

# CVP REMOTE HEARING GUIDANCE 2022

New National Guidance from the Lord Chief Justice

By Page Nyame (2HB Pupil)



## INTRODUCTION

1. On 14<sup>th</sup> February 2022, Lord Burnett - Lord Chief Justice of England and Wales - issued new national guidance on remote attendance for advocates in the Crown Court:  
<https://www.judiciary.uk/announcements/message-from-the-lord-chief-justice-remote-attendance-by-advocates-in-the-crown-court/>
2. The new guidance is **'not a prescriptive practice direction but intended simply to assist in promoting consistency and predictability of approach to the question of remote attendance in the Crown Court.'**<sup>1</sup>
3. The guidance has been published following requests from the Criminal Bar Association, as well as from individual practitioners, for clear guidance on remote attendance.

---

<sup>1</sup> [Message from the Lord Chief Justice – Remote Attendance by Advocates in the Crown Court | Courts and Tribunals Judiciary](#)

4. Attendance remotely in Court has increased significantly since March 2020 due to the pandemic and Coronavirus Act 2020 provisions extending the use of video links in criminal proceedings.
5. Of note, the guidance categorises hearings that will ‘generally be suitable’ for remote attendance, as well as hearings where attendance will ‘normally be required in person’.
6. As coronavirus restrictions end in many areas of life across the country, the Lord Chancellor’s guidance could provide significant assistance to many barristers who wish to appear remotely in the Crown Court for reasons other than the fact of the pandemic.

## KEY POINTS

7. The new guidance emphasises that the statutory ‘interests of justice’ test must be used to determine whether remote attendance should be granted and highlights that the range of factors considered in the application of the test can be ‘wider than the circumstances of the individual case’ (paragraph 3, guidance).
8. The guidance sets out the suitability for advocates to attend remotely by hearing type, subject to the statutory test.
9. **Sentencing hearings** are not categorised as suitable for either in person or remote attendance, rather they ‘will require consideration on a case-by-case basis’ (paragraph 9, guidance).
10. Practicalities are also addressed, for example if appearing remotely advocates must know how to share documents or CCTV via the screenshare function.<sup>2</sup>

---

<sup>2</sup>[How to share documents in a Cloud Video Platform video hearing - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/how-to-share-documents-in-a-cloud-video-platform-video-hearing)

## ATTENDANCE REQUIRED – 3 EXAMPLES

11. **Generally, a hearing with a witness giving evidence** requires the advocates who are to examine/cross-examine to be present in court.
12. For example the guidance states that this would include trials, Newton hearings, (contested) Proceeds of Crime Act hearings and appeals against conviction (paragraph 5, guidance).
13. **When a defendant is required to attend in person**, the defence advocate will normally be required to attend in person (paragraph 6, guidance).
14. **Plea and trial preparation hearings (PTPHs)** in the Crown Court normally require attendance unless the court is satisfied that (paragraph 8, guidance):
  - a. 'there has been **effective engagement** between the CPS and defence;
  - b. **a conference** has taken place at which the defendant has been given appropriate advice on plea, **and**
  - c. all relevant preparations have been completed in advance of the PTPH date'.

## REMOTE ATTENDANCE SUITABLE – 6 EXAMPLES

15. **The following 6 hearing types 'will generally be suitable for remote attendance by all advocates, unless the court otherwise orders'** (paragraph 7, guidance):
  - a. **Mentions**
  - b. **Bail applications**
  - c. **Ground rules hearings**
  - d. **Custody Time Limit (CTL) extensions**
  - e. **Uncontested Proceeds of Crime Act hearings**
  - f. **Hearings involving legal arguments only.**

## WHAT TO WEAR?

16. In the 'general conditions' section of the guidance, practical requirements for advocates appearing remotely are set out – which are for the most part standard video call etiquette - namely:
- a. Attend in a quiet and private location
  - b. With good quality broadband and equipment
  - c. Without distracting backgrounds
  - d. Advocates must be able to see and be seen, to hear and be heard (cameras and microphones on)
  - e. *The same standards of dress and conduct are required as in court* – which appears to indicate, contrary to practice during the pandemic, that barristers should be robed when appearing remotely. Courts and practitioners have been seeking further clarification on this, but no further guidance has been issued to date.
17. **The guidance emphasises that contact details (email address and mobile phone number) must be uploaded and notified to the Court in advance** – which is often done by 'widely shared' comment on the sidebar of the digital case system, so that the Court can communicate with all advocates at any time, especially when processing a list of cases.

## THE USE OF CLOUD VIDEO PLATFORM (CVP) VIDEO LINKS

18. In March 2020, the Coronavirus Act 2020 (sections 53-57) introduced temporary provisions to extend the use of audio and video live links in criminal proceedings.
19. The Criminal Procedure Rules – in CrimPR 3.2(4) - also provide for using live links where appropriate for pre-trial hearings, the Defendant's attendance at a hearing and for receiving evidence, such as when a witness appears remotely.<sup>3</sup>

---

<sup>3</sup> [The Criminal Procedure Rules 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

## WHY IS THERE GUIDANCE NOW? A RESPONSE TO CONCERNS

20. A range of benefits and drawbacks have been reported about the use of remote attendance by video link – as summarised in the Court of Appeal (Criminal Division)’s Review of the Year 2021:

**‘Whilst it offers a plethora of benefits, we all understand that it is not a panacea, and court users have appreciated the importance of adjusting the use of this tool to reflect the circumstances’.**<sup>4</sup>

21. The new guidance responds to some concerns – including variability in approaches between Courts to granting and providing links - as well as emphasising the advantages of remote attendance for the criminal justice system.

