

# Access to justice during the COVID-19 pandemic in the UK



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Open University Law School  
and  
Student Law Office, Policy Clinic,  
Northumbria University, School of Law**

*Research report for: All-Party Parliamentary Group for Legal and Constitutional Affairs*

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## Contents

|   |                                     |
|---|-------------------------------------|
| Acknowledgements .....  | 2                                   |
| Introduction .....  | 3                                   |
| Background and aims of the study .....  | 4                                   |
| Research method.....  | 6                                   |
| Data and statistics regarding online court hearings.....  | 6                                   |
| Attendance of Court of Protection hearings .....  | 6                                   |
| Examination of existing literature .....  | 7                                   |
| Research limitations .....  | 8                                   |
| Results.....  | <b>Error! Bookmark not defined.</b> |
| 1. Fol requests .....   | <b>Error! Bookmark not defined.</b> |
| 2. Official data regarding online court hearings published on the GOV.UK website ...  | <b>Error! Bookmark not defined.</b> |
| 3. Data gathered from attendance of Court of Protection hearings ....   | <b>Error! Bookmark not defined.</b> |
| Administrative aspects .....  | <b>Error! Bookmark not defined.</b> |
| Technological aspects.....  | <b>Error! Bookmark not defined.</b> |
| Analysis .....  | <b>Error! Bookmark not defined.</b> |
| Analysis of findings from Court of Protection hearings.....   | <b>Error! Bookmark not defined.</b> |
| Analysis of findings from the official data published on the GOV.UK website .....   | <b>Error! Bookmark not defined.</b> |
| To what extent did court hearings move online between 16 <sup>th</sup> March 2020 and 19 <sup>th</sup> July 2021?.....                                    | <b>Error! Bookmark not defined.</b> |
| To what extent, if any, have hearings remained online at present?   | <b>Error! Bookmark not defined.</b> |
| To what extent, if any, were the public allowed access to face-to-face hearings between 16 <sup>th</sup> March 2020 and 19 <sup>th</sup> July 2021? ..... | <b>Error! Bookmark not defined.</b> |
| To what extent, if any, were the public allowed access to online hearings between 16 <sup>th</sup> March 2020 and 19 <sup>th</sup> July 2021? .....       | <b>Error! Bookmark not defined.</b> |
| Recommendations for reform.....   | 9                                   |
| Conclusion .....  | 11                                  |
| References .....  | 12                                  |
| Appendices .....  | 14                                  |

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## Introduction

The COVID-19 pandemic has presented many challenges for our legal system. The courts have had to adapt to the unprecedented change in circumstances. One of the most dramatic changes to occur was the introduction of remote court hearings. This report, jointly authored by the Open University and Northumbria University, seeks to explore this transition and the impact it has had on access to justice.

The Open University Policy Clinic is part of the Open Justice Centre. Open Justice provides free legal advice and education to members of the public in a variety of legal areas. In 2019, Open Justice established the Policy Clinic to undertake research on behalf of organisations and charities, aiming to influence policy and law reform. The Northumbria Student Law Office was set up in 1981 and offers free legal advice to members of the public on a range of different areas. The Policy Clinic within the Student Law Office was set up in the 2018/2019 academic year with the aim to undertake research influencing policy and law reform.

We began our research by gathering data from a sample of 80 Crown Courts and 77 County Courts. In addition to this, we conducted fieldwork in the Court of Protection. This involved all members of the team requesting access as public observers to remote hearings. In total, 25 hearings were attended. There was also a review of existing literature surrounding remote hearings. This report will identify the themes arising from our research that have a direct influence on access to justice. We will discuss the findings from our research alongside the existing data, and comparisons will be made between these two data sets. We believe this report is particularly important as we enter a post-COVID-19 world and questions are being raised as to whether the changes that have occurred during the pandemic should be implemented permanently. The aim of this report is to gain an insight into the effect of the pandemic and to assess the practicality of online courts.

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## Background and aims of the study

In these unprecedented times, our legal system has had to adapt quickly to accommodate a safer and more distanced approach to hearings without preventing access to justice and, therefore, losing the effectiveness of physical courts. This study explores this balance and seeks to understand whether it has been achieved or whether there is a need for reform.

