Transform Justice briefing on the Police, Crime, Sentencing and Courts bill, March 2021

This briefing sets out Transform Justice's views on the following elements of the Policing, Crime, Sentencing and Courts bill tabled on 9 March 2021:

1. Out of court disposals (Part 6)
2. Custodial remand of children (Part 8)
3. Audio and video live links – specifically the use of video/audio hearings at court and video remand hearings at the police station (Part 12 and Part 3)

To discuss this briefing in more detail please contact Transform Justice's director, Penelope Gibbs at penelope@transformjustice.org.uk.

Transform Justice proposes the following amendments to the bill:

Out of court disposals (Part 6, Clause 76 – 99):

- the removal of the necessity for formal admission of guilt for the community caution.
- the removal of any rehabilitation period for out of court disposals.
- the clarification that police forces will still be free to use community resolutions.
- the clarification that decisions on conditions, if used, should be left to police discretion.

Custodial remand for children (Part 8, Clause 131):

- the majority of the bill provisions on use of custodial remand for children are welcomed.
- the history condition should be removed, or failing that strengthened and the term 'recent' defined as less than six weeks, to ensure only relevant risk-related factors can be considered as reasons for remand.
- the offence condition should be significantly strengthened to reduce the number of children accused of low-level offences facing remand.
- we support the strengthened necessity condition but this improvement risks being undermined by the 'to prevent further imprisonable offences' criterion. This criterion should be removed.
- the duty to record reasons should include a requirement to record the ethnicity of the child, how the remand conditions have been met and why non-custodial alternatives were unsuitable. This should be accompanied by centralised monitoring of decision making.
- updating the police remand criteria to align with the new court remand criteria to ensure consistent decision making across the justice process.

Use of video/audio hearings at court (Part 12, Clause 168):

- that all defendants who might appear on a video or audio link from a location outside court should be subject to a full health and mental health screening by a health professional before the case is listed, and that assessment be made available to the judge responsible for listing before listing is finalised.
- that all defendants, including those remanded by the police, who wish to appear in person rather than on video, should be allowed to do so.
- no extension of video and audio links should be enacted until a full evaluation is completed and published of the impact of video and audio links on indicators monitoring effective participation, access to justice, fair trial rights, key justice outcomes (impact on sentencing & remand decisions) and confidence in the justice system. We would also advocate for the publication of the budget for the digital court reform programme and a full cost-benefit analysis of the changes including the "sunk costs", impact on justice outcomes and an estimate of the number of criminal court buildings the government is planning to close.

Video remand hearings at police stations (Part 2, Clause 53):

- that the PECS staff in police custody proposal is contingent on a full cost-benefit analysis of video remand hearings versus the physical equivalents: HMCTS should do a full evaluation of costs and the differential justice outcomes associated with video remand hearings.
- that this legislative change (PECS staff supervising prisoners in police custody) should only be implemented in the event of a fourth national lockdown.
- that every defendant who may be assigned a video remand hearing should be subject to a full health and mental health screening (and if necessary an assessment) by a health professional before the case is listed.
- that this screening information and needs assessments from police custody are made available to the bench/judge before that day's court hearings start and that a simple system is set up to bring those defendants immediately to court whom the bench/judge deems to need face-to-face hearings.
- that all those who are deemed vulnerable (vulnerable adults and all children) should automatically be assigned a physical hearing.

Out of court disposals

Introduction

The PCSC bill makes provisions for the replacement of the current menu of out of court disposals with a two-tier system – a higher level diversionary caution and a lower level community caution (Part 6, Clause 76 - 99). Both cautions must have conditions attached and both require the admission of guilt.

Out of court disposals offer an effective and proportionate way of responding to low-harm crime without going to court. As well as often being more satisfying for the victim, evidence shows they are usually more effective than court disposals in reducing offending. They also do not entail a long criminal record which can be a barrier to employment, housing and education.

Out of court disposal use has declined over the last decade, even more so than prosecutions. As such Transform Justice broadly welcomes provisions that simplify and clarify the use and purpose of out of court disposals, as we consider this will increase their effective use.

Below we summarise our outstanding concerns regarding the proposals. We recognise and welcome the fact that much of the detail of how OOCDs can be used will be set out in guidance at a later date.

