

**The Commissioner Designate for Victims of Crime
Northern Ireland**

Response to

**Audio and Video links (Live Links) for Northern
Ireland Court and Tribunal Hearings**

September 2022

1. About us

The Commissioner Designate for Victims of Crime was appointed by the Minister of Justice in March 2022 to be an independent voice for victims of crime. The overarching purpose of the Commissioner Designate is to represent the needs and interests of all victims of crime and help drive systemic improvements across the criminal justice system. This will include helping to identify any areas where victims are not consistently being provided with their entitlements as set out within the Victim Charter and ensuring that their issues and experiences are raised in the public arena, with Government, with criminal justice organisations and organisations that support and represent victims, in order to bring forward effective change.

The main responsibilities of the Commissioner Designate for Victims of Crime are to:

- Provide a voice for all victims of crime;
- Promote and encourage best practice;
- Review the adequacy and effectiveness of law and practice;
- Promote the Victim Charter and review its operation and delivery by service providers;
- Direct complaints and monitor outcomes.

Our Vision

A society where victims of all crime feel valued and have enforceable rights to protection, participation, support and redress.

2. General Comments

In early 2020, when the Covid-19 pandemic hit the UK, many turned to online service delivery as their only option to survive the new and unprecedented circumstances. Online delivery facilitated workplaces, food shopping, medical appointments, family gatherings and court hearings.

Whilst online court hearings were primarily for the purpose of social distancing to protect attendees, the opportunity of remote attendance introduced in the Coronavirus Act 2020, created an unintentional test for the application of the measures that the Department is now proposing. Given the success of getting courts back up and running after the initial lockdown, the pandemic has provided a strong argument that online, remote court attendance is not only possible but that it could be made available to society as a whole and no longer limited to the most vulnerable or intimidated.

Taking into account the experience of a victim of crime attending court, the Commissioner Designate would highlight the findings of the Department's November 2021 engagement exercise which identified the following benefits of live links:

- reducing the impact on people, especially those who are vulnerable, when going through what is already a stressful event;
- allowing children to give evidence remotely in a child friendly and neutral environment;
- reducing the risk of unplanned encounters with defendants or their relatives: and;
- meeting the Victim's Charter obligation of providing separate waiting areas from defendants.

Despite these positive results of remote court attendance during the pandemic, the Commissioner Designate is frustrated that the quantitative data to support this unique opportunity afforded by the Coronavirus legislation was not more robustly captured to help aid evaluation. Anecdotal evidence would suggest that remote evidence was most consistently used for pre-trial hearings or to facilitate the attendance of the defendant or hear evidence from expert witnesses and police officers. When it came to civilian witness evidence the default appears to have been to require the victim or witness to attend court in person unless there was a clear exceptional reason not to. This position appeared to be contrary to the public health guidance to restrict numbers gathering in public spaces and indeed the court's desire to reduce unnecessary footfall in court buildings.

The Commissioner Designate is disappointed that the evaluation report in respect of the Foyle Sightlink pilot which ran from November 21 to February 22, is not available at the time of writing, however, the Civilian Remote Evidence Group has assured her that they plan to meet in order to discuss the evaluation report in due course. She is particularly concerned that despite local collaboration supported by senior commitment, the criminal justice system was unable to adequately identify victim need far enough in advance to ensure that remote evidence was a genuine option available to victims and that the necessary communication channels to keep victims updated remotely were in place.

Increased Participatory Rights

The Commissioner Designate believes that all victims of crime should have increased participatory rights, i.e. the ability to make choices around the handling of their case, including choosing how they would prefer to give their evidence. She believes that we need to build on the positive experience of the use of live link as a special measure for those deemed vulnerable or intimidated and that the time is right to expand this option to victims of all crime. Giving evidence is an extremely

personal experience and many people report different feelings about being called upon to give evidence. Whilst some victims may feel empowered and validated by the opportunity to be heard and to have *'their day in court'*, many will feel re-traumatised and nervous about the process, and fearful of having to attend an unfamiliar environment such as a courtroom.

