

Evaluation of Video Link Pilot Project at Manchester Crown Court

Final Report

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Contents

	Page
Summary	3
Chapter 1: Introduction	8
Methodology	8
Acknowledgements	10
Chapter 2: The video link courtroom	11
Chapter 3: The video link hearings	13
Number and type of hearings	13
The defendants	14
Offences and pleas	14
Outcome of hearings	14
Chapter 4: Key issues	16
Equipment reliability and performance	16
Pre-hearing contact and pleading guilty	18
Client consultation during the hearing	20
Client contact after the hearing	22
Confidentiality	22
Listing video link hearings	23
Booking video consultations	24
Applications for defendants to appear in person	25
Bail applications made over the link	26
Cases involving co-defendants	26
The length of video link hearings	27
Defendants' degree of involvement in proceedings	28
The skills involved in running a video link hearing	31
Probation	32
Training	32
Impact on defendants	34
Views on fairness	34
Costs and savings	38
Chapter 5: Conclusions and recommendations	40
Introduction	40
Equipment performance and reliability	41
Video courtroom design	41
Lawyer/client consultations and confidentiality	43
Length of hearings	45
Defendants' ability to follow proceedings	45
Applications to appear in person	46
Training	46
The need for a strategic approach	47

Summary

This is the report of a study commissioned by the Prison Service to evaluate the pilot use of video links between HMP Manchester and Manchester Crown Court. This extended the use of video links for preliminary hearings in magistrates' courts, which was piloted in three courts and four prisons beginning in November 1998. A programme of work to extend video links to a wider range of magistrates' courts and prisons is currently underway.

The Crown Court pilot began in September 1999. The formal evaluation period ended in February 2000 although the continued use of the equipment has been sanctioned at least until April 2000.¹ During the pilot, the link was used primarily for plea and directions hearings (PDHs) in custody cases committed at a video link hearing from Manchester City Magistrates' Court. Some applications to extend custody time limits and pre-trial reviews were also heard over the link.

The evaluation sought to establish whether video links are an effective way in which to conduct such hearings and whether the use of this technology is compatible with the interests of justice. It looked also at the effect of the video link on the relationship between advocate and client.

As with the earlier evaluation in the magistrates' courts, experience during the pilot showed that hearings can be conducted effectively by video if suitable safeguards are in place. In general, advocates were opposed to video link hearings although their objections often related to underlying issues concerning Crown Court hearings in general rather than matters arising specifically from the use of video links. For instance, concerns that defendants find it hard to follow the discussions that take place at a PDH apply whether or not the link is used. Advocates also felt that the link prevented them from consulting properly with their client but previous studies have highlighted the inadequacy of pre-hearing contact between advocate and defendant when the defendant is brought to the court building. Suspicions that the video link inhibited meaningful discussions about plea were not borne out by the proportion of guilty pleas in pilot hearings.

However, the pilot also showed that it is easy to underestimate the training needs of participants at link hearings. Vigilance is needed on the part of judges, advocates and court clerks to ensure an acceptable quality of justice. Clerks must give appropriate explanations at the start and end of each hearing and ensure that, wherever possible, the courtroom camera is pointing at the person speaking. Judges must be satisfied throughout that defendants can hear and see the proceedings. Advocates must ensure that they remain in shot while speaking. All participants need to watch for a signal that a defendant wishes to speak to his lawyer.

The pilot took place at a time when greater use of video links for witness testimony at criminal trials is expected as a result of implementation of the Youth Justice and Criminal Evidence Act 1999. The evaluation identified the need for strategic coordination in the procurement of equipment and in the application of quality controls to this increased reliance on technology. Such coordination falls clearly within the strategic remit of the initiative entitled Integrating Business and Information Systems in the Criminal Justice System (IBIS).

¹ As this report was being completed, the pilot use of video links at Manchester Crown Court was sanctioned until the end of March 2000.

Crown Court Video Link Pilot Evaluation

Data were collected at pilot hearings about the defendant or defendants, the category of offence on the indictment, the length of the hearing, the nature of pleas entered and the outcome of the hearing. Note was also made of applications for bail and for the defendant to appear in person.

These data were supplemented with the responses of participants to questionnaires distributed to prosecution and defence advocates at court and to prison officers and defendants at the prison. Clerks involved in pilot hearings completed a questionnaire towards the end of the evaluation period and judges presiding at link hearings were interviewed. Views were sought on the performance of the equipment, the length of hearings, the impact of the technology on communication between lawyer and client and the fairness of the process. Defence advocates were asked about the confidentiality of communications with their clients before, during and after each hearing. A total of 138 participants provided responses during the evaluation period.

The courtroom chosen for video link hearings was of standard size and layout. Monitors in the courtroom provided a view of the defendant to everyone present, including those in the public gallery. By pressing buttons on a control module, the clerk could move a single wall-mounted camera to point at whoever was speaking. Although there was a second camera pointing at the judge, it was not used because of the delay in switching between cameras. The picture from the camera at the court appeared on the defendant's monitor in the courtroom at the prison. A prison officer accompanied the defendant in the courtroom during the hearing. Fax machines at the prison and the court enabled documents to be exchanged. Defendants could indicate to the court if they wanted to give instructions to their lawyer in the course of the hearing. With the court's permission, the defence advocate left the courtroom and went to a nearby telephone booth to speak privately to the defendant.

Booths fitted with video link equipment were located in the court building and at the prison. These were used for consultations between lawyers and defendants before and after hearings. Notices posted in the booths contained guarantees of the confidentiality of the consultations from the Prison Service and the courts and an undertaking from the system suppliers that no monitoring devices had been installed.

The following key points emerged from analysis of the data collected during the pilots:

- In general, the equipment performed reliably throughout the pilot. One hearing was abandoned due to equipment failure.
- Some problems arose with equipment performance, particularly in relation to sound quality. The problems were most acute towards the start of the pilot after which remedial action by the system supplier resulted in improved performance.
- The vast majority of participants described equipment performance as acceptable or excellent. Most criticisms related to sound quality at the prison. Both defence and prosecution advocates expressed concern about defendants' ability to hear what was said in the court. Some judges shared these concerns.
- None of the defence advocates who completed a questionnaire had represented the defendant at a previous hearing. Twenty-six per cent said they or their representative had visited the defendant in prison. Seventy per cent had participated in a videoconference with the defendant on or before the day of the hearing. Three defence

advocates (13 per cent), all of whom were appearing on the link for the first time, indicated no pre-hearing contact with the defendant.

- Eighty-five per cent of defendants had been visited by a legal representative in the prison prior to the hearing; 91 per cent said they had taken part in videoconference with their lawyer prior to the hearing and 56 per cent had discussed their case with their lawyer on the telephone. Two defendants (4 per cent) had not been in contact with their lawyers by any of these methods.
- Both defence and prosecution advocates felt that video link PDHs hampered discussions with the defendant about plea. Two defendants and three judges expressed similar concerns. However, the guilty plea rate at video link PDHs during the pilot was higher than the average rate for all PDHs at Manchester Crown Court during the same period. This held true even though confirmed guilty pleas were removed from the video link list for the defendant to attend in person at an ordinary PDH.
- Nine per cent of defendants spoke to their lawyer over the telephone in the course of those video link hearings at which a data sheet was completed. Seventeen per cent of defence advocates said they had taken instructions in this way. Defendants reported a higher rate but they may have been confusing conversations during the hearing with those held before or after the hearing.
- Post-hearing contact between client and advocate is good practice whether or not the defendant is physically present at court. Twenty-three per cent of advocates held a video consultation with their client following pilot hearings. Thirty-nine per cent of defendants said they had no post-hearing contact with their lawyer.
- Despite assurances of confidentiality displayed in consultation booths, 35 per cent of defence advocates had concerns that videoconferences with clients were being monitored and 22 per cent that instructions by telephone taken during a hearing were overheard. Thirty-five per cent of defence advocates felt that legal consultations during prison visits were not confidential.
- Video link hearings were listed each afternoon at 15 minute intervals. Adherence to the running order and times was generally good although some advocates complained that the arrangements were inflexible. As video link hearings were listed before a range of judges, the judge who normally sat in the courtroom equipped with the link frequently had to make way for a colleague. In addition, video link hearings made it difficult to list trials in that courtroom. At the end of the evaluation period, discussions were underway to hold video link hearings on a single day each week and to hear cases in the morning as well as the afternoon. This should alleviate both judicial disruption and constraints on listing trials.
- Despite strenuous efforts to inform advocates of the booking arrangements for consultation booths, many failed to book slots in advance. In some cases, there was confusion as to whether the advocate or the instructing solicitor should make the booking. Requests for consultations made on the day of the hearing were all accommodated but caused administrative problems and some pre-hearing delay. Twenty-six per cent of defence advocates referred to problems they had encountered in booking videoconferences.
- Applications to appear in person were made on behalf of three defendants (five per cent). All three applications were granted. Two were for co-defendants and their lawyer indicated to the court that they would plead guilty on the next occasion. The advocate for the third defendant explained to the court that his client was on the prison's hospital wing and might be suffering from paranoia. The advocate had not

Crown Court Video Link Pilot Evaluation

been able to obtain instructions at a videoconference because the defendant had kept his voice low out of fear that he would be overheard.

- Questions relating to the defendant's bail status are usually resolved well before the PDH although a bail application based on changed circumstances can be made at any time during the pre-trial period. Data sheets recorded applications made on behalf of three defendants (five per cent). None of these applications was granted.
- Pilot cases included one with co-defendants in custody, three with one defendant in custody and co-defendants on bail and three with at least two co-defendants in custody and additional co-defendants on bail. Court clerks found that those cases with a mixture of defendants appearing over the link and in person were the hardest to manage.
- Link hearings lasted 12 minutes on average. No baseline data were available for comparison with the length of PDHs at which the defendant is produced at court. Most participants considered that defendants were produced for link hearings at least as quickly as when they are brought to court and that the video link had no impact on the length of hearings.
- A majority of clerks and a large majority of advocates felt that defendants in the courtroom could follow proceedings and maintain eye contact with the judge better than those appearing on the link. Three judges expressed concern about the defendant's ability to follow what was happening. On the other hand, 92 per cent of defendants on the link felt that they were being looked at by people in court who spoke to them. Around 90 per cent of prison officers on duty in the courtroom at the prison felt that defendants both paid attention to proceedings and could follow what was happening.
- Video link hearings involve clerks in carrying out various tasks in addition to their normal duties of logging the judge's directions. In particular, they must ensure that, whenever possible, the camera is pointing at the person speaking. Some clerks had difficulty in doing so at pilot hearings observed by the evaluators. Defendants can easily become confused if the speaker is not in shot at any particular time. The layout and design of the video link courtroom and the adherence of participants to some simple protocols are important in avoiding such confusion.
- Training for video link hearings was focused on a group of four clerks who then cascaded their skills to other clerks taking the video link court. Circuit judges at Manchester did not participate in mock hearings. Their only preparation for presiding at link hearings was a demonstration of the link at an open evening. Some link hearings were presided over by visiting High Court judges who received no preparation whatsoever. The same was true for prosecution and defence advocates except those who saw the link demonstrated at the open evening. Most participants saw little need for training in relation to link hearings but, in the view of the evaluation team, they generally underestimated the additional skills required and the benefits that more comprehensive preparation might bring.
- The magistrates' courts pilot evaluation discovered wide approval among defendants for video link hearings and a number of potential benefits to them through avoiding the trip to court. A similar picture emerged in this study. Seventy-six per cent of defendants said they preferred to be in the prison for their hearing compared with 24 per cent who would rather come to the court building.
- Seventy-one per cent of prosecution advocates felt that the link was unfair in some respect. The corresponding figure for defence advocates was 52 per cent. Three of the four circuit judges interviewed also expressed strong misgivings about the link.

However, 81 per cent of defendants and all clerks and prison officers felt the link was fair.

- The costs of video link facilities depend to a large extent on the characteristics of the hosting courts and prisons. It is therefore not possible to estimate from the pilot experience the likely cost of introducing video links on a wider scale. However, the savings in escort costs during the pilot in respect of category A prisoners who appeared over the link amounted to at least £18,500.

Based on the above findings, the evaluation report makes the following recommendations:

Recommendation 1: In procuring video link equipment for courts and prisons, the specification should address both the level of performance required when the equipment is installed in its working environment and the technical details of interfacing systems. Suppliers should be required to describe any loss of functionality that will result when operating their equipment with that of a different manufacturer. Acceptance testing of the system should be carried out in the intended setting.

Recommendation 2: A review of court accommodation should be conducted to establish the feasibility and cost of providing the facilities required for video link hearings. This should consider the suitability of existing courtrooms to host such hearings and the possibility of siting videoconference booths nearby. The survey should identify opportunities for using existing video equipment for link hearings.

Recommendation 3: The specification for consultation booths and housing for telephones used to take instructions during a hearing should include a requirement that conversations conducted at normal volume must not be audible to anyone other than the lawyer and the defendant.

Recommendation 4: Guidance from the Bar and legal training should emphasise the need for advocates to speak to clients at the end of each hearing to ensure that they understand the decisions that have been reached. Explanatory material about the link for lawyers should draw attention to the option of being with their client in the prison rather than in the courtroom.

Recommendation 5: Those participating in video link hearings should undergo training beforehand. Written guidance should be developed for use during training and for subsequent reference. The training should include an opportunity to take part in mock hearings where the skills learned can be tried out in a simulated working environment. Wherever possible, only trained personnel should take part in video link hearings.

