



BIRMINGHAM LAW SOCIETY

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**CRIMINAL PROCEDURE RULES COMMITTEE
PROPOSAL REGARDING USE OF LIVE LINKS
AND TELEPHONE CONFERENCING**

Ministry of Justice Consultation
February 2016

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Introduction

The Birmingham Law Society is the largest provincial local law society with a membership of some 5,000 representing solicitors, barristers and paralegals working in the West Midlands area. The Society is responding to the consultation relating to proposals for the use of live links and telephone conferencing within the criminal justice system.

Questions for consideration

We respond to the specific questions raised in the consultation paper as follows:

1. Are the proposed rule amendments worthwhile? Bearing in mind what is recommended by the Review of Efficiency in Criminal Proceedings, would it suffice instead to leave unamended the general duty and the general discretions for which the Criminal Procedure Rules already provide?

We agree that the proposed amendments are worthwhile. We appreciate the need to increase efficiency which will ultimately benefit all parties to proceedings.

Although we welcome the increased use of technology we must comment that the defence do not enjoy a level playing field. There has been no corresponding investment in IT or assistance to cash strapped firms of solicitors. Many have very little IT infrastructure and more still lack the means to invest. Their position has been exacerbated by year upon year of cuts in funding. Legal Aid rates have remained unchanged since the 1980s and even in years where direct cuts have not been made, there has been a gradual erosion of the value of the payments provided.

The current uncertainty as to the future of Duty Solicitor Provider Work Contracting is the latest amongst a series of disincentives to firms to invest in hardware and technology. Unless and until the Ministry of Justice finalises its proposals for future contracting firms will be unlikely to secure funding to invest in the equipment necessary to meet CPS and HMCTS in their increasing use of technology. In reality in most areas of the country it is only the largest firms in scale who have been able to invest in suitable technology.

As the Review of Efficiency in Criminal Proceedings identifies it is necessary for parties to have access to appropriate IT equipment of sufficient quality to make best use of new methods of working.

2. Is it right for the proposed duties to rest primarily on the court? Would it be more appropriate instead to impose duties on the parties?

We agree that it is right for the proposed duties to rest primarily on the court. We are satisfied that CPR r.3.3(1) provides the explicit requirement for all other parties to assist the court in achieving the objectives of r.3.2.

3. Would it be helpful to remind parties of their obligation to help the court comply with these explicit duties by including reminders in all the relevant forms? – reminders, that is, for

applicants to indicate whether they think a hearing should be convened or not and, if it should, then whether the parties should attend physically or instead by live link or telephone?

We agree that it would be helpful to contain reminders and reference to the particular CPR rules on the forms specified for use by parties.

4. Should the Criminal Procedure Rules include a definition of “telephone conference facility”?

We agree that the CPR should define telephone conference facility. We suggest the addition to the proposed wording, indicated in paragraph 43 of the consultation, of “or other device.”

5. Should the proposed rules acknowledge specifically the potential use of a live link to conduct a pre-trial discussion as well as a pre-trial hearing?

We approve the proposal that the rules specifically acknowledge the use of live links and telephone conferences for the purposes of discussion as well as hearings. We agree that not every element of current hearings need be conducted with the Judge and much administrative work (such as identifying suitable trial fixtures) could readily be conducted by way of discussion rather than a formal hearing. We form the view that this will provide increased flexibility in arranging court business which will benefit advocates and indeed firms in the allocation of resources.

6. Is it helpful to ensure consistency of expression between rules 3.2, 3.5 and 5.1? Or is that unnecessary?

It is helpful to retain consistency of expression between rules 3.2, 3.5 and 5.1.

Additional issues and comments

We also make some additional or general observations regarding the proposed increase in use of live links, telephone conferencing and other measures to conduct business which to date has been achieved in the setting of formal hearings.

We propose that the rules should allow for a defendant to appear by use of live link from another court centre, or appropriate facility in instances where the defendant enjoys bail. There are frequently instances where defendants are bailed away from the location of the court, specifically to avoid contact with other parties. Defendants are often uprooted from their usual family life and face difficulty in continuing with established employment. They face financial hardship and are often reliant on the assistance that can be provided by family members and friends. It may assist in increasing attendance rates to provide defendants in such positions with the facility to attend hearings by live link from their nearest court centre. There are obvious savings of cost to the defendant and to the central fund in cases where, having been acquitted, the defendant is granted an appropriate costs order. This is in addition to the savings of the costs involved in executing warrants for arrest in cases of non-appearance.