Given the issues of delay within case progression, together with an aging court estate which is often unfit to adequately cater for the needs of victims, particularly those with disabilities, remote evidence provides the opportunity to develop accessible, local and fit for purpose venues where victims could more comfortably give evidence to the court.

The NICTS' aim within 'The Vision 2030 Portfolio' is to "*deliver independent, fair and effective, modern courts and tribunals which serve the people of Northern Ireland with an innovative, collaborative and responsive administration of justice system*". The Victim and Witness Strategy 2021-24 aims to put *'victims and witnesses at the centre of the criminal justice system'* implementing measures that will meet their needs and improve their engagement. The introduction of a choice for a victim as to how they give their evidence helps to recognise victims as participants in the process and goes some way towards addressing their interests and needs.

The Commissioner Designate recognises that some professionals within the criminal justice system have genuine concerns that the quality of a victim's evidence or an assessment of their credibility may be diminished by live link evidence. She notes however, that research with mock jurors and research outlined in Chapter 8 of the consultation document does not support this belief. Research does however indicate that further harm and re-victimisation can be caused to victims through engagement with the criminal justice system.

Whilst it is unlikely that the introduction of a choice whether to attend court remotely or in person would lead to a rush of victims choosing live link as their preferred option, the choice should be available and it should be for the victim to weigh up the pros and cons and make an informed decision as to which option best meets their needs.

Effective Planning and Co-ordination

It is the Commissioner Designate's view that despite often publicly expressed support for improvement in practice from key criminal justice agencies or the introduction of legislation, there remains a level of resistance to change coupled with a lack of advance planning which often thwarts effective implementation of practice improvements. The Commissioner Designate would encourage the Department to consider what guidance and resource needs to be planned for to support any proposed changes to legislation in the area of audio and video links.

She is particularly concerned that recent changes to utilise Remote Evidence Centres (RECs) to improve the experience of sexual violence victims are not reaching their full potential.

The two Remote Evidence Centres introduced following the Gillen recommendations, have reported the following usage from January 2021 to 31 August 2022:

Craigavon REC

- 3 adults have attended and given evidence from Craigavon REC.
- 4 adults chose to give evidence at the REC and changed their mind at the last moment, giving their evidence from the video-link in the courthouse.
- 10 young witnesses have attended to give evidence from the REC, 6 gave evidence, and 4 viewed guilty pleas being entered at a late stage.
- 2 young witnesses changed their mind and decided to give evidence from the video-link in the courthouse.

Belfast REC

- 3 adults have given evidence from the Belfast REC.
- 5 adults changed their minds late in proceedings and gave evidence from the video-link in the courthouse.
- 6 young witnesses have attended to give evidence from the remote facility in Belfast. (Some of these attended on more than one occasion.)
- 2 young witnesses decided late in proceedings to use the court facility instead of the REC.
- 6 young witnesses were agreed by the defence and so didn't have to use the REC as planned.

The staff in charge of the RECs have assured the Commissioner Designate that the feedback from witnesses who have attended and used the REC facilities has been very positive.

The Commissioner Designate recognises that there are a variety of reasons why a victim may choose to attend the court to give evidence rather from a remote evidence centre. She is however concerned that the relatively low numbers progressing through this route is impacted by the manual system of identifying cases in the absence of an appropriate IT fix on the PPS system.

The Commissioner Designate also notes concern that a failure to properly plan for how prosecutors can effectively communicate with victims throughout the day will often lead to victims opting to attend the live link facility within the court building

instead. If we are to be genuine in our efforts to improve the facilities available to victims and maximise the impact of new initiatives, we must ensure that we work to remove any barriers to access in advance.

In summary

This consultation calls for contribution to forward looking policy making which considers how issues may still be relevant for 10 years or more. The criminal justice system cannot function without victims. It is therefore essential that we acknowledge their importance and work to ensure that their rights and needs are valued in both word and practice. This legislation provides the opportunity for Northern Ireland to lead the way in ensuring that its criminal justice system values and supports the role that victims of crime play in the administration of justice both now and in the future.