Recommendation 6: Following the Comprehensive Spending Review, the government set up new structures for joint strategic planning across the criminal justice system. Video links are an ideal candidate for the strategic approach which these structures are intended to implement. The IBIS initiative should assume responsibility for coordinating the planning and funding of the various criminal justice projects that rely for their success on video links. It should also consult with legal practitioners and the judiciary on measures to maintain the quality of justice at video link hearings.

Chapter 1 Introduction

- 1.1 This is the report of an evaluation of the pilot use of video links between HMP Manchester and Manchester Crown Court. The evaluation was undertaken on behalf of the Prison Service by Joyce Plotnikoff and Richard Woolfson. The Crown Court pilot was an extension of the pilot use of video links for preliminary hearings in magistrates' courts, which was the subject of an earlier evaluation.² During the pilot, the Crown Court video link was used primarily for plea and directions hearings (PDHs) in custody cases committed at a video link hearing from Manchester City Magistrates' Court. Some applications to extend custody time limits and pre-trial reviews were also heard over the link.
- 1.2 The pilot began in September 1999 and was scheduled to last three months. However, at the end of this period it was decided to continue the use of the equipment at least until April 2000 and this evaluation report will inform a decision on the future of video links in the Crown Court.
- 1.3 The purpose of the evaluation was to examine the suitability of video links for conducting preliminary hearings in the Crown Court. In particular, the study was asked to address:
- the configuration and performance of the video link equipment
 - the effect of the video link on the relationship between advocate and client
 - the arrangements for pre- and post-hearing consultations between lawyer and client
 - the scheduling and length of hearings
 - the effectiveness of consultation about new working practices
 - the impact of the link on the prison regime, in particular accommodating the needs of both the Crown Court and the continuing video link hearings at Manchester City Magistrates' Court
 - associated training issues.
- 1.4 The evaluation sought the views of defendants, lawyers, court clerks, prison officers and the judiciary, with particular regard to whether these groups considered that video link hearings in the Crown Court were fair.

Methodology

- 1.5 The contract for the evaluation was let in September 1999, just as the pilot was about to begin. There was therefore no opportunity to undertake the collection of baseline data at hearings without the video link, which could be used for comparison with pilot data. However, the Court Service made available the statistics it collects on PDHs at Manchester Crown Court covering a period of 20 months prior to the start of the pilot.
- 1.6 The evaluators attended planning meetings and an open evening held at the court during September 1999 to demonstrate the video link equipment to court staff, the

² Joyce Plotnikoff and Richard Woolfson, *Video Link Pilot Evaluation*, HM Prison Service, 1999.

judiciary and members of the legal profession. Throughout the evaluation period, they attended working meetings to resolve problems that arose with use of the link.

- 1.7 The evaluators visited Manchester on a number of occasions during the pilot to observe video link hearings from both the court and the prison. These visits also provided an opportunity to interview in person judges, court staff, defence and prosecution advocates, defendants and prison officers participating in link hearings. These supplemented information from questionnaires that were distributed to all groups apart from judges at each pilot hearing. All questionnaires were confidential and returnable to a Freepost address. The return envelopes distributed to prisoners were marked to indicate that they contained a privileged communication.
- 1.8 The number of interviews and responses received to questionnaires is shown in Table 1.1. Participants in all categories may have completed a questionnaire on more than one occasion, hence the number of respondents may be fewer than the number of returned questionnaires. As questionnaires were anonymous to ensure confidentiality, it is not possible to say how many participants responded. However, lawyers were asked to record their views as to the fairness of the link only on the first occasion that they completed a questionnaire. The 23 defence lawyers who completed questionnaires each represented a single defendant over the link on the days to which their responses refer.

Table 1.1: Number of responses from each category of participant

Role	Number of responses
Judges	5
Court clerks	7
Prosecution advocates ³	24
Defence advocates	23
Defendants	54
Prison officers	25
Total	138

- 1.9 In order to let members of the public and other participants who did not receive a questionnaire provide comments on the use of the video link, posters were prepared and displayed prominently in the foyer of the court, outside the video courtroom, in the robing room and videoconference booths and in the holding area at the prison. However, no written comments were received as a result of these posters.
- 1.10 To provide a record of equipment performance and reliability, the prison and the court were asked to maintain a log of all faults including the nature of the problem and the speed and effectiveness of remedial action taken by the support contractor.

³ Of course, many advocates accept both prosecution and defence briefs.

Acknowledgements

1.11 The completion of this evaluation within the allotted time was only possible thanks to the cooperation of the many agencies and individuals involved in the pilot. Staff at Manchester Crown Court and prison officers in the video link suite at HMP Manchester gave us their unstinting support throughout. We are particularly indebted to Anne Bradley the court manager, Pat Bergin the deputy manager and Paul Cox the accommodation officer who were consistently welcoming and helpful. At the prison, Principal Officer Pat Langford and Officer Howard Dove were tireless in responding to requests for information and in arranging visits to the prison by team members wishing to observe at link hearings. We are grateful to court clerks who patiently recorded the details of link hearings and distributed questionnaires to participants. Judges gave generously of their time for interview and the Honorary Recorder of Manchester was particularly supportive of the research. Probation officers at court described to us the impact of the link on their work. Our thanks go also to the many prosecution and defence advocates, defendants and prison officers who completed and returned questionnaires about their experience at link hearings. We would like to acknowledge the help we received from Jim McMath of Mar-Com Systems Limited who answered our many technical questions about the video link equipment. Finally, we are again indebted to Mary Wilkinson of the Prison Service who has facilitated all aspects of the evaluation. Her organisational and personal skills have been crucial throughout and the success of the pilot is due in large part to her efforts.

Chapter 2 The video link courtroom

- 2.1 Court 14 at Manchester Crown Court is unexceptional in its layout and design. It is a large square room with the raised judge's bench against one wall directly facing the dock on the opposite wall. The jury box is on the judge's left and to the right are seats for the probation service, the press and the public. Advocates and representatives of defence solicitors and the CPS sit on benches in the well of the court facing the judge. The clerk sits at a desk in front of the judge's bench facing the lawyers and the dock. A court stenographer sits to the right of the clerk and makes a record of everything said in court.
- 2.2 For the purpose of the pilot video link hearings, two cameras, five monitors and microphones have been added. The equipment allows a videoconference to be established with the prison using three pairs of ISDN lines. On the clerk's desk is a fax machine to send documents to the prison and a video link control module. The module has a small screen on which programmable touch buttons are displayed.
- 2.3 One camera is located high on the wall to the judge's left above the jury box. It can swivel through a semi-circular arc to any one of six preset positions at the touch of a button on the clerk's control module. The presets allow the camera to provide close-ups of the judge, court clerk, prosecution and defence advocates. There is also a wide-angle view which shows both advocates in a single shot. The second camera is fixed on the judge and is mounted on top of a monitor on the judge's desk. The clerk can switch between the two cameras using the control panel.
- 2.4 As well as the judge's screen, there are small monitors in front of both advocates and a large monitor on the bench top of the jury box directly below the wall-mounted camera. An additional large monitor is placed at the end of the judge's bench facing the court to allow others present in the courtroom, including the public, to view the proceedings. Microphones are provided for the judge, clerk and advocates and these are connected to the video link unit through the court's audio system.
- 2.5 A short distance from the video courtroom there are three booths. Two of these are equipped with a videoconferencing system that uses a single pair of ISDN lines. The booths are available for lawyers to hold pre- and post-hearing videoconferences with their clients in the prison where there are similarly equipped booths. Lawyers should book an appointment for such a videoconference with the prison at least 24 hours in advance to ensure that booths will be available. The third booth contains a telephone used mainly for lawyers to consult their clients during the course of a hearing. Guarantees of confidentiality from the Prison Service, the court and the system suppliers are displayed in all the booths.
- 2.6 At Manchester prison there are two video courtrooms, one in the standard wing and one in the Category A wing. Both courtrooms are of similar design. The defendant sits in front of a single monitor on which is mounted a camera pointing directly at him. There is also a telephone in the courtroom and a fax machine in an adjoining office. A prison officer is present during the hearing but usually out of shot of the camera.

Crown Court Video Link Pilot Evaluation

- 2.7 Before the hearing begins, the clerk establishes a link by dialling the prison using the control module and checks the quality of the connection. In addition to the full-screen image from the camera in the prison courtroom, the monitor shows in one corner a small image of the picture from the courtroom camera. This image is known as 'picture-in-picture' and its position can be moved around the monitor screen using a button on the clerk's control module. The monitor in the prison also has picture-in-picture but its position on the monitor cannot be changed. However, the feature can be removed altogether by the prison officer.
- 2.8 The judge enters the courtroom and the prisoner is brought into the prison courtroom and seated in front of the monitor and camera. The judge directs under Section 57 of the Crime and Disorder Act 1998 that the defendant will be treated as if he was present in the courtroom. The clerk introduces the participants and explains some procedural details to the defendant, including how to signal to the court during the hearing that he wishes to speak to his lawyer.
- 2.9 If the defendant wishes to speak to his advocate during the course of the hearing, he raises his hand in the manner described by the clerk at the start of the hearing. With the judge's permission, the advocate goes to the telephone booth and dials the phone in the prison courtroom to speak to the defendant in private.
- 2.10 At the end of the hearing, the judge addresses the defendant, summarises the decisions that have been reached and confirms that the defendant understands. The advocate may then use the videoconferencing booths to hold a further consultation with the defendant.

Chapter 3

The video link hearings

Number and type of hearings

- 3.1 Between the start of the pilot on 22 September 1999 and the end of fieldwork data collection on 10 February 2000, 92 Crown Court hearings were held over the link. One hundred and two prisoners had appeared on the link at these hearings, although the figure includes some double counting as a small number of prisoners appeared on more than one occasion. Case data sheets prepared by the evaluation team were completed by court clerks in relation to 64 defendants.
- 3.2 Eighty-six video link hearings were for plea and directions, four were applications to extend custody time limits and two were pre-trial reviews.
- 3.3 The greatest number of video link hearings on a single day was five and on most days there were only one or two. The number of video link hearings was fewer than expected by Crown Court staff. Two factors may have contributed to this. First, there were fewer PDHs of all kinds listed at Manchester Crown Court during the pilot period compared with a similar period in 1998, as Table 3.1 shows.

Table 3.1: Number of PDHs of all kinds listed at Manchester Crown Court

Month	Year	
	1998	1999 (pilot)
September	250	198
October	218	187
November	232	224
December	237	199
January	191	170
Total	1,128	978

- 3.4 The second reason for the reduced number of link hearings is that certain cases committed to the Crown Court for a link hearing were subsequently taken out of the video link list. This occurred when the Crown Court received written notice from the defence solicitors that a guilty plea would be entered to the counts on the indictment. In such instances, a video link PDH would have been adjourned after pleas were taken to allow the defendant to be produced at court for sentencing. To ensure best use of court time, the hearing was instead taken out of the video link list and rescheduled for the defendant to be brought to court. The new hearing date was sufficiently far ahead to allow a pre-sentence report to be prepared where this was thought appropriate. This meant that the court could proceed directly to sentence on the rescheduled date. In the period between the start of the pilot and the end of 1999, nine hearings were removed from the video link list for this reason.

Crown Court Video Link Pilot Evaluation

The defendants

- 3.5 The 64 defendants in the hearings at which data were recorded were aged between 21 and 63. Five of these prisoners were provisionally classified as category A. Special security measures are necessary when such prisoners are transported to court.⁴
- 3.6 In seven cases, defendants appeared with co-defendants: two cases involved a single co-defendant on bail, one case had three co-defendants all of whom appeared on the link and the other four cases had a mixture of co-defendants on bail and on the link.
- 3.7 All but one of the defendants who appeared on the link were legally represented. The exception was a defendant who appeared on the first day the link was used. He dismissed his lawyers and his PDH was rescheduled for a further link hearing with new lawyers a week later.
- 3.8 None of the defendants who appeared during the pilot required the use of an interpreter.

Offences and pleas

- 3.9 Data about the most serious count on the indictment were available in relation to 60 of the 64 defendants. Forty-four indictments (73 per cent) included an indictable-only offence while 16 (27 per cent) related to either-way offences.
- 3.10 Pleas were entered by 45 defendants of whom 11 (24 per cent) pleaded guilty and 34 (76 per cent) pleaded not guilty. Of 12 defendants charged with either-way offences, three (25 per cent) pleaded guilty. In cases involving indictable only offences eight out of 30 defendants (27 per cent) entered a guilty plea. In the remaining three not guilty plea cases the type of offence was not recorded.

Outcome of hearings

- 3.11 The outcomes of the hearings for the 64 defendants involved are shown in Table 3.2:

⁴ During the pilot period as a whole, seven category A prisoners appeared over the video link. Six of these were further classified as 'high risk' and their transportation would have involved even more elaborate security than usual.

