

Executive summary and recommendation

# Understanding the impact of COVID-19 on tribunals

## The experience of tribunal judges

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June 2021



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## A. Background

- 1.1 The measures introduced to tackle the spread of COVID-19 resulted in rapid changes to the operation of courts and tribunals across England and Wales. Across the tribunals system, measures were put in place to protect public safety and ensure that tribunals were able to function and hear cases wherever possible. A range of procedural and practical changes were adopted: tribunals were encouraged to triage their caseload and to decide cases “on the papers”, the use of remote hearings was expanded and rules on party compliance with directions were relaxed to take account of the unprecedented circumstances of the pandemic.
- 1.2 Taken together, these changes constituted a significant shift in the operation of tribunals. The Senior President of Tribunals and leadership judges were keen to explore the impact of these changes on the experience of the tribunals judiciary, to identify opportunities to refine the processes put in place, and to guide future developments.<sup>1</sup> In order to assist them in this task, they commissioned a survey—this report presents the findings from that exercise.

## B. About the survey and respondents

- 1.3 An online survey of judicial office holders was designed with the support of the Senior President of Tribunals and Chamber Presidents who reviewed and approved the design of the survey. This survey was distributed via email and was open to all judicial office holders who had participated in hearings between 19 March 2020 and 31 July 2020. **1507 judicial office holders completed the survey in full**—only those respondents who completed the survey in full were included in the analysis.
- 1.4 In the early stages of the research it was revealed that no central record was kept of the numbers of judicial office holders who had heard cases remotely between 19 March 2020 and 31 July 2020. The absence of this data makes it impossible to assess the response rate to the survey (i.e., how many judicial office holders who were eligible to participate in the survey chose to do so). Due to the sampling and recruitment approach adopted, the findings of this survey cannot be generalised to the wider population of judicial office holders. The research methodology and limitations are detailed at Chapter 3.
- 1.5 The highest number of responses came from judicial office holders sitting in the Health, Education and Social Care Chamber, followed by the Social Entitlement Chamber and the Employment Tribunals (England and Wales). The majority of responses came from fee-paid non-legal members.

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<sup>1</sup> The following questions were identified as being of particular interest and importance: (i.) How effective was the guidance and support provided for judges, and how might it be improved? (ii.) Who provided IT support for remote hearings and how satisfactory was this support? (iii.) How effective was the administrative support and infrastructure provided for remote hearings and how might it be improved? (iv.) How much equipment is needed to conduct remote hearings effectively? (v.) How did the different hearing platforms compare and how well did the technology used to conduct remote hearings perform? (vi.) What has been the impact of the transition to remote hearings on access to justice? (vii.) What has been the impact of the transition to remote hearings on judicial office holder morale and wellbeing?

The majority of respondents had completed between 1 and 20 remote hearings at the point at which they participated in the survey. 27% of responses came from judicial office holders who indicated that their base hearing centre was located in London, while 16% of respondents indicated that their base hearing centre was located in the South East of England. The vast majority of respondents (94%) reported joining hearings from their home—only a minority attended court and hearing centres to conduct hearings.

### C. Findings: Guidance and support

- 1.6 The majority of respondents had both seen the guidance provided by HMCTS and Chamber Presidents and found it useful, but concerns were raised about the administrative and technical support provided to facilitate the conduct of remote hearings. Over one third of respondents reported that hearings proceeded without access to technical support to address IT issues. Where respondents *were* provided with administrative and IT support, the majority stated that they were satisfied with the support they received, however experience varied considerably across chambers. Only 38.9% of respondents in the Mental Health Tribunal were satisfied with the IT support for remote hearings [para 5.14].
- 1.7 Serious issues were reported with arrangements for accessing papers, which have been reported as generating applications to appeal. These issues were particularly acute in the Employment Tribunals in both England and Wales and Scotland. A number of common difficulties were identified [see para 5.17]—these issues should be addressed as a matter of urgency.
- 1.8 Respondents also raised concerns about the guidance and support provided to appellants in order to prepare them to take part in remote hearings. The dedicated support team created in the SEND jurisdiction to assist judicial office holders and parties to join hearings should be replicated across other jurisdictions.
- 1.9 Many respondents raised concerns about reasonable expenses (such as phone bills) not being covered by HMCTS. The survey revealed the potential for disparities (or perceived disparities) in resource provisions to generate resentment between fee-paid and salaried judges. A number of respondents raised concerns about the fitness for purpose of the existing model for remunerating fee-paid judges in the context of remote hearings. Suggestions to address concerns made by respondents included that fee-paid judges be paid a writing fee to compensate for not being paid for travel costs [paras 5.19-5.20].