Consultation Questions

Chapter 5: What is understood by 'in the interests of justice'?

- Question No 1:

The Department seeks your views on the proposal the judiciary should continue to decide whether a person's participation remotely in any court proceedings would be in the interests of justice.

Which of the following best describes what you think about this?

X I agree.

- I do not agree.
- I am unsure.
- I have no view.

Please insert any additional comments/observations you wish to make.

The Commissioner Designate agrees with the Department's wishes to retain flexibility which allows all relevant circumstances both of the issues and the parties, including witnesses, to be considered by the Judge before determining the suitability of the use of live links in that case or for that participant.

It is the opinion of the Commissioner Designate that the judiciary should proactively enquire about the potential for the use of live link appearance for parties during pre-hearing arrangements. Criminal justice agencies also need to proactively identify the potential need and/or opportunity for a remote appearance by victims and witnesses far enough in advance that the option is placed before the Judge alongside all other matters at the pre-trial planning phase.

Chapter 6: Alternative ways to provide for the use of live links in Northern Ireland

- Question No 2:

The Department seeks your views on whether the statutory test for participating remotely should include that the court must be satisfied the use of live links is in the interests of justice AND not prejudicial or contrary to the fairness of the proceedings.

Which of the following statements below best describes what you think about this?

- I do not consider the statutory test should include this additional requirement.
- I consider the statutory test should include this additional requirement that the use of live links should not be prejudicial to the fairness of the proceedings.

X I am unsure.

- I have no view.

Please insert any additional comments/observations you wish to make.

In this instance, the Commissioner Designate would defer to technical legal opinion in the matter as she believes, to the lay person, fairness and the interest of justice are not mutually exclusive and therefore the debate in this area comes down to that of specialist legal consideration.

- Question No 3:

The Department is minded not to immediately legislate to specify factors or matters a court should have regard to or take account of in determining the use of live links in a specific case. Instead, the Department would include within legislation, a power for the Department, to make secondary legislation such as rules or regulations that could specify factors or matters a court should have regard to or take account of in determining the use of live links. Court rules or regulations have the advantage of being quicker to update than primary legislation.

Which of the following statements below best describes what you think about the Department's proposal to include in any legislation a power to make court rules or regulations to address any factors or matters a court should have regard to before determining whether the use of live links meets a statutory test like 'the interests of justice' or any alternative?

X I consider the Department should rely on a power to make court rules or regulations to address, at some future date, specific factors or matters a court should have regard to in determining the use of live links.

I consider the Department should not rely on a power to make court rules or regulations to address specific factors or matters a court should have regard to in determining the use of live links but should include these factors in an Act of the Northern Ireland Assembly.

I am unsure.

I have no view.

Please insert any additional comments/observations you wish to make.

The Commissioner Designate is of the opinion that secondary legislation is more suitable given that it has the advantage of being quicker to update than primary legislation and there can be more responsive to any future issues that may be encountered.

- Question No 4:

The final question in this chapter concerns whether legislation includes, as occurred in Scotland, England and Wales, an obligation that a court or tribunal should have regard to any guidance issued by the Lady Chief Justice.

Which of the following best describes what you think about this?

X I agree legislation should include an obligation a court or tribunal have regard to relevant guidance issued by Lady Chief Justice

- I do not agree legislation should include an obligation a court or tribunal have regard to relevant guidance issued by the Lady Chief Justice.
- I am unsure.
- I have no view.

Please insert any additional comments/observations you wish to make.

It is the Commissioner Designate's opinion that regard to the Lady Chief Justice's guidance would help to promote faith amongst the public in the consistency of the approach to this issue.

Chapter 7: Use of live links for juror participation and appeal hearings

- Question No 5:

The Department is not convinced there is evidence that allowing jury members to participate remotely in a trial is appropriate for Northern Ireland at this time.