Table 3.2: Results of video link hearings

Outcome	Number of defendants
Case was adjourned for trial on at least some counts	36
Pleas were acceptable and the case was adjourned for sentence	11
Case was adjourned for a further PDH over the link	5
Case was adjourned for the defendant to attend in person at a further PDH	4
Custody time limits were extended	6
Counts were ordered to lie on file	1
Case was adjourned for mention at the conclusion of another trial	1
Total	64

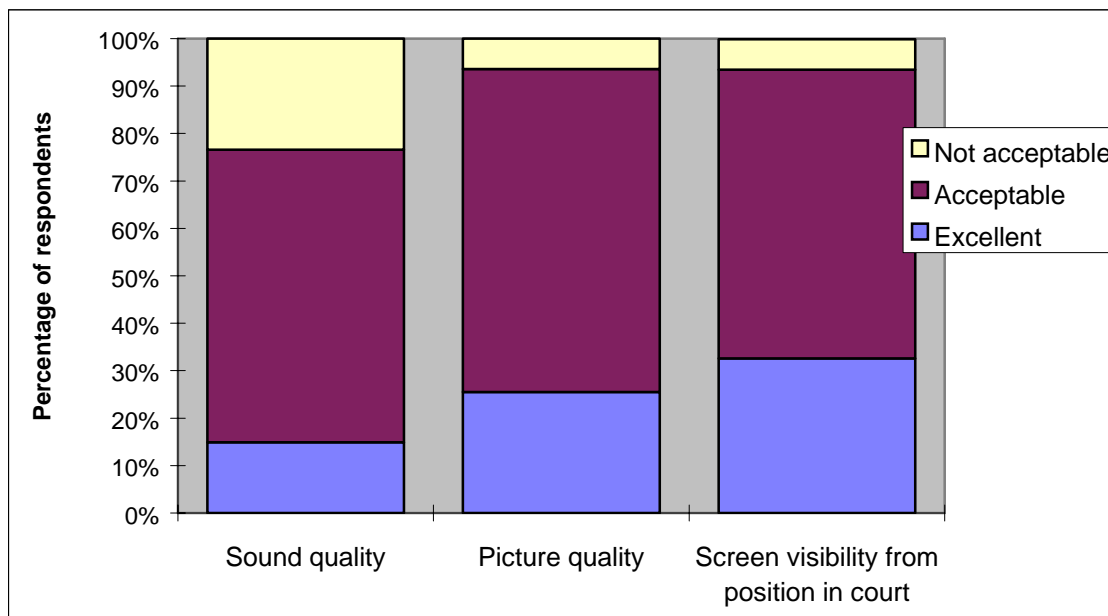
Chapter 4 Key issues

Equipment reliability and performance

- 4.1 Only one pilot hearing was abandoned because of problems with the video link equipment. This occurred on the last sitting day before Christmas. The problem was subsequently found to be that the ISDN lines needed re-setting, a process that takes only a few minutes. Because staff on duty that day were less familiar with the equipment, the problem was not diagnosed immediately and the list was abandoned.
- 4.2 Although equipment could generally be relied upon not to fail, there were problems with performance particularly in relation to sound quality. These were most acute during the first few weeks of the pilot. As a result of various changes to the system set-up, sound quality subsequently improved.
- 4.3 Some early difficulties with feedback at both ends of the link were solved by repositioning monitors. A further problem arose with interference between link equipment and the court's Lanier tape machine. This had the effect that some court microphones were rendered inactive. The problem was overcome by the video link system suppliers who built a custom interface to reduce the signal level from the tape machine.
- 4.4 The quality of sound received at the prison proved to be very sensitive to the positioning of microphones at the Crown Court. The microphone on the clerk's desk sometimes picked up the distracting sound of papers being shuffled; on the other hand, if the mike was moved too far from the clerk it became hard to hear what was said. In the end, satisfactory positions were found through trial and error.
- 4.5 Some of the problems illustrate the difficulties of interfacing equipment produced by different manufacturers. The Crown Court used a Sony video system while the prison used PictureTel equipment. Although both systems conform to certain international standards which ensure they can operate together, some proprietary functionality was lost. For instance, when the sound at the Crown Court end of the link is muted a message to this effect should appear on the monitor at the prison. With the mixed equipment used in the pilot this did not happen, resulting in confusion at the prison end of the link. To overcome this, the court clerk was instructed always to tell the prison prior to muting.
- 4.6 Picture quality was generally good throughout the pilot but the limitations of the equipment caused a problem of another kind. A delay of a few seconds occurred when switching between the wall-mounted courtroom camera and the camera on the judge's desk. Because of the speed of exchanges between courtroom participants, the delay made it impractical to switch views in this way. Instead, the judge's camera was not used and the wall-mounted camera was used throughout. A technical solution to the delay problem was available but the cost of around £1,500 was not thought to be justified under the circumstances.

4.7 Defence and prosecution advocates were asked for their views on equipment reliability. Of the 44 who replied, 35 (80 per cent) said the equipment performed reliably and seven (20 per cent) said it did not. All but one of the hearings at which reliability problems were reported took place during the first half of the pilot. Descriptions of the nature of these complaints revealed they were more to do with performance than reliability. Advocates' views on equipment performance are illustrated in Figure 4.1.

Figure 4.1: Advocates' views on equipment performance



4.8 A large majority found all three aspects of equipment performance acceptable or better. Sound was the most problematic feature and the majority of complaints related to hearings during the first half of the pilot period. Concerns about defendants' ability to hear what was happening in the courtroom were expressed by both prosecution and defence advocates:

“The defendant could clearly not hear what was happening in court.”

“The defendant could not hear any of the proceedings after the arraignment.”

4.9 One defence advocate complained about the sound in the videoconferencing booth:

“In conference the link was poor. The defendant could not properly understand me.”

4.10 The quality of sound at the courtroom end of the link was generally acceptable although one prosecution advocate had difficulty in hearing the defendant.

4.11 Judges' concerns also centred on sound quality. One complained of being unable to hear the defendant clearly at hearings throughout the pilot. Another spoke of defendants “straining to hear what is going on”. However, a High Court judge who presided at an early hearing was impressed by the system:

Crown Court Video Link Pilot Evaluation

“There were no delays and the equipment worked well. The sound was very good and the hearing proceeded in the normal way.”

4.12 On case data sheets, clerks reported performance problems at six out of 32 sessions (19 per cent). All the problems occurred during the first two months of the pilot and all related to defendants’ inability to hear what was happening in the courtroom. After these initial problems were sorted out, clerks reported that the system worked well.

4.13 All seven clerks described picture and sound quality and screen visibility as acceptable although two complained that, on occasion, synchronisation between the speaker’s voice and lip movements was lost.

4.14 Defendants and prison officers were less critical of equipment performance than courtroom participants. Forty-nine (91 per cent) defendants said they could hear everything said in court during the hearing and 51 (94 per cent) said they could see the court clearly on their screen. Only one prison officer commented adversely on performance:

“You could hear everything in court but there was a lot of distracting residual noise i.e. papers being shuffled, which at times made it difficult to hear what people were saying.”

4.15 During the pilot, members of the evaluation team observed a number of video link hearings both in the prison and in the courtroom. The sound quality on these occasions was adequate but not perfect. The defendant at a PDH usually speaks only to confirm his name and enter a plea. Most speech comes from the participants in the courtroom and so the quality of sound at the prison end is of particular importance. In the view of the observers, the sound at the prison end had a “fuzzy” quality particularly when the clerk was speaking and prisoners often appeared to be straining to hear what was being said.

Pre-hearing contact and pleading guilty

4.16 Defendants appearing at the Crown Court have usually spoken to a solicitor about their case on a number of occasions. Those remanded in custody may have been visited in prison by a solicitor or caseworker. It is possible but less likely that they will have seen the advocate who is to represent them at the PDH. The first such meeting often takes place in the cells at the Crown Court. The discussion is likely to include how the defendant will plead and whether the prosecution will accept a guilty plea to a lesser charge than that appearing on the indictment. In the case of a defendant appearing over the video link, the meeting in the cells is replaced by a videoconference shortly before the start of the hearing.

4.17 None of the 23 defence advocates who completed a questionnaire had represented their client at a previous hearing in the magistrates’ court. Six (26 per cent) said they or their representative had visited the defendant in prison. One had held a videoconference before the day of the hearing and 15 (65 per cent) on the day of the hearing. One advocate had spoken to his client by telephone on the day. Three defence advocates (13 per cent), all of whom were appearing on the link for the first time, indicated no pre-hearing contact with the defendant.

4.18 Most defendants had had some contact with their legal representatives although, to avoid confusion, they were not asked to identify whether such contact was with a solicitor, a barrister or a caseworker. Forty-six (85 per cent) said they had been visited by a legal representative in the prison prior to the hearing; 49 (91 per cent) said they had taken part in videoconference with their lawyer prior to the hearing and 30 (56 per cent) had discussed their case with their lawyer on the telephone. Two defendants (four per cent) had not been in contact with their lawyers by any of these methods.

4.19 A major objection to the use of the video link by both defence and prosecution advocates was that it hampered discussions with the defendant about plea. Such discussions were seen as the primary purpose of the PDH. Videoconferences were not considered suitable for establishing the rapport necessary for effective communication on this subject. Advocates described the difficulties of conducting discussions on plea over the link as follows:

“I found the process of conference with the client beforehand very impersonal and not conducive to getting to grips with the issues that needed to be dealt with.”

“A videoconference may prevent the holding of a proper relationship of trust between defendant and counsel where counsel can give robust advice on pleas.”

4.20 In describing the circumstances in which they would apply for their client to appear in person instead of over the link, defence advocates commented:

“In almost any circumstances other than a straightforward PDH. The video link is not appropriate where there need to be negotiations at court with the Crown over possible pleas and hence the need to see the client several times before the hearing itself.”

“If there was a need to discuss substantive issues.”

“If the defendant was pleading or likely to be pleading guilty or if I felt it likely that I would strongly be advising a guilty plea.”

“If pleas might be entered which would require negotiation with or consideration by CPS and further instructions.”

“When the client needs advice as to plea or the strength of the case against him (i.e. often); when careful instructions on any evidence need to be taken (often). It will be a rare case when it is in a client’s interest not to be at court.”

4.21 Two defendants also felt that the video link was a barrier to communicating with their lawyer:

“At Crown Court it is inappropriate because you feel restricted about what you can say to your lawyer over the video link and there might be an important issue you want to raise with him.”

Crown Court Video Link Pilot Evaluation

“The barrister should decide if I come to court or not because he knows if a deal is on the cards. At court you’re waiting for hours so there’s more time to discuss a deal.”

- 4.22 Judges acknowledged the difficulties. One felt that it was not possible to have a meaningful discussion about plea over the link. Although he was sceptical in general about the effectiveness of PDHs in encouraging early guilty pleas, he nevertheless felt that “in the few cases where a deal is possible at the PDH, the use of the video link prevents this”. A second judge referred to the “freezing effect of technology” and took the view that plea discussions were “easier on a face-to-face basis”. However, this judge saw the solution as a pre-hearing conference between advocate and client:

“Provided counsel has had a proper conference with his client beforehand, the hearing goes well.”

- 4.23 Another judge agreed:

“In my experience the facilities do not permit a detailed and intimate discussion between counsel and client in the way in which such discussions can take place face-to-face. This can be overcome by holding a conference at the prison in advance of the PDH.”

- 4.24 Concerns that video links reduce the guilty plea rate were not borne out by experience during the pilot. In the 45 video link hearings at which the data were recorded, 11 defendants (24.4 per cent) entered a guilty plea. The highest monthly guilty plea rate for all PDHs at Manchester Crown Court during the pilot period was 21.2 per cent during September 1999. The comparison is even more striking when one takes into account that confirmed guilty pleas were removed from the video link list for the defendant to attend in person at an ordinary PDH.

Client consultation during the hearing

- 4.25 During a PDH at which the defendant is present in the courtroom, the defence advocate may approach the dock at various points to take instructions. Sometimes the defendant will attract the advocate’s attention for this purpose. At link hearings, court clerks in their opening remarks told defendants that they should raise their hand at any point if they wished to speak to their advocate. Proceedings would then be stopped while the lawyer left the courtroom and went to the nearby telephone booth designed for this purpose.

- 4.26 In practice, the arrangements were little used. Case data sheets recorded that only six out of 64 defendants (nine per cent) spoke to their advocate during the hearing. One judge found the arrangements unsatisfactory:

“I ask a lot of questions at a PDH and it is hard for counsel to consult with his client when responding. The use of the telephone outside the courtroom for such consultation is not practical – it is inconvenient and it breaks up the hearing.”

- 4.27 A prosecution advocate agreed:

“The hearing was made longer than would otherwise be the case because matters arose which required defence counsel to take instructions from the defendant during the hearing, which necessitated a long delay to enable a private consultation.”⁵

4.28 However, another judge felt that the need for such consultation indicated poor preparation:

“Defendants interrupt to speak to counsel because they have not had a satisfactory conference beforehand.”

4.29 In questionnaire responses, four defence advocates (17 per cent) said they took instructions from their client over the telephone in the course of the hearing. One of these described the problems of taking instructions in this way as:

“A total lack of immediate access. It is impersonal and cold with no opportunity for human contact with the client. There was also delay to the court when I had to leave to consult my client by telephone.”

4.30 Three other defence advocates, who had not used the telephone to take instructions, also pointed to problems:

“There is a loss of eye contact and a sense of remoteness. It does not enable you to build any rapport or inspire confidence.”

“It involves holding up the proceedings while we go back to the private booth. This wastes time and is not an appropriate way to treat clients.”

“It is totally impossible to take running instructions, e.g. if the date suggested [for trial] is not convenient to counsel.”

