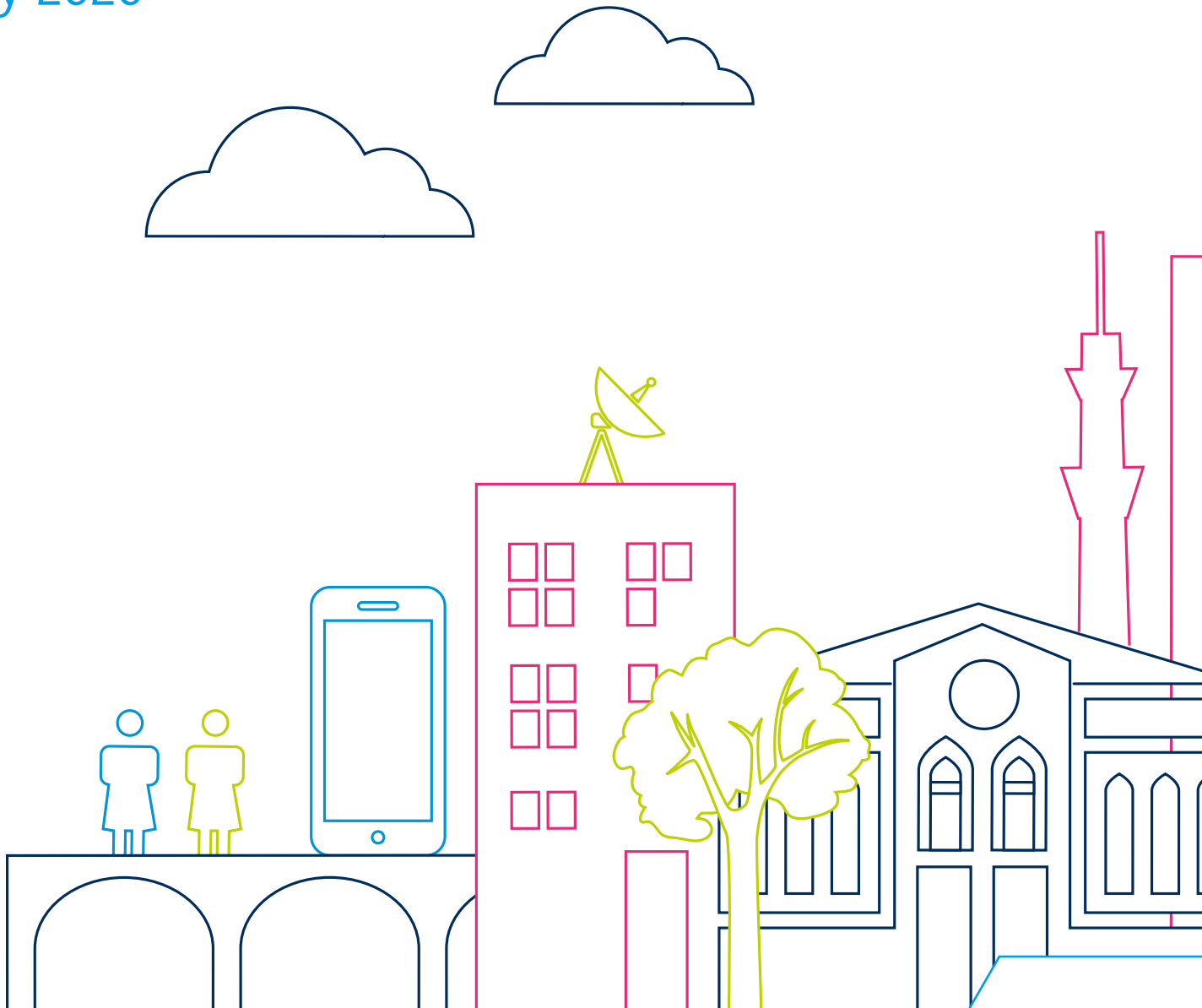




HM Courts &
Tribunals Service

Video Hearings Process Evaluation (Phase 2) Final Report

Meredith Rossner and Martha McCurdy
London School of Economics
July 2020





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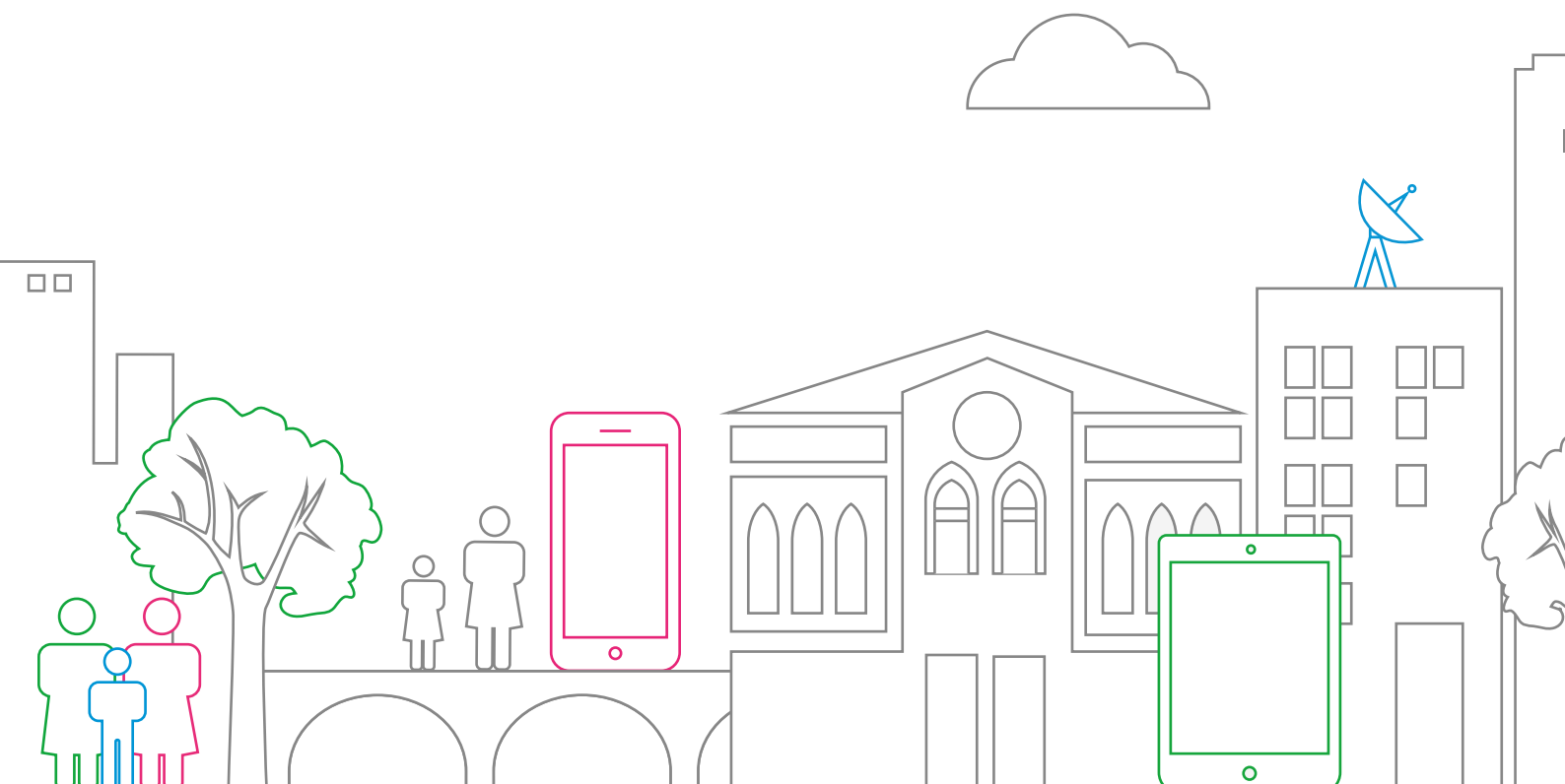


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1. Summary

This report details the findings of the Video Hearings Process Evaluation Phase 2, comprising party-to-party hearings and party-to-state hearings in civil, family and tax jurisdictions.¹ It will provide a brief summary of the previous research in this area, the larger reform and evaluation landscape, the development and implementation of video hearings, and a description of the data and methods used in the evaluation. This evaluation took place between March 2019 and March 2020, and was concluded before the COVID-19 pandemic.

The evaluation was based on a prototype version of the video hearings service. A new platform was released in November 2019 (Release 1), but we could not observe an entire user journey due to the elapsed time between a hearing being listed and taking place. As such, the additional functionality in Release 1 has not been reviewed. Differences from the new release are noted throughout the report.

The evaluation included observations of hearings, interviews with users and key stakeholders, and analyses of administrative data and documents. It will report on the implementation and user and judicial experience of video hearings. It will conclude by making recommendations about best practice for the video hearings process.

The experience of participants in this pilot suggests that, at least for the types of hearing tested, video hearings can provide an appropriate alternative to physical hearings.

[Developing the video hearings service and platform \(Section 4\)](#)

We observed a high-level investment and public engagement in developing and testing the video hearings service and platform to increase its accessibility and usability for users with a range of digital skills. Significant user research was undertaken when developing Release 1.

[The journey to a video hearing \(Section 5\)](#)

The journey to a video hearing involves a suitability assessment, including assessing whether parties have appropriate equipment, internet connection and private space. This is conducted by court or tribunal staff and the video hearings team, while a judge makes the final decision.

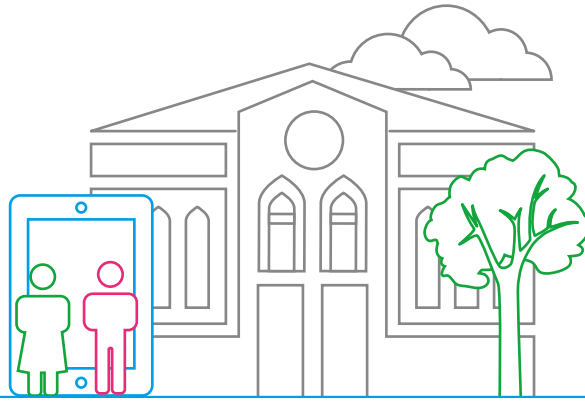
There are multiple stages in the video hearing journey where a party might be removed from the pilot. A major barrier to progressing to a video hearing is where one or both of the parties' email address is unknown. Other challenges include not receiving responses from one or either of the parties. There were two disruptions to case flow during the pilot, one when Release 1 was launched and one when the practice direction that permitted some video hearing listings expired.

The introduction of Release 1 in November 2019 resulted in a change to the journey: users no longer as a rule take part in a pre-hearing call with a Video Hearings Officer (VHO). Instead they take part in an automated online self-test that checks their equipment and internet speed. We did observe hearings under the new video platform. However, due to the elapsed time between a hearing being listed and taking place, the current research did not include users who took part in an automated check as part of their journey to a video hearing.

[User experience of the video hearings journey \(section 6\)](#)

Users reported a high level of satisfaction with the level of support they received leading up to their video hearing. They found the guidance reassuring and were able to resolve any potential technical issues. Users largely complied with basic advice, they displayed a professional demeanour and participated in the video hearing from a neutral setting. Users participated from their homes or workplace. Most users were clearly visible on the screen, however in some cases poor lighting made it difficult to distinguish features. With a few exceptions, audio quality was high. All judges participated in video hearings from a courtroom. The exception to this was Short Notice Hearings which were held in private judicial chambers.

¹ This research builds on the Phase 1 evaluation, a process evaluation of party-to-state hearings in the Tax Tribunal (<https://www.gov.uk/government/publications/implementing-video-hearings-party-to-state-a-process-evaluation>). Party-to-state hearings involve an action against a state body (in this case HMRC). In party-to-party hearings, such as most civil claims, actions are against other individuals or private entities.



[Description of video hearings \(section 7\)](#)

We observed 23 video hearings, six of which were unable to proceed due to technology problems, including product outages and parties unable to log on to the platform. Three additional hearings were adjourned to a later date so that the judge and other party would have time to read documents that were produced at the hearing. These adjournments would also have occurred had the hearing been in-person. Other technical issues were less significant and easier to remedy compared to findings from the previous pilot.² Judges were effective in managing the video hearings, and users respected the formality of the proceedings. Judges adapted to the video format well and made sure that parties could hear and see one another and that turn-taking conventions were adhered to.

[User experience of video hearings \(section 8\)](#)

Most users commented on the convenience of having a video hearing and the time and cost it saved them. Some users also reported reduced stress and anxiety due to being able to take part in a hearing from their home or from their solicitors office. Legal professionals felt the cases selected for the pilot were appropriate and also recognised this option as a benefit for parties. Users reported finding their video hearing easy, effective and straightforward. However, some recognised a challenge with communicating over video and felt that it might be difficult for people who are not familiar with or do not have access to the suitable technology. Users maintained the view that pre-hearing support was highly valuable and helped them navigate the technology on the day of their hearing. All users were highly satisfied with how the judge managed the hearing and the formality of the hearing. Users who experienced technological issues did not report these as unmanageable and thought that judges dealt with any disruption effectively.

[Judicial perspectives on video hearings \(section 9\)](#)

The judges in our sample all had previous experience with screens in the courtroom, though not necessarily with video links. Those who had a one to one familiarisation session and the chance to try out the video hearings platform were pleased with this. Judges were satisfied with the video hearings process for the hearings they conducted, though also noted that the format was more draining than physical hearings. They could see the benefit of moving some additional hearings to video, though also noted that some cases are better dealt with where parties are physically together. Judges held some reservations about video hearings, in terms of their ability to manage video hearings effectively, the ability of the hearing format to communicate formality and authority, dealing with late or missing documents, and the cost effectiveness of administrative support. They stressed that video hearings were a good option as long as the technology was dependable. Judges reported that access to video hearings should be increased but not as a substitute to physical hearings.

² <https://www.gov.uk/government/publications/implementing-video-hearings-party-to-state-a-process-evaluation>.

1.1 Recommendations

These recommendations are drawn from the key findings of the evaluation, based on the data we collected over the period of the research. We note where in the report to find more detail on each recommendation. The video hearings service is developing rapidly, so we also note where HMCTS has begun to address or has already resolved the issue since the conclusion of the evaluation in March 2020.

We offer four main types of recommendations. The first relate to improved guidance for users of video hearings. The second concerns the functionality of video hearings. The third refers to recommendations for improved equipment. The final set of recommendations include areas where we encourage further research.

Recommendations to improve guidance

The remote locations chosen by most participants were suitable and users were satisfied with the layout of their video hearing. Lay and professional users appeared on screen in an appropriate manner with plain backgrounds. In some instances, poor lighting or camera angles made it harder to see people's facial expressions. In other instances, users appeared either too close to the camera so that their head and neck dominated the screen or too far away so that it was hard to distinguish facial features.

Recommendation 1:

We recommend developing guidance to achieve effective lighting and framing for all users. Users, including judges, should be at a distance from their camera so that their head, shoulders, and some of their torso is in view. This will allow for gestures and other movements to be seen. Users should avoid backlight or harsh direct overhead light. (for more details, see Section 6.4).

Since the end of data collection, guidance on lighting, backdrop and position of screen has been incorporated in the current user journey, with additional guidance for judges and professional users. Since COVID-19, extensive guidance is being offered for those having video hearings on GOV.UK.

While in general the quality of the video and audio was high, we observed cases with significant feedback or with inconsistent volume.

Recommendation 2:

We recommend advice given that external microphones and/or headsets are advisable to avoid distortion and feedback. For more details, see section 6.4, 7.5 and 8.7.

Post evaluation, the service now has the ability for the judge to mute participants, or for them to mute themselves, which will help with noise interference.

Judges for the most part reported minor technical difficulties with the video hearings they conducted, acknowledged that parties acted appropriately and that they were able to manage hearings effectively. However, most reported that video hearings were harder to manage, took more time, and were not a substitute for a court or tribunal hearing. While most could see the appropriateness of using video for certain matters, compared to the feedback we received from participants there was more of an unease with video hearings.

Recommendation 3:

We recommend continuing to advise judges on managing a video hearing such as strategies to support effective turn-taking and prevent parties from talking over one another. This may include **investigating the introduction of a function that signals who is speaking.** For more details, see section 7.7, 9.3 and 9.4.

Since the evaluation, the guidance offered to judges has been turned into a video-based training session by the Judicial College. It provides comprehensive guidance on the behavioural and practical aspects of conducting a hearing.

Recommendations about platform functionality

We regularly observed instances where the label for the judge on the screen did not provide specific information about who they were.

Recommendation 4:

We recommend that judges appear on the screen with labels indicating their name and location, rather than generic labels. For more details, see section 6.4.

Post evaluation, generic labels for judges have now been replaced with editable labels. We would encourage regular use of this function.

Users experienced few technical problems, and reported generally positive feedback about their video hearing. For the most part, when technology problems arose, they were dealt with quickly and did not disrupt proceedings. There were instances however when parties experienced an issue with their audio or video feed of which they were unaware.

Recommendation 5: We suggest incorporating into the platform signals for informing parties when their audio or video fails. For more details, see section 7.5.

The service is evolving rapidly, and since the evaluation, the judge is alerted if a party's connection is poor. VHOs monitor a user's network strength in real time and take action if needed.

Judges and video hearing users all expressed a concern that those without access to high quality technology or robust internet were excluded from participating.

Recommendation 6: *We recommend that **measures should be developed to improve access to video hearings, including the ability to access a hearing through tablets and mobile phones.** For more details, see section 8.8 and 9.8.*

The project will soon be releasing the facility to access a video hearing using an iPad and is investigating mobile phones/other tablets.

Recommendations for improved products and associated services

Judges raised concerns about handling late or missing documents. Although they recognised that all documents should be submitted in advance of the hearing, they also noted that it is not always possible to submit documents in advance. Furthermore, sometimes documents are only realised as important during a proceeding. Many also acknowledged that even if late documents can be shared, in some instances hearings will have to be adjourned to allow time to read.

Recommendation 7:

*We recommend **investigating ways of sharing late documents in a safe and secure way.** For more details, see section 7.6 and 9.4.*

Judges viewed the hearing through a separate monitor with a mounted camera placed on their bench. This was in addition to their laptops used for viewing documents, references, and writing notes. Some judges reported that the extra monitor on their bench took up space needed for their laptop or notebook. In addition, the placement of the camera made it difficult to include other tribunal members in the frame.