Concern about the requirement to attach conditions

Transform Justice is disappointed by the provisions that both diversionary and community cautions must have conditions attached (Clause 76 (4)). We reiterate the point made in earlier briefings that the current simple caution, which has no conditions attached, is a very effective sanction with the lowest recidivism rate of any sentence/sanction. In the evaluation of the two-tier system, the conditional caution was effective in reducing recidivism, but no more so than the simple caution. Cautions with conditions attached are more expensive to administer and monitor than disposals with no conditions attached. Attaching conditions also risks labelling and stigma, which can be more counterproductive to reducing reoffending than a lighter touch disposal with no conditions.

We suggest that the regulations accompanying the legislation do not stipulate how many, or what kind of, conditions must be attached to these new cautions. Police forces are best placed to make these decisions based on locally available options.

Admission of guilt for the community caution

The current framework for out of court disposals may be contributing to racial disparities in crime outcomes. This is because to receive an out of court disposal, the person has to make a formal admission of guilt. If someone does not admit guilt, they will be charged and sent to court. Evidence cited in the Lammy Review shows that BAME people are more likely to plead not guilty, due to a lack of trust in the criminal justice system among BAME communities making BAME suspects less likely to cooperate with the police. This means BAME individuals are less likely to admit guilt and receive an out of court disposal and are more likely to face prosecution. It is therefore a pity that an admission of guilt is required for both diversionary and community cautions (Clause 77 (2) (b) and Clause 86 (2) (b)). We consider this to be a missed opportunity for tackling ethnic disparities.

In addition we believe the requirement for a formal admission of guilt will place a further administrative burden on police officers, by preventing them from administering community cautions 'on street'. This will restrict their use in otherwise suitable cases.

Use of community or diversionary caution with domestic abuse

We note that the offence types eligible for the new cautions will be set out in a Code of Practice (Clause 94). We advocate for an inclusive approach to eligibility which allows police to use their discretion to determine the best course of action. One area where the current system creates barriers to effective police responses to crime is in cases of domestic abuse.

The current conditional caution cannot be used for domestic abuse cases, without the special dispensation of the DPP. Where this dispensation is not in place, DA cases which are not suitable for prosecution must be dealt with using the simple caution or a community resolution.

This legislation provides an opportunity to improve the police response to domestic abuse by allowing all forces to use diversionary and community cautions for such cases. There are very

successful programmes such as Cara[1] for those who admit to domestic abuse, and where the cases are suitable for dealing with out of court. We would recommend that all forces are allowed to use the community or diversionary caution for domestic abuse, rather than individual forces needing to seek permission from the CPS. Usage should be subject to rigorous scrutiny and independent research.

Clarity around community resolutions

Transform Justice promotes the use of lighter touch responses to crime, based on evidence that minimising a person's contact with the criminal justice system reduces the likelihood they will offend again. We therefore support the use of community resolutions, an out of court disposal currently used by all forces as an effective response to lower-level crimes.

The status of community resolutions under the proposed legislation is not clear. Clause 96 "*Abolition of other cautions and out-of-court disposals*" states that "*No caution other than a diversionary or community caution may be given to a person aged 18 or over who admits to having committed an offence*." We are unsure what this means for community resolutions, although we understand the intention is that they will remain available to police if they wish to use them.

Given the value of community resolutions, as an out of court disposal that does not require a formal admission of guilt, the legislation and accompanying regulation should make clear in Clause 96 that use of community resolutions will not be prohibited under the new framework.

Remove the rehabilitation period for all out of court disposals

We recommend eliminating the rehabilitation period associated with diversionary cautions so those who receive it are not forced to disclose this record to potential employers. The simple caution had no rehabilitation period, but the current conditional caution does. This has, in effect, increased the barriers to employment faced by those who are diverted from court. Given the government's commitment to reform of rehabilitation periods elsewhere in the legislation, we recommend that the rehabilitation period for diversionary caution is removed. The PCSC bill, in Part 11 Clause 163, already sets out various changes to the rehabilitation periods for different sentences. Removing the diversionary caution rehabilitation period should be added to this list of changes.

We understand the community caution will not have a rehabilitation period attached and welcome this.