25.2.22

## APPENDIX: GUIDANCE IN FULL

### [Message from the Lord Chief Justice – Remote Attendance by Advocates in the Crown Court | Courts and Tribunals Judiciary](#)

*‘The pandemic has seen the increased use of technology to facilitate remote attendance at hearings, and contains valuable lessons as to the relative advantages and limitations of remote attendance as compared with in-person attendance.*

*Judges have had to balance a large number of competing considerations when deciding whether attendance should be in-person or remote, often in challenging and fast-changing circumstances. A variety of protocols have been issued by Resident Judges at various times in different courts tailored to suit local conditions and circumstances.*

*This national guidance is not a prescriptive practice direction but intended simply to assist in promoting consistency and predictability of approach to the*

---

<sup>4</sup> [A Review of the Year in the Court of Appeal \(Criminal Division\) 2020-21 \(judiciary.uk\)](#)

*question of remote attendance in the Crown Court, whilst recognising the need for flexibility in the individual case and to suit local conditions.*

*It will be kept under regular review in the light of accumulated evidence and experience as to the utility and effectiveness of remote hearings.*

## GUIDANCE

- 1. The court's duty of furthering the overriding objective by active case management includes making use of technology (CrimPR 3.2). Where it is lawful and in the interests of justice to do so, courts should exercise their powers to conduct hearings by live-link (CrimPD 3N).*
- 2. The decision as to whether participants attend a hearing remotely or in-person is a judicial decision and a matter for the discretion of the judge in each case applying the "interests of justice" test in the light of all the circumstances. This is a statutory requirement.*
- 3. The interests of justice are very broad and wider than the circumstances of the individual case and holding an effective hearing. They include the efficient despatch of business overall and the availability of judicial, staff, technical and other resources. The relevant circumstances properly to be taken into account may vary widely in different courts at different times.*
- 4. It is good practice for courts to communicate regularly with their court users, prisons and others to establish ways of working which suit local conditions and to indicate how judges at a court centre are likely to approach the decisions as to remote attendance. Each court will establish a process for dealing with live-link attendance.*
- 5. Any hearing in which a witness is to give evidence, whether in person or remotely, will normally require the advocates who are to examine or cross-examine that witness to be present in court (i.e. trials, Newton hearings, POCA hearings and appeals against conviction) unless the court otherwise orders.*
- 6. Any hearing which a defendant is required to attend in person will normally require the defence advocate also to be physically present at court. All hearings where the defendant attends remotely will require the defence advocate to be able to communicate confidentially with the defendant immediately before and after the hearing.*

*7. Mentions, bail applications, ground rules hearings, CTL extensions, uncontested POCA and hearings involving legal argument only, will generally be suitable for remote attendance by all advocates, unless the court otherwise orders.*

*8. PTPHs will normally require the attendance in person of advocates for both prosecution and defence, unless the court is satisfied that (a) there has been effective engagement between the CPS and defence, (b) a conference has taken place at which the defendant has been given appropriate advice on plea, and (c) all relevant preparations have been completed in advance of the PTPH date. Experience has shown that, in order to be effective, PTPHs require early engagement and full compliance with Better Case Management principles.*

*9. Sentence hearings will require consideration on a case-by-case basis. The matters referred to in paragraph 6 above, together with the seriousness of the charge, the intention of victims or their families to attend, the amount of public interest, and many other factors will determine whether it is appropriate for any advocate to attend in person or remotely.*

*10. Courts will continue to endeavour to make arrangements for listing which balance the interests of all parties, including advocates, and the need to conduct the business of the court effectively and efficiently. It must be understood that those arrangements, by time marking, or otherwise, are likely to vary from court-to-court and day-to-day according to the needs of the court, victims, defendants, and others involved and the prevailing circumstances.*

## **GENERAL CONDITIONS FOR REMOTE ATTENDANCE BY ADVOCATES**

*1. Advocates should ensure that they attend in a quiet and private location with good quality broadband and technical equipment and without distracting backgrounds. They must be able to see and be seen, to hear and be heard. The same standards of dress and conduct are required as in court.*

*2. Advocates who appear remotely should upload contact details and be able to operate the technical equipment involved, and, for example, to be able to upload documents before and during the hearing if required and, if necessary, to show CCTV or other digital material to the court.*

*3. The court must be able to communicate with all advocates appearing in a list throughout the time when that list is being heard. Email addresses and mobile phone numbers must be uploaded or lodged with the court in accordance with the arrangements made by that court, and these devices must be switched on*

*so that the advocate can be reached by email or text at all times up to the time when their last case in that list is complete.*

*4. The principle of criminal listing is, and has always been, that the advocate must be ready and available as soon as the court calls the case on. This applies equally to remote hearings. It is, and has always been, the professional responsibility of the advocate to ensure that they do not take on an inappropriate number of commitments so that they cannot comply with this. The judges hearing lists are likely to wish to help as far as they can in current circumstances; but, as has always been the case, advocates should not assume that the court will accommodate their other work without obtaining the prior permission of the judges concerned’.*

**Lord Burnett of Maldon,  
Lord Chief Justice of England and Wales**

14 February 2022<sup>5</sup>

---

<sup>5</sup> [Message from the Lord Chief Justice – Remote Attendance by Advocates in the Crown Court | Courts and Tribunals Judiciary.](#)