

<b>Title:</b> Prisons & Courts Bill: Virtual Hearings and Open Justice <b>IA No:</b> MoJ002/2017 <b>RPC Reference No:</b> N/A <b>Lead department or agency:</b> Ministry of Justice <b>Other departments or agencies:</b> Her Majesty's Courts and Tribunals Service (HMCTS) Legal Aid Agency (LAA)	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 22/02/2017			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
<b>Contact for enquiries:</b> general.enquiries@justice.gsi.gov.uk				
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> Not Applicable

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£3m	N/A	N/A	Not in scope	N/A

**What is the problem under consideration? Why is government intervention necessary?**

Currently, hearings are normally held in person, with all parties physically present in the court room. There will always be a place for the physical court room and the solemnity of the court, but it is inefficient and disproportionate for every hearing to take place in person. We need a modern and affordable court system, which uses resources proportionately and capitalises on new technologies.

Use of telephone and video conferencing is limited. Government intervention will make it clearer when and how available video technology and telephony can be used in the criminal courts, and where the court can make decisions by reviewing legal arguments and evidence and recording decisions on a digital platform without the need for a hearing.

The principle of open justice is part of our common law and is enshrined under Article 6 of the European Convention on Human Rights (ECHR), the right to a fair trial. It is a critical consideration as we deliver virtual hearings measures, as certain elements of criminal procedure will no longer be heard in a physical courtroom. We will enable the public to view open hearings which are held 'virtually', using a computer screen located in a court building, as well as ensuring access to listings and outcomes where appropriate. Although the virtual hearings legislation only applies to the criminal courts, civil and family courts and tribunals have existing powers to conduct fully virtual hearings in certain cases, some of which will be open to the public. As such, the open justice measures will apply to the criminal, family and civil jurisdictions and tribunals.

**What are the policy objectives and the intended effects?**

The objective is to expand the use of video technology and telephony, in order to give the court more flexibility to manage criminal proceedings in the most proportionate way and reduce inefficiency for users and criminal justice partners. As a result, we will need to enable virtual hearings to be observed by members of the public and ensure that prohibitions on court recording apply to these proceedings.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 0: Do nothing – proceed with the non-legislative measures already planned in HMCTS Reform.

Option 1: Legislate to implement reforms that will encourage the greater use of telephone and video facilities in criminal proceedings and ensure that virtual hearings can be observed by members of the public, but prohibit observers making unauthorised recordings of these proceedings.

**Will the policy be reviewed?** There is no plan to review the policy

Does implementation go beyond minimum EU requirements?	N/A			
Are any of these organisations in scope?	<b>Micro</b> N/A	<b>Small</b> N/A	<b>Medium</b> N/A	<b>Large</b> N/A
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	<b>Traded:</b> N/A		<b>Non-traded:</b> N/A	

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

**Signed by the responsible Minister:**  **Date:** 22/02/2017

# Summary: Analysis & Evidence

# Policy Option 1

Description: Virtual Hearings and Open Justice

## FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: £	High: £	Best Estimate: £3m
2014/15	2016/17	10			

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	£0	£0	£0

### Description and scale of key monetised costs by 'main affected groups'

None

### Other key non-monetised costs by 'main affected groups'

There will be implementation costs to HM Courts and Tribunals Service (HMCTS) from the provision of technology for live video links, telephone and video conferencing and the provision of open justice. The proposals would have cost, process and working culture implications for the Crown Prosecution Service (CPS) (and other parties to proceedings) that have yet to be assessed in terms of their impact on Transforming Summary Justice and Better Case Management, or quantified specifically in respect of cost.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0		
High	0	N/A	
Best Estimate	0	£550k	£3m

### Description and scale of key monetised benefits by 'main affected groups'

There would be a saving to HMCTS of £550k per year in steady state from a reduction in the need for Court Ushers

### Other key non-monetised benefits by 'main affected groups'

There will be an improved experience for those working within the criminal justice system including the police, the Crown Prosecution Service, the legal profession and the judiciary due to a reduced need to travel to court, resulting in less disruption and inconvenience. This potential benefit is non-quantified.

Defendants, victims and witnesses (and in youth cases, parents, guardians or carers) will also benefit from not having to travel to court unnecessarily. Scheduling may be made more efficient and effective as listing can be flexible to user needs, and not restricted to court hours or patterns. This potential benefit is non-quantified.