Funding

The impact assessment suggests a significant cost for police forces in implementing the new framework and mentions a £1.5 million three-year programme aimed at supporting police forces to access local intervention services, identify gaps in available provision and help prioritise what services are needed that are not currently available. We are concerned that £1.5 million is insufficient to set up new programmes across 43 police forces and that there remains a strong financial disincentive against the use of out of court disposals by police forces. We recommend the government consider a mechanism for funding such programmes particularly if forces can demonstrate they are saving MoJ money by diverting low level cases from the court process.

[1] https://hamptontrust.org.uk/program/cara/

Custodial remand for children

Introduction

Transform Justice welcomes the majority of the bill's provisions on the use of remand to Youth Detention Accommodation (YDA) for children (Part 8, Clause 131), including the inclusion of a statutory duty to consider the welfare of the child and the strengthening of the sentencing condition. These changes will help to reduce the number of children who are unnecessarily remanded to custody.

However, we believe some minor further changes would help ensure custodial remand is used only as a last resort. These proposed changes are set out below.

History condition

The bill makes provision to amend the history condition so that previous instances of breach or offending while on bail must be significant, relevant and recent. We would prefer this condition to be removed completely, given its link to unmanageable risk is tenuous and that relevant risk-related concerns are adequately captured by other conditions. If the condition is to remain, we support the strengthening of the wording. To ensure the change is most effective we suggest that 'recent' is defined as having occurred in the past six weeks.

Offence condition

We are disappointed that the bill provisions make no changes to the offence condition, which currently allows remand for any violent or sexual offence or any offence where an adult might receive a custodial sentence of over 14 years. The wide range of offences covered by this condition is not in keeping with the aim to only use custodial remand as a last resort. For example, the current wording includes domestic burglaries (which are not violent but carry a 14+ year sentence for adults) and minor sexual offences such as sexting. We support the Alliance for Youth Justice (AYJ)'s recommendation made previously to significantly strengthen this condition to require the child to be charged with an offence punishable with life imprisonment. Alternatively, as a minimum the word 'serious' should be added so that children accused of lower-level offences are excluded.

Necessity condition

Transform Justice welcomes the strengthened wording of the necessity condition, which would require remand to only be used when the risk posed by a child cannot be safely managed in the community. However, we are concerned that the benefits arising from this amendment will be undermined by the loose wording of one of the other necessity conditions: that remand to YDA is necessary to prevent further imprisonable offences. This condition is highly subjective and casts a wide net, which may be widened further by youth sentencing provisions elsewhere in the bill. We reiterate the recommendation made previously by AYJ to remove this 'to prevent further imprisonable offences' condition. Failing this we suggest that the word 'serious' is added before offences.

Statutory obligation for the courts to record their reasons

We support the provision to require courts to record their reasons for remanding a child. This will improve judges' scrutiny of their own decision-making and provide valuable data on the use of remand. In order for this obligation to be most effective, we suggest:

- that any legislation sets out a requirement for centralised monitoring of decision making around the use of custodial remand for children. This will ensure continued learning about its use.
- that the courts are required to record the ethnicity of any child remanded to custody. This duty has the dual aim of bringing the extreme racial disparity in the use of remand for children to the forefront of the court's mind, while also providing accurate data to help understand this disparity in line with the 'explain or reform' principle outlined in the Lammy Review.
- that in outlining their reasons for remanding a child, courts must specify why non-custodial alternatives were deemed unsuitable and how each of the custodial remand conditions have been met.

Criteria for police remand

Our research indicates that police remand (which involves the child being detained by the police until court, either in a police cell or in a local authority 'PACE bed') is a driver of custodial remand. This is because any child remanded by the police has to be presented in court within 24 hours, meaning Youth Offending Team staff often don't have enough time to develop a bail package that will satisfy the court. Children who appear from police custody also usually appear in the secure dock which can bias courts to view the child as more 'dangerous' and therefore more suitable for custodial remand. We therefore suggest that the police remand criteria are brought into line with the new court remand criteria to ensure consistent decision making across the justice process.

Audio and video live links

Introduction

Our comments focus on the use of video/audio hearings at court (Part 12, Clause 168) and changes to facilitate video remand hearings at police stations (Part 2, Clause 53). We are fully supportive of the measures concerning open justice (Part 12, Clause 166) and amending common law to enable the presence of a BSL interpreter in the jury deliberation room (Part 12, Clause 164). Most of our concerns re audio and live links apply to both increased use of remote hearings, and video remand hearings, so we cover them together; where concerns apply to specific areas we have covered this separately.