### D. Satisfaction with technology

- 1.10 Significant amounts of equipment are needed to conduct video hearings effectively and the laptops provided as standard by HMCTS to salaried judges may require updating to improve their processing power and the quality of the inbuilt camera. Headsets and second screens were commonly reported

to be critical to the smooth conduct of remote hearings. Access to high-speed broadband is critical to enable hearings to take place effectively.

- 1.11 Satisfaction with the platforms used to conduct remote hearings was generally high (between 64.4% and 82.9%). Respondents were least satisfied with Skype for Business (only 64.5% of respondents who had used this platform described themselves as satisfied or very satisfied) and most satisfied with Zoom (82.9% of respondents who had used this platform described themselves as satisfied or very satisfied). Only 69.4% of respondents were satisfied with Cloud Video Platform—Cloud Video Platform had the second-highest percentage of dissatisfied users after Skype for Business. This may be considered worrying given that Cloud Video Platform has been chosen as the official platform for use across tribunals in England and Wales.

#### E. Remote hearings and access to justice I: Access to hearings

- 1.12 The impact of remote hearings on access to justice varies between and within chambers. Respondents indicated that proceeding with hearings remotely has created new practical and attitudinal barriers to accessing the justice system for some parties [para 7.9], whilst reducing them for others [para 7.8]. Respondents reported that patients in detained settings appearing before the Mental Health Tribunal have been particularly adversely affected by a lack of access to adequate equipment and broadband. Many respondents reported issues with contacting appellants on the day of their hearing, and raised concerns about the ability of appellants to access the papers necessary for their case [para 7.10].
- 1.13 The utility of remote hearings as a tool to tackle case backlogs is contested [paras 7.5-7.7]. Respondents from the SEND Tribunal reported that the introduction of remote hearings supported the reduction of the tribunal's pre-pandemic backlog through rendering it easier to convene panels. Conversely respondents from the Immigration and Asylum Tribunal reported that hearings were taking longer to conduct, creating a backlog of cases [para 7.7].
- 1.14 Whilst respondents considered that remote hearings had reduced psychological barriers to attending hearings for some, these barriers had been amplified for others: particularly those with low levels of digital literacy and confidence; English as an additional language; those on low incomes; parties experiencing mental health problems; and parties with hearing and learning difficulties. Respondents from the Mental Health Tribunal in particular reported diminished attendance at hearings by appellants [para 7.14]. In addition, lack of confidence that remote hearings provide parity of experience and outcome for parties was reported to deter some from participating [para 7.15].

## F. Remote hearings and access to justice II: Participation in fair and effective hearings

- 1.15 The majority of respondents felt that telephone hearings were effective for routine procedural and case management matters, noting that tribunals were experienced in deploying telephone hearings for this purpose prior to the pandemic. In addition, telephone hearings were felt to be appropriate for dealing with short simple matters, where parties were represented [para 7.21]. In the case of video hearings, respondents felt that these worked best for short, straightforward hearings which concerned points of law, rather than live evidence. Some respondents from the Employment Tribunals (England and Wales) felt that video hearings worked well for judicial mediations. Hearings involving represented parties and professionals were felt to be most suited to video hearings, although respondents observed that much depended on the quality of broadband and technology available to parties [para 7.22].