Court space will be freed up to deal with more complex cases thereby allowing HMCTS to gain benefits from a more efficient restructuring of the court estate. This potential benefit is non-quantified.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	<b>3.5</b>
<p>There is a risk that case volumes may change. However, published statistics show that whilst receipts volumes may fluctuate from year to year, as an average over a longer period they have remained reasonably constant. The Net Present Value figure presented uses a period of 10 years to mitigate this risk.</p> <p>Estimated hearing lengths are based on current best estimates. There is a risk these times will change.</p>		

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m: N/A</b>			<b>Score for Business Impact Target (qualifying provisions only) £m: N/A</b>
Costs: N/A	Benefits: N/A	Net: N/A	

## A. Background

### *Introduction*

1. The Government is investing over £1 billion to transform the courts and tribunals system. We will deliver a service that is just, proportionate, accessible to all and works better for everyone, from judges and legal professionals, to witnesses, litigants and victims of crime. This measure is part of a wider legislative package that underpins the court reform programme and collectively contributes to benefits of £252 million per annum at steady state from 2023-24. While most of the measures in the Bill produce significant direct savings, some do not. However, the measures are interdependent and all contribute to wider, indirect savings by streamlining processes, enabling more flexibility in judicial deployment, digitalisation, and effective deployment and utilisation of our staff and estates. In short, each measure is vital for us to deliver the reform programme and associated savings as planned.
2. As part of the above package, Her Majesty's Courts and Tribunals Service (HMCTS) Reform programme will simplify the criminal courts system by introducing new measures to ensure criminal offences are dealt with in a proportionate and appropriate way. The measures in this Impact Assessment (IA) aim to maximise the efficiencies possible through digitisation by enabling more matters that would usually be conducted at a physical hearing to be dealt with:
  - by a 'virtual-enabled' hearing where one or more of the parties appear before the court using a live audio or video link and one or more party will appear in the physical court room; or
  - by a 'fully virtual hearing', where there is no physical court room and the court and parties attend using telephone or video conferencing facilities. This may also be referred to as a 'wholly audio hearing' or 'wholly video hearing'.
3. This IA also looks at the principle of open justice – the public's right to see justice being carried out – and safeguards to ensure that the virtual hearings measures are used appropriately.

### *Use of virtual hearings*

4. At present, hearings are usually held in person in a court building, with all parties physically present. The law already allows certain criminal proceedings to take place by electronic means including live video or telephone conferencing. Some matters can and are progressed without a hearing e.g. by using email. Video links into the court room are most commonly used for vulnerable or intimidated witnesses, to avoid the need for them to attend court, and for defendants in custody, where it is more efficient for the justice system to have these defendants attend certain proceedings from prison.
5. In the criminal jurisdiction, there are a range of provisions that specify the particular circumstances under which witnesses or defendants may attend by video link. Existing legislation is contained in:
  - The Youth Justice and Criminal Evidence Act 1999, section 24, which provides for vulnerable or intimidated witnesses to give evidence by live video link as a special measure, if it is in the interests of justice for them to do so. Section 33A enables a vulnerable accused to give evidence by live link if in the interests of justice to do so;
  - The Criminal Justice Act 2003, section 51, expands that provision to allow any witness other than the defendant to give evidence via live video link in specified proceedings<sup>1</sup>, subject to the court being satisfied that it is "in the interests of the efficient of effective administration of justice" and that suitable facilities are available;
  - The Police and Criminal Evidence Act 1984, sections 46ZA, 46A and 47 make provisions relating to bail hearings;

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<sup>1</sup> A summary trial, an appeal to the Crown Court after a summary trial, a trial on indictment, various appeal hearings, a hearing before a magistrates' court or Crown Court held after the defendant has pleaded guilty.

- The Crime and Disorder Act 1998 (as amended) under sections 57A-F allows for the defendant to be treated as if he is present when appearing over live video link for:
    - i. Pre-trial hearing, including where the defendant is at the police station;
    - ii. Certain enforcement hearings, relating to confiscation orders (but specifically excluding defendants at the police station);
    - iii. A sentencing hearing that immediately follows a preliminary hearing – allowing a court to convict and continue to sentencing without reconvening; and
    - iv. Certain stand-alone sentencing hearings.
6. The court has, in some circumstances, used its inherent jurisdiction to allow the use of video link in circumstances other than those specified in this legislation. The Criminal Procedure Rules on live video links and telephones for pre-trial hearings (Rules 3.2(4) and (5)) allow the court to make use of the technology when it is appropriate. The Rules broaden the scope to include defendants who are not in custody, but who “want to attend by video link”. The Rules make clear that the court cannot compel a defendant to attend by live video link if they do not wish to do so. Courts frequently make basic administrative decisions without a hearing where this is not precluded by statute. The Criminal Procedure Rules also detail how certain matters can be determined without a hearing.
  7. HMCTS is running a pilot in Reading Crown Court that tests some case management decisions being made on the telephone for short hearings (less than 15 minutes) dealing with less complex matters where there is no legal argument and the defendant is not required to attend. These include case progression, directions hearings, applications to offer no evidence (if the defendant has been arraigned and is not required), applications to stand fixtures out, hearings where only one party is required, and hearings to provide updates in cases which require proactive case management.
  8. It is not always necessary for hearings to be held in person in a court building. It places a burden on parties who may have to travel long distances for a short, straightforward hearing which could, just as easily, be dealt with using telephone or video conferencing. As set out above, there are some circumstances that already permit the use of video link and telephone conferencing, but these are limited and, for the most part, still require the use of a physical courtroom. Whilst some technology and the permission to use it has been in place for nearly a decade there is reticence to use it. We want to extend the circumstances where such technology can be used, such as implementing and embedding the ‘fully virtual hearing’. A culture change is needed to encourage the court and interested parties to make greater use of digital channels where they are already able to do so as well as create new opportunities to do so: this legislation will expand availability of technology and bring about this shift more quickly.