Recommendation 8:

*We recommend that **judges continue to have a separate monitor to view parties in the video hearing, and that the equipment provided can accommodate a single judge or a panel of judges and panel members.** For more details, see section 9.4 and 9.8.*

A barrier to progressing to a video hearing, most notably in Set Aside Judgments, is where there is no email address available for one or both parties. A case cannot be listed for a video hearing without an email address. The video hearings team spends a considerable amount of time attempting to locate email addresses and a significant number of potential hearings are removed from the process. The current forms do contain a space for an email address but it is not mandatory to provide one.

Recommendation 9:

We recommend that the email address field is marked as 'required' on the current form and that when the forms become digital the completion of the email address field is mandatory.

Recommendations for future research

With the introduction of Release 1 in November 2019, a major change was the introduction of an online self-test to check a user's technology in place of a one-to-one pre-hearing preparatory phone call. By the close of the data collection period and due to disruptions with case flow following the release of this platform, the journey to a hearing for users still involved the original correspondence and pre-hearing calls. Everyone we interviewed took part in a pre-hearing call, which were rated very highly by users.

Recommendation 10:

*We recommend **further research on the user experience of the journey to a video hearing and of video hearings under Release 1, including the automated technology self-check.** For more details, see section 6.1 and 6.2.*

Video hearings on Release 1 are currently being observed and interviews with participants are being conducted by an HMCTS user researcher. Further user testing will be undertaken as the service develops and its use expands across different jurisdictions.

Judges and legal professionals all thought that the hearings that were a part of the pilot were suitable for a video format and were open to considering video hearings for other matters. There was some concern about having cases over video that required negotiations between parties outside of the courtroom, and cases that involved examination or cross examination of evidence.

Recommendation 11:

*We recommend that **complex cases should not be ruled out as unsuitable for video hearing. Further testing should be conducted to assess the suitability of more complex cases.** For more details, see section 8.8 and 9.7.*

Both lay and legal users reported that hearings were suitably formal. All reported that they and others took the hearing seriously. Some indicated that while it may not have been as formal as a traditional court or tribunal hearing it was a professional encounter. Judges, however, expressed some reservations about the formality of the proceedings and the ability of the video hearings format to communicate judicial authority. It is important to recognise that the formality of a physical court or tribunal may not be replicated on screen, but hearings can still meet a minimum standard of professionalism. Traditional symbols and procedures of a physical courtroom may help with this, such as displaying a coat of arms, judicial dress and demeanour, and reminding participants of the conduct of a court or tribunal. Professionalism is also communicated through initial correspondences and through the journey to the video hearing room that users undertake.

Recommendation 12:

We recommend **additional research** on how best to strike the balance between a video hearing that **meets the criteria of formality, professionalism, and accessibility**. For more details, see section 7.8, 8.6 and 9.4.

Our evaluation did not collect data from vulnerable users who may need extra support during a court or tribunal appearance. For instance, we did not receive consent to interview applicants in short notice emergency injunction hearings.

Recommendation 13: We recommend that further research is conducted on how vulnerable users experience video hearings.

It is possible that only those who are predisposed to be positive towards remote technology are ending up with a video hearing. This is known as self-selection bias.

Recommendation 14: We recommend additional research is conducted to investigate ways to address possible self-selection bias.

Users in this pilot took part in a video hearing from their home or office using their own devices. They had control over their space, their lighting, and positioning. This may not be the case in other forms of video or video-enabled hearings, such as when participants appear from police custody or prison.

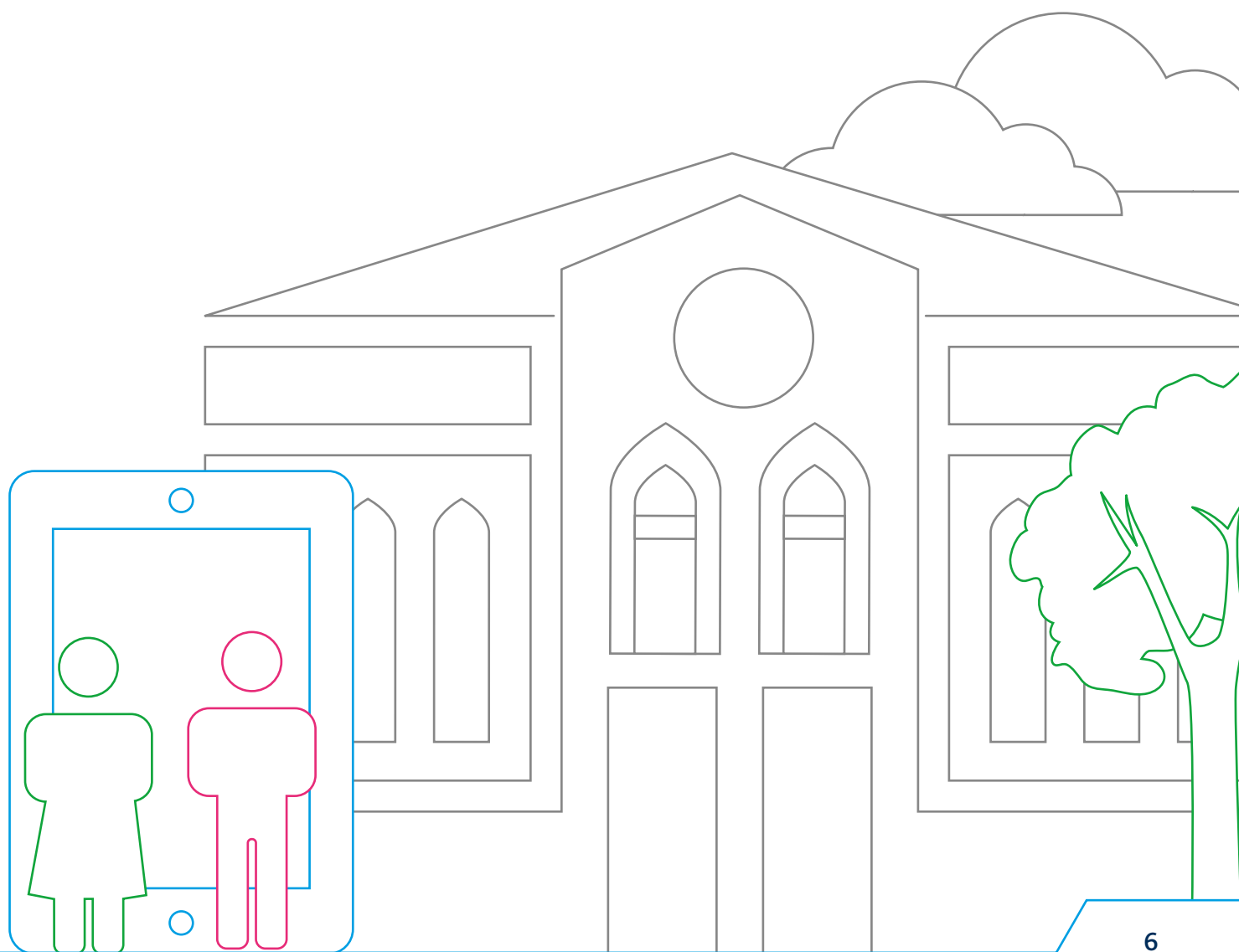
Recommendation 15: We recommend further research into how the incorporation of more coercive remote spaces, such as prisons or police custody, impacts the process and dynamics of a video hearing.

To ensure open justice during the pilot, when video hearings were not private they were held in a physical courtroom. Such a configuration may not be an effective use of the court and tribunal estate.

Recommendation 16: We recommend additional research on ways that justice can remain open whilst allowing for flexibility about where video hearings take place.

This report delivers findings from a process evaluation, which focuses on the implementation of video hearings and the user experience of video hearings.

Recommendation 17: It is recommended that an impact evaluation of video hearings is conducted on how video hearings impact decision-making and other justice outcomes.



2. Background

2.1 What is a video hearing?

Video links have been used within courts and tribunals for many years. A fully video hearing is a hearing where all parties take part in a video conference with their laptop or desktop computer using a web-based system. Parties join the hearing from a suitable location of their choice. This is distinguished from video-enabled hearings, a fairly common type of hearing in certain jurisdictions where one party participates via video but everyone else is co-located in the courtroom.

2.2 Previous research on video hearings (2018)

In 2018 HMCTS conducted the first pilot for video hearings where all parties participate in a hearing remotely. The pilot used an early technical product to test the concept of video hearings for basic appeals in the First Tier Tribunal (Tax Chamber). Video hearings in this pilot consisted of an appellant appearing via their own computer from home or from work, a representative from HMRC appearing from their office, and a judge sitting in an open courtroom to ensure open justice. If the appellant had a representative, they were co-located with the appellant at their location or they appeared remotely from their office. A process evaluation focused on the user experience of the video hearing. The findings of the process evaluation are detailed in Rossner and McCurdy (2018).³ A summary of the key findings are below:

- Many potential users were unable to take part in a video hearing due to the limitation of the first iteration of the technical product, which required a specific browser and hardware specifications, among other criteria. However, most cases that proceeded to a video hearing were completed successfully.
- VHOs, who assisted users with technological issues prior to the hearing and during the hearings, played a vital role in user satisfaction. They quickly solved any problems, and made users feel comfortable and at ease using the technology. There was a concern, however, that this high-level support would not be available in an expanded version of this service.
- Users experienced a high level of satisfaction, in particular, with the ease of use and the convenience of not having to travel to the tax tribunal.
- Most video hearings experienced minor technology difficulties that were quickly resolved (mostly to do with audio and/or video dropping out due to poor internet connections in the courtroom). A small number of cases experienced significant technological problems and were rescheduled as an in-person hearing or a telephone hearing. The report found there to be significant hurdles to overcome to ensure technology is robust and usable.
- Appellants and representatives reported that their video hearing was suitably formal and approximated to being in a courtroom. However, some judges and HMRC representatives expressed a concern that some appellants appeared to act in a less formal manner during their video hearings than they would have had they appeared in-person. Observations of both video hearings in in-person hearings suggested that participants acted with equivalent levels of formality.
- Members of Judiciary reported that the familiarisation sessions they took part in were useful, and that the technology was easy to use. Data from observations and interviews suggested that the judges were effective in managing proceedings

This pilot evaluation was the first empirical research on video hearings for real cases. Other research on fully-video hearings includes an experiment with a simulated virtual court in Australia (Tait et al. 2017).

³ <https://www.gov.uk/government/publications/implementing-video-hearings-party-to-state-a-process-evaluation>

2.3 Research on video-enabled hearings

In video-enabled hearings, one party appears remotely, and all other parties are co-located in a physical courtroom. A fully video hearing is different in that the technology enables all parties to participate from any suitable location. Research on video-enabled hearings has largely focused on defendants appearing remotely in Criminal cases, and detainees appearing remotely in Immigration and Asylum cases. There is also research on expert, vulnerable and child witnesses appearing remotely. In the Criminal and Immigration and Asylum contexts, research suggests that individuals participating remotely can feel isolated and less confident in the proceeding (McKay 2017, Eagly 2015). A 2010 Ministry of Justice evaluation of video-enabled criminal hearings found that defendants who appeared via video were more likely to plead guilty and to receive a custodial sentence than offenders who appeared in person (Terry et al 2010). However, this was confounded by the fact that video defendants were also less likely to be represented. Research on child and vulnerable witnesses suggest no differential outcomes when testimony takes place via video (Ellison and Munro 2014, Munro 2018). Expert witnesses who testify remotely can also experience challenges communicating effectively (Wallace and Rowden 2018).

While video-enabled remand hearings have been taking place from police custody suites for a number of years, in 2020 a new evaluation commissioned by the Office of the Sussex Police and Crime Commissioner examined an upgraded and improved 'booking tool' and enhanced video court (Fielding et al. 2020). In a section on the user experience of video remand hearings, the researchers report that once the new tool was implemented, there was an improvement in terms of introduction and orientation of defendants at video court, an increase in defendants attempting to speak to the judge, and a decrease in technology disruptions. But these hearings also experienced a reduction in advocate client communication, a greater sense of distance or detachment, and a decrease in the audio quality. They found defendants to be sentenced at similar rates, custodial sentences were more common in video court but decreased after the introduction of the booking tool.

2.4 The current video hearings pilots (2019-2020)

The previous pilot focused on party-to-state hearings in the First Tier Tribunal (Tax Chamber). The current pilot began as a test of party-to-party hearings in the Civil and Family Courts. These hearings add an additional level of complexity to the proceedings, as they involve two parties taking part from their home or workplace (unlike the Tax Tribunal hearings which involved one appellant and one representative from HMRC). Consent, eligibility, and suitability assessments were therefore undertaken for two parties before a video hearing could take place. The pilots were located at the Manchester and Birmingham Civil Justice Centres.

In consultation with senior members of the judiciary, HMCTS identified two hearing types that involved a relatively straightforward exchange between parties and no examination of evidence in court. In the Civil Court, video hearings were piloted with **Set Aside Judgments (SAJs)**, where applications are made by the defendant to set aside a County Court Judgment against them. These are most often cases where a defendant did not know that a judgment was made against them. In these hearings, the defendant and claimant are present. A judgment will be set aside if the defendant can show that they did not know about the judgment, they make the application in reasonable time, or the judge thinks that there may be a successful defence to the claim. If the judgment is set aside, the defendant must submit a defence and have a new County Court hearing.

In the Family Court, video hearings were piloted with **First Direction Appointments (FDAs)**. This is the first hearing in financial proceedings during a divorce. It is a 'house-keeping' and largely procedural hearing, where the court sets a timetable for resolving issues over financial remedy. A number of documents must be produced in advance of the hearing, where they are examined by the court. It was decided that for the purposes of the video hearings pilot, FDAs would only be eligible if both parties have legal representation. Video hearings in SAJs and FDAs began to be listed in December 2018 and hearings began to be heard in March 2019.

In March 2019, HMCTS also began to pilot video hearings in **Short Notice Hearings** (non-molestation orders, and in July 2019 Section 8 orders regarding children were added to testing). These are not party-to-party hearings, but rather a hearing with a judge and an applicant seeking an immediate injunction against a partner or former partner. In these cases, heard at the Manchester Civil Justice Centre, an applicant will attend their local solicitor's office to request an injunction, and within a few hours they will be able to have a hearing with a judge. The applicant and their solicitor are co-located in a conference room at the solicitor's office, and the judge sits in a private judicial retiring room at the court.

In August 2019 HMCTS returned to the First Tier Tribunal (Tax Chamber) to supplement the party-to-party pilot. One reason for this was that in November 2019 HMCTS launched a new video hearings platform. This represents a major technological breakthrough with the backend operating system, and a new journey for both legal representatives and lay users, though the user end of the hearing does not change substantially. This pilot trialled video hearings for **Basic Tax Appeals**, the same type of hearings used in the 2018 pilot and process evaluation. This allows for a robust comparison between the original and newer pilot. Video hearings are operated from Taylor House, London.

The development of these pilots was informed by the previous pilot and evaluation in the First Tier Tribunal (Tax Chamber). Changes from the previous pilot include the move to an online system notifying parties of their hearing, seeking consent, and conducting an eligibility assessment. The procedure also involves a modification to the pre-hearing preparations with a VHO. The pilot also improved its internet capabilities in order to reduce the number of technology disruptions.

The move in November 2019 to a new platform means that some of the user journey changed during the course of our evaluation. While hearings began listing under Release 1 in November 2019, by the end of data collection in March 2020 most hearings that were being heard were originally listed under the old platform (more details are in Section 6 below). As a result, though we did observe hearings that were held under Release 1, we did not interview any users who experienced the user journey under the new platform.

2.5 The larger reform context

The video hearings pilot and process evaluation are a part of the larger £1.2 billion HMCTS reform programme to transform and modernise the justice system (Lord Chancellor, Lord Chief Justice of England and Wales, and the Senior President of Tribunals, 2016).⁴ The full reform programme is ambitious in scope and scale. Physical courts and tribunals are closing, services are centralising, paper-based services are moving to a digital format, some types of cases are moving online, and the use of video is increasing. Reform is managed by HMCTS with the support of the senior judiciary. This is seen as a necessary upgrade to the existing system. The Lord Chief Justice Lord Burnett, in oral evidence to the justice committee in July 2019, remarked:

Overall, the judiciary sees the reform programme as long-overdue modernisation of our systems—which have rather ossified, to be perfectly honest, as a result of a lack of resources, over the last 20 years or so in particular—to keep pace with technological developments. The reform programme is about a lot more than simply digitisation and taking advantage of technology that is now available, but we cannot stand still. As the public at large, and all of us, use technology to deal with most aspects of our daily life, it would be remarkable if the courts alone, among all important aspects of society, did not attempt to keep up. (Burnett, 2019)

Across HMCTS, reform has been agile and iterative, with distinct teams within HMCTS developing and testing different technical products in different jurisdictions. For instance, the 2018 video hearings were being piloted at the same time as an online divorce application service, a paperless system of sentencing for fare evaders and fraudulent ticket holders at a magistrate's court, and a service to lodge tax appeals online.

The video hearings pilot was one of the first reforms to engage an independent evaluator to examine the user experience of a new technical product. The evaluation, conducted by the authors at the London School of Economics, are independent of any additional evaluation undertaken by HMCTS or the Ministry of Justice.

The 2018 evaluation in the First Tier Tribunal (Tax Chamber) and the current evaluation are both process evaluations of user experience. Since the technical product is still in the process of modification and improvement, it was deemed important to collect robust data on the process and experience of video hearings. At a later date, the video hearings pilot, as well as all the other elements of the reform programme, will need to undertake an outcome, or impact, evaluation.

Findings from the video hearings process evaluation cannot be generalised to any other elements of the reform programme, including other innovations in video technology across the justice sector.

⁴ For more on the reform programme, see <https://www.gov.uk/government/news/hmcts-reform-programme>.

2.6 COVID-19 and the reform programme

COVID-19 and subsequent lockdown measures in March 2020 have dramatically changed the way courts and tribunals in the UK, as well as globally, operate. Across multiple jurisdictions in the justice sector, courts and tribunals have moved away from convening hearings in physical courtrooms to a range of remote options. HMCTS, working with senior members of the Judiciary, are offering multiple options to allow for remote participation, including telephone hearings and video conferencing platforms including CVP, BT MeetMe and Skype for Business. These products are different from the technological product that is currently used in the video hearings pilot and do not provide the same user journeys and remote in-hearing support functions. They have been adopted as an emergency response to COVID-19. They offer flexibility to suit a range of jurisdictional requirements and hearing types.