The cost of travel to even the nearest court centre is often prohibitive for defendants. We would wish to see an increased readiness of courts to excuse defendants' attendance at court where their representatives are able to certify that no plea is to be indicated, no sentence is likely and they are fully instructed.

Further we submit that facilities could appropriately be used in such cases to enable defendants to give evidence. In a recent case a local firm represented a defendant of advanced years who was in ill health. The trial listed at Birmingham Crown Court required him to travel daily, in winter, for approximately one and a half hours to attend the court. Although facilities existed at a Crown Court within a third of that time from his home address, the defence application to utilise the live link was refused. The difficulty appeared to be the shortness of staff at the sending court and the unwillingness of the local court to make use of the link for extended periods of time. The consequent requirement for the defendant to attend in person had an impact on his ability to concentrate and take part in the trial. That in turn resulted in delays in the trial for appropriate breaks to be taken. In our submission had the defendant been provided with the ability to attend by live link the proceedings would have been resolved more efficiently.

We have raised our concerns with Her Majesty's Courts and Tribunals Service regarding the limitations of facilities to take part in confidential consultation with clients at court centres. In the West Midlands such facilities are limited in time by the listing of hearings. In some court centres they are also limited by the provision of booths which are insufficiently sound proofed. We have raised with HMCTS that sound proofing is insufficient with the result that every word of neighbouring live link conferences can be heard. Where the court and a visitor booth link to the same custodial establishment it is on occasion possible to hear the neighbouring court proceedings. The booths are in great demand at peak times and we submit that it is not appropriate for advocates and other parties, such as probation officers and anyone walking past the booths at the time, to be able to overhear sensitive, confidential discussions. The facilities undermine the need to preserve the confidentiality of lawyer/client communication.

We understand the desire to provide live link facilities for police officers. Although it is laudable to save time spent travelling to and from court and the waiting time witnesses endure, we remain keen to ensure that arrangements are made to prevent the contamination of witnesses. Practitioners in the West Midlands have raised concern regarding how robust those arrangements have been when police officers have given evidence from locations away from the court. We suggest that where such arrangements are made the Criminal Procedure Rules are applied robustly and witnesses are reminded of the importance of avoiding discussion with other witnesses due to give evidence.

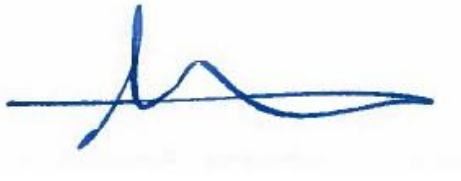
The feedback we have received from practitioners suggests that courts need to provide flexibility in terms of the time provided for live link conferences prior to hearings. The more that live link facilities are used the more the present resources of the court are stretched. Prisons have a tendency to be prescriptive regarding hearing times. The very short conference times provided are commonly insufficient to obtain meaningful instructions, where it has not been possible to visit defendants in person in advance of the hearing. Many instances of requests for the production in person of defendants arise from difficulties experienced in confirming instructions by live link.

We have reservations as to the use of live link facilities when sentencing defendants for serious and sexual offences. Those are often complex cases requiring particular attention to mitigation. Where difficulties arise at the hearing, or dispute arises as to the basis of plea, it

can prove very difficult to resolve where further visiting facilities, outside the short appointment prior to the hearing, cannot be arranged by the prison.

It is also desirable to have an opportunity to speak with defendants after sentence in every case. When the hearing is not over a live link, defence advocates generally have the opportunity to visit the defendant in the cells. It is highly desirable for advocates to have the opportunity to visit clients after the hearing to advise on sentence, appeal, duration of sentence and any financial obligations that may now arise. Whilst it is accepted that it may prove difficult to timetable a further live link conference after the hearing, the facility to at least have a telephone conversation should exist.

Dated: 9 February 2016

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke.

Mushtaq Khan
President
Birmingham Law Society