The Open Justice Court of Protection Project was set up, initially, to promote access to justice specifically in the Court of Protection<sup>1</sup>. The need for wider transparency within the courts is an area of concern that the project seeks to highlight<sup>2</sup>. The pandemic created uncertainty with regard to how courts could hold hearings safely, and the subsequent transition to remote hearings raised concerns as to whether the courts could function effectively<sup>3</sup>.

Due to the advancement of modern technology, previous research has been conducted into online courts. This research has been authored by both legal academics<sup>4</sup> and government institutions. The focus of the research was to determine the practicality of introducing online courts on a larger scale.

Reports from the Ministry of Justice (MoJ) and HM Courts and Tribunal Service (HMCTS) conducted analysis of participants' experiences when engaging with online hearings. Two reports were published in 2018<sup>5</sup> that assessed the technological barriers facing remote hearings and attempted to suggest ways in which these could be mitigated. A report from the MoJ in 2018<sup>6</sup> examined the process of online hearings through the first pilot scheme introduced by HMCTS. The court in focus was the First-Tier Tribunal. Another report<sup>7</sup> evaluated user experience more generally with regard to accessing HMCTS services. Both reports advised the introduction of remote hearings and the importance of an administrative team<sup>8</sup> to oversee the infrastructure required to facilitate remote hearings.

The previous research in this area has focused on providing a general overview of remote court hearings, such as what to expect during a remote hearing. This

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<sup>1</sup> Open Justice Court of Protection Project, 'About the Project' <<https://openjusticecourtofprotection.org/about/>> accessed 10<sup>th</sup> March 2022.

<sup>2</sup> Ibid.

<sup>3</sup> William McSweeney, 'Technology, Access to Justice and the Rule of Law. Is technology the key to unlocking access to justice innovation?' [2019] The Law Society.

<sup>4</sup> Ibid. See also Grainne McKeever, 'Remote Justice litigants in person and participation in court processes in Covid 19' [2022] Modern Law Review and Richard Susskind, 'The technology barriers have been surmounted' [2020] Legal IT Insider.

<sup>5</sup> Meredith Rossner and Martha McCurdy, 'Implementing video hearings (party to state): A process of evaluation' [2018] Ministry of Justice. See also HMCTS Customer Insight Team 'HM Courts & Tribunals Service Citizen User Experience Research' [2018] Ministry of Justice.

<sup>6</sup> Meredith Rossner and Martha McCurdy, 'Implementing video hearings (party to state): A process of evaluation' [2018] Ministry of Justice.

<sup>7</sup> HMCTS Customer Insight Team 'HM Courts & Tribunals Service Citizen User Experience Research' [2018] Ministry of Justice.

<sup>8</sup> Ibid.

involves gaining access to the hearing, the procedure of the hearing itself and leaving the hearing. The previous research that has been conducted fails to give any specificity on how remote hearings may vary depending on factors such as location and time. Our research adds to the existing literature by firstly compiling and codifying existing literature into an easily accessible document. Secondly, the research explores online courts with the added influence of the COVID-19 pandemic. This report combines both qualitative data and quantitative data.

Ultimately, the results of the study will hopefully assist in deciding whether to continue with the modernisation to online hearings, whether to revert to the in-person approach experienced prior to COVID-19, or whether to implement a hybrid of the two approaches. The recommendations this report will make may form the basis of future law reform in the area. In addition to this, the results and information contained within the report may educate members of the public as well as add to the existing literature in this area. The results of the study will be presented in an easily accessible format for a lay audience.

We focused our research by asking the following questions:

- What were the policy decisions made by the Court Service regarding the move to online hearings?
- To what extent did court hearings move online between 16<sup>th</sup> March 2020 and 19<sup>th</sup> July 2021?
- To what extent, if any, have hearings remained online at present?
- To what extent, if any, were the public allowed access to face-to-face hearings between 16<sup>th</sup> March 2020 and 19<sup>th</sup> July 2021?
- To what extent, if any, are there any changes or restrictions imposed after this date?
- To what extent, if any, were the public allowed access to online hearings between 16<sup>th</sup> March 2020 and 19<sup>th</sup> July 2021?
- In what way, if any, has the public access to court hearings been facilitated?
- To what extent, if any, does the above differ geographically or according to type of court?
- Has the move to online court hearings impacted on public access to justice at all?