### F.1. Identifying vulnerability and making adjustments

- 1.16 The Equal Treatment Bench Book affirms that identifying and making adjustments for disabilities or other disadvantage is critical to facilitating full and effective participation.<sup>2</sup> Nearly half of respondents (44.9%) who had conducted audio (telephone) hearings felt that it was difficult to identify when parties were vulnerable and may require reasonable adjustments. This figure dropped in the context of video hearings, where just over one third of respondents (34.5%) who had conducted video hearings stated that they found it difficult to identify when parties were vulnerable and required adjustments [para 7.25].
- 1.17 A majority of respondents reported that proceeding with hearings remotely had forced judges to rely to a greater extent on the information contained within papers or provided by legal representatives. Where this information was not supplied, or the party was unrepresented, respondents reported that it was very difficult to identify when a party was at a disadvantage [para 7.27]. Respondents reported that judicial office holders had to take a proactive role in identifying vulnerability and disadvantage in remote hearings, and to work harder to establish rapport in the early stages of hearings to facilitate this [para 7.30]. Some respondents reported that the fact that some parties were more relaxed when able to join hearings from their own home actually masked their vulnerability, making it harder for judges to identify and address barriers to participation.
- 1.18 For those respondents who reported that they had found it difficult to identify when parties were distressed or disadvantaged during video hearings, a majority attributed this to issues with the technology used to conduct hearings. Respondents reported that poor picture quality and audio made it difficult to identify when parties were struggling, undermining the potential for video hearings to address the issues experienced in telephone hearings. Further to this, respondents

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<sup>2</sup> See Judicial College (2018) "Equal Treatment Bench Book" (March 2020 Revision) London p. 4. Available at: <https://www.judiciary.uk/wp-content/uploads/2020/05/ETBB-February-2018-amended-March-2020-17.09.20-1.pdf>.

reported that even where parties did have a good video connection, a combination of the camera focusing on the speaker, and the requirement to conduct multiple tasks simultaneously (such as taking notes and alternating between windows) meant that parties would not always be visible to the tribunal panel, making it difficult to monitor parties' reactions [para 7.36].

- 1.19 The overlap between parties who were likely to be vulnerable or disadvantaged, and those with reduced access to technology was cited as exacerbating issues with identifying and monitoring distress and vulnerability. Respondents reported that parties with inadequate access to broadband and technology were often forced to join their video hearing by telephone, making it impossible to monitor visual cues.
- 1.20 These issues were magnified in the Mental Health Tribunal, where inadequate technology and equipment, low access to broadband and the withdrawal of pre-hearing examinations impacted on the ability of tribunal members to identify vulnerability. Further to this, once vulnerable patients were identified, the circumstances of the pandemic made it difficult to put in place effective adjustments that would enable patients to participate [paras 7.38-7.44]. A number of respondents reported that proceeding with hearings remotely had exacerbated the patient's pre-existing symptoms and created risks for staff who were facilitating attendance [paras 7.45-7.48].

#### F.2. Remote hearings and levels of legal representation

- 1.21 Representatives can play a key role in supporting the tribunal to identify when parties are vulnerable and may require reasonable adjustments to participate. A majority of respondents also reported that hearings where parties are represented are easier to conduct remotely. For this reason, understanding the impact of the rapid expansion of remote hearings on the number of parties who are represented is of critical importance.
- 1.22 Across all chambers, the majority of respondents reported that the number of parties who are represented by a lawyer or advice worker was unaffected by the transition to remote hearings. 75.2% of respondents ( $n=1393$ ) reported that they had observed no difference in the number of parties who were represented in telephone hearings, and 86.9% of respondents ( $n=968$ ) reported that they had observed no difference in the number of parties who were represented in video hearings. A minority of respondents in the Immigration and Asylum Chamber (where respondents reported that levels of representation are normally high) stated that the number of parties who were represented had risen in light of the transition to remote hearings, as representatives found it easier to attend [paras 7.51-7.52].
- 1.23 Reductions in levels of representation in telephone hearings were reported in those chambers where parties tend to rely on representation from charities and advice agencies. 43.5% of respondents from the Social Entitlement Chamber ( $n=490$ ) reported that the transition to telephone hearings had resulted in fewer appellants being represented. This was attributed to the financial impact of the

pandemic on advice agencies, and the fact that advice agencies were not equipped to provide legal advice and representation remotely [paras 7.54-7.58].

