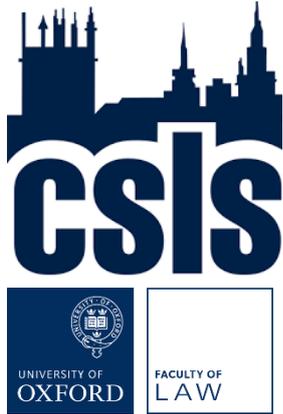


Exploring the case for Virtual Jury Trials during the COVID-19 crisis

An evaluation of a pilot study conducted by JUSTICE



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Executive Summary

Introduction

1. In light of the significant impact COVID-19 is having on the operation of the courts, JUSTICE are concerned to ensure that access to justice and fair adjudication can be maintained. They argue that this is particularly important for Crown Court trials since a significant number of defendants are remanded in custody awaiting trials and the prison service is under considerable strain during the pandemic. Delays in hearing cases also causes stress to victims, witnesses, defendants and the families that support them. In these circumstances JUSTICE argue that it is important to test the case for jury trials to be held using video facilities in which everyone is participating from a separate room. The question they have posed is whether, in these times of crisis, it is possible to hold ‘dispersed’ or virtual trials in which the principles of fairness, accuracy of evidence and certainty can be met.
2. In light of the COVID-19 pandemic HMCTS has been forced to take the idea of remote hearings seriously. The last few weeks have seen the production of new COVID-19-related law, guidance and Practice Directions on remote proceedings. This has generated a unique opportunity to experiment with digital justice and virtual trials.
3. Digital solutions to the current situation must be set against concerns about the digitally excluded. Research suggests that effective access and use of video technology differs according to age, income, education and location. These issues are of particular importance given the over-representation of the disadvantaged amongst those being tried in the criminal justice system.
4. Further debate about the capacity of technology to provide solutions during social distancing needs to remain sensitive that virtual trials may also pose challenges for particular individuals most notably vulnerable witnesses and defendants. This is likely to place limits on where trials take place and the people that are invited to take part.

The goals of this action research

5. This report has been commissioned by JUSTICE with the following objectives: to evaluate how well the technology worked in the virtual trials; to compare the conduct of the trial with traditional face to face hearings; to consider whether there are any benefits to virtual trials; to appraise whether there were any problems that arose which might give cause for a legal challenge; and to evaluate what lessons might be learnt from the two virtual trials conducted to date.

About the Experiments

6. In early April 2020, JUSTICE organized two experimental virtual jury trials with the support of AVMI and Corker Binning solicitors. These were designed to explore whether it will be possible for a fair trial to take place when all of the participants were appearing from different physical locations. Volunteers to play the various roles in the trial were recruited from amongst JUSTICE members. A third mock trial is due to take place in early May.
7. These trials differed from previous experiments of this kind which have tended to focus on one person, typically the defendant or a vulnerable witness, appearing in a physical court in which everyone else is present via videolink.

8. Both trials were based on a fictional case supplied by the Honorable Society of the Inner Temple though the Inner Temple makes no comment either way on the viability of virtual trials by virtue of this support.
9. All the parts in the mock trial were played by volunteers including practicing barristers and a judge.
10. The parties came together during proceedings on a single screen in which the jurors appeared in a group in smaller boxes than other participants. Other virtual spaces also existed behind this shared view of the 'courtroom.' These included the jury room and a private consultation room for lawyers and their clients. Jurors, the clerk and Judge also had access to a private chat function which they could also use to access documents.
11. A number of changes were made between the first and second trial in order to improve the process. These included the provisions of better information for lay participants; a pre-trial test call; the creation of a script or 'crib sheet' for the judge and clerk; the inclusion of a jury bailiff; additional behind the scenes technical support; the allocation of unique numerical identifiers for each jury member; the use of wigs and alteration to the shared view of the courtroom.

Positive aspects of the JUSTICE virtual jury trial

12. There were a number of positive aspects of the experiment which revolved around seven main issues:
 - The technology worked very well for most of the two trials. This was especially the case in the second trial in which more technical staff were provided behind the scenes and participants were better briefed about how to use the technology;
 - The judge and barristers involved were highly effective in creating a sense of gravitas and civic occasion;
 - Lay participants appeared to be comfortable with the technology once trained and there were suggestions that in some instances it caused less stress than going to a physical courthouse;
 - Lay participants generally had a much clearer view of everyone unimpeded by the usual interrupted sightlines in physical courts. This gave a much stronger sense of participation;
 - The defendant was treated with much more dignity in this experiment than when they are placed in an enclosed dock at the side or back of a courtroom as is the norm.
 - A separate virtual room was provided for the defendant to consult with their counsel in private. Given that defendants are routinely placed in docks at some distance away from their lawyers, it is argued that in this pilot the right to consult with counsel was enhanced.
 - Those operating the technical aspects of the trial proved to be very flexible and have already identified a number of ways in which the platform they have provided could be improved.

Problems with the virtual court pilot scheme

13. There were also a number of problems which need to be addressed if further experiments are to be conducted:
 - It became apparent in the first trial that participants needed to be provided with customized information about their role as a juror or a witness, how to use the technology and what to do if something went wrong. A number of these problems were resolved in time for the second trial and this resulted in the provision of three guides for jurors, witnesses and lawyers.
 - There were a number of failings about the bandwidth of participants' internet connection which need to be addressed as a matter of urgency if virtual trials are to gain credibility. A failure to see or hear proceedings could easily result in unfair decisions being made. A number of these problems were mitigated by the provision of advice to participants about how to maximise the quality of their connection before the second trial. Connectivity problems may be exacerbated during the COVID-19 pandemic while there is high demand for the internet. A consistent connection may only be achieved if some lay participants are supplied with hardware and high-quality internet access.
 - When participants appear from their homes the rooms that they are in become part of the virtual court. The area behind them and appearance of faces onscreen varied considerably during the pilot and had a significant impact on the solemnity of proceedings. The authors argue that for this new sort of virtual civic space, the design of dispersed locations have to be considered as important as technical capacity.
 - Not all participants seemed aware of the importance of avoiding distracting or problematic behavior, particularly in the first trial. Further guidance in a variety of forms could usefully be developed building on the documents already drafted by JUSTICE and AVMI.
 - Observations of the JUSTICE trial suggest that more attention could usefully be paid to how the virtual space created during this experiment could be transformed into a civic space. This includes providing backdrops with a coat of arms for the judiciary, ensuring that lawyers wear full court dress, directions being given about the solemnity of the occasion and the design of virtual waiting rooms to prepare participants for the transformation in social tone which should take place when they enter court.
 - While technical competency might be assumed of many lay participants, there will be others who would find this platform alienating and stressful. The additional stress of being 'in' court while on their own may prove too onerous a task, especially where the person could be classified as vulnerable. These issues may prove insurmountable barriers to participation for some jurors and could lead to an unrepresentative sample of jurors taking part in trials during the COVID-19 crisis.
 - Some participants were concerned that jurors might circumvent expectations that they should attend court from a room in which they are alone and should not use the internet while the court is in session. The courts providing their own equipment with only the virtual trial software loaded on it could prevent these kinds of distractions.
 - The issue of how the JUSTICE model would allow for observation by the public if rolled out to real jury trials has not been extensively discussed in the course of this

pilot. JUSTICE is working on the basis that livestreaming to the public is possible. This is clearly an important issue which is deserving of additional attention.

Key lessons learnt from the JUSTICE virtual jury trial pilot

In light of the various successes of the pilot and the potential to make further improvements there is a convincing case for rolling out the pilot if the danger of a backlog of jury trials becomes a reality. It is important to ensure that there is an appropriate evaluation of the scheme as it unfolds to facilitate constant improvements and identification of issues. Lessons learnt from the project are outlined below.

- It is essential that adequate backstage technical support is provided to courts operating video trials. This is the single thing that most impacts on the fluidity and legitimacy of proceedings.
- It is not appropriate to ask the judge and clerk to be constantly vigilant about who is present when they have a range of other really important tasks to carry out. The jury bailiff in the second trial helped with this, and it was good to see in AVMI's report that they are already thinking about a team of technical support to help facilitate an effective trial.
- All participants should have their circumstances assessed in order to gauge whether they have the hardware and internet capacity to take part in a virtual trial without a loss of connection.
- All participants should be fully briefed about how the platform works. Ideally this would be provided in several formats including videos and booklets well in advance of the trial. This study and others have demonstrated that the quality of proceedings is enhanced significantly where participants have been able to attend a technical walk through of the system in advance of the trial. Information provided should include a description of the geography of the virtual space, such as how many virtual rooms were available and who could access them.
- A judicial opening statement customized to the needs of a virtual trial should be prepared for all judges to deliver at the beginning of the virtual trial indicating how it is different from a physical trial and what is the same. The materials prepared for this pilot would be a useful starting point.
- All participants need to be given clear instructions about how to prepare the room from which they should appear. It is important that they are advised to ensure they have a plain background behind them without clutter in view. Participants should also be advised how to position themselves to ensure that their face and arms are visible.
- In order to address concerns that video trials encourage a more formal approach to the administration of justice it would be valuable if a coat of arms and an appropriate backdrop could be placed behind the judge. Judges and lawyers should also attend in full court dress.
- It would be valuable for further experiments to consider how the formality of proceedings and the need to prepare jurors for civic performances could be enhanced by the creation of a well-designed waiting facility and timed entrances into the virtual court.
- Overall, attention needs to be paid to the potential problem of a shift towards too much informality, particularly if important elements previously conveyed through architecture, costume and ritual in the physical courthouse are 'lost' in this transition to virtual proceedings and not recovered creatively through other means.

- Screen strain and the fact that people attend court from their homes means that it might be difficult at times for them to remain focused on proceedings; this might mean a need for more frequent but shorter breaks.
- For the next experimental trial in May, or any future tests, it is recommended that lay participants, including the jury, be comprised of representatives or advocates from a wide range of diverse backgrounds, abilities and specific needs to ensure that the platform is suitable for the diversity of the general population. For instance, this may include inviting advocates from disability groups, the neuro-divergent and mental health sector, elderly and aged, those with intersectional needs, Domestic Violence advocates and BAME representatives. People with expertise in these areas should be consulted and included in the evaluation process.
- Future trials and tests also need to be considerate of the different modes and places in which defendants might participate in this platform. We recommend that heads of remand centres are given guidance about how to ensure that defendants appear with a dignified backdrop and in a well-insulated room.
- These experiments were conducted using a trial that took half a day to complete (albeit with extremely abbreviated parts of the process). Given the issues raised in our report around the intimacy and intensity of the virtual court experience and the suggestions made for ensuring frequent breaks, the issue of the appropriate length of the trial for this platform may be worthy of further investigation. It may be that this platform works fine for trials of short or medium length duration, but those spanning several weeks may prove to be less easily managed in this way. Future experiments should therefore test the different lengths of trial possible against user experiences of them. It may be that the estimated length of trial becomes a determining factor in whether or not it is appropriate to proceed with a trial by this platform or not.



Introduction

In light of the significant impact COVID-19 is having on the operation of the courts, JUSTICE are concerned to ensure that access to justice and fair adjudication can be maintained. They argue that this is particularly important for Crown Court jury trials in which defendants are often remanded in custody in the run up to proceedings.ⁱ There are currently just under ten thousand people remanded in prison awaiting trial or sentencing. This group makes up 11 per cent of the total prison population (National Statistics, 2019) at a time when public health officials suggest that COVID-19 will thrive in prisons.ⁱⁱ The majority of prisoners on remand have not been convicted of a criminal offence and are awaiting trial following a not guilty plea. Her Majesty's Courts and Tribunal Service (HMCTS) has indicated that it is working to make it possible for the majority of remand cases to be heard by videolinks during the COVID-19 crisis and anticipates defendants appearing from police custody suites, prisons and youth custody facilities where this serves the interests of justice.ⁱⁱⁱ Managing demand for trials during the pandemic is critical for all those involved. Delays in the administration of justice in such cases is likely to create stress for defendants, complainants, witnesses and their wider families all of whom will be seeking certainty over proceedings that may have been hanging over them for some time. Leaving cases to be resolved until social distancing rules are relaxed will create backlogs for HMCTS and leave many lawyers without work. In these circumstances, JUSTICE argue that it is important to test the case for appropriate virtual jury trials in which everyone participates in the trial from a separate room. The question that JUSTICE have posed is whether, in this time of crisis, it is possible to hold such 'dispersed' or virtual trials in which the principles of fairness, accuracy of evidence and certainty can be met. This publication reports the findings of an action research project involving a virtual jury trial experiment run by JUSTICE in April and May of 2020.