The Department considered the outworking of the mock jury pilot project operated in England and the evaluation of that pilot. The Department's view is that any such change more appropriately lies within a wider review of jury arrangements in Northern Ireland. The Department, therefore, proposes that all members of juries should continue to be required to attend court in person.

Which of the following best describes what you think about this?

- I agree.
- I do not agree.
- I am unsure.

X I have no view.

Please insert any additional comments/observations you wish to make.

The Commissioner Designate has no official view on this matter as it does not directly represent a challenge faced by victims of crime. However, the Commissioner Designate does have an interest in the potential to remove barriers to case progression as it is in a victim's interest to allow a case to proceed.

The Commissioner Designate would assert that remote attendance by jurors could have the ability to prevent a case from collapsing or having to delay sitting on a given day, e.g. if a juror was Covid positive however still able to participate remotely or if a juror had to attend a medical appointment. The Commissioner Designate feels there may be an argument for allowing remote juror attendance in exceptional circumstances and that it may be a worthwhile exercise to weigh up the requirement for jury members to be present against the potential for a case not progressing due to problems with the jury.

As the Department repeatedly recognises, the Covid-19 pandemic has evidenced a new way of working that would have been considered impractical or even impossible beforehand. Where possible, we should seek to ensure that new legislation can be future proofed where possible to build in flexibility whilst still ensuring the integrity and structure of the court.

- Question No 6:

The Department, having reviewed the various legislative provisions recently passed for England and Wales as well as the Republic of Ireland, considers there should be no presumption of exclusion from the use of live links for an appeal hearing.

Which of the following best describes what you think about this?

X I agree that appeal courts should use live links for hearings provided the statutory test is satisfied.

- I do not agree that appeal courts should use live links for hearings provided the statutory test is satisfied.
- I am unsure
- I have no view

Please insert any additional comments/observations you wish to make.

- Question No 7:

The Department considers that all courts, including appeal courts can be an appropriate forum for the court to determine complex matters of law, via live links, subject to judicial discretion.

Which of the following best describes what you think about this?

X I agree that hearings using live links are capable of dealing with complex matters of law subject to judicial discretion.

- I do not agree that hearings using live links are capable of dealing with complex matters of law subject to judicial discretion.
- I am unsure.
- I have no view.

Please insert any additional comments/observations you wish to make.

The Commissioner Designate is in agreement and would again express that the Covid-19 pandemic provided indisputable evidence that this can be successful.

Chapter 8: Specific concerns expressed about use of live links in Northern Ireland and the Department's response

- Question No 8:

The Department considers there will always be cases for which remote evidence may be less desirable either “in the interests of justice” or to ensure “fairness” to the parties before the court or tribunal. The Department's firm view is the judicial member is best placed to determine, on a case-by-case basis, what should occur having being required to hear the views of the parties. However, the introduction of a default statutory presumption to rule out a virtual hearing for oral evidence during a final or contested hearing (whether criminal, civil including public or private law or within the remit of a statutory tribunal) might address the reservations expressed to date about live links.

Which of the following best describes what you think about this?

- I agree there should be a default statutory presumption to exclude the use of live links for final hearings where contested oral evidence is required.

X I do not agree there should be a default statutory presumption to exclude the use of live links for final hearings where contested oral evidence is required.

- I am unsure.
- I have no view.

Please insert any additional comments/observations you wish to make.

The Commissioner Designate believes that the suitability of a remote hearing must be judged on the characteristics of the case. Any decision regarding the use of live link for victim testimony in particular should come down to the individual needs assessment of the victim considered by the Judge alongside the requirements and complexities of the case [as per answer to question 10].

- Question No 9:

The Department considers any default statutory presumption, if introduced, to protect the principle of judicial independence, must be capable of being deviated from when the judge is satisfied the statutory test is met.

Which of the following best describes what you think about this?

X I agree the judge hearing the case, if satisfied the statutory test/s is met, can deviate from any default statutory presumption.