### F.3. Remote hearings and effective communication

- 1.24 The Equal Treatment Bench Book defines “effective communication” as a process through which “everyone involved [in the legal process] understands and is understood...Understanding means understanding the evidence, the materials, the process, the meaning of questions and the answers to them.”<sup>3</sup> In the absence of effective communication, the Equal Treatment Bench Book argues, “the legal process will be impeded or derailed”.<sup>4</sup>
- 1.25 Overall, nearly half of respondents (46.6%, *n*=1371) reported that it was easy or very easy to communicate with parties during telephone hearings. The proportion of respondents who reported that it was very easy or easy to communicate with parties fell slightly in the context of video hearings, to 41.2% (*n*=1036). However, over one quarter of respondents reported that it was difficult or very difficult to communicate with parties during telephone hearings (28%, *n*=1371), and nearly one third of respondents stated that it was difficult or very difficult to communicate with parties during video hearings (31.7%, *n*=1036). Respondents reported that the rapid expansion of remote hearings impacted both positively and negatively on the technical, practical and psychological barriers to communication between parties and judicial office holders.
- 1.26 Experiences diverged significantly between and within chambers. Overall, the highest proportion of respondents who found it difficult or very difficult to communicate with parties during telephone and video hearings reported sitting in the Health, Education and Social Care Chamber (although experience varied considerably between those who sat in the SEND Tribunal and those who sat in the Mental Health Tribunal).
- 1.27 Difficulties with communication were attributed to both practical [paras 7.62-7.65 and 7.69-7.71] and psychological barriers [paras 7.66-7.68 and 7.72-7.73] created by the transition to remote hearings. Practical barriers were created by the practice of judges “muting” participants, low-quality technology, impairments in the interpretation process and restricted access to broadband. Psychological barriers were created by the reduced ability to establish rapport with appellants, and by the increased range of tasks required of judicial office holders in a virtual hearing environment: the requirement on the judge to monitor the virtual hearing environment could distract them from attending to parties’ needs in the same manner that they would be able to in a physical hearing.
- 1.28 The practical and emotional advantages and disadvantages of remote hearings in terms of promoting communication were magnified in the experience of respondents from the Health, Education and

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<sup>3</sup> Judicial College (2018) “Equal Treatment Bench Book” (March 2020 revision) p. 4. Available at: <https://www.judiciary.uk/wp-content/uploads/2020/05/ETBB-February-2018-amended-March-2020-17.09.20-1.pdf>.

<sup>4</sup> *ibid.*



Social Care Chamber. Overall, 40.9% ( $n=579$ ) of respondents from this chamber reported that they found it difficult or very difficult to communicate with parties during telephone hearings, and 39.7% ( $n=648$ ) of respondents found it difficult or very difficult to communicate with parties during video hearings.

- 1.29 This overall figure masked significant divergences in experience between respondents in the SEND Tribunal and those in the Mental Health Tribunal. In the SEND Tribunal, the percentage of respondents who found it difficult or very difficult to communicate with parties in telephone hearings was just 16.9%, compared with 46.3% in the Mental Health Tribunal. Similarly, just 15.6% of respondents in the SEND Tribunal reported that they found it difficult to communicate with parties during video hearings, compared with 44.5% of respondents in the Mental Health Tribunal. The reasons for this are explored in detail at paras 7.74-7.89.

#### F.4. Video hearings and the ability of parties to effectively put their case

- 1.30 Overall, 57.6% ( $n=961$ ) of respondents reported that video hearings were mostly effective or effective in enabling parties to participate and put their case effectively. Nearly one third of respondents across all chambers (31.9%,  $n=961$ ) stated that in their experience video hearings were slightly ineffective or ineffective in this regard [paras 7.90-7.93]. Respondents from the Tax and Chancery Chamber, which had the highest proportion of respondents who indicated that video hearings were mostly effective or effective, tended to report that this was because they had dealt mainly with professional and represented parties (see Figure 7.13 below).
- 1.31 As above, the Health, Education and Social Care Chamber contained the highest proportion of respondents who reported that video hearings were slightly ineffective or ineffective in enabling parties to present their case (37.2%,  $n=640$ ). In the context of video hearings, perceptions of efficacy varied between respondents from the SEND Tribunal and those from the Mental Health Tribunal. In the SEND Tribunal, over two-thirds of respondents (70.6%,  $n=82$ ) reported that video hearings were effective or mostly effective in terms of supporting parties to participate and put their case, compared with only half of respondents in the Mental Health Tribunal (50.4%,  $n=513$ ).
- 1.32 Many of the factors that were described as impacting negatively on communication were also referenced by respondents in explaining why they felt that video hearings were ineffective or slightly ineffective in terms of enabling parties to participate and put their case effectively. However, within the responses provided, new and additional themes were identified. These included: (i.) the impact of video hearings on the ability of parties to communicate with their representatives during hearings [paras 7.94-7.95]; (ii.) the rigid structure imposed on video hearings to manage their tendency to overrun undermining the flexibility that was normally deployed to enable parties to present their case [para 7.96]; (iii.) the impact on supporter attendance [para 7.97]; and (iv.) the informality trap—the tendency for parties to perceive video hearings as less formal and therefore not present their case as effectively [paras 7.98-7.99].