Although they have been experimenting with some participants joining trials by videolinks for some time, the COVID-19 pandemic has forced HMCTS to take the idea of trials in which no one is in the same room seriously. Senior members of the judiciary have also been keen to harness the power of technology during the crisis. In the words of the Lord Chief Justice:

It is clear that this pandemic will not be a phenomenon that continues only for a few weeks. At the best it will suppress the normal functioning of society for many months. For that reason, we all need to recognise that we will be using technology to conduct business which even a month ago would have been unthinkable. Final hearings and hearings with contested evidence very shortly will inevitably be conducted using technology. Otherwise, there will be no hearings and access to justice will become a mirage. Even now we have to be thinking about the inevitable backlogs and delays that are building in the system and will build to an intolerable level if too much court business is simply adjourned.^{iv}

The pandemic has had a significant impact on the ability of HMCTS staff, the judiciary and citizens to use the court estate. One hundred and fifty-seven courts, which form 42 per cent of the court estate, remain open to deal with priority cases on the basis that not everything can be done remotely. Examples of priority hearings include all matters relating to custody, detention and bail, and urgent applications for matters such as terrorism, domestic violence or search warrants.^v A further 124 courts and tribunals are open to HMCTS staff and the judiciary but not the public. These 'staffed courts' are being kept open to support video and

telephone hearings and progress cases without hearings.^{vi} Certain types of cases are seen as being more amenable to virtual trials than others. The Lord Chief Justice has made clear that the rules in both the civil and family courts are flexible enough to enable telephone and video hearings of almost any matter, with the default position being that all hearings should be conducted with one, more than one, or all participants attending remotely across the legal system.

The last few weeks have seen the production of new COVID-19-related law, guidance and Practice Directions on remote proceedings.^{vii} The *Coronavirus Act 2020* expands the availability of video and audio link in court proceedings. It allows certain civil applications in the magistrates' court to take place by phone or by video, expands the availability of video and audio link in some criminal proceedings, and permits the public to participate in court and tribunal proceedings through audio and video links. Guidance makes clear that it is for the judge or magistrate assigned to the case to decide on the method for the hearing and that they will only take place by video if the judge is satisfied that it is in the interests of justice for everyone involved. In making their decision, judges and magistrates are expected to consider the details of the case, the type of hearing, how complex it might be and the participant's ability to use video links.^{viii}

Despite these many recent developments it is significant that no criminal jury trials are currently being held,^{ix} though the Lord Chief Justice announced on 23 March, that he is committed to keeping the situation under regular review. With that in mind a judicial working group has been established to consider ways to re-start some jury trials once it is safe to do so. It includes representatives from the Law Society, Bar Council, Criminal Bar Association, HMCTS, Crown Prosecution Service, Prisoner Escort Contacts, Ministry of Justice, Her Majesty's Prison and Probation Service, National Probation Service, National Police Chiefs' Council, and Legal Aid Agency.^x It is unclear at present how organisations representing the interests of lay and disadvantaged voices are feeding into the deliberations of the working party.

There is now extensive experience in the use of video-links in the criminal justice system and a Justice Video Service exists in the criminal courts for this reason.^{xi} Vulnerable adults and children have long had the opportunity to give evidence and to be cross examined on video (both pre-recorded and live). However, the majority of research in the area has relied on the use of mock rather than real trials, and relates to studies where only a limited number of people are appearing by video-link while others remain in the court.^{xii} There is also little evidence about the impact that virtual trials have on outcomes. The Ministry of Justice did launch a 'virtual court' pilot scheme using real cases just over a decade ago, and its evaluation of the pilot argued that they had demonstrated that a video link between a police station and a physical court could be successfully used to conduct a first hearing in the majority of cases. The evaluation of the process also suggested that it might also be possible to extend its use to other parts of the criminal justice system. Indeed, it was argued that broadening the use of the technology might improve the economic case for its installation, as the technology costs borne by the pilot were high. The authors own evaluations of the Virtual Court pilot at the time were sceptical of these claims to 'success' (Mulcahy, 2008; 2011; Rowden, 2011; 2013a; 2018; Mulcahy and Rowden, 2020).

The virtual jury trial tested here represents an entirely new way of conceiving of the trial by dispensing with the courtroom altogether. In the Ministry of Justice pilot discussed in the last paragraph the judge, clerk and members of the public continued to gather in a courtroom with

the defendant entering the court via videolink. Criticisms of the scheme tended to focus on the fact that the defendant had a radically different experience of the trial to all the other parties involved. In the experiment run by JUSTICE and discussed here, *all* the participants appeared from somewhere *other* than the courthouse. This challenges us to think differently about how we evoke the sense of the court. As such, this experiment feels more akin to a comprehensive transformation of justice, of the kind that authors such as Lederer (1999), Tait (2017) and Susskind (2019) have long foretold. Precisely because of its radical nature in dispensing with the need for a courthouse altogether, such a shift demands a diligent and thorough analysis. However, given the unprecedented and extreme nature of the COVID-19 crisis and its implications, it is suggested that now is a timely point at which to further test the feasibility and credibility of conducting criminal jury trials where no two people are in the same room.

This report has a lot to say about technology, but it is also concerned with the right to a fair trial and the impact that virtual trials are likely to have on lay and professional experiences of the justice system. Socio-legal research into conceptions of justice indicates that satisfaction with courts is not just linked to the outcome of a case but is more directly connected to a sense of ‘procedural fairness’. Critical indicators of procedural fairness include the ability of parties to meaningfully participate and voice their concerns or position; transparency; impartiality; confidence in the consistency of decision-making; a sense of being respected and treated with dignity; and a belief in authorities as trustworthy. Such is the importance of these findings that research suggests that people are more willing to accept an outcome, even outcomes that are not in their favour, if they feel that the end result was generated through a fair process.^{xiii}

Digital solutions to the current COVID-19 crisis must be set against concerns about the digitally excluded. Research suggests that effective access and use of video technology differs according to age, income, education and location and this is an issue that JUSTICE has expressed concern about.^{xiv} These issues are of particular importance given the over-representation of the disadvantaged amongst those being tried in the criminal justice system. Digital exclusion will also be of particular concern to those serving legal circuits with rural communities where internet access and capacity is often severely limited. Examples include the North East and South West circuits. Further debate about the capacity of technology to provide solutions during social distancing needs to remain sensitive to the fact that virtual trials may also prove challenging for those who are vulnerable by reasons of leading complex or chaotic lives because of alcohol or drug use; learning disabilities; significant mental health issues; homelessness or the fact that they victims of violent crimes or abuse.^{xv} These conditions are likely to place limits on where trials take place and the people that are invited to take part in new virtual trial initiatives.



The goals of this action research project

In this document we report on two experimental virtual trials organized by JUSTICE in April 2020. This report has been commissioned by JUSTICE. It aims to:

- Evaluate how well the technology worked in the virtual trials;
- Compare the conduct of the trial with traditional face to face hearings;
- Consider whether there are any benefits to virtual trials;
- Appraise whether there were any problems that arose which might give cause for legal and other challenges; and
- Reflect on the lessons that might be learnt from the two virtual trials conducted to date.

The action research we undertook has been informed by Jodie Blackstock, JUSTICES's Legal Director who explained the background to the process and how the mock trial was designed. She has also provided the authors with a technical report on the process provided by the technicians at AVMI who provided technical support. It is important to stress that these trials have been conducted during challenging times when all planning and design meetings have had to be conducted remotely. The fact that policy makers are keen to get input into questions that need a swift answer means that the research reported here has been conducted more quickly than would normally be the case.

In the sections that follow we outline how the trials were conducted before going on to discuss positive and negative aspects of the experiment. We close with a discussion of what could be done to maximise the chances of virtual trials working. At the time of writing there are plans to conduct a third virtual trial involving a practicing court clerk, interpreter and more representative group of jury volunteers.



About the virtual jury trial experiments

In early April 2020, JUSTICE organized two experimental virtual jury trials with the support of AVMI and Corker Binning solicitors. These were designed to explore whether it will be possible for a fair trial to take place when all of the participants were appearing from different physical locations. The court service uses BTMeet, Skype for Business and a Cloud Video Platform to manage hearings while observing social distancing guidelines. This virtual court room operated on a bespoke version of AVMI's managed video conferencing platform. This allows for the visual grouping and positioning of participants in such a way as to recreate, as closely as possible, the layout of the court room and positioning of persons within it. The experiment was run twice, on 9th April and again on the 17th April 2020. A third trial involving an interpreter, practising court clerk and more representative jurors with previous experience of being on a jury is planned for early May.

The first trial lasted 192 minutes and the second lasted 255 minutes. This included some time for jury deliberation. It was never anticipated that the jury would be given the same amount of time to deliberate as real juries. Instead the main focus was on testing the technology to gauge whether meaningful discussion and participation was possible when all the jurors were located in different locations. However, the second trial was deliberately longer to allow at least half an hour to test how easily jurors were able to converse in their private 'room.'^{xvi}

Both trials were based on a fictional case supplied by the Honorable Society of the Inner Temple called R v Hallett.^{xvii} All the parts were played by volunteers recruited from the membership of JUSTICE including an acting judge and barristers.^{xviii} The case involved a single defendant indicted for s. 20 Offences Against the Person Act wounding, and three live witnesses who were examined and cross-examined. Three witness statements were read pursuant to s. 9 Criminal Justice Act and a bundle comprising images of an injury, a location map and a record of a taped interview were distributed to the jury. To recreate the public gallery, the virtual court hearing was streamed on You Tube and a link was provided to allow invited observers to view it live. Observers were invited from HMCTS, the Bar Council, Criminal Bar Association, and the media to view the experiment.

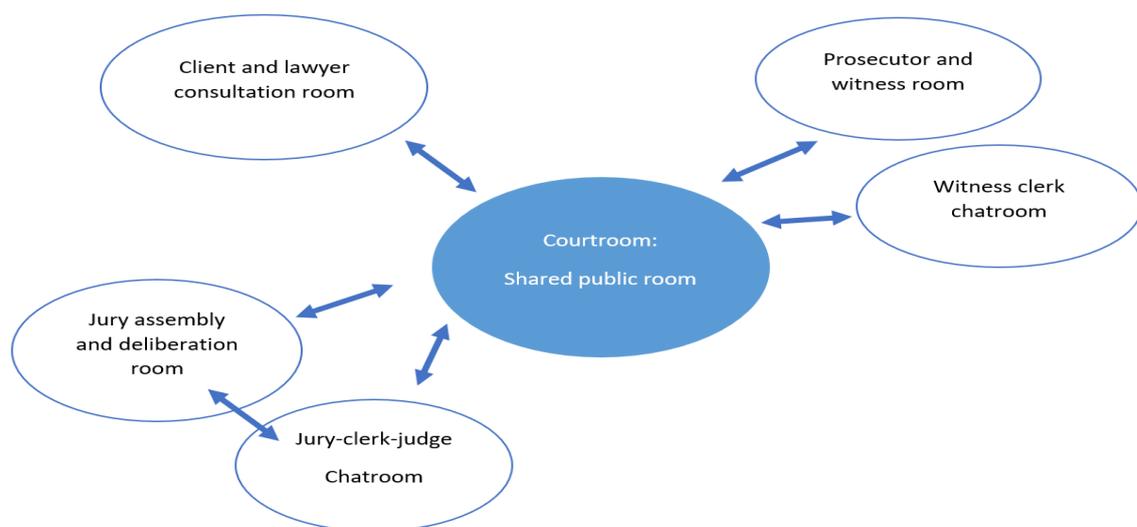


Figure 1 The Geography of the virtual courtroom

Operational and technical support was provided by several technicians from AVMI who provide audio visual for UK court proceedings. In the first trial the clerk, was played by an AVMI technician, who appeared to the court to be orchestrating and monitoring the various links and bringing the jury in and out. In the second trial a ‘jury bailiff’ role was added, played by another AVMI technician, to act as additional dedicated support for the jurors. Both trials were recorded for research purposes and can be shared with others interested in evaluating the process. As figure 1 shows, the virtual courthouse created mirrored courthouses in HMCTS estate by having a public frontstage and a backstage with private facilities to which the public had no access.

