Executive Summary

- Video hearings, where all parties participate in a court or tribunal hearings remotely, are a new technology in England and Wales. They are different from video-enabled hearings, which have been in use for a number of years, where only one party participates remotely and all other participants are co-located in a courtroom. Previous research on video-enabled hearings in the criminal and immigration and asylum areas suggest difficulties in providing access to justice for defendants and detainees.

- The 2018 process evaluation of video hearings in the First Tier Tribunal (Tax Chamber) demonstrated positive findings in terms of the user experience of video hearings. Users found the software easy to use, they understood what was happening, and they reported satisfaction with how the judge introduced and managed the hearing. They provided particularly good feedback regarding the support they received from the video hearings administration team. Users were pleased that they did not have to travel to court and they thought the video hearing was suitably formal and serious. Data was not collected on outcomes such as decision making.

- Most video hearings experienced minor technical difficulties. Users were patient with these difficulties, though it is clear that the technology needs to be improved before a wider implementation is feasible. A small number of hearings experienced significant technical difficulties and could not continue as a video hearing.

- These findings suggest that video hearings may not limit access to justice in certain types of hearings. Similar types of hearings- where users report no vulnerabilities, where they participate from their homes or workplaces, where there is little documentation and evidence to examine- may also be suitable for video hearings. These findings cannot be generalised to video-enabled hearings or video hearings in other jurisdictions such as criminal and immigration and asylum.

- More research is needed on the user experience, procedural justice, and outcomes of video hearings across a range of jurisdictions before it is more widely implemented.

1. Introduction

1.1. The evidence is submitted by Dr. Meredith Rossner. Dr. Rossner is an Associate Professor in the Law Department at the London School of Economics, and has significant experience conducting evaluation research in court and tribunal settings. In 2018, Dr. Rossner conducted an independent evaluation of the HMCTS video hearings pilot for party-to-state hearings in the First-tier Tribunal (Tax Chamber). The final report was published in

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1 This research is submitted in a personal capacity, and not on behalf of the London School of Economics.
September 2018. In 2019 HMCTS will conduct further pilots of video hearings in select Civil and Family hearings, which will also be evaluated by Dr. Rossner.

1.2. The research is a process evaluation. As such, it reports on the user experience of video hearings. The evaluation did not collect data on outcomes, such as judicial decision making or cost. The evidence presented here relates to video hearings, it does not comment on other aspects of the larger reform programme.

1.3. The evidence below will proceed as follows: (1) It will describe the video hearings pilot and (2) the methodology undertaken for the evaluation. (3) It will provide a brief summary of findings relevant to the questions posed in the terms of reference. (4) It will discuss the limitations of the current research and need for future research.

2. Defining video hearings, and distinguishing video hearings from video-enabled hearings

2.1. A video hearing is a court or tribunal hearing where all parties participate remotely using video conferencing technology. Currently, for reasons of open justice, the judge sits in a courtroom to conduct these hearings.

2.2. Video hearings are a new development in court technology in England and Wales. Previously the only video technology available in courts and tribunals were video-enabled hearings. In video-enabled hearings only one party (usually a defendant or witness) participates remotely while all other parties and court staff are co-located in a single courtroom. This has been standard in many jurisdictions for decades, for instance in bail hearings where the defendant appears from police custody, sentencing hearings where the defendant appears from prison, or bail hearings in the Immigration and Asylum Chamber where detainees are appearing from a detention centre. Video-enabled hearings are also used for vulnerable or child witness testimony where the witness appears from a specially designed video suite, or expert witness testimony where the witness may appear from their office. It is important to distinguish video hearings from video-enabled hearings. Most previous research has been conducted on video-enabled hearings. Findings from research on video-enabled hearings cannot be generalised to video hearings.

2.3. Video hearings for the First-tier Tribunal (Tax Chamber) were piloted in 2018 as a part of a larger effort to transform and modernise the justice system. In 2019 HMCTS will conduct further pilots of video hearings in select Civil and Family hearings.