#### F.5. Remote hearings and fair decisions in accordance with law

- 1.33 A fair and effective hearing requires both individuals presenting evidence to be able to make their case and the decision maker to be able to comprehend it. As such, any evaluation of the impact of the expansion of remote hearings on access to justice must consider the effect of changing the mode of hearing on judicial decision making. A number of respondents expressed concerns that the rapid transition to remote hearings (both telephone and video) had made arriving at a fair decision harder [paras 7.100-7.103]. In explaining their concerns, respondents implicated distractions caused by technical difficulties, reduced ability to discern non-verbal clues and indicators, and the impact of remote hearings on intra-panel discussions.

#### F.6. The impact of remote hearings on parties' perceptions of fairness

- 1.34 A number of respondents expressed concerns that it was more difficult to ensure that parties feel they have had a fair hearing in the context of proceeding remotely. This was attributed to: issues with the technology, which it was felt undermined perceptions of the professionalism and fairness of hearings; the inability of parties to see the panel, which undermined both the ability of the panel to demonstrate that they were treating the appellant with dignity and fairness, and made it harder for parties to trust the motives of the panel; and the absence of a "neutral" hearing room. Respondents stated that the absence of a neutral hearing room was felt to increase the ability for parties to perceive disparities between their socio-economic circumstances and those of opponents or judicial office holders, and raised concerns that this might lead parties to question the motives of judges and perceive the overall hearing as less fair [paras 7.104-7.108]. A number of respondents highlighted the need to conduct research to examine the experience of parties.

#### G. The impact of remote hearings on judicial wellbeing

- 1.35 The rapid transition to remote hearings has impacted negatively on the wellbeing of the majority of judicial office holders who responded to this survey. Explanations for this included that remote hearings had changed the role of judicial office holders in hearings by i.) making them responsible for managing technical difficulties and increasing the administrative burden placed on judges; ii.) rendering existing skills and techniques for managing hearings less useful; and iii.) making it harder to control proceedings. Remote hearings had also introduced new concerns, such as worries about interference with witnesses and parties.
- 1.36 Whilst some respondents welcomed the reductions in travel time, and the fact that proceeding with hearings remotely had enabled fee-paid judges to continue earning during the pandemic, many reported missing the social aspect of engagement with fellow panel members. Concerns were also raised about the potential for arrangements surrounding remote hearings to foster resentment between fee-paid and salaried judges.
- 1.37 A majority of respondents reported that remote hearings were more tiring than hearings conducted in person. This was attributed to: i.) the propensity for remote hearings to increase the length of

hearings; ii.) the increased levels of concentration required; and iii.) the stress associated with managing the technology alongside managing the hearings.

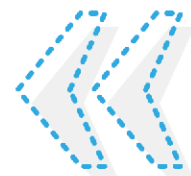
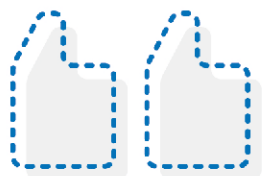
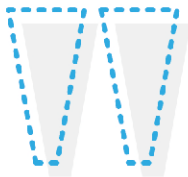
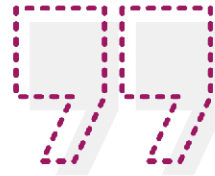
## H. Recommendations

