



The Bar Council

A lens on justice:
The move to remote justice
2020 – 2024

May 2024

Foreword

The introduction of remote hearings is one of the most significant changes to the mode of delivery of justice in recent times. Over the last 20 years, remote hearings have become a key feature of the justice system. When the pandemic forced courts to close, the need for a robust remote justice system became acute. Its immediate delivery led by the judiciary, and supported by professional users and the public, was one of striking success. The justice ‘show was kept on the road’. The use of remote hearings has now, however, fallen back in a somewhat unstructured way and across all jurisdictions, just one in four hearings is now online.

In what is the first evaluation of remote hearings in England and Wales from the perspective of legal professionals, this report examines the rapid escalation of remote hearings prior to and accelerated during the pandemic by reference to HMCTS data, and as to how it has impacted barristers, through the analysis of five Bar Council surveys. This report sets out what has been working, what’s not and where improvements or changes are needed.

In our 2023 survey of the profession, well over a thousand comments were given by barristers on remote hearings. Within their statements, barristers have shared experiences of where remote hearings are effective and, in some cases, beneficial, particularly for those with caring

responsibilities. But the Bar has also set out where remote hearings are not working well, and most concerningly in some cases, they are failing, hampering access to justice and productivity in the courts.

Almost half (49%) of the profession told us that remote hearings should be used more frequently. 38% said the number was about right at the moment and almost 10% said they should be used less frequently or not at all. Views differed across regions and practice areas and the majority of those in crime and family felt they should be used more frequently.

A principal complaint is as to the lack of consistency of approach across courts and judges which can cause confusion and lead to uncertainty amongst all court users. Barristers tell us that there should be a consistent, uniform, and pragmatic approach to remote hearings, rather than what appears sometimes to be an unpredictable, even arbitrary approach.

It is welcome news, then, that the senior judiciary have already started to ‘grasp the nettle’ so far as the Crown Court is concerned with the issue – just prior to the publication of this report – of an amendment to the Lord Chief Justice’s Guidance on Remote Attendance by Advocates in the Crown Court to include bail applications where the defendant is not to attend court.¹ This change will be monitored and the protocol, more generally, kept under review.

In relation to these cases the default position will be a remote hearing with in-person hearings only taking place if there is some good reason for an in-person hearing (such as the physical presence of the relevant counsel already in court). These decisions are, of course, always a matter for the judge in each case applying the interests of justice test.

It is hoped that all jurisdictions might take the opportunity to review existing remote hearing protocols, in particular, to secure the greatest levels of consistency and predictability so far as the interests of justice may allow.

The Bar is not against the use of remote justice in principle, quite the opposite in fact – barristers acknowledge that remote hearings have the potential to ameliorate some of the issues facing the sector. This is quite apart from the benefits barristers tell us they personally experience as a result of reduced travel time and increased efficiency. But, as many barristers have told us in this report, the benefits to the profession should not be to the detriment of the administration of justice. This must not be a zero-sum game. It is clear that in some instances, a remote hearing is simply not appropriate, particularly where the infrastructure cannot meet the demand.

Meeting important public needs, such as reducing the court backlog, by utilising remote hearings should not override justice being done and being seen to be done. Nor should they outweigh the importance of in-person hearings to the rule of law;

the authority of the court; respect for, and adherence to, adverse judicial decisions; maintenance of the high standard of barrister advocacy; and ensuring that the unsuccessful litigant feels they have ‘had their day in court’.

The Bar Council therefore calls for a principled and consistently applied approach to the use of remote hearings. One that uses remote hearings more regularly where it is efficient to do so, and which allows for greater certainty and predictability for all court participants including barristers, solicitors and litigants. In areas facing the greatest backlogs, with higher than desirable ineffective hearing rates, such as the Crown Court, this might contribute towards greater productivity, as well as allowing all concerned to better plan their professional and personal diaries.

I am very grateful to those barristers who contributed to the many surveys examined in this report and to the HMCTS for providing access to their data for this robust analysis. Understanding the views of professional court users is important when deciding the role remote hearings will play in the future of the justice system.

Sam Townend KC

Chair of the Bar
May 2024

References

1. See the update to paragraph 7 of Annex 1 of the Better Case Management Handbook titled ‘Remote Attendance by Advocates in the Crown Court (February 2022)’ at <https://www.judiciary.uk/guidance-and-resources/better-case-management-revival-handbook-january-2023/>

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Introduction

The Bar Council represents around 18,000 practising barristers in England and Wales and promotes the values they share. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights, often acting on behalf of the most vulnerable members of society.

The Bar makes a vital contribution to the efficient and effective operation of criminal and civil courts. It provides a pool of talent, from increasingly diverse backgrounds, from which a significant proportion of the judiciary is drawn and on whose independence the rule of law and our democratic way of life depends.

The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the operationally independent Bar Standards Board (BSB).

This report encompasses an evaluation of remote hearings in the period from March 2020 to March 2023, examining both how the rapid introduction of remote hearings has impacted barristers' working lives and how barristers feel remote hearings have impacted the functioning of the court system, the quality of advocacy, access to and the delivery of justice. It is the first evaluation of remote hearings in England and Wales from the primary perspective of legal professionals.

Remote justice or remote hearings should be considered to include both audio and video hearings carried out as part of a case administered by HM Courts & Tribunals

Service (HMCTS) in England and Wales.

On a day-to-day basis, listing of cases and deciding what type of hearing would be most appropriate in a case is a judicial function and, as such, independent of HMCTS, the government and the Bar.

Remote hearings were a feature of the court system in England and Wales before March 2020, but their use was, due to the Covid-19 pandemic, rolled out with speed and ahead of schedule, causing an enduring and fundamental change to the delivery of justice and the working conditions of professional court users. From the outset, the Bar Council collected survey data from barristers on the operational and experiential nature of this shift.

Since May 2021, the Bar Council's position on remote hearings has been:²

1. We are supportive of the continuing use of technology in our courts.
2. We are supportive of remote hearings becoming the default position for short or uncontroversial procedural business. We recognise that the appropriate use of remote hearings will be vital in tackling accrued backlogs in each of our jurisdictions.
3. However, for any hearing that is potentially dispositive of all or part of a case, the default position should be in-person hearings. Remote hearings should be available as an option in such cases where the court and all parties agree that proceeding in that way would be appropriate.

This report specifically evaluates the

delivery of remote justice, but we are aware that there is conceptual and practical overlap between the operation of remote justice and the conditions of remote working. Barrister views on remote working will be addressed here to a certain extent, but this is not the focus of the report.

The report draws on three key sources that have been reanalysed to examine the prevalence and professional experience of remote hearings, associated benefits, problems, and issues, as well as what barristers would like to see for the future in terms of remote hearings. The sources are:

1. The Bar Council Covid-19 surveys which consists of three separate surveys monitoring the impact of the Covid-19 pandemic on the Bar.

2. The latest two iterations of the Bar Council's longitudinal Barristers' Working Lives Surveys (2021 and 2023).
3. HMCTS data on the prevalence of remote hearings spanning January 2020 to January 2023.

More details of these surveys including how they were administered and the response rates is provided below in Annex.

References

2. The Bar Council (May 2021) [Four Bars statement on the administration of justice post-pandemic](#).



Section 1: Executive summary and key findings

HMCTS aims to improve its capability to deliver court proceedings online in the long term by investing in technology and achieved this at pace during the Covid-19 pandemic.³ Despite this, the proportion of hearings taking place online is now decreasing. Poor data collection does not allow for thorough monitoring or evaluation of the impact of remote hearings.

Remote hearings have been an operational feature of the court system in England and Wales since 2003. Increased capacity was prioritised under the Reform Programme, beginning in 2016, and they were introduced at pace amid the crisis induced by the Covid-19 pandemic in 2020-21. Courts closed for in-person business for three months from March to June 2020, and then gradually re-opened with intermittent closures for the next six to ten months. With significant variation between jurisdictions, many court proceedings moved online.

There has been a decline in the proportion of remote hearings (compared with in-person hearings) over the last three years. This contrasts with HMCTS's pre-pandemic aim of reducing the number of cases heard in person by at least half.⁴ In 2021, according to HMCTS' data, 58% of hearings were remote; in 2022, 44% of hearings were remote; in 2023, 25% of hearings were remote. The pattern of remote hearings varies quite considerably by jurisdiction.

HMCTS has not been collecting any

significant data on remote hearings since February 2023 and before then, it only collected partial data. HMCTS has not analysed or published the data it has, is not carrying out ongoing monitoring or evaluation, and has no imminent plans to reintroduce data collection.⁵

Barristers do not want to see progress on remote hearings rolled back, a large minority would like to see their use increased, and more would support increased use if the functioning of remote hearings were to be improved.

Barristers are now accustomed to remote hearings being a part of their practice. In 2021, 35% attended only remote hearings in the three months before the survey and 33% attended both remote and in-person hearings. In 2023, 4% attended remote only and 60% attended both.

Barristers' views on the frequency of remote hearings in 2023:

- Half (49%) of all barristers said remote hearings 'should be used more frequently'.
- 38% said 'it is about right at the moment'.
- Just 8% said 'they should be used less frequently'.
- 1% said they 'should not be used at all'.
- 4% said they 'did not know'.

The operational functioning of remote hearings has improved significantly since 2021. In 2021, 77% of barristers said that they experienced technical problems

with video platforms; this had reduced to 35% by 2023. In 2021, 30% said that video platforms were not meeting the needs of vulnerable clients; that had also reduced by 2023 to 12%.

Counsel on circuit are more supportive of remote hearings than those in London. Four in ten respondents working in London would like to see remote links used more extensively compared to more than half of all other respondents and up to two thirds of those working in the North West and East of England.

However, barristers identify problems with remote hearings and their impact on the delivery of justice.

Barristers see remote hearings as being useful and important for a variety of reasons; they improve work-life balance, save time and money, are efficient and allow greater flexibility, among other benefits. There is a mitigating view offered by some barristers that the advantages were seen to be for the benefit of the profession and possible increased efficiency but not, necessarily, for the benefit of the quality and administration of justice.

Barristers express serious concerns about the consistency in the administration of justice and decision-making over the format of hearings with some barristers suggesting there is a negative view of remote hearings among some of the judiciary and at some courts. Many barristers argued that consistency in application and procedural clarity is important.

Other challenges in the administration of remote hearings include issues with technology; communication problems from the court and between parties in advance of hearings, particularly

when translators were involved; court management and listing/block listing of hearings, and floating lists.

The publicly funded Bar (those who are reliant on legal aid/public funding for more than 50% of their income) are much more likely to indicate problems with remote hearings. Just 6% said that there were no problems, compared to 26% of those who are less reliant on public funding.

King's Counsel (KCs) — a key group linked to the next generation of the judiciary — were less likely to report problems with remote hearings than other barristers, but they were also less inclined to support the extension of remote hearings, and more likely to want to see remote hearings reduced.

Although there was some variation in the types of hearings that were seen as appropriate to be held remotely, there was reasonable consensus that for shorter applications, case management meetings, preliminary hearings, administration hearings, and small claims hearings, amongst others, remote should be the default. There was also general agreement that for trials, especially longer ones, and those where contested evidence is involved, in-person hearings should be the norm. However, there were mixed views and differences of opinion as to which types of hearings were suited to in-person or remote provision.

The Bar Council welcomes the publication of the updated Lord Chief Justice's Guidance on Remote Attendance by Advocates in the Crown Court on 24 April 2024.⁶ This change will be monitored and the protocol, more generally, kept under review. along with a general review of the protocol applicable in the Crown Court. Whether

a hearing is to be held in person or remotely is exclusively a matter for the court in the interests of justice. The Bar Council invites consideration to be given by all jurisdictions to review existing remote hearing protocols, in particular, with a view to ensuring the greatest levels of consistency and predictability for the benefit of all court users.

References

3. Ministry of Justice (2021) **HMCTS Reform**. The Ministry of Justice's evaluation developed a theory of change model with four thematic categories, one of which is 'enhancing the use of audio and video hearings.'
4. National Audit Office (May 2018) **Early progress in transforming courts and tribunals**.
5. There is a trial collection of provisional data, which involves scraping the published daily listings for Crown Courts only, using the free text field which may contain the hearing method. This has been a stop gap whilst the reformed platforms are stood up.
6. See the update to paragraph 7 of Annex 1 of the Better Case Management Handbook titled 'Remote Attendance by Advocates in the Crown Court (February 2022)' at <https://www.judiciary.uk/guidance-and-resources/better-case-management-revival-handbook-january-2023/>



Section 2: Background

2003 – 2023

All courts and tribunals in England and Wales operate under HMCTS, which is an executive agency of the Ministry of Justice. HMCTS is responsible for supporting the independent judiciary in administering criminal, civil and family courts and tribunals in England and Wales, and for non-devolved tribunals in Scotland and Northern Ireland. Capability for remote hearings is part of HMCTS's long-term strategy for modernising the justice system, expedited through necessity by the pandemic. They have been used in criminal courts for many years since the Criminal Justice Act 2003 made provision for witnesses to give evidence via video or audio link in eligible cases at the discretion of the court where it is in the interest of justice.⁷

HMCTS Reform Programme

In 2016, HMCTS launched an ambitious portfolio of changes under the Reform Programme that aimed to modernise and digitise the justice system, reduce complexity, and provide new ways for people to engage. This included civil (through the implementation of Online Civil Money Claims and the Damages Claims project), criminal (via Common Platform and the Single Justice Procedure), family (via the Probate online, Divorce and Financial remedy online, and the Family Public Law online service projects), and tribunal (through projects in the Immigration and Asylum Tribunals and the Social Security and Child Support Tribunals) jurisdictions, and to transform infrastructure and methods of enabling

services (through the Video Hearings Service and the Court and Tribunal Hearings Service). HMCTS intended to achieve its aims by introducing new technology and working practices to modernise and digitise the administration of justice, moving activity out of the courtroom, streamlining processes, and introducing digital channels for people to access services. This enabled some efficiency savings by reducing headcount, moving court proceedings online, and reducing the physical court estate. A key component of the reform programme was introducing and expanding digital services, including audio and video remote hearings, with HMCTS saying these aimed to “create new and more efficient routes to justice”.⁸

Government thinking around virtual hearings had already been developing over several years by this point. In 2009, a pilot in two London courts testing the desired outcome of speed and efficiency savings to courts found that, largely due to the cost of introducing the technology, virtual hearings cost more than they saved. It also found that there were challenges around different behaviours and outcomes in online proceedings. It recommended further investigation.⁹

“The impact of the pilot on judicial processes and outcomes is complex. The evidence points to a series of factors that may be regarded as giving cause for concern, but the frequency with which they occur is very difficult to judge.” – Virtual Court pilot outcome evaluation.

2016 – 2020

As part of its portfolio, HMCTS expected to employ 5,000 fewer staff and reduce the number of cases held in physical courtrooms by 2.4 million cases per year by March 2023. The stated aim in the civil and family courts and tribunals in 2016 was “to reduce the number of cases requiring a physical hearing from 2.6 million to 1 million a year” by 2022/23. In the criminal courts, the aim was “to reduce the number of criminal cases requiring a physical court hearing each year by around half (from 1.7 million to 0.9 million)” in the same timeframe.¹⁰

Our analysis of the 2021-23 HMCTS data would suggest that this has not been achieved as in 2023, 20% of Crown hearings were conducted **entirely** remotely¹¹ and 21% of civil and 35% of family hearings were conducted remotely. In addition, these represent significant reductions from the levels of remote hearings conducted in 2021 and 2022.

Reducing physical hearings would not always require those hearings to be replaced like-for-like with a remote hearing. Some of the reduction was planned to come about through measures including defendants entering guilty pleas online; more efficient case management reducing the number of hearings necessary; and some civil matters such as divorce and probate being dealt with entirely online from application through to resolution.

Between 2016 and 2020, digital services had already begun to change ways of working for legal professionals. However, as of Q3 2019, HMCTS was running significantly behind schedule in the parts of the Reform Programme that related to the delivery of remote justice in the form of audio and video hearings.

According to the National Audit Office (NAO) in September 2019, HMCTS had “not reported any progress” in reducing the number of physical hearings.¹² The Video Hearings (VH) service was still in development.