Frontstage

The parties came together during proceedings on a shared ‘public’ screen in which the jurors appeared in a group in smaller boxes than other participants. The judge, counsel and defendants remained static during the trial with the witnesses appearing below the judge once called and exiting after they had given evidence. Figure 2 shows the appearance of the virtual courtroom during the first trial, operating on a secure, Cisco platform. As with all the images in this report the faces of a number of volunteers has been blurred to protect their identity. When the trial was streamed all participants could see a non-blurred version of this image.

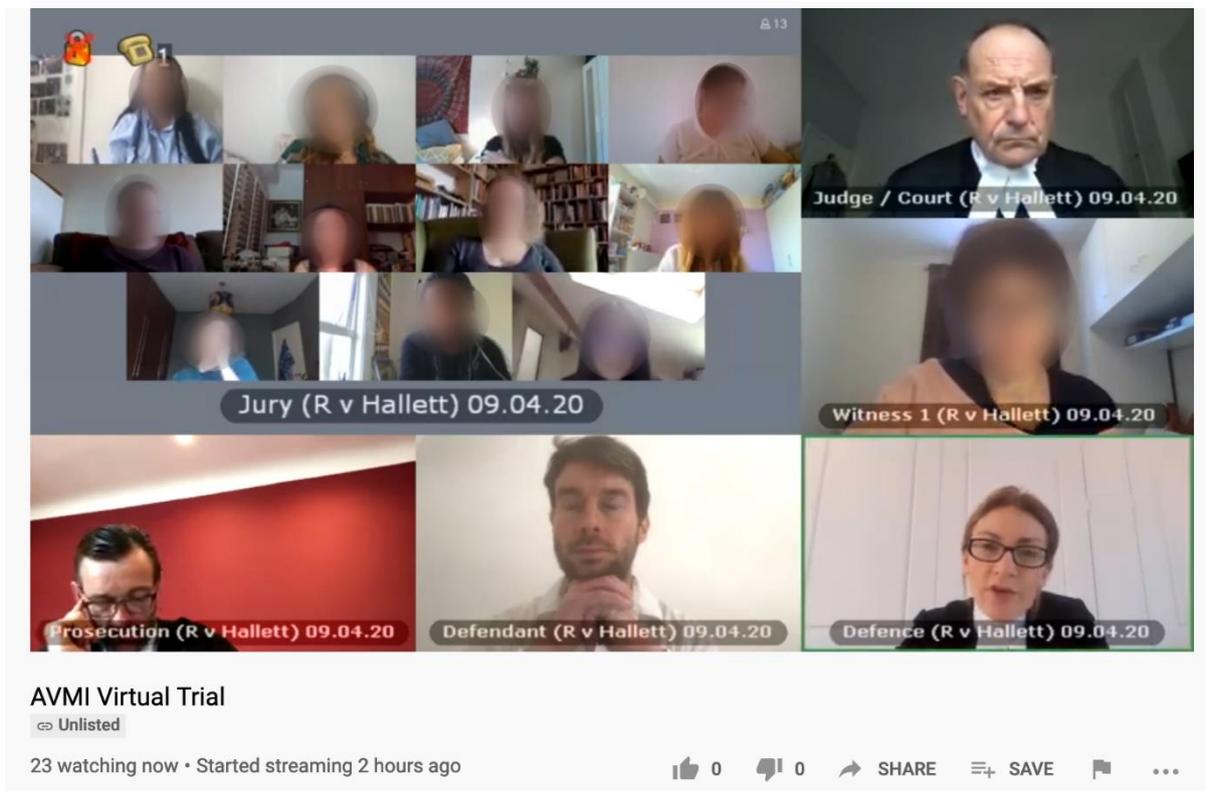


Figure 2: Screenshot of YouTube live stream (trial one)

In this screenshot defence counsel is in the process of questioning their first witness. The jury are placed together as a group and easily distinguished from other participants as would happen in a physical courtroom. When they were giving evidence, the witness appeared on the screen in place of the clerk. It is evident that the observer can see how many others are ‘watching’ proceedings at the bottom of the court ‘window’ and also how long the video stream has been running. All parties except for the jurors have labels indicating who they are. In the second trial jurors were also given numbers to make it easier to identify them while protecting their privacy. While the trial was taking place all the parties had exactly the same ‘shared’ screen view. Those present were able to see a smaller proportion of the body of others than would be the case if they gathered in person in a courthouse.^{xix}

Backstage

Other virtual spaces also existed behind this shared view of the ‘courtroom.’ The first of these was a jury room. This was used for jurors to assemble before the trial started and for jury deliberations. Jurors entered and exited the court by way of a single live feed and waited in this room where they could see each other but not the court. In this way the jury room attempted to simulate what happens in courthouses. The jury bailiff in the second trial, could ‘enter’ and interact with the jury in this room and then leave. A screenshot of the jury room, taken from the live stream recording room can be seen in Figure 3.

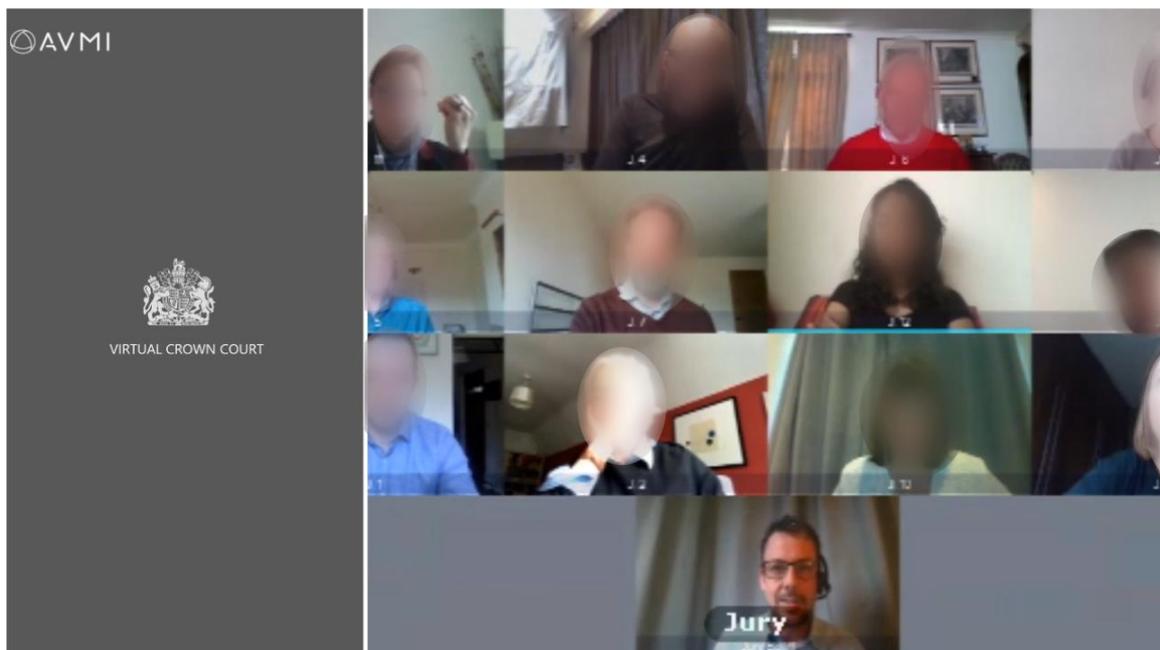


Figure 3: The ‘Jury room’ for deliberation (trial two)

This shows the Jury Bailiff appearing at the bottom of the screen. Juror’s numbers (e.g. “J 1” or “J 3”) are also visible at the bottom of each of their windows.

There was a second virtual private space where the defendant could consult with their counsel. Provision for private consultations between lawyer and client reflects a fundamental

tenet of our justice system. This is already recognised in the existing rules for legal visits within prisons and for telephone calls between prisoners and their legal advisers. Keen to ensure that this principal continues to be upheld, HMCTS are currently working to ensure that arrangements for conducting legal meetings by videoconference are secure, private and afford legal representatives appropriate time to confer with their clients. How to reproduce these meetings in virtual space is currently the subject of debate. Ensuring the link is secure, integrated in the same platform and that technicians cannot hear what is being said is clearly an imperative for any designers.^{xx} But there are also concerns about what will happen if members of the public are allowed open access to live streamed proceedings because of their ability to record proceedings or take photographs of those involved.^{xxi} HMCTS are in the process of testing a bespoke product for private consultations when using videolinks and are working to scale up this solution. While this is being done other arrangements will have to be made to facilitate these conversations, such as phone calls to clients, though it would be interesting to research whether defendants and counsel found telephone solutions sufficient for their needs.

A third virtual room in which the prosecutor was able to introduce themselves to the witnesses was also made available. A fourth space was created for Jurors, the clerk and Judge in the form of a private chat function. This chat function, run separately to the courtroom videolink, was not seen by other participants or observers.^{xxii} It appeared as a separate ‘window’ on the computer for those participants who were using it. The chat room served two functions. First, it was used to give jurors access to the jury bundle and to provide them with information about their responsibilities. The judge referred to this information and went through it with the jurors. Figure 3 shows a screenshot of such information from the second trial.

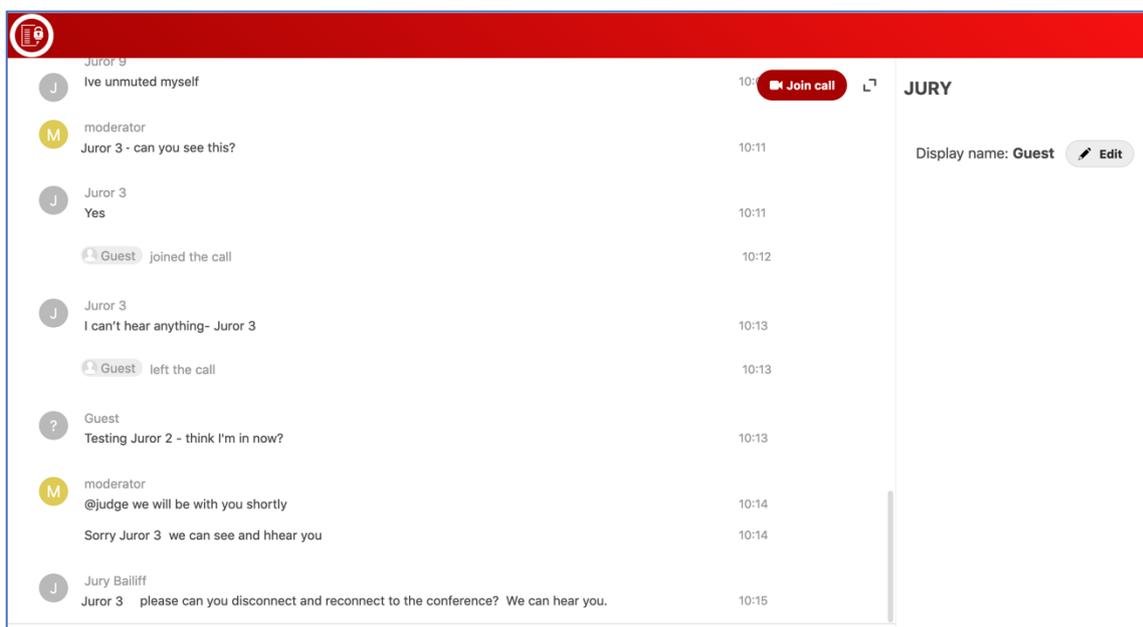


Figure 4: Screenshot of the jury chatroom in use (second trial)^{xxiii}

Secondly, the chat function was designed to help jurors indicate to the technical team or the judge that they were having difficulties with the connection, and to troubleshoot any other practical or procedural issues, or questions that they had about the trial and the process. The witnesses had a similar separate chat room each for the same reasons. The idea was that this would result in less interruptions to the trial as it progressed on the shared public screen. Jurors could unmute their microphones if necessary, but their microphones could also be controlled by an operator which reduced the likelihood of jurors speaking over anyone else.