#### *Open Justice*

9. The principle of open justice – justice being seen to be done – is part of our common law and is enshrined under Article 6 of the EHCR. Maintaining transparency is crucial as it deters improper behaviour on the part of the court and maintains the public’s confidence in the administration of justice and the impartiality of the judiciary. Upholding open justice is a critical consideration as we deliver HMCTS reform.
10. At present, if a member of the public wishes to observe an open hearing they would need to attend the court where the hearing is taking place. Public gallery capacity is restricted (on average around 12 spaces per courtroom) and available on a first-come first-served basis.
11. Photography and sound recording are expressly prohibited in the courts:

- Section 41 of the Criminal Justice Act 1925 (CJA) provides an absolute prohibition on photography in courts, other than the Supreme Court; and
  - Section 9 of the Contempt of Court Act 1981 (CCA 1981) prohibits the making of unauthorised sound recordings.
12. Section 32 of the Crime and Courts Act 2013 (CCA 2013) contains an order-making power that allows the Lord Chancellor, in concurrence with the Lord Chief Justice, to make an order setting out the conditions under which the prohibitions on recording in court in section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act 1981 would be lifted. This power has been used to make exceptions in the Court of Appeal and the Crown Court, to enable limited recording and broadcasting from the Court of Appeal and the recording of sentencing remarks in the Crown Court.
13. As we increase the use of digital channels we need to ensure that we maintain the principle of open justice, particularly where matters are taken out of the physical courtroom altogether. In the case of 'fully virtual hearings', where all parties attend using telephone or video conferencing facilities, no courtroom is used and there is therefore no public gallery for observers to sit in. We plan to enable members of the public to view virtual hearings (where there is otherwise no restriction on attendance) using a computer screen located in a court building. But we need to ensure the prohibitions on photography and sound recording would apply to these observers in the same way that they would in a physical courtroom.

## **B. Policy Rationale and Objectives**

### **Economic rationale**

14. The conventional economic approach to Government intervention is based on efficiency and equity arguments. The Government may consider intervening if there are failures in the way markets operate (e.g. monopolies overcharging consumers) or there are failures with existing Government interventions (e.g. waste generated by misdirected rules). The proposed new interventions should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and re-distributional reasons (e.g. to reallocate goods and services to the more needy groups in society).
15. The economic rationale for the policy proposals considered in this IA are primarily based on improving the efficiency of the case allocation and case management processes.

### **Policy objective**

16. The high level policy objective is to approach the progression and management of cases as proportionately as possible and use modern technology to increase convenience, flexibility and effective use of resource.
17. Increasing the number of decisions made using wholly audio or video hearings has enormous potential to increase the efficiency and effectiveness of the criminal justice process. It will also reduce inconvenience and increase efficiency for not just the courts, but criminal justice partners like probation, prisons and the police, and also legal professionals. Victims and witnesses (and in youth cases, parents, guardians and carers) will also benefit from not having to travel to court unnecessarily.
18. We want to ensure that members of the public and media are able to view open hearings which take place outside of the traditional court room, by enabling the court to live stream fully virtual hearings, which could be viewed from a dedicated terminal in a court building. We also want to protect victims and witnesses, defendants and other parties taking part in virtual hearings, by ensuring the current prohibitions on photography and sound recording in courts will also extend to observers watching a live stream of a virtual hearing. We intend to make it an offence for a person to make, or attempt to make, an unauthorised recording or transmission of a virtual hearing live stream; a person observing

a live stream; or a person participating in court proceedings via live audio or video link. The measures will extend to all courts (civil, criminal and family) and tribunals.

## C. Affected Stakeholder Groups, Organisations and Sectors

19. The groups that would be most affected by the options discussed in this IA are:

- Defendants;
- Victims and witnesses;
- Parents, guardians and carers;
- Members of the public who wish to observe a hearing;
- Her Majesty's Courts and Tribunal Service (HMCTS), which administers the Crown Court and the magistrates' courts;
- Criminal justice system (CJS) partners, including the Crown Prosecution Service (CPS), probation, youth offending teams, police and HM Prison Service;
- Providers of legal services, especially barristers and solicitors (both prosecution and defence);
- The judiciary, and;
- Taxpayers, who ultimately meet the costs of court cases.