Background to audio and live links

When the Prisons and Courts Bill was tabled in February 2017, Transform Justice wrote of the plans to increase the use of virtual justice that "*many of the proposals in the bill have been floated as ideas, but few have been subject to rigorous external scrutiny*". That bill was abandoned, the ideas have never been subject to rigorous, external scrutiny but many were rushed through under emergency Covid-19 legislation last year.

The government did not mention audio and video live link measures in its White Paper, nor has it consulted on them. Despite this, the new bill includes provisions that will make it easier for courts to conduct criminal hearings remotely, with defendants, witnesses, lawyers and possibly jury members attending remotely by audio or video link. It also includes specific provisions to facilitate more defendants appearing remotely from police custody (video remand hearings), instead of travelling to the court to attend in person.

The rationale for legislating to increase the use of audio and video live links seems somewhat confused. On the one hand, the need for Covid-19 protection is mentioned, on the other, the measures are justified on the grounds of efficiency and modernisation. The Covid-19 argument is perplexing given that the bill will not be enacted for at least a year, by which time the Covid safety of courts will not be an issue.

The bill is based on assuming the £1.2 billion HMCTS digital court reform programme has been a success so far and that, even if it hasn't, so much has been spent on the programme that it must be continued. There are implications that video hearings may make court buildings redundant, but it is still not clear how many more physical courts HMCTS plans to close.

As ever, it would be helpful to see a complete plan, budget and cost-benefit analysis of the digital court reform programme in order to appraise and contextualise these proposals. Despite the high expenditure, in four years of activity, these have never been published.

Lack of evidence on how video and audio links and video remand have worked in the pandemic

It is concerning that we have no evidence, beyond anecdotal, about these momentous changes and we would recommend proper research be conducted and published before any changes that will increase the use of audio and video live links are set in stone.

The government has claimed that video and audio links in the pandemic have been a huge success. But beyond the occasional announcement on the number of links used, we have no evidence on video and audio criminal hearings in the pandemic. No data has been systematically collected and no research published. Defendants and witnesses have very rarely appeared on video pre-pandemic from anywhere apart from controlled settings, prisons and police custody. Now they can appear from anywhere if the judge, and the legislation, permits.

At the beginning of the pandemic all jurisdictions turned to using video and audio hearings more extensively. In 2020, the family courts[2] and civil courts[3] commissioned or supported extensive research with users and stakeholders about their experiences. No such research has been published about criminal hearings. However, a survey of judicial attitudes commissioned by the judiciary suggests most judges are unhappy about virtual hearings – 75% were concerned by the reduction in face-to-face hearings, 75% by the digital court reform programme and 81% by court closures[4]. A survey commissioned by Transform Justice suggested that members of the public are also unhappy at the prospect of virtual hearings. Asked for their preference should they be accused of a crime, two-thirds of respondents said they would prefer to appear in court in person rather than on video or on the phone.

HMCTS recently commissioned some studies across all jurisdictions – including "*agile implementation review research*", which has we think been completed but not published. HMCTS have also commissioned an evaluation which will encompass:

- which hearing types in which jurisdictions may be suitable to be conducted remotely?
- does the remote hearing process work for all user groups? Should some groups be prioritised for physical hearings? Are remote hearings more suitable for some users?

[2] https://www.nuffieldfjo.org.uk/resource/remote-hearings-rapid-consultation
[3] https://www.judiciary.uk/announcements/civil-justice-council-report-on-the-impact-of-covid-19-on-civil-court-users-published/
[4] https://www.judiciary.uk/announcements/judicial-attitudes-survey/

- how should remote hearings be conducted so that hearings run smoothly, and users understand the process and their role within it?
- do some users need additional support (if so, what kind of support?)?
- do users perceive remote hearings to be fair and just? How can remote hearings be conducted to ensure court processes are respected?

This information will be important, but we are concerned that this evaluation will lack enough data about the criminal jurisdiction to draw firm conclusions, that it is not due to be published till summer 2021, and that it does not include any data collection and associated analysis of justice outcomes.

In the absence of research or data to verify that the changes have been a success, we would suggest that the changes in the bill are high-risk.