Covid-19 pandemic

This meant that at the start of the pandemic in March 2020, when all physical courts and tribunals in England and Wales were closed for at least three months between March and June 2020, HMCTS was not in a strong position to move physical court proceedings online rapidly and securely. Even where it **was** possible to move hearings online, many cases, particularly cases requiring a jury trial, were not suitable for online hearings. This meant many cases were simply not heard, resulting in growing backlogs and waiting times. The case backlog grew across criminal, civil, and family jurisdictions and tribunals, but most notably and intractably in the Crown Court. There were 58,000 criminal court cases waiting to be heard at the end of May 2021. Four in ten (40%) cases had been waiting to be heard for more than six months at the end of March 2021, compared to one in four (25%) at the end of December 2019.¹³

Despite initial challenges, there were significant developments in accelerating aspects of the Reform Programme to move court and tribunal proceedings online, where appropriate. Beginning in May 2020, Cloud Video Platform (CVP) was introduced to replace the beta VH service, which was not yet ready to be rolled out widely.

From July 2020, the court estate gradually reopened, and it was supplemented by additional temporary courts, known as Nightingale courts. These premises

helped boost capacity and allow for socially distanced trials in a bid to clear the backlog of cases that had rapidly accumulated during the period of court closures.

Experience of remote hearings during this re-opening stage of the pandemic (May to October 2020) was affected by jurisdiction. Nine in ten of those few Crown and Magistrates' court hearings that **were** heard during this time were in-person: 87% of Crown cases and 91% of Magistrates' cases. By contrast, nine in ten users of the family court attended remotely.¹⁴

Post-pandemic

Since the pandemic, the courts appear to be moving away from the peak use of remote hearings. The decision on the type of hearing to be used rests with the presiding judge in a case, and HMCTS facilitates the type of hearing the judge considers appropriate. In 2021/22, the courts held more than 2.2 million hearings, 42% of which primarily used audio or video hearing technology. Our analysis of the HMCTS data corroborates this, suggesting that 41% of all hearings were conducted **entirely** remotely in January 2022. HMCTS's annual report also states that 46% of hearings in 2021 were in part or fully held in-person and 12% were predominately paper-based.¹⁵ Here, our snapshot analysis of the data from January 2021 suggests that 57% of hearings were in part or fully in-person and only 2% were paper-based.¹⁶

In 2022/23, the courts held more than 2 million hearings, of which 28% primarily used audio or video hearings technology, 63% were in part or fully held in-person and 8% were predominantly paper based.¹⁷ Our analysis of the HMCTS data from January 2023 suggests that

three-quarters (75%) of all hearings were in part or fully in-person and 24% were remote hearings, with just 1% paper-based. Again, these figures are similar to the published HMCTS annual review, albeit with a discrepancy on paper-based hearings.¹⁸

In February 2022, the Lord Chief Justice published national guidance on remote hearings that was intended to promote consistency. The guidance specifies that: "Mentions, bail applications, ground rules hearings, CTL extensions, uncontested POCAs and hearings involving legal argument only, will generally be suitable for remote attendance by all advocates unless the court otherwise orders."

It emphasises that whether to hold a case remotely or in-person is a judicial decision, made using the "interests of justice" test and that advocates should be available for attendance in-person where required.¹⁹ In June 2022, HMCTS relaunched its VH service. It includes consultation rooms and guidance for court users.

Remote hearings are, as had been intended by HMCTS for several years before the pandemic, now an established practice in the delivery of justice. However, there is a view among legal professionals and magistrates that remote hearings do not necessarily improve efficiency in court in a way that could make substantial time or cost savings to the justice system.²⁰ That being said, barristers tell us that remote hearings can enable considerable time and cost savings to lay and professional court users on an individual level, making a significant improvement to work-life balance. We have, since the pandemic, collected comprehensive data on barristers' evolving relationship with

the everchanging parameters of their workplace. Legal professionals have become accustomed to much more of their work taking place online and have quickly learnt to adapt to this. But the shift in legal activity taking place virtually did not happen overnight – there has been a 20-year undertaking to move certain court proceedings online in England and Wales.

References

7. See Section 51: **Criminal Justice Act 2003**.
8. Ministry of Justice (2021) **HMCTS Reform Evaluation Framework**.
9. Matthew Terry, Dr Steve Johnson and Peter Thompson, Ministry of Justice Research Series 21/10 (December 2010) **Virtual Court Pilot Outcome Evaluation**.
10. National Audit Office (May 2018) **Early progress in transforming courts and tribunals**.
11. Annex outlines the definitional details. In-person hearings include hybrid hearings i.e. those hearings where some participants were in-person, and some were remote. However, given that remote hearings aimed to reduce the court estate and headcount, it is unlikely that hybrid hearings help achieve this. In fact, they are potentially more costly than 100% in-person hearings.
12. National Audit Office (September 2019) **Transforming courts and tribunals – a progress update**.
13. Institute for Government (October 2021) **Performance Tracker: Criminal Courts**.
14. HMCTS (December 2021) **Evaluation of remote hearings during the COVID 19 pandemic**.
15. HMCTS (July 2022) **Annual Report and Accounts 2021/22**.
16. We do not know how paper-based hearings are being counted in the HMCTS data sent to the Bar Council.
17. HMCTS (July 2023) **Annual Report and Accounts 2022/23**.
18. It is possible that these hearings are less likely to be recorded in the court returns.
19. Lord Burnett of Maldon (14 February 2022) **Message from the Lord Chief Justice – Remote Attendance by Advocates in the Crown Court**.
20. Institute for Government (23 Feb 2023) **Performance Tracker 2022/23: Spring update – Criminal courts**.



Section 3: Review of existing remote hearings evaluations

There has been considerable scrutiny of and discussion about HMCTS's transition to remote hearings, before, during and after the pandemic. Since 2019, HMCTS has been strongly encouraged by a range of stakeholders to introduce data collection and monitoring of the impact of remote hearings from an access to justice perspective.

Dr Natalie Byrom of the Legal Education Foundation went so far as to list the data points necessary to fully evaluate the impact of remote hearings on users of the justice system.²¹ This 2019 evaluation set out practical steps by which HMCTS could define and measure the impact on access to justice and vulnerable persons of the court reform process. It stressed the importance of inserting objective online measures of procedural justice into any new processes or systems, and of making comparisons between physical and online processes, particularly when it came to quality of engagement.²²

The NAO has been regularly monitoring HMCTS' progress against its original project aims.²³ In 2018, the NAO's first evaluation expressed doubt about the prospective cost savings of some of the reforms, noting that they were based on the assumptions that at least 70% of service users would move online within 5 years, that all cases would start online, and that the majority of civil and family cases would move entirely online. The NAO noted that some of the wider issues around proposed increases to virtual hearings had not been fully scoped

out, both from a practical perspective (e.g. increased technological burden on prison officers) and an access to justice perspective (e.g. impact on case outcomes when hearings are not in-person).²⁴

The NAO's second evaluation in 2019 highlighted the fact that there had been delays in the transition to online services, meaning HMCTS had not been able to evidence a reduction in demand for physical hearings before closing more court buildings. It also warned of the tension between delivering rapid change and delivering sustainable change.²⁵ In February 2023, the NAO reported that HMCTS was going to miss the December 2023 deadline for completion of the Reform Programme and drew particular attention to the challenges around the delivery of Common Platform in the criminal courts.²⁶

In November 2019, the House of Commons Committee of Public Accounts encouraged HMCTS to pause the rollout of video hearings while the impact on justice outcomes was evaluated.²⁷ The inquiry heard that the implementation and limited evaluation of video hearings had primarily been process-driven and had not collected data that would allow evaluation on access to justice metrics. It had also not paid attention to the specific needs of vulnerable groups.

HMCTS has evaluated the implementation of remote hearings at several points. In 2019/20, it commissioned an independent evaluation of party-to-party and party-to-state hearings in civil, family and tax

jurisdictions. Legal professionals surveyed as part of the evaluation recognised the potential benefit to parties of remote hearings, and found the user experience mostly straightforward, but identified some challenges with communication.²⁸

Reviews published during the pandemic

When the pandemic hit, there was broad consensus that remote hearings were an integral part of the resources available to keep the justice system functioning as best as possible. Nevertheless, stakeholders again flagged concerns about the ability of certain groups of users to fully engage and communicate remotely and emphasised the need for monitoring by user group and case outcome.

Since the pandemic, there have been two wider evaluations by the government – one in December 2021 and another in March 2023. The December 2021 evaluation identified similar patterns to other non-governmental analyses: professional court users were broadly in favour of sustained use of remote hearings, but that there were ongoing challenges around technology, training, and communication. The March 2023 evaluation looked at case outcomes for the first time and found little to no variation in case outcome by hearing type. It also found there was little to no efficiency saving in terms of time.

The Equality and Human Rights Commission published findings very early in the pandemic flagging up serious concerns about some users' ability to engage with remote justice.²⁹ They pointed towards the specific communication needs of people with cognitive impairments, mental health conditions and/or neurodiverse conditions and stated that these needs could not be met via a remote link. The report emphasised that

the implications of remote justice are not fully understood and should be evaluated in full before their use is made more widespread.

The Nuffield Family Justice Observatory carried out a consultation in family remote justice also in the early stages of the pandemic. It found that most considered remote hearings to be justified for certain cases under the circumstances but identified considerable cause for concern around the fairness of remote hearings in some instances, including issues around confidentiality, communication, vulnerability, and problems accessing appropriate technology and technological support.³⁰

Similarly, the Legal Education Foundation reviewed civil remote justice in May 2020. Lawyers involved stressed that there were technical difficulties and a lack of technical support, but were, in general, satisfied with the hearings, with 71.5% describing their experience as positive or very positive. They found that remote hearings were more tiring, and less effective in terms of facilitating participation.³¹

A report by the Justice Select Committee in July 2020 urged HMCTS to systematically collect monitoring data so that a proper evaluation of the effectiveness of remote justice and an assessment of the impact on access to justice could be made.³²

In its March 2021 report 'COVID-19 and the Courts', the House of Lords Constitution Committee made several recommendations to the government which included continued investment in remote hearing technology. It distinguished between the higher courts, where the transition to remote hearings had been relatively straightforward, and

the lower courts, particularly the criminal courts. It identified that virtual hearings “appear to have been effective when there has been adequate and fully functioning technology with which all parties are fully conversant; deployed in preliminary, interlocutory or procedural cases.”³³

In June 2021, the Legal Education Foundation published research that shed light on the experience of tribunal judges as they adapted to the use of remote hearings in the early months of the pandemic. The report found that the move to remote hearings was reasonably smooth, but that “respondents indicated that proceeding with hearings remotely has created new practical and attitudinal barriers to accessing the justice system for some parties...whilst reducing them for others.”³⁴

HMCTS evaluated its response in an implementation review of video hearings between April and August 2020, and a larger evaluation report published in December 2021.³⁵ The December 2021 evaluation was a large project which included the judiciary, public users, legal representatives and HMCTS staff, including a quantitative survey of over 2,000 legal users supported by 25 qualitative interviews. The evaluation presents a comprehensive overview, broadly stating that legal representatives found remote hearings a useful part of their professional lives, with the main challenges being around the reliability of the technology, and some challenges around communication and building rapport.

Reviews published post-pandemic

In April 2022, the House of Commons Justice Select Committee released its ‘Court Capacity’ report which refers to the digital capacity of courts and emphasises

that the lack of HMCTS data meant that a major stumbling block for the inquiry was collecting sufficient data to work out what was happening in the courts. It also made the point that in the Crown Court, the interests of justice meant that in-person attendance was often necessary.³⁶

The Magistrates’ Association’s survey of criminal courts during the pandemic, also published in April 2022, revealed worrying findings about the impact of remote hearings on justice. Magistrates believed there was a role for remote links, but that heavy reliance on them was not in the interests of justice. The concerns of magistrates “centred on the impact [of remote links] on procedural justice and effective participation. Both were heavily impacted by the quality of technology available in courtrooms.”³⁷

The Judicial Attitudes Survey, highly significant given that judges are the gatekeepers to remote hearings, found that salaried judges were divided on whether remote hearings were beneficial, but most fee-paid judicial officeholders felt remote hearings had been beneficial to their work. For salaried judges, the largest perceived negative effect of remote hearings was on the interactions between parties (60%), the way parties behave during hearings (54%) and the quality of advocacy (50%).³⁸

In January 2023, the Ministry of Justice published its first evaluation of remote hearings on the Crown Court.³⁹ This evaluation notably focused on efficiency and effectiveness. It found that holding a hearing remotely had almost no impact on efficiency as measured by hearing duration or the number of hearings required in a case. It also found that effectiveness (as measured by case outcomes) was not affected. The focus on

case outcomes is significant as that had been a cause of concern for many in the sector.

The rule of law and administration of justice are different in Scotland, so the systems are not necessarily directly comparable. However, an evaluation of remote hearings in the civil justice system in Scotland, conducted in August 2023, found that there were diverse views on the impact and continued use of remote hearings. Some common challenges included: issues arising from technical problems; digital exclusion and literacy (particularly, though not only, among parties); and challenges around communicating, both verbally and non-verbally. Common benefits included: time, costs and comfort for parties and professionals, and work-life balance for professionals.⁴⁰

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Section 4: New analysis

This section collates the data and statistics extracted through further analysis of the three data sources detailed in the Annex.

4.1 Prevalence of remote hearings

The HMCTS data (Table 4.1) shows, unequivocally, that there has been a significant and steep decline in the volume of remote hearings, as recorded by the Audio-Visual Situation Report between 2021 and 2023, and a corresponding increase in in-person hearings.

It is likely that some of the growth in in-person hearings between 2021 and 2022 can be attributed to the definitional change, where in-person hearings were redefined to include partially remote and fully in-person. However, this does not explain the large increase in the proportion of hearings conducted in-person (including hybrid) between 2022 and 2023, from 56% of all hearings in 2022 to 75% in 2023.

The direction of travel over the three

time points is indisputable. The aggregate proportion of all hearings being undertaken (entirely) remotely fell from 58% (possibly a slight overestimate due to the reasons set out above) to 44% in 2022 and 25% in 2023. Despite the inconvenience of the definitional change for the analysis, it is perhaps necessary, as when a hearing is required to be even partially in-person this effectively negates much of the potential advantage of conducting the hearing remotely e.g. staffing and physical court space. It is primarily in the expansion of fully remote hearings, as opposed to hybrid hearings, where any benefits to the justice system can be accrued. In addition, there was a significant body of opinion across the Bar that hybrid hearings were to be avoided where possible.

Although there was a decrease in all types of remote hearings between 2021 and 2023, the steepest decline was in hearings conducted using BT MeetMe. The proportion of hearings conducted using CVP remained stable between

Table 4.1: Percentage of all hearings conducted in each format: 2021 to 2023⁴¹

	2021	2022	2023
In-person (inc. hybrid 2022/2023)	42	56	75
BT MeetMe	20	9	4
CVP	24	24	13
Skype	4	0	0
Teams	0	9	7
Video Hearings Service	1	0	0
Other Platforms	10	2	1
All remote	58	44	25
Base n=100% total hearings covered	152,746	108,094	78,323
No. of records	1,459	1,419	1,000

Source: HMCTS 2023

2021 and 2022 but dropped significantly between 2022 and 2023. The change between 2022 and 2023 is more reliable, so from this point we will only compare the change in the proportion of hearings being conducted using different processes between 2022 and 2023. This includes our analysis of hearing type by jurisdiction and region.

Remote hearings by jurisdiction and region

Table 4.2 shows the proportion of all hearings being conducted using different processes by jurisdiction in 2022 and 2023 and Table 4.3 presents the same summary data for 2022 and 2023 by region. Overall, there has been an 18 percentage point increase in the proportion of hearings conducted in-person and an equivalent reduction in remote hearings (we include ‘other’ here which, as far as can be determined, are primarily paper-based hearings). This change has been most marked in the family and civil court jurisdictions which have seen 46 and 34 percentage point moves towards in-person hearings. The Magistrates’ court jurisdiction has not changed at all in

the proportion of hearings conducted remotely while the Crown Court jurisdiction has seen a lower 14 percentage point move from remote to in-person.

Looking at regional disparities, the South of England has witnessed the largest changes with 29, 25 and 21 percentage point shifts from remote to in-person hearings in the South West, South East and London respectively. While the North East, Midlands and Wales regions showed the smallest shifts from remote to in-person.