## D. Description of Options Considered

20. To meet the policy objectives described above, the following options are assessed in this IA:

- **Option 0/Base Case**
- **Option 1: Increase the use of live audio and video links and virtual hearings whilst maintaining 'Open Justice'**

### Option 0 – Base case

21. Under this option, the HMCTS Reform would maximise and extend the use of decisions made 'on the papers', by telephone and using video technology under existing powers. However no changes would be made to legislation to unlock the potential to fully transform and modernise the way justice is administered in the criminal courts.

### Option 1 – Increase the use of live audio and video links and virtual hearings whilst maintaining 'Open Justice'

22. Under this option the government proposes to expand the use of live audio and video link and telephone and video conference technology to give the court more flexibility in managing criminal proceedings. In the case of 'fully virtual hearings', there would be no physical courtroom and all parties will join the hearing via telephone or video conference. As a result, changes would also need to be made to existing legislation to take into account the live streaming of cases in these new circumstances to enable hearings to be viewed/heard from a screen/telephone in a court building.

#### *Increasing use of live audio and video links and virtual hearings*

23. Under this option, the criminal court may direct for basic administrative decisions (such as an uncontested variation of bail terms) to be made without a hearing on the papers (preferably via the digital platform). Courts have an inherent power to do this in many circumstances, and as such we are not legislating to provide for this generally, though we will consider whether there are any specific existing provisions which preclude this and need amending.

24. Where a hearing is deemed necessary by the court, this may not always require all parties to be present in the physical court room. Matters may be dealt with by a 'virtual-enabled' hearing, where one or all of the parties appear before the court in a physical court room by way of a live audio or video link; or by a 'fully virtual hearing', where there is no physical court room and the court and

parties attend using telephone or video conferencing facilities . This may also be referred to as a 'wholly audio hearing' or 'wholly video hearing'.

25. Where the court is satisfied that it is in the interests of justice, having considered any representations from the parties (and youth offending teams in youth cases), it would be able to use telephone and video technology in the following circumstances:

*Pre-trial & enforcement decisions*

- a. The court would be able to deal with pre-trial and enforcement issues either 'on the papers' without a hearing; via wholly audio hearing or wholly video hearing; or via a hearing enabled by the use of a live audio or video link, regardless of whether the defendant is in custody.
- b. Contested bail applications cannot be decided on the papers. Where the grant of bail is in dispute, the court would be able to make its decision in a wholly video hearing or to make use of live video link. Where the conditions of bail are in dispute, the court would, in addition, be able to make its decision in a wholly audio hearing or be able to make use of a live audio link.

*Sentencing hearings*

- c. Sentencing would only be conducted on the papers in the circumstances set out under the existing Single Justice Procedure (SJP) for summary only, non-imprisonable offences. (A separate legislative change for certain SJP offences to be dealt with entirely online is examined in the Automated Online Conviction and Statutory Standard Penalty IA.) In suitable cases the court would be able to direct that the hearing at which a defendant is convicted and sentenced be conducted by a wholly video hearing or enabled using a live video link (but not a wholly audio hearing or using live audio link).

*Trials*

- d. The court would not be permitted to try any matters on the papers outside of the existing SJP (which does not include cases involving defendants aged 10-17 years).
  - e. It would be possible to conduct trials in magistrates' courts for summary only, non-imprisonable offences (e.g. speeding or TV Licence evasion) by wholly video hearing. This would be where the SJP is applicable and the defendant has entered a not guilty plea and indicated that he or she does not want to be tried in accordance with the SJP, and only where all parties and court agree to hold the trial by video. All other trials would be conducted in the physical court room.
  - f. In all trials there would be additional provision for participants (including the accused) to attend and/or give evidence by live video link. There would also be provision for witnesses (other than the accused) to give evidence by live audio link where there are no suitable live video link facilities and all the parties agree.
26. There would be safeguards in place to ensure that virtual hearings and other electronic channels are only used under appropriate circumstances and that the defendant is afforded a fair hearing. The court would always have the final say on whether it is appropriate to conduct a hearing in a certain way, and must be satisfied that it is in the interests of justice to do so. Factors which might render it contrary to the interests of justice for a matter to be determined by audio/video link will be set out in Criminal Procedure Rules and Criminal Practice Directions as appropriate. These are likely to include considerations such as whether any of the parties lack the necessary technology, digital skills or appropriate venue to call in from; whether the defendant is likely to be taken into custody at the end of the hearing and is at risk of absconding; or whether any of the parties or witnesses are vulnerable (for example, on grounds of age or incapacity) such that their effective participation in the case or engagement with support or legal advice is better managed by a physical hearing in a court room.