4.31 Defendants’ responses suggested a higher level of use of the procedure. Twenty-five out of 54 defendants (46 per cent) said they had spoken to their lawyer over the telephone during the hearing. This high proportion may be the result of a failure to distinguish between such conversations from videoconferences held before and after the hearing. One defendant who had given instructions during the hearing nevertheless felt the procedure was unsatisfactory:

“Sometimes the occasion occurs where you would like to ask a question with your lawyer - in this instance you would have to stop the court and you find you are not used to this.”

4.32 In contrast, another defendant who had spoken to his advocate preferred the video link arrangements for taking instructions which he described as “better than in the courtroom where it is hard to interrupt”.

4.33 Among the 29 defendants who had not given instructions during the hearing, four (14 per cent) said they did not want to interrupt proceedings, one (three per cent) was not

⁵ The length of video link hearings is discussed at paragraph 4.58.

Crown Court Video Link Pilot Evaluation

aware that the facility existed and the other 24 (83 per cent) said they had no need to use the telephone for this purpose.

Client contact after the hearing

4.34 The evaluation report on video link hearings in the magistrates' courts referred to the importance of post-court consultations between lawyer and client as an opportunity to explain to defendants the decisions the court had reached and the next stage in the process. This is equally true of Crown Court proceedings. Of the 23 defence advocates who returned questionnaires, eight (23 per cent) had held a video consultation with their client following the hearing. None of the rest had spoken to the defendant on the telephone. Out of 54 defendants, 33 (61 per cent) had had a videoconference or telephone conversation with their lawyer after the hearing. Twenty-one (39 per cent) had had no post-hearing contact with their lawyer.

Confidentiality

4.35 As with the magistrates' courts pilots, the issue of the confidentiality of client consultations was a primary concern for many advocates. Despite undertakings on confidentiality from the Court Service, the Prison Service and equipment suppliers being posted in videoconferencing booths, suspicions of bugging persisted. Eight advocates (35 per cent) said they were not satisfied with the confidentiality of videoconferences and a further seven (30 per cent) could not say whether or not they were satisfied:

"I am not reassured as to who else might listen in to or record conversations."

"Videos are not confidential. People can listen in either deliberately or inadvertently. In one case recently the conference appeared on screen in court for all to see and watch."⁶

"I could not see whether either end or the middle was being eavesdropped or intercepted."

"I do not trust that phone line is secure."

"There will always be a feeling of being monitored whether this is true or not."

4.36 There were also concerns about the sound leakage at both ends of the link:

"Conversations can clearly be heard from outside the video booth."

"The defendant seemed unsure whether we could be overheard and we could see another defendant sitting outside his room, through a glass partition."

4.37 The issue of conversations being overheard from outside the booths is a real one. The videoconferencing equipment in the booths comprises a camera with a built-in

⁶ In fact, such an event could not have occurred. The system supplier explains that while the courtroom videoconferencing system works on three ISDN pairs, the booths operate on a single pair. It is therefore impossible for the booth system to multipoint with that in the courtroom.

microphone and a 14-inch monitor. There is a natural tendency to raise the level of one's voice when using this set-up, thus increasing the chance of being overheard from outside the booth. The booths in the magistrates' court and the prison are provided with videophones, which have a smaller screen and a telephone handset. As an experiment, the equipment in one of the booths in the court was replaced for a day with a videophone borrowed from the prison. Because lawyers did not raise their voice when speaking into the handset mouthpiece, their conversations could not be overheard.

- 4.38 There was only slightly less suspicion about the telephone provided for taking instructions during the hearing. Five advocates (22 per cent) were not satisfied with the confidentiality of such conversations and four (17 per cent) were unsure. Reasons for dissatisfaction were similar to those relating to videoconferences.
- 4.39 Concerns about confidentiality were not restricted to telecommunication. Eight advocates (35 per cent) felt that legal consultations conducted at the prison were not confidential and four more (17 per cent) were not sure.

Listing video link hearings

- 4.40 Plea and directions hearings appear on the list of all circuit judges at Manchester Crown Court. For the pilot, it was initially thought best to restrict video link PDHs to a small group of judges. However, because of the difficulties this constraint imposed on listing, the number of judges involved grew. By the end of the pilot, eight circuit judges and two High Court judges had presided at a video link hearing.
- 4.41 During the pilot, video link hearings were listed in the afternoon as the prison video suite was already committed to magistrates' court hearings each morning. This arrangement was not ideal. The judge who normally sits in Court 14 was frequently obliged to change courtrooms to accommodate colleagues presiding at video link hearings. Moreover, as video link hearings were spread throughout the week, it was not possible to list any but the shortest trials in the video link courtroom. Towards the end of the pilot, discussions took place with the prison and the magistrates' court on changing these arrangements. As a result, it is planned to concentrate Crown Court video link hearings on a single day each week and to hear these cases in the morning as well as the afternoon. This arrangement should reduce the disruption caused to the judge of the video link court as well as making it possible to list trials in that courtroom. However, the arrangement will only be feasible as long as the number of video link hearings remains small.
- 4.42 The first video link hearing each day was listed at 2:15 p.m. to allow the advocate to hold a videoconference with the defendant at 2 p.m. Subsequent hearings were listed at 15 minute intervals. This arrangement differs from that used for ordinary PDHs which can be listed throughout the day and in no particular order. The invitation sent to lawyers to attend the open evening prior to the start of the pilot explained the need to adhere to the running order and times for pilot hearings:

“Whilst it has always been standard practice for courts to change the running order of the list on the day in order to utilise the time more efficiently, departure from a previously stated time will cause problems for the court and prison staff.

Crown Court Video Link Pilot Evaluation

Accordingly it is essential that legal representatives are available at the allocated list time."

- 4.43 Despite this explanation, some advocates complained about the fixed running order and starting times:

"The proceedings are now restricted preventing any flexibility or variation from a set path."

"The strict timetable for conferences and court hearings may prevent the flexibility required in a long list of cases for their efficient administration."

- 4.44 Despite the complaints, judges and court clerks reported that adherence to the listed running order was generally good and delays to the start of hearings were seldom longer than a few minutes. This was the case at hearings attended by the evaluation team.

Booking video consultations

- 4.45 The smooth running of video link sessions depended crucially on a disciplined approach by lawyers to prior booking of videoconferences with clients. Advocates were asked to contact the prison before the day of the hearing to book one or more 15 minute videoconference slots. The list of bookings was then forwarded to the court which would ensure access to the videoconferencing booths was available at the appointed time.

- 4.46 Despite strenuous efforts to publicise these arrangements, clerks reported that advocates frequently appeared at court with no knowledge of the procedure and no videoconference booked. Sometimes there was confusion as to whether the advocate or the instructing solicitor should make the booking. Because video link lists were usually short, the prison and court were able to arrange a videoconference in such situations despite the lack of notice. However, there was often a short resultant delay to the start of the hearing. The booths at the court were kept locked for security reasons and the key and remote control required to operate the equipment had first to be retrieved from court administration. Delays were worst where advocates appeared at court and requested a conference with only a few minutes to spare before the hearing was due to begin.

"On numerous occasions, counsel have attended minutes before the hearing is due to start and requested a telephone conference. The prison staff have always been very accommodating but it puts undue pressure on all staff to delay the start."

"Today, counsel did not know about the system or the need to book a conference. The solicitor had not done this."

"The need for solicitors to pre-book a telephone conference, and inform counsel of the same, needs to be emphasised again."

- 4.47 Six defence advocates (26 per cent) referred to problems they had encountered with booking videoconferences:

“I was briefed extremely late on in the day and therefore it was very difficult to book in to speak to my client before or after the hearing.”

“My solicitors did not know such conferences had to be pre-booked. There was no form of notification from the court explaining the procedure or that bookings were necessary.”

“I had to wait for a remote control. Would it not be possible to have the equipment and documentation at court for video hearings instead of disrupting administrative staff?”

4.48 There were some delays even where the proper booking procedure had been followed:

“A videoconference was booked for 2:00 p.m. for a 2:15 p.m. PDH. My client was brought into the booth at 2:15 p.m. for the conference.”

“The booking was made by my solicitors but not logged by the court. However, court staff organised a conference very efficiently.”

“The video clerk arrived late.”

4.49 As with the magistrates’ courts pilot, the booking of videoconferences has proved problematic and a potential cause of delay to the start of hearings. With short video link lists, the booking system is less crucial provided that booths and clients are available to each advocate 15 minutes before their hearing is due to begin. However, this could prove unmanageable in multi-defendant cases or if the number of hearings increases, as will happen if hearings are held on a single day each week.

Applications for defendants to appear in person

4.50 Applications to appear in person were made in relation to three (five per cent) of the 64 defendants for whom data were available. All three applications were made by the defence and all three were granted. Two of the three were co-defendants and their lawyer indicated to the court that they would plead guilty on the next occasion. The advocate for the third defendant explained to the court that his client was on the prison’s hospital wing and might be suffering from paranoia. The advocate had not been able to obtain instructions at a videoconference because the defendant had kept his voice low out of fear that he would be overheard.

4.51 None of the 23 defence advocates who returned questionnaires had made an application for their client to appear in person. Nine advocates (39 per cent) were aware that such an application could be made. One who was not aware said:

“Instructing solicitors are not aware of the defendant’s right to [apply to] attend the hearing. I was only instructed for the PDH, ‘holding’ the brief for trial counsel.”

4.52 Some of the circumstances in which advocates said they would make an application for an appearance in person are set out in paragraph 4.20 in relation to plea discussions.

Crown Court Video Link Pilot Evaluation

Among the rest, four said they would apply if the defendant was likely to plead guilty, two if they needed a detailed conference and two if the defendant was particularly troublesome. Three others said that in future cases they would always apply.

Bail applications made over the link

- 4.53 In most custody cases, the issue of the defendant's bail is resolved before the PDH. An appeal against the refusal of bail in the magistrates' court is usually heard by a judge in chambers in the absence of the defendant. Bail applications were made over the link on behalf of three (five per cent) of the 64 defendants for whom data sheets were available. None of these applications was granted. The prison reported that only one bail application was granted over the link during the course of the pilot. No comparison was possible with the success rate of bail applications at PDHs prior to the pilot as failed applications are not recorded on the court computer system.
- 4.54 None of the advocates who completed a questionnaire had made a bail application over the link and, unlike lawyers in the magistrates' court pilot, none mentioned specific concerns about doing so.
- 4.55 One judge who was opposed to the link in general said that he would not hear a bail application over the link because the defendant needed 'a complete understanding' of what was happening. However, another judge expressed the view that bail applications work satisfactorily over the link provided there has been a proper conference with the client beforehand.

"In normal circumstances, there is often a lot of to-ing and fro-ing between the defendant and his counsel in bail applications. This is difficult over the link but I am sure that people will get used to it in time."

Cases involving co-defendants

- 4.56 In the cases for which data were available, one involved co-defendants in custody, three involved one defendant in custody and co-defendants on bail and three involved at least two co-defendants in custody and additional co-defendants on bail. In these cases, all defendants in custody appeared over the video link.
- 4.57 Clerks generally found cases involving co-defendants appearing on the link and in person the most difficult to control. Four out of seven clerks complained about such cases:

"I am not yet convinced that cases with defendants in custody and on bail are suited to video link hearings."

"The link works best in hearings where all defendants are in custody. If some are in custody and some on bail in the same case, the hearing can become quite messy."

"The link is not very suitable for more than one defendant at a time. It is very difficult if you have one defendant in custody and one on bail in the courtroom."

“Mixed bail and custody cases do not flow well. The worst case involved two defendants in the dock and two in custody. This was a DSS case with 12 counsel. There was lots of argument from counsel. It was messy and very awkward. Three in custody is OK.”

The length of video link hearings

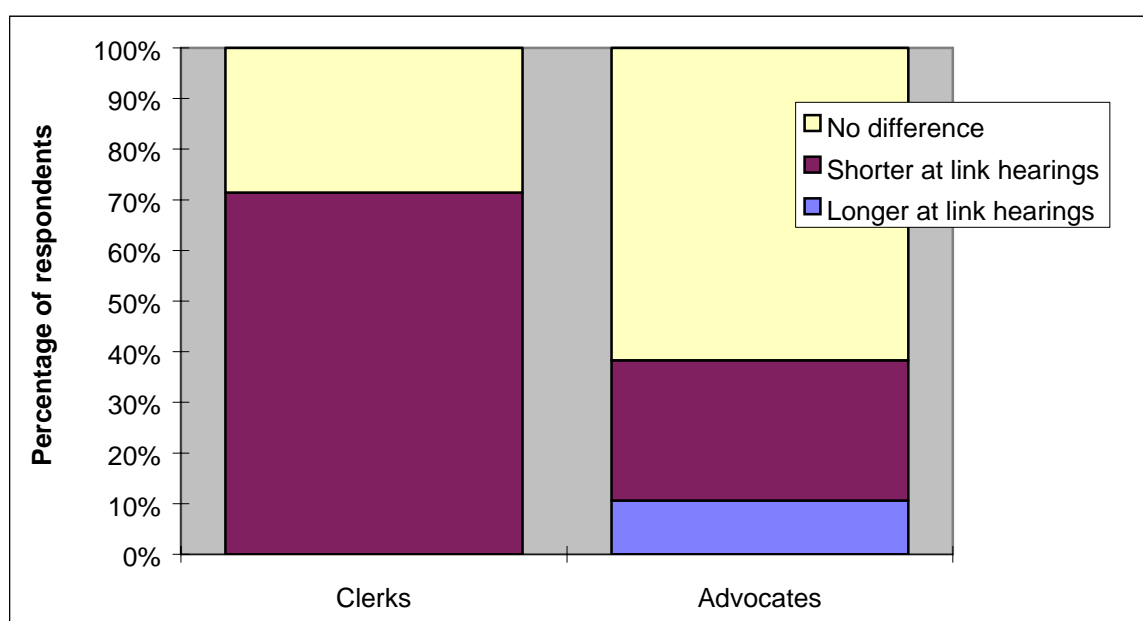
4.58 No pre-pilot data were available on the length of hearings at which defendants in custody are produced at court. Data on the length of 57 pilot hearings are presented in Table 4.1:

Table 4.1: Length in minutes of video link hearings

	Number	Length in minutes		
		Minimum	Maximum	Average
Without co-defendants	50	3	39	10.0
With co-defendants	7	13	40	26.3
All hearings	57	3	40	12.0

4.59 The data were supplemented with questions to courtroom participants on the perceived impact of the video link on the length of hearings. Most agreed that defendants were produced at least as quickly as when they were brought to court (Figure 4.2). Four out of 47 advocates (nine per cent) reported a delay of more than five minutes in producing the defendant for the start of the hearing.

