



PRESIDENT OF THE
QUEEN'S BENCH DIVISION

REMOTE OBSERVATION OF HEARINGS IN CRIMINAL COURTS GUIDANCE

Introduction

1. [Section 85A of the Courts Act 2003](#) and the [Remote Observation and Recording \(Courts and Tribunals\) Regulations 2022](#) enable courts to direct that proceedings be transmitted electronically to identified individuals who are not taking part in the proceedings (“a transmission direction”). It applies to the Crown Court and Magistrates’ Courts (including youth courts) as well as all other courts and tribunals. [General Guidance](#) on the operation of the power has been provided to the judiciary. This supplementary guidance is directed to the exercise of the power in the criminal courts. It should be read with the [Act](#), [Regulations](#) and [Guidance](#). Additional training materials will be made available on the LMS.
2. Requests for transmission directions need not incur significant judicial time. They can almost always be determined summarily on the basis of the written request, without a hearing, and with short reasons delivered informally via court staff. If resolution of an application is likely to take significant time or resource (with an impact on other judicial work) then that might indicate that the request should be summarily refused. It will be for individual court centres to devise ways of working that enable requests to be processed with as little impact on judicial time as possible. That may include the amount of notice that should ordinarily be given, how a person seeking access should identify themselves and what other information they should be asked to provide before the request is put before a judge. These matters are not prescribed by statute, and there should not be any blanket rules (eg that “late” requests will always be refused), but an example of what a court might ordinarily require is attached to this guidance.

Statutory criteria and considerations, and guidance as to principles

3. The court may only make a transmission direction if it is satisfied that (a) it would be in the interests of justice, and (b) there is capacity and technological capability to enable transmission and giving effect to the direction would not create an unreasonable administrative burden.
4. The court must take into account (i) the need for open justice, (ii) the timing of the request and its impact on the court, (iii) available resources, (iv) statutory limitations on attending the hearing (eg [prohibition of those under 14](#)), (v) whether the request is to transmit outside the UK, (vi) the impact on the evidence, public understanding, ability of

public/media to observe/scrutinise the hearing, and the safety and privacy of those involved in the proceedings.

5. The [General Guidance](#) sets out a list of general factors that courts will wish to keep in mind if the threshold requirement of technological capacity is met. These are set out in paragraphs 6-14 below.
6. *The decision whether to make any and if so what direction for remote observation will always be a judicial decision not an administrative one.* In order to minimise the burden on judicial office holders the judiciary will help HMCTS develop effective operating procedures. It is likely that a degree of standard practice will develop. This may include standing access arrangements for those who regularly report on proceedings. But the ultimate power and responsibility for a decision on remote access lies with the judicial office holder in the individual case.
7. *Decision-makers must give due weight to the importance of open justice.* This is a mandatory consideration. Open justice serves the key functions of exposing the judicial process to public scrutiny, improving public understanding of the process, and enhancing public confidence in its integrity. Remote observation can promote all those purposes. Access for reporters, legal commentators and academics is likely to do so. Judicial office holders may take as a starting point that remote access for other observers is desirable if they would be entitled in principle to have access to a courtroom in which the hearing was taking place, and giving them remote access is both operationally feasible and compatible with the interests of justice.
8. *Timing and impact on the business of the court must be considered.* Media applications and others that are timely and uncontroversial may pose no difficulty. On occasion, however, applications may be late, or numerous, or raise complex issues. Judicial office holders might properly guillotine the process, limit the numbers given access, or decline to deal with an application if they would otherwise be disabled or impeded from administering justice in the case itself, or diverted from other pressing judicial duties.
9. *Decision makers must give due weight to all the relevant circumstances, including the factors identified in the Regulation.* The Regulation is not an exhaustive list, other factors may arise too. Nor do the matters listed in the Regulation operate necessarily as trump cards in every case. All circumstances have to be considered. For example, taking into account the impact on a right of privacy of a person involved, in relation to the remote observation of a hearing which is to be in open court, does not necessarily mean remote observation should always be refused. Whether to do so or not will depend on the circumstances.
10. *Remote observation should be allowed if and to the extent it is in the interests of justice; it should not be allowed to jeopardise the administration of justice in the case before the court.* The primary duty of any court is to administer justice in the case before it. In some circumstances, remote observation could jeopardise that aim. For example, a witness might be reluctant to give evidence under remote observation by an unknown number of unseen persons, or the quality of her evidence might be impaired by the prospect. Remote observers may be more likely than someone watching in a court room to breach a

reporting restriction or the ban on filming or photography or to engage in witness intimidation. They may be harder to observe, identify and hold to account if they do. For observers outside the jurisdiction these risks may be greater, and it is unlikely that sanctions for disobedience could in practice be imposed. Judicial office holders should consider whether any such risks exist in the case that is before them when assessing whether remote access would be in the interests of justice. They should reflect the answer in their decisions and in the content of any directions they make.