The video hearings service under evaluation in this pilot has been specifically designed for the requirements of the court and tribunal context. Based on research conducted by HMCTS, the service includes a 'journey to a video hearing' that precedes the hearing which is designed to evoke the court and tribunal journey (see Section 4 and 5 on the HMCTS research lab and on the journey to a video hearing). Included in this journey is the video hearing waiting room and private rooms for consultation. In these hearings, the judge can see when parties are in the waiting room and will then start the hearings, all parties join the video hearing at the same time. The service also includes both remote and local technological support.

The video hearings service and platform currently being piloted as a part of the reform programme is not being used as part of HMCTS contingency response to COVID-19. The service is considered an end-state-solution, and continues to be tested and developed. This is taking place alongside the introduction of other platforms in response to COVID-19.

HMCTS are continuing to provide fully video hearings across three locations (Manchester, Birmingham and London) for basic tax hearings, SAJs, FDAs and short notice hearings. However, case flow has been limited during COVID-19. The process remains the same and quality checks with parties are still being undertaken.

HMCTS will also evaluate the response to COVID-19.

3. The current research

3.1 Research objectives

The proposed evaluation seeks to assist HMCTS to develop a technical product and set of protocols that will provide users with a fair, just, and easy-to-use process. This study seeks input from users as well as judicial authorities and will provide important data about the video hearing experience that will help HMCTS deliver such a process. The process evaluation aims to provide HMCTS and key stakeholders an opportunity to understand both how the programme was implemented and how it was experienced by users. Research objectives include:

- An understanding of how the video hearings system is implemented in the courts and tribunals.
- An understanding of how stakeholders engage with the system
- An analysis of key strengths and challenges of the video hearings service
- Identification of constraints which would need to be remedied in order to scale the service more widely.
- Identification of routine data which can be collected and stored for future evaluation.

The current research is a process evaluation primarily focused on the user experience of video hearings, with an emphasis on how users experience the technology and the hearing process. We also collected data on how the video hearings platform was developed and implemented, and on judicial perspectives on video hearings.

3.2 Data and methods

This evaluation builds upon the research methods used in the 2018 process evaluation of video hearings in the First-Tier Tribunal (Tax). However, as we anticipated a small caseload (based on the previous pilot), the research instruments have been amended to include more open-ended interview questions. The methods for this process evaluation include: observations of hearings and other sessions relevant to the pilot, interviews with a wide range of stakeholders, and analysis of all documentation produced by the video hearings team. We

also observed a sample of traditional in-person hearings as a comparison group. The constraints of the pilot meant that a randomised approach was not appropriate, and the variable details across cases meant that a matched comparator sample was not feasible. Therefore, any differences between the pilot and the comparison group may be due to factors other than the mode of hearing.

Detailed data sources and methods include:

Development and implementation

- Observations of HMCTS 'research labs'
- Site visit to Video Hearing Officer team
- Semi-structured interviews with members of the video hearings research, implementation, and support team
- Interviews with court officials who liaise with video hearings team to list the hearings
- Analysis of documents produced by the video hearings team

First Direction Appointments and Set Aside Judgments

- Observations of judicial familiarisation sessions
- Semi-structured interviews with judges before they have conducted any hearings
- Observations of video hearings across all sites
- Observations of 'in-person' hearings as a comparison group
- Semi-structured interviews with users (parties and representatives) before and after video hearing
- Semi-structured interviews with judges at the close of the pilot
- Analysis of case flow data and other HMCTS documentation

Short Notice Hearings

- Observations of a select number of hearings
- Semi-structured interviews with judges at the close of the pilot
- Field site visit to local solicitors office to observe hearing facilities
- Focus group with solicitors who use this service
- Analysis of case flow data and other HMCTS documentation

Basic Appeals (Tax)

- Semi-structured interviews with judges in advance of the pilot
- Observations of video hearings
- Semi-structured interviews with users (parties and representatives) before and after video hearing
- Semi-structured interviews with judges at the close of the pilot
- Analysis of case flow data and other HMCTS documentation

Table 1. Summary of data collection

Observations	
Video hearings (10 SAJ, 2 FDA, 2 Short Notice Hearings, 9 Basic Tax Appeal)	23
In-person hearings (1 SAJ, 8 FDA)	9
Research Lab	4
Judicial familiarisation sessions	2
Practice video hearing call with Video Hearings Admin team	1
Site visit with Video Hearing Officer team	1
Total number of observations	40

Interviews	
Baseline interview with judges at the start of the pilot (13 in Family and Civil, 2 in Tax)	15
Follow up interviews with judges at the conclusion of the evaluation (8 in Family and Civil, 4 in tax)	12
Focus group with solicitors in Short Notice Hearings (N=3)	1
Interviews with parties* before their hearing	8
Interviews with parties** after their hearing	18
Post pilot surveys with HMRC representatives	7
Interviews with video hearings team (4 project, 2 research, 1 administration)	7
Interview with court staff member /listing officer	1
Total number of interviews	69

*Four litigants in person, three appellants and one legal representative.

** Eleven litigants in person (defendants and claimants), two appellants and five legal representatives.

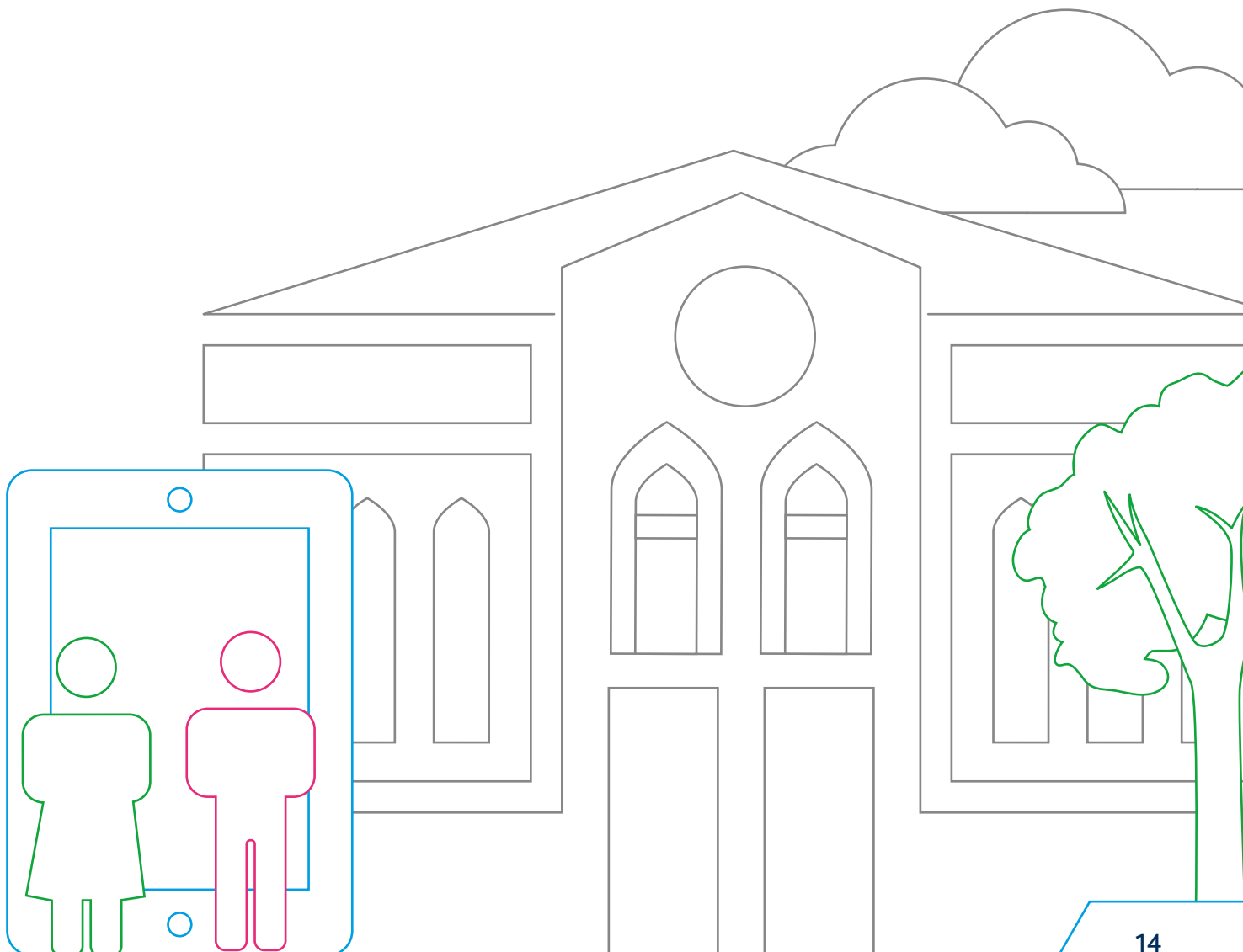
Some judges who were interviewed at the start of the pilot were also interviewed at the close of the evaluation. Other judges joined the pilot later and were only interviewed at the end. Some users were interviewed before and after their hearing. Although this varied depending on user's availability. Full details of the sample are in chapters eight and nine.

Interviews and observation fieldnotes were coded thematically. The majority of the data is qualitative in nature and is detailed throughout the text. Where it was possible to provide quantitative estimates of various aspects of the user experience, we do so, though caution should be taken against generalisation due to the sample size and the non-random sample. Unless otherwise specified, the term 'users' or 'participant' refers to claimants, defendants, and legal representatives (SA), applicants, respondents and legal representatives (FDAs), applicants and solicitors (Short Notice Hearings) and appellants, their representatives, and HMRC representatives (Basic Tax Appeals). Throughout the report, direct quotes are displayed in italics.

The sample size is larger than in the 2018 process evaluation (in that evaluation we observed 8 video hearings, 2 telephone hearings and 8 in-person hearings and conducted 31 interviews), though the findings reported here are still somewhat limited by the sample size. The researchers aimed to observe every video hearing they were notified of and interview all parties that responded to a request for interview. The exception to this is the Short Notice hearings, the urgent nature of such hearings meant that they often took place before a researcher could be notified to attend. The researchers additionally did not receive permission to interview applicants in these hearings. The research team made every effort to attend hearings when they were notified of them. This was not possible in that

some hearings either (a) the research team was not notified in advance that the hearing was taking place or (b) a researcher was unable to attend a hearing due to scheduling conflicts. While it is unlikely that there is a systematic bias in the hearings that we did observe, we cannot rule out that the sample of hearings is not representative of all video hearings that took place during the pilot. Where possible, we compare the observation data to population wide data collected by HMCTS to check the representativeness of the sample.

Researchers were not involved in the selection of cases. There is the possibility of self-selection bias, in that only users who are favourable to video technology responded to the initial correspondence from HMCTS (see section 5.5, table 2 for a description of case attrition and details on non-responses). It is also possible that case selection was made with conservative estimates of suitability. The results should be read as exploratory and preliminary, based on a small sample of cases studied in-depth.



4. Developing the video hearings service and platform: accessibility and usability

4.1 HMCTS research labs

As part of the video hearings pilot, the HMCTS developed and tested the video hearings service and platform with diverse users (such as judicial officers and members of the public, including self-identified 'low skilled digital users'). As part of our evaluation we observed four research labs, where user testing is conducted. We also interviewed four members of the video hearings team, two who are involved in research and two who are involved in implementing and managing the project.

The video hearings research team conducts rigorous and iterative research and collects data on user accessibility and usability, as well as how to address barriers and concerns with video hearings. The research team work on two-week cycles, they test out specific iterations, analyse their findings and then incorporate this finding into the next two-week cycle. The prototype is regularly updated and refined to reflect research findings.

Key and ongoing concerns that are being addressed by the team include:

- **Making sure that video technology is stable** and reducing the number of dropouts, technical faults and issues with audio/video. This was a major concern that we documented in our 2018 evaluation of the Tax Tribunal pilot. In November 2019 Release 1 was launched that increases stability in the service.
- **Ensuring that users feel comfortable and confident** using and participating in a video hearing. A key concern was alleviating the mistrust that some members of the public have about allowing access to their home technology (such as a camera and microphone), as well as ensuring that users have appropriate and enough information to access and use video hearings.
- Another related concern was **ensuring the service can support higher volumes of hearings**. Findings from the previous study, as well as in interviews during this pilot, found that having one-to-one pre-hearing call to check technology and to become familiar with the platform was preferential. Such a check is not scalable as the service expands. The video hearings team has gathered data on how to build an automated service that offers users

a similar experience and support. This was tested in the research laboratory and has informed the design of the Release 1. In the labs, users responded positively to the automated test, indicating that it was easy to use.

New iterations of the video hearing process are trialled in the research lab. The team recruits users with a range of digital abilities including those who identify as having low digital skills, cognitive impairments, and mental and physical disabilities to ensure that the video hearings interface will be widely accessible. Members of the public do not know what they are testing in advance. A research participant spends up to one hour in the research lab, where they are presented with an imaginary scenario in which they are being asked to attend a court or tribunal hearing (cases which are like those being piloted in the video hearings pilot). The research team collects data on how the member of public engages with the initial correspondence, as well as how they navigate the online survey to assess suitability. They are introduced to the concept of video hearings and are given a chance to use the video hearings platform. This is observed by the research team, and participants give feedback on their experience. Findings from observations in research labs as well as interviews with the research team demonstrate how the team are addressing some key concerns. This includes:

- **A sensitivity to users' concerns about allowing access to their technology**. Some users felt uneasy about using the video technology or expressed mistrust about allowing access to their camera and microphone. This proved a *very difficult thing to overcome [video hearings team]*. By refining the online questionnaire to explain why they need access to technology and reassuring users that they are not granting full access, the team reported to us that they had *managed to lessen [this] concern* amongst users.
- **Ensuring that users feel comfortable with the idea that they could attend a hearing via video**. In earlier iterations of the prototype, users were presented with a video hearing at the end of the suitability questionnaire. Many users felt uneasy with the idea of attending court or tribunal via video. The recent prototype of the suitability questionnaire includes an initial description and video demonstrating a video hearing. Data from observations in the research lab and in interviews with the research team found that presenting this information upfront helped to alleviate some concerns.

- **Providing users with an appropriate level of information to ensure that users can easily interact with the service.** One of the biggest challenges for the research team is making the journey to a video hearing straightforward and accessible for users. The research team test correspondence and communication that users receive notifying them of a hearing, as well as content as part of the online journey. As one team member told us, there is a *fine balance between providing too much information in advance so [users] are daunted with providing sufficient information so they are prepared to login and give the service a try.*

In general, the journey to a video hearing has been significantly improved and made more accessible through its development in the research lab and users feel more at ease with the service. As one member of the research team explained:

When people are pushed in to trialling the journey, we generally found over the course of the research labs... people feeling more comfortable, accepting and willing to give it a go, that is reassuring [to us].

Another member of the research team commented on the importance of being able to test the video hearings platform and receive encouraging feedback from members of the public:

Even those people who were reluctant and sceptical, once they are taken through the journey... we had a lot of people saying it was so much easier than that they thought. [We see] people that are converted from never [wanting to] do a video hearing and would rather go to court to saying that they would rather do their hearing by video.

4.2 Summary

We observed a high-level investment and public engagement in developing and testing the video hearings service and platform to increase its accessibility and usability for users with a range of digital skills. Significant user research was undertaken when developing Release 1.

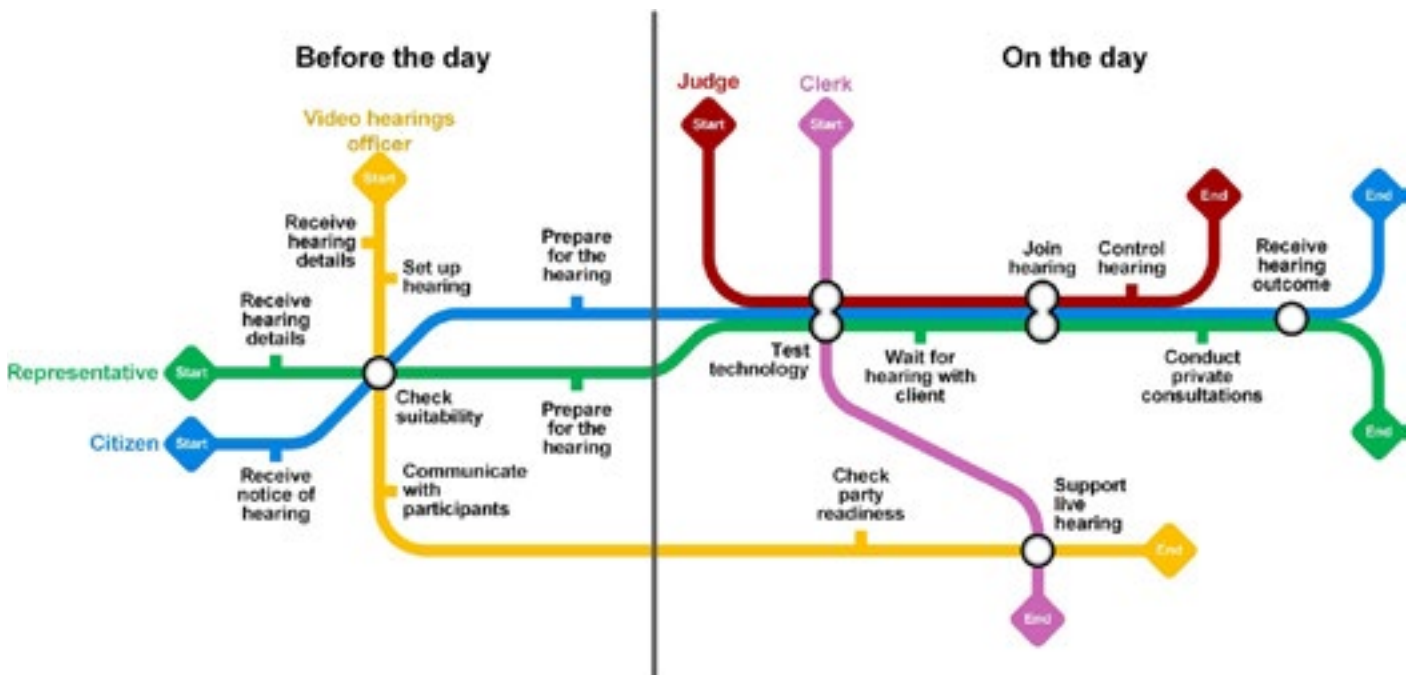
5. Journey to a video hearing

The following section details the steps involved in organising a video hearing in each of the four types of cases (FDA, SAJ, Short Notice Hearings, and Basic Tax Appeal). It will then draw on interviews with court and video hearings staff to identify hurdles and challenges to successful implementation. Finally, it summarises case flow and attrition.