27. Under this option, we would need to provide the media and members of the public with real-time access to any fully virtual hearing which is to be held publically (the court may determine that a case should be heard in private). The measures would enable the court to direct that a wholly audio hearing or wholly video hearing should be live streamed to enable observers to see or hear proceedings. We are proposing to enable members of the public or media to observe virtual hearings from one of a number of dedicated terminals in court buildings. A member of court staff would be available to facilitate access.
28. We want to protect the solemnity of the court as well as the rights of victims and witnesses, defendants and other members of the court by ensuring that the current prohibitions on photography and sound recording in courts would also extend to observers watching a live stream of a virtual hearing. The legislation will make it an offence for a person to make, or attempt to make, an unauthorised recording or transmission of a virtual hearing live stream or a person observing that live stream. The member of court staff would also be available to ensure compliance with recording restrictions, and the consequences of breaching the prohibitions would be clearly displayed. We will also make it an offence for a person to make an unauthorised recording or transmission of a person participating in court proceedings via live audio or video link.
29. Although the virtual hearings legislation only applies to the criminal courts, civil and family courts and tribunals have existing powers to conduct fully virtual hearings in certain cases, some of which will be open to the public. As such, the open justice measures will apply to the criminal, family and civil jurisdictions and tribunals.

## **E. Cost and Benefit Analysis**

30. This IA identifies the key monetised and non-monetised impacts on the Ministry of Justice (MoJ), its agencies and other bodies of Option 1 described above. These monetised and non-monetised impacts are compared to the 'Do nothing' option, i.e. where all non-legislative reforms in the HMCTS Reform programme have been implemented but those requiring legislation have not. As the 'do nothing' option is being compared to itself its costs and benefits are zero, as is its Net Present Value (NPV). The NPV of Options has been compared to this.
31. It is important to note that these estimates are based on a number of assumptions and should not be regarded as firm predictions. For more information relating specifically to these assumptions, please refer to the Assumptions and Risks section (section F).
32. Unless stated otherwise, all monetised costs and benefits are in 2014/15 prices and, where necessary, have been re-based using HM Treasury's published GDP deflator series.<sup>2</sup>
33. Estimates of sentencing volume changes are based on 2015 outturns.
34. Estimates of costs and benefits of the options are presented as a NPV over a 10 year horizon from 2016/17.
35. A 15% optimism bias has been applied to the costs and benefits. This is an explicit adjustment to account for the demonstrated, systematic tendency, for overly optimistic appraisal of interventions and capital projects in both the public and private sector<sup>3</sup>.

### **Option 1 – Increased use of live audio and video link and fully virtual hearings**

36. The increased use of technology to replace the traditional in-court hearing would benefit HMCTS although these savings cannot be quantified as stand-alone savings and need to be looked at in the round as part of the wider transformation programme. It would also benefit court users and criminal

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<sup>3</sup> Flyvbjerg, Underestimating Costs in Public Works Projects – Error or Lie, APA Journal (2002)

justice partners but again, these savings cannot be quantified. We have only attributed direct benefits where we are explicitly taking new powers, rather than clarifying existing or inherent powers. This legislation would specifically enable the use of virtual hearings in the following circumstances:

- Trial and any subsequent sentencing hearings where a defendant pleads not guilty for a summary non-imprisonable offence (i.e. SJP cases where the defendant has indicated that he or she does not want to be tried in accordance with the SJP);
- Pre-trial hearings (including bail/remand hearings) for Lower Tier cases (Summary Imprisonable and Triable Either Way) for defendants not held in custody<sup>4</sup>;
- Pre-trial hearings (including bail/remand hearings) for Crown Tier cases (Indictable Only cases) for defendants not held in custody.

37. Outside of the single justice tier, we would extend legislation to cover sentencing cases using a fully virtual hearing and where the defendant is not in custody (current legislation allows live video link where the defendant is in custody). We consider that in most circumstances this would happen where the defendant is in custody and would otherwise attend using live video link; this power will enable the other parties to also attend virtually. The direct and indirect benefits arising from this option have not been separately modelled in the HMCTS Business Case and as such have not been quantified here.

38. The same point applies to enforcement hearings: the number of cases which would be dealt with as a fully virtual hearing (as opposed to on the papers or using live audio or video link) is likely to be relatively small, and as such have not been modelled in the HMCTS Business Case and are not quantified here.

39. Benefits arising from witnesses (including the accused) being able to give evidence via live video link and witnesses (other than the accused) being able to give evidence via live audio link in extended circumstances have not been quantified.

40. Although we consider that HMCTS reforms will encourage an increase in the number of decisions taken by the court 'on the papers', we are not seeking to create a new power and as such we have not quantified the associated benefits. The benefits of making allocation decisions without a hearing have been included in the Allocation & Sending IA.

## **Costs of option 1**

### Implementation Costs

#### *IT and Training – Virtual Courts*

41. The HMCTS Reform Business Case includes implementation costs for the provision of technology for live audio and video link and telephone and video conferencing across HMCTS estate, the running costs and training. The overall assumed cost of this technology is included in the HMCTS Reform Business Case. We are, however, unable to isolate the cost specifically attributable to this option, this is therefore included as a non-quantifiable cost.

42. There will be additional costs associated with providing media and members of the public with real-time access to any virtual hearing (i.e. open justice) which is to be held publically (the court may determine that a case should be heard in private). We are proposing to enable members of the public or media to observe virtual hearings from one of a number of dedicated terminals/telephones in each court building. A member of court staff would be available to facilitate access. There would be implementation and running costs from providing this service, at present we have not quantified these costs.