<b>1</b>	<b>Improving guidance and support for judicial office holders</b>
1.1	Guidance should be consolidated in one place and version control should be improved to enable judicial office holders to keep track of updates. Guidance should not be emailed as this makes it difficult to keep track of the latest version.
1.2	Guidance should include chamber-specific case studies and practical examples to illustrate good and bad practice.
1.3	Guidance authors should clearly distinguish between instructions, guidance, and hints and tips
1.4	More information should be provided about how to deal with common practical and procedural problems, for example, how to manage difficulties with interpreters, dealing with missing evidence etc.
1.5	Chamber specific precedents/scripts for conducting video and audio hearings should be created, and more detailed guidance on hearing etiquette and how to allocate time within remote hearings should be provided.
1.6	The consistency of guidance and practice across different hearing centres should be improved, and a consistent role for administrative staff should be created, e.g. specifying who will confirm case reference numbers and record start and finish times.
1.7	Specific guidance relating to the use of interpreters, and how to manage in the absence of simultaneous interpretation should be provided.
1.8	Concerns raised regarding disparities in resource provisions between fee-paid and salaried judges should be investigated.
1.9	Steps should be taken to monitor the impact of the increased administrative burden of remote hearings on judicial wellbeing.
<b>2.</b>	<b>Improving guidance and support for parties</b>
2.1	HMCTS should improve the guidance and support provided to parties, particularly those who may be considered vulnerable. HMCTS should institute a pre-hearing checklist for parties, which should be completed prior to the commencement of the hearing.
2.2	The pre-hearing checklist should include: <ul style="list-style-type: none"> <li>• Checking that the parties have their papers and are able to access them during the hearing;</li> <li>• Checking that all parties understand how to connect to the hearing;</li> <li>• Checking that both the equipment and connection is of a suitable standard to facilitate effective participation;</li> <li>• Identifying vulnerability and whether there is a requirement for reasonable adjustments;</li> <li>• Checking that parties understand and are capable of following the instructions regarding hearing etiquette;</li> </ul>

	<ul style="list-style-type: none"> <li>• Checking that parties understand the purpose of the hearing.</li> </ul>
2.2	The role of the dedicated support team created by judicial office holders in the SEND jurisdiction was highlighted as an example of best practice [see para 5.12]. The functioning of this team should be reviewed and, the model it provides replicated across other tribunals
<b>3.</b>	<b>Access to papers</b>
3.1	Arrangements for providing access to papers should be urgently reviewed, to ensure that all parties and judicial office holders are able to access them in a timely fashion.
3.2	<p>Quality control measures should be introduced to address delays in hearings caused by issues with the bundles. Checks to be adopted should include the following</p> <ul style="list-style-type: none"> <li>• Checks should be introduced to ensure that all key documents have been scanned and included in the file;</li> <li>• Bookmarks should be included to aid navigation of large files;</li> <li>• E-bundling and PDF software should be made available to fee-paid judges;</li> <li>• Issues with DOM-1 machines that act as a barrier to remote access to online databases should be addressed:</li> </ul>
3.3	The adoption of the digital case management system should be expedited.
<b>4.</b>	<b>Technology—Hardware</b>
4.1	<p>Judicial office holders tasked with conducting remote hearings should be provided with:</p> <ul style="list-style-type: none"> <li>• second screens,</li> <li>• headsets,</li> <li>• access to additional devices for viewing papers (such as iPads),</li> <li>• access to a high-speed internet connection.</li> </ul>
<b>5.</b>	<b>Technology—Platforms</b>
5.1	HMCTS should examine the issues reported with BT MeetMe around poor-quality audio; cumbersome dialling in process; problems in recording hearings, and the lack of notification when a party leaves a call.
5.2	HMCTS should review the stability of Cloud Video Platform to investigate and identify the cause of the issues identified regarding participants “freezing” and “dropping out”.
5.3	<p>The following changes should be made to the functionality of Cloud Video Platform:</p> <ul style="list-style-type: none"> <li>• The platform should be adapted to show larger pictures of attendees, and include the functionality to enable JOH’s to view all participants on the screen at once;</li> <li>• The platform should support wider angles, and the ability to see more than a head and shoulders view of parties;</li> <li>• A private virtual waiting room should be added to facilitate pre-hearing discussions between parties;</li> </ul>