The hearings that were a part of the evaluation follow a similar journey: a case is listed for a video hearing, parties receive initial correspondence explaining video hearings and are asked to fill in a questionnaire to help assess suitability, they undergo a technical triage and a pre-hearing call with a video hearings support officer, and then the video hearing takes place. This journey is simplified in short notice hearings as they take place with little notice and only from pre-approved solicitors' offices.

Figure 1 demonstrates the journey to a video hearing, as visualised by HMCTS. This figure helps to illustrate the whole process, and demonstrates the difference between the video hearings platform and the larger video hearings service, both of which make up the pilot. Users engage with the platform for their video hearing. The video hearings service guides users through the journey and supports them along the way. More detail of the key stages is explained below.

Figure 1. Journey to a video hearing (source: HMCTS)



5.1 Journey to a video hearing (First Direction Appointment, Set Aside Judgment, and Basic Tax Hearing)

Listing the hearing

An application for a FDA or for a SAJ is completed by the case administrator at the court, and a time and date for the hearing is set. At this point, it is not yet decided whether the hearing will be heard in-person or by video. Either way, the time and date will remain the same.

For the Basic Tax hearings, the tax hearing support team at the tribunal make a request to list a basic substantive tax hearing (where the appellant has a known email address). The case is listed to a video hearing slot at Taylor House (against any judge).

Initial correspondence

For a case to continue as a video hearing, email addresses for all participants are required. Often this involves chasing the legal firm when a legal representative is unnamed. Once legal representatives and parties are all named and email addresses obtained, the video hearings team creates an account and a notice is served to the parties by email. Participants create an ID and password and are asked to fill in a suitability questionnaire online.

The initial correspondence takes approximately two days to process and up to fourteen days to receive a response. If no response is received after fourteen days, the video hearings team informs the administrative team at the court or tribunal to revert the case to an in-person hearing. This decision is then recorded on the case file and parties are notified that their hearing will not be heard via video (seven days before hearing date). The hearing takes place in-person on the original scheduled date.

Suitability Checks

Once the video hearings team has received responses from all parties, they conduct a technical triage. The video hearings team evaluates the parties' response to the initial questionnaire assessing whether they have the appropriate equipment, internet connection and appropriate room to conduct a video hearing. If either party fails the technical triage, the case is reverted to an in-person hearing.

The video hearings team informs the case admin team at the court or tribunal that the parties have passed the technical triage, who send the responses and original claim to the judge. The judge makes the final decision on whether the hearing and participants are suitable for a video hearing. If the judge decides that the hearing is not suitable, it is reverted to an in-person hearing. Reasons a case might not be suitable might include: if multiple applications have been made, if the judge considers the case too complex, or if parties are incompatible.

Pre-hearing support

If the judge confirms that the hearing can take place via video, the video hearings team arrange a pre-hearing technology check and practice video call. This includes checking whether parties have an appropriate room and technology to conduct the hearing, familiarising parties with the video hearing set up, and offering parties a chance to engage with the platform. In the basic tax hearings, HMRC representatives have usually taken part in a practice call as part of a familiarisation session.

If either call fails or is not complete seven days before the hearing is scheduled, the hearing is reverted to an in-person hearing.

The video hearing

The video hearings team emails parties with a reminder and the hearing takes place on the original scheduled date in a courtroom with video hearing facilities. For the basic tax hearings, the video hearings team emails HMRC to identify the specific presenting officer.

At the hearing, a member of the video hearings team is available to assist the judge, and the video hearings officers are available to assist remotely if there are any technological problems. There is, however, a proposed transition away from having the video hearings team in the courtroom to having a local support model for on-site tasks. Remote support from video hearings officers will continue.

From serving the notice, the whole journey to a video hearing takes approximately twelve to sixteen weeks.

5.2 Journey to a Short Notice Video Hearing

Listing the hearing

A phone call is received from an approved solicitor's office requesting to book an urgent ex parte Family Law injunction hearing by video. The case is listed by case administrator at court on available slots (Monday – Friday at 14.00 or 14.30). The solicitors are informed of their listing and to be ready with their client twenty minutes before the hearing is scheduled.

The solicitors' firms handling the Short Notice Hearings have all received training in video hearings and their equipment has been pre-checked.

Issuing the application

The solicitor submits the application form, statement and draft order via email to the Family Law inbox. This is received by the case administrator and the clerk issues the application with a case number. The clerk forwards a copy of the emailed application with the case number to the video hearings team (at least an hour before allocated hearing time).

Setting up the video hearing

The video hearings team contacts the solicitor twenty minutes before the hearing start time to confirm that the solicitor and their client are logged on and ready to start the hearing.

The judge, with the help of a support person (in the room) and the VHO (remotely), signs into the video hearings service. They are not in a courtroom, but a private judicial retiring room.

The hearing is conducted via video and the video hearings team are available by phone for any support, if required.

5.3 Barriers and challenges

According to one video hearings team member we interviewed, the video hearings pilot is working on a *very small number of select hearing types in a small number of courts, this becomes even smaller [as a case progresses through the process]*. A major barrier is when one or neither of the parties' email address is known. A case cannot be listed for a video hearing and an account cannot be generated without an email address. According to the video hearings team this is a major reason why cases are not listed for a video hearing. It was suggested by a member of the video hearings team that the move to online application forms might overcome the problem of not having email addresses. Currently the paper-based application to SAJs includes a space for an email address, but it is optional.

Another barrier is associated with waiting for multiple parties to complete the suitability questionnaire. As one member of the video hearings team explained a *major fall out is if we don't get any [responses] where one or both parties don't complete the initial questionnaire*. This is a hurdle in moving forward with the journey to a video hearing. As another member of the video hearings team explained:

we can book a practice call everyday [...] but if one side is holding the case up, you are waiting entirely on an individual to move the case along. But equally in party-to-state cases you could have that one person who doesn't reply... if you have a reluctant person or someone who has other things going on in their lives and [filling out a] questionnaire isn't as important to them.

The potential for parties to delay the process moving forward mean that video hearings can be more difficult to organise than physical court and tribunal hearings. The video hearings team spends a considerable amount of time locating email addresses, chasing up people to log on to the video hearings service and complete the suitability questionnaire, as well as checking whether they understand the process.

5.4 Changes to the process

The journey to a video hearing was modified during the period of this research. Since the release of the new platform in November 2019, the journey to a video hearing no longer involves a pre-hearing call with the video hearings team. Instead, when parties are first emailed about participation in a video hearing, they watch a video explaining the process of attending a court or tribunal for a hearing and the process of taking part in a video hearing, and they undergo an online technical self-test to check their camera, microphone, and internet speed. If the triage shows some potential problems with their equipment, or they indicate in the suitability questionnaire that they would be interested in a video hearing but need more support, then a pre-hearing call is scheduled with a VHO.

Even though the period of research for this evaluation ran until March 2020, all of the cases observed between November 2019 and March 2020 had either been relisted following adjournment or had already progressed through a pre-hearing call with a VHO. As a result, none of the participants that we interviewed report taking part in an automated check.

5.5 Case flow and case attrition

Tables two through five details how many cases dropped out of the video hearings process at each stage.

Table 2. Case flow, First Directions Appointments, March 2019 - March 2020 (Source: HMCTS)

	Birmingham	Manchester
Total number of potential cases	713	331
Cases removed as cases are not listed in court	433	N/A
Cases removed prior to testing because one or more parties are NOT represented	181	220
Cases removed prior to testing because one or more parties do not have an email address or contact details	10	5
Cases removed by the judiciary because of complexity or urgency (including product outage and expiration of practice direction)	51	13
Cases removed due to unsuccessful equipment check	12	29
Abandonment: Cases removed as nil response from one or more party	15	54
Due to settlement: Removed from the pilot	2	1
Due to product outage: Removed from the pilot	0	1
Number of cases still undergoing testing in March 2020	6	5
Total number of hearings heard by video	3	3

Note: cases were first listed as a video hearing in December 2018, though the first hearing did not take place until March 2019.

Table 3. Case flow, Set Aside Judgments, March 2019 - March 2020 (Source, HMCTS)

	Birmingham	Manchester
Total number of potential cases	347	414
Cases removed as cases are not listed in court	N/A	N/A
Cases removed prior to testing because one or more parties are NOT represented	N/A	N/A
Cases removed prior to testing because one or more parties do not have an email address or contact details	270	179
Cases removed by the Judiciary because of complexity or urgency (including product outage and expiration of PD)	48	46
Cases removed due to unsuccessful equipment check	14	59
Abandonment: Cases removed as nil response from one or more party	14	103
Due to settlement: Removed from the pilot	0	2
Due to product outage: Removed from the pilot	0	5
Total number of hearings heard by video	1	20

Note: cases were first listed as a video hearing in December 2018, though the first hearing did not take place until March 2019.

Table 4. Case flow, Short Notice Hearings, March 2019 - March 2020 (Source: HMCTS)

	Manchester
Total number of potential cases	55
Due to settlement: Removed from the pilot	0
Due to product outage: Removed from the pilot	2
Total number of hearings heard by video:	53
Applications for Family Law injunctions	42
Cases with S8 orders included	11

Table 5. Case flow, Basic Tax Appeals, September 2019 - March 2020 (Source: HMCTS)

	Taylor House, London
Total number of potential cases	59
Cases removed by the Judiciary because of complexity or urgency (including product outage and expiration of PD)	3
Cases removed due to unsuccessful equipment check	17
Abandonment: Cases removed as nil response from one or more party	8
Due to settlement: Removed from the pilot	7
Due to product outage: Removed from the pilot	3
Numbers of cases still undergoing testing in March 2020	10
Total number of hearings heard by video	11

This data comes from the video hearings team. In total, from March 2019 – March 2020 there have been 91 video hearings: 6 FDAs, 21 SAJs, 53 Short Notice Hearings, and 11 Basic Tax appeals.

The main reason FDAs are not progressing are that either one or both parties are not represented. The main reason SAJs are not progressing is because one or more parties do not supply an email address (this may be because the original applications to set aside are paper-based). Birmingham has a particularly high proportion of SAJs that could not proceed due to missing email addresses.

During the pilot, there were two periods that impacted case flow and number of video hearings being held. Between 27th of September 2019 through to 18th November 2019, 15 cases (11 set aside hearings, 3 tax hearings and 1 FDA) were adjourned or cancelled due to product outage with the video hearings

platform. During this period, the old prototype was removed and there was a delay with the launch of Release 1. The video hearings team worked with judges and parties to find the best outcome for parties and cases.

Of the 15 hearings that experienced product outages:

- Four were adjourned and relisted for video hearing at a later date.
- One hearing was removed from the pilot and dealt with on paper
- Two were removed from the pilot and the hearing took place at a later date in person.
- Four were removed from the pilot and retained the same date for an in-person hearing.
- One was adjourned and relisted for a video hearing but the claimant changed their mind about having a video.
- Two were removed from the pilot and transferred to a local or other county court.
- One hearing was adjourned and relisted for a video hearing, the second video hearing attempt failed due to technical issues, the case was later settled without a hearing.

The second period that affected case flow took place between 30th November 2019 and 2nd March 2020 and affected SAJs. The practice direction made under rule 51.2 of the Civil Procedure Rules established a pilot scheme to be called the Video Hearings Pilot Scheme. The pilot was to run from 30th November 2018 to 30th November 2019. This enabled the listing of SAJ applications by video.

When the practice direction expired, some cases were still listed but had not yet been heard. Cases where suitability questionnaires had been processed and directed to be listed for video by a judge before 30th November 2018 with a video hearing date after 30th November were covered by the initial practice direction. For example, some SAJ hearings, processed before the 30th November 2018, were listed for December 2019 and January 2020. All other cases still in triage of the 30th November were reverted to a physical hearing. Any new cases had to await the new practice direction. The new practice direction enabled the video hearings team to recommence listing SAJ applications for video hearings as of 2nd March 2020.

As a result, no new SAJs were included in the pilot between 30th November 2019 and 2nd March 2020. At the time of writing this report (May 2020), no new SAJs have been listed for video since the 14th January 2020.

5.6 Summary

The journey to a video hearing involves a suitability assessment, including assessing whether parties have appropriate equipment, internet connection and private space. This is conducted by tribunal or court staff and the video hearings team, while a judge makes the final decision.

There are multiple stages in the video hearing journey where a party might be removed from the pilot. A major barrier to progressing to a video hearing is where one or both of the parties' email address is unknown. Other challenges include not receiving responses from one or either of the parties. There were two disruptions to case flow during the pilot, one when Release 1 was launched and one when the practice direction that permitted some video hearing listings expired.

The introduction of Release 1 in November 2019 resulted in a change to the journey: users no longer as a rule take part in a pre-hearing call with a VHO. Instead they take part in an automated online self-test that checks their equipment and internet speed. We did observe hearings under the new video platform. However, due to the elapsed time between a hearing being listed and taking place, the current research did not include users who took part in an automated check as part of their journey to a video hearing.

6. User experience of the video hearings journey

6.1 Initial correspondence

Prior to the introduction of Release 1 in November 2019, in FDA, SAJ, and Tax hearings, users were initially contacted by email notifying them that their hearing was potentially listed as a video hearing. They were directed to a website where they filled in a suitability questionnaire. If they passed a technical triage, they then took part in a pre-hearing call with a VHO, who checked their equipment and internet speed, gave them general advice about preparing for a hearing, and took them through a practice hearing.

A key change with the introduction of Release 1 was that potential users are taken through an online self-test which checks their camera, microphone, and internet speed. Unless specific needs are identified, they no longer have a one to one call with a VHO.

While the platform was introduced in November 2019, cases that were listed prior to that were still ongoing through the end of data collection in March 2020. Since there was an additional disruption to case flow in December 2019, very few cases under Release 1 were heard before the time frame for evaluation finished. As a result, while we did observe hearings that took place on the Release 1 platform, due to the elapsed time between a hearing being listed and taking place, we did not talk to any users who took part in an automated check as part of their journey to a video hearing. According to HMCTS, while portions of the journey are altered for users, the hearing itself should look and feel the same. This is consistent with our findings, in that we report no difference in how users experience the hearing before and after Release 1.

The people we interviewed gave little feedback on their initial correspondence. They felt that the communication via email was appropriate and that the online questionnaire was easy to navigate. Most did not remember the contents of the original email and only framed their pre-hearings correspondence in terms of the pre-hearing call. As one user reported, in response to a question about initial guidance, *Erm not that I recall, I had an email with bits and pieces, not sure when it came, I don't think I opened it, everything I needed was from the phone call [defendant, SAJ]*. This was a common response across users.

6.2 Pre-hearing calls

In interviews with users before their hearings, most expressed optimism about their upcoming video hearing. The majority stated that they were extremely pleased with the level of support that they had received from the VHOs.

Users reported that the guidance helped prepare them for their upcoming video hearing. They felt assured that support would be on hand if they needed it during their video hearing. One appellant stated that: *I'm quite comfortable and relaxed. [The VHOs] have encourage me to get in contact half an hour before to make sure I am online.*

Another claimant felt that the level of support was extremely valuable and supportive in preparation for their upcoming Set Aside video hearing.

Everything was great. [The VHO] was really helpful, really knowledgeable and she guided me through, she explained what we would be doing and gave me a lot of information and listened, she was really good. It was nice to have contact with [the VHO] from beginning to end and to have that consistency. [claimant, SAJ]

Despite not having had a video hearing before, another claimant also felt reassured and at ease following the support from the VHOs, telling us that *she was very approachable, which makes a difference [...] made it easy to understand and comfortable.*

Users felt that this support adequately prepared them their hearing. VHO advised users to find a quiet room, with a plain background, and to use the same device from the same location that they conducted the practice call. As one defendant stated:

It was useful to be provided with reassurance of what would happen on the day, what to wear, how contact would be initiated, what would be like with technical perspective, making sure it works properly [defendant, set aside judgment].

[The VHO explained that I] had to be in the same room as for the trial, plain background as such, and smart wear.

Most technical issues that were flagged at the pre-video hearing stage were addressed. A common issue was asking users to switch browsers to ensure the stability of the platform. Some users experienced technical issues during their pre-hearing video call, but most were confident that the technology would

work on the day and were pleased to have been offered a run through. Some, however, expressed reservations that the technology would interfere with their hearing:

I'm not hundred per cent convinced [that technology will work on day of video hearing] because when we were doing the call it dropped out like half way through and then I had to reconnect again which doesn't fill with you confidence, but it was fine when we are on the call [appellant, tax appeal].

Users felt that people who might be disadvantaged by a video hearing included those unfamiliar with technology, although one claimant stated that this was not the norm.

I suppose some people might be a little bit unfamiliar with technology. These days people are so used to using FaceTime to discuss family matters, why should one not just imagine oneself in the room with a judge? [claimant, SA].

6.3 The video hearing waiting room

On the day, users logged into the system and were taken through a few screens reminding them of the rules of the court or tribunal. The penultimate screen before the hearing started was the waiting room, where they were given information about who else was logged in and any other important information about the hearing. When the judge was ready to begin a hearing, they clicked a 60 second countdown timer that appeared on the parties screens. Figure 2 illustrates the video hearing waiting room, indicating the details of the case (the case number, data and time) and the names of the other participants who will be joining. The screen displays the current time in analog and digital form, as well as the time the hearing is due to start. The video hearings team contact number is displayed in case the parties need to communicate with them, in case of emergency or if they are experiencing technical issues. It also advises the party to remain close to their screen. Figure 3 indicates to the party that the hearing is delayed and informs them that a member of the video hearings team will contact them by telephone. The precise time is again displayed in analog and digital form. HMCTS branding and the coat of arms is displayed in both screens.

Figure 2. The video hearing waiting room



Users reported spending between 2 and 30 minutes in the waiting room. In some cases they spent longer because they logged in well in advance of the hearing start time and in other cases it was because there were some technical delays with the other parties logging in. They spent their time reviewing notes and preparing for their appearance. One user reported continuing with his work while in the waiting room, until the countdown timer appeared at which point he gave his full attention to the video hearing.

Figure 3. Notice of delayed hearing



Users were satisfied with the design and format of the waiting room, reporting that it was easy to see when the other parties were logged in and ready to join the video hearing.

6.4 Staging and design of remote spaces

Lay users appearing from home or office

Users appearing from home were given some basic advice about suitable backgrounds and dress for a video hearing. We found that most appellants (tax) and defendants and claimants (SAJ) largely complied with this, appearing in smart or smart-casual attire with plain or neat backgrounds. Example of participants remote spaces include:

- A plain white wall
- A white or light-coloured wall with a sofa, spare bed, and/or bookshelf in the background
- What appears to be a home or home office, with the participant using a headset and a whiteboard with writing on it in the background.