Due to the reduction in response rate in 2023, the data is not quite so reliable when considering the intersection between region and jurisdiction, but suffice to say, there were notable moves to in-person hearings in the following areas:

Family courts: had an average 46 percentage point change from remote to in-person and most regions showed a 50-60 percentage point shift from remote to in-person. However, this trend was not witnessed in London where there was a smaller 26 percentage point change.

Civil courts: had an average 34 percentage

Table 4.2: Hearings conducted in 2022 and 2023 by jurisdiction and format (%)

Jurisdiction	Civil		Crown		Family		Magistrates		Tribunals (all)		Total	
	2022	2023	2022	2023	2022	2023	2022	2023	2022	2023	2022	2023
Percentage of all hearings...												
In-person (inc. hybrid 2022/23)	45	79	66	80	20	65	83	84	24	43	57	75
BT MeetMe	28	8	0	0	9	2	1	2	19	8	8	4
CVP	10	3	34	20	29	9	14	4	53	45	24	13
Skype	0	0	0	0	0	0	0	0	0	0	0	0
Teams	11	6	0	0	40	23	1	8	1	1	9	7
Video Hearings Service	0	0	0	0	1	0	0	0	1	1	0	0
Other Platforms	7	3	0	0	1	0	1	1	2	2	2	1
All Remote	55	21	34	20	80	35	17	16	76	57	43	25
Base n=100% total hearings	17,978	14,480	24,225	18,457	17,146	10,843	36,261	24,399	10,581	9,021	106,191	77,200
No. of records	383	254	179	112	398	284	320	218	139	132	1,419	1,000

Table 4.3: Hearings conducted in 2022 and 2023 by jurisdiction and format (%)

Region	Wales		North East		North West		Midland		South West		South East		London		Total	
Percentage of all hearings...	2022	2023	2022	2023	2022	2023	2022	2023	2022	2023	2022	2023	2022	2023	2022	2023
In-person (inc hybrid 2022/23)	59	72	67	72	67	86	42	56	54	80	54	83	52	74	57	75
BT MeetMe	5	2	14	9	9	1	11	4	8	3	6	3	6	2	8	4
CVP	29	12	17	6	8	7	30	35	11	5	38	13	33	20	24	13
Skype	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Teams	4	13	2	12	10	1	15	4	24	11	1	0	8	5	9	7
Video Hearings Service	2	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0
Other Platforms	1	1	1	1	6	5	1	0	3	1	1	1	0	0	2	1
All Remote	41	28	33	28	33	14	58	44	46	20	46	17	48	26	43	25
Base n=100% total hearings	8,867	6,867	13,135	15,165	18,103	7,775	12,585	6,278	12,219	12,357	17,001	6,056	24,281	22,702	106,191	77,200
No. of records	161	115	234	247	176	49	212	95	287	299	174	58	175	137	1,419	1,000

Source: HMCTS, 2023

point change from remote to in-person but this was significantly higher in the North West (54 percentage points) and, again, lower in London (19 percentage points).

Crown Courts: recorded the smallest shift in format from remote to in-person of 14 percentage points. This might be expected given the high proportion of Crown Court hearings that were conducted in-person in 2022 and 2023. However, this nevertheless conceals some regional disparities. Most regions saw little or no change in the proportion of hearings being conducted remotely, indeed a few saw a small (albeit statistically not significant) increase but in the South East and London, there was a 22 and 19 percentage point shift respectively, from remote to in-person.

Magistrates' courts: showed little change in aggregate between 2022 and 2023 in the proportion of hearings conducted remotely. However, this conceals a further North/South difference with the South West and South East both showing a shift of 10 and 22 percentage points from remote to in-person while all the other regions showed small increases in remote

hearings or no change.

Tribunals: witnessed an aggregate 19 percentage point shift from remote to in-person between 2022 and 2023. Wales and the North East saw much larger shifts from remote to in-person while the other regions saw changes of 20 percentage points or less.

Given that the HMCTS objective in 2016 was to reduce the number of hearings conducted in the civil and family courts from 2.6 million to 1 million by 2023, and that these courts showed the largest shifts from remote to in-person hearings between 2022 and 2023, it suggests that judges do not feel that remote hearings are appropriate to the degree that was anticipated. The target shift to remote hearings is smaller in the criminal courts (from 1.7 million to 1.1 million hearings in-person) and this is partially reflected by the smaller move back to in-person hearings between 2022 and 2023 in Crown and Magistrates' courts as recorded in Table 4.2.

Going forward, it would be useful to examine why there is such large regional

variation in the moves from remote to in-person hearings, and why there appears to be a North South divide in this.

Barristers' Working Lives 2021 and 2023

The two Barristers' Working Lives surveys (see the Annex for details) asked barristers to indicate whether or not they had undertaken remote or in-person hearings in the three months before each survey. Table 4.4 shows that there has been an increase in the proportion of barristers who indicated that they have only conducted in-person hearings in the three months prior. There has also been a significant reduction from 35% to 4% in the proportion of respondents who indicated that they have conducted only remote hearings in the preceding three months. Unfortunately, it is not possible to infer the proportion of hearings conducted remotely or in-person among the group who indicated they have been involved in both types (up from 33% to 60%).

Table 4.4: Percentage of barristers attending court in each format: 2021 to 2023

	2021	2023
In-person only	18%	26%
Remote only	35%	4%
Both in-person and remote	33%	60%
Not attended court	14%	10%
Base N=	3,470	3,531

Source: Barristers' Working Lives 2021 and 2023

Using the same data, Table 4.5 breaks the responses down by main area of practice. While there has been an overall increase in the proportion of barristers reporting that they have only acted in in-person hearings, among those working in crime, the figure has decreased from 40% to 34%. In all the other areas of practice, there has

been an increase in in-person only court attendance.

The change in the proportion of barristers who report having conducted remote hearings only is significant. In April/May 2021, workplaces had started to return to normal, so the reduction in remote hearings between May 2021 and May 2023 is significant, particularly in the context of HMCTS's objective to reduce reliance on in-person hearings.

It is notable that in Barristers' Working Lives 2023, there was little difference in the likelihood of barristers reporting remote, in-person or both types of court attendance in relation to their levels of public funding or stage of career. The change in hearing type for KCs was more marked. In 2021, 17% of KCs undertook remote hearings only (compared to 18% of other barristers) but two years later, in 2023, 40% of KCs were conducting in-person hearings only compared to 23% of other barristers. Interestingly, in 2021, a significantly higher proportion of KCs were conducting remote hearings than other barristers (48% compared to 33% of other barristers).

However, as Figure 4.1 demonstrates, there is significant variation in the proportion of barrister time spent in remote hearings. Across all respondents, a third (32%) indicated that more than 50% of their time was spent in remote hearings. However, in the criminal Bar, only 10% said that more than 50% of their time was spent in remote hearings. In civil practice, this figure increased to 54%.

As one might expect from the data, there were big differences between those who are more than 50% publicly funded and those less than 50% publicly funded. More than twice as many of those less reliant on public funding (32%) said they had

Table 4.5: Percentage of barristers attending court in each format by area of practice: 2021 to 2023

2021		Area of Practice						Total
		Crime	Civil	PI/PN	Com.	Fam	Other	
Attending court in 2021 in previous 3 months	In-person only	40%	10%	12%	3%	17%	8%	18%
	Remote only	7%	45%	42%	58%	39%	34%	35%
	Both in-person and remote	46%	26%	38%	18%	34%	12%	33%
	Not attended court	8%	19%	8%	21%	10%	47%	14%
Base N=		919	775	420	566	698	77	3,455
2023		Crime	Civil	PI/PN	Com.	Fam	Other	Total
Remote/In-person in previous 3 months	In-person only	34%	24%	15%	28%	21%	18%	26%
	Remote only	1%	7%	6%	6%	1%	10%	4%
	Both in-person and remote	60%	51%	74%	47%	76%	26%	60%
	Not attended court	5%	18%	5%	18%	2%	46%	10%
Base N=		959	790	404	582	724	72	3,531

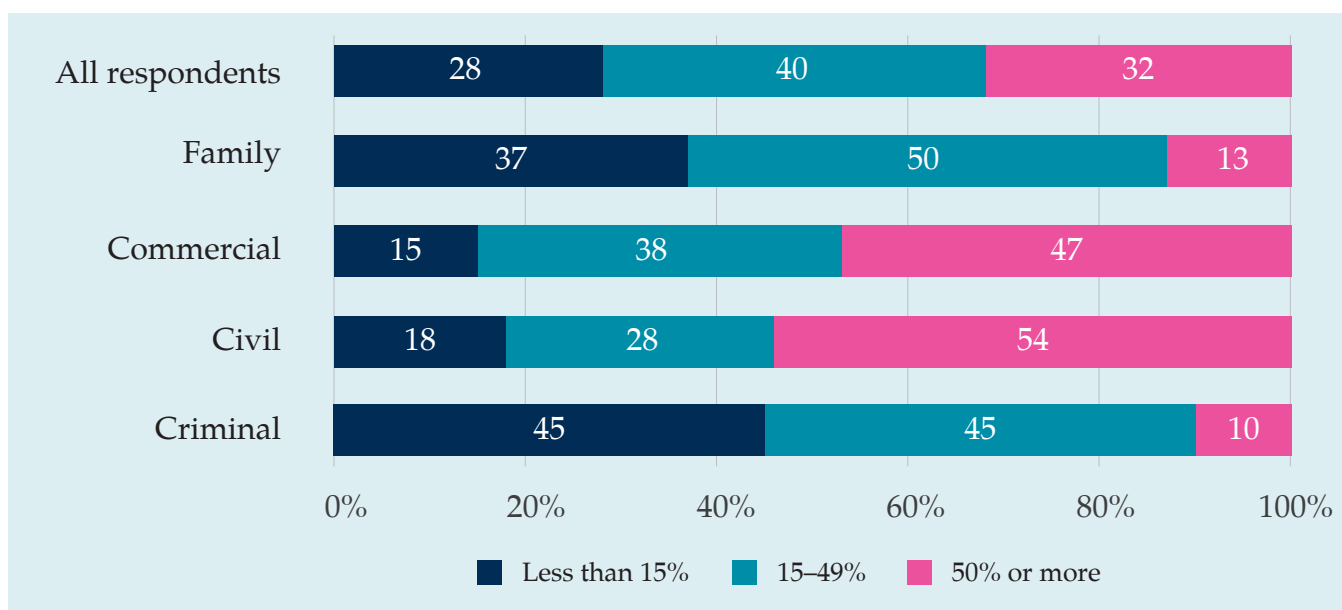
Source: Barristers’ Working Lives 2021 and 2023

spent 50% or more of their time in remote hearings compared to just 15% of those more reliant on public funding.

There was also some difference by stage of career with barristers at the Young Bar (those in their first seven years of practice) less likely (22%) to report having spent 50% or more of their time in remote

hearings in the three months prior to the survey than those in middle or later practice (34%). However, among those who had conducted remote hearings, there was no difference in the proportion of time spent on remote hearings between KCs and other barristers.

Figure 4.1: Proportion of time spent in remote hearings in previous three months by area of practice: 2023



Source: Barristers’ Working Lives 2021 and 2023

4.2 The future of remote hearings: barristers' preferences

This section examines the views of barristers on the future use of remote hearings. The data is gleaned from Barristers' Working Lives 2023.

- Half (49%) of all respondents said remote hearings 'should be used more frequently'.
- 38% said 'it is about right at the moment'.
- Just 8% said 'they should be used less frequently'.
- 1% said they 'should not be used at all'.
- 4% said they 'did not know'.

This would suggest that even if the recent move back to in-person hearings is not reversed, which half think it should be, most barristers think it should not go any further at the very least.

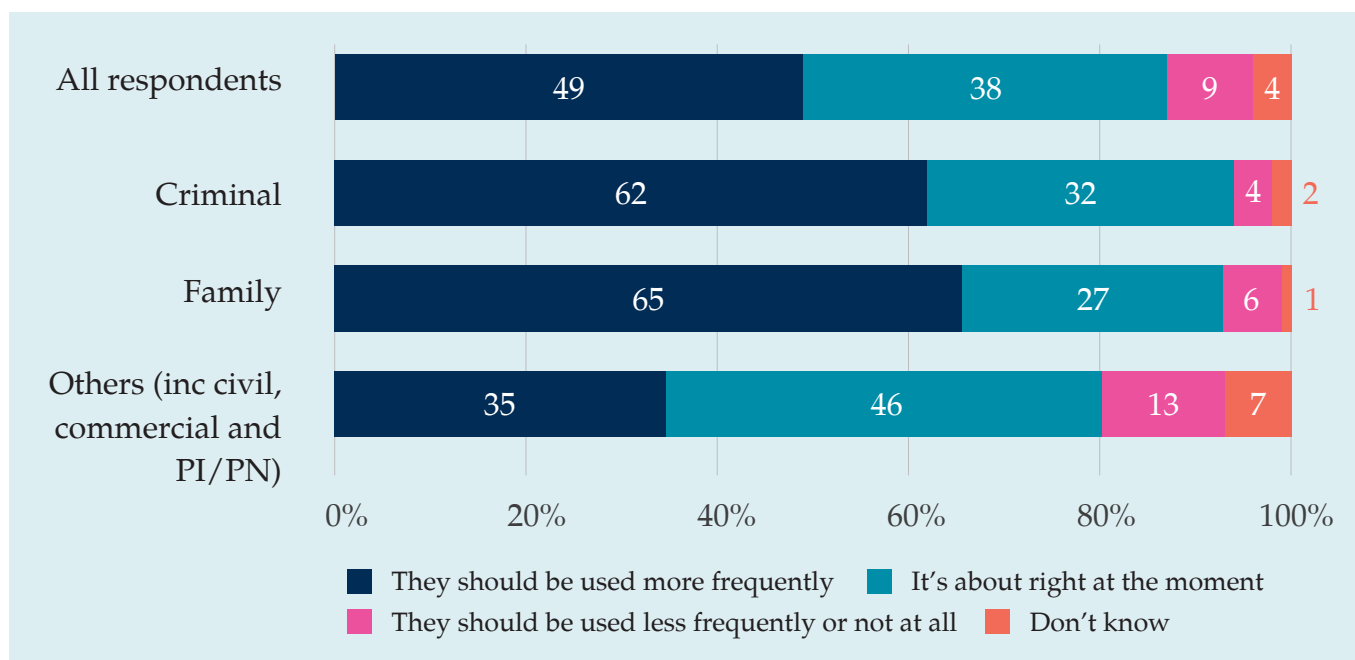
The main split in the profession is between barristers working in criminal

or family practice and the remainder (Figure 4.2). Two thirds of those working in family (65%) and 62% of barristers working in criminal practice said that remote hearings should be used more frequently, compared with 35% of all those working in other areas of practice and 30% of barristers in commercial practice. It has been shown above that criminal hearings/practice exhibit the steepest decline in remote hearings.

There was also a big difference between KCs' views and other barristers. More than half (55%) said that remote hearings should be used as frequently as they currently are in their main area of practice (compared to 37% of other barristers) but just 28% said they should be used more frequently compared to 55% of other barristers. Furthermore, twice as many KCs felt they should be used less frequently in their area of practice (15% compared to 7% of other barristers).

Perhaps surprisingly, there was little or no difference in views here between barristers at the Young Bar, in middle or

Figure 4.2: Using remote links in the future by area of practice: percentages



Source: Barristers' Working Lives 2023

later practice. Marginally, barristers in later practice (48%) were less likely to say they would like remote hearings to be used more frequently, compared to 53% of barristers at the Young Bar or in middle practice.