43. The cost of enforcing the restrictions on recording a live stream of a virtual hearing (across all jurisdictions) is expected to be equivalent to those for enforcing restriction within the current physical setting.

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<sup>4</sup> Legislation already exists to conduct virtual hearings for defendants held in custody.

## Ongoing Costs

### *CPS*

44. This option would have cost, process and working culture implications for the CPS (and other parties to proceedings) that have yet to be assessed in terms of their impact on Transforming Summary Justice and Better Case Management, or quantified specifically in respect of cost or benefits.

### *Police*

45. The new HMCTS design model includes in certain cases defendants who indicate a guilty plea to low-level summary imprisonable offences who will be eligible for a 'fast-track' sentence hearing from the police station (where no further reports are required). It is expected that offences such as drink driving may be appropriate for this process. This is expected to see some 40,000 defendants sentenced on the same day as they are charged via a video-hearing to a bench of three magistrates (i.e. virtually).
46. Current legislation exists which enables defendants who **are held in custody** and plead guilty to be sentenced virtually, however defendants who are granted bail by the police must appear before a physical court to be sentenced.
47. Measures included in the proposed legislation will enable defendants who indicate a guilty plea and **are granted bail by the police** to return to the police station the same day and be sentenced virtually (in-line with the current process as a defendant held in custody). This process would not apply to defendants who plead not guilty.
48. There is expected to be an additional cost to the police as, for this cohort of defendants only, the police will now be required to host a virtual hearing instead of the defendant appearing at a physical court to receive their sentence.
49. This cost has not been monetised as it is expected that only a small proportion of the 40,000 defendants will be granted bail by the police and the associated economic costs are therefore de minimus. Further, it is possible that some of these costs may be offset by economic benefits to the police, for example a fast-track sentence will adopt a 'stream-lined' case file which is assumed to require less police time to complete.

## **Benefits of Option 1**

### Non-Monetised

50. In addition to the quantifiable benefits set out above, the changes would also encourage the extended use of virtual hearings across the criminal jurisdiction, contributing to a 1200% uplift of these hearings expected as a result of the wider HMCTS reforms. This increase in the use of technology to progress and hear cases, enabled in part through this legislation would contribute to significant savings through reduced estate and staff. The potential benefits are non-quantified.
51. There may be increased flexibility and efficiency for CPS resources as CPS advocates or instructed counsel would be able to prosecute from their office or Chambers. Whereas previously a prosecutor might need to attend a number of different courts in one day or alternatively several prosecutors would need to cover numerous different courts, these cases could be conducted virtually from a single location. These benefits are non-quantified.
52. There may be an improved experience for others working within the CJS including the police, the legal profession and judiciary due to a reduced need to travel to court, resulting in less disruption and inconvenience. Parties are also likely to benefit from not having to wait at court for proceedings to begin. This potential benefit is non-quantified.

53. Defendants, victims and witnesses (and youth cases, parents, guardians or carers) may also benefit from not having to travel to court unnecessarily. This particularly applies where the hearing would have been held in another part of the country, as the user could instead participate from a local video facility. This potential benefit is non-quantified.
54. Reforms to the method of scheduling and listing cases are planned as part of wider HMCTS reforms. This will enable all hearings (including those with quantified savings above) to be made more efficient and effective as listing can be flexible to user needs, and not restricted to court hours or patterns. This potential benefit is non-quantified.
55. Court space may be freed up to deal with more complex cases or even non-criminal cases thereby allowing a more efficient restructuring of the court estate. This potential benefit is non-quantified.

### Monetised

56. The following section outlines the quantifiable economic impact for each tier from the proposed measures. Table 1 shows the take up rates of virtual hearings assumed for each tier. These rates do not reach 100% as the use of virtual hearings are not mandatory.

**Table 1 - Take up rates of virtual hearings, by court tier**

	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26
Single Justice Tier	77%	79%	81%	83%	85%	85%	85%
Lower Tier	89%	91%	93%	95%	97%	97%	97%
Crown Tier	89%	91%	92%	94%	95%	95%	95%

57. In order to estimate the steady state court savings relating to Court Ushers it has been assumed that the unit cost of a Court Usher per hour is £14.

### *Single Justice Tier Cases*

58. We have assumed 890,000 hearings per year from the single justice tier, i.e. the number of hearings eligible for the SJP (which does not include defendants aged 10-17). Of this cohort, we assume that approximately 3%<sup>5</sup> (25,000 hearings) will involve a defendant who enters a not guilty plea and has their hearing conducted via wholly video hearing (following agreement of all parties and the court).
59. It is assumed that the trial and any subsequent sentencing hearings for these 25,000 hearings (in which the defendant has made a not guilty plea and the court and all parties have agreed to a video trial) will be conducted via wholly video hearing. This removes the requirement for an usher to co-ordinate attendees in a physical court room or the need for any of the parties, including the magistrates to travel to court. As all other parties will still need to attend virtually, the economic benefit attributable to these proposals relates to usher time savings only.
60. The assumed average hearing length of a trial and sentencing is 30 minutes in the Single Justice Tier. Court Ushers are present not only during the trial, but before and after to co-ordinate attendees. We therefore assume that Court Ushers are required for 1.2 times the length of a hearing<sup>6</sup>.
61. Table 2 below presents the application of the above assumptions to baseline hearing volumes in order to estimate a steady state saving for Single Justice Tier cases.