2.4. Previous research has focused on video-enabled hearings, mostly in a criminal context. In 2010, the Ministry of Justice published an evaluation of video-enabled hearings for defendants in police custody in London and Kent, focusing on outcomes such as cost efficiency, judicial decision-making, fairness and procedural justice. They found that, while a video link between a police station and court can be used to conduct a hearing in most cases, the pilot did not provide substantial cost savings, although an expansion of the programme may lead to savings in the longer term. Other findings raise potential concerns

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2 Terry, Matthew, Johnson, Steve Johnson and Thompson, Peter (2010), Virtual Hearing Pilot Evaluation. MOJ Research Series 21/10.
about differential outcomes when defendants appear via video, although there are many variables to take into account when looking at outcomes. For instance, the research found that magistrates were more likely to sentence a defendant to custody when they appeared via video link, though defendants who appeared via video were also less likely to have legal representation, which may have affected this outcome. Additionally, some defence solicitors reported that they found it more difficult to communicate with their client via video, and some magistrates reported worries that video hearings threaten the authority of the court.\(^3\)

2.5. The video hearings pilot differs from previous developments in two key ways. First, unlike video-enabled hearings, in a video hearings all parties appear remotely. This is likely to change the dynamic of the hearing in that all parties communicate via the same medium. Second, most research on video-enabled hearings focuses on defendants appearing in criminal court or detainees appearing from immigration detention. The HMCTS pilot examines the use of video hearings for basic appeals in the First-tier Tribunal (Tax Chamber). A maximum of four participants took part in a hearing: an appellant, their representative (if represented), a representative from HMRC, and a judge.

3. The process evaluation of video hearings (party to party)

3.1. In 2018 HMCTS launched the first pilot in England and Wales for video hearings. The process evaluation draws on interviews with video hearing users – appellants, their representatives, and HMRC representatives; observations of video hearings and traditional in-person hearings; and interviews with judges managing the hearings and members of the Judicial Working Group on video hearings. In total, the research team conducted 31 interviews with stakeholders, observed 8 video hearings, 2 telephone hearings, and 8 in-person hearings. Further information on the methodology is available in the full report.

3.2. The process evaluation was designed to document the user experience of video hearings. It does not measure cost efficiency, nor does it measure outcomes in decision-making. The video hearing technology and the procedure developed to manage the hearings are a significant departure from previous technological innovations, and as such it was deemed vital to understand the experience of the technology and procedure before measuring outcomes. The results are exploratory and preliminary, based on a small sample of cases studied in-depth.

4. Findings about video hearings related to the terms of reference

4.1. The evidence reported here relates to the findings about video hearings that speak to the terms of reference as set out by the Justice Committee. I recommend that the Committee review the full report for a more comprehensive review of the findings.

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4.2. What are the likely effects of the reforms, both implemented and proposed, on access to justice in relation to: a. civil justice? b. family justice? c. criminal justice? d. administrative justice, particularly as delivered by the tribunals system? e. those who are digitally excluded or require support to use digital services?

Findings from the 2018 evaluation can only speak to the likely impacts in the tax tribunal or similar party-to-state hearings. The 2019 evaluation will evaluate the user experience for a limited set of party-to-party hearings in the Family and Civil Division.

4.3. In this pilot, once cases were screened for eligibility and suitability, only a small number of total cases were appropriate for video hearings. Users who did take part in a video hearing received significant support from the video hearings administration team at HMCTS, and most cases that proceeded to a video hearing were completed successfully. Users reported high levels of satisfaction with the support they received prior to the hearing.

4.4. All appellants, representatives, and HMRC representatives reported that they were satisfied overall with their video hearing experience. All reported that they were able to participate effectively in the video hearing, that they thought that the other parties were able to participate effectively, and that it was easy to take part in a hearing. No one reported any negative findings with regards to access to justice.

4.5. Appellants in this evaluation were required to have access to a computer and reliable internet in order to take part in the pilot. There was general consensus amongst the judges and the HMRC representatives that parties would not be suitable for video hearings if the individual lacks appropriate IT skills. It is my understanding, however, that HMCTS has been conducting user research on people who are digitally excluded and those who require support to use digital services, and is currently developing procedures to support such users.

4.6. Results from this pilot suggest that video hearings can be successfully used in these types of cases. It is worth noting that basic appeals in the Tax Tribunal are relatively straightforward, with minimal documentation and no examination of evidence during the hearings. Appellants did not report any vulnerabilities to the researchers, and most took part in the hearings from their home or office. Appellants in this pilot were professionals and most were comfortable using video technology. No significant issues with access to justice were reported. The Ministry of Justice and HMCTS should identify similar types of hearings in other jurisdictions that may be suitable for video hearings.

4.7. It is important to reiterate that these finding cannot be generalised to criminal cases and to immigration and asylum cases. Whilst past research in these areas examines video-enabled hearings, the findings consistently report that vulnerable users, such as defendants appearing from a custody suite or migrants in detention, may be at a disadvantage when they are not in the same room as the judge and their legal representatives (when represented). It is vital that more high-quality research both on the process and outcomes is undertaken in these areas in advance of any reform or move to video hearings.
4.8. What are the effects on access to justice of court and tribunal centre closures, including the likely impact of closures that have not yet been implemented; and of reductions in HMCTS staffing under the reform programme? For users, how far can online processes and video hearings be a sufficient substitute for access to court and tribunal buildings?