In most cases it appeared that participants were sitting at a table or a desk with a fixed camera at approximately eye level. In a few cases it appeared that the participant had their laptops placed on their laps, the camera would move slightly with them as they adjusted their bodies, and they looked down into the camera.

Some participants were sitting close to the camera so that most of the shot was of their head and shoulders, with very little background view. Others were sitting further away, and more of their torso, arms, and hands were in view. With this framing, more of the background was also visible. We recommend a slightly wider shot that makes gesture and other movement visible.

While the lighting was generally good, a few participants appeared in poor light or with a shadow over their face making it more difficult to see.

With a few notable exceptions, audio quality was high. Some participants used a headset with an external microphone, which generally improved the sound quality and limited background noise. In a few instances where a participant used a microphone built into their device, the courtroom could hear background noise from a nearby open window.

Legal professional spaces

In the Short Notice Hearings and the FDAs, participants were co-located with their legal representatives. Additionally, in three of the SAJs a legal representative acted on behalf of the claimant. In nearly all the hearings we observed, participants were in a conference or meeting room, sitting at a table, with fluorescent lighting. In some instances, the lay participant sat slightly behind their legal representative, and in others they sat side by side. In both FDAs we observed legal representatives turned to their client to whisper in private. This was not heard by the rest of the court.

Examples of the layout include:

- In a SAJ, the solicitor acting for the claimant was sitting at a conference table surrounded by binders, notebooks, and a bottle of water. There was a fixed camera on the other side of a medium sized conference room, as a result we could see her from waist up. We could see the table and all the documents. In this configuration, she appeared much smaller than the defendant (appearing from home on a laptop), whose head and shoulders took up most of his screen.
- In a SAJ, the legal representative sat near a window with sun streaming in, causing a shadow across his face.
- In an FDA, on one screen one party was with his representative in a conference room. He sat just out of view from the screen but leant in to consult with his solicitor. They appeared to be looking down at a laptop. The other party was also present with her representative, also sitting at a conference table, sitting next to her solicitor and visible on the screen. They also appeared to be looking down at a laptop.
- Legal representatives were all dressed in business attire.

HMRC remote spaces

In the tax tribunal hearings, HMRC representatives appeared remotely from their offices in Belfast or Bristol. In general, they appeared in what looked like a small office, with poor light. It was often hard to make out the features of the representatives on the screen. HMRC representatives also experienced problems with their audio feed, and a buzzing sound could be heard in some hearings.

6. User experience of the video hearings journey

Judicial space

Judges all appeared in a courtroom, either at the Manchester Civil Justice Centre, the Birmingham Civil Justice Centre, or Taylor House, London. The exception to this was the judges in the Short Notice Hearings, who appeared in a judicial retiring room at the Manchester Civil Justice Centre. In these hearings judges sat at a table with a white wall behind them. The camera was at eye level, and a coat of arms was hung behind them. This is part of their private chambers, these cases are not normally open to the public.

In the courtroom, judges sat at the bench with a camera at approximately eye level at the top of a monitor that they used to view the other parties in the hearing. Most of them also had a separate computer or laptop for their notes, in addition to the paper documents they needed to conduct the hearing. They all had a coat of arms behind them, though the visibility of this symbol was variable.

In the Tax appeals, the judge was normally accompanied by a tribunal member (a tax expert) who sat with them on the bench. Members were unsure whether they should sit closer to the judge so that they are within the frame, or further away out of the shot. In about half the hearings the expert sat close to the judge to appear in the shot and in the other hearings they stayed out of the frame but would at times lean into the frame when speaking.

When a judge clicks the countdown timer for a hearing to begin, they can then see how they will look to the other parties on the screen. They also have the ability to minimise the self-view, which we observed at least one judge do.

There was some variability in terms of judges' gaze. In many cases they appeared to be looking away from the camera for much of the hearing, either down at their papers or to the side at their laptop screen. In some cases they would look directly into the camera to ask a question and in others they rarely or never looked at the camera, for the most part looking at their own screen or paper.

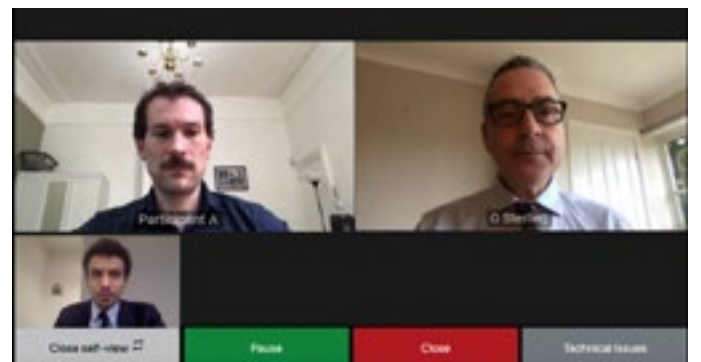
The layout of the video hearing

All participants appeared in their own box, arrayed around the screen. Figure 4 details the view from the point of view of a participant and Figure 5 details the judge's view of the hearing. The user could see themselves in the lower left corner, though there was an option to hide self-view. On parties' screens, the judge appeared on the left and the opposing party on the right of the screen (Figure 4). Unlike in the previous pilot, there was no HMCTS logo, coat of arms, or other branding built into the platform, with the exception of the judge who had a coat of arms on the wall behind them.⁵ All participants had labels at the bottom of their box with their name. We regularly observed a generic label for the judge, for instance saying 'judge taylorhouse' or 'Manchester CJC J.' Judges can now edit their label, as displayed in Figure 4.

Figure 4. Participant view of a two-party hearing (mock-up supplied by HMCTS)



Figure 5. Judge's view of a two-party hearing (mock-up supplied by HMCTS)



6.5 Summary

Users reported a high level of satisfaction with the level of support they received leading up to their video hearing. They found the guidance reassuring and were able to resolve any potential technical issues. Users largely complied with the basic advice, they displayed a professional demeanour and participated in the video hearing from a neutral setting. Users participated from their homes or workplace. Most users were clearly visible on the screen, however in some cases poor lighting made it difficult to distinguish features. With a few exceptions, the audio quality was high. All judges participated in video hearings from a courtroom. The exception to this was Short Notice Hearings which were held in private judicial chambers.

Due to the elapsed time between a hearing being listed and taking place, we did not interview participants who experienced the automated self-test.

⁵ See Rossner and McCurdy (2018), p. 38 for an example of the layout and design of the Phase 1 evaluation.

7. Description of video hearings

7.1 Hearings observed

Over a one-year period, we observed twenty-three video hearings. This included:

- Ten Set Aside Judgments (SAJs)
- Two First Directions Appointments (FDAs)
- Nine Basic Appeals in the Tax Chamber (Tax Appeals)
- Two Short Notice Hearings.

Of the twenty-three hearings, we observed fourteen successfully complete. Six hearings were not able to proceed due to technical faults (two in the Tax Tribunal and four SAJs in Manchester Civil Justice Centre) and a further three tax hearings did not proceed due to missing documents.

Table 6. Description of observed video hearings

Completed	14
Could not begin due to technology faults	6
Could not proceed due to missing documents	3
Total	23

All four SAJs were scheduled to take place on the same day. However, none proceeded due to a product outage relating to the implementation of Release 1. In the Tax Tribunal, two hearings could not begin because there were significant problems with parties logging on to the video hearings platform (in one case HMRC could not log on and in one a representative acting for an Appellant could not log on).

In three additional tax hearings all parties were able to log on to the hearing platform successfully, but late documents were submitted that could not be read in time, so the hearings were postponed. In these hearings the judge told us that it was possible that in-person hearings would also have been postponed due to late documents so we cannot attribute this failure to proceed to the video hearing. We observed similar postponements in live hearings where documents were missing.

Of the four SAJs that did not proceed, two were removed from the pilot and heard in-person, two were relisted, of which one went ahead via video and the other failed at the second attempt due to further issues with the claimant's technology. Of the five tax hearings, one was relisted for a face to face hearing, one was completed via video later in the day after the technical issues were resolved, one was relisted and completed via video after the late documents were submitted and two were relisted for video hearings; of which one was completed via video with all parties remote due to COVID-19 restrictions and one was settled.

The hearings we observed had a 63% rate of completion (14 out of 23). If we don't include the three hearings that did not proceed because of late documents, then the completion rate rises to 70% (14 out of 20 hearings). This is similar to the 2018 process evaluation, which had a 73% rate of completion (8 out of 11 hearings).

We also obtained data from HMCTS on the larger population of video hearings, to check whether our sample was representative. Out of a total of 55 hearings that were attempted, 17 experienced a product outage and 38 were heard successfully, which is a 69% rate of completion. This does not include the Short Notice Hearings, which rarely experienced product outages.⁶

⁶ For a more accurate comparison between the observed sample and the HMCTS population, we could remove the Short Notice Hearings from our observed sample, then the rate of completion is 57% (12 out of 21) and when excluding the hearings that did not proceed because of late documents the completion rate rises to 71% (15 out of 21).

7.2 Length of hearings

Observed hearings ranged from 4 minutes to 1 hour 45 minutes, depending on the complexity of the case and whether there were any technological disruptions. SAJ hearings averaged 33 minutes, with one four minute hearing because parties had already come to an agreement in advance and one hearing that lasted one hour and twelve minutes due to delays with the technology necessitating a few reboots.

The two Short Notice hearings we observed were both approximately 15 minutes and the two FDAs were 20 minutes and 1 hour 7 minutes. The Tax Appeals (not including the non-starters) averaged 57 minutes (ranging from 20 to 90). In the 2018 evaluation of the Tax Tribunal, hearings were closer to two hours, suggesting an improvement in efficiency.

This was similar to what was recorded in the HMCTS data on all hearings, where the average hearing length was 16 minutes. The average SAJ was 19 minutes, the average FDA was 32 minutes, the average tax appeal was 47 minutes, and the average Short Notice hearing was 8 minutes.

7.3 Parties and representation

The four types of hearings that made up the pilot had different requirements for legal representation. In both the FDAs and Short Notice Hearings the presence of a legal representative was a requirement for participation in the pilot.

Table 7. Parties and representation

Set Aside Judgments	
Defendant and Claimant both Litigant in person (LiP)	2
Defendant was a LiP and Claimant had acting solicitor	3
Defendant and Claimant had acting solicitors	1
Unknown as hearing did not commence	4
First Directions Appointment	
Both parties had legal representation (required)	2
Short Notice Hearings	
Applicant had legal representation (required)	2
Tax Appeals (including cases that did not proceed)	
Appellant LiP	7
Representative for appellant	2
Total hearings were all parties were represented	7
Total hearings with a mix of legal representatives and LiP	3
Total hearings with LiP exclusively	9
Unknown as hearing did not begin	4
Total	23

In the SAJs, two of the hearings were attended by litigants in person with no legal representation, in three of the hearings the defendant was a litigant in person while the claimant had a solicitor acting on their behalf, and in one hearing both the defendant and the claimant were represented by solicitors.

In the Tax Appeals (including the five hearings that had to be rescheduled due to technology problems or missing documents), appellants were self-represented in seven hearings, and had a representative acting for them in two.

In the guidance parties were sent they were asked to appear alone, unless they were co-located with a representative or had another reason for having another person in the room with them. Judges would ask at the beginning of a hearing

whether there was anybody else in the room. In a few cases, legal representatives had colleagues or supervisors in the room with them. They were not in the frame, but the judge asked that they briefly make themselves visible so the court or tribunal could see them. In one SAJ, a defendant had a supporter with them, also not in the frame, which the court was aware of in advance. All other users said in the hearing that they were alone. In another SAJ, the defendant told the judge, *I've got children downstairs but I've told them under no condition can they come up*. The judge smiled and laughed and said, *ok*.

7.4 Support available

In the hearings we observed, there were multiple sources of operational and technical support available for parties and the judge. In the courtroom with the judge there was a member of the video hearings team acting as a support officer to assist the judge. There was often a member of the video hearings team present for oversight as a part of the development of the pilot. A VHO was also available remotely to help anyone who was having trouble logging in or any other technological problems.

This was a pilot, and so models for on-site support will continue to be developed and adapted to different hearing types. On site Digital Support Officers (DSOs) will be available to deal with technological issues that may arise and remote VHO support during hearings will continue.

7.5 Technology problems

As in the previous pilot, many hearings experienced some problems with the technology, though on the whole these were less significant and easier to remedy. The most common issue related to parties experiencing problems logging into the web-based platform. As described above, two cases in the Tax Tribunal could not begin because either HMRC or the Appellant were unable to log on to the platform. In these hearings, the video hearings team worked to remedy this for upwards of forty-five minutes before deciding to reschedule the hearing.

Four observed SAJs could not begin due to problems relating to with the launch of Release 1. The problems were addressed within a few days and the platform was able to run again.

Of the remaining 17 hearings, eight started on time or even early if all parties were logged in early and the judge was ready. Nine hearings had slight delays (between five and 15 minutes) as parties needed to restart the platform and log on again.

Table 8. Technology problems at the start of a hearing

Unable to start due to problems logging on	6
Delayed start due to minor problems logging on (5-15 mins)	9
Starts on time or early, no problems logging on	8
Total	23

For the most part, once parties were able to successfully log in and the judge was able to successfully commence the hearing, there were few technical difficulties.

Of the 17 hearings (including the three that needed to be rescheduled due to missing documents), two hearings experienced technological problems that necessitated a number of restarts. In both these cases, parties' screens would freeze, the judge would pause the hearings, and they would have to relaunch the platform a number of times to get it working. This means that of the hearings that were able to commence, 88% (15/17) did not experience major technological faults that required a restart.

Table 9. Pausing and restarting hearings due to technology

No technology problems once hearing starts	15
Technology breakdown needing a restart during the hearing	2
Total	17

Overall, 65% of the hearings (15 out of 23) ran smoothly and did not need any technical support.

However, some of the hearings did experience minor technical challenges during the hearing. They were not deemed serious enough to request a pause and restart of the platform, and users were able to address them on their own, usually by the judge asking for parties to repeat themselves or slow down. Of the 15 hearings that were not paused and restarted, we noted minor problems with the audio or video feed in five. For example, in one SAJ, the judge needed to speak both slower and louder so that the defendant could hear properly. The judge adjusted his voice and they continued. In another SAJ, the defendant's video feed froze within the first minute of the hearing. The judge was hesitant to proceed, stating *I'd like to get a video stream*. They discussed restarting the hearing and the judge said *I can proceed as we have the [documents, but] I would personally prefer if I can see [the defendant] properly in case he indicates by body language that he doesn't understand*. The defendant responded, *I'm quite happy to not waste the courts time as long as I'm allowed to make a point as required, really, with your permission*. The judge allowed this. The defendant's face remained frozen for the first few minutes of the hearing, and after a few minutes the video stream began to work. Later on in the same hearing the claimant's video feed also froze, it was not mentioned in the proceeding and it is unclear if they realised they appeared frozen to the judge. The case proceeded as normal and after a few minutes their video feed returned. This example suggests it may be useful for parties to have a signal built to notify them of connectivity problems

7. Description of video hearings

Similarly, in a Tax Appeal, the HMRC representative's audio feed had a buzzing sound making it difficult to hear. They were asked to repeat themselves a few times but were able to continue with the hearing.

To summarise, five hearings had minor technology problems, but parties were able to manage without assistance and the hearing platform was not restarted. Two hearings had technology problems that required the judge to pause the hearings so that the platform could be restarted, and six hearings experienced technology problems that could not be resolved and the hearing could not begin.

7.6 Use of documents

The bundle containing all the necessary documents relevant to the case was an important element every hearing. Judges and litigants to information contained in the bundle to both ask and answer questions.

In ten cases all participants had the documents they needed to proceed. We don't know whether all documents were available in six of the cases as the hearings did not start due to technology problems. In three other cases the hearing was postponed because late documents were submitted that not all parties had received. In these cases:

- HMRC did not receive the bundle, the tribunal decided to set a new date to allow time for HMRC to read the documents.
- The Appellant's representative was missing a document from the bundle. Even if they emailed it to him immediately, he wouldn't have had enough time to read it properly, so the tribunal adjourned the hearing for another time to allow time to read it.
- The Appellant submitted a late document that the judge did not have. They paused the hearing for about 10 minutes to look for it. HMRC also did not have the document so they decided to reschedule the hearing.

After these hearings, judges remarked to us that it is relatively common to adjourn a hearing because of late documents, and this is not necessarily due to the video platform. We did observe this during in-person hearings.

In the final four cases (one SAJ, one Short Notice Hearing, and two tax hearings), there were late documents, but the judge agreed to proceed anyway.

- In a Tax appeal, the appellant had sent a letter to the tax tribunal that the judge had not seen. The judge said that if he needed to during the hearing, he would ask the appellant to read it out loud or would look at it after the hearing.
- In a Tax appeal, HMRC had sent though a skeleton argument, but it was not in the judge's bundle. He said to carry on even though didn't have skeleton argument as it is more 'efficient' if they continued with the proceedings.
- In a Short Notice Hearing, the solicitors informed the judge of new evidence that was not in the original application.

This isn't 'sworn evidence' but the judge allowed it, asking that a police report be added to the file after.

- In a Set Aside Judgment hearing, the applicant referred to a letter that she had written to the claimant that she had not included with her application. She read it out loud to the judge.

In the in-person hearing we observed parties handing documents to the judge. If they were succinct enough they were accepted and read on the spot.

Late documents are a frequent occurrence, which presents difficulties for how to share via video. During a tax hearing held via video, an appellant was asked by the judge to read out a document that neither HMRC nor the judge had received. The judge explained that in this case they were able to get around late documents but that it could be more problematic in other circumstances. They explained that it is much easier in a physical courtroom to ask an usher to photocopy a new document and distribute among parties in the courtroom. The judge recommended developing a secure facility to share late documents.

You might need the ability to share documents. Because you find in every case, there are always last minute documents, in a physical court hearing you would ask the usher to photocopy and hand out documents but in a video you can't do that [Judge, Tax].

7.7 Introducing the hearing and managing turn-taking

In the familiarisation sessions, judges were given general guidance about managing video hearings. In particular, they were advised to make sure that all parties could see and hear at the beginning of a hearing and to use parties' names as much as possible so that it was clear who they were speaking to. Appendix 1. details the guidance judges receive about video hearings.