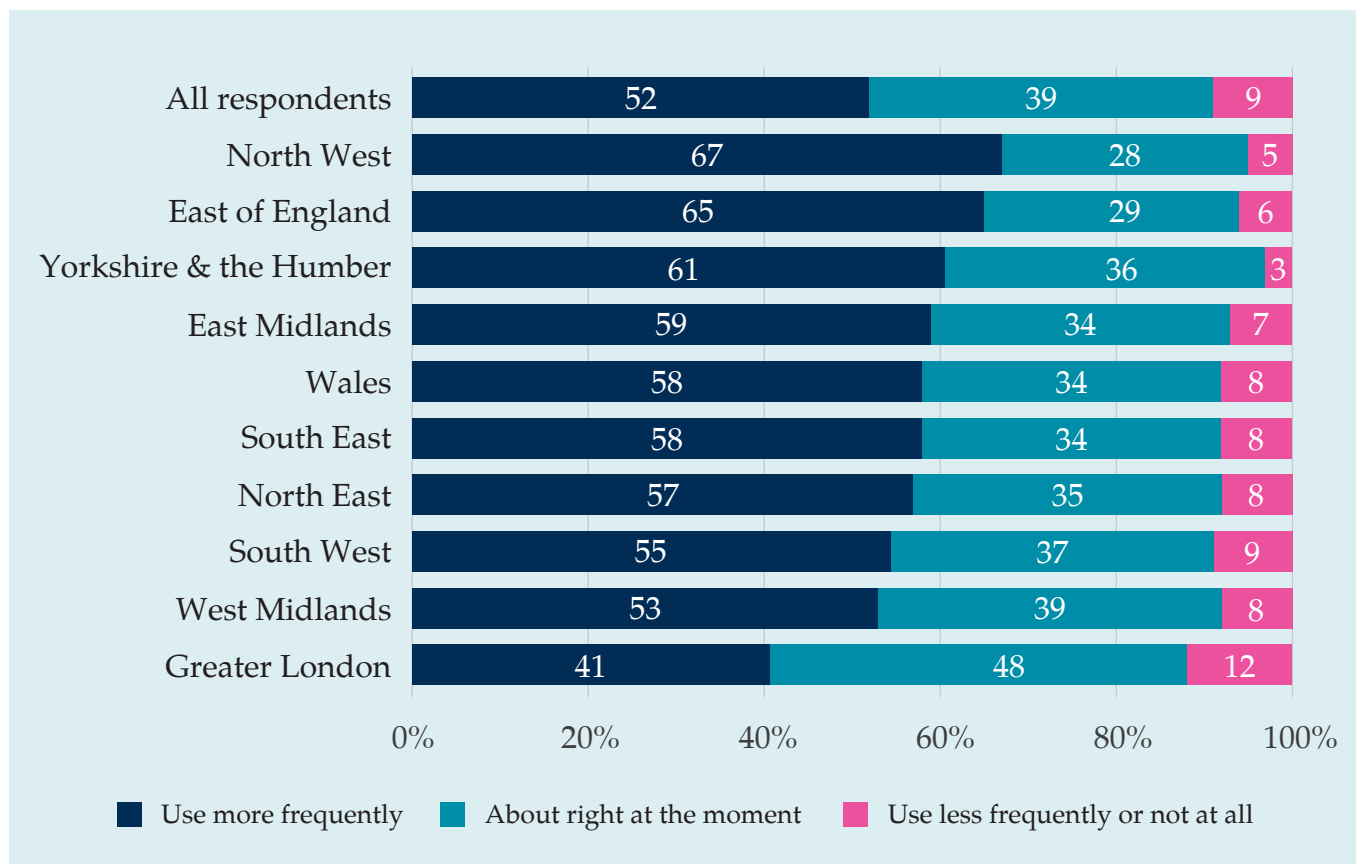
Region of practice also came out as a differentiating factor, largely because, as above, there is a difference in opinion between those working in the Greater London area compared to those working elsewhere in England and Wales (Figure 4.3). Four in ten respondents working in London would like to see remote links used more extensively compared to more than half of all other respondents and up to two thirds of those working in the North West and East of England.

In terms of biographical differences, more respondents with childcare responsibilities wanted to see remote

hearings used more frequently (51%) compared to 46% of those with no childcare responsibilities. More than half (54%) of disabled barristers said they should be used more frequently compared to 42% of those with no disability. There was no difference between men and women in responses to this question. This data shows how the possibilities for increased flexibility influence barristers' views and comments around the quality of the often old-fashioned court estate, explaining why disabled barristers were more likely to enthuse over remote hearings.

It is worth noting here that, perhaps unsurprisingly, responses to this question were dependent on current exposure to remote hearings. Some, perhaps even most, barristers were likely to be answering this question based on their

Figure 4.3: Using remote links in the future by region



Source: Barristers' Working Lives 2023

own experience, as opposed to the wider profession. Among respondents who had more exposure to remote hearings, fewer felt that ‘they should be used more frequently’ (60% of those who had spent up to 30% of their time in remote hearings thought they should be used more frequently compared to 34% of those who had been in remote hearings for more than half the time). Those who had spent more time in remote hearings were more likely to indicate that the amount of time should remain the same. Furthermore, twice as many (12%) who spent most time in remote hearings (more than 40% of their hearing time) said that remote hearings should be reduced or not used at all compared to 6% of those who spent up to 40% of their time in remote hearings. Nevertheless, it is a small minority of barristers who feel the use of remote hearings should reduce, let alone be stopped, even among those who have most experience of remote hearings. If we allow for exposure, the data suggests that a larger majority think that remote hearings should be expanded – i.e. where

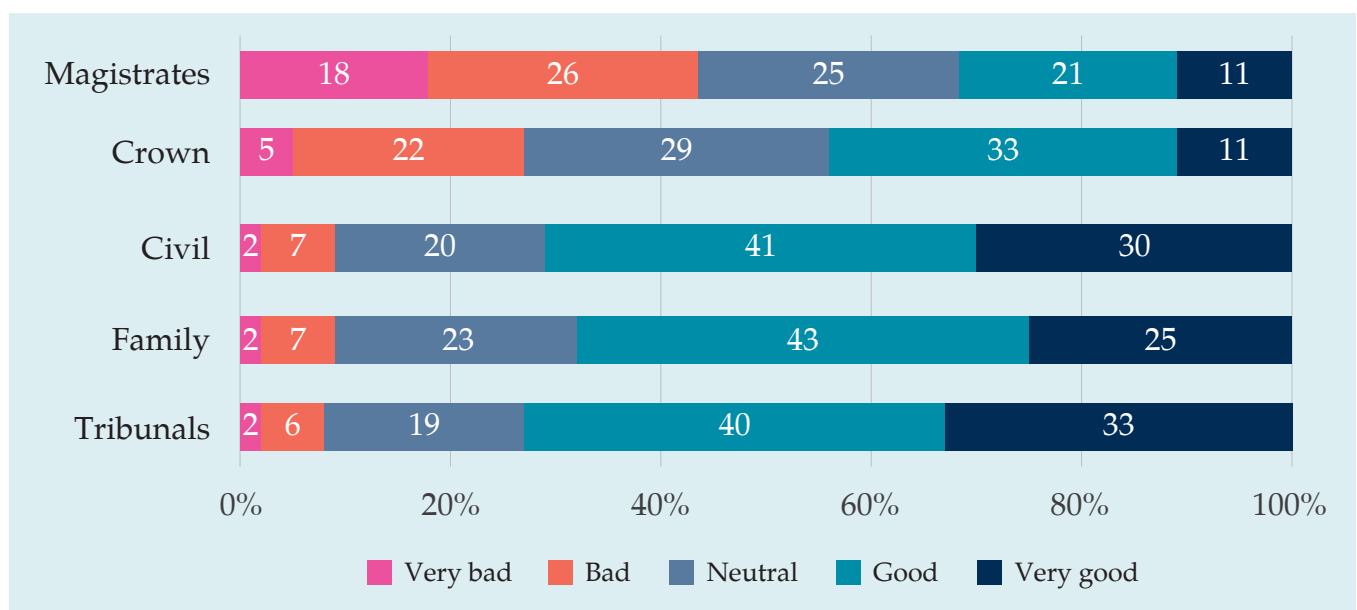
they are used least currently, barristers are more likely to want to see it extended.

Professional preferences are only one consideration among several when implementing decisions and policies concerning the application of remote hearings, but the data demonstrates the clear view that professional users would like to see the level of remote hearings, at a minimum, remain the same and for nearly half the profession, extended.

4.3 Court provision, efficiency, and effectiveness: barristers’ views

The Barristers’ Working Lives 2023 survey also sought barristers’ views as to how the court systems were working remotely and in-person. Views were generally more positive for each of the five systems, except on Magistrates’ courts (Figure 4.4). It is worth noting that when comparing barristers’ views of the court systems when operating remotely compared with in-person, views are generally more positive about remote systems, with the

Figure 4.4: Views of how the court systems function remotely (percentages)



Source: Barristers’ Working Lives 2023

widest difference in response for Crown and Family courts.

For Crown Courts, 23% of respondents said their experiences of how the system was operating in-person were good or very good compared to 45% when considering how they were working remotely. The equivalent difference in the family court system was 47% (in-person) and 68% (remote), indicating their experience was good or very good. Barristers report that the remote justice system is working better than the in-person system. However, there will be differences in the types of hearings being held remotely compared to in-person, which will impact views.

For Magistrates' courts, there was a significant difference in opinion on how the system was working remotely between family practice barristers and those working in crime. Nearly six in ten (57%) of those working in crime felt their experience was bad or very bad compared to 35% of those working in family practice. Conversely, 41% of those working in family practice said their experience was good or very good compared to just 18% of those working in crime.

KCs were generally slightly more positive about both in-person and remote court systems than other barristers but significantly so about the civil courts, again both in-person and remote. In-person, 44% of KCs thought the civil courts were 'very good' compared to just 17% of other barristers and 8% thought they were working badly compared to 21% of other barristers. A similar, albeit less marked difference, was apparent for remote hearings in the civil courts as well.

There was little difference in views here by career stage notwithstanding the Young Bar was more likely to see the

in-person operation of the Magistrates' courts as functioning 'badly' or 'very badly' (68% of the Young Bar compared to 57% of middle and 44% of later practice barristers). There was also little to separate the views of those who were more dependent on public funding and other barristers.

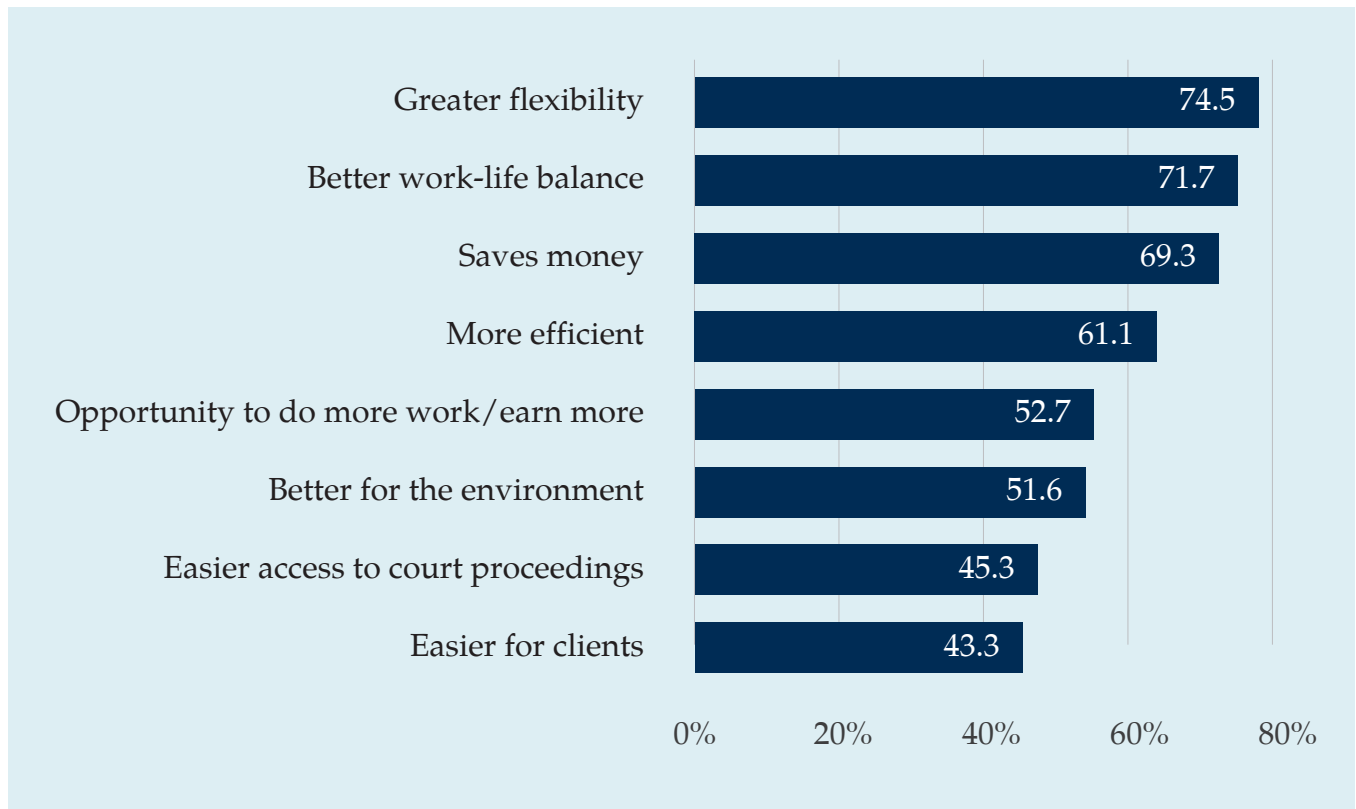
4.4 Remote hearings benefits: barristers' views

Barristers tend to be positive about the benefits of remote hearings, as evidenced in the responses given to a series of questions in the Barristers' Working Lives 2023 survey and in June 2020, when two thirds (68%) of barristers said they would like targeted remote hearings to be an ongoing feature of future court work, even though many barristers had been experiencing problems with court provision in remote hearings.⁴² This chimes with the HMCTS's evaluation which found that 59% of professional court users would like to work remotely post-pandemic.⁴³

Most barristers could see various benefits to remote/hybrid hearings. Of the 3,070 who responded to this question in the 2023 Barristers' Working Lives survey, just 6% said they had no experience of remote/hybrid hearings and fewer still (3% of those that had some experience of remote hearings) said there were 'no benefits' to remote/hybrid hearings (6% of KCs). Some must have responded to the question indicating perceived benefits or benefits they could anticipate if they attended remote hearings, as only 2,257 said they had attended court remotely in the three months before the survey.

The main benefit of remote/hybrid hearings was 'greater flexibility' (75% indicated this feature of remote hearings)

Figure 4.5: Benefits of remote/hybrid hearings – percentages (n=3,070)



Source: Barristers' Working Lives Survey 2023

and 'better work-life balance' (72%). Seven in ten respondents (69%) also indicated that remote/hybrid hearings save them money and six in ten (61%) said that they thought this format was more efficient. Half (53%) said they could work/earn more this way and a similar proportion (52%) thought that it was better for the environment. Less than half (45%) thought there was better access to court proceedings and 43% said it was easier for clients.

The most significant differences were between criminal and family barristers and the others. Across most of the benefits listed, barristers working in crime/family practice were more likely to indicate each benefit (Table 4.6).

However, the differences by area of practice were greatest when discussing the benefit of it being 'easier for clients'. Just one in four (26%) barristers working

in criminal practice thought it was easier for clients, the lowest proportion of all the practice areas, particularly when compared to 61% of barristers in family practice.

Barristers in criminal practice were significantly more likely to identify benefits associated with financial savings, flexibility, efficiency, work-life balance, and the opportunity to do more work/earn more. Barristers with dependent children and/or adults were more likely to see the benefits of flexibility and work-life balance, as were women and younger barristers.

When considering regional differences in the reported benefits of remote/hybrid hearings, it is noticeable that barristers based predominantly in Greater London were less likely to indicate all the listed benefits other than them being 'easier for clients'. Particularly

large differences between barristers in London to elsewhere were seen in views of ‘work-life balance’ (76% of those based outside London compared to 64% of London-based barristers). No doubt this will be partly a reflection of ease of physical access to courts. Similar differences emerged between these two groups when considering ‘opportunity to do more work/earn more’, ‘better for the environment’ and ‘saves money’ as benefits of remote/hybrid hearings.

The Young Bar were more likely to emphasise greater flexibility than later practice barristers (81% compared to 69%). The same also went for those where more than 50% of their income was publicly funded (83% compared to 70% where less than 50% of income was publicly funded). Better work-life balance was also more important to the Young Bar and middle practice than later practice barristers (76% compared to 67%). It was similarly important to the publicly funded Bar (80%). The biggest difference in views was in answer to remote hearings

providing more opportunities to work/earn more (63% of Young Bar compared to 56% of middle and 46% of later practice barristers) and 64% of barristers reliant on public funds for 50% or more of their income.