## Research method

Our research method consisted of three pillars. First, we obtained data and statistics regarding online Crown and County Court hearings during the COVID-19 pandemic. Secondly, we conducted fieldwork by attending Court of Protection (CoP) hearings in order to gain practical experience of virtual courtrooms. Thirdly, we reviewed existing literature on the topic. Each of these pillars will be explained in detail below.

### Data and statistics regarding online court hearings

Direct and targeted research was undertaken by sending a Freedom of Information (Fol) request to a sample of 80 Crown Courts and 77 County Courts to obtain figures regarding remote court hearings since the start of the pandemic. We created a standard template letter for the Fol, which was e-mailed to each Crown and County Court (see Appendix A). Our supervising tutors compiled a target list of 80 Crown Courts and 77 County Courts to contact. This list of courts was created by cross-referencing several different sources and checking to see if each court was still active. This resulted in a list that covered the entire population of England and Wales. For each court, we recorded the following contact information: Crown or County Court name, email address and telephone number. The supervising tutors sent all of the e-mails on the students' behalf, using the contact list as a central place to track and compile the responses.

When sending the Fol requests, the period of time for which data was requested spanned March 2020 to July 2021. This period was chosen as it represents the time within which social restrictions were in place in both England and Wales, albeit to varying degrees throughout the 15-month window. The starting point chosen, was the date on which the initial lockdown was announced, by the UK Government (23<sup>rd</sup> March 2020), and the end point was set at the date on which all restrictions were lifted in England (19<sup>th</sup> July 2021). As it became clear that official data regarding online hearings was only published from May 2020 to May 2021, we narrowed our research to focus on this period instead.

As the project moved along, it became apparent that it would not be possible to obtain a response from all 80 Crown Courts and 77 County Courts. Given the lack of resources available to the courts, their responses often steered us back to sources already available within the public domain, such as data provided on the GOV.UK website. As a result, we focused our analysis on the officially published data.

### Attendance of Court of Protection hearings

In addition to this, both universities have conducted fieldwork examining the experiences of public observers within the CoP. We researched how to attend online CoP hearings in order to add a practical dimension to the data that was obtained for the study. The data was gathered by completing a questionnaire on the various aspects of each hearing. The results of each questionnaire would provide qualitative and quantitative data on the experience of attending hearings. For example, the questionnaire would ask students to rate the audio and video quality of each hearing

on a scale of 1 to 5 points and to give their overall assessment of how accessible the hearing was. The text of the questionnaire can be found in Appendix E. Each student was given a target of attending three hearings (equating to a total of 39 hearings) between January and February 2022. This deadline was then extended to 4<sup>th</sup> March 2022 to ensure that we had more time to reach our target.

To attend the hearings, we used the following process. First, we referred to the public hearing lists to find suitable hearings. At present, the hearing lists for courts and tribunals are published daily and weekly by HMCTS on GOV.UK. The lists are free to access for members of the public. The lists are updated daily at 4:30pm, and any alterations after this time are telephoned or emailed directly to the parties or their legal representatives. The CoP daily hearing list typically includes the time, judge, case details, case type, time estimate, type of hearing and whether it is open to the public or private<sup>9</sup>. Secondly, we contacted the relevant court to request to sit in on the chosen hearing. To do so, we emailed the relevant CoP or [courtsofprotectionhearings@justice.gov.uk](mailto:courtsofprotectionhearings@justice.gov.uk), or we called the number 020 7421 8718. After this, arrangements were made for requesters to attend. Once the request to attend had been accepted, relevant information for accessing the hearing was sent to the requester, including a link to access the online or telephone platform and a Transparency Order. The Transparency Order is a document that sets out the confidentiality requirements for the hearing, ensuring that the details of the parties to the case are not made public by anyone in attendance. We were required to read this document before attending the hearing. The courts requested that we join the hearings 10 to 15 minutes before they were due to commence, using the link provided via email.