Figure 4.2: Time to produce defendants in video link hearings compared with from the cells at court

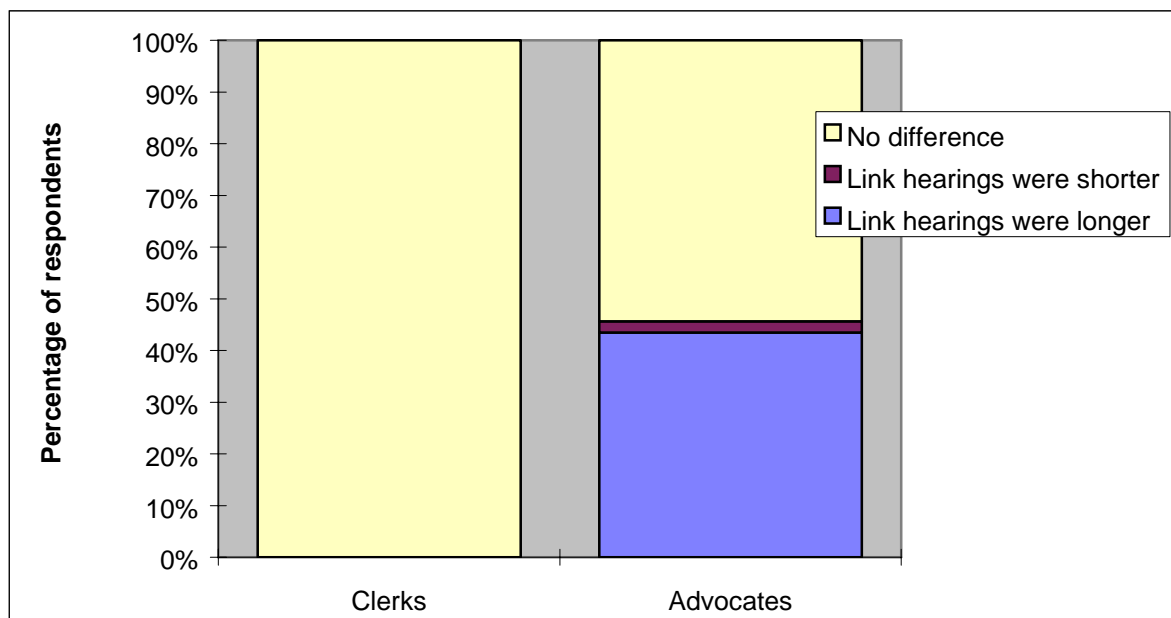


4.60 The majority view was that the video link had no impact on hearing length although some advocates felt that video link hearings were longer (Figure 4.3). On the other

Crown Court Video Link Pilot Evaluation

hand, one defence advocate who did not like the link nevertheless conceded, “the hearing itself was clinical but efficient”.

Figure 4.3: Length of video link hearings compared with those where defendants appear in person?



4.61 Judges generally agreed that the length of hearings had not been affected by the link.

Defendants' degree of involvement in proceedings

4.62 A concern often expressed by opponents of video links is that they diminish defendants' ability to follow what is happening in the courtroom. A majority of advocates and clerks in the pilot agreed (see Figures 4.4 and 4.5).

Figure 4.4: Views of defendants' ability to follow proceedings

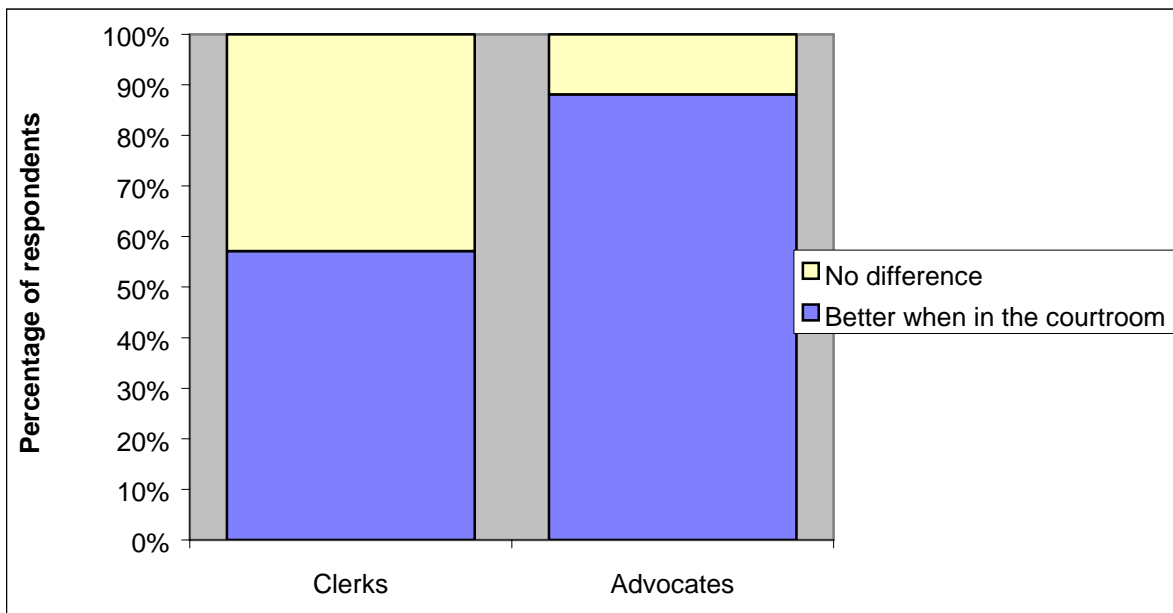
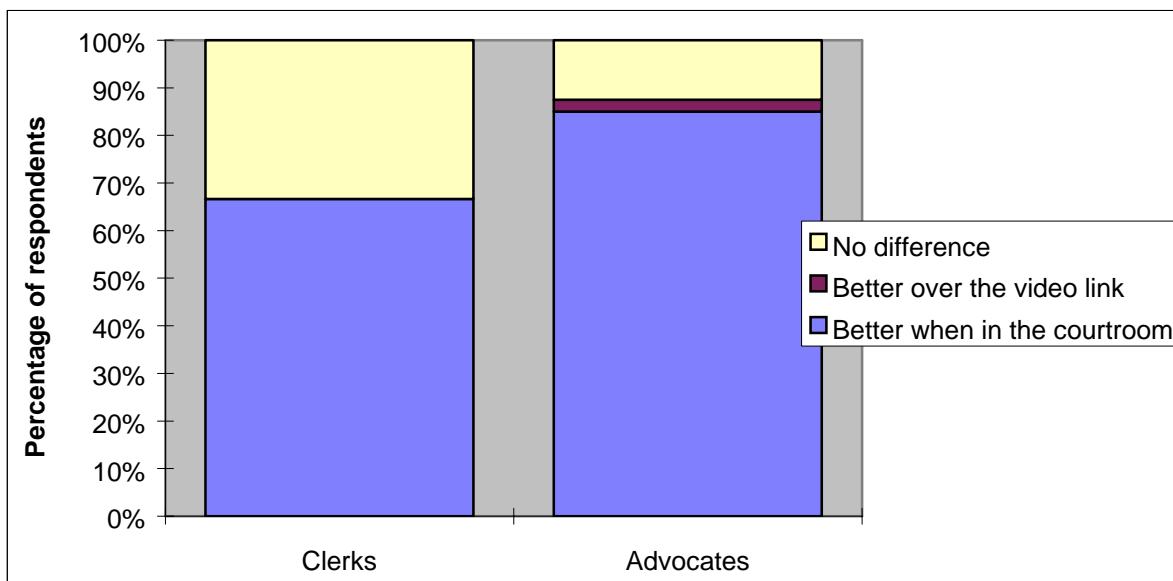


Figure 4.5: Views of judge's ability to maintain eye contact with defendants



4.63 Advocates' comments reflected the strength of their feelings:

“I am concerned about my client’s ability to follow what was going on. He told me he didn’t feel involved and got the impression he was the least most important person there. The whole process felt cold and remote.”

“As the defendant could not participate in any meaningful way, he did not treat the proceedings or the court with any seriousness.”

“The defendant in my case today felt he was excluded and could not follow the proceedings properly.”

Crown Court Video Link Pilot Evaluation

“It was obvious that the defendant had difficulty following proceedings in that he was unsure which pleas to enter on a six-count indictment, even though he was clear about this beforehand. I could not readily and discreetly assist him. I may try to see him in conference before sentence to redress this and reassure him of the efficacy of the system.”

“A remote defendant is totally unable to participate in proceedings in any meaningful way or to communicate confidentially with his legal adviser during the hearing, to express a view or change his mind. This is just an exercise in entering pleas.”

4.64 Defendants were asked if they felt that people in court were looking at them when they were being spoken to. Their answers were at odds with the views of advocates. Out of 50 replies, 46 (92 per cent) felt they were being looked at and only one (two per cent) did not. Two others said they could not tell whether or not they were being looked at. The final defendant commented “the judge did not look at me when he spoke but others did”.

4.65 Prison officers were asked whether defendants paid attention to proceedings over the link and could understand what was happening in court. Around 90 per cent answered yes to both questions. The remainder felt that some but not all paid attention and understood.

4.66 Three judges expressed concern about the ability of the defendant to follow proceedings in court. One wrote to the resident judge to say that, in his view, PDHs in cases involving child witnesses were not suitable for the video link. He referred to a particular hearing at which he had presided:

“In this case, there were several victims and the enquiries in relation to them took some time. Whilst this is being done the defendant is unable to follow what is happening in court, the technology being insufficient for him to realise that important questions which will affect his trial are being discussed between judge and counsel for both sides. I could hear the defendant asking from time to time what was going on. The questions were directed to the unseen prison officer who is always off-camera ... I don't believe it is satisfactory for the judge to give a commentary as to what is happening as that may lead to a question and answer session. The same applies to counsel as they would have to be talking to the defendant whilst other matters were being discussed.”

4.67 Similar concerns were expressed by two other judges:

“Some PDHs are paper-based and the hearing includes long silences while documents are being read followed by discussions with counsel. The defendant is not involved.”

“On one occasion, the defendant turned to the judge and said, ‘Has everyone forgotten I'm here?’.”

4.68 One judge suggested that these problems are related more to the nature of PDHs than to the use of the link. After a plea has been taken, the PDH agenda is devoted to technical issues that defendants find confusing whether they are present in the courtroom or appearing over the video link. This judge felt that the PDH was not the right vehicle for sorting out such details. He would prefer instead for the matters to be dealt with by a directions judge in the absence of the defendant. He likened such a procedure to the case management hearings which are now held in many civil cases as a result of the civil justice reforms.

The skills involved in running a video link hearing

4.69 The nature of the exchanges at a PDH is qualitatively different from hearings in the magistrates' court. After the initial pronouncements and the taking of pleas, the hearing is characterised by brief exchanges between judge and counsel about issues on the judge's questionnaire which both parties complete beforehand. The speed of these exchanges makes it difficult for the clerk to keep the speaker in shot. By the time the wall-mounted camera has swivelled to a new preset position, the speaker has often changed.

4.70 The demands on the clerk go far beyond knowing which buttons to press on the equipment console. Throughout the hearing, the clerk must keep a vigilant eye on the courtroom monitor: the defendant may signal that he wishes to give instructions to his lawyer; the advocate who is speaking may inadvertently move out of shot; or the picture-in-picture feature may need to be moved around the screen to avoid obscuring an important part of the view. All these tasks are in addition to the clerk's usual duties at a PDH of logging the judge's directions and communicating with the court's administration. The difficulties are compounded in cases involving co-defendants, particularly where some are on the link and some are present in the courtroom.

4.71 In hearings observed by the evaluation team, clerks, not surprisingly, had difficulty in performing all these tasks effectively. Rather than continuously moving the camera, some clerks showed a wide-angle view of the advocates for most of the hearing. The judge was brought into shot only for his opening and closing remarks. The distance shot made it hard for the viewer to discern which advocate was speaking, particularly because advocates remained seated while addressing the court. Later in the pilot, advocates reverted to standing while addressing the court and the camera presets for close-up shots were adjusted accordingly. This made it easier for defendants to tell who was speaking in the distance view although it was still less satisfactory than a close-up view of the speaker.