KCs were significantly less likely to indicate any of the benefits listed but the significant difference were in relation to:

- Better work-life balance (50% of KCs compared to 76% of other barristers).
- Opportunity to do more work/earn more (31% compared to 57%).
- More efficient (45% compared to 64%).
- Greater flexibility (61% compared to 77%).

As much as most barristers appreciate the improved flexibility, work-life balance, and the time, energy and cost savings associated with remote hearings, they are mindful of the delivery of justice.

4.5 Problems with remote hearings: barristers’ views

Table 4.6: Benefits of remote/hybrid hearings by area of practice (percentages)

Benefit...	Crime	Civil	PI/PN	Commercial	Family	All respondents
Greater flexibility	84.9%	68.1%	75.1%	57.6%	78.5%	74.5%
Saves money	77.7%	62.6%	73.0%	60.2%	69.5%	69.3%
Easier for clients	26.0%	47.2%	42.5%	45.5%	61.0%	43.3%
Easier access to court proceedings	48.6%	42.8%	40.6%	35.2%	52.6%	45.3%
More efficient	67.4%	52.6%	63.9%	52.5%	66.0%	61.1%
Better work-life balance	77.6%	65.5%	76.5%	49.7%	82.4%	71.7%
Opportunity to do more work/earn more	65.2%	44.2%	54.0%	33.0%	57.7%	52.7%
Better for the environment	57.8%	42.9%	52.4%	36.7%	61.9%	51.6%
Other	2.9%	3.8%	4.8%	2.0%	4.7%	3.6%
Base N=	887	631	374	455	688	3,070

Source: Barristers’ Working Lives Survey 2023

During the pandemic, there were significant problems experienced by barristers and the justice system more broadly. For example, two thirds (68%) of barristers surveyed in April 2020 cited the interruption to court work as a major difficulty for them.⁴⁴ This figure remained high in June 2020 when 64% of all barristers cited interruption to court work as their biggest problem. In November 2020, the biggest problem for barristers was still the interruption to court work, but it was only cited by 40% of respondents, a significant reduction from April.⁴⁵

However, almost three-quarters (72%) of respondents did not feel that access to justice was at an acceptable level, with 81% citing the court backlog as a major obstacle. Other significant justice concerns were scheduling/listing issues (67%), problems with remote hearings (53%), and problems experienced by vulnerable clients (50%).

Two thirds of all respondents (67%) to Barristers' Working Lives 2021 said they had experienced some problems, and one third of these (22% of all who had attended court) reported that these problems were significant rather than minor. Those who had attended court in-person were much more likely to report significant problems than those who had

attended remote hearings only, as Table 4.7 shows. Nearly half of those who had only attended remotely (45%) said that there had been no problems, compared to 23% of those attending both and 30% of those attending in-person only.

More than four out of five criminal barristers (82%) who attended court in the last three months in April 2021 reported problems in the court system, with just over half of these saying the problems were significant rather than minor. It is worth noting that criminal barristers were also more likely than other barristers to have attended court in-person rather than remotely.

Despite KCs feedback being less enthusiastic than other barristers about the future use of remote hearings, they were less likely to report problems, be they significant problems (13%) or minor problems (34%) than other barristers (24% and 47% respectively).

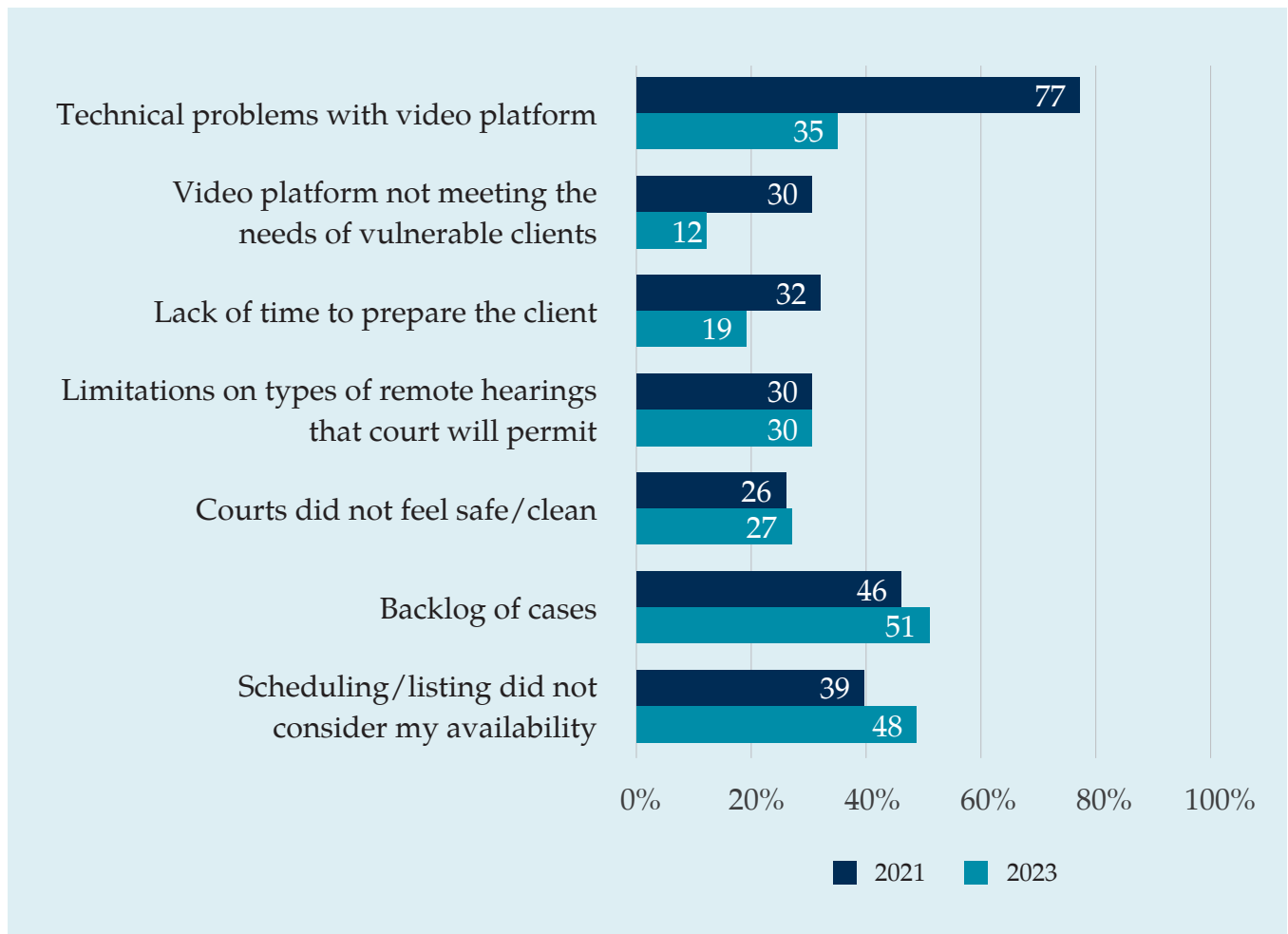
In both the 2021 and 2023 Barristers' Working Lives surveys, respondents were asked to say whether several issues were problems for them. In 2021, three quarters (77%) of all respondents indicated that technical problems with video platforms were an issue. Of the barristers surveyed who had attended court in-person in the first three months of 2021, 67% had

Table 4.7: Problems experienced when attending court (in-person or remotely) percentages by type of attendance (2021)

	Type of court attendance			
	In-person and remote	In-person only	Remote only	All
Yes, significant problems	29%	33%	9%	22%
Yes, minor problems	48%	37%	46%	45%
No	23%	30%	45%	33%
N=	1,131	622	1,213	2,966

Source: Barristers' Working Lives 2021

Figure 4.6: Problems attending courts/tribunals in last three months: percentages



Source: Barristers Working Lives 2021 and 2023

experienced problems in the court system, increasing to 82% when considering only criminal barristers. These problems were most likely to be with technical issues with video platforms, with 78% of barristers who experienced problems saying this was an issue.⁴⁶ By April 2023, just 35% cited this issue. In November 2020, although the question was framed slightly differently, just over half (54%) indicated there were ‘problems with remote hearings’.

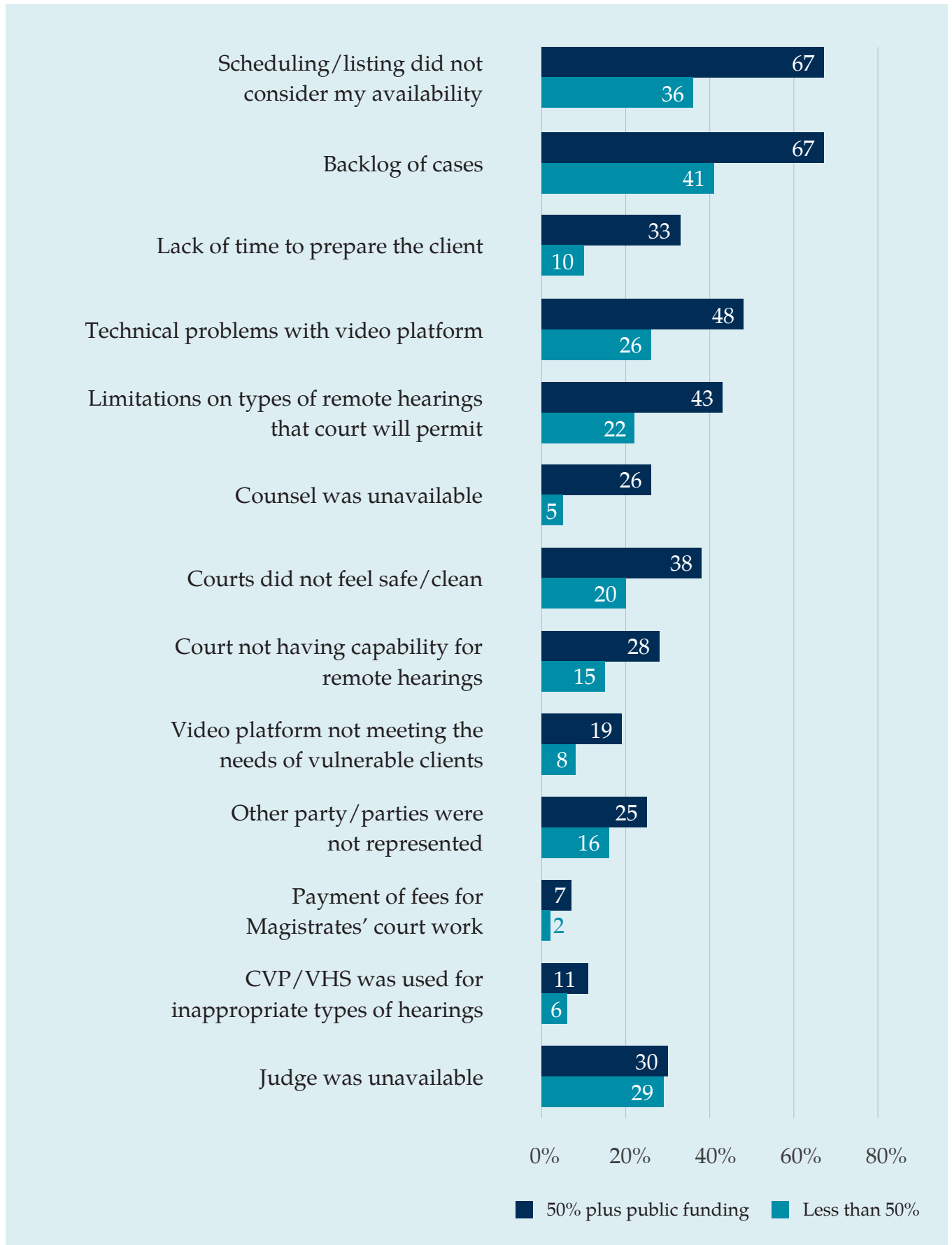
However, the backlog and issues around scheduling/listing cases were both cited by more respondents in 2023 than in 2021 (see Figure 4.6). It is worth noting that in November 2020, the Bar Council Covid-19 survey found that more than eight in ten (82%) respondents said there was a

backlog and two thirds (67%) mentioned the scheduling of cases as being a concern.

The Young Bar were less likely to indicate that there were no problems associated with attending courts/tribunals in the previous three months (8% compared to 17% of middle and 25% of later practice barristers). Across all the issues listed, the Young Bar was more likely to have indicated a problem.

KCs were significantly less likely to report there being problems in the court/tribunal system than other barristers with 42% indicating ‘none’ in response to the question, compared to 15% of other barristers. Given KCs were less likely to want to see remote hearings extended, just 4% said there were problems associated

Figure 4.7: Problems attending courts/tribunals in previous three months in publicly funded practice: percentages (2023)



Source: Barristers' Working Lives Survey 2021 and 2023

with ‘court capability for remote hearings’ compared to 23% of other barristers reporting that this was a problem. Similarly, they were less likely to indicate that there were ‘limitations on the types of hearings that courts will permit’ (12% compared to 33% of other barristers).

The publicly funded Bar (those reliant on legal aid or public funding for more than 50% of their income) are much more likely to indicate problems with attending courts/tribunals, in-person or remotely. Just 6% said that there were no problems compared to 26% of those who are less reliant on public funding. Differences were across the board and are summarised in Figure 4.7.

The biggest difference between the publicly funded Bar and the remainder is in views on scheduling/listing not considering barrister availability (67% of the publicly funded Bar, compared to 36% of the rest).⁴⁷

Similarly, the backlog was cited by 67% of publicly funded barristers compared to just 41% of the others. More than three times as many publicly funded barristers mentioned ‘lack of time to prepare the client’ (33% compared to 10% of the rest). Almost twice as many mentioned problems with the technology (48% compared to 26%). Those working on publicly funded cases are evidently experiencing greater and more difficulties in the court/tribunal system than those working on private cases.

4.6 Access to justice

In June and November 2020, the Bar Council asked barristers if people were able to access justice to an appropriate level during the Covid-19 pandemic. The numbers improved slightly between June and November, suggesting that as the

system became more acquainted with remote technology, access to justice was not as badly affected as originally thought. In June 2020, 80% of respondents said access to justice was not at an appropriate level, while in November the figure had reduced to 72% (Table 4.8).

It is noticeable that other than in criminal practice, the numbers who said access to justice was not an appropriate level reduced. This was seen in family practice: a third said that access to justice had returned to pre-pandemic levels or was at an appropriate level in November, compared to just 13% in June (Table 4.8). It is worth noting that there was no difference in views by stage of career; the Young Bar were equally likely to see difficulties in relation to access to justice in June and November 2020 as those later in their careers. However, those working more in the publicly funded areas of work were much more likely than those working predominantly without public funding (85% compared to 64%) to say there were problems with access to justice.

Unfortunately, the 2021 and 2023 Barristers’ Working Lives surveys did not collate this information, but this would be a useful addition to the 2025 survey and enable the consideration of differences in opinion between in-person, hybrid, and remote hearings across the different jurisdictions. However, in commenting about the efficacy of remote hearings in April 2023, many barristers mentioned access to justice issues.

References

41. At the end of the document there is a detailed summary of the caveats that should be considered when using these data.
42. The Bar Council (July 2020) [Bar Survey Summary Findings July 2020](#).
43. HMCTS (December 2021) [Evaluation of remote](#)

Table 4.8: Can people access justice to an appropriate level? June and November 2020 (%)

June (November)		Area of Practice						Total
		Crime	Civil	PI/PN	Com.	Fam	Other	
Access to justice at an acceptable level	Yes	5 (2)	7 (9)	10 (15)	11 (12)	8 (17)	0 (25)	6 (8)
	Similar to before the pandemic	5 (7)	7 (13)	10 (10)	14 (17)	5 (15)	26 (25)	7 (12)
	No	86 (88)	79 (68)	68 (60)	60 (46)	81 (64)	53 (45)	80 (72)
	Don't know	4 (3)	8 (10)	12 (15)	15 (25)	6 (3)	21 (15)	7 (8)

Source: Barristers' Working Lives 2021 and 2023

hearings during the COVID 19 pandemic.