In addition, there is no proper evaluation of the proposal that juries should be connected by video link to the physical court and appear from there. The charity Justice ran and evaluated a simulated trial of this idea in 2020 but this model was only used for one trial.

Equality impact of criminal video and audio live links

The bill's equality impact assessment suggests that "*On balance, we do not consider that expanding the availability of live links or that making use of technology in this way would result in people being particularly disadvantaged because of any protected characteristic. Ultimately, judicial discretion remains in place as to whether it is appropriate for a video hearing to take place*". On the basis of existing evidence, we do not share this analysis.

A recent report from the Equalities and Human Rights Commission (EHRC) on whether the criminal justice system treats disabled people fairly identified video hearings as a barrier to disabled people's effective participation. The EHRC recommended that Government should address this and other barriers "*before any further measures are introduced or extended*". We would suggest that the problems surrounding video hearings have not been addressed and therefore these "*further measures"* should not be introduced.

The report raises two main issues facing disabled people involved in video hearings:

1. **Effective participation**. It is acknowledged by the government and the EHRC that those with mental health issues/cognitive impairment and/or neuro-diverse conditions can struggle to participate in their court hearing on video – to understand what is happening in the hearing and to communicate their views during it. "*Defence solicitors and advocates highlighted the separation between the defendant and their solicitor and/or court. They outlined that defendants may not have a full view of the court, or know who is present in the room at the other site... It was also noted that being alone for a video hearing, without support, can be difficult for some people... 'It wasn't what I would call a real court because I was sat in a room all on my own with a screen but I couldn't hear what was being said … I found it very difficult and I was unable to take part in it'. (Defendant, England/Wales)".*[5]
2. **Identification**. The EHRC pointed out that there is no reliable system to identify those who have mental health/neuro-diverse and cognitive impairment disabilities, particularly considering that these are often hidden and/or the defendant may be reluctant to disclose. Those in police custody get referred for a health screening if officers think one is necessary, but many disabled people slip though this net and are not assessed and are thus not

[5] https://www.equalityhumanrights.com/en/publication-download/inclusive-justice-system-designed-all

recognised by the system. Opportunities for staff and others to pick up hidden disabilities at a later stage are reduced in video remand courts since lawyers and other practitioners do not meet their clients face to face before court, and video is a barrier to noticing such disabilities. Those who appear in person in magistrates' courts may be assessed as needing a health assessment by court staff, lawyers or judges. It is much easier to pick up subtle clues if the defendant is physically present. If a defendant appears on video from home and their disability is undiagnosed or undisclosed, it is unlikely it will be identified.

Judges can currently request that defendants be brought to, or come to, court in person. But there is still discrimination against those with mental health/cognitive impairment and neuro-diverse conditions since there is no proper system to identify defendants' disabilities, to communicate relevant information to judges at the point of listing and to bring such defendants to court if disabilities have been identified.

Transform Justice and EHRC research suggest that there is little awareness of the need to make reasonable adjustments for those with disabilities. This has been backed up by observations of magistrates' courts during the pandemic where several mentally ill defendants were seen appearing on video and struggling to participate. No lawyer or judge suggested that these defendants be brought to court, even though transport and facilities were available. No new measures have been introduced since the Covid-19 legislation was enacted to address existing barriers to the participation of disabled defendants. Without new measures, video and audio links will continue to be discriminatory.

We do not think secondary legislation is the right vehicle to ensure the court should make provision for those with disabilities in relation to live links. Criminal procedure rules are not subject to democratic debate and voting. Furthermore, the discrimination exposed by the EHRC occurred in the context of courts and judges abiding by criminal procedure rules. The latter have not prevented discrimination so far.

Impact of audio and video live links on access to justice and effective participation for all participants

There is evidence that video and audio links impede the effective participation of all defendants, not only those with disabilities. Two government funded studies of video remand courts[6] (2010) and of Video Enabled Justice (VEJ)[7] (2020) reveal that being on video seemed to lead to:

- lower levels of legal representation.
- more punitive outcomes. The 2010 MoJ report found more defendants pleaded guilty when on video and that "*Virtual Court cases were more likely to receive a custodial sentence and less likely to receive a community sentence than in the comparator area (Table 3.12). Analysis at the level of individual offence types suggests that the difference between community and custody penalties occurs across the board: it was not offence-specific*". In the more recent VEJ study, the same association was found of increased prison sentences and fewer community sentences for those who appeared on video.