**Table 2 - Steady state savings in Court Ushers for Single Justice Tier Cases**

	<b>Single Justice Tier</b>
Total annual volume of SJP hearings	890,000
-Volumes where defendant enters a plea of not guilty online	45,000
-Volumes were defendant opt-in for virtual hearing	42,000

<sup>5</sup> Assumed that 5% of defendants enter a not guilty plea, 95% opt-in for virtual hearing and 60% of virtual hearings are conducted via video.

<sup>6</sup> 36 minutes per hearing.

-Volume of cases where trial and/or sentencing hearing is conducted via wholly video hearing	25,000
Estimated Unit Cost	£14
Total court usher hours saved	13,000
Total annual steady state savings (15% OB include)	£160,000

Number may not sum due to rounding. Saving sin 14/15 prices with 15% OB applied

#### Lower Tier Cases – Defendants not being held in custody

62. We have assumed approximately 550,000 Lower Tier hearings per year. We assume approximately 20%<sup>7</sup> of these hearings will involve a defendant who enters a not guilty plea and is on bail.

63. Of these cases, it is assumed that 60% of the case management and progression hearings (i.e. pre-trial hearings) will be conducted using a wholly audio hearing or wholly video hearing. This results in an estimated 60,000 hearings being conducted virtually.

64. The assumed average hearing length of pre-trial hearings is 13 minutes in the Lower Tier. Again, to account for the co-ordinating of attendees before and after the trial, it is assumed that Court Ushers are required for 1.2 times the length of a hearing<sup>8</sup>.

65. We have assumed that there will be 20,000 contested bail/remand hearings subsequent to the initial bail/remand hearing. We have assumed 85% (17,000) of these will be conducted via wholly video hearing. The assumed average hearing length of a contested bail/remand hearing is 10 minutes, therefore a Court Usher is required for 12 minutes.

66. Table 3 presents the application of the above assumptions to baseline hearing volumes in order to estimate a steady state saving for Lower Tier cases.

**Table 3 - Steady state savings in Court Ushers for Lower Tier Cases**

	Pre-trial hearings	Lower Tier
Total annual volume hearings		550,000
-Volume of hearings that involve a defendant who enters a not guilty plea online		115,000
-Volumes of hearings that involve a defendant not in custody		100,000
-Volume of hearings where pre-trial hearings are conducted via wholly audio or video hearing		60,000
Estimated Unit Cost		£14
Total court usher hours saved		20,000
Total annual steady state savings (15% OB include)		£200,000

	Lower Tier
<b>Contested bail/remand hearings</b>	
Volume of contested bail/remand hearings	20,000
-Volume of hearings where contested bail/remand hearing are conducted via wholly video hearing	17,000
Estimated Unit Cost	£14
Total court usher hours saved	3,000
Total annual steady state savings (15% OB include)	£40,000

Number may not sum due to rounding. Saving sin 14/15 prices with 15% OB applied

#### Crown Tier Cases – Defendants not being held in custody

67. We have assumed that of the 130,000 Crown Court<sup>9</sup> annual hearings approximately 25%<sup>10</sup> would involve bailed defendants and would have pre-trial (case management) hearings conducted using a

<sup>7</sup> Assumed approximately 20% of defendants enter a not guilty plea and of these 88% are not held in custody (based on proportion of TEW defendants not remanded in custody - Table Q4.2 Criminal Justice Statistics Quarterly, March 2016).

<sup>8</sup> 36 minutes per hearing.

<sup>9</sup> Based on HMCTS Crown Court receipts.

<sup>10</sup> Assumed 60% of IO cases are not held in custody (based on proportion of TEW defendants not remanded in custody - Table Q4.2 Criminal Justice Statistics Quarterly, March 2016) and 45% of hearings will be conducted virtually (either by video link or telephone)

wholly audio hearing or wholly video hearing. Therefore it is assumed some 30,000 management hearings would be in this way in the Crown Tier per year.

68. The assumed average hearing length of these pre-trial hearings is 15 minutes in the Crown Tier. Again, to account for the co-ordinating of attendees before and after the trial, it is assumed that Court Ushers are required for 1.2 times the length of a hearing<sup>11</sup>.
69. We have assumed that there will be 7,000 contested bail/remand hearings subsequent to the initial bail/remand hearing. We have assumed 85% (6,000) of these will be conducted via wholly video hearing. The assumed average hearing length of a contested bail/remand hearing is 10 minutes, therefore a Court Usher is required for 12 minutes.