44. The Bar Council (April 2020) **Bar Council Survey April 2020: Key Findings.**
45. The Bar Council (December 2020) **Bar Survey Summary Findings December 2020**
46. Bar Council (September 2021) **Barristers' Working Lives 2021.**
47. When referencing the 'publicly funded Bar', we are referring to those whose income is publicly funded by 50% or more. Please note that the rest of the Bar will include those whose income is partly reliant on public funding.

4.7 Barristers' testimony on remote justice

There were a range of comments on remote hearings, some in favour, others opposing, and some were mixed. This section is not exhaustive but indicates the range of opinion.

Broadly in favour

There were numerous comments and accounts of the declining state of the physical justice system and that the only way to reverse the impact on the justice system was to move towards remote hearings where feasible and agreed. Some of the comments reiterate the findings above, but convenience and efficiency were frequently mentioned. There was also a desire to make sure that the learning that took place during the pandemic was not lost but built on so

that remote hearings could become better quality and more effective. There was the sense that the profession learned how to work remotely during the pandemic and they did not want this progress to be wasted. There were comments about the crumbling infrastructure and that 'technical difficulties' should not be an obstacle or used as an excuse to not use remote technology. It was seen by many as the future 'whether we like it or not', and there should be a desire to build on what has been achieved in last few years. Some mentioned not wanting to deal with court limitations, some argued that vulnerable clients prefer remote, so that they don't have to deal face-to-face with other side. Equality and access to work, as well as justice, were mentioned by others.

"The microphones need upgrading in many courts but the use of remote hearings allows greater access to justice for many clients and using them for case management hearings helps allocate proportionate resources to cases."

"I feel very strongly that we are wasting the progress made in using remote hearings in family cases for non-evidential hearings - most hearings where evidence is to be heard will require in-person attendance, but case management does not as a rule. Remote hearings are generally more convenient for parties and advocates, cheaper and more efficient. They place less stress on the crumbling infrastructure in most court buildings where decent and sufficient conference facilities, safe and clean areas to work and wait, and even working toilets are now stretched...CVP is not being used because 'it is difficult for the court staff to operate'. This is nothing to do with the interests of justice."

"Most county courts seem to be listing interlocutory hearings to take place by remote means and these now work well provided there is an appropriate ELH. A handful of identifiable locations dogmatically list in-person without any apparent practical benefit to the parties or the administration of justice."

"We have moved away too much from remote hearings - they are the future of justice in the UK."

"For the right cases they are invaluable. The criminal Bar continues to shrink and this ensures access."

"They have been stopped in most hearings locally which is a shame as they were very useful for short hearings. Less travel and ease of access meant that it was more convenient for everyone."

“Remote: better access for clients in Cambridgeshire where transport is difficult and expensive. Not good if interpreters required. Interpreters not always booked. Too many cases, so long delays in final hearings. Physical security inadequate - clients are increasingly aggressive and potentially violent and someone is going to be seriously hurt. “

“They have been incredibly beneficial in increasing access for disabled barristers and in turn making the profession more accessible. The needs of disabled barristers should be taken into account generally when considering whether to list remotely/hybrid.”

“Overall, remote hearings have been a clear net positive for clients, the public and practitioners. In my view, all procedural or interim hearings should be remote and there should be an option for hybrid hearings where witness attendance is required. As a barrister with a physical disability, the saving of energy in reducing travel has meant having more energy for my job, as well as daily life. An insistence on going back to ‘normal’ post Covid entirely ignores the ways in which remote working made the law & the profession more accessible.”

“Remote/hybrid hearings for administrative hearings can be effective and efficient. They may also, in appropriate circumstances, be able to improve accessibility to the courts (e.g. for professional and lay court users with mobility difficulties). The High Court’s policy of requiring an application fee when applying for a remote hearing for accessibility reasons is discriminatory.”

“They function as well if not better than in-person hearings. A hearing can involve, across clients’ counsel and solicitors, 8-12 man-hours of travel wasted, and at times not accessible by primary caregivers or disabled barristers. Given the Equality Act duties, in-person hearings should need to be justified to the parties and should be the exception in civil cases.”

“The ‘drift’ back towards more attended hearings is a very retrograde step. The profession and judiciary adapted brilliantly to the immediate challenges of the COVID-19 pandemic and proved how with flexibility and the full use of technology the Courts could continue to function. It was also a massive boost to the well-being of hugely stretched professionals enabling them to work more efficiently and safely. The benefits to the litigants themselves cannot be over-emphasised and no one could realistically dispute that remote hearings (provided good internet access is available) revolutionised and benefitted all who are working in the family justice jurisdiction to improve the outcomes for all.”

“The use of remote/hybrid hearings is critical for procedural or short hearings, as a more efficient and proportionate mechanism for access to justice. Hybrid access is also important for client participation although insufficient work is done to ensure public access, which could be improved.”

“Remote hearings work extremely well for all unopposed hearings and for opposed procedural hearings of up to a day. In my view, there is a huge access to justice benefit in saving cost. It has also been transformative for me personally, enabling me to combine having a baby and then managing nursery timings with returning to practice. I feel strongly that remote hearings should be listed where both parties agree or for all unopposed hearings, and that the Bar associations should advocate for that on behalf of members (particularly female members with caring responsibilities).”

“There should be more, particularly for interim hearings. Life at the Bar for a full-time working mother or for anyone with caring responsibilities is extremely tough. More remote hearings would help to retain women at the Bar and help with work-life balance...It would also allow disabled practitioners to have greater access to work.”

“Courts are being known for those that are helpful and flexible and those that are not. We are all under inordinate pressure and should be able to work together on solutions. Counsel do not need to be shouted at or castigated just because the entire system is underfunded.”

Broadly opposing

This position often centred around a sense that person-to-person exchange was the only way to conduct justice, as well as the belief that quality of justice should not be trumped by a desire to hit targets, increase efficiency, and deliver more, but not necessarily better, justice and hearings.

Some developed this point further by arguing that much of the impetus for remote hearings was to enhance the working lives of professionals rather than improve the justice delivered and some did not want to see a move to remote just because it is 'convenient'. Some argued that justice being delivered locally was important and that remote hearings allowed professionals anywhere in the country to intervene in the administration of justice outside their areas, thus losing a sense of local justice. Another angle on this was the requirement that 'justice needs to be seen to be done' and that this can only be achieved in person.

It was argued that balancing efficiency versus effectiveness and quality of justice should be more important than the quantity delivered. It was also felt that the process of remote hearings could be more time-consuming rather than less, partly due to difficulties in client communication, among other things.

"Justice has to be seen to be done. That does not occur with remote hearings."

"I do not think that remote/hybrid hearings should become the norm. Justice is done between people and should be done face to face wherever possible. Even at interlocutory hearings, much opportunity for non-verbal communication is lost online. In-person hearings should remain the default. It seems to me that there is a danger of remote hearings being scheduled because it is more convenient for the professional participants rather than because it is genuinely the better option to secure justice."

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“The problem with remote hearings is that you lose the importance of personally meeting the judges and opposing counsel where important conversations take place about the case i.e. settlement, an indication of a concession, the judge’s informal view(s). These touch points in litigation are important and their impact is lost remotely. Also, the sense of local justice is lost because anyone anywhere in the country can dial in to do the work at the higher end for more difficult cases the danger to the regional Bar is a drift to London to do this work rather than using local counsel who then have the opportunity to up-skill and remain progressive or relevant in their area of expertise.”

“They appear to be for the benefit of legal practitioners more than clients. Justice is more efficient but not sure it is more effective and that witnesses can be properly scrutinised in this medium.”

“Save for the non-contentious or case management hearings, remote hearings can be both more cumbersome and least conducive to the smooth administration of the case. Some of the most basic functions available in-person are unavailable in remote hearings, such as easy access to one’s client, or to one’s opponent.”

“Remote hearings have the overall effect of downgrading the quality of justice and the reputation of the rule of law. it is breeding contempt amongst users and viewers alike.”

“I think we lose a lot through remote hearings. Not just in terms of open justice and public access to hearings but because the human/personal interaction between participants is lost. I feel that judges are sometimes more reluctant to interrupt counsel to ask questions in a remote hearing than they would be at an in-person hearing. I have had at least one case where the judge has raised an issue in the course of his written judgment that I suspect would have been raised and dealt with at an in-person hearing.”

“Remote hearings are used in the ET too frequently. The ETs often have empty rooms when you go in-person notwithstanding the Employment Tribunal roadmap saying justice is best done in-person. Hybrid hearings are allowed for a party’s convenience - again notwithstanding the Employment Tribunal roadmap that says justice is best done in-person. Remote and hybrid hearings impact on (1) representatives being able to agree things out of court and so saving court time (2) parties being able to easily give instructions (3) witnesses giving evidence (4) remote hearings impact negatively on the party’s ability to make legal submissions. Judicial intervention is notably down.”

Balanced views

Some felt improvements to technology would help and that some cases should be remote while others not. Consistency across the country or region was seen as important here to agree on which types of hearings are best served by different approaches. It was suggested that a list of hearing types or formats should be generated and indications of whether the default should be remote or in-person which would then need to be agreed upon between participants but always considering the interests of justice and accessibility, some begging the question: is no hearing better than a poor hearing?

“Ultimately, the courts are there to serve the litigants. The system should be used to facilitate access to justice in the most efficient, effective, and cost-saving way.”

“Remote hearings are excellent for routine or simple matters. They are less effective for lengthy, complex cases or cases requiring extensive oral evidence. I hope we never go back to the bad old days of travelling 8 hours for a 10-minute hearing, but I am concerned that justice will not be done if we use remote hearings too often for the longer and more complex matters. It is about proportionality.”

“The quality and the reliability of the tech often reduces the effectiveness of the hearings. More reliable technology would make for better justice. Some of the wrong hearings are being heard remotely/in-person. More thoughtful listing is required.”

“Telephone hearings should be consigned to history. Immediately. Video hearings are generally unsuitable for (a) hearings of any length greater than 1.5 hours (for health and justice reasons), (b) hearings involving more than two parties, (c) contentious hearings involving unrepresented parties and (d) hearings where the court is likely to need to be persuaded by oral advocacy.”

“1. The civil justice system is visibly disintegrating. 2. Although they might arguably be defensible for interlocutory work, remote hearings are absolutely unsuitable for trials. 3. The authorities are nevertheless likely to pretend that such hearings are suitable for trials and to amplify their use.”

“In my view, CMCs, PTRs and short application hearings should all be conducted remotely (unless otherwise ordered on the application of a party); whereas trials should be conducted in-person (unless otherwise ordered on the application of a party). There has been a tendency in my areas of practice for CMCs, PTRs and application hearings to be increasingly conducted in-person (which is less time efficient, more costly and may have negative impacts on access to justice and the environment).”

“Remote procedural hearings are good. Trials remotely especially if there is detailed witness evidence or litigants in-person are problematic. Telephone hearings are not usually very good. Participation is harder for everyone. Video hearings are better. Where there are litigants in-person, they often have difficulty accessing video platforms. They may also fail to have the bundle with them which can cause problems that can be avoided in-person.”

“The practice in the Crown Court as to when to permit CVP hearings is still very inconsistent between courts and is still sometimes difficult to predict if you don’t normally attend the court in issue, as policies/practices are seemingly not published anywhere accessible generally. Furthermore, there is a real reluctance to let defence counsel attend remotely if their client is required to attend, either because of some sense that the counsel should appear physically in-person alongside the client and/or because there’s a reluctance to allow defendants to appear remotely. For some hearings, CVP could still be appropriate in those cases, and the seemingly blanket rule against remote hearings for things like short mentions or short arguments where a defendant is required is unhelpful. If you predominantly defend, it removes a lot of the benefits of remote working.”

“There are some court centres that really benefit from remote hearings- Carlisle/Cumbria have a greater access to counsel by using remote platforms. That doesn't always suit the client however and I feel strongly that cases where clients have additional needs and require an interpreter or intermediary should be in-person in order to provide the best service possible to the client. The court centres need to be open, accessible and local in order for that to happen.”

“There needs to be better assessment of when to use remote hearings and when not to. There are always technical issues. There may be some appellants with difficulties accessing technology. There may be other appellants/witnesses that will find it difficult to take time off work and travel to the hearing centre. My view is that in-person hearings remain a better option for appellants and as such the courts should give significant weight to what the appellant's representative requests as long as this is well-reasoned.”

Issues raised

Members raised several issues in their comments, including:

- Technology needs to radically improve.
- They say that there is inconsistency and different rules, expectations, policies, and double standards.
- Justice not being done despite best efforts with the system in free fall – remote hearings seem to not be making a difference.
- They say there is an overemphasis on meeting targets and clearing backlogs.

“At present, the default approach of many of the Crown Courts appears to be that prosecution counsel can attend via CVP but defence counsel must attend in-person ...This approach is taken, even if the case is listed because of a suggested failure on the part of the Crown which can only really be addressed if prosecution counsel attends in-person to mediate with the police who are almost always to blame for the Crown’s case management failures. One consequence of this routine double standard is that prosecution counsel who is attending remotely has probably got a list of CVP hearings to deal with and is very difficult to reach in advance of the hearing and has precious little capacity to address any points that might be raised between counsel.”

“Each Crown Court is different, it is impossible to know what the practice is...If we can't be there, surely better to have CVP [attendance] than nobody at all. Utterly desperate at Crown Court at the moment, impossible to cover all the work, back-to-back trials with no time to prepare them, and if you do prepare a case, it doesn't get listed. We are all exhausted and depressed. Feel letting people and justice down.”

“Despite the best efforts of court and tribunal staff the courts and tribunal service are struggling to cope. It is under-resourced, operating from buildings which are often not fit for purpose. Staff headcount reductions has led to increasing use of agency staff and organisational knowledge and memory are lost. Judges do not have sufficient time to do their jobs to the standards that court users have a right to expect. Remote hearings are used in circumstances when they are not appropriate. Access to justice is imperilled when clearing backlogs and meeting KPIs are prioritised over fairness, equality of arms and due process.”

“The state of the court buildings that I work in severely impacts on both my working day and my clients' impression of the justice system, and the results they obtain within it. On various occasions, the physical state of the court system has made my clients unsafe, unhappy, uncomfortable. The backlogs continue to have an extremely detrimental effect. Lay people are disillusioned with the quality of the E&W justice system. I am repeatedly having to apologise for failures within the system to my clients because I am embarrassed to work amidst such chaos. Remote hearings appear to have made little difference to this.”

“Hybrid works well. Improves access without detracting from the seriousness of the proceedings. They are, however, far more tiring than in-person hearings and the county courts are nowhere near equipped for them: still using enormous paper bundles (especially when Litigants-in-person are involved) and not finding documents sent by post or by email.”

“Due to the serious underfunding of the criminal justice system, the technology for remote hearings in the Magistrates’ court is incredibly substandard and not fit for purpose. I had to urgently prosecute via CVP and could not hear what was happening nor engage in the proceedings. The CVP host herself said that the technology simply needs replacing, not that this will actually happen. This causes delay, frustration and hearings which are barely appropriate of effective. The legal advisor in my hearing had to yell what was happening into one working microphone for me to follow, this is just not professional or feasible going forward.”

4.8 Qualitative analysis of barristers’ views on the court system 2023

Process

- Respondents were invited to provide comments on their experience of the functioning of the courts and tribunals and/or remote and hybrid hearings.
- Respondents could write as much as they wanted.
- Up to eight different points were coded for each response. Sometimes a point might be made more than once, in several different ways, but in these

instances, only one code would be given.

- It was not always straightforward to interpret the point being made and often points would be nuanced with a positive or negative reference to remote hearings but given with caveats. For example: “Remote hearings are great for short hearings/directions/administrative hearings. For hearings where advice is required, they are not, in my view, appropriate or effective.”
- Where possible, we have tried to capture this nuance of response, but it is not always straightforward when reducing sometimes very detailed remarks to a broad code.
- A total of **1,388 barristers offered comments**, sometimes in great detail. A great deal of consideration was given by respondents to the topic and it deserves close scrutiny.