4.72 The comments of some clerks reflected the difficulties of their role:

"I am taking a log and it is hard to switch between this and operating the camera, particularly if the judge is quick. There is need for judicial training on this point."

"It is hard to follow the proceedings when many people are speaking."

"The camera should have a wider view. I leave it on main view when everyone is speaking. I find these hearings stressful because I am not doing them every day."

Crown Court Video Link Pilot Evaluation

- 4.73 Although the extra burden imposed by the video link falls mainly on the clerk, other participants are also affected. Judges referred to the need to control the pace of proceedings and keep an eye on the defendant at all times to ensure he remained engaged in the proceedings. The practice of asking the defendant to stand when being addressed, normally automatic, is not appropriate at video link hearings. Advocates need to sit in designated positions and avoid movements that take them out of camera shot. They must also master the technique of communicating with clients during a videoconference. Prison officers must ensure that the defendant can see and hear the proceedings at all times. They also need a basic familiarity with courtroom procedure, a skill largely lost since the role of escorting prisoners to court was transferred to the private sector.
- 4.74 Many of these skills can be acquired through training, which is discussed below. However, some of the issues raise questions about the layout of the video courtroom. For instance, in the early stages of the pilot, the monitor used by the clerk was not positioned directly below the wall-mounted camera. Because there is a natural tendency to look at the monitor rather than the camera, the clerk did not appear to be looking at the defendant when addressing him. The problem was solved by ensuring that the camera and clerk's monitor were in-line.⁷

Probation

- 4.75 The role of the Probation Service at PDHs is usually restricted to responding to requests for a pre-sentence report (PSR) when defendants enter guilty pleas. However, even aspects of this task are affected by the use of the video link. Normally when a PSR is ordered for a defendant in custody, a probation officer will conduct a preliminary interview in the cells at court. This will cover basic details and act as the foundation for a subsequent more detailed interview at the prison. This procedure is not available for a defendant appearing over the link and the probation officer conducting the interview at the prison is at a disadvantage as a result.
- 4.76 Towards the end of the pilot period, it was suggested that the videoconferencing facilities might be used for the preliminary probation interview with a defendant appearing over the link. The prison has indicated that it is willing to accommodate such requests provided the facilities are not already booked for legal consultations. The prison would not be able to hold prisoners in the video link area for extended periods simply to make them available for an interview with Probation. With the current listing arrangements, the prison should be able to respond to most requests from Probation but if video link hearings are held on a single day each week as planned, the position could change.

Training

- 4.77 There were various strands to the training undertaken in conjunction with the pilot. Prior to the start, mock hearings were held to allow court and prison staff to become familiar with the link. Judges did not participate in these hearings. The only introduction to the link for judges was a demonstration which preceded the open evening held prior to the start of the pilot. The demonstrations then continued

⁷ There may be a similar problem for the judge due to the impracticality of using the camera mounted on top of his monitor.

throughout the open evening to which all heads of chambers and all Manchester criminal law solicitors were invited. A video on the use of the link, produced for the magistrates' court pilot, was also shown.

- 4.78 Manchester Crown Court has 15 clerks. Only four of these received formal training in the use of the link. Training sessions covered both the technical operation of the equipment and adjustments to procedure required at video link hearings. The technical training was provided by the system suppliers, Mar-Com Systems Limited, who also supplied written operating instructions on the use of the link.
- 4.79 Although it was intended that the four trained clerks would take most video link sessions, various other clerks became involved as the pilot progressed. Before taking the video link court, clerks who had not been trained were given brief instructions by those who had. In addition, some staff visited Manchester City Magistrates' Court and HMP Manchester to observe the video link hearings which have been running there since November 1998.
- 4.80 Prison officers running the video link courtroom at the prison had already received training in connection with the magistrates' court pilot. Equally, all defendants appearing over the link had previously appeared on the magistrates' court link. An explanatory video is shown to defendants prior to appearing on the link for the first time and 91 per cent of defendants recalled seeing this video. All but one had been told what would happen at the Crown Court hearing either by a prison officer, their lawyer or both. The remaining defendant had been told what would happen by a fellow prisoner.
- 4.81 The differences in training provision for clerks was reflected in their questionnaire responses:
- “I watched a video and received hands-on training on using the equipment.”
- “There was a demonstration by the equipment supplier and opportunities for practice link-ups with the prison.”
- “Basic training was given beforehand. I learned more on my own when actually dealing with the controls.”
- “I saw the prison system and visited the magistrates' court to see it in use there.”
- “I received brief instruction from a colleague.”
- “One of the four clerks who received training initially showed me how to operate the equipment.”
- “I had a quick practice when the equipment was first installed.”
- 4.82 Despite these differences, all but one of the clerks felt that their training had been adequate. One took the view that “all that is needed is to get familiar with the

Crown Court Video Link Pilot Evaluation

equipment”. The clerk who felt training was insufficient said that the opportunity to participate in mock hearings would have been helpful.

- 4.83 The resident judge rejected the idea that video link hearings should be heard by a small cadre of judges who would thus build up the necessary expertise. He considered it important that the burden was spread among all judges and that “all should have the necessary skills”. He pointed out that restricting hearings to a small group of judges would place an unacceptable constraint on court listing. As regards judicial training, he acknowledged the need for demonstrations of the equipment along with practically based seminars and discussion on presiding at such hearings. He felt also that guidance would be helpful on matters such as the use of interpreters, unrepresented defendants and adequate grounds for granting an application for an appearance in person.
- 4.84 Defence advocates were generally sceptical of the need for training. Out of 16 replies, four (25 per cent) had had an opportunity to practise on the link and none of the rest felt that such an opportunity would have been useful. Among 18 prosecution advocates, two (12 per cent) had had a chance to practise and five others (28 per cent) would have welcomed the opportunity.

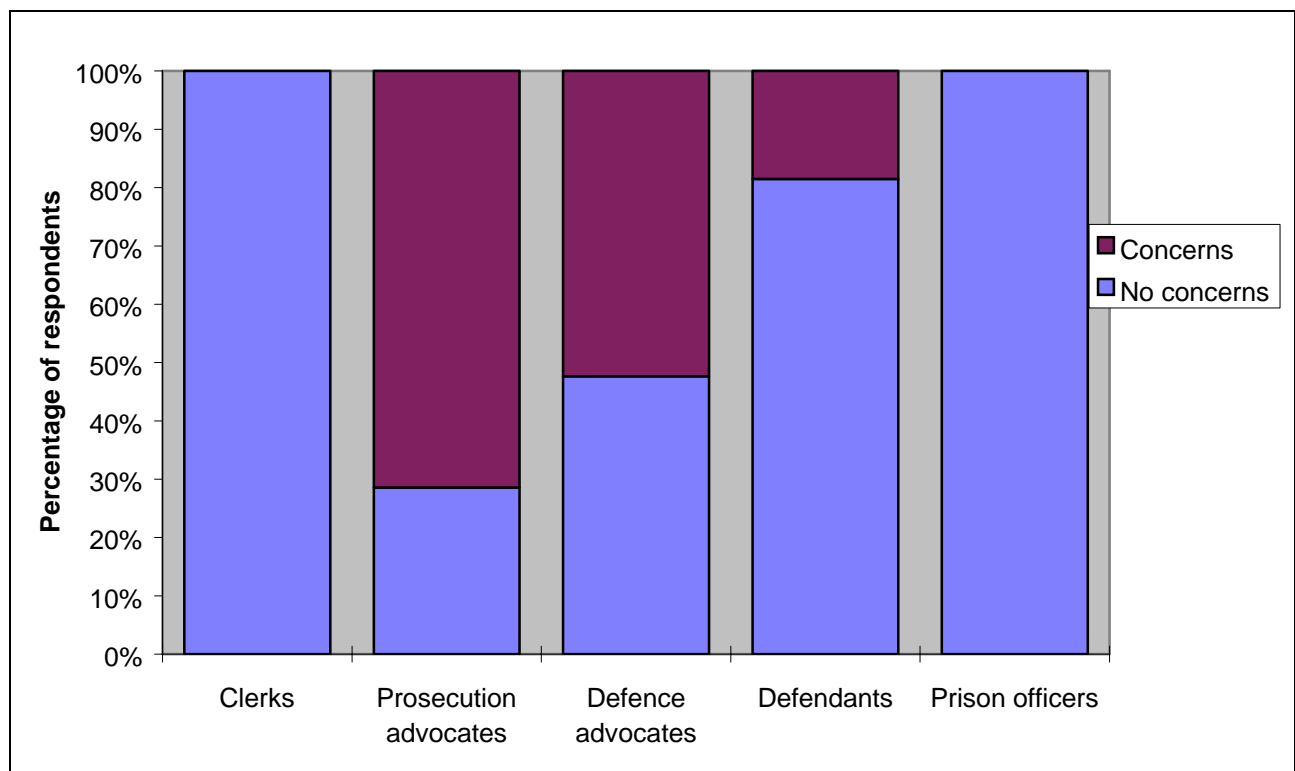
Impact on defendants

- 4.85 The magistrates’ courts pilot evaluation discovered wide approval among defendants for video link hearings and a number of potential benefits to them through avoiding the trip to court.⁸ A similar picture emerged in this study. Forty-one defendants (76 per cent) said they preferred to be in the prison for their hearing compared with 13 (24 per cent) who would rather come to the court building. One link hearing enthusiast said that “the court comes over as far less intimidating”.
- 4.86 The most significant loss for defendants appearing over the link was the opportunity to see family and friends at court, although compensation came for some at a visiting session at the prison that would have otherwise been missed. One prisoner summed up the feelings of many: “Most prisoners feel the link saves a lot of messing about. But it would have been nice to see my girlfriend”.

Views on fairness

- 4.87 Participants were asked whether the video link was a fair way to hold a pre-trial hearing. Figure 4.6 shows the results for everyone but the judges. The highest level of concern was among prosecution advocates, 71 per cent of whom felt that the link was unfair in some respect. The corresponding figure for defence advocates was 52 per cent. Eighty-one per cent of defendants and all clerks and prison officers felt the link was fair.

⁸ Paragraphs 4.96 – 4.103, *Video Link Pilot Evaluation*, HM Prison Service, 1999.

Figure 4.6: Participants' views of the fairness of video link hearings

4.88 Three of the four circuit judges interviewed expressed strong misgivings about the link. The fourth circuit judge and a High Court judge who had presided at a single video link hearing were more enthusiastic.

4.89 Broadly speaking, the reasons why the link was thought to be unfair can be categorised as follows:

- objections in principle, based on the defendant's right to be present
- concerns that the link acts as a barrier to communication between lawyer and client which prevents meaningful discussions about plea
- a feeling that the defendant can neither follow nor participate in proceedings if not physically present in the courtroom
- a view that any cost savings are illusory except for defendants who present a high security risk.

4.90 Objections in principle came from advocates and judges:

“The defendant has a fundamental constitutional right, once charged, to appear before the court” (defence advocate).

“This system is contrary to the good conduct of the case and the interests of justice” (defence advocate).

Crown Court Video Link Pilot Evaluation

“If accused of a criminal offence in open court, the defendant has a right to attend and see precisely the form in which he is being accused and those involved in the process” (defence advocate).

“Defendants need to be present and to be able to have confidence in their legal team, not a TV screen” (defence advocate).

“It is wrong in serious cases to conduct any part of the proceedings without the defendant being present in court to follow the proceedings against him” (defence advocate).

“We should take account of the view of the public and of defendants that they may not have been involved in a ‘proper’ hearing and that justice is being done at arm’s length” (prosecution advocate).

“The defendant has a right to be produced in order to speak to lawyers, family and friends about what should be done” (prosecution advocate).

“I don’t like it. You need to see a defendant eye-to-eye if defending, in the dock if prosecuting” (prosecution advocate).

“I have misgivings about the link for anything involving the defendant’s future” (judge).

“As a matter of principle and practicality, the defendant should be at court for PDHs” (judge).

4.91 The view that the link prevented effective communication between lawyer and client was also widely held:

“There was no opportunity for spontaneous discussion about acceptable guilty pleas” (defence advocate).

“There is a wholly unsatisfactory feel to a videoconference” (defence advocate).

“I found the process of conference with the client beforehand very impersonal and not conducive to getting to grips with the issues that needed to be dealt with” (defence advocate).

“It is impossible properly to advise the defendant over the link. There is a feeling of artificiality” (prosecution advocate).

“It is difficult to conduct a proper conference - sometimes very difficult advice has to be given. It is too easy for the defendant to get upset and switch off the video” (prosecution advocate).

“In my experience the facilities do not permit a detailed and intimate discussion between counsel and client in the way in which such discussions can take place face-to-face” (prosecution advocate).

4.92 The majority of those who felt the link was unfair were convinced that the defendant felt cut off from and unable to follow proceedings:

“As the defendant could not participate in any meaningful way, he did not treat the proceedings or the court with any seriousness” (defence advocate).

“I am concerned about my client’s ability to follow what was going on. He told me he didn’t feel involved and got the impression he was the least most important person” (defence advocate).

“It is wholly unacceptable to exclude the defendant in a serious case such as this from any meaningful participation in an important hearing directly affecting his case” (prosecution advocate).

“The defendant cannot appreciate the seriousness of the hearing and has no real comprehension of what is happening in court” (prosecution advocate).

“The defendant does not know what is happening” (judge).