[6] http://spccweb.thco.co.uk/media/4807/university-of-surrey-video-enabled-justice-final-report-ver-11.pdf
[7] https://www.gov.uk/government/publications/virtual-courts-pilot-outcome-evaluation-report

In addition, studies and research done by Transform Justice[8], Fair Trials[9] and the Law Society[10] indicate that:

- defendants' ability to interact with their lawyer before, during and after the court hearing is severely hampered by video links. Lawyers find it more difficult to establish a relationship, take instructions and advise on plea because the video creates a disconnect, because of technical issues and because insufficient time is available on video calls.
- pre-hearing video consultations are often not confidential.
- defendants' behaviour seems to change because they are on video with most defendants *"tuning out"* while some vent their frustration through shouting.
- defendants are seldom given a choice as to whether to appear on video.

Economic impact of the audio and live links proposals

The economic impact assessment suggests that "*allowing hearings to be heard outside of court or in smaller courtrooms will lead to efficiency savings as the estate can be used more effectively*".

It is not clear what the evidence base is for these efficiency savings, since the IA makes clear that HMCTS cannot identify the current costs of running criminal courts ("*costs apportioned to criminal courts are only based on criminal court receipts…and a percentage of all HMCTS receipts*" p.4).

HMCTS also does not know the throughput of video hearings vs physical hearings i.e. whether more hearings a day are held on video than in the physical court. Evidence from pandemic video remand hearings and from the government funded research studies suggests that video creates inefficiency in throughput (fewer hearings per hour/day), but we would need comprehensive data collection to establish this for all video hearings. Without this information, we think it impossible to conclude there are potential efficiency savings.

The efficiency savings implied are in physical courts infrastructure i.e. achieved through closing court buildings. However, most hearings involving video are hybrid - with the judge, legal advisor and other court staff still sitting in the court, and court cells and docks available for those vulnerable detained defendants who need face-to-face hearings. Given this, we are not clear why the government thinks these changes will allow for closing more courts. We would benefit from a financial plan and budget for the whole digital court reform programme. The government states that "*capital investment has already begun and is therefore considered to be a sunk cost*". But we do not know exactly how much capital investment has been spent and on what. We also dispute that sunk costs justify the continuation of any programme which is inefficient or leads to negative outcomes. Throwing good money after bad makes no sense.

The IA suggests that there will be a cost saving in lawyer and client travel costs and time. This assumes that lawyers, given the choice, will not attend court in person, but we do not know this. Were the Legal Aid Agency to restore a payment for travel to the magistrates' court (waived in this last lockdown), the choice would not always be clear. As it is, the government seems to be creating a strong financial incentive for lawyers not to attend court (see IA para 64). Some administrative and procedural hearings such as mentions, some PTPHs, PTRs and bail applications in chambers certainly seem to be more efficiently completed on video and this should be facilitated. But in the case of

[8] https://www.transformjustice.org.uk/wp-content/uploads/2017/10/Disconnected-Thumbnail-2.pdf
[9] https://www.fairtrials.org/publication/justice-under-lockdown-england-wales
[10] https://www.lawsociety.org.uk/topics/research/law-under-lockdown-the-impact-of-covid-19-measures-on-access-to-justice-and-vulnerable-people

most hearings where defendants are participating, lawyers find it easier to communicate with their clients and give advice face to face. Thus, Transform Justice is wary of the government creating any perverse financial incentive for lawyers to give remote advice. Without a full assessment of the differential effect of lawyers working remotely versus in person, we question the financial benefit cited. If remote legal representation led to more adjournments, less meaningful engagement between prosecution and defence, and differential justice outcomes for defendants, it would not be good value. Criminal lawyers should be paid fairly for doing administrative hearings remotely and for attending court when relevant (including for all first appearances in the magistrates' court, for remand reviews, for trials and for sentencing), rather than the government trying to placate them by suggesting they save money by working remotely for all hearings.