Some strong and repeated themes emerged from the comments and the overall direction of the comments was relatively clear. Remote hearings, less so when considering hybrid hearings, were seen as being useful and important, in a variety of situations and for a variety of reasons. Much of the benefits have been demonstrated above in the quantitative data such as improving work-life balance, saving time and money, and allowing greater flexibility, among others. A mitigating view again offered by some barristers is that the benefits were seen to be for the profession and not, necessarily, for the administration of justice.

Table 4.9: Comments on the functioning of the justice system

Code	Label	Percentage of cases
10	Remote: most/more appropriate	44.4%
09	Remote: exceptions	17.4%
16	Court resistance/bias against remote	16.5%
02	Benefits: other specific	13.5%
14	(In)consistency in application	12.9%
01	Benefits (repeated from previous question)	12.8%
04	Problems: technology	11.7%
08	Remote: inappropriate/ too many (CVP esp.)	11.2%
17	Court/justice system issues	11.2%
05	Problems: communication	9.4%
06	Problems: management etc.	8.4%
13	Judiciary (issues)	7.1%
03	Benefits: general (non-specific)	6.8%
07	Problems: professional	4.6%
15	Hybrid/telephone problems/ineffective	2.6%
20	Solutions	2.6%
Base N=1388		

Source: Barristers' Working Lives Survey 2023

Key findings which emerge from the comments:

- **'Remote hearings are most/more appropriate' is the most frequently articulated view on Table 4.9:** Just over 44% of all those who commented said something along these lines. This corroborates the findings above that show barristers are supportive of remote hearings and most would like to see them extended or, at the very least, maintained.
- **Variation in the primarily publicly funded Bar responses:** Publicly funded barristers are more likely to mention issues around inconsistency, judiciary resistance to remote hearings, and perception of court resistance/bias against remote hearings.
- **Differences more acute when looking**

at the criminal Bar compared to others:

- Just 31% of those working in crime said that remote hearings were more appropriate (50%).
- 13% mentioned issues with the judiciary about remote hearings (4%).
- 27% highlighted inconsistencies in application (8%).
- 22% highlighted court resistance/bias against remote hearings (12%).
- **KCs less likely to report problems, but less inclined to support the extensions of remote hearings.**
 - They are twice as likely to have commented in a way that suggests remote hearings are inappropriate (22% compared to 10%).
 - More made comments supporting remote hearings but only with caveats

around the need for exemptions (21% compared to 17%).

- Less likely to comment on inconsistencies and court resistance/ bias against remote hearings.

The summary headings presented in Table 4.9, however, conceal considerable detail and, as intimated above, many comments were nuanced and tempered with caveats and exceptions. The following covers many of the issues addressed within each of the broad categories covered in the table and an example quote(s) is provided to give a little more insight. Some comments were extremely critical of the courts, their management, the infrastructure, and the judiciary. This commentary does not give weight to the strength of opinion held by many in the profession.

Remote: most/more appropriate

The comments which fell under this category in 44.4% of cases included the following:

- **They should be used more.**
- They should be the default, especially for:
 - shorter applications
 - case management meetings;
 - preliminaries
 - administration hearings
 - first directions appointments
 - Commission for Conciliation, Mediation and Arbitration
 - plea and trial preparation hearings
 - costs and case management conferences
 - pre-trial review
 - sentencing;
 - credit hire
 - permissions
 - mentions

- directions
- interim hearings
- applications
- reviews
- lay client requests
- interlocutory
- small claims
- absent client
- **They should be used for everything except for trials.**
- **Only have in-person hearings if not possible to conduct it remotely.** More detail might also be given in the comment, such as the obstacles to effective remote hearings should be addressed **but an obstacle should not necessarily result in in-person hearings.**
- They are appreciated by international clients.
- They work well for regional courts.
- They should be used if all parties agree.
- Clients prefer them.
- Expressions of disappointment that **nothing has been learnt from the pandemic.**
- They are **inevitable**: we need to modernise, it's coming whatever we do right now, it's a matter of 'when', not 'if'.
- Frustration that despite improvements to the technology (the numbers reporting issues with technology/ platforms between 2020 and 2023 decreased) **remote hearings have not been pursued with more enthusiasm.**

“I see no reason why the majority of interim hearings cannot continue as remote hearings. There are very few which are sufficiently complex or difficult to require in-person attendance. Conversely, the benefit of remote hearings for barristers cannot be understated. It allows for greater flexibility, enhancing work-life balance and family commitments, particularly for primary carers. Barristers (most likely female barristers who are adversely affected by the problems at the Bar) could continue with the childcare responsibilities whilst attending remote hearings. It is cost-efficient for everyone involved. Systems are in place and generally work smoothly. It reduces travel - I once travelled 5 hours plus each way to attend a 5-minute in-person hearing. This could all be done remotely now.”

“Any hearing which doesn't involve a requirement to give advice to the client in person or witness handling should have a remote option. This should be a policy across all courts rather than court-specific. At the moment, some judges/courts have no issue with CVP attendance for most types of hearings, some judges will insist on all counsel coming in person even for something very simple like a mention. You end up having to beg for CVP or the clerks use up time making requests. Courts that have a clear CVP policy for counsel and also provide CVP links for all hearings on 'courtserve' have the best model in my opinion (for example Warwick CC). The main thing to facilitate all court hearings is to have clearer time markings and where possible to stick to them. I have had the experience of waiting on a CVP link for hours before being let into the hearing.”

Remote: exemptions

The comments which fell under this category where remote hearings were 'preferred but with exemptions' in 17.4% of cases included a long list of hearing types. All the detail of what respondents felt should be exemptions to remote/hybrid hearings cannot be given in this overview. Often there were conflicting messages, and where some might say any trial over one hour, others might say any trial over three hours, and others one day, or even multi-day trials being the exception from a norm of remote hearings.

Hearings barristers felt should be exempt from being held remotely include:

- Trials.
- (Immigration) appeals.
- Contested evidence hearings.
- Final/long hearings (>1.5hrs, 1, 2, 3 hours or longer).
- Multiple party involvement.
- Financial Dispute Resolutions.
- Vulnerable clients
- International issues.
- Housing possessions.
- Cases involving witnesses.
- Taking witness evidence/cross-examination.
- Complex cases (caveats given unless all parties agree).
- For anything other than short case hearings.
- Some mentioned exceptions should include cases where interpreters are involved.

"I would suggest all interim hearings are remote, save where a client is vulnerable. The blanket insistence that all hearings are in-person appears dogmatic and old-fashioned. Access to justice is not predicated on physical attendance. Our system needs to adapt to changing world post pandemic and I don't understand why it's just in-person is better when in fact all interim hearings save where a client is vulnerable could be remote. Many courts lack any conference space, so you are conducting sensitive conversations in a waiting area or in the car park. There is nowhere to get food or drinks. Clients are face to face often with the other side whom they would prefer not to see and the number of times I have sought special measures for clients which gets lost, or the court simply can't help with."

"Litigated trials should not be heard remotely. Live witness evidence has to be the gold standard. Procedural/non-witness work is highly suitable for remote hearings."

Court resistance/bias against remote

One in six respondents (16.5%) indicated in their comments that there seems to be some court/judicial resistance/bias against remote and hybrid hearings. Comments included:

- This is an **'illogical position'**.
- There is an obstinacy, and **unwillingness to modernise and accept the benefits of remote hearings.**
- There is an inability or **unwillingness to improve the remote infrastructure** to ensure that they can work as well as possible.
- There is concern that there is an **element of protectionism to maintain the court estate**, exacerbated by a fear that not using the estate would ultimately result in losing it.
- There is a **lack of consistency** with some hearings being remote but not other very similar ones.
- Some courts were intent on **protecting the local Bar by moving back to in-person** as remote hearings benefited 'out of town' counsel.
- Demands for courts to **listen to the Bar** and try to be objective.
- **Ignoring the opportunities** penalises the Young Bar and damages the wellbeing of counsel.
- Questions about **why they should return to in-person when remote was efficient** and working well?
- **No lessons learnt from the pandemic.**
- **Small courts sometimes seem more resistant** than larger courts.

"Both parties requested that the hearing be heard remotely because there was a train strike and for costs saving reasons (no witnesses needed to be examined for example). The court refused, and I had to travel the night before, stay the night so that I could make it to the hearing in time which lasted all of 45 minutes. There was absolutely no reason why the hearing could not have been heard remotely and it is a waste of everyone's resources for the court, with no reason, to insist upon procedural hearings of that nature to be listed in-person."

"So many hearings are being listed in person again for no obvious reason. In particular, the county courts are returning to block listing...it wastes so much time. There has been a wholesale abandonment of remote hearings, rather than consideration being given to whether they would be preferable in some instances (which they clearly would)."

Benefits: other specific

As well as those that were repeated from the questions earlier in the survey, 13.5% of comments given by barristers included not previously listed benefits of remote hearings. These included:

- **Balance of travel to hearing time** and how much time is wasted travelling to and from courts.
- **Inclusive** of Covid-19 vulnerable professionals and hard-up clients.
- **Less intimidating.**
- Allow counsel to **cover a wider geographical area** and can enable counsel to live outside London.
- **Timekeeping** felt to be better.
- Lack of physical court space implied that they are **essential**.
 - Problems associated with inferior court space and facilities were mentioned too – some were scathing about this issue.
- More likely to **allow for better continuity of counsel** and lend themselves to a more **solution-focused approach** to hearings.
- **Good for clients with caring responsibilities** and vulnerable clients although the exact opposite was argued by some.
- **Useful with short notice hearings** as they were seen to have cost savings for clients.
- **Protect practitioners from in-person abuse** from litigants.
- **Less likely to be over-listed.**
- Good for retaining women at the Bar and **more inclusive** in a variety of ways e.g. disability inclusion was mentioned by quite a few respondents.

- **Easier for staff** at all levels.
- **Improves choice and competition.**
- Can **address lack of counsel** and judiciary issues.
- Greater **work-life balance.**

“Remote and hybrid hearings are better for more vulnerable clients. Having remote hearings is efficient in hearings being on time and managed speedily which stops lots of hanging around wasted time at Court. More needs to be done within the court systems to make this available easily for clients - thought given to ensuring the right equipment being available and ability to ensure in hybrid hearings that all can be seen and heard well.”

(In)consistency in application

Comments about the inconsistency of approach from different judges and courts and that the system needs clarity in policy, process and guidelines were given in 12.9% of cases. These included:

- There is a general lack of leadership/ overall policy/ direction between courts and judges.
- It would help if there was a Digital Case System page which could generally standardise which hearings could and could not be remote.
- Consistency and predictability are key to improving effectiveness.
- It is important that both prosecuting and defending counsel are either in court or remote. Some felt it was not appropriate when one is in court and the other is remote. A few respondents felt that prosecution was given more remote allowance than defence.
- Consistency in processes and communications/technology, a need to reduce court/process idiosyncrasies.

“I think that remote hearings have huge benefits but are not always used for the right hearings. By way of example, I am commonly required to travel for two- or three-hour hearings in the county court for matters on the small claims track with no substantial witness evidence. By contrast, I regularly conduct four-day discrimination trials remotely. The practices are inconsistent and often illogical.”

“It is strange that policy about remote hearings is left to resident judges meaning the approach is different in different court centres. There are confusing and varied policies about how to request them, when requests will be permitted, and how CVP links are distributed. It seems absurd to me that there would be any resistance to counsel attending a non-contentious hearing by CVP, where a client is not at court in person. How are we meant to clear the backlog if this is not allowed as a matter of course? My clerks spend hours of their day making CVP requests in various ways for hearings where it should just be allowed.”

Problems: technology

Although the problems with technology have been alleviated to a significant degree, there were nonetheless numerous comments – 11.7% of cases – concerning issues with the technology, faults/ connectivity, technical skill limitation and more. Issues with remote hearings mentioned included:

- Why CVP was preferred over **Teams/ Zoom which function better and have been tested thoroughly** – why reinvent the wheel?
- **Issues with client access.**
- **Need for better technology, equipment, and backup systems** in case of technology failure (telephone seen as inappropriate though by many).
 - Counsel should use external microphones.
 - Need for blurred backgrounds and other refinements.
 - Audio/visual equipment in the criminal justice system needs immediate improvement.
 - Links with prisons were viewed by some to be particularly bad.
- **Bandwidth issues.**
- Necessitate better court staff training. Some mentioned hearing impairment equipment problems.
- Need to improve/introduce a **better system to allow the display of documents.**
- **When interpreters were involved** and the need for translation facilities.
- **Remote waiting rooms** and poor communication meant counsel and clients/witnesses could be left waiting for ages not knowing when they were needed.

“The management of the courts and the equipment and software used by the courts is terrible. HMCTS is dysfunctional and unfit for purpose. Remote hearings would work if the courts had any interest in anyone’s costs other than their own. A competent court would embrace them. They have been used in overseas courts for 20 years with no problem. Technology needs to be improved. There are too many courts with faulty technology.”

Remote: inappropriate/too many (CVP esp.)

There was a perception among some barristers that, although remote/hybrid hearings can be good/useful in theory, the reality can be different. Some favoured a return to in-person hearings and viewed remote hearings as inappropriate for any substantive sessions with more than one in ten (11.2%) of comments falling under this label. Comments on inappropriate/overuse of remote hearings included:

- **Only used to suit practitioners.**
- The ‘weakest link’ of poor quality of interaction meant that the **hearing could be rendered poor for everybody** – it was seen as a ‘lowest common denominator’ issue.
- **‘Demoting’** the profession.
- Contrary to the opinion outlined above **not good for vulnerable/defendants.**
- **‘Maybe’ useful outside London** but not inside.
- Do not, and **have not, reduced the backlog.**
- **Not fit for purpose**, but these comments were often mitigated by direct criticisms of the technology (primarily CVP), rather than anything inherent in the notion of remote hearings.
- Too many problems with remote hearings to the point where some felt **the disadvantages outweighed the advantages.**
- **Professional implications:**
 - Harder to ‘read’ judges/witnesses.
 - Quality of evidence is poorer.
 - Settlements/resolutions pre-hearing were less common again in contrast to similar comments saying they were

more likely.

- Possibilities that remote hearing processes can be abused by ‘greedy’ counsel with allegations of charging dishonesty.
- Difficult for unrepresented parties.
- Clients do not take them seriously.
- **Work-life issues** as a downside to remote hearings, such as it being depressing being sat at a screen all day.
- **Some concerns about fairness and criticisms that it can be inefficient.**
- **Difficulties with facilitating in prisons.**
- Only used for convenience with **no thought given to the quality of justice.**
- **Worries about skill development** for younger counsel, with fewer in-person court appearance training opportunities.
- Lead to judges listing mentions that aren’t needed.

“I think we lose a lot through remote hearings. Not just in terms of open justice and public access to hearings but because the human/personal interaction between participants is lost. I feel that judges are sometimes more reluctant to interrupt counsel to ask questions in a remote hearing than they would be at an in-person hearing. I have had at least one case where the judge has raised an issue in the course of his written judgment that I suspect would have been raised and dealt with at an in-person hearing.”

“The assumption should be that all defendants and counsel attend any hearing in-person. But there may be circumstances when a circuit judge decides a defendant in custody can be sentenced/ appear for a PTPH or mentions via CVP. Defendants on bail should be expected to attend all hearings save when the court agrees they can appear via CVP (at their solicitor’s office for example). I would stop defendants on bail appearing on CVP from domestic or work locations. The assumption should be that counsel appears in all hearings in-person. However, where there is good reason for them to appear via CVP that should be allowed - and reasonable requests to appear via CVP when counsel is in another court centre should be granted. However, all the above is meaningless unless the quality of the equipment and internet connections is not immediately improved and properly maintained. Links to prisons are often poor as is the sound quality. In short, the entire audio visual set up in the criminal justice system needs urgent and radical improvement.”



Court/justice system issues

There were similar issues to the technology reported above in comments about the court/justice system issues, given in 11.2% of cases, but many also included:

- The justice system 'is in freefall'.
- Poor administration and communications.
 - Some courts were criticised for not providing skeleton arguments or drafting orders.
- Overworked courts.
 - Some suggested problems are with the courts, staffing, technology and infrastructure and not remote hearings per se.
 - They lack capacity with a reported need for more courts and judges, the perceived faults of remote hearings are not relevant.
- Variable quality - some felt the higher the court, the better it functions.
- Some tendency to lose things.
- Unreasonable expectations of counsel.
- All should have enhanced technology.
- Better scheduling.
- Antiquated, unclean, and poorly maintained courts.
 - Need for investment in the court infrastructure.
- Unfit for purpose, e.g. some cases need soundproofed rooms.
- Court flexibility to cope with new practices.
- Issues with listing, communication, timing unreasonable expectations.
- Large backlog exacerbating matters.

