

Memorandum of Understanding

between

His Majesty's Courts and Tribunals Service

and

His Majesty's Prison and Probation Service

Date: 1 September 2023

Contents:

- 1. Introduction**
- 2. Background**
- 3. Purpose**
- 4. Objectives**
- 5. Signatories**
- 6. Annex**

1. Introduction

This Memorandum of Understanding (MoU) has been agreed between His Majesty's Courts and Tribunals Service (HMCTS) and His Majesty's Prison and Probation Service (HMPPS).

It will take effect on 1 September 2023.

The aim of this MoU is to help clarify the 'virtual custody' of the prisoner during their remote hearing and preceding private consultation with their legal representative on the Video Hearing service; and formalise the relationship of shared risk and responsibility between HMCTS and HMPPS during this process.

The term 'virtual custody' developed through engagement about the custody of the prisoner whilst they remain on virtual platforms for remote hearings where prison staff might not have direct physical oversight over the prisoner.

The MoU encourages constructive co-operation between HMCTS and HMPPS in navigating the virtual custody of the prisoner during their time on VH and holding remote hearings more broadly.

This MoU is not a legally enforceable instrument, but the parties to it will act in good faith and nevertheless consider themselves to be bound by its terms.

2. Background

This MoU has been created within the context of HMCTS implementing their bespoke platform, Video Hearing service (VH), in all jurisdictions after the utilisation of Cloud Video Platform (CVP) as a temporary product during COVID-19. VH has been piloted in Civil, Family and Tribunal jurisdictions, where people in prison might participate in a remote hearing; but the bulk of remote attendance at a hearing will be in the Crime jurisdiction where VH will become the strategic platform for remote hearings.

In order to establish whether the prison estate would be compatible with VH, extensive testing and stakeholder engagement was undertaken; and it was ultimately confirmed that the platform would be compatible with HMPPS equipment. And through this engagement it became clear that the virtual custody of the prisoner during their journey on VH was the outstanding issue.

During the prisoner's regular visits via video, hosted on CVP by prison staff, it was clear that their legal custody remained with HMPPS. However, as the prisoner will attend their pre/post consultation with their legal representative and then their hearing on the HMCTS platform, VH, there was a renewed conversation around the operational risks, and should these risks manifest, whose virtual custody would the prisoner be under.

3. Purpose of this MoU

This memorandum establishes a model of shared ownership of virtual custody between HMCTS and HMPPS whilst the prisoner is on VH.

During the process of booking a prisoner on to a remote hearing on VH, from coordinating on dates and details to producing them remotely on the day from their cell to the room where they will have their private consultation and then their hearing, there are multiple people and agencies involved in ensuring this process runs smoothly, consistently and safely. For example, members of staff in HMCTS will be responsible for providing the details of the legal representative to HMPPS in advance of their consultation with the client, whilst members of prison staff will be responsible for authenticating the identity of the legal representative before the consultation commences.

This complex change of hands has existed since prisoners have attended their hearings and private consultations remotely in custody, but with the advent of the new HMCTS platform, VH, it is a good opportunity to not only address the issue of virtual custody but also to formalise and clarify the roles, responsibilities, and relationships between HMCTS and HMPPS to facilitate the process most efficiently and effectively.

Therefore, this MoU will:

- a) Set out an agreed process between HMCTS and HMPPS to get the prisoner from their private consultation with their legal representative to their remote hearing on VH.
- b) Set out the respective roles and responsibilities of HMCTS and HMPPS to ensure security measures are in place whilst the prisoner is on VH.
- c) Provide broad principles and best practice for how HMCTS and HMPPS should work together to navigate remote hearings on VH with a consistent approach.

4. Outcomes

A: An agreed process between HMCTS and HMPPS to get the prisoner from their private consultation with their legal representative to their remote hearing on VH

The process of getting a prisoner from their private consultation with their legal representative to their remote hearing is slightly different on VH than on CVP.

At optimum utilisation, VH occupies the 'one-room' model where the prisoner can be left in one physical room in the prisons video suite (in a PCVL or VCC prison) which will bring them into a private consultation room and then bring them into the hearing when the Judicial Officer Holder starts proceedings. This avoids the prison officer physically moving the prisoner from one physical room to another and dialling them into one virtual room and then another.¹

Annex A outlines the process from the days before the hearing, to what happens on the day of the hearing and supporting the prisoner from their consultation to the end of their remote hearing on VH.

B: Roles and responsibilities for HMCTS and HMPPS whilst on VH

Although the respective roles and responsibilities of HMCTS and HMPPS in supporting a prisoner during their attendance at a remote hearing and consultation are broadly the same, agnostic of platform, there are a few new adjustments if the platform is VH.

For example, since the private consultation between the legal representative and prisoner will be hosted by the VH platform, the joining details for the prisoner to attend (SIP and Pin) will be provided by HMCTS to HMPPS, when historically this was a virtual space that HMPPS used to host themselves via CVP.

Annex B builds on the process whilst mapping on the exact roles and responsibilities of HMCTS, HMPPS and the legal representative on to each step of the process.

Additionally, the question of virtual custody has been most difficult as regards the private consultation of the prisoner and their legal representative where the prisoner could be exposed to a different virtual risk, as they are left unattended. On VH, there will be no HMCTS member of staff who can access this private space and HMPPS will not perform auditory monitoring in order to respect the prisoner's right to confidential legal advice. Therefore, Annex C, maps out the exact pitfalls of the virtual custody of the prisoner during their private consultation and proposes a shared ownership of risk, according to the roles of HMCTS, HMPPS and the legal representative.