70. Table 4 presents the application of the above assumptions to baseline hearing volumes in order to estimate a steady state saving for Crown Tier cases.

**Table 4 - Steady state savings in Court Ushers for Crown Tier Cases**

<b>Pre-trial hearings</b>	<b>Crown Tier</b>
Total annual volume of hearings	130,000
-Volumes of hearings that involve a defendant not in custody	70,000
-Volume of hearings where pre-trial hearings are conducted via wholly audio or video hearing	30,000
Estimated Unit Cost	£18
Total court usher hours saved	10,000
Total annual steady state savings (15% OB include)	£150,000

<b>Contested bail/remand hearings</b>	<b>Crown Tier</b>
Volume of contested bail/remand hearings	7000
-Volume of cases where contested bail/remand hearing are conducted via wholly video hearing	6,000
Estimated Unit Cost	£18
Total court usher hours saved	1,000
Total annual steady state savings (15% OB include)	£20,000

Number may not sum due to rounding. Saving sin 14/15 prices with 15% OB applied.

71. In summary, under current assumptions the estimated saving to HMCTS is £550,000 per annum in staffing costs for Court Ushers.

**Table 5 - Total steady state savings in Court Ushers for all tiers (inc. 15% optimism bias)**

<b>Single Justice Tier: trial and/or sentencing hearing</b>	£160,000
<b>Lower Tier: Pre-trial and contested bail/remand hearing</b>	£240,000

<sup>11</sup> 36 minutes per hearing.

<b>Crown Tier: Pre-trial and contested bail/remand hearing</b>	£170,000
<b>Total annual steady state savings</b>	£550,000

Number may not sum due to rounding. Saving sin 14/15 prices with 15% OB applied

### Open Justice

72. We would still provide open justice under option 1, therefore the benefit of open justice would not change when compared with the base case.

### Net Impact of option 1

73. The 10 year NPV estimate of this option is £3m 2014/15 prices.

## F. Risks and Assumptions

74. A description of key assumptions underpinning the analysis and a summary of the related risks are provided in the table below:

Assumption	Risk
<b>Implementation Date.</b> The project commenced in May 2016 and is due to be completed by 2019/20.	Any delay in completion would result in a lower net economic benefit over the 10 year NPV period.
<b>Baselines.</b> The analysis and figures presented are in 2014/15 prices using 2014/15 baseline volumes.	If future actual volumes are lower relative to the base year the net economic benefit of the intervention would be lower than estimated.
<p><b>Defendant/receipt volumes.</b> Based on HMCTS assumptions, the estimated volumes of cases for each tier are listed below. We assume that annual volumes will remain constant.</p> <p><b>Offender Volumes Single Justice Tier</b> We assume a volume of 25,000 wholly video hearings for single justice tier cases. This is based on an annual volume of 890,000 cases in total and the assumption that 5% enter a not guilty plea, 95% of which opt in for virtual trial (and the court approves) and 60% of virtual hearings are conducted via video</p> <p><b>Offender Volumes Lower Tier</b> We assume a volume of 25,000 wholly video hearings for lower tier cases. This is based on an annual volume of 550,000 cases in total. We assume 20% of defendants enter a not guilty plea and of these 88% are not held in custody. 88% is based on the proportion of TEW defendants not remanded in custody in latest published statistics. We also assume 20% of pre-trial hearings will be conducted virtually</p> <p><b>Offender Volumes Crown Tier</b> We assume a volume of 5,000 wholly video hearings for Crown tier cases.</p>	There is a risk that volumes may change. However, published statistics show that whilst receipts volumes may fluctuate from year to year, as an average over a longer period they have remain reasonably constant. The NPV figure presented uses a period of 10 years to mitigate this risk.

Assumption	Risk
<p>This is based on an annual volume of 92,000 cases in total. We assume 57% are not held in custody. We also assume 10% of pre-trial hearings will be conducted virtually</p>	
<p><b>Estimated hearing length.</b> Based on HMCTS assumptions, the estimated hearing lengths for each tier is as follows:</p> <ul style="list-style-type: none"> <li>- 30 minutes for single justice tier sentencing hearings.</li> <li>- 13 minutes for lower tier pre-trial hearings and;</li> <li>- 15 minutes for Crown tier pre-trial hearings.</li> </ul>	<p>These lengths are based on current best estimates. There is a risk these times will change.</p>
<p><b>Usher Time.</b> Based on HMNCTS ABC model, assumed usher time for each tier is as follows:</p> <ul style="list-style-type: none"> <li>- 36 minutes for single justice tier sentencing hearings</li> <li>- 16 minutes for lower tier pre-trial hearings</li> <li>- 18 minutes for Crown tier pre-trial hearings.</li> </ul>	<p>These lengths are based on current best estimates. There is a risk these lengths will change.</p>

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