In addition to these backstage spaces individuals could also exit the courtroom at will by simply exiting the system to the private spaces from which they appeared. This was done during lunch and other breaks when the shared screen was put on hold. The judge could also ask jurors to leave in order to allow a private discussion with lawyers on a point of law. In these situations the clerk and bailiff were relied upon to confirm that the jurors had left the virtual courtroom. The public gallery could also be closed if necessary.

Changes in the course of the experiment

Holding a second trial allowed JUSTICE and AVMI to address some of the practical, technical and operational issues that arose during the first trial; a number of which had been raised by the authors in the course of this action research project. A number of alterations were made as a result in preparation for the second trial. These included:

1. *Better information for lay participants:* Creation of a jury and witness information sheet. This provided information on the oath/affirmation that will be given, how to behave in the hearing, what to do if a technical issue arises, how to address the judge; how to arrange their surroundings; the need for plain backgrounds; what browsers to use; the use of automatic muting and instructions on how participants should position themselves in front of screens. Jurors were also told how the chat link worked in advance and alerted participants to the fact that there might be some waiting involved. The information sheets produced appear as Appendices A and B to this report.
2. *Pre-trial test call:* Jurors were advised what they should do if the technology failed in a test call with all the jurors the day before the hearing. This allowed jurors to test out the platform designed by AVMI and to pose questions about it.
3. *A script or 'crib sheet' for the judge and clerk:* This outlined all the points they need to address to ensure that a virtual court hearing runs smoothly. This information sheet appears as Appendix C to this report.
4. *Inclusion of a jury bailiff:* The role of jury bailiff was added to ensure that the jury were having their technical needs met and to reduce the overall workload of the clerk. It was clear that technical support would be needed for the clerk in a real trial as they have other obligations to carry out for the judge and court.
5. *Invisible participants:* It was made clear that some people participating in the trial such as the clerk could not always be seen but might intervene using the audio link. This provided more transparency about who was 'present'.
6. *Jury identification:* Jurors were assigned a unique number and this appeared as a small label on their window onscreen to further help with identification.
7. *Evaluators:* The two academic observers were given access to the backstage juror chat room so that they could see how it was being used (see Figure 4 above).
8. *Court dress:* The judge and counsel wore wigs.
9. *Shared view of the courtroom:* There were also some changes to the public gallery view. This included the addition of a side panel so that observers could see relevant

documentation being discussed at the same time. A sample screen of this function for the second trial appears in figure 5 below. The view shown is the public screen. Those who had access to documents in the private chat room could pull up documents at will using the document viewer tab.



Figure 5: Sample screen from the second trial for the public gallery stream.

A new screen indicating when the court was not in session was also added during the second trial to limit what the public were able to see in the courtroom during times when technicians were ‘bringing’ people in and out of the virtual court. The screen also provided some reassurance about what was happening for participants trying to re-enter the trial after a break or jury deliberations. A screen shot of this is shown in Figure 6.

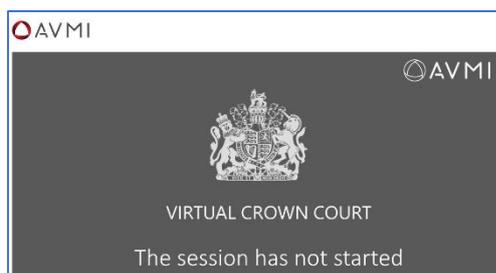


Figure 6: Holding screen designed for trial 2

The various changes made in preparation for the second trial meant that additional technical support was needed to ensure that there was sufficient personnel to ensure good sound and broadcast quality throughout, oversight of where people were being placed within the courtroom; witnesses were ‘brought in’ in an efficient manner. This resulted in there being five technical support staff present during the second trial. AVMI have argued that while this appears resource hungry the support team could be reduced as their staff became more familiar with this new process.

Future experiments

A third trial has been scheduled for 6th May 2020. AVMI have also been asked by JUSTICE to consider whether the system could be adapted to include other participants such as a

remote interpreter or intervener. It transpired that there is capacity to add additional people to the screen, though this might mean that some images were smaller. AVMI have suggested that an interpreter could easily be added to the next trial. Significantly, they would not necessarily need to appear on the screen but could provide translation in the form of a voiceover. Since interpreters rely heavily on audio and seeing the lips of the person whose words they are translating it has been suggested that there are some advantages to interpreters being able to see everyone involved in the trial at close quarters. Research by the authors has suggested that positioning of interpreters in physical courtrooms frequently creates tensions with the court service because of their professional need to be placed in a prime position in the courtroom where they can see everyone.

JUSTICE and AVMI have concluded that conducting trials with multiple defendants and lawyers would be too complex at this stage when the case for virtual jury trials has not yet been fully tested (Mulcahy and Rowden, 2020). The issue of how to deal with vulnerable witnesses was also raised and considered challenging at this stage in discussions about general principles. Though it is hard to establish direct eye contact in a virtual trial intimidating behavior can also take the form of gestures that represent threats. Studies of domestic violence have suggested that these are often very subtle and known only to the victim and their abuser. It is likely that these are situations in which the interests of justice are not necessarily served by virtual jury trials.



Evaluation of the Process

In this section of the report we draw attention to the authors' observations about positive and negative aspects of the two experimental trials conducted by JUSTICE. These suggest that there are some unanticipated advantages to virtual trials but that a number of issues relating to the design of these new spaces and technological issues need to be addressed before they could be rolled out more widely.

Positive aspects of the JUSTICE virtual jury trial

Positive aspects of the experiment revolved around six main issues, each of which are dealt with in turn below.

Technology

Aspects of the technology appeared to work well, from the point of view of the observers in the public gallery for much of the trial. The sound quality was generally good throughout. In the first trial there was a local hardware issue relating to the camera of one of the jurors which meant that they could not 'enter' court. Unfortunately, this meant that they had to be replaced but someone was promptly brought in from the jury pool. For the first trial there was one juror who could not be seen by the court (but who could see and hear everything). This is a situation that would normally cause a pause in proceedings in order to be rectified but was allowed to continue (see Figure 1) for the purposes of getting through the exercise. These kind of technological capacity issues for jurors were improved upon by the second trial by instigating the technological walk-through process by the technical team with jurors prior to the trial. Having learnt from mistakes made during the first trial, the second trial ran much more smoothly but additional technical support (a total of five technicians) was provided.

Professional performance and creating a sense of occasion

Those who were experienced in legal proceedings facilitated the creation of a sense of formality and occasion in the proceedings that afforded them the requisite dignity. The judge in both trials made a point of regularly reminding participants that this was a court of law in which they were undertaking an important civic role. Used to the formality of courtroom proceedings and language, the judge and barristers were effective in creating a sense of gravitas by retaining the small rituals and marks of respect one would expect to be played out in a physical courthouse. There was for instance remarkable little evidence of the parties talking over each other and the lawyers showed all the usual marks of respect that they would in a physical courtroom.

The professionals involved adapted well to the situation remaining calm when there were technical hitches and giving advice and warnings that were particularly pertinent to a trial in which everyone is in dispersed locations. By way of example, the judge talked about 'common sense manners' to the jury and the importance of making sure that they took turns to speak during their deliberations. He also indicated that he would keep a 'benevolent and kindly eye' on jurors to make sure that they remain engaged and would politely 'nudge them back into the room' if they appeared not to be paying attention. In this way the judge adapted his performance well to a new format. His way of doing so could usefully be built upon and formalized.

Lay engagement

The presence of all key participants in the trial on a screen just a few centimetres away for all those involved generated a sense of intimacy which promoted a sense of close engagement with the process. Physical courtrooms generally serve to distance people from each other and this is a deliberate strategy adopted by the Court Standards and Design guides produced by HMCTS (Mulcahy and Rowden, 2020). Distancing in the courtroom is motivated by convenience, the need to signify hierarchy and fears that some participants may intimidate others or effect an escape from custody. Generations of socio-legal scholars have drawn attention to the downside to these design principles which commonly leave lay participants in the trial feeling remote from proceedings, marginalised or disengaged. Though the virtual trials were at times a much more intense experience there was undoubtedly a much stronger sense of being closely involved in a group event when all the participants could be seen up close and clearly.

The design of this videolink also had a positive impact on the ‘sightlines’ in the courtroom. These are often interrupted in physical courts because of largely flattened floors in courtrooms designed since the 1970s. This means that when barristers stand up to speak, they often break the sightline between defendant and judge. In other cases, sightlines are deliberately interrupted because of fears of intimidation or jury ‘nobbling’. In this experiment all the parties could see each other’s faces very clearly and were accorded equal visual status. In the view of the authors this constituted a success for open justice. Intimidation of other people was also made more difficult by the fact that everyone is on full view to others. It was also difficult to look someone directly in the eye with a view to intimidating them.

The volunteers recruited by JUSTICE in the first trial were young and likely to be rather more ‘tech savvy’ than the average population. Though older volunteers were recruited to play jurors in the second trial they were well educated and placed to follow proceedings and instructions. There is clearly a case to involve a more representative sample of jurors in the third trial which is currently being planned. Subject to this important caveat, the participants appeared very comfortable using videolink and engaging with the process through screens. Appearing by videolink could relieve the pressure and intensity of being in a physical court. Jurors seemed more comfortable asking questions and drawing the attention of the judge to technical difficulties than is the norm in physical courtrooms. They also seemed comfortable moving between the exhibits and this could be done more swiftly than in traditional trials where exhibits have to be brought in and passed round the court.

Jurors quickly picked up on non-verbal cues from other about how to behave including raising their hand or nodding their head. This indicated a sensitivity to the problem of time lag which is common and familiar to those who regularly use video technology. Watching the jury deliberation at the end of the second trial, there was a clarity to the conversation from an observers’ point of view, and the jurors were quick to help each other with the technology. In one instance they indicated to a juror that they had forgotten to unmute their microphone. They were also conscious of the need to mute their microphone when not speaking to improve the audio quality of the call.

Effective use of technology was also facilitated by the intervention of the judge. In the second trial, he reminded the jurors about the mute function on their microphones and explained that this was to prevent sound distortions. In the course of doing so he reminded them that they did ‘have a voice’ through the chat function, commenting that ‘this is your direct line to me.’

He also used this as an opportunity to check that they were all aware of the chat function. Techniques of this kind could usefully be made available to other judges involved in similar exercises, or might even be included in information packs for jurors distributed in advance. Making sure that everyone is engaged, or as the judge put it ‘in the room’ is important if everyone is to feel that they are being treated with respect and listened to. In this context it was useful that in both trials the judge indicated relatively early on that there would be a 20 min break half-way through. This helped with time management and pacing especially as online meetings can demand more of participants and be more intense.

The dignification of the defendant

The defendant was treated with much more dignity in this experiment than when they are placed in an enclosed dock at the side or back of a courtroom, as is the norm in physical courts. This is far from being a minor observation. Campaigns for the abolition of the dock have been initiated by both JUSTICE and the Howard League for Penal Reform in recent years (Mulcahy, 2013; Blackstock, 2015; Mulcahy *et al*, 2020) based on concerns about difficulties in realising a right to counsel, the presumption of innocence and a right to dignity. One advantage of virtual trials is that they dispense with the need for an enclosure for the defendant that is physically distinctive from those used by other participants. In the JUSTICE trials the defendant was both literally and metaphorically at the centre of the proceedings and his face was in a frame that was the same size as everyone else except the jurors. In this way, the virtual trial could be said to be more democratic than face to face trials. By placing the defendant in such a prominent central position on the screen, their face becomes a salient reminder of the purpose and focus of criminal proceedings. On a more practical note, this also allowed everyone to see the defendant’s reaction to evidence as it was presented.

The right to counsel

The Virtual court pilot scheme conducted by the Ministry of Justice in 2010 in which defendants appeared via videolink in front of others gathered in a traditional courtroom raised a number of concerns about the physical separation of defendants and their lawyers (Terry *et al*, 2010). The researchers who evaluated the scheme argued that a number of practitioners felt that this physical separation of the defendant from their lawyer made it more difficult for them to communicate in private (Terry *et al*, 2010). Other researchers have suggested that the separation of lawyer and client places lawyers in a dilemma about whether it is in the best interests of their client to stay in the room with the judge or attend a remote justice space in order to be with their client (Licoppe and Dumoulin, 2010; Rowden, 2013a).