- I do not agree the judge hearing the case, if satisfied the statutory test/s is met, can deviate from any default statutory presumption.
- I am unsure.
- I have no view.

Please insert any additional comments/observations you wish to make.

The Commissioner Designate agrees and is of the opinion that the judiciary should be able to exercise their judgement in these matters.

- Question No 10:

The Department does not wish to see any diminution of video link procedures in place, before the pandemic, which allows young and vulnerable witnesses to provide their “best evidence”. Accordingly it is proposed provision be made to prevent any default statutory presumption excluding the use of live links for final hearings from impacting upon legislative provisions in force before the Coronavirus Act 2020.

Which of the following best describes what you think about this?

X I agree pre-existing legislative provisions permitting the use of remote evidence before the Coronavirus Act 2020 should fall outside the impact of any default statutory presumption to exclude the use of live links for final hearings.

- I do not agree pre-existing legislative provisions permitting the use of remote evidence before the Coronavirus Act 2020 should fall outside the impact of any default statutory presumption to exclude the use of live links for final hearings.
- I am unsure.
- I have no view.

Please insert any additional comments/observations you wish to make.

It is the Commissioner Designate’s opinion that the provision afforded to young and vulnerable witnesses to give evidence remotely is extended to all victims of crime who choose to avail of it.

Chapter 9: Range of identified factors or matters for potential inclusion in legislation

- Question No 11:

The Department’s view is that protection of the principle of open justice, provided any legislation includes similar provisions to those within Part 2 of Schedule 27 of the Coronavirus Act 2020, can be left to a blend of secondary legislation, judicial guidance or practice directions.

Which of the following best describes what you think about this?

- X I agree.
- I do not agree. I think the primary legislation should include a reference to “open justice” arrangements.
- I am unsure.
- X I have no view.**

Please insert any additional comments/observations you wish to make.

The Commissioner Designate supports the principle of open justice but would stress the need to ensure that any option to watch proceedings remotely has appropriate safeguards to protect the needs interests of the court and the parties of involved.

- Question No 12:

The Department is aware the Crown Court Rules (Northern Ireland) 1979 do not include an overriding objective similar to that mentioned within the Magistrates’ Court Criminal Case Protocol or County Court. However, the level of respondents to the 2021 engagement who support “the Coronavirus Act 2020 provisions or similar” being made permanent makes the preferred approach of the Department not to immediately legislate on factors or matters which a court/tribunal should have regard

to when it determines whether the use of live links should occur. The Department prefers to make secondary legislation, if required, that could set out factors or matters which a court should have regard to when determining the use of live links (See Question 3).

Which of the following best describes what you think about this?

X I agree that the legislation does not need to set out specific matters or factors the court should consider when determining whether a person should participate remotely in any court proceedings.

I consider specific matters or factors should be set out in legislation as part of the court determining whether a person should participate remotely in any court proceedings.

I am unsure.

I have no view.

Please insert any additional comments/observations you wish to make.

As above, the Commissioner Designate believes that the option should be available to all victims but agrees that secondary legislation could more appropriately set out the range of factors that the courts should consider when determining this.

- Question No 13:

If in Question 12 above you did not agree with the Department and consider specific factors or matters should be included in legislation as part of the court/tribunal determining a person's participation remotely, how many and what factors would you wish to see?

I wish to see a short list (no more than 4) specific matters or factors set out in legislation. Please add details of those matters or factors as additional comments below.

I wish to see a long list (5 or more) of specific matters or factors set out in legislation. Please add details of those matters or factors as additional comments below.

I am unsure.

I have no view.

Please insert any additional comments/observations you wish to make.

N/A

- Question No 14:

Which of the following statements best describes your view when considering the differing approaches adopted for England and Wales, Republic of Ireland and Scotland.

- I prefer the approach adopted for England and Wales.
- I prefer the approach adopted for the Republic of Ireland.
- I prefer the approach adopted for Scotland.

x I am unsure.

- I have no view

4. Contact Information

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