HMCTS and HMPPS have agreed standards of conduct that they both expect of the legal representative, when they have a private consultation with their client before (and after) their hearing on VH. These set out that they are expected to uphold the principles of their profession and keep the conversation secure and private. The legal representative must 'acknowledge' these 'Terms of Service' when they commence the consultation with their client at a prison on VH. Although the MoU is not a binding document for the legal representative, the MOU nevertheless set out their roles and responsibilities in supporting their client through this process, in order to aid HMCTS and HMPPS in understanding where they can follow up with legal professional bodies, should a breach occur. Breaches should be addressed in line with security procedures.

¹ However, if in some prison establishments the current (CVP) process of a two-room model will continue.




C: Broad principles for how HMCTS and HMPPS should work together to navigate remote hearings on VH with a consistent approach

- HMCTS and HMPPS should be in good communication before, during, and after the hearing
- HMCTS and HMPPS should communicate any operational delays that may impact on the other agency
- HMCTS must provide HMPPS with the details of the legal representative at the earliest convenience
- HMCTS must keep HMPPS updated of any changes to the hearing details of the prisoner at the earliest convenience
- HMCTS and HMPPS must have a contingency plan should the technology fail during the hearing
- HMCTS and HMPPS should work closely on the differences in process for PCVL and VCC prisons
- HMCTS should continue to maintain their understanding if the prisoner is late for their hearing due to manifold delays in prisons
- HMPPS must continue to uphold their high security measures of identifying legal representatives remotely
- Training for HMCTS and HMPPS staff involved in the process should be regularly updated and delivered


5. Signatories

This Memorandum of Understanding will be reviewed on an annual basis and updated as necessary.


Signed


Jason Latham Development Director HMCTS
Date: 21 June 2023

Signed


Michelle Jarman-Howe Chief Operating Officer HMPPS
Date: 1 September 2023

Signed


Jim Barton Executive Director, HMPPS Change
Date: 1 September 2023



6. Annex

Annex A:

Process of prisoner attending private consultation with their legal representative and their hearing on VH	
Prior to the hearing:	
<i>Legal Representative (LR) gives HMCTS their full details</i>	
<i>HMCTS links secure email address of LR to endpoint on VH service</i>	
<i>HMCTS provides prison with SIP address & Pin and the linked LR details</i>	
On the day of the hearing:	
<i>LR to sign into VH service and agree to the terms of service²</i>	
<i>*</i>	
<i>HMPPS sign into VH service</i>	
<i>LR to call endpoint into consultation</i>	
<i>HMPPS check LR's ID and proof of profession</i>	
<i>HMPPS bring prisoner into the room</i>	
<i>Private consultation takes place between LR and prisoner</i>	
<i>HMPPS perform roving patrol to monitor the sight of the private consultations taking place</i>	
<i>* If it is suspected or observed that the prisoner is in an unsafe, insecure or inappropriate environment with their LR, HMPPS will follow local procedures and notify the court at the earliest convenience</i>	
The hearing begins:	
<i>Judicial office holder starts hearing all participants and endpoints pulled from consultation/waiting room into the hearing</i>	
Hearing concludes	
<i>If a post hearing consultation is required and booked then the prisoner will remain in the room and the endpoint will be invited into the private consultation</i>	<i>If a post hearing consultation is not required and or booked, then HMPPS will remove the prisoner from the room</i>
<i>HMPPS will check LR's ID before the post-hearing private consultation commences</i>	
<i>Post hearing private consultation takes place between LR and prisoner</i>	
VH disconnected	

² Terms of Service for legal representatives creating a private consultation with a client in custody on the Video Hearing service



Annex B

Steps in process:	Process of getting prisoner on to the Video Hearing service	Who is responsible?
1.	LR provides HMCTS the LR's full details (name, email address & telephone number)	Legal Representative
2.	HMCTS inputs LR's details on VH and links them to the endpoint	HMCTS
3.	HMCTS provides HMPPS with the SIPS address & pin for the hearing and the linked LR's details	HMCTS
4.	HMPPS's OMU to upload/pass over the information received from HMCTS to prison	HMPPS
5.	HMPPS to sign into VH using the SIP and Pin provided at the time and date of the hearing	HMPPS
6.	Linked LR to call endpoint into pre-consultation	Legal Representative
7.	HMPPS to conduct photographic ID and proof of profession checks against the Legal representative's information provided by HMCTS	HMPPS
8.	HMPPS to bring in prisoner after Legal representative has been verified	HMPPS
9.	HMPPS to monitor (via corridor or control room). If anything untoward is taking place disconnect call	HMPPS
10.	HMPPS to remove prisoner from the room after their hearing (and private consultations with their Legal Representative) has taken place	HMPPS

Annex C:

Proposed ownership of task:			
Possible incidents	HMCTS	HMPPS	Legal Representative
<i>Providing wrong details</i>	Y	N	Y
<i>Linking the wrong participant to endpoint</i>	Y	N	N
<i>Legal representative being permitted access to prisoner when not verified</i>	N	Y	N
<i>Permitting an unauthorised person into the private consultation</i>	N	N	Y
<i>Removing a Prisoner from an unsafe, inappropriate or insecure situation</i>	N	Y	N

Key:	
Y	Yes – responsible
N	N – not responsible