"I sit as a civil recorder and from that standpoint the functioning of the courts is poor. Buildings and facilities are poor. Workload is huge. Backlog is massive. Preparation time is nil. Parties are often told there is judicial unavailability. Courts also insist that minor hearings are listed in-person, which inconveniences parties and counsel."

Judiciary (issues)

Within the 7.1% of cases where issues with the judiciary were mentioned, comments concerned:

- General feeling that the judiciary could be change-averse.
 - Descriptions of apparent hostility, lack of flexibility, entrenched views, and bias against remote hearings.
 - Judges were either failing to recognise, or at least were not sufficiently considering, the potential benefits to the profession and counsel of remote hearings and how they might impact shortages and improve work-life balance.
- The judiciary does not recognise that shortages of legal professionals mean remote hearings are more essential, not less.
 - There are significant issues and problems affecting the profession and if more flexibility is not provided, more will leave.
- Unreasonably tight expectations when remote hearings are provided.
- Inconsistency of approach.
- Lack of preparation.
 - Some mentioned training needs for magistrates.
- The need for judges to insist on better remote/teleworking facilities rather than attendance.
- Insufficient account is taken of the needs of vulnerable witnesses/defendants/clients who might find it easier to participate remotely.

Benefits: general (non-specific)

“Remote hearings are convenient for clients, witnesses and representatives, they save money for those parties, they are better for disabled parties and caregivers, and they help to reduce everyone’s carbon footprint.”

These comments – which accounted for 6.8% of cases - included remote hearings being generally seen as more effective and functioning well (given the speed of introduction). They were seen as one of the significant benefits from the pandemic but that there was still room for improvement.

Problems: professional

“Short directions hearings are probably appropriate for remote hearings, but it does mean advocates don’t meet to discuss matters in advance (so areas of contention are not narrowed). I do not think remote trials are justifiable: cross-examining over video is not appropriate. Similarly, longer applications with detailed submissions should be made in-person, on the simple basis that communication is better in-person. Too many remote hearings also erode the community of the Bar.”

These comments – which made up 4.6% of cases – included the following issues:

- Taking instructions was harder.
- Difficulties getting points across remotely.
- Unsafe to have parties on their own remotely as the content of some hearings can be distressing and cause problems for participants, witnesses, clients, or victims.
- Clients can lack understanding and it can be harder to convey what is required remotely.
- Work taken away from local counsel.
- Justice not being well served.
 - Some also felt that remote hearings might improve the volume of justice administered but it reduced the quality.

- Sitting on screens for too long.
- A few commented along the lines of remote attendance destroying the social element of the job and networking opportunities.

Hybrid/telephone problems/ineffective

“In my experience, fully attended or fully remote hearings are the most effective. Hybrid hearings are the worst of all worlds. Often those on the screen cannot see or hear properly those in court. Witnesses often cannot see or fully identify those asking the questions.”

These comments – which accounted for 2.6% of cases – predominantly centred around the point that hearings should either be entirely remote or entirely in-person. Hybrid hearings were not perceived as working well, partly because the court system is not adequate for hybrid, but again it was the infrastructure and technology that was criticised as opposed to the principle. It was also felt that in hybrid hearings, the absent party was at a disadvantage. Several said that telephone hearings should be abandoned.

Solutions

Respondents offered solutions in 2.6% of their comments which included:

- Using Teams (like in the high court apparently) or Zoom.
 - There were several comments, as mentioned above, around CVP reinventing the wheel.

- Flexibility and compromise and a move away from a dogmatic approach advocating either remote or in-person hearings.
- Providing policy/guidance/rules for remote hearings.
 - Devise a pre-hearing questionnaire to assess suitability for conducting it remotely or in-person.
- Notes pre-meeting are helpful for remote hearings.
- More administration staff needed before to ensure remote hearings run efficiently and effectively.
- Earlier communication of links.
- Using solicitors/barristers' offices for clients where there are technology issues.
- Counsel should be able to observe progress of hearings they can use their time better while they wait.
- Significant investment in remote infrastructure needed so that they run more effectively.
 - It was also believed that this would remove many of the criticisms of remote hearings.

Respondents said that neither remote nor in-person hearings should be the default. Instead, assurance is needed that whichever system is deployed, it is implemented to benefit clients not just counsel. Counsel should have a say, but the decision should be made on a case-by-case basis, informed by consistent policy and guidance.

“I would encourage parties to be given the following directions for remote hearings. Counsel must provide their contact details to each other, by 6pm the preceding day. Counsel for defendant must have had a conference with their client before the hearing commences. Counsel for the defendant must have clear confirmed instructions on how the hearing is to proceed. Counsel for prosecution and defence must liaise prior to the hearing and provide a note to the court of how the hearing is expected to proceed and a summary of any agreements/ areas of disagreement.”

Conclusions

When a judge is planning a court hearing, there are a wide range of different issues to consider including efficiency, access to justice, vulnerability, convenience, case requirements, and practicality. There are long-established traditions around in-person court hearings in England and Wales that, while they may not always fully meet all these needs, are at least deeply familiar to the professional court users involved and provide a situation in which court users can feel they have had their day in court – that justice is felt to have been done.

Remote hearings have come into this ancient system, at pace, as a disruptor. In some instances, the varied needs of court users are clearly and simply met by a remote hearing in place of a physical hearing. We find that for hearings without the parties themselves present, directions hearings, mentions, hearings that are not contested and other simple and/or procedural matters, remote hearings can greatly increase efficiency and usability without creating tensions elsewhere.

However, there are serious problems with the administration of some remote hearings that have not fully been identified or evaluated, and, critically, the impact on justice outcomes is not being routinely monitored. We additionally note from barristers' comments that many prefer working remotely to working in poorly maintained, uncomfortable, inaccessible, and inadequate court facilities.

Barristers have recognised the potential that remote hearings may dramatically improve their working lives while also

possibly increasing efficiency in the courts. However, as much as barristers appreciate the improved flexibility, work-life balance, and time and cost savings associated with remote hearings, they also tend to be mindful of the delivery of justice. They have identified in our surveys some pitfalls, including challenges with access, technology, consistency, and communication.

Those barristers who are more sceptical about remote hearings tend to have a strong sense, based on their experience, that personal communication is central to the process of justice being done and being felt to be done. Face-to-face contact with lay and professional clients is central to the work of barrister advocacy. The process of meeting prior to court, setting expectations, handling of the hearing, explanation of the outcome, and strategizing as a group is impossible to fully replicate on screen. Similarly, conversations with other counsel, solicitors, court staff and the judge/tribunal to narrow differences is an integral part of the justice process.

We do not envisage a future court system in which screens replace these vital interpersonal relationships.

The introduction of remote hearings to the courts in England and Wales is probably the most significant change to the operational delivery of justice since the introduction of legal aid in 1949. We find it staggering that, despite clear recommendations from a range of stakeholders over several years, HMCTS has been collecting only trial provisional data on remote hearings since February

2023, collected only partial data before that, has not analysed or published the data it has, is not carrying out ongoing monitoring/evaluation, and has no imminent plans to reintroduce data collection.

It appears from the analysis we have undertaken on the limited (unpublished) HMCTS data, that judges justifiably recognise the unknowable impact of remote hearings on justice and are responding by using the “interests of justice” test and curtailing their use. This is a sensible response given the paucity of data and evaluation.

Nonetheless, this is a missed opportunity. Support for remote justice is high in principle among barristers – it has the potential (although this is largely untested) with judicious use to modernise and create efficiencies within the court system while supporting a more flexible working life for professional court users.

The introduction of modern and efficient digital courts was also the conceptual basis for closing 43% of the physical court estate in England and Wales since 2010.⁴⁸ If HMCTS, as it appears, is unable to properly introduce replacement

digital systems that fully support the administration of justice for all users of the system, or to evidence that they have done so, the pre-emptive closure of so many physical premises turns out to be indefensible.

The Bar Council recommends HMCTS:

- Improve data collection and monitoring around remote hearings and commit to regularly publishing data.
- Continue to support the judiciary in regular review of protocols for the use of remote hearings, with particular attention to the consistency of application.

The Bar Council recommends the Ministry of Justice:

- Commit to evaluating potential justice outcomes and procedural impacts.
- Significantly invest in the technology/tech support around remote hearings.
- Consider the views of professional court users in future plans around their use.

References

48. See the Bar Council’s [Access to Justice dashboard](#).

Annex: data sources

This report is primarily based on an analysis of five Bar Council survey datasets, covering the period March 2020 to March 2023. A sixth data source has also been used, the HMCTS Audio Visual and Covid-19 Situation Report.

Annex 1: Bar Council Covid-19 surveys

These surveys were undertaken to inform the Bar Council's Covid-19 response. The Bar Council surveyed the profession three times in 2020 to track the impact of the pandemic on barristers.

Survey 1: April 2020

- The first survey in our Covid-19 response series went out to all 16,946 practising barristers in England and Wales between 8 and 13 April 2020.
- Two separate questionnaires were prepared, one for the employed Bar and another for the self-employed Bar, to address the slightly differing requirements of each branch of the profession.
- 10,200 practising barristers (who had consented to receive surveys for research purposes in our membership database) were emailed directly with the link to the relevant survey (employed/self-employed) along with a personal message from the then Chair, Amanda Pinto KC.
- The survey had an initial closing time of 17:00 on 9 April 2020.
- On the morning of 9 April 2020, a general message to all barristers was sent including a link to both surveys

and a request for barristers to complete the relevant survey by 00:00 on 13 April.

- Dual practitioners were invited to complete the version of the survey (employed/self-employed) they felt was most relevant to them.
- 3,470 barristers (20% of the profession) responded to our survey.
 - 3,198 self-employed barristers (24% of the self-employed Bar) responded.
 - 272 employed barristers (9% of the employed Bar) responded.
- During this period, physical and remote hearings were suspended entirely.

Survey 2: June 2020

As part of our Covid-19 response, we resurveyed the Bar for a second time. It had become apparent that the impact on an already stretched justice system was a) profound and b) not felt evenly across different groups. The Bar Council became increasingly concerned about the sustainability of the Bar, particularly among certain groups, and Survey 2 was intended both as part of our ongoing monitoring of the profession and, more specifically, to measure and monitor inequality of impact.

- The survey was sent to all 16,482 practising barristers in England and Wales by direct email link on 16 June 2020.
- It closed on Monday 6 July 2020 at 12:00.
- Response rates were:
 - 16% for self-employed barristers (2,147 of 13,095).
 - 9% for employed barristers (254 of 2,956).

Survey 3: November 2020

The third survey was conducted at a stage when we felt the Bar was (or at least should have been) beginning to experience some recovery and adjustment to, if not the previously recognised normality, a 'new normal'. The courts had been re-opened for three months, even remaining open during the second national lockdown, and we hoped that barristers with a court-based practice had been able to return to work. We primarily wanted to test this assumption of recovery and to assess whether a differential impact was still being felt across different groups within the Bar.

- The survey was sent to all 17,078 practising barristers at that time in England and Wales by direct email link on 25 November 2020.
- It closed on Monday 14 December 2020 at 12:00.
- Response rates were:
 - 9.9% for self-employed barristers (1,344 of 13,502 self-employed barristers).
 - 3.5% for employed barristers (107 of 3,044 employed barristers).
 - The employed Bar response rate was too low to be statistically meaningful, so only the self-employed Bar results were used.
 - The reduced response rate suggests that there was perhaps a little less anxiety in the profession about exiting the pandemic, although completing three similar surveys in a year is demanding a lot of the profession.

Annex 2: Bar Council Barristers' Working Lives surveys

Every two years, the Bar Council surveys the profession to take a temperature reading on the profession, examining key issues while presenting longitudinal data on the characteristics and working life experience of the Bar. We used two of these surveys in this report.

Barristers' Working Lives 2021

- This was undertaken by the Bar Council in April 2021.
- The first email was distributed on 17 April 2021.
- The anonymous survey remained open for six weeks, during which time three reminders were sent out, as well as further communications from different professional practice groups within the Bar, the Circuits, and Inns.
- The survey was finally closed on 27 May.
- After removing identifiable duplicates, and insufficiently completed questionnaires this response included a total of 3,479 returns (including usable partial returns).
- Approximately 16,900 barristers received emails or messages to participate in the survey, giving a response rate of 20.6%.

Barristers' Working Lives 2023

- The most recent in the longitudinal series was undertaken in April 2023.
- It included a set of questions specifically designed to assess remote justice in courts and tribunals from the perspective of the working lives of barristers.
- Replicating the methodology in 2021,

the anonymous survey was distributed to around 9,000 barristers who had opted in to taking part in research on 18 April 2023.

- The rest of the Bar had an opportunity to engage with the survey through BarTalk (an e-newsletter sent to all practising barristers) and social media and adverts/mentions in Counsel magazine).
- The survey remained open for six weeks, during which time three reminders were sent out, as well as various further communications from different professional practice groups within the Bar, Specialist Bar Associations, the Circuits, and Inns, as well as directly from the Chair.
- The survey was closed on 5 June.
- After removing identifiable duplicates, and insufficiently completed questionnaires, this response included a total of 3,535 returns (including usable partial returns – identified as anyone who had completed at least one of the substantive sections of the questionnaire).
- Approximately 16,900 barristers received emails or messages to participate in the survey, giving a response rate of 20.9%, almost identical to the Figure achieved in 2021.
- The demographic and employment details of the respondents demonstrate a very consistent response set which lends weight to the comparability of the two Working Lives surveys.

Annex 3: HMCTS data on the Prevalence of Remote Hearings

HMCTS collected data on remote hearings manually in the Audio Video Situation Report and its predecessor, the COVID-19 Situation Report, from May 2020. These were manual data collection exercises where each court was asked to provide data on the number of hearings and what digital platform was used to conduct remote hearings. As with any manually collected data, it is less accurate than data sourced directly from a system. The data collection was formally wound down on 5 February 2023. Since then, no data has been regularly collected by HMCTS on the format of hearings while a new methodology to automate data capture as part of scheduling and listing is developed.

During the pandemic, and up until 2023, HMCTS collected data covering the delivery of justice by physical, remote, hybrid and paper-based methods (see below for a full discussion of the data). The data was collected during January of each year and although there are some weaknesses and gaps in the data provision, it is the only data set available that quantifies how justice is being delivered across England and Wales.

Three years' worth of data was provided to the Bar Council by HMCTS, spanning the end of the pandemic (January 2021) and then each year onwards until January 2023. The data covers the format of hearings by region and jurisdiction and is collated manually with courts completing returns for the previous week.

However, although we have reported the data in aggregate form for 2021, they are not directly comparable with 2022 and

2023 as there were significant changes both in process and definitions. From 1 June 2021, the survey used to collect the data changed from a daily to a manual return. The definition of what constituted a 'hearing' was clarified, and the method for counting Single Justice Procedure hearings also changed. This means that the data collected prior to 1 June 2021 is not directly comparable to the data collected after 1 June 2021 (i.e. the 2022 and 2023 data). Also, in 2021 only fully in-person hearings were counted as in-person but in 2022 and 2023 both fully and partially (where some participants were in-person and some remote) in-person were counted together, also referred to as hybrid hearings.

Video hearings are any hearings that were mostly conducted using a platform that is video capable, and audio where the platform only supports audio. We cannot say if video was or was not used for hearings done via a video-capable platform. The 'other hearings' category is for anything that does not neatly fit into one of the other three categories. This

might be a paper hearing or an online or email case.

Data was not subject to the same level of checks as official statistics, and this includes a lack of cross-reference with case files. As such, we know that the number of hearings reported through the manual collection does not match case records. The number of hearings collected through the manual return systematically undercounts hearings, but it is broadly representative of the way that hearings take place. This means that the proportions reported in the report are broadly reflective of how hearings were conducted across the period in question.

Reviewing data completed over recent months, we know that the period used in this table has increasing rates of non-completion. We do not know if there are any biases within answering the survey itself, so whether it over or underrepresents certain hearing methods (in-person or remote) is not possible to say.



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