Appellants and HMRC representatives found video hearings a convenient alternative to attending court. Appellants were located all over the country, and one was located in continental Europe. HMRC were based in Belfast and Bristol. They all appreciated not having to travel to London to attend the tribunal hearing, pointing out the time and money they saved by not travelling to a physical hearing or having to take an entire day off work. This is different, however, from attending a local court.

4.9. Most hearings experienced technical difficulties, which were usually resolved within a reasonable timeframe, often by restarting the hearing platform. While users reported that these pauses were not distracting to them overall, they worry that the technology will need to be more reliable and robust in a larger roll out. In a small number of cases (3 out of 11) the technical difficulties were severe enough that the hearing was unable to continue as a video hearing (two were held over the telephone and one was rescheduled as an in-person hearing). It is worth noting that this pilot used an early technical product, a newer platform will be developed for future pilots which is predicted to improve the capabilities significantly.

4.10. With regards to whether video hearings can be a sufficient substitute for access to court and tribunal hearings, all appellants reported that the video hearing was suitably formal, that participants appeared to be taking the process seriously, and that for them it appropriately approximated being in a physical courtroom. Some judges and HMRC representatives expressed concern that some appellants were acting in a less formal manner during their video hearing then they might have if they had come to court, however there is no way to confirm whether this is true. The researchers observed instances of ‘informal’ behavior in video hearing and in-person hearings in equal measure. Based on this evidence, I would conclude that in certain cases, such as the relatively simple basic appeals heard in the First Tier Tribunal (Tax Chamber), video hearings can be a sufficient substitute. However, one cannot conclude that video hearings would be a sufficient substitute in other types of hearings.

A reduction in HMCTS staffing will present significant challenges to the success of video hearings as they currently operate. A number of staff members were available to provide support and technical help to all users, including judicial users. A key reason for the high levels of satisfaction was due to the intensive support by HMCTS staff.

4.11. Have the Ministry of Justice and HMCTS consulted effectively on the reforms, and maintained sufficient communication, with: a. Judicial office holders at all levels of seniority? b. The legal professions and the advice sector? c. Other relevant stakeholders?
Extensive consultations were undertaken in advance of the video hearings pilot by the video hearings team at HMCTS. They were advised by members of the judiciary sitting on the Managing Video Hearings Working Group, with representatives from most jurisdictions. As a part of the evaluation, the research team sought feedback from relevant stakeholders—appellants, their representatives, and HMRC representatives.

4.12. Have the Ministry of Justice and HMCTS taken sufficient steps to evaluate the impact of reforms implemented so far, including those introduced as pilots; and have they made sufficient commitment to evaluation in future

The Ministry of Justice and HMCTS should be commended for seeking an independent evaluation of video hearings in the Tax Tribunal. It is a positive step forward to have such data on the user experience, even though the evaluation was limited by its small sample size. Commitment has also been made for future evaluations in the Family and Civil Division.

4.13. However, further research is needed in a number of areas. As video hearings expand into different jurisdictions and types of hearings, it is vital that research on the user experience continues to be collected.

4.14. Data is also needed on outcomes, particularly on whether judicial decision making is substantially different when parties take part in a video hearing, compared to an in-person hearing. Additional data on the procedural justice elements of such a hearing would also help to identify any issues relating to access to justice. A randomised-controlled trial is the best method for determining the impact of new technologies such a video hearings. With this methodology, users are randomly assigned to take part in a video hearing or an in-person hearing. This is the best way to ensure equivalent groups for comparison, then any different in outcomes can be reasonably attributed to the treatment, in this case the video hearing.

5. Conclusion

5.1. The research discussed in this submission is preliminary. This is the first time HMCT has piloted video hearings, and it was important to collect date on the process and experience for users in order to improve the practice. Only once the technology and procedure is further developed will it be appropriate to conduct an outcome evaluation.

5.2. These findings suggest that video hearings may not limit access to justice in certain types of hearings. Similar types of hearings, where users participate from their homes or workplaces, where there is little documentation, and were evidence is not examined, may also be suitable for video hearings. These findings cannot be generalised to video-enabled hearings or video hearings in other jurisdictions such as criminal and immigration and asylum tribunal. It is reasonable to hypothesize that participating from a custodial environment, such as a police station or a detention center, will significantly shift the dynamic in a way that is detrimental to vulnerable users.
5.3. I strongly recommend more research is conducted on the user experience in different jurisdictions and on outcomes such as judicial decision making, before video hearings are widely implemented.