In the JUSTICE experiment *everyone* who participated was in a separate room, but provision was made for the defendant and their counsel to confer in a private ‘side room’ if necessary. In a physical courthouse lawyers who want to consult with their client have to find a free consultation room, discuss matters with their client in the public circulation area or speak to their client through the glass screen that makes up the upper half of the dock. In the experimental virtual trials being discussed here, lawyers did not make use of the private facility to consult with their client in the first trial, but it was used in the second trial without anyone being able to see or hear their discussion. This private consultation was organized swiftly and efficiently. Given that defendants are routinely placed in docks at some distance away from their lawyers, it is argued that in this JUSTICE experiment the right to consult with counsel was actually enhanced.

Flexibility

Despite enhanced performance in the second trial, there appears to be considerable scope to adjust and improve on the current platform. AVMI seem keen to engage in ongoing debate about how it could be developed and they have already identified a number of areas for improvement which can be put in place in advance of the third pilot. These include:

- Preparing jurors for entry into the civic sphere by playing them an HMCTS produced video about being a juror.^{xxiv} Producing a video for jurors based on the different conditions present in virtual trials has also been discussed.
- Production of short 30 second-long videos in which judges, lawyers and jurors talk about their role in the proceedings for use in the jury waiting room.
- Inclusion of screen shots of the virtual court in operation in the written guides for jurors.
- Ensuring that each juror is assigned their own dedicated place on the screen in which only they appear during the course of the trial. This will improve juror identification and make it easier to spot whether the same person is having regular problems with connectivity.
- The provision of an appropriately designed backdrop for the judge.
- Ensuring that all jurors are visible throughout the proceedings and not obscured by documentation or signs.
- Develop the ‘court not in session’ holding screen for the public gallery to better inform the public as to what is going on; how long breaks are scheduled to be; and when court is due to go back in session.

AVMI have also indicated that a series of additional improvements could be tested out if resources were made available. These include the provision of hardware and a secure internet connection to jurors and witness who are digitally impoverished. AVMI have also suggested that the use of certain types of camera in the hardware provided to participants could capture more of the rooms in which jurors and witnesses are located. In the two trials to date the judge has asked jurors and witnesses to confirm that they are in a room alone but this would allow oversight of whether someone else comes into the room after this discussion has taken place. AVMI has also suggested that pre-trial evaluations of the hardware and internet capacity of potential jurors could also be attempted in the future to ensure that all those taking part as jurors have the ability and capacity to fulfill their role in the virtual trial.

Problems that arose in the course of the experiment

The amount of time that JUSTICE had to prepare for this pilot project meant that there were inevitably a number of teething problems. The purpose of the second trial and a proposed third trial is to continue to work to improve the process. In this section we highlight a number of problems with the virtual trial pilot scheme some of which can be resolved with more time and effort and others which are more challenging.

Inadequate information

Several concerns arose after the first trial about the type of information provided to jurors in advance of the trial. These tended to fall into two categories. The first involved information about their responsibilities, how they were expected to behave and what would happen during

the proceedings. These can be summarized as orientation issues. The second related to technical issues. Some lay participants in the first trial were confused about how to access or use the secure chat room or find written evidence available through the chat room. Many of these issues were resolved by the production of additional information for participants which was circulated in advance of the second trial (see Appendices A and B). Feedback from jurors and witnesses who took part in the second trial indicated that orientation and technical issues were much less of a problem as a result.

Participants also indicated that they would have liked a stronger sense of the geography of the virtual courtroom (see further figure one). It was not clear to observers how many virtual ‘rooms’ there were. Reference was made at one stage to the fact that someone had gone to the ‘public gallery’, and in another instance there was a reference to the jurors symbolically entering the court room from the jury ‘pool’. It would be useful for everyone to have some idea of the different places that people might move from and to when they were not visible so that everyone could get a sense of place and this virtual civic space.

Concerns were also raised about the lack of information provided during the course of the trial. When there were long delays there was no information coming from the court as to what was causing the delay other than a holding screen shown at figure 6 indicating that the court was in recess. In future trials it would be useful if these holding screens could be customized so that participants had more information. This would be particularly useful when participants returned from lunch and were concerned that they had returned late and had been denied access to proceedings. These sorts of incidents may be particularly stressful for vulnerable defendants, litigants in person, victims and family members observing the trial.

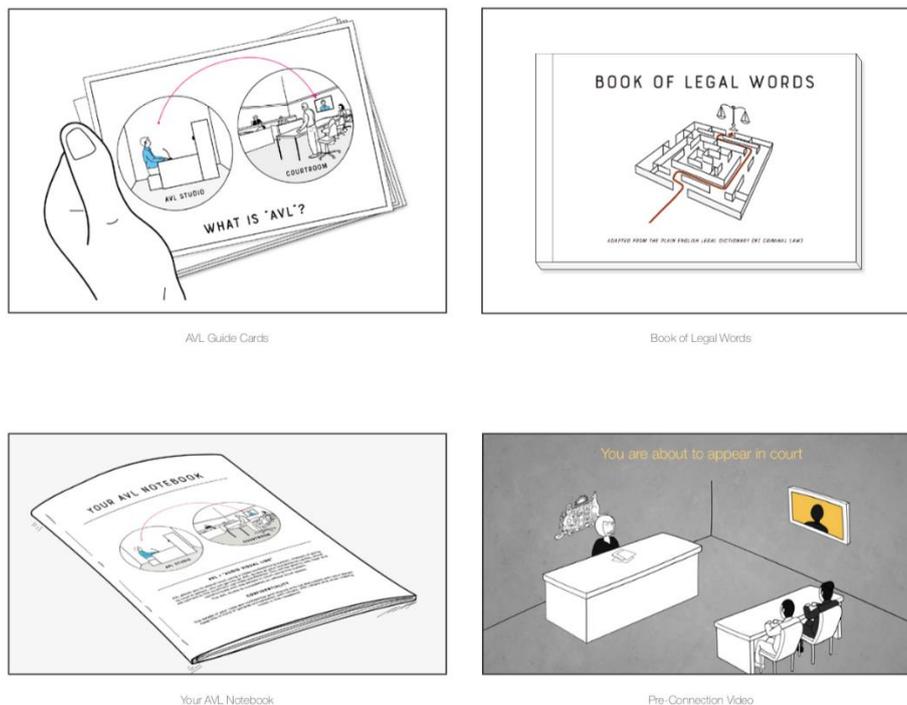


Figure 7: NSW Justice orientation materials for AVL-suites in remand centres as produced by Designing Out Crime, UTS, Australia (Source: Kashyap et al, 2018; images by Lucy Klippan, reproduced with permission).

There are useful exemplars of work being done elsewhere which could be drawn upon during the challenge of COVID-19. By way of example the Designing Out Crime research unit at the University of Technology in Sydney, produced a suite of materials to help those on remand orient themselves to appearing in court via videolink. These included short orientation videos, a pre-link segue video providing a countdown to entering the court, AVL notebooks, banners to put up in waiting areas as well as a visually accessible A-Z of legal terms and an AVL booklet (see Figure 7). Similar work is also being done in England and Wales in the Cloud Video Platform pilots that Meredith Rossner has been reviewing for the Tax Chamber, divorce and some civil claims online. A suite of similar user-friendly and virtual trial specific orientation materials could usefully be developed for more general use in order to increase the chances of all lay participants preparing for a successful court appearance.

Technical problems

Interruptions to proceedings through loss of connectivity were a significant problem in the course of the pilot. Participants during the first trial lost their internet connection and others were able to be heard but not seen and vice versa. In the first trial one of the lawyers who was having trouble with bandwidth regularly entered and left the virtual courtroom.^{xxv} In other instances sudden absences caused confusion amongst remaining participants and it was not always clear to the court who was 'in' or 'out' of the trial. These technical problems indicate that there is still some way to go in ensuring that the use of videolink is not a hindrance to the perception of fairness and delivery of a fair trial. Seemingly small things, such as screen freezes (visible as occurring to one juror in Figure 8) and sound cutting in and out, are not easily discounted in this context as vital evidence could easily be missed as a result. These issues may be difficult to track if jurors are not sufficiently trained as to the importance of them adequately hearing all of the evidence and alerting someone if they experience a problem.

These episodes reinforced the need for technical support to be on hand throughout and advance information provided about what to do if something goes wrong (See Appendices A and B). Ensuring that all the jurors are present is not a task that can be assigned to the judge who needs to focus on other matters, or even the clerk. If HMCTS staff are allocated to this role they need to be properly trained. The implications of jurors not being in attendance when evidence is given or arguments are made would clearly expose HMCTS to the outcome being challenged. This is the principle reason why a jury bailiff was added to support staff in the second mock trial and five technicians were on hand to manage different aspects of event management.

It is important to stress that however good the system is it can always be undermined if lay participants do not have adequate facilities to participate in their home. By way of example, in this experiment participants had problems with their connection because of local bandwidth and poor equipment such as a faulty camera that they were using to connect to the court. These issues caused stress and high levels of frustration with the process for those who encountered them and are likely to be exacerbated during the COVID-19 crisis when there is higher demand for internet services. As a result of these problems advice was sent to participants in the second trial about minimizing other internet use in their home while the court was in session, pre-testing where their internet connection was strongest in their home and ensuring that they closed down any other programmes on their computer. Ideally, the

court would be able to provide dedicated hardware and internet service to each participant, to ensure that each had equal access to equipment and a stable internet connection.

When people are gathered together in the same physical space and able to observe the same things there is more likely to be a common understanding of what is going on. The dynamic is very different when people are in dispersed locations. It is clear that there needs to be additional sensitivity to the need to inform everyone of what is going on in virtual trials. By way of example, in the second trial there was a server issue^{xxvi} which resulted in six of the twelve jurors not being completely visible to the public gallery throughout the trial (see Figure 5). It was later discovered that the technical team had alerted the judge to the problem and that the juror was only invisible on the shared public gallery screen. The fact that this was not communicated to the public gallery meant that there appeared to be an irregularity which might compromise the delivery of justice. This highlights the need for clear communication between the court and the public gallery to explain any disparities between what the court can see and hear and what the public gallery feed is delivering.

In another instance similar confusion was caused by some participants having to make room on the screen for others. This happened in the first trial when the clerk appeared at the beginning of proceedings but then disappeared to make way for witnesses. It may be that there was only a need to see the clerk at the outset and end of proceedings. However, neither this nor the fact that the clerk was also the operator of the video call was explained to lay participants. This situation was made more confusing by the fact that the clerk sometimes intervened in audio-only mode. In the second trial, in order to better publicize what was happening the clerk made an effort to explain that he was leaving the proceedings to allow the witness to come into view. This made the experience less disorienting for those viewing and gave a clearer sense of who was participating in the proceedings.

It is also important for everyone involved to know who is in charge of fixing problems when they occur. This was made much clearer to participants before the start of the second trial, but in the first trial it was unclear to an observer whether it was the judge or the clerk who was charged with monitoring whether everybody had visual and auditory access to proceedings. This problem was exacerbated by the absence of the clerk on screen.

Joining instructions were provided to each participant ahead of the first trial, but with insufficient time to check each person's connection was stable. The situation was improved for the second trial. AVMI have suggested that if the pilot scheme were rolled out more broadly test sessions with small groups of potential jurors could be organized well ahead of a trial in order to test whether those called for jury service had sufficient hardware and bandwidth to take part in a trial. If they did not, it is suggested that they could draw on a bank of laptops purchased for the purpose and sent a mobile wi-fi hub which would allow them to participate effectively.

The empanelling of the jurors took much longer than necessary, particularly in the first trial, though some experienced lawyers suggested that it could take just as long in a physical courthouse. In part this was because of broken connections but it was also because the judge and clerk could not always recall who everyone was or who had entered the courtroom and left it. The process of having to take a regular roll call was made easier in the second trial by jurors being given a unique number. This also facilitated juror anonymity. AVMI have also suggested that the problem of identifying which jurors had been called and were present in the virtual courtroom could also be eased if the platform they have design allocated a

particular space in the ‘jury box’ section of the shared screen to each juror. In the first and second trials jurors appeared in the order that they entered the shared screen and if there connection was lost they re-appeared in a different space. This could be disorientating.