In our observations, judges had a consistent approach to beginning video hearings. When parties appeared on screen, judges would greet them, and check that everybody could see and hear before proceedings started. Some judges would introduce parties and make sure they were pronouncing names correctly, while others would quickly move into the substantive matters of the hearing.

If there were slight problems with the technology, for instance if it was hard to hear, some judges would spend a minute at the beginning of the hearing working to improve the quality. For instance, in one SAJ, the applicant said he could not hear well. The judge replied, *if I lean forward to speak up can you hear me? I will try to speak slowly and loudly.* The applicant said, *yes, that's very helpful, thank you.* In another hearing, the judge asked the video hearings team member who was present in the courtroom to adjust the microphone to improve the sound quality for participants.

In the Tax Tribunal hearings, judges would usually explain to appellants the order of turn-taking, and then ask whether they preferred to speak first or would they rather have HMRC speak. For instance, in one hearing we observed, the judge began by introducing everyone and their role in the hearing. He reminded the appellant that the tribunal is independent from HMRC. He requested that everyone speak slowly. He then turned to the appellant and asked that he let him know if he needed a break or if he was having trouble understanding anything that either he or the HMRC representative says. He finishes by saying, *Is that ok so far?* The appellant nodded his head and said yes. The judge concluded the introduction by saying, *All right are we ready to begin?*

Judges would provide similar explanations to defendants and claimants in SAJs. In FDA hearings and in Short Notice Hearings, where all the talking was done by legal professionals, judges did not make introductions or provide an explanation of how the hearing would proceed.

Judges were observed to be very adept at managing turn-taking and making sure parties understood what was happening and when it was their turn to speak. They would consistently refer to the users by name when they were speaking to them or when they were asking them to speak. Other examples include:

- Pausing to summarise what has happened so far and what will happen next.
- Regularly checking in with both parties to make sure they understand.
- Making sure everyone agrees with a certain issue before moving on.

In one hearing, the judge noticed that the applicant was shaking his head while the claimant was speaking. After the claimant finished, the judge turned to the applicant, addressing him by name, and asked him to elaborate on his head shaking.

Not surprisingly, in cases where legal representatives predominantly spoke, turn-taking was smooth and little was required from the judge in terms of management. For example, in an FDA hearing, we observed the judge very quickly developed a rhythm of back and forth questioning with both legal representatives. Both sides answering very quickly. At one point the video feed froze requiring a restart. Once the video returned, the judge immediately resumed questioning where they left off.

The approach that judges took to managing the hearing, was consistent with how they described their approach in interviews at the start of the pilot. Most judges spend more time orientating and explaining the hearings to litigants in person. As one judge explained.

If they are in-person- I have to say who I am and what I do. It's a very different approach, they don't know what's expected of them and you have to take control. You talk to one, talk to the other and explain what will happen. If the applicants have counsel, you get into it. I say 'Yes Ms. Smith, the floor is yours.' They will put in a position statement and note ahead of time, I might say 'I've read your notes, thank you very much, where are we and

where are we going?' It's a completely different approach [Judge, Family Law].

When a judge thinks that a participant is not understanding, they will stop and ask if they can help to clarify and will repeat an argument or a decision in simple and direct language.

I do try to make sure that they understand what is being said, when I go to them and ask for their position, I break it down as far as I can, get rid of all the jargon and explain the argument in layman's terms, and I ask them what they want to say about it...I try to make sure that they understand what's going on before I make a decision [Judge, Family Law].

7.8 Formality

Most judges included in their introduction a reminder that this was a formal court or tribunal hearing and that all rules and etiquette of an in-person hearing applied to the video context. For example, in a SAJ, the judge said at the start of the hearing:

You should see the coat of arms behind me or on your screen. This is to remind you that this is a formal hearing, and the same rules apply as in court. You cannot record or stream this hearing.

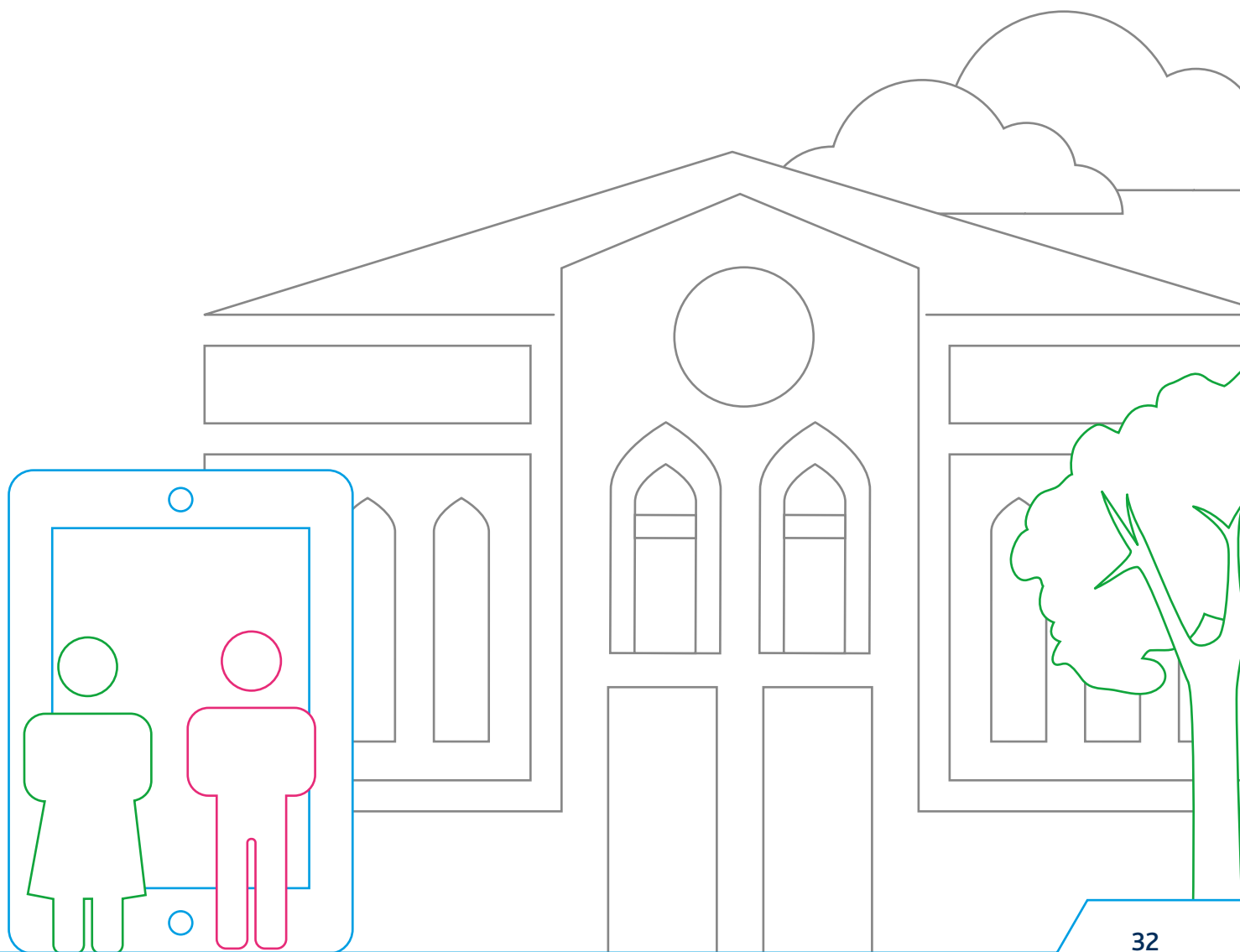
In another SAJ, the judge said to us and the others in the room as they were setting up for the hearing, *I suppose that their front room is an extension of the courtroom, and I take control of their room like I do the courtroom.* During the hearing, he remarked to the solicitors, who were both appearing from their office, *you will both know this, your rooms are effectively extensions of my courtroom. You cannot record in it, etc. all the usual rules apply.*

Users seemed to respect the formality of the court or tribunal, all used appropriate language when addressing the judge, no one was observed to be eating or drinking or acting inappropriately.

7.9 Summary

We observed 23 video hearings, six of which were unable to proceed due to technology problems, including product outages and parties unable to log on to the platform. Three additional hearings were adjourned to a later date so that the judge and other party would have time to read documents that were produced at the hearing. These adjournments would also have occurred had the hearing been in-person. Other technical issues were less significant and easier to remedy compared to findings from the previous pilot.⁷ Judges were effective in managing the video hearings, and users respected the formality of the proceedings. Judges adapted to the video format well and made sure that parties could hear and see one another and that turn-taking conventions were adhered to.

⁷ <https://www.gov.uk/government/publications/implementing-video-hearings-party-to-state-a-process-evaluation>.



8. User experience of video hearings

We interviewed thirteen parties after their hearings, comprising nine defendants who made an application to Set Aside Judgment (SAJ), two claimants in SAJs, and two appellants in Tax appeals. Most participants had previous experience of using video conferencing technology, the majority already use such platforms regularly for work or at home. Ten used a laptop to access the hearing and three used a desktop computer. Four took part from their office or workplace, and nine were at home.

We also interviewed five legal representatives. Three representatives took part in FDA hearings and two were in SAJs. All had prior experience of video conferences, both in the workplace and at home. All took part in a hearing using a laptop in a conference or meeting room in their office or chambers, with the exception of one representative who was already at court that day for a different matter, so took part from a private space within the court using a laptop they borrowed from HMCTS for the occasion. The legal representatives in the FDA hearings had their clients co-located with them, sitting in a conference room. We additionally conducted one focus group with a group of three solicitors who work in a firm that handles a large volume of Short Notice Hearings. In these hearings, the applicant would sit with their solicitor in a meeting room in the solicitor's office.

Due to HMRC protocols, we were unable to conduct telephone interviews with their representatives. Instead, we emailed our interview questions to a manager, who distributed them to representatives involved in video hearings. Representatives responded to our questions over email. We received seven responses from HMRC representatives. Of those, only four had participated in one or more video hearings as part of the pilot, and three HMRC representatives had not yet taken part in a video hearing (although two representatives had been present during hearings in the first pilot in 2018). All HMRC representatives had experience using video conferencing such as Microsoft Teams at work or Facebook at home. Most of them reported feeling comfortable using technology and that they find video-meeting technology easy to use. HMRC representatives used a laptop provided by HMCTS and conducted the video hearings in a room within HMRC offices. One representative needed to use a mobile phone for the internet connection and they also used a portable microphone speaker, which they reported enhanced the sound quality.

Most users reported that their hearings were easy, effective, straightforward and that they would recommend video hearings.

I think it's a really good idea and for people who are working and travelling and living in different areas of the country, it was really helpful. It depends on having right gadgets, internet speed and connection. I am from an IT background so it was really easy for me to grasp the whole thing [defendant, SAJ].

The majority of users interviewed did not experience major technical problems, and most felt they were able to engage and participate in hearings effectively. There was no difference in feedback about the hearing between users who took part in a hearing prior to Release 1 and users who had their hearings using the new platform.

8.1 Convenience of video hearings

Most users commented on the convenience of having a video hearing and the time it saved. In one instance it saved a defendant in a SAJ a three-hour drive to court. In another, a defendant felt that taking part from home was preferable than travelling to a physical court

[A video hearing] is more convenient than having to go to Manchester to court, it was quick over a video hearing, it is easier for people, it saved me time to travel to Manchester during rush hour in the morning to sit and wait, and then be taken in and then have to get back [home]. [The] hearing was done from comfort at my home, I sat and waited at my laptop and then it was done in a matter of 10 or 15 minutes [defendant, SAJ].

The time saved from not travelling to the court or tribunal also meant that users did not have to take time off work to attend their hearing. One claimant explained: *I prefer [a video hearing] because I won't be able to have time off work, so I don't know how I would have got around that. [My office] let me have an hour or two out of the office rather than half a day [claimant, set aside hearing].* An appellant in a Tax hearing told us they were pleased to be able to have their hearing via video and reduce travel and time costs, considering the high cost of travel to London during rush hour. Two HMRC representatives also reported that the main benefit of video hearings was time and cost of not having to travel to the Tax Tribunal in London. One representative also notes that often appellants are absent from physical tribunal hearings and that video hearings might increase their attendance.

A major theme amongst legal professionals was the value of not having to travel to court for a hearing. Having a video hearing provided many solicitors and their clients with the opportunity to reduce travel time and costs. For example, one solicitor stated that they often spend the night in Manchester ahead of a hearing. Being able to attend via video was a huge amount of value to the client and a major positive. Not only was time and money saved, but they were able to quickly return to their work following a video hearing.

Not travelling to court was a particular advantage for solicitors and applicants in Short Notice Hearings. Since these hearings are granted the day the application is made, they are usually slotted in around a judge's schedule. The result is a long wait time for a hearing slot to become available. As one solicitor said, *I've had experience where I have an application at 10:30am or 11am and not seen a judge until 4:30pm or 5pm. Sometimes our clients have babies with them or childcare issues and can't be at court waiting all day. I have had to send clients home to pick up children from school.*

Alternatively, video hearings applications are lodged by noon, and the hearings take place that afternoon. This way of conducting the hearing is reported to be both more convenient and less intimidating. As one solicitor explained,

Our clients are more keen to do it- they have school pickup issues, they don't want to, or don't know how, or are anxious about travelling to Manchester. A lot of our clients don't have access to a car and it can take over an hour [to get into court]. It's more intimidating to come all the way into court. We have explained to them that there is no respondent there, but they still get the fear that someone will know what they are doing. The office is a safer place for them [Solicitor, Short Notice Hearing].

8.2 Comfort with video technology

Many commented on how video technology has been a habitual part for most people. As one appellant stated, *most people are accustomed to using FaceTime.* Another claimant was familiar with video technology in the court setting, having experienced viewing video evidence whilst sitting on a jury.

One claimant felt there were benefits to having their SAJ via video. In particular, they noted the comfort of not having to be physically present in the same room as the other party:

I think it will be just be a bit daunting [physically] seeing the defendant. You are suing him so it's not going to be a nice situation. But obviously [the hearing will] be on computer screen rather than in same room, [it] probably eases people with anxiety [claimant, SAJ].

This user told us that they preferred taking part from their home and felt that their anxiety was not as heightened had they had their hearing in a physical court or tribunal.

Some users thought that video hearings should become a normal way to access courts and tribunals, as long as all parties were reassured that this format would not jeopardise their case or right to a fair hearing.

It's a way to move with modern times and enable people to communicate and convey and represent themselves. [Having a video hearing] doesn't have to be as time consuming for court or the claimant or defendant. I think it's a good idea, the only issues are the reassurance for the individual as to the fact that they will be treated in the same way, whether personally in court or not [defendant, SAJ].

A solicitor who was experienced with telephone hearings thought that there were added benefits to holding remote hearings via video.

I don't have an objection if done by telephone or video, I see advantages of a video hearing, you can see intonation of parties. The other thing I have found with telephone conferences is that you don't know when you should be speaking, you don't know if the reaction has been made to what you have said or even as simple as they have not heard you [solicitor for claimant, SAJ].

All users reported that they were able to focus and maintain their attention and were not distracted by the technology during their hearings.

One defendant, however, commented that communication is more difficult via video:

It's much easier in court, you can get the point across better, [it is a] bit random talking to a computer. As comfortable as you might be doing it, when in front of someone you can get your point across better, judge them better, get a feel of them much better, [it is] very robotic on the PC [defendant, SAJ].

All four HMRC representatives who had participated in the current pilot were satisfied with the technology. They felt they were able to communicate clearly and the video was clear. All representatives did not have problems seeing the other parties, however one representative stated that the appellant's sound stopped working during the hearing. This was resolved by the technical support team.

8.3 Video hearings support

Follow up interviews with users reiterated the value of having support from the Video Hearing Officers. They reflected that support prior to their video hearing helped them prepare for the hearing and made them feel more confident about accessing the hearing via video. They also commented that it was reassuring knowing that the support was there if they experienced any difficulties on the day of the hearing.

I had to do a practice call which was straightforward, which involved a lot of set up and being accurate, it was very formal which it should be. They guided me through it, it made sense, it was explained very thoroughly, someone with much worse technology skills could have done it. I am quite tech literate, I think my mum could have done it [defendant, SAJ].

Another user made a similar remark:

I just spoke to someone from HMCTS – a nice lady, dead helpful, they rang and talked me through the setting up procedure, did a couple of tests and told me what to do on the court day – everything, they made it dead easy [defendant, SAJ].

Users noted that pre-hearing calls and test calls just prior to the video hearing were valuable in resolving any potential issues. As one appellant explained, having pre-hearing technical checks mitigates any problems from arising during the actual hearing. On the day of the hearing, the appellant was unaware of background noise and issues with their microphone. These issues were only identified by the video hearings team during a technical check just prior to the hearing.

You have to set up 30 minutes beforehand so in that 30 minutes I was testing it [...] Although they give you an opportunity to see your video, the key point for me was the microphone wasn't working and there was background noise, but I couldn't hear that...they let me reset my laptop and then microphone worked perfectly fine [appellant, tax appeal].

All legal professionals commented on the benefit of having a session with the VHO who assist them with logging on and connecting to the video hearings platform, advising on the right browser, and what to expect at the hearing. For example, one legal professional noted how the VHO explained how it wasn't possible to mute another party during a video hearing. Another commented on how they wouldn't have known to switch to the right browser to run the video hearing.

Some solicitors recommended that these sessions continue to be provided in the future. As one solicitor, representing the defendant in a set aside hearing, explained he would have struggled without this support.

It was very helpful [...] I am not sure I would have found it as easy without someone initially showing me the buttons and what to expect and how to wait [legal representative for defendant, set aside hearing].

Of the four HMRC representatives who took part in video hearings during the current pilot, two reported receiving training. One reported receiving an email and on-screen instructions, whilst the second received a training session on how to use and set up the system. They had already taken part in a test call and reported that:

From my perspective HMCTS provided me with everything I needed to know to complete a video hearing. Troubleshooting may be something which needs to be addressed but I have not experienced any technical issues personally.

8.4 Staging and layout

Most users who were interviewed thought it was helpful to have a self-view during their video hearing. One defendant in a SAJ in particular noted that it was useful to monitor your background, especially whilst in your own home *it's good to know what the judge can see, [the self-view can] warn you if anything in background, I have pets that I was worried about coming in.*

Some users also commented on the layout of the other parties. Two users noted that the judge was at the top of their screen, and another thought that the judge had a bigger frame than the other parties. Several users also commented on the formality of the judge's video frame. They recognised the coat of arms behind the judge and commented that other parties appeared to be in offices.