To analyse our findings, we extracted the raw data from each questionnaire, anonymised it and consolidated it into a spreadsheet (see Appendix F). The answers to one question (“Question 20: If any, what other information from the hearing do you wish to disclose for the project?”), which were entered into the questionnaires as free text, were anonymised and compiled as raw data into a separate spreadsheet (see Appendix G). Frequency analyses were conducted for each question to determine the spread of the data. During our analysis, we cross-referenced the results from different questions in order to evaluate potential correlations between different sets of data. The most pertinent data has been extracted and displayed as graphs in the “Results” section of this report.

### Examination of existing literature

Finally, an examination of existing literature on the subject was carried out to determine the academic landscape. Consideration of literature was beneficial to understand the breadth of material about COVID-19 and the courts. We also obtained data from a variety of publicly available sources. These included the UK Government (GOV.UK) website, CourtServe and the MoJ website. Based on this research, we consulted a number of PDF documents containing essential data.

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<sup>9</sup> GOV.UK, ‘Royal Courts of Justice daily cause list’ <<https://www.gov.uk/government/publications/royal-courts-of-justice-cause-list/royal-courts-of-justice-daily-cause-list>> accessed 24<sup>th</sup> April 2022.



## Research limitations

The research that we have conducted has some limitations. With regard to the FoI requests, the data we requested was confined to a specific period (namely, 16<sup>th</sup> March 2020 to 19<sup>th</sup> July 2021). Although this period is relevant to the COVID-19 pandemic, there is still a brief period after this date where remote hearings were still in effect. Furthermore, there are a series of exceptions that allow courts to deny requests. In addition, as mentioned above, a number of the courts we contacted did not have access to the relevant data, prompting us to redirect our analysis to alternative sources of data.

The fieldwork we conducted also carries some limitations. First, we focused our research on the CoP; however, this is just one of the courts in which remote hearings have been in effect. Secondly, the period during which the observations were carried out does not correspond to the full period during which remote hearings were in operation. Thirdly, the sample of hearings that we gathered is a relatively small sample size compared to subsequent data gathered from secondary literature. As a result, we may have omitted any general themes and patterns that have emerged across a larger sample size. Moreover, the hearings were observed in 2022, and this would most likely be a time when any issues that may initially have arisen would be resolved.

As a group, we attended 66% of the target number of hearings. Given more time, we could possibly have attended 100% of the target hearings. However, this proved difficult due to a substantial number of last-minute adjournments to hearings and a limited number of daily cases.

Our examination of existing literature is also subject to several limitations, as it concerns such a contemporary issue. First, the extent of the literature available was limited. Although the wider debate on the modernisation of courts has been ongoing for several years, the transition to remote hearings has not been reported on so widely. In addition, some reports are still yet to be officially analysed and released, and the data publicly available is thus limited.

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## Recommendations for reform

Based on a synthesis of our results and analysis, we have developed a set of recommendations for possible reform to online court hearings. These are as follows:

1. Remote hearings should remain as a viable option that participants should be able to choose over physical hearings. It would be beneficial to retain remote access to hearings, because this enables observers to access hearings from any location and allows people with restricted mobility to gain access more easily. In addition, removing the need to travel to a physical courtroom reduces costs for members of the public and minimises the amount of leave that they need to take from work.
2. More training on how to access court hearings should be made available for those who are not familiar with technology and with accessing remote hearings in general.
3. The number of platforms used for the remote hearings should be reduced and standardized across different courts. Currently, different courts use different platforms to varying extents. It would be easier for the public if a single platform were in use, as they would not have to learn to navigate multiple solutions.
4. Video hearings when conducted received a more positive review than audio hearings. This would suggest that video hearings should remain, and audio-only hearings should be reserved for a last resort if both physical and video hearings are unable to be held. From our research, all of the phone hearings experienced sound issues, suggesting that improvements are required. The lack of video presence also created difficulties with following the hearing, as it was more challenging to determine who was speaking at any given point. The use of video technology would provide improved accessibility for the end user.
5. It may not be possible to reduce the offering of telephone hearings due to lack of access to equipment or technical issues. If this is the case, a potential solution would be to encourage users to opt for video access wherever possible by mentioning the benefits of video over telephone access<sup>10</sup>.
6. Better technology functionality should be established for online hearings. The court service could improve the experience for end users by providing breakout rooms for judges and counsel instead of asking observers to leave the session while private discussions are held. Such improvements would provide a better experience for all involved.
7. Hearings lists should be updated for the whole week as opposed to daily. Alternatively, daily hearings lists should be published further in advance than they currently are. Either of these changes would allow for more efficient access to hearings, as the public would be able to make contact with the relevant court further in advance of the hearing.
8. Adjournment of remote hearings should be communicated more effectively to members of the public. A platform could be established on which adjournments are posted, or the daily hearings list should be regularly