There were a number of other less significant technical glitches. These included the fact that there was an irritating American sounding electronic voiceover which appeared to intervene every time someone entered or left the room in the first trial. The voiceover also appeared to give misleading information about the number of people remaining in the room. This function was largely silenced in the second run of the trial which greatly improved the dignity and clarity of proceedings. A logo of a lock and telephone at the top left of the screen (see figures 2 and 8) in the first trial were also removed in the second trial as they interfered with the view of one of the jurors.

Backdrops, lighting and camera angles to being seen

The government has recently produced useful advice on video or phone hearing which makes a number of helpful suggestions as to how participants can prepare themselves and their surroundings. It advises participants to locate themselves in a quiet private space where they will not be interrupted, to sit with the light in front of them so that their face is not in a shadow and to make sure that the view behind them is neutral or blank, to only drink water, not to eat or smoke and to ask permission if they want to move away from the screen during the hearing.^{xxvii} The value of this advice was illustrated during the JUSTICE experiment. The background environment and appearance of faces onscreen varied considerably and had a significant impact on the solemnity of proceedings. The authors argue that the design of dispersed locations for these new sorts of virtual civic space have to be considered as important as ensuring there is technical capacity.

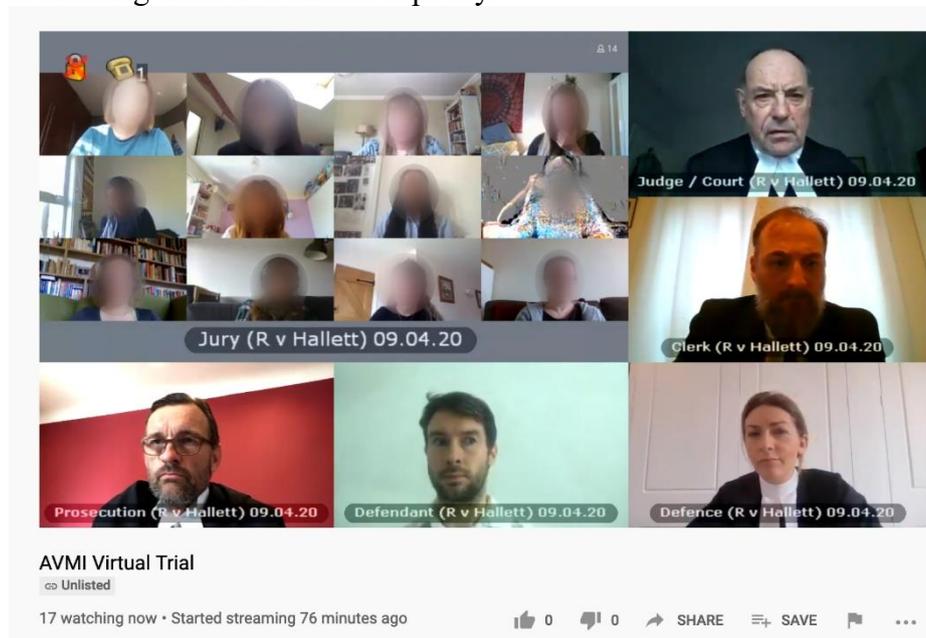


Figure 8: View of different backdrops of participants, first trial (trial one)

In the screenshot reproduced above in Figure 8, the faces of the two barristers were the easiest to see because they have a relatively plain backdrop. The plain red backdrop behind the prosecution barrister worked particularly well in this regard. By way of contrast, many of the jurors appeared from rooms with a lot of clutter in the background which was distracting

and tended to create an undignified setting for justice to be administered in. A wardrobe and some jackets hanging up on the back of a door could also be seen behind the judge (see Figure 2), and this did little to convey the majesty of the law. Participants were instructed to have a plain background, but there was insufficient time before the first trial to ensure this was in place before proceedings started. The jurors attended to additional advice on the matter in time for the second trial, but Figure 3 shows that some jurors continued to have distracting objects behind them.

In some video conferencing platforms, the background pixels around a person can be blurred. If used for jurors this would have the dual advantage of focusing attention on them rather than their location while also protecting their privacy. This is currently not possible in the system used for the JUSTICE but could usefully be explored in the future. Alternatively, people could be asked to put a plain sheet up on the wall behind them. This and some pre-trial coaching took place in the video enabled experiments in the Tax Tribunal (see further Rossner and McCurdy, 2018). It also helps for participants to be able to see their own image so that they can adjust it as appropriate, although previous research in this area (Rowden, 2011) suggests that some may find this function distracting and like to have the capacity to turn this off.

Lighting is also important. This is clear from the image of the clerk in Figure 8 above. It can be seen that he appears with an orange tinge which meant that it was not always possible to see his features clearly. This might cause particular problems for people who are lip reading or interpreters/translators who find it useful to combine audio and lip reading. Several jurors' faces were also unreadable through a combination of natural light in the background of the shot, or insufficient natural or artificial light being present behind the camera, illuminating their face. The authors argue that reinforcing the importance of customising local space is an important issue if the dignity of the proceedings is to be retained and these dispersed locations are all to become part of the virtual courtroom.



Figure 9: The impact of backdrop and lighting on visibility (trial two)

Backdrops and lighting have a particular impact on how well people with different skin colours present and this is a factor that could usefully be brought to the attention of all participants. This is illustrated in Figure 9 which shows the effect that different choices of backdrop and lighting had on how well jurors could be seen in the second trial. These

comments are not just about visual complexity and confusion; a well-designed backdrop can help promote the sense of the courtroom being a serious space.^{xxviii}

The surroundings from which people appear is critically important for defendants. There will be significant differences in the experience between those defendants appearing from an AVL suite in a prison and those appearing from their home after securing bail. In both situations, the defendants will want to present themselves in the best possible way but research undertaken in an Australian context suggests that defendants appearing from prison often appear from what are obviously barren institutionalized settings. In some instances this was often combined with a ‘soundtrack of incarceration’ involving the slamming of heavy cells doors audible over the videolink. This rendered prisoners self-conscious because it made the fact that they had been imprisoned obvious, with all the connotations this has for the presumption of innocence (see further McKay, 2018a; 2018b).

Distracting behaviour



Figure 10: Prosecution barrister obscured by writing on screen

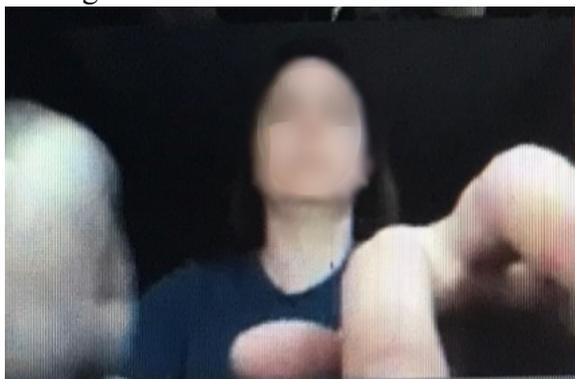


Figure 11: Obscured image of juror's hands close to screen during proceedings

Not all participants seemed aware of the importance of avoiding distracting or problematic behaviour, especially in the first trial. There was a particular issue about variations between people in terms of how close to the screen they sat with some looming larger than others. By way of example, the prosecuting barrister sometimes appeared so low in the screen that their mouth was obscured by the description of them (*Figure 10, inset*). In the second trial it was the defence barrister joining the experiment for the first time and jurors during deliberation who moved in and out of view. Other participants played with their screen, drank cups of tea that loomed large onscreen as evidence was being given. On some occasions in the first trial, people got up to fetch something. In one instance, this was because their screen was not working but the juror did not seem to realise that they were being viewed by the court onscreen. On another occasion a participant could be seen typing on screen causing her fingers to loom large on the screen because of the low positioning of her camera (*Figure 11, inset*). This example raises the issue of whether low lying cameras on laptops are appropriate for use in these circumstances.

Advice to participants about appropriate behaviours was sent to everyone prior to the second trial but these messages could be reinforced if a short orientation film could be prepared and

watched by participants before their appearance, to take participants through the dos and don'ts of virtual trials. Further to suggestions made above this advice could be shown in a waiting room before participants enter the courtroom.

The Virtual Court as a Civic Space

In the evaluation of the Ministry of Justice virtual court pilot in 2010 it was reported that some Magistrates and District Judges found that the court had more difficulty in imposing its authority remotely and suggested that defendants took the procedure less seriously (Terry, 2010). This suggests that more attention could usefully be paid to how the virtual space created during this experiment could be transformed into a civic space. Much of this is achieved by the gravitas of the judge and their way of behaving, though the position of the judge at the top of the court hierarchy could be emphasized by his image being larger than everyone else. It was clear from both trials from the behavior of the judge that they were in charge of the court and their words and demeanour made clear that it was a grave occasion. It also created some sense of a group activity or community ritual to be able to see how many people were watching on the YouTube channel.

It was however noticeable that the judge's space in both trials was devoid of the usual symbols of the court, most notably the coat of arms. The inclusion of this symbol, which is one of the best-known symbols of State, would undoubtedly assist in elevating and formalising the tone of the proceedings. This issue could be easily resolved by the judge being supplied with a pull up screen with a coat of arms on it. Alternatively, some videoconferencing platforms such as Zoom allow users to customize their own background and hide their actual surroundings with an image chosen by the participant. Figure 12 shows a screenshot of one of the authors using Zoom and a simple image sourced on the internet.



Figure 12: Using Zoom to create a suitable virtual backdrop

It was interesting to note that neither the judge nor barristers in this experiment wore wigs in the first trial when they would have done so if they had been in a physical court. While there has been much debate about whether judges and barristers should wear wigs there is no reason why they should adopt different practices just because the trial is virtual. On a more practical note, one observer noted that the absence of a wig on the judge made it very difficult to distinguish them from the barristers present by sight alone. It was suggested that this could result in witnesses who were only present for a short time finding it difficult to immediately distinguish between the others present. Having identified this as an issue the judge and barristers in the second trial decided to wear wigs.

There is also a need to pay attention to how traditional rituals can be carried out effectively in the virtual space and where rituals may need to be adapted. For instance, the face-to-face ritual of all participants rising from their seats when the judge enters the courtroom would be

difficult to replicate exactly without some kind of adaptation; not least because the fixed cameras would remain focused on people's torsos as they rose. This is just one example, but many can be found, that need reconsidering in this transition to the virtual courtroom environment (see Licoppe and Dumoulin, 2010, further on this point).

There is also a need to develop new forms of ceremony and ritual in virtual trials where people do not have the benefit of a journey through the courthouse to a courtroom to help acclimatise themselves to the civic environment. By way of example, during both the trials conducted references were made to jurors entering the court after being empanelled, but it would be good to consider how this 'entrance' and the crossing of this important threshold in and out of court could be emphasized. This notion of progressing from ordinary to special space has been much written about and remarked upon. Court architecture provides several behavioural cues about how to behave as participants walk through the courtroom doors, lobby, *salle des par perdus*, courtroom waiting areas, sound chamber and into the inner sanctum of the court (Mulcahy and Rowden, 2020). Each of these transitions help to create a sense of occasion and prepare participants for their courtroom performance. By way of contrast, in virtual trials participants can be in their sitting room one moment and in the courtroom the next. This calls for sensitivity to the need to prepare and orientate court users in different ways. The authors recommend that serious thought be given to the need for a virtual waiting room, designed with input from social scientists, which gives lay participants time to reflect on what is about to happen. Projects of this kind have been undertaken by the New South Wales Department of Justice in Australia (see Kashyap *et al*, 2018). Elsewhere performance artists interested in the concept of virtual trials have made imaginative use of images of doorways as a useful way of marking virtual journeys to the courtroom.

Restricted participation?

It was clear that all participants in this exercise had a reasonable level of competency when it came to technology and operating the software platforms that were being trialled. While such competency might be assumed of many, there would certainly be others who would find this platform alienating and stressful beyond what should be reasonably expected of a juror performing their civic duty. The additional stress of being in court while on your own may prove too onerous a task, especially where the person could be classified as vulnerable. These issues may prove insurmountable barriers to participation for some jurors, witnesses and defendants without the alternative of being able to attend via a safe neutral space such as a courthouse or police station AVL suite. This could lead to an unrepresentative sample of jurors taking part in trials during the COVID-19 crisis, though using video technology would allow HMCTS to draw from a national pool for every circuit.