8.5 Judicial management

All users interviewed were pleased with how the judge managed the video hearing and thought that the turn-taking rules were explained well. They also noted that at the beginning of the hearing the judge ensured that all parties could hear and see each other.

One defendant explained how the judge took ownership of the hearing while also making participants feel comfortable and making sure they understood:

I think he mentioned the coat of arms – being at station as such – he explained briefly the kind of rules of the court – he explained about coat arms behind him and explained it's held as a normal court ... he kind of took ownership of it all, so he would ask me particular questions and then other lady and then in turn and then ask, answer at each given time, he was straightforward... so yeah everyone knew who was who, and that everybody could hear and explained if any issues how to deal with it [defendant, SAJ].

Solicitors reported that the judges were skilled in managing questioning and turn-taking between the parties.

8.6 Formality

Many users felt that the video hearing approximated being in a physical court or tribunal, although most of the lay users had little or no personal experience of attending a court or tribunal. As one user told us, *I have never been but what I would picture, I don't think I was as nervous about doing a [video hearing] as I would have been going to court, but [it's] still a judge that I was speaking to.*

One solicitor commented, *it felt very much like in court, it ran exactly as would have done in a courtroom* [solicitor for defendant, SAJ]. A solicitor who appears in short notice hearings remarked, *No difference, it's the same judge, same responses we always get.* HMRC representatives largely reported that the video hearing approximated a physical courtroom and that the same level of formality was maintained. As one representative told us, *It was just like being there in person. I was surprised about how much like a face-to-face hearing it was.* Another representative reported feeling more relaxed during the video hearing, indicating that not having the parties in front of them calmed their nerves.

Several participants commented that it felt less formal than a physical courtroom, but indicated this was a benefit. One user commented that this was as a result of participating in the video hearing from their own home, *[the video] brings down formality because you are in your own surroundings, you don't need to worry about it as much or about what you are wearing.*

Another user remarked that it was less formal, but this helped to reduce their stress. *[The hearing was] a little bit less formal because I wasn't too sure what to expect [it was] a lot less stressful than I thought it would be.*

Another appellant also stated that they felt more comfortable in their own home than they would have in a physical courtroom. While opinion varied about whether a video hearing was more or less formal than a traditional court or tribunal, all users thought that the hearing was taken seriously. One defendant in a SAJ put it succinctly, *It was both formal while being easy enough, it was professional is the best word.*

A few legal professionals pointed out that the familiarisation sessions and pre-hearing calls help to provide people with an indication of what to expect during the hearings, and that this may help participants take the hearing seriously and act appropriately when appearing on video.

8.7 Experience of technology problems

Most users who were interviewed did not experience any major technical problems and commented that the technology worked well. Most users reported being able to hear and see the other parties clearly, and that they felt they were able to be seen and heard well by the other parties too. A few users mentioned experiencing short delays with what they could hear and see.

Amongst the users interviewed who did experience technical problems, they did not feel that these significantly impacted their hearing. For example, during a SAJ, a defendant reported that there were some delays between what they could hear and the other party speaking.

I could hear speaking, [it] was obviously delayed, so [their] mouth moving but wasn't the same time as the words necessarily, which I found when I did the test run. It wasn't too delayed to the point it was minutes after, there was only a slight delay. [defendant, SAJ]

This delay was on both sides. Similarly, the claimant in this hearing reported a delay in what they said and when the judge heard them. They stated that this could be distracting, but that it did not impact the proceedings.

One appellant stated that their hearing was delayed by thirty minutes due to the other party experiencing technical issues. However, they commented how the video hearings team were diligent in keeping them informed.

I was waiting for about ten minutes then I got a video call from the IT people, they told me what the situation was and sorted out so shouldn't be too much longer. I got another call ten minutes later, they said 'ok it's sorted we should start in 5 more minutes.' So, they kept me up to date. It wasn't like I was waiting and didn't know what was going on. [appellant, Tax Appeal].

The same appellant also reported issues with technology of the HMRC representative once they had logged on to hearing and that their audio and visual was *pretty poor* and it sounded like there was white noise in the background. The judge suggested turning the volume down which appeared to remedy the feedback.

In one case the defendant's face appeared frozen to the judge for a few minutes. The defendant asked to continue the hearing anyway. He felt that the judge handled the situation well and noted that although this could be problematic in other situations or for other users, they did not feel disadvantaged.

My face was frozen only for the judge, he couldn't see me, he couldn't see any reaction, he did ask whether I wanted to proceed on that basis... The judge was quite receptive to things anyway. But that could have been off putting, some people might not want to go ahead with the hearing, but it would have been waste of time and I didn't want to waste anyone's time [defendant, SAJ].

In another SAJ, the defendant was struggling to hear other parties and experienced some delay in what they said. However, they stated that this did not appear to detriment the proceedings and other parties were able demonstrate that they had understood when the defendant spoke:

[There] wasn't much of a time lag, if I spoke you could catch reactions, be it of the judge or other party. You would notice a nod or shake of the head, it was like having a face to face conversation [defendant, set aside hearing].

One HMRC representative reported issues with their internet connection whilst in the waiting room. In their view, the video hearings team were very responsive, and the issue was solved by tethering their mobile phone to the laptop. Another HMRC representative's hearing was adjourned because the appellant had not received the bundle. They reported that this was dealt with well over the video and that it would have not been different had they been in a physical court or tribunal.

The issue [of the appellant not having the bundle] was handled well during the hearing, we were able to communicate clearly on the best action to take that being adjourning and the Judge discussed resending the bundle, again this was communicated clearly. Discussing the issue over a video hearing felt no different from a face to face hearing, there were no miscommunications or talking over one another. Obviously, the appellant did not receive the bundle, but I could participate effectively throughout the hearing.

Many users noted that the judge was skilful in managing technical issues. One legal professional recounted how during a SAJ, the video froze on several occasions. The judge asked all parties to repeat so that nothing was missed. Another solicitor also noted how delays are not only experienced during video hearings: *there are interruptions in court as well [legal professional, claimant, SAJ].*

8.8 Future roll out

Most users commented on the ease and advantages of having their hearing via video. However, they thought that video hearings would be a disadvantage for users who do not have access to technology or a stable internet connection in their home. The service currently requires a desktop or laptop computer, and a minimum internet speed. Users also thought that a video hearing would be difficult for people who struggle with hearing or who might be anxious or unfamiliar using video technology.

Some users reported feeling intimidated seeing the other party and suggested the option of being able to close the other party's video screen. Both parties in one set aside hearing noted that they found it off putting being able to see the other party on the screen.

All legal professionals interviewed shared the opinion that the cases selected for the pilot were suitable for video. Hearings that were deemed suitable for video include short hearings, case management hearings where directions, submissions or judgments were given, and interlocutor hearings where two legal professionals dealt with the case. HMRC representatives agreed that Basic Tax Appeals and cases without many witnesses were appropriate for video hearings. Legal professionals and HMRC representatives thought that cases that would be unsuitable for video hearings include trials, or cases that involved unrepresented litigants or cross examination.

Whilst solicitors considered FDAs suitable for video hearings, they did not think this was the case for further proceedings dealing with divorce and financial remedy. There were specific concerns amongst legal professionals about hearings in later stages of a financial resolution hearing where negotiation and having both parties and their solicitors in the same venue was deemed vital.

I think it's pitched right in terms of which hearings are to be dealt with by video, this was an FDA... the next hearing after that is FDR, [It] would be much more difficult [to do via video], [it] can last anything to up to a day and in and out of court and conference rooms [legal professional, FDA].

Legal professionals felt that the physicality of discussing issues in the corridor could not be replicated via video. A legal representative stated that barristers are concerned about not being able to negotiate beforehand and *not having a face to face with the other side*. As another legal professional stated, *there is so much benefit having parties in same venue to discuss matters and negotiation*.

It is worth noting that we did observe a video SAJ where parties came to an agreement before the hearing started. They told the judge this when they entered the hearing room and the hearing lasted four minutes. The ability for private consultation is also built into the platform.

8.9 Summary

Most users commented on the convenience of having a video hearing and the time and cost it saved them. Some users also reported reduced stress and anxiety due to being able to take part in a hearing from their home or from their solicitors office. Legal professionals felt the cases selected for the pilot were appropriate and also recognised this option as a benefit for parties. Users reported finding their video hearing easy, effective and straightforward. However, some recognised a challenge with communicating over video and felt that it might be difficult for people who are not familiar with or do not have access to the suitable technology. Users maintained the view that pre-hearing support was highly valuable and helped them navigate the technology on the day of their hearing. All users were highly satisfied with how the judge managed the hearing and the formality of the hearing. Users who experienced technological issues did not report these as unmanageable and thought that judges dealt with any disruption effectively.

9. Judicial perspectives on video hearings

We interviewed 13 judges across Manchester and Birmingham Civil Justice Centres, after they took part in a familiarisation session and before they took part in a video hearing. We also interviewed 2 judges from the First Tier Tribunal (Tax Chamber) in advance of conducting a video hearing. At the close of the data collection period, we interviewed an additional 12 judges about their experience running video hearings. Four of these judges had also been interviewed prior to their involvement in the pilot. The remaining nine had not been identified as participating in the pilot when we conducted interviews at the start of the pilot. Interviews were conducted over the telephone and lasted about 30 minutes.

9.1 Judicial familiarisation sessions

Judges in the Civil and Family Courts took part in a one to one familiarisation session in advance of the pilot. In this session, they met with members of the video hearings team who briefed them on the technology and gave advice on managing a hearing over video. For instance, they encouraged judges to use parties' names when addressing them to make sure it was clear who was being spoken to. Judges then took part in a mock video hearing, with members of the video hearings team acting remotely as parties. Judges paused to ask questions during the mock hearings and gave their feedback afterwards. We observed two of these familiarisation sessions. Sessions took place in December 2018 – March 2019. Judges who joined the pilot after March 2019 did not have an in-depth familiarisation session. Instead, they had a briefing and run through immediately prior to their hearing with a member of the video hearings team.

All judges had prior experience using technology in the courtroom, and most regularly use a laptop on the bench to take notes, review documents, electronic case management, and to look up judicial resources. While all judges reported familiarity with using screens in the courtroom, many also used a pen and paper to take notes. Judges who have split or multiple screens in the courtroom reported that this feature was useful as it allowed them to examine multiple documents at once. Family court judges noted that their whole system was electronic. As such they had the most experience with electronic diaries, electronic filing, and case management. Most said that they found using laptops and electronic resources intuitive and straightforward.

Most judges had experience using video technology outside the courtroom, either in a professional or personal context, but very few had used video conferencing in a court or tribunal context prior to taking part in the pilot. All had experience conducting hearings over the telephone.

Judges who took part in a familiarisation session were satisfied with the process, although some voiced concern about the length of time between the session and actual date of their first video hearing. As one judge noted, *like in any training to do with technology, when I have a session I think it's magic, but unless I'm doing it every day I forget*. Judges felt that sessions were particularly useful in terms of explaining the necessity of addressing parties by name, however some were concerned about whether judges were expected to resolve technical issues or whether an IT team would be on hand.

There was a demo and a bit of talk, that was very informative and interesting and then... I took the reins and I had a good go at doing a hearing. [The] best training is just doing it, doing the demo, having the crib sheet – knowing to bring parties attention to who else is in the room, [asking] can they see and hear each other and hear and see me – this wouldn't come naturally [Judge, Civil Court].

All judges felt that the familiarisation sessions were important, and most welcomed the chance to role play and test the technology. Most judges said they are used to using phone and video and would not need a vast amount of training but would need to have support on hand to help.

Judges were shown the basics of how to use the video hearings platform, but many were unsure what to do if the technology were to break down. Some judges expressed more willingness to deal with technology, whilst others were less inclined. In the hearings a member of the video hearings team was present to assist the judge, and future plans include offering local support.

Most judges did not remember receiving guidance about managing video hearings (see Appendix 1). However, most thought that the need to adapt the procedure or etiquette to suit the video format was common sense. It was clear to all judges that best practice included checking that all parties could see and hear, checking that everyone had the same documents, ensuring that parties were alone and not recording, and addressing parties by their name. Many said that this was not much of a departure from what they already do. *I think this training is useful for people who don't deal with LiP (Litigants in*

Person), but much of what they said I already do, but it's good to have a refresh, particularly making sure you use peoples' names [Judge, Civil Law].

Some judges were self-conscious about appearing in front of camera, although not insurmountable, most felt confident that they would adapt to using video technology.

9.2 General feedback on video hearings

Of the judges we interviewed at the close of the pilot, seven were based in Manchester Civil Justice Centre, four based at the Tax Tribunal, Taylor House in London, and one in Birmingham Civil Justice Centre. Their experience in the pilot ranged from 1 video hearing to 10 video hearings. Most judges had conducted only one case type during the pilot. One judge, who had not taken part in a familiarisation session, only stepped in to conduct a Short Notice hearing and on the day found out it was to be via video hearing.

In general, judges were cautiously optimistic about the video hearings. They thought they had been effective in managing the video hearings and the types of cases included in the pilot were appropriate. In general, judges were pleased with how the video technology worked. However, they expressed some reservations about a future roll out.

In pre-pilot interviews, judges identified a number of advantages that video hearings may bring to parties. Chiefly, they reported that video hearings are likely to be a more convenient and less expensive option for people, especially in light of recent court and tribunal closures. Many also noted that video hearings might be less intimidating or stressful for parties. In follow up interviews, judges considered video hearings as a viable alternative for parties where face-to-face court or tribunal hearings were unavailable or not possible. They noted the particular importance in the current climate with COVID-19 restrictions, as well as where parties were unable to travel to a court or tribunal.

Frequently people have to travel considerable distance and they complain bitterly, so a video hearing will save some expense. They may be in potentially less stressful surroundings, attending court can be stressful, can be intimidating, lots of people flying around in the waiting room, it can be very unfamiliar and people can react quite badly to being in court [Judge, Civil Law].

Many judges also suggested that video hearings are a significant improvement over telephone hearings.

The nice thing about video [compared to] telephone is that you can all see each other, the awkward silence on telephone where you think 'goodness has the line gone down.' On video you can see if they are talking or not, or if they are just writing something down... The one thing you can't do with telephone is make a very simple arrangement just to suspend the hearing just for a few minutes [Judge, Civil Law].

However, in follow up interviews, some judges noted that the video hearings they conducted could easily have been completed over the telephone.

I was left feeling 'well I've done telephone hearings of similar type' and I can't say I see utility of a video hearing other than just seeing people. If we were going to do remote hearings, [they] could have easily been done by telephone [Judge, Civil Law].

Judges reported that in the hearings they conducted, parties adhered to the rules of the court or tribunal and behaved in an appropriate way. However, they continued to express concern about parties participating in hearings from their own homes.

[We are] used to having people in court and then you get two videos and see people's living room or kitchen and it is always inevitable thing that something happens out of earshot and someone is distracted and they come back and say sorry that was child, dog or door. I can see on one hand the convenience of not having to travel, if you have disability, or can't get childcare or other commitments. But conversely people naturally being in their house and different dynamic than being in courtroom because [the] everyday mill of life carries on around them [Judge, Civil Law].

It is worth noting that we did not observe any such disruptions in the video hearings. Most users appeared with a plain wall behind them. While domestic life may have been continuing around users, it was not apparent on the screen during the hearing.

9.3 Judicial experience of the technology

Judges reported that the video hearings platform was functional and that it was easy to log in to a hearing, as well as close and pause a hearing. Judges had a support officer with them on the bench showing them what to do. They thought that the video hearings platform was much easier to use and more streamlined in comparison to traditional video links used in courts and tribunals. However, most stressed that video hearings would only be a suitable alternative if they worked reliably and if there was adequate support in the event of technical difficulties.

The majority of judges reported high quality audio. They also reported that the video technology was natural and some noted that it felt like the parties were in the same room. As one judge reported, *No delay, [it] did really feel to me that parties were here in front of me [Judge, Tax].*

However, judges expressed concern with the robustness of the technology and the delay to listings caused by technical issues. One judge commented on the knock-on effects of video hearings running over time and being interrupted due to technical issues. Judges also commented that the video hearing scheduling was often disorganised and that this impacted the judge's ability to manage their schedule.

[Video hearings] weren't always wonderfully well organised. [I would] be listed to do them and nobody would turn up and I would [be then told I] didn't have any and... wasn't needed. I think the problem with all remote hearings is that timing isn't always the control of judge so [one] can't juggle things around easily [Judge, Family Law].

Most judges commented that video hearings took more time, though they also recognised that this was mainly due to set up times, added technical checks and the time taken to address any technical issues. Once hearings got underway, they took the same amount of time as traditional hearings. Two judges who participated in several Short Notice Hearings as part of the pilot stated that the time to set up the video took longer, but the actual applications were similar length to a physical application.

However, some judges did point to the extra time needed to use formal turn-taking cues that might otherwise be picked up visually or intuitively in a physical hearing. Often, judges noted, it took more time for people to realise it was their turn to speak, or that parties spoke over one another. As one judge stated, the formal cues and turn-taking were more *clunky* via video than in a physical courtroom.

9.4 Managing a video hearing

Most judges reported that the type of hearings that were in the pilot were not usually difficult to manage. However, most judges agreed video hearings required additional judgecraft to effectively manage the hearing and maintain their authority.

Most judges considered video hearings to be more draining than physical hearings. One judge stated that video hearings are *more tiring and stressful for judges*. They commented that there was an extra layer of detail to manage over video. As one judge stated:

[Video hearings] are more intensive, you have to keep one eye on being able to hear and see people, in a physical courtroom people naturally interact and you can see both parties and you can see they have the papers [...] dealing remotely you always feel like there is a bit of delay, there is a verbal dance trying to wait for one another, it becomes more disjointed [Judge, Civil Law].

Managing parties and the formality of the hearing

Judges commented that it was harder via video to manage parties' reactions. Judges also indicated that parties were more likely to talk over one another in a video hearing as a result of the lack of physical cues around turn-taking. One judge stated that parties are more likely to go *off on a tangent* and it was *more difficult to get parties on track* during a video hearing compared to a physical hearing.

Judges reported some difficulty ascertaining whether parties were following the proceedings via video. One judge in family court stated that it is harder to gauge the subtle interactions and relationships between opposing parties in a video hearing.

Although no judges reported inappropriate behaviour during the pilot, some judges were concerned that having a video in your own home might tempt some parties to turn their video off or behave inappropriately.

It worked well. Having said that, it's new and when people get more complacent, I don't know what other habits might slip in. [Judge, Family Law]

Judges reported mixed feedback about the formality of video hearings and the way their authority was perceived. In hearings we observed, judges remarked to us afterwards that it was *suitably formal* and that it was *useful to have something like a court seal* to remind participants of this during the hearings.