	<ul style="list-style-type: none"> <li>• A mechanism should be added to enable panel members to speak to each other confidentially during hearings;</li> <li>• Subtitles/real time speech-to-text facility should be added to enable speakers to be understood and support those with hearing difficulties to participate in hearings;</li> <li>• The panel should be adapted to improve the ability to reliably join interpreters and a “pinning” function to enable them to be seen by the panel;</li> <li>• A mechanism should be added to facilitate document sharing in real time;</li> <li>• The platform should offer functionality to present a neutral background.</li> </ul>
5.4	Colleagues in Scotland should be contacted to explore their experience with an alternative platform, with a view to identifying improvements that might be made to Cloud Video Platform.
5.5	The leadership judges should set/recommend a minimum threshold for technical performance below which the fairness and efficacy of hearings is threatened to ensure consistency. E.g. maximum number of interruptions permitted
<b>6.</b>	<b>Access to justice I—Remote hearings and accessing tribunals</b>
6.1	HMCTS staff should review their approach to providing papers to parties to ensure all parties are able to access them in a timely fashion prior to their hearing.
6.2	HMCTS staff should work proactively to identify and provide support to appellants who: <ul style="list-style-type: none"> <li>• Are likely to be on low incomes without access to equipment, phone credit or broadband;</li> <li>• Are experiencing mental health or learning difficulties;</li> <li>• Have English as a foreign language;</li> <li>• Are hard of hearing or deaf, or who have impaired sight or difficulties with speech and language;</li> <li>• Are in detained settings, such as mental health care facilities, immigration detention centres and prisons.</li> </ul>
6.3	Checks should be conducted to ensure that patients in detained mental health settings are able to access the technology and broadband required to participate in remote hearings. Hospitals should be asked to ensure that patients are able to join hearings from a quiet room and via a device that is not shared, and have access to writing materials to take notes.
<b>7.</b>	<b>Access to justice II—Fair and effective hearings</b>
7.1	Leadership judges should issue guidance that telephone hearings should be reserved for routine procedural and case management matters where parties are represented.
7.2	Leadership judges should issue guidance that video hearings should be reserved for: <ul style="list-style-type: none"> <li>• Short, straightforward hearings concerning points of law;</li> <li>• Hearings not involving live evidence;</li> <li>• Hearings where all parties are represented and are joining with their representative.</li> <li>• Hearings where all parties have access to good broadband and adequate technology.</li> </ul>
7.3	Leadership judges should issue guidance that remote hearings (both telephone and video) should be used with caution where:

	<ul style="list-style-type: none"> <li>• Hearings are long;</li> <li>• Factual matters are in dispute;</li> <li>• Issues of credibility are engaged;</li> <li>• There are multiple participants and witnesses;</li> <li>• Parties are unrepresented;</li> <li>• Parties require the assistance of an interpreter;</li> <li>• Parties experience physical or mental health difficulties, including hearing loss;</li> <li>• Issues are highly contested.</li> </ul>
7.4	This guidance should remain in place until independent research conducted with a representative sample of tribunal users has been conducted. This research should be designed in such a way as to explore the impact of remote hearings on outcomes for tribunal users.
<b>8.</b>	<b>Data collection</b>
8.1	Data should be routinely collected on the number of judges who preside over tribunal hearings during any given period. This data should be collected in such a manner to enable leadership judges to re-contact those judges who have sat for the purposes of monitoring and research.
8.2	Management information collected by HMCTS should include capturing information on the mode by which hearings are taking place. The following descriptions are suggested: <ul style="list-style-type: none"> <li>• Fully video: where all parties attend by video;</li> <li>• Partly video: where some parties attend by video whilst others attend in person;</li> <li>• Fully audio: where all parties attend by telephone;</li> <li>• Partly audio: where some parties attend by telephone and others attend in person.</li> </ul>
8.3	Data on the duration of hearings should be recorded to model the impact of remote hearings on backlogs.
8.4	The platform used should also be routinely recorded. A full list of data that should be captured by HMCTS on an ongoing basis to facilitate better understanding of the impact of remote hearings on access to justice, judicial wellbeing and to support leadership judges to plan is presented at Appendix B. HMCTS should be asked to complete the data audit template at Appendix B to confirm which of this data is already captured
<b>9.</b>	<b>Further research</b>
9.1	A panel survey should be commissioned to explore changes in the experience of a representative sample of tribunal judges over time.
9.2	Research should be conducted to investigate whether a decrease in representation is a consequence of representatives refusing to take part in hearings and advising clients to do the same on the basis of concerns about the fairness of hearings conducted by telephone.
9.3	As a matter of urgency, independent research should be conducted with a representative sample of tribunal users to explore the impact of remote hearings on perceptions of fairness and outcomes for tribunal users.



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