Integrity and security

Much trust is placed in jurors to carry out their role with integrity. This includes undertakings not to discuss a case with anyone, not access published information about the case or to conduct their own investigations or search the internet about it. To some extent, what was being asked of jurors in this trial is simply an extension of these acts of trust. However, there are opportunities for lay participants to become distracted when they are in their own homes. Security is, understandably, a major concern in legal proceedings. In both trials jurors and witnesses were instructed to locate themselves in a private room without anyone else being present. The importance of this was reiterated by the judge at the beginning of proceedings and when witnesses appeared to give evidence. It was also made

clear in information sent to jurors and witnesses in advance of the second trial. The immediacy of the proceedings and the close-up of the participant's face would seem to make it very hard for them to converse with someone else in the room without it being observed by others on the link. Jurors were asked to close down other programmes on their computer and to turn off their mobile phones. However, it was possible for them to surreptitiously have a second window on their computer open to read emails or to search the internet. When cameras are located in different places depending on the machine being used it can also be difficult to determine whether participants are watching the virtual court shared screen or another programme. The courts providing their own equipment with only the virtual trial software loaded on it could help prevent these kinds of distractions by limiting access to other programmes.

Open justice

In considering the use of telephone and video technology, the judiciary and HMCTS have made clear that they will continue to have regard to the principles of open justice. A range of measures are being provided to continue to support the principle of open justice including audio recordings of a hearings being made available for listening to in a court building; the notes of a hearing being made available on request; the publication of court and tribunals lists online; and access to hearings and information to accredited media on cases. None of these provisions anticipates the public being able to access hearings on-line, though current guidance specifies that requests from the media and others to observe a hearing remotely can be made to the court in advance to allow for inclusion during the hearing set-up.^{xxxix} However, Tomlinson *et al* (2020) have suggested in their review of video proceedings in the Administrative court that lists of cases are often published late and that requests to view proceedings live can be problematic as a result.

The JUSTICE model would allow for observation by the public. Observers of the trials were invited to enter the public gallery which was not made available to others outside of the group of invitees because this as an experiment. Livestreaming to the public through YouTube is however possible with the technical platform being used.^{xxx} Current guidance anticipates that public access to all trials may simply not be possible during the COVID-19 pandemic, though it seems open to observation by members of the press. The possibility of access to a wider audience is something that could usefully be explored in future discussions with AVMI in advance of the third trial.



Key lessons learnt from the JUSTICE virtual jury trial pilot

In light of the various successes of the pilot and the potential to make further improvements there is a convincing case for rolling out the pilot if the danger of a backlog of jury trials becomes a reality. It is important to ensure that there is an appropriate evaluation of the scheme as it unfolds to facilitate constant improvements and identification of issues. Lessons learnt from the project are outlined below.

- It is essential that adequate backstage technical support is provided to courts operating video trials. This is the single thing that most impacts on the fluidity and legitimacy of proceedings.
- It is not appropriate to ask the judge and clerk to be constantly vigilant about who is present when they have a range of other really important tasks to carry out. The jury bailiff in the second trial helped with this, and it was good to see in AVMI's report that they are already thinking about a team of technical support to help facilitate an effective trial.
- All participants should have their circumstances assessed in order to gauge whether they have the hardware and internet capacity to take part in a virtual trial without a loss of connection.
- All participants should be fully briefed about how the platform works. Ideally this would be provided in several formats including videos and booklets well in advance of the trial. This study and others have demonstrated that the quality of proceedings is enhanced significantly where participants have been able to attend a technical walk through of the system in advance of the trial. Information provided should include a description of the geography of the virtual space, such as how many virtual rooms were available and who could access them.
- A judicial opening statement customized to the needs of a virtual trial should be prepared for all judges to deliver at the beginning of the virtual trial indicating how it is different from a physical trial and what is the same. The materials prepared for this pilot would be a useful starting point.
- All participants need to be given clear instructions about how to prepare the room from which they should appear. It is important that they are advised to ensure they have a plain background behind them without clutter in view. Participants should also be advised how to position themselves to ensure that their face and arms are visible.
- In order to address concerns that video trials encourage a more formal approach to the administration of justice it would be valuable if a coat of arms and an appropriate backdrop could be placed behind the judge. Judges and lawyers should also attend in full court dress.
- It would be valuable for further experiments to consider how the formality of proceedings and the need to prepare jurors for civic performances could be enhanced by the creation of a well-designed waiting facility and timed entrances into the virtual court.
- Overall, attention needs to be paid to the potential problem of a shift towards too much informality, particularly if important elements previously conveyed through architecture, costume and ritual in the physical courthouse are 'lost' in this transition to virtual proceedings and not recovered creatively through other means.
- Screen strain and the fact that people attend court from their homes means that it might be difficult at times for them to remain focused on proceedings; this might mean a need for more frequent but shorter breaks.

- For the next experimental trial in May, or any future tests, it is recommended that lay participants, including the jury, be comprised of representatives or advocates from a wide range of diverse backgrounds, abilities and specific needs to ensure that the platform is suitable for the diversity of the general population. For instance, this may include inviting advocates from disability groups, the neuro-divergent and mental health sector, elderly and aged, those with intersectional needs, Domestic Violence advocates and BAME representatives. People with expertise in these areas should be consulted and included in the evaluation process.
- Future trials and tests also need to be considerate of the different modes and places in which defendants might participate in this platform. We recommend that heads of remand centres are given guidance about how to ensure that defendants appear with a dignified backdrop and in a well-insulated room.
- These experiments were conducted using a trial that took half a day to complete (albeit with extremely abbreviated parts of the process). Given the issues raised in our report around the intimacy and intensity of the virtual court experience and the suggestions made for ensuring frequent breaks, the issue of the appropriate length of the trial for this platform may be worthy of further investigation. It may be that this platform works fine for trials of short or medium length duration, but those spanning several weeks may prove to be less easily managed in this way. Future experiments should therefore test the different lengths of trial possible against user experiences of them. It may be that the estimated length of trial becomes a determining factor in whether or not it is appropriate to proceed with a trial by this platform or not.



Further reading

Observations in this report have been drawn from our extensive research work spanning the past decade in examining the introduction of videolinks to courts and the design of justice environments and law courts. While a few of the below references are referred to explicitly in the above text, below we list some works by ourselves, and our colleagues, that have influenced our approach to this analysis, and that may provide fruitful further reading for future improvements to JUSTICE's virtual jury trial experiments.

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Appendices

Appendix A: Information for virtual jurors

Before Jury Service

Before you join the virtual trial, please ensure that you have read the information contained in this website: <https://www.gov.uk/jury-service> and watched the video linked to on that page.

These will give you a general idea of what is expected of you as a juror. They do not address issues that you may face in a virtual courtroom but many of the principles will remain and be applicable.

Set up

The virtual court requires a consistent internet connection to minimise the risk of technical issues:

- For best results, connect an ethernet cable between your device and your router.
- If you cannot connect an ethernet cable to your router, sit as close to your router as possible and ensure you have a good Wi-Fi signal.
- Please ensure that other members of your household do not adversely affect the connection by using bandwidth hungry services during the session such as video streaming, music streaming or online gaming.
- **Make sure that all other programmes and browser tabs are closed** before logging on to the call. **Do not open anything while the court is in session** other than the video hearing, chat function and document exhibits.
- Make sure the video hearing is open in full screen view so that you can see everyone as clearly as possible. **Do not try to change to single person view – you must see all participants in the hearing.**

Choose a **quiet location** to ensure that you can be clearly heard, and that you will not be distracted by external sounds.

Please ensure that your background environment is suitable for a court hearing. This means ensuring that you have a **plain backdrop** and that there is **no clutter** in view. This ensures that you will look dignified and that your facial features can be made as clear as possible.

Ensure that **lighting does not obscure your features**. This can be done by ensuring that a light source is not visible on the camera (such as a window). Make sure also that you are well lit and that the background is not dark behind you.

Make sure that you are comfortable, as moving position during the trial is distracting.

Please ensure the **camera is positioned correctly**. This means:

- Your face, shoulders and top half of your torso should all be visible.
- You should be sat at a distance so that any arm and hand movements you make should be visible, when needed.
- Your hands should not be in view when they are resting.
- Your keyboard should not be visible.

- You should not be sat so far away that your facial features are difficult to see.
- No part of your head should be out of view.
- Aim for a passport photo-style position as indicated below



Privacy

It is very important that **you are in a private room during the hearing** and that **no one enters or leaves**. This is to avoid distraction. But it is also because you **must not speak to anyone during the hearing**.

Be prepared to show that there is no one else in your room to the clerk as you join the call. This will be done ahead of you entering the virtual courtroom. You will also be asked by the clerk to **turn off your mobile phones** and to **confirm that you are in private**.

Juror's Oath/Affirmation

At the beginning of the trial, you will be 'sworn in' as a jury member. This will require you making an oath or affirmation that you will try the defendant based only on the evidence you hear in court.

An oath is made with a religious book and an affirmation is made without one. If you would like to swear an oath, please **ensure that you have the religious book that you wish to swear on to hand**.

During the hearing

Avoid distracting behaviour and be aware that you are visible to others. This could include:

- Drinking from vessels that loom large on screen
- Reaching for things across from you (to avoid try to place what you need on the side you are most likely to use)
- Typing
- Playing with your screen
- Getting up
- Move where you are sitting while evidence is being given

If you have a technical issue **you must make the Court Clerk aware of this as soon as possible** by raising your hand. If you're video is not working, please use the chat function. **DO NOT SPEAK OVER ANYONE TO BRING ATTENTION TO YOURSELF.**

The Court Clerk will be available throughout the hearing. However, their video will only be switched on during the start of proceedings. Once their video has been switched off, you will

still be able to communicate with them in the usual way. It is the Clerk who will deal with technical issues.

If you have a question for the judge, please use the chat function discreetly. The Judge and the Clerk will both be monitoring the chat and will be alerted to your question there.

Deliberation

When it is time for the jury to deliberate, you will be moved into a separate and private virtual room. During your deliberations, please ensure that you **do not talk over one another** and that you **do not use the chat function to discuss the trial**. If you do, you will be breaking the law. Only use the chat function to alert the Clerk if you have a technical issue that is making it difficult for you to be heard.

During deliberation **you must be visible to each other and cannot leave your room or the screen** without permission from the jury bailiff. You may contact them through the chat function.

Before you begin deliberations, **you must select a foreperson**. The foreperson's role is to **chair the jury discussion and guide the jury to a decision, ensuring that everyone has had a fair chance to speak**. The foreperson will also speak in court when the judge asks for the verdict to be given.

During deliberations, be mindful that for some people, it is difficult to speak up virtually. Although it is the foreperson's role, all jurors must give space for others to speak and ensure that everyone is able to put across their views in full.

When you have made your decision, please use the chat function to alert the Clerk to this and you will be brought back into the virtual court room.

Appendix B: Information for virtual witnesses

Set up

The virtual court requires a consistent internet connection to minimise the risk of technical issues:

- For best results, connect an ethernet cable between your device and your router.
- If you cannot connect an ethernet cable to your router, sit as close to your router as possible and ensure you have a good Wi-Fi signal.
- Please ensure that other members of your household do not adversely affect the connection by using bandwidth hungry services during the session such as video streaming, music streaming or online gaming.
- **Make sure that all other programmes and browser tabs are closed** before logging on to the call. **Do not open anything while the court is in session** other than the video hearing, chat function and document exhibits.
- Make sure the video hearing is open in full screen view so that you can see everyone as clearly as possible. **Do not try to change to single person view – you must see all participants in the hearing.**

Choose a **quiet location** to ensure that you can be clearly heard, and that you will not be distracted by external sounds.

Please ensure that your background environment is suitable for a court hearing. This means ensuring that you have a **plain backdrop** and that there is **no clutter** in view. This ensures that you will look dignified and that your facial features can be made as clear as possible.

Ensure that **lighting does not obscure your features**. This can be done by ensuring that a light source is not visible on the camera (such as a window). Make sure also that you are well lit and that the background is not dark behind you.

Make sure that you are comfortable, as moving position during the trial is distracting.

Please ensure the **camera is positioned correctly**. This means:

- Your face, shoulders and top half of your torso should all be visible.
- You should be sat at a distance so that any arm and hand movements you make should be visible, when needed.
- Your hands should not be in view when they are resting.
- Your keyboard should not be visible.
- You should not be sat so far away that your facial features are difficult to see.
- No part of your head should be out of view.
- Aim for a passport photo-style position as indicated below
- Be aware of where the camera is mounted on your device. If you have the option, try to choose a device in which the camera is located centred above the screen, rather than on the side.