4.93 Only two of the 54 defendants referred to feeling remote from proceedings in the courtroom:

“Its virtual reality is different from the old-fashioned way where in court you might be assisted by a relative or friends for moral or psychological support, which the video link does not allow. It looks more virtual than real.”

“You very much feel as if you are processed on paper before the court”.

4.94 Many participants made the point that video link hearings did not save money except, possibly, in the case of category A defendants:

“There will be no advantages, however much there appear superficially to be cost-savings. It will not save a penny in the long run” (defence advocate).

“Save for category A prisoners, there is no justification for these hearings” (defence advocate).

“For category A prisoners, where extra security is deemed appropriate – helicopters, outriders, guns etc – there may be cost savings. For all other prisoners usually brought by bus from Strangeways, any tiny savings are outweighed by the unfairness of the proceedings” (prosecution advocate).

“It seems to me that, other than for category A prisoners, the video link is a waste of time and money. The two defendants who appeared in my case today could have been dealt with at the same time as plea and could easily have been brought from prison” (prosecution advocate).

Crown Court Video Link Pilot Evaluation

“There are no great benefits. The numbers are small and so the savings are small. Buses come from the prison to the court each day in any case” (judge).

“I see the point in category A cases but not otherwise. It is a balance between costs and the interests of justice” (judge).

“I do accept that the video link is a good idea in high security cases to save expense. Police security arrangements tend to go over the top in such cases when prisoners are brought to court. But in ordinary cases, there are no such savings and the defendant is at a disadvantage because counsel cannot afford to go to the prison for a conference” (judge).

Costs and savings

- 4.95 The Court’s videoconferencing equipment and system support was provided free of charge for the first three months of the pilot by Mar-Com Systems Limited. For the subsequent period, Mar-Com rented the equipment to the Court Service for a monthly fee of £1,395.00 plus VAT which included full maintenance and support. The construction of the three booths for video and telephone conferences cost £10,000. Detailed figures for call costs during the pilot were not available at the time of writing this report but, based on Court Service estimates, they were in total of the order of £200 for the courtroom system and considerably less for the videoconference booths. The cost of renting the five ISDN lines used in the video link court and the videoconference booths is around £2,000 a year.
- 4.96 The prison used the same equipment and facilities as for magistrates’ courts hearings. The associated costs were discussed in Chapter 5 of that evaluation report.
- 4.97 The most significant savings that result from video link hearings arise from the reduced movement of prisoners between the prison and the Crown Court. Savings are only achieved if the reduction in movements is sufficient to allow cancellation of journeys by the cellular vans used to transport prisoners to and from court. Given the small number of hearings each day during the pilot, it is unlikely that any savings of this kind resulted. This position may change in the future if the number of link hearings increases. This is most likely to happen as a result of new procedures for indictable only cases contained in the Crime and Disorder Act 1998. These involve moving such cases directly to the Crown Court following an initial appearance in the magistrates’ court. The first Crown Court appearance is a preliminary hearing where a timetable is set for the service of the prosecution case and a subsequent PDH. The indictable only measures were piloted in a number of centres during 1999 and a decision on wider implementation will be made shortly, based on the results of the pilot evaluation.
- 4.98 Higher savings arise if movements of defendants with a category A security classification can be avoided. Such prisoners are transported to and from court and supervised while at court by the Prison Service rather than a private escort service. There may also be police involvement in the form of armed escorts and even helicopters. Road closures can occur when the convoy passes through with consequent disruption to traffic and local residents. Figures from Greater Manchester Police indicate that police escorting costs for moving a ‘typical’ high-risk category A prisoner between HMP Manchester and Manchester City Magistrates’ Court are around £3,100. The costs for moving a prisoner to

the nearby Crown Court would be similar.⁹ The figure refers only to police costs, not to escorting costs incurred by the Prison Service.

- 4.99 During the pilot, seven category A prisoners appeared over the link. At least six of these presented a high enough security risk to require police involvement had they been brought to the Court building. The savings resulting from these hearings alone were therefore at least £18,500.
- 4.100 Because of the number and complexity of the factors involved, it was not possible on the basis of the pilot to quantify the costs and savings that would be associated with a wider implementation of video links in the Crown Court. The sources of such costs and savings are discussed in detail in Chapter 5 of the evaluation report of the previous pilot.

⁹ HMP Manchester is about two miles from Manchester Crown Court. Escorting costs would be higher in areas where the distance between the prison and the court is longer.

Chapter 5 Conclusions and recommendations

Introduction

- 5.1 During the pilot, 92 defendants remanded in custody to Manchester prison appeared over the video link for a Crown Court hearing. These hearings proceeded in an orderly manner and covered the same issues as when the defendant is present in the courtroom. At PDHs, pleas were entered and directions issued. Applications to extend custody time limits were made and granted. The pilot demonstrated that video links offer a viable method by which to hold pre-trial hearings in the Crown Court.
- 5.2 Many advocates and judges saw in the use of video links for pre-trial hearings a fundamental challenge to the interests of justice. There was a similar reaction when the 1988 Criminal Justice Act first allowed the evidence of certain child witnesses to be given by closed circuit television (CCTV). Over time, the use of CCTV for this purpose has become a standard and accepted feature of Crown Court trials. Indeed, subsequent legislation has extended the facility to a wider range of young witnesses and to vulnerable and intimidated adults. It may be that the use of video links between courts and prisons for preliminary hearings will, in time, become equally accepted.
- 5.3 There is already evidence that this is happening. The pilot links introduced in three magistrates' courts and four prisons in November 1998 initially encountered similar opposition. However, more than a year later video link hearings have become routine in the courts concerned and plans are underway to extend their use to magistrates' courts and prisons throughout the country.
- 5.4 Other jurisdictions have found the use of video links to be compatible with the interests of justice. Defendants in custody appear over video links at courts in more than half the States in the USA, in Australia and in Singapore.¹⁰ In South Africa, where pilots are currently being planned, broad enabling legislation is in place which allows all hearings, including trials, to take place over a video link. Northern Ireland has run a successful pilot linking Hydebank Wood Young Offenders Centre with both Belfast Magistrates' Court and the High Court within the Royal Courts of Justice. The introduction of links to other courts and prisons is planned.¹¹
- 5.5 These examples are unlikely to reassure those who take the view that defendants have a fundamental right to be physically present at any hearing where issues concerning their future and that of their case are being determined. However, exceptions to such a principle existed before the advent of video link hearings. Bail applications are often

¹⁰ The position in Europe is less clear. Italy already makes extensive use of video links in mafia trials. A project sponsored by the European Commission is currently underway and will establish the extent to which technology, including video links, is used in the courts of 15 countries within the European Union. Its report is due in September 2000.

¹¹ *Evaluation of the Northern Ireland Prison Service/Court Service Video Link Pilots*, Dr Keith Bryett, December 1999.

heard in the defendant's absence by a judge in chambers and some technical matters concerning trials and trial dates are decided in the same way. This does not diminish the responsibility of the criminal justice system to ensure that video link hearings allow defendants to hear, see and participate in events in the courtroom. The rest of this chapter considers the criticisms levelled at the effectiveness of link hearings in these respects and, where appropriate, makes recommendations for improvement.

Equipment performance and reliability

- 5.6 As in the previous pilots, there were few problems that could be attributed to malfunction of video link equipment. However, questions did arise as to whether the equipment was capable of delivering the required sound and picture quality. However impressive the capabilities appear on paper, it is clear that equipment performance can be properly assessed only when it is used in its working environment.
- 5.7 The task of tuning equipment performance was made more difficult by the need to integrate systems of different manufacture and specification. During the pilot, problems arose in interfacing the courtroom video equipment both with the court's tape machine and the video system at the prison. Most of the difficulties were sound related and most were overcome during the first few weeks of the pilot. However, initial impressions are important and some judges and advocates quickly formed the view that the system was unsuitable for its intended purpose.
- 5.8 Even when the most serious problems had been solved, sound and picture quality was rated no higher than acceptable by most participants. During observation at the prison, members of the evaluation team confirmed that there was room for improvement in sound quality. References to a lack of synchronisation between sound and picture persisted throughout the pilot.

Recommendation 1: In procuring video link equipment for courts and prisons, the specification should address both the level of performance required when the equipment is installed in its working environment and the technical details of interfacing systems. Suppliers should be required to describe any loss of functionality that will result when operating their equipment with that of a different manufacturer. Acceptance testing of the system should be carried out in the intended setting.

Video courtroom design

- 5.9 Some limitations of video link equipment may be overcome by appropriate courtroom design. PDHs are often characterised by short interchanges between judge and advocates. With the single moving camera used in the pilot, the clerk had an impossible task in trying to ensure that the speaker was in shot at all times. Extra cameras increase expense and still require some form of switching: in the pilot an extra camera was provided but could not be used because of the time lag associated with switching between cameras.
- 5.10 To overcome the problem, clerks in the pilot tended to leave the camera on a distance view that included prosecution and defence advocates but excluded the judge. This

Crown Court Video Link Pilot Evaluation

solution was seen as less than satisfactory because the defendant was denied a close-up view of the speaker.¹²

- 5.11 In interview, judges and clerks pointed out that many features of the standard Crown Court courtroom design, for instance the dock and the jury box, are not required for most video link hearings. Nor is it necessary for the judge to be on a higher level than the well of the court. A less formal arrangement with a smaller room and participants seated next to one another at a table would be acceptable and easier to capture on the link. A single fixed camera could show all speakers in relative close-up and a single microphone could be used. The layout could be optimised for use of the video link. An arrangement of this kind would avoid the constraints on listing trials that arise with use of a full-size video link courtroom. Equally, no judge would need to be displaced by a colleague presiding at a video link hearing.
- 5.12 There are two main problems with such an arrangement. Firstly, it is not well-suited to multi-defendant cases. If there are a small number of defendants all in custody then the arrangement can probably be made to work. But if the number of defendants is large or if there is a mixture of defendants on bail and in custody then a small room is simply unsuitable. It may have to be accepted that, in the short-term at least, video links cannot be used for such cases.
- 5.13 The second issue is availability. If there was no requirement to provide accommodation for members of the public then most Crown Court centres could probably find an appropriate room. However, few centres would have publicly accessible rooms large enough to accommodate seating for the public. There is no statutory requirement to provide public access but there is nevertheless pressure to do so. A further constraint is the need to provide near the courtroom a telephone for lawyers to take instructions during the hearing without being overheard. This may reduce further the number of centres with suitable accommodation.
- 5.14 Consideration is currently being given to implementing the Youth Justice and Criminal Evidence Act 1999 which greatly extends the categories of witness eligible to give evidence by TV link from outside the courtroom. A survey of court accommodation has been carried in connection with these changes. A similar exercise is required to establish the feasibility and cost of equipping courts for video link hearings. The survey should look at opportunities to make use of video link equipment already in use or being procured by the Court Service for other applications.

Recommendation 2: A review of court accommodation should be conducted to establish the feasibility and cost of providing the facilities required for video link hearings. This should consider the suitability of existing courtrooms to host such hearings and the possibility of siting videoconference booths nearby. The survey should identify opportunities for using existing video equipment for link hearings.

¹² It is worth noting that a defendant in the dock in Courtroom 14 is denied any view of advocates' faces as the dock is situated along the back wall behind the advocates' bench which faces the judge.

Lawyer/client consultations and confidentiality

- 5.15 The effect of introducing new technology is often to focus attention on existing issues rather than to raise new ones. An example of this with video links is discussions about plea. Good practice requires that the defence advocate be in contact with the defendant to discuss plea before the day of the PDH. In January 1998, the Court Service's Review of the Effectiveness of Plea and Directions Hearings in the Crown Court found that only 42 per cent of defence counsel had met with the defendant before the day of the PDH. It commented:
- “The failure of defence counsel to hold a conference with the defendant in the majority of cases can seriously jeopardise the prospect of an early plea.”¹³
- 5.16 The second requirement for timely plea discussion is contact between defence and prosecution counsel. The findings of the Review on this point are even more startling. Only two out of 89 defence counsel questioned had been in contact with their opposing counsel.¹⁴ In addition, 92 per cent of defence counsel said they were not even aware of the identity of prosecution counsel prior to the day of the PDH.¹⁵
- 5.17 The responses provided during this study confirm the findings of the Review. Only 26 per cent of defence advocates said that a defence representative of any sort had visited the defendant in prison. For most advocates, the day of the PDH was the first opportunity to talk about plea with the defendant or opposing counsel. It is therefore hardly surprising that they considered a videoconference to be poor substitute for a meeting with their client in the cells at court.
- 5.18 Their concerns and those of judges about discussing pleas at a videoconference were not borne out by the figures. Video link PDHs produced a guilty plea rate of 24.4 per cent compared with the highest monthly figure during the period of the pilot of 21.2 per cent for all PDHs at Manchester Crown Court. This is even more surprising given that at least nine cases were taken out of the video link list because of prior notification of a guilty plea by the defence.
- 5.19 Complaints from advocates about the confidentiality of videoconferences were of genuine concern. There was clear evidence that both ends of some conversations were audible outside the booths at court. The problem lay in the booth's equipment, which consisted of a videoconferencing system with remote control and a 14-inch monitor. Because the speaker sits some distance away from the system's built-in microphone there is a natural tendency to raise one's voice. The remote control also allows the volume of the other speaker's voice to be increased. A temporary solution was provided by a videophone borrowed from the prison. This has a smaller screen, touch-screen controls and a telephone handset, which means that neither end of the conversation can be overheard. The simpler controls also reduce the risk of system settings being changed.¹⁶

¹³ Paragraph 5.18.