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<sup>10</sup> (n 17).

- updated to provide information on adjournments. Furthermore, a live update system would be beneficial, so that information is always up to date.
9. Improvements should be made to the response times for access requests. Our findings suggest there was an increased chance of a delay in communication if the hearing was held in the morning. Providing swift communication to the end user would not only reduce the number of calls but provide improved access to justice.
  10. Training should be standardised for court staff to allow them to instruct and guide parties more effectively with regard to the process of participating in a virtual hearing. Two types of guidance could be issued by court staff: first, information regarding the technical aspects of attending the hearing (e.g. how to use the online platform, an opportunity to test connectivity, etc.); and secondly, information regarding the customs of the court (e.g. how to address the judge, when and whether to speak during the hearing).
  11. Due to the fact that some HMCTS staff reported feeling “overwhelmed” by the volume of guidance provided, it must be ensured that they are supported and given sufficient time to complete any necessary training courses and familiarise themselves with the guidance<sup>11</sup>.

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<sup>11</sup> (n 17).

## Conclusion

In conclusion, the research aims were to assess the practicality of online courts and to make recommendations for possible reform. This was achieved by gathering data from a sample of Crown and County Courts. Furthermore, fieldwork was conducted by the Open University and Northumbria University in the Court of Protection. A combined total of 25 hearings were attended over a two-month period. We also reviewed existing literature in this area. Overall, there were more remote hearings conducted in the County Court than in the Crown Court during the pandemic, and the number of physical hearings increased as COVID-19 rules were relaxed.

In some ways, the changes to court proceedings that were necessitated by the COVID-19 pandemic made hearings more accessible to the public. This was because hearings were predominantly conducted online, whereas prior to the pandemic, the majority of hearings were held in person. Barriers to attendance at hearings, such as travel and expense, were removed by the widespread use of virtual hearings. However, areas for improvement have also been identified: the administrative processes involved in accessing hearings remotely could be less onerous for the public, and the technology used for the virtual hearings could be upgraded.

The recommendations we have suggested are that remote hearings should remain as a viable option, but more resources on how to access court hearings should be made available to facilitate this. Court staff should be offered more training to ensure they are confident with their new tasks, while more guidance should be published for members of the public to familiarise them with the processes involved. For 2022, a new video hearings service will be implemented by HMCTS<sup>12</sup>. The scope of this service is yet to be determined. However, it will hopefully address some of the issues raised in this report, such as the need for separate consultation spaces for legal representatives and the requirement for built-in guidance. We also recommend that the hearings lists should be updated for the entire week as opposed to daily or, alternatively, that daily hearings lists should be published further in advance. Further research should be done to determine the most efficient way to conduct court hearings, both online and in person, in order to maximise accessibility for the public.

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<sup>12</sup> (n 18).

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## Appendices

- Appendix A – Fol requests sent to Crown and County Courts
- Appendix B – Freedom of Information requests sent to Crown Courts
- Appendix C – Text of letters sent to CoP requesting access to hearings
- Appendix D – Court of Protection hearings attended by students
- Appendix E – Text of the questionnaire on CoP hearings
- Appendix F – Consolidated data from Appendix E (CoP hearings)
- Appendix G – Raw responses to Question 20 from Appendix E (CoP hearings)