Ensure that the **virtual court screen is maximised**.



Privacy

It is very important that **you are in a private room during the hearing** and that **no one enters or leaves**. This is to avoid distraction. But it is also because you **must not speak to anyone during the hearing**.

Be prepared to show that there is no one else in your room to the clerk as you join the call. This will be done ahead of you entering the virtual courtroom. You will also be asked by the clerk to **turn off your mobile phones** and to **confirm that you are in private**.

Before giving evidence

As a witness, you are unable to view the proceedings prior to giving evidence. This is to avoid your own evidence being affected. As such, you will have to wait in the virtual waiting room until you are called. This is similar to the experience of a witness in a face-to-face trial.

We will endeavour to give you as much warning as possible so that you are ready to give evidence when needed.

Witness Oath/Affirmation

Before you give evidence, you will be asked to take an oath or affirmation that you promise to tell the truth.

An oath is made with a religious book and an affirmation is made without one. If you would like to swear an oath, please **ensure that you have the religious book that you wish to swear on to hand**.

While giving evidence

Be aware that you are appearing in court and that you should, therefore, dress in an appropriate and respectful fashion.

When giving evidence, try to **speak into the camera on your device** as much as possible. However, much like in court, it will not impact your evidence should you look at the screen to see people within the virtual court. When giving evidence in a face-to-face court, it is also not possible to look at everyone's faces at once and it is expected that the witness may look around from time to time. There will be the same expectation in the virtual court. You should be aware, however, that if the camera on your device is located on the side of your screen, that when you look directly at the screen the view of your face from the perspective of other court attendees will be from a slight angle.

It is vital that you are able to hear and understand all of the questions that are put to you, and that you are able to clearly answer. If you do not hear, or technology disrupts, a question, please **politely ask the barrister to repeat the question, explaining the issue**. Small issues such as these are to be expected and you should not feel unable to ask to hear the question in full.

Please refer to the judge as “Your Honour” and barristers as “Ms/Mrs/Mr...”

Avoid distracting behaviour and be aware that you are visible to others. This could include:

- Drinking from vessels that loom large on screen
- Reaching for things across from you (to avoid try to place what you need on the side you are most likely to use)
- Typing
- Playing with your screen
- Getting up
- Move where you are sitting while evidence is being given

If you have a technical issue **you must make the Court Clerk aware of this as soon as possible** by speaking or raising your hand if possible. If you do not believe you can be seen or heard, please use the chat function to make the court aware of a technical issue. **Do not provide evidence or comment in any way on the proceedings through the chat function.**

The Court Clerk will be available throughout your evidence. However, their video will not be switched on. It is the Clerk who will deal with technical issues.

Appendix C: SCRIPT FOR LAWYERS

The virtual courtroom

The virtual trial intends to replicate as well as possible the court environment. The judge, and legal representatives will be visible at all times by the jury, defendant, and those viewing the public link. As such, be mindful of your positioning on the screen and any actions that have the potential to be distracting.

Information required for participants

At the start of the hearing:

- Judge gives opening statement indicating how a virtual trial is different to a physical trial and the sorts of rules that are the same.
- Explain that there is a ‘virtual public gallery’ where people are viewing the trial and can, as such, see the jury.
- Explain existence of other virtual ‘rooms’ if they are being or are intended to be used.
- **This should be repeated and adapted for each witness** – introducing who is on screen and that there is a virtual public gallery.

When jurors enter:

- A roll call should be taken.
- This should be repeated at the start of each session.
- Judge to confirm with clerk in open court that each juror’s room has been checked to ensure they are in private.
- **Make the same check with each witness that joins the call.**
- Inform jurors how they can address the judge

The judge must address the jury specifically on issues that arise during a virtual hearing. These issues include:

- That the jury should have their microphone on mute
- That they should be mindful of their positioning and any distracting behaviour
- That the Court Clerk’s video will not be on, but can still be contacted through the chat function
- There is a prohibition on recording virtual hearings, including screenshots, contravention of which can result in contempt of court.
- That they should switch off their phones, not reply to emails and not communicate with anyone outside the virtual court while court is in session
- They must only try the defendant based on the evidence they hear in court

Judge must inform everyone:

- That the virtual courtroom is a civic space which is sombre and serious.
- Who it is that is responsible for monitoring that all participants are properly connected to the virtual court.

When a witness enters:

- Explain how virtual trial is different to physical trial
- Introduce who everyone is
- Highlight that there is a virtual public gallery

- Confirm with clerk in open court that witness's room has been checked to ensure that they are in private

Issues that may arise

When a juror is found to have been having a technical issue:

- check the last part of the proceedings they saw and heard.
- If not too long ago, thought should be given to repeating that section/the question and answer (which can happen in trial if the witness is too quiet, for example).
- If it was too long ago [a recording of that section should be made available to the juror to watch]

When a technical issue arises:

- proceedings should be paused briefly to understand the nature of the problem and ensure that nothing is missed.
- If the technical issue is not easily fixable, a break in proceedings should be considered.
- The judge should make clear whether a jury member can still hear, even if their video is not working, where the judge is aware of this.

Once a technical issue arises:

- the judge should explain for the benefit of everyone in the proceedings and public gallery what the issue is and what is being done to solve it.
- When the issue has been resolved, the judge should explain at what point proceedings will begin from and why.

Where a witness was below 18 at the time of the incident:

- special care should be taken to point this out for the benefit of the jury and audience.
- if the witness remains under 18 at the time they give evidence, this should also be explained, with an explanation of the adjustments that are required also given.
- in present case Colin was 14 at the time of incident and may now be 17 or 18. Need to check which and if this impacts his evidence in any way.

Distracting behaviour:

- if the judge is aware of the reason for potentially distracting behaviour, he should announce this for the benefit of those watching
- for example, if a juror is typing a question, the judge should be aware of this and point this out: **“there has been a question from a juror”**

With all issues:

- care should be taken to ensure that those participating and watching the trial fully understand what is happening and the thought process behind it.

Endnotes

ⁱ The likely reasons for being placed on remand are that a person has been charged with a serious crime; convicted of a serious crime in the past; the police believe that the person will not attend their court hearing or will commit another crime while on bail and the defendant has been given bail before and not stuck to the terms. See further <https://www.gov.uk/charged-crime/remand>. Last accessed April 2020.

ⁱⁱ See for instance Johnson, 2020.

ⁱⁱⁱ HMCTS telephone and video hearings during coronavirus outbreak, 22nd April 2020 <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak#using-existing-technology-and-making-new-technology-available>. Last accessed April 2020.

^{iv} Coronavirus (COVID-19): Message from the Lord Chief Justice to judges in the Civil and Family Courts, 19th March, 2020: <https://www.judiciary.uk/announcements/coronavirus-covid-19-message-from-the-lord-chief-justice-to-judges-in-the-civil-and-family-courts/>. Last accessed April 2020.

^v HMCTS priorities during coronavirus outbreak, 19th March 2020. <https://www.gov.uk/guidance/hmcts-priorities-during-coronavirus-outbreak>. Last accessed April 2020.

^{vi} See further: <https://www.gov.uk/government/news/priority-courts-to-make-sure-justice-is-served>. Last accessed April 2020.

^{vii} See for example HMCTS, Guidance: HMCTS telephone and video hearings during coronavirus outbreak, First Guidance, 18th March 2020; Judiciary of England and Wales, Civil Justice in England and Wales: Protocol regarding Remote Hearings 20th March 2020; The Lord Burnett of Maldon, Review of court arrangements due to COVID 19, message from the Lord Chief Justice (LCJ Guidance) 28th March 2020; CPR Practice Direction 51Y – Video or Audio Hearings During Coronavirus Pandemic, 25th March 2020.

^{viii} See further How to join telephone and video hearings during coronavirus (COVID-19) outbreak, 16th April 2020: <https://www.gov.uk/guidance/how-to-join-telephone-and-video-hearings-during-coronavirus-covid-19-outbreak>. Last accessed April 2020.

^{ix} HMCTS priorities during coronavirus outbreak, 19th March 2020. <https://www.gov.uk/guidance/hmcts-priorities-during-coronavirus-outbreak>. Last accessed April 2020.

^x Jury Trials, 24th April: <https://www.judiciary.uk/announcements/jury-trials/> Last accessed April 2020.

^{xix} HMCTS telephone and video hearings during coronavirus outbreak, 22nd April 2020 <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak#using-existing-technology-and-making-new-technology-available>. Last accessed April 2020.

^{xii} See for example: Davies and Noon, (1993); Plotnikoff and Woolfson (1999); Ellison and Munro (2014). See also further reading.

^{xiii} This discussion of procedural justice draws in particular on the seminal work of Tom Tyler and colleagues. See for example: Lind, E and Tyler T (1988) and Casper, J.D., Tyler, T. and Fisher, B., (1988).

^{xiv} See in particular JUSTICE *Preventing Digital Exclusion* <https://justice.org.uk/our-work/assisted-digital/>. Last accessed April 2020.

^{xv} This has been recognized by the judiciary: <https://www.judiciary.uk/announcements/coronavirus-covid-19-message-from-the-lord-chief-justice-to-judges-in-the-civil-and-family-courts/>. Last accessed April 2020.

^{xvi} After some time at the beginning to sort out technical issues, the first trial started on Thursday 9th April at 10.22am and finished at 1.50pm, with a short recess between from 12.20pm to 12.35pm. At 12.50pm formal proceedings concluded to allow a short 5 minute jury deliberation amongst the jurors, followed by a short discussion of how the deliberation worked. The second trial started at about 10.35am and completed at 2.50pm on Friday 17th April. During this trial, there was a 15 minute break at 1.20pm. There were also two breaks for technical problems early during the second proceedings of around 15 minutes and then of 5 minutes.

^{xvii} Please note that by providing materials for the exercise, Inner Temple is not endorsing any view one way or the other on the subject of virtual jury trials.

^{xviii} HH Alistair McCreath played the judge; Mark Trafford QC prosecution counsel; and Orla Daly played defence counsel in the first experiment and Rosina Cottage QC in the second. Jurors and witnesses were student volunteers in the first trial but some older jurors were brought in to the second trial to accommodate more diversity. The defendant was a trainee solicitor.

^{xix} The issue of not being able to make direct eye contact with people or see their whole body in order to read ‘body language’ was addressed by the judge in their opening statement. He drew attention to the eligibility of blind people to sit as jurors without any doubt being cast on their ability to play a full roll in the trial.

^{xx} HMCTS telephone and video hearings during coronavirus outbreak, 22nd April 2020.

<https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak#using-existing-technology-and-making-new-technology-available>. Last accessed April 2020.

^{xxi} Photography in court is banned under the Criminal Justice Act 1925.

^{xxii} Observers in the first trial could not access the chat function or be heard or seen by any of the participants. In the second trial the authors were able to view the live chat function in order to see the sorts of problems that jurors encountered with the technology.

^{xxiii} Any first names that were used in the chat have been anonymized and replaced with juror number

^{xxiv} JUSTICE already directed jurors to the presence of this video in information sent out in advance.

^{xxv} It transpired that counsel had communicated by other means to the court that despite not being visible onscreen, they could nonetheless hear and see everything).

^{xxvi} This occurred at the provider end and has since been resolved.

^{xxvii} How to join telephone and video hearings during coronavirus (COVID-19) outbreak, 16th April 2020, <https://www.gov.uk/guidance/how-to-join-telephone-and-video-hearings-during-coronavirus-covid-19-outbreak>. Last accessed April 2020.

^{xxviii} We understand that a lot of effort was taken with the juror in the top left corner to improve their set up. When they leaned forward they could be seen perfectly clearly, it was when they sat back in their seat that the legibility of their face became an issue.

^{xxix} HMCTS telephone and video hearings during coronavirus outbreak, 22nd April 2020

<https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak#using-existing-technology-and-making-new-technology-available>. Last accessed April 2020.

^{xxx} In this instance JUSTICE felt that the public gallery ought to be limited to 30 people because otherwise it could be intimidating for the volunteers if they knew there are loads of people watching.