¹⁴ Paragraph 5.30.

¹⁵ Paragraph 5.31.

¹⁶ Two videophones have subsequently been purchased for use in the videoconferencing booths at Manchester Crown Court.

Crown Court Video Link Pilot Evaluation

- 5.20 Despite undertakings to the contrary, suspicions persist among advocates that telecommunications are electronically bugged. These extend concerns held by some lawyers that eavesdropping devices are used to monitor legal consultations at the prison. With future installations, it may be possible to allay concerns about videoconferences by encrypting the signal before transmission although the cost of achieving this with current technology may be high.
- 5.21 The procedure for taking instructions during a hearing was also criticised as disruptive and hard to initiate. This issue is not solely about video links. The Royal Commission on Criminal Justice, in considering whether the courtroom dock should be abolished, pointed to the difficulties encountered by defendants in attracting their advocate's attention. The Crown Court Study conducted as part of the Commission's research discovered that nearly two-thirds of defendants had information that they wanted to give to their barristers which they were unable to give because they were too far away. A third of defence solicitors thought it would have been helpful to have had the defendant sitting close to the lawyers.¹⁷
- 5.22 In some ways, defendants appearing on the link were in a better position to give instructions than those in the courtroom. At the start of each hearing, the clerk informed the defendant how to attract the court's attention if they wished to speak to their advocate. Such advice is not given to defendants at court. Although there was some confusion about the extent to which the procedure was used, none of the 54 defendants reported trying to attract the court's attention but not being noticed. One defendant specifically mentioned that the video link arrangements were better than those in court.
- 5.23 There is another way in which a video link hearing could provide better facilities than at court for lawyer/client communication. During the pilot, the evaluation team had the chance to observe video link hearings at the District Court in Perth, Western Australia. In some of these, the advocate was located with his client in the prison rather than in the courtroom. This allowed exchanges between lawyer and client to take place throughout the hearing with no disruption to proceedings. There is nothing in law to prevent such an arrangement in this country although advocates may be reluctant to visit prisons for this reason without extra payment. Nevertheless, it is an option open to advocates who have particular concerns about client communication. Plea discussions with the prosecution could, if necessary, take place by videoconference.
- 5.24 Although many advocates expressed concern about the ability of defendants to follow proceedings in the courtroom, only 23 per cent had spoken to their client after the hearing to ensure that they understood the decisions taken by the court. Such post-hearing consultation is good practice whether or not the video link is used. In the interests of justice, all clients appearing on the link or in person should be spoken to by their advocate at the end of each hearing.

Recommendation 3: The specification for consultation booths and housing for telephones used to take instructions during a hearing should include a requirement that conversations conducted at normal volume must not be audible to anyone other than the lawyer and the defendant.

¹⁷ Paragraph 109, *Royal Commission on Criminal Justice Report*, July 1993.

Recommendation 4: Guidance from the Bar and legal training should emphasise the need for advocates to speak to clients at the end of each hearing to ensure that they understand the decisions that have been reached. Explanatory material about the link for lawyers should draw attention to the option of being with their client in the prison rather than in the courtroom.

Length of hearings

- 5.25 In the absence of baseline information on PDHs with the defendant present, it is hard to judge the impact of the video link on hearing length. However, given the average length of 10 minutes for hearings with a single defendant and 12 minutes for all hearings, it seems unlikely that video link hearings are significantly longer than usual. The views of participants would seem to support this. Some extra time may be involved when advocates leave the court to take instructions in the course of the hearing but there is little evidence that this results in undue delay.
- 5.26 Some delay was caused to the start of hearings because advocates were unaware of the booking procedure for videoconferences, despite strenuous efforts to inform them before the pilot began. Booths at court were normally kept locked for security reasons and requests at short notice for a conference required keys and remote control to be retrieved from court administration some distance away. While there may be some scope for streamlining the procedure for providing access to booths at court, delays are bound to occur if booking procedures are not followed. The problem may ease as familiarity with the process grows over time but the pilot experience demonstrates the importance of good communication about procedures with the local legal community.

Defendants' ability to follow proceedings

- 5.27 The most common complaint about video link hearings concerned the inability of defendants to follow what was happening. The reasons for this may be more to do with the nature of the issues discussed at PDHs than with the use of the video link. Once a not guilty plea has been entered at a PDH, what follows can seem technical and obscure to a lay observer. Discussion can cover matters such as the disclosure of unused material, third party disclosure, defence statements, admitted facts, Section 9 statements, witness and advocate availability, trial bundle pagination, points of law and extensions to the scope of legal aid orders. The exchanges are made harder for the layman to follow because of the extensive use of legal language.
- 5.28 We are not aware of any research on how well defendants in the dock at court understand proceedings at a PDH. It is therefore hard to judge whether defendants appearing on the link are at a particular disadvantage in this respect. None of the defendants in the pilot who were interviewed or returned questionnaires made reference to problems in understanding what was happening in the courtroom. The concerns expressed by advocates may simply point to the importance of explaining to all defendants the nature and significance of the decisions taken during the hearing. This again underlines the need for a post-hearing conference between advocate and defendant.

Crown Court Video Link Pilot Evaluation

Applications to appear in person

- 5.29 The court accepted prior written notice of an intention to plead guilty as a reason to remove a case from the video link list. The case was then re-listed for the defendant to be brought to court on a date when a pre-sentence report would be available. This is a sensible procedure that is also followed in the case of PDHs where the defendant is due to appear in person.
- 5.30 Few applications to appear in person were made at pilot hearings. Despite the opposition in principle to use of the link expressed by some advocates, no application for a defendant to appear in person was made on this basis. One successful application was made on the grounds of the defendant's mental state. All defendants appearing on the link had legal representation although a defendant who dismissed his lawyers and refused to proceed with his link hearing was nevertheless required to appear over the link on the next occasion. No defendant on the link required an interpreter.
- 5.31 Apart from the issue of the defendant's mental state, the pilot did not point to any particular criteria for deciding if a case was unsuitable for the link. Some clerks felt that cases involving co-defendants on bail were not well suited to a link hearing for administrative reasons.

Training

- 5.32 There was a tendency by participants in the pilot to underestimate the range of skills involved. For clerks, there is a difference between knowing which buttons to press and operating the equipment efficiently during a hearing while attending also to other administrative tasks. Vigilance is required throughout the hearing on the part of clerks and judges to ensure that the defendant can see and hear proceedings and to notice a signal from a defendant who wishes to speak to his advocate. Clerks need a camera movement strategy covering which camera setting will be used for each speaker, whether advocates will stand or sit when speaking and how to cope with rapid changes of speaker that the camera cannot follow. All speakers should be aware of the strategy and, where appropriate, should wait till they are in shot before speaking. They must look at the camera rather than the monitor when addressing the defendant and avoid movements which take them out of shot. Court observation during the pilot suggested that many participants have difficulty in following these simple rules.
- 5.33 Video link hearings require some additions to the usual courtroom pronouncements, including:
- an opening statement from the judge that the defendant will be treated as if he or she was present in the courtroom
 - a request for confirmation that the defendant can see and hear what is happening in the courtroom
 - instructions about how to attract the court's attention if the defendant wishes to speak to his or her lawyer
 - at the end of the hearing:
 - a check by the judge that the defendant understands the outcome of the hearing

- an enquiry as to whether the defendant wishes a conference with his or her lawyer after the hearing
 - where a PSR has been ordered, a request to the prison for the prisoner to remain in the video link area for a brief conference with a probation officer.
- 5.34 Training needs arise also at the prison. As well as understanding the equipment, prison officers need to respond to prisoners' questions and concerns. They require some instruction in courtroom procedure, particularly as they are seldom involved in escorting defendants to court.
- 5.35 The training provided in preparation for the pilot was very limited. Only four clerks were formally trained. Some mock hearings were held but these did not include members of the judiciary. During the pilot, some clerks appeared to lack confidence in operating the equipment while attending to their other courtroom duties. A number of judges presided at a single video link hearing and were clearly unfamiliar with the procedures. Those who took video link hearings regularly became more adept at the adjustments required and developed the ability to monitor other participants during the course of the hearing.

Recommendation 5: Those participating in video link hearings should undergo training beforehand. Written guidance should be developed for use during training and for subsequent reference. The training should include an opportunity to take part in mock hearings where the skills learned can be tried out in a simulated working environment. Wherever possible, only trained personnel should take part in video link hearings.

The need for a strategic approach

- 5.36 The Crown Court video link pilot involved cooperation between criminal justice system agencies, particularly the Prison Service and the Court Service. The process of planning and implementing the pilot demonstrated the kind of 'joined-up working' that is at the centre of the government's vision for the future of the criminal justice system. The challenge now will be to maintain this strategic approach in a wider implementation exercise.
- 5.37 There are already some signs of potential problems. Although cooperating fully with the pilot, the Court Service has claimed that while it will have to bear the cost of equipping courts, the benefits and savings will accrue mostly to the Prison Service in the form of reduced escorting costs.¹⁸ This observation has echoes of the problems encountered by the joint departmental review of the criminal justice system whose report was published in July 1998. The review concluded that the criminal justice system did not operate as a "system" and was not seen as a system by many of those who worked within it. It found that a key problem was the lack of incentive for any individual agency to consider how its activities affected the performance and costs of others.¹⁹

¹⁸ Nevertheless, videoconferencing is a key feature of the vision of the future set out in the Court Service's consultation document 'Transforming the Crown Court', September 1999. Paragraph 75.2 makes specific reference to savings associated with the use of video links between courts and prisons.

¹⁹ Quoted at paragraph 2.3 of *Criminal Justice: Working Together*, Report by the Comptroller and Auditor General, December 1999.

Crown Court Video Link Pilot Evaluation

- 5.38 Following the joint departmental review, the government introduced its Strategic Business Plan for the Criminal Justice System 1999-2000. This document talks of “more flexible funding arrangements to transfer funds across the criminal justice system, where that would better achieve aims and objectives”.²⁰ To implement the strategic plan, a ministerial group comprising the Home Secretary, the Lord Chancellor and the Attorney-General was established along with various subordinate multi-agency groups. As part of this new approach, the initiative entitled Integrating Business and Information Systems in the Criminal Justice System (IBIS) is tasked with ensuring that “a whole system approach is taken to developments in information systems and that business processes are designed to take full advantage of the opportunities offered by technology”.²¹ Video links offer an ideal opportunity to adopt such a whole system approach and deliver strategic objectives, yet agency funding arrangements currently offer little incentive to do so.
- 5.39 The case for strategic intervention is not confined to funding. The use of video links within the justice system is set to increase dramatically over the coming years. The Youth Justice and Criminal Evidence Act 1999 envisages that a wider range of witnesses than ever before will give evidence at criminal trials in magistrates’ courts, the youth court and the Crown Court by means of video links. Increased use of links for expert testimony can be expected in both civil and criminal trials. Lawyers are investing in videoconferencing equipment which, in the longer term, could be used for client conferences and ease the pressure on the booths at court.²² In light of judgments of the European Court of Human Rights in the case of *T & V v. the United Kingdom*²³, the use of video links may be extended to some trials involving juvenile defendants.
- 5.40 The procurement of video links calls for a coordinated approach if best value for money is to be obtained. A primary concern must be that the systems of different agencies can operate together without a reduction in performance levels. Equally, equipment must be capable of fulfilling the range of uses to which it will be put: for instance, Crown Court systems should be suitable both for linking with prisons for pre-trial hearings and for taking the evidence of witnesses in criminal trials. Past experience has demonstrated the problems that can arise from a lack of coordination. When the videotaped evidence-in-chief of young witnesses was made admissible, there were differences in the equipment used by police forces in recording the video statements and that of the Crown Court centres where they were played at trial. Interviews that were apparently of good audio and visual quality when played on police equipment were assessed as unusable by judges and lawyers when played at court. The issue of equipment incompatibility was not initially recognised or acknowledged and the resulting problems have taken years to resolve. Similar mistakes can be avoided in the procurement of video link equipment through strategic thinking. Such an approach would implement government policy and encourage projects that benefit the system as a whole.
- 5.41 There is a final reason why strategic oversight is needed in relation to the growing use of video links. The quality of justice administered at link hearings can only be assured

²⁰ Paragraph 3.3.2.

²¹ From the leaflet *Introducing IBIS* produced by the Home Office.

²² The Legal Aid Board has recently approved the cost of a videoconference held between a prisoner in Horfield Prison, Bristol and his counsel in chambers in Leeds.

²³ Strasbourg, 16 December 1999.

if equipment performs to an acceptable standard and procedures designed to inform and involve the defendant are rigorously adhered to. This applies both to the hearing itself and to consultations between lawyer and client before and after the hearing. Mechanisms are needed to ensure acceptable levels of service. Identifying such mechanisms will require consultation with judges and the legal profession.

Recommendation 6: Following the Comprehensive Spending Review, the government set up new structures for joint strategic planning across the criminal justice system. Video links are an ideal candidate for the strategic approach which these structures are intended to implement. The IBIS initiative should assume responsibility for coordinating the planning and funding of the various criminal justice projects that rely for their success on video links. It should also consult with legal practitioners and the judiciary on measures to maintain the quality of justice at video link hearings.