One judge who was interviewed at the close of the pilot articulated the challenge of maintaining authority and a formal atmosphere without the physical cues of a live courtroom:

I think the formality in our tribunal is generally helpful in most cases because it helps to give the judge their authority. What happens in a live hearing, you come in and people stand up, [the judge is] sitting at the front on the bench and you have the authority from the minute you walk in. Where dealing with ... you may be in a less formal setting or neutral setting and it may be more difficult to make sure that you've got control. [Judge, Tax]

9. Judicial perspectives on video hearings

Judges were also concerned that it may be more difficult for clients and their lawyers to liaise over the video platform. They reported that there needs to be a chat function or ability to telephone or message so that clients and their lawyers can converse privately. Many judges reflected on the current situation during the COVID-19 pandemic which presented problems for represented parties and not being able to be in the same room as their lawyer. They stated that it was important that remote discussions could still be held between lawyers and their clients, even outside of a pandemic. It's worth noting that private consultation facilities are currently available as a part of the video hearings platform.

Managing documents

Judges were consistently worried about how video hearings would accommodate documents that are produced at the last minute. It was a regular occurrence in their courtrooms for documents to be missing or to only be presented during a hearing. Many judges were unsure how this would be handled in a video hearing. In follow up interviews, judges also commented that it was much harder to manage late documents during a video hearing. Whilst judges had found solutions, some video hearings were adjourned as a result of missing or late documents. Many judges commented that documents may often be produced last minute or only become relevant during the proceedings. They commented that it was easier and more secure in a physical court or tribunal to ask an usher to photocopy new documents and distribute amongst parties in the courtroom.

Sightlines and frames

Some judges were concerned that the additional monitor on their bench led to a cramped space. There was less room for the bundle and their notes, and in the tax hearings judges noted that there is not enough room for them to share the bench with a panel member. After one tax hearing we observed, the judge remarked that it was *doable* but that they felt a bit *crushed together with the panel member* so they could both fit on the screen. In cases where the panel member sat outside the frame, judges were concerned that others could not see them. As one Tax judge noted, *It is important [for the parties] to see everyone who is speaking and part of the decision and whole process.*

Judges also reported that it was important that they could see parties faces clearly. There was concern that the video frame was too small. One judge commented that only being able to see the parties' head and shoulders meant that it was difficult to assess whether anyone else was in the same room. They commented that this might be problematic as you cannot see if the party is being influenced or prompted.

Despite their concerns, judges felt that they had effectively managed the hearings as part of the pilot. Some noted that it was also important to consider the benefit of video hearings for parties, who might feel more comfortable participating in the hearing from their homes.

9.5 Video hearings support

Judges were pleased with the administrative and technical support that was available to them in the courtroom. They reported that it was useful having support at hand to set up the hearing and if any technical issues arose during a video hearing. One judge in the Tax Tribunal told us, *having a support officer next to me gave me confidence.*

There was some concern amongst judges that support for the pilot was labour intensive, especially where support staff were travelling to Manchester from London. Judges also expressed concern that the current technical support would not be feasible for a future roll out and would be difficult to upscale.

The administration was over and above, not sure that could be realistically expected on a fully time wider basis if rolled out [Judge, Family Law].

HMCTS is developing models for on-site support to be provided locally rather than from within the video hearings team. When asked what kind of support judges would like in the future, most saw a need for ongoing support, though some indicated that a telephone number for remote support would be sufficient.

Some judges reported that they would like to have a clerk or someone else in the courtroom with them to set up the video hearing. They considered it *very undignified* for the judge to check if parties are ready to start the hearing and that this could set the hearing off *on the wrong foot*.

9.6 Suitability

The majority of judges were in agreement that parties and cases that were suitable for video hearings include:

- Cases where evidence is not examined, most thought that assessing evidence would be more difficult via video
- Cases that involved represented parties and/or professionals, who would be more familiar with the proceedings and may be more likely to provide documents ahead of the hearing
- Parties who are confident with technology
- Case management hearings or directions hearings
- Short hearings
- One sided application for injunctions, set aside hearings and FDAs, that involve either one side, submissions or directions.

Judges felt that hearings that would not be suitable for video include:

- Hearings that involved cross examination or contested evidence
- Complex hearings that involved litigants in person
- Longer cases, which might be tiring
- One judge also commented that block listed cases might be difficult to manage via video,

It is very common in family proceedings that parties come to court and the judge has a different view and when a judge expresses his or her view, the parties need to talk to their lawyers, that process is difficult to manage on a video hearing [...] typically family cases are block listed – many list 3 or 4 at 10am, knowing that you will get a case in and throw in your view and they go out and the next one comes in – you can't do that with a video hearing [Judge, Family Law].

In the Family jurisdiction, most judges were not convinced that any proceedings following an FDA would be suitable for a video hearing, as these tended to involve deliberations between parties and their representatives outside of the courtroom. Judges considered being physically in a court as more conducive for these discussions to take place.

One judge stated that although it might be possible to involve an interpreter, it might be difficult for those parties to use the technology and navigate the platform without adequate language capabilities.

One family court judge commented that in certain types of hearings, being able to physically see parties together often informs the kind of techniques they, as the judge, would employ to manage the hearing.

One advantage [to] having a hearing in court is that you see parties together, it is particularly important in family cases, you see parents of child about whom they are fighting, you get view of the relationship and how they are with each other, how they communicate. You don't get [this] on video... you can lose a sense of possibility to bridge the gap with people... [seeing] people come in court [will inform] how I will start hearing- as an authoritative figure or do I start in a conciliatory and cajoling way. [Judge, Family Law]

However, some judges were less conclusive about what kinds of parties or cases would be suitable for a video hearing. Many judges also weighed up limiting access to video for some parties against the advantages for parties of saving travel time, cost, and childcare. One judge also stated that it was difficult to assess which parties and cases would be suitable for video at face value. Often issues that could affect someone's ability to function or engage with a video hearing were not always evident.

Others suggested that as judges gain confidence with the technology, more parties and cases should be considered for video. This would ensure that all parties have the option to be included in the process and have access to justice.

Finally, one judge expressed a wariness that video hearings were increasing alongside local court and tribunal closures.

[It could be] dangerous to have anyone away from [the] protection of their lawyer and the court, they could be susceptible to pressure... [video hearings are] not a substitute for local hearings, [due to the] lottery postcode people in certain areas will be getting second class service... [The] push for video hearing is in parallel with closure local courts – [it's] just no substitute [Judge, Family Law].

9.7 Future roll out

Many of our interviews with judges took place during the COVID-19 pandemic and subsequent lockdown. In addition to their work as a part of the video hearings pilot, some judges had also been conducting remote hearings from their homes, and could not help reflecting on this experience in addition to their experience with the pilot. Most judges stated that they would be happy to undertake further video hearings. If they were expected to conduct hearings at home, they noted that they would need to have robust technology.

However, many judges reported that they prefer in-person hearings and that it was *more effective* to conduct hearings in a physical courtroom. Reasons included: the ease of managing a physical courtroom and dynamics between parties, the gravitas of parties being physically present in a courtroom together, the security of a courtroom and not having to rely on technology and the delays technological problems cause. Although some reflected that video hearings are a viable alternative not only during a pandemic but also for parties who have difficulties travelling to a court or tribunal or who are living overseas.

Some judges felt particularly negative about the prospect of video hearings replacing physical court hearings in family law cases,

Even though I as judge am responsible for decision making, it is interactive and undertaken by listening to what other people say. It's about looking at body language and interactions with other people in courtroom... [Another] disadvantage is not being able to make assessments of people. Direct communication in family cases is extremely important, if I make an order saying a child is going to be placed for adoption, I want to look at its mother in the eye and tell her my decision and explain why and I want to take the consequences. If she wants to rant at me that's what the job is about and [an] element of that is lost ... So I would feel quite negative [about video hearings] because of enhanced difficulty in decision ... it becomes not like a court, [I] feel distanced and not part of it [Judge, Family Law].

Equipment

In the pilot judges were given a separate monitor on their bench with an inbuilt camera through which they conduct the hearings. This is separate from their judicial laptops that they use for notes or for reference. Judges expressed a concern about a future roll out, they would still need an external monitor and that judicial laptops would not be suitable to run video hearings. They noted that it was essential to have two screens, one to read documents and one to see the video hearing. However, judges also acknowledged that they needed more bench space to conduct the hearings, especially if they were to share the bench with a member.

Improvements to video platform

A few judges commented that it might be useful to have a mute function but that this would have to be with good reason, for example to ensure that people don't talk at the same time or if someone was in the same room with their lawyer and wanted a private conversation (note: in Release 1 the judge and the parties have a mute function). Judges also thought that it would be useful to have a document sharing function, as well as a chat facility or private sessions for clients and lawyers.

Improved access

There was shared concern amongst judges that only those with access to technology or funds to pay for representatives would be able to access video hearings. They stated that video should be an *option to everyone ... [the] most vulnerable should also have option [to have a video hearing]* [Judge, tax]. Some judges suggested providing video pods in local buildings, such as libraries or courts. They noted that this would save time and costs whilst broadening the spectrum of people who could access a video hearing. Other options include widening the scope to allow for participation from tablets and mobile phones. However, judges were keen to have assurance that security of video hearings can be maintained.

9.8 Summary

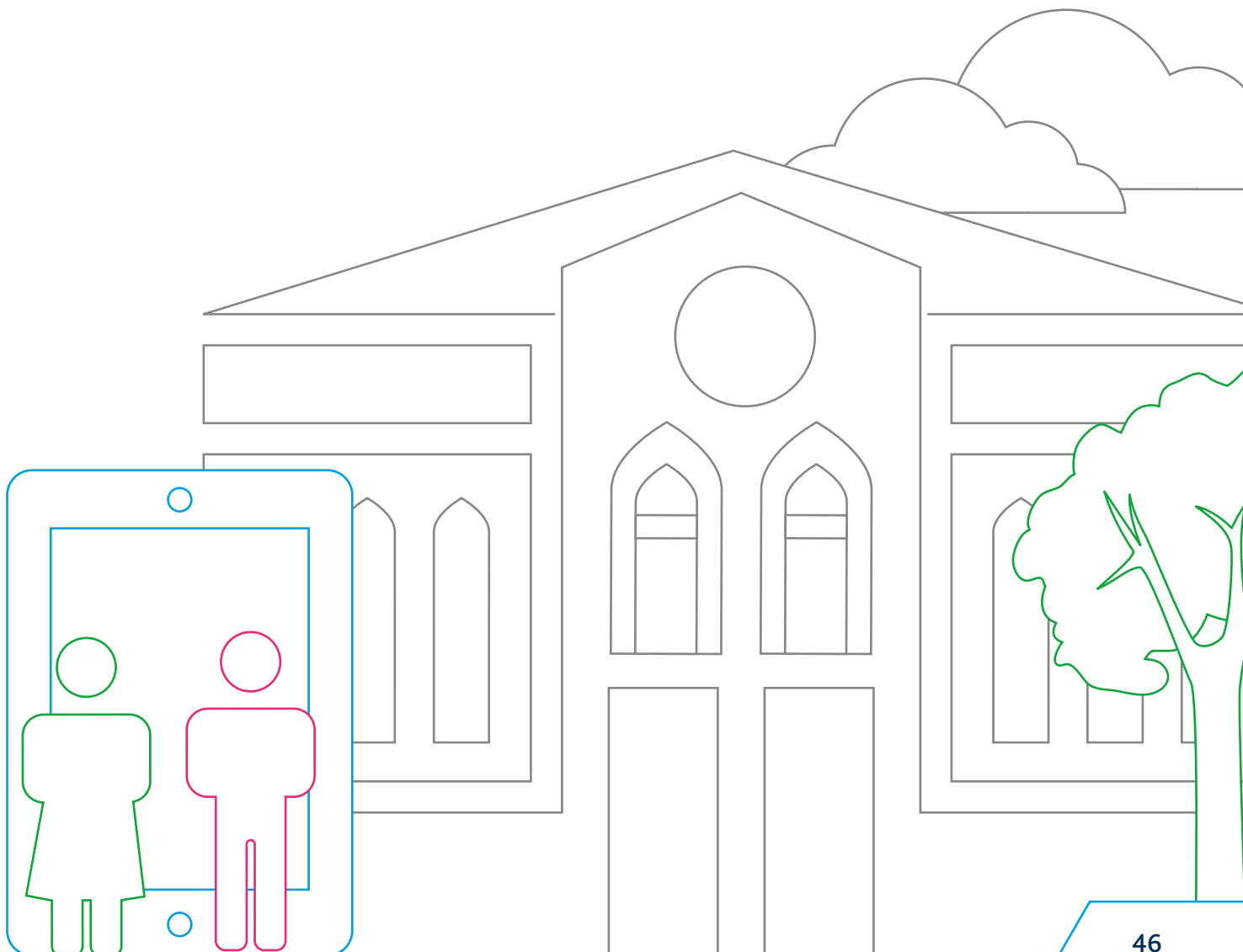
The judges in our sample all had previous experience with screens in the courtroom, though not necessarily with video links. Those who had a one to one familiarisation session and the chance to try out the video hearings platform were pleased with this. Judges were satisfied with the video hearings process for the hearings they conducted, though also noted that the format could make a hearing more difficult to manage and was more draining than physical hearings. They could see the benefit of moving some additional hearings to video, though also noted that some cases are better dealt with where parties are physically together. Judges held some reservations about video hearings, in terms of their ability to manage video hearings effectively, the ability of the hearing format to communicate formality and authority, dealing with late or missing documents, and ensuring administrative support is cost effective. They stressed that video hearings were a good option as long as the technology was dependable. Judges reported that access to video hearings should be increased but not as a substitute to physical hearings.

10. Conclusion

This report examined the development, implementation, and user experience of the video hearings service and platform across four different hearing types in the civil, family, and tax jurisdictions: Set Aside Judgments, First Direction Appointments, Short Notice Hearings, and Basic Tax Appeals. Methods involved a combination of observation, semi-structured interviews, and analysis of HMCTS documentation. This is the second process evaluation of the video hearings pilot. The first report was completed in 2018 and only considered video hearings for Basic Tax Appeals.

The recommendations summarised on page 4-6 are drawn from the key findings of the evaluation, based on the data we collected over the period of the research.

To conclude, the hearings included in this evaluation represent an expansion of the video hearings platform beyond the party-to-state context in the Tax Tribunal to incorporate party-to-party cases in the Civil and Family Courts, as well as Short Notice Hearings in the Family Courts. This demonstrates the potential capacity to be used across a range of justice hearings. Users in these contexts experienced the video hearings platform as convenient, robust and easy to use. While some participants experienced technical difficulties, on the whole video hearings that were a part of this evaluation can be seen as an improvement over the Phase 1 evaluation. As in the previous evaluation, users responded positively to both the high level of support they received as a part of the service and the judicial management of the hearing. While judges expressed concerns about the formality of the proceedings and the ability of the video platform to communicate authority, all users reported that the tone and level of formality was appropriate. The experience of participants in this pilot suggests that, at least for these types of hearings, the video hearings service and platform can provide an appropriate alternative to physical hearings.



Appendix I. Guidance for judges on conducting a video hearing (used from March 2019 to March 2020)⁸

Video hearings: guidance for judges

This guidance is for judges to use during a video hearing.

Before the hearing: general points to note

Remember that:

- the video technology is here to enable you to run the hearing as you wish
- you or a clerk can start, pause, resume and end the hearing with the same degree of control as you would in a physical courtroom

Be aware that:

- visual cues may be lost or distorted over video so you'll need to watch and listen carefully
- it may be harder to detect a participant disengaging or losing concentration

You will need to:

- start questions or comments with a name: for example, "Mr Jones, what is your response to this?"
- address participants either individually or in turn to avoid people speaking over each other

You may need to:

- be alert to the possibility of unseen prompting
- check that participants understand what is happening, more often than you would in a hearing held in court

Starting the hearing

If you wish to see the participants' view of you/the court before the hearing starts, you or the clerk can run a quick 'check equipment' test. You also have the option of having your 'self-view' open or closed during the hearing.

Countdown

When 'start hearing' is selected, there's a 30 second countdown that all parties see before they appear on screen

Introductions

- Introduce yourself as the judge
- Introduce each participant by explaining their role and ask each in turn to confirm their name
- Ask each participant in turn to confirm they can see and hear each other
- Make sure you can see and hear the participants. If necessary, ask them to move position or speak up

Check whether anyone else is present

Ask participants to confirm that they're alone or to introduce anyone else in the room and explain why they're there

Explain what will happen if there are technical problems

Explain:

- that if anyone has technical difficulties, they should alert you or contact the VHO by instant message (on screen) or by phone
- that if there is a major technical problem you'll pause the hearing and everyone will return to the waiting area

⁸ Since the evaluation ended, the Judicial College has produced a detailed video for judges with expanded guidance about behavioural cues during a video hearing.

Other points to raise

Explain:

- that if you're looking down or typing, you're taking notes and participants may hear your keyboard
- that if a participant needs a break they should ask you, or if necessary, attract your attention by raising their hand
- (if appropriate) that this is a public hearing and members of the public are/ may be observing

Ask participants to check they are ready

Ask participants to check they have everything they need close by, such as papers, pens and water.

Explain the rules

Explain to participants:

- that they are now in a formal court or tribunal and must follow certain rules
- that it's a criminal offence to record the hearing (by audio or video), to publish any recording, or take any images (by photo or screen shot)
- to only drink water and not eat or smoke (including e-cigarettes)
- to only use their phone for contact with the video hearings team
- to be alone unless they have your permission otherwise
- to follow your instructions at all times – and ask you if they need to move away from their screen for any reason
- If they would like a private consultation at any point they should ask you. You may then pause the hearing to allow them to do so.

Technical problems during the hearing

If one of the participants could be having an internet problem:

- a message will appear on the screen prompting you to check if everyone can still see and hear clearly

If one of the parties unexpectedly leaves the hearing:

- the system will show who has 'disconnected'
- the hearing will be suspended and everyone will return to the online waiting room.
- the VHO will contact the participant shown to be having the problem and try to solve it
- the hearing can be resumed as soon as the participant re-connects
- if the problem cannot be resolved, everyone will be notified and the hearing will be closed

Ending the hearing

Explain to participants:

- what will happen next in their case
- that once you have ended the hearing, participants will return to the waiting area where they can sign out or have private conversations if they need to
- when you're going to end the hearing

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