"Video hearings will provide increased flexibility and efficiency for CPS and police resources as individuals such as prosecutors may no longer need to attend a number of different courts in a single day but could take part online from a single location" (IA para 68). We are surprised that the prosecuting community is cited as saving on travel via remote working. Our understanding is that prosecutors stay in one courthouse all day and that, even in the pandemic, many preferred to work remotely from their office in the courthouse itself, rather than from home.

Background to video remand hearings in police stations

Before the pandemic, very few police forces ran video remand courts. In those that did, defendants detained by the police post-charge would not be taken to court for their first appearance, but would appear from police custody by video link with their lawyer, the judge, the prosecutor etc. in the physical courtroom.

When the pandemic struck, PECS contractors (who usually transport these remanded defendants to the court) said courts and court cells were not Covid-safe enough and refused to transport all the prisoners who needed to go to court. So police forces in almost every area agreed to set up makeshift court-rooms in police custody which would be video linked to the magistrates' court. The police agreed to run these courts purely on an emergency basis and were not paid to do so by HMCTS. As the first wave eased and courts implemented their own Covid-19 safety procedures, police stopped running video remand courts and most areas reverted to the traditional arrangement.

The bill provides for PECS contractors to supervise inside police custody those detained by the police post-charge before, during and after their first court appearance (Part 2, Clause 53). Where police run video remand courts currently (a few police forces still do), PECs staff have permission to work in police custody to help organise listings, but not to supervise detainees during the court hearing or in police cells.

The provisions in the bill lay the groundwork for a return to video remand courts.

The Covid-safety benefit of video remand hearings

The government has promoted video remand hearings as promoting Covid-19 safety. However, there is no evidence that they have reduced the spread of infection. Those remanded by police who attend traditional courts are currently transported in sealed vans by PECS staff. At court they are supervised in court cells. If their lawyer is working remotely, the defendant has a telephone consultation with their lawyer from the court cell so there is no face-to-face contact. The PECS staff then bring the defendant up to the court where they appear in the sealed dock. Thus any risk of infection is only between PECS staff and the defendant. This has been mitigated through social

distancing and the use of masks. If PECS staff are reassigned to work in police custody, as promoted in the bill, their risk will be the same.

Economic impact of the video remand hearings provisions

The government has published an economic impact assessment for the use of PECS staff in police custody. This shows a positive cost benefit but the assumptions behind this bear challenging.

PECS staff would only be used in custody if the police agreed to run video remand courts permanently. Despite the government stating "*VRHs will indeed be rolled out at some point in the future*" (p.3), no such agreement has been reached - police forces have given no commitment to running and hosting video remand courts. Given that most police forces are not running video remand courts currently, the installation of video remand courts nationwide would incur considerable costs for the police, including premises costs, IT infrastructure costs, costs of keeping defendants in cells for longer, and staff costs. During the first months of the pandemic the costs incurred by police in running emergency video remand courts were considerable – the Met had to use 45 staff to manage the process and estimated the operation cost the equivalent of £2 million a year. Though some police costs would be offset through the support of PECS, it would still cost police staff time to liaise with PECS staff and would incur the other costs. The 'Do nothing' option in the economic assessment assumes that the police costs of running video remand hearings have already been budgeted for by local forces – but this is not the case.

The economic impact assessment suggests that the PECS staff in police custody are in addition to existing PECS staff. PECS staff will still need to transport defendants from police custody to court and to supervise prisoners at court. Therefore, if PECS staff allocated to police custody for video remand hearings are additional, PECS costs will be greater, police will incur significant costs and the courts will still need to be able to accommodate some of those who have been detained by the police in court cells. We therefore suggest that the economic impact assessment does not encompass any of the costs associated with having PECS staff in police custody, so the cost-benefit cannot be judged.

In addition, we would suggest that a full cost-benefit needs to encompass the differential justice outcomes achieved by video hearings. If video hearings result in more remands in custody and increased custodial sentences (as previous research suggests), these costs need to be factored into any economic assessment.

Given that the most valid comparison is with the cost of first appearances in the traditional court, as happens in most police force areas currently, we would recommend that the impact assessment be re-run on this basis, with 'Do Nothing' assuming no VRHs are held, and with the costings including all the associated police, court, throughput and justice outcome costs of running video remand courts as compared to traditional first hearings.

Further information

If you would like to discuss any of the points in this briefing please contact Penelope Gibbs, director of Transform Justice at penelope@transformjustice.org.uk.