11. *Issues about remote observation should not undermine the court's ability to meet the needs of other cases.* Decision-makers are required to satisfy themselves that giving effect to a direction would not unreasonably burden the court or its staff. In some cases the parties may provide the means of remote access. Otherwise, the facilities and personnel will be provided by HMCTS or another public sector body. Provision varies. Most salaried judicial office holders will know very well what facilities and personnel are available to them. Others may be reliant on information from those responsible for their court. The court must bear in mind the need to allocate its scarce resources in an appropriate way between the cases that come before it. Open justice has been and still can be achieved without remote access.
12. *Any derogations from open justice should apply equally to remote observers.* It is sometimes necessary to derogate from open justice, for instance by restricting public access to aspects of the evidence or restricting reporting of what takes place in open court. In such a case it is very likely that the court will need to impose equivalent restrictions on remote observers. That may have practical implications which will need consideration. For example, if screens are used to prevent a witness being seen in court, steps will be needed to make sure that restriction applies to remote observers. Reporting restriction orders may need to be communicated to remote observers by email.
13. *The ultimate decision will inevitably depend on the nature of the jurisdiction, the particular resources available at the relevant time, and the specific facts and circumstances of the case.* The work undertaken in courts and tribunals covers a vast spectrum. The turnover of work, the technical facilities and available staff resources vary greatly geographically and over time. These are all matters that can properly influence a decision.
14. *It will not usually be necessary to give more than the briefest reasons.* These are multi-factorial assessments which will often have to be made at speed by judicial office holders who are best placed to identify and evaluate the considerations relevant to the application before them and to reach robust decisions in the interests of justice.

Advantages of a transmission direction

15. There are many advantages of such a facility provided it is properly controlled: (a) Increased transparency and access to courts, which is in the interests of open justice, (b) Greater efficiency for those reporting criminal proceedings which may be expected to enhance the quantity and quality of that reporting, which is in the public interest, (c) More private access to proceedings for family members of participants and others who

may wish to avoid exposure to other participants or public, (d) Greater access than a courtroom can accommodate for high profile cases where public access is now rationed by space.

Risks of transmission directions in criminal proceedings

16. The court does not have the same level of control over those following proceedings remotely that it does over those who are physically present in the courtroom. It follows that a transmission direction in criminal proceedings gives rise to risks that will need to be considered. Associates of defendants, witnesses or complainants might misuse remote access to seek to influence the evidence or the jury. Even if a request is made in good faith and for a good reason, a witness might be more reluctant to give evidence under remote observation, or the quality of their evidence might be impaired by the prospect. For observers outside the jurisdiction these risks may be greater, and it is unlikely that sanctions for disobedience (eg putting screenshots on social media / breaching reporting restrictions) could in practice be imposed.
17. A transmission direction may also give rise to significant administrative burdens. Court staff will need to confirm the identity of those watching the proceedings remotely, administer appropriate warnings, monitor that the link is working, and address any technical issues. Criminal courts are unlikely to have significant excess administrative resource, so the making of a direction can give rise to administrative burdens that are not easy to accommodate. Remote observation should not undermine the court's ability to meet the needs of other cases. The court must bear in mind the need to allocate its scarce resources in an appropriate way between the cases that come before it. Open justice has been and still can be achieved without remote access.

Application of the statutory criteria

18. Participants in legal proceedings: A transmission direction may not be made for those who are taking part in the proceedings (for example, legal representatives, or a witness, or a probation officer). In such cases the court may facilitate remote attendance via a live link under s51 Criminal Justice Act 2003. A transmission direction only applies to those who are not taking part in the proceedings, for example (a) Those who wish to publish a report or commentary on the proceedings, (b) Relatives of those closely involved in the proceedings, whether as defendants, victims or witnesses, (c) Students or researchers, (d) Members of the public who are interested in what happens in courts.
19. Interests of justice: The particular aspects of criminal proceedings which must be given primacy when considering directions under [s85A\(2\)](#) include:
 - (a) The need to prevent acts tending to pervert the course of justice by the intimidation of jurors, magistrates, witnesses, defendants, and other participants (eg taking screenshots and posting on social media, or communicating what has been said to witnesses who are still to give evidence).

(b) The need to protect victims, defendants, witnesses, jurors and others from intrusion into their personal privacy even where that is not being done with a criminal purpose.

(c) The need to prevent prejudicial material coming to the attention of jurors.

20. The Court will wish to consider whether there is any risk of interference with the jury, or witnesses, or the evidence, or that the transmission will be impermissibly recorded. Where for example the application is made by a known and trusted journalist there may be no significant concern. Where the application is made by someone who is not known and who may be connected with a defendant, complainant or witness, then the court will wish to take particular care before concluding that it would be in the interests of justice to grant the application. The court will also wish to take particular care where there are reporting restrictions in place: in such cases it might not be appropriate to allow remote access except to those who can confidently be trusted to comply with the reporting restrictions.

21. Capacity / burden: Some courtrooms (including most in the Magistrates' Courts) are unlikely to have the technology necessary to transmit proceedings for some time. In such cases, a request for a transmission direction is likely to be refused on the ground that the court does not have the capacity or technological capability to enable transmission. Where the technology is available, the court will wish to consider the administrative impact on court staff (taking account of the need to confirm the identity of all those who will have access to the transmission, and to set up the transmission, and to administer appropriate warnings about what is and is not permissible, and to monitor the transmission, and address any technical issues that arise). Unless there is sufficient time and resource to facilitate the transmission without impacting on other court business, the court might conclude that making a transmission direction would create an unreasonable administrative burden. The efficient working of the court is always important, but in 2022 the pressures on the court system are well known and include shortages of staff, courtrooms, judges, advocates and properly functioning digital systems. Any additional impediment to efficiency carries a cost both to the case being heard and those waiting to be heard.

Particular considerations that are applicable to different types of hearing

22. When considering where the interests of justice lie, the court will wish to bear in mind the type of hearing. Some considerations that may be relevant to different types of hearing are set out below:

PTPH / Directions hearing / bail hearing	Risk that witnesses may be approached, or that proceedings may be reported (eg on social media) in a way that is contrary to s41 Criminal Procedure and Investigations Act 1996 .
Jury empanellment	Risk of identifying members of jury to seek to approach or influence individual jurors.

Trial	Special measures (whether witness is screened from camera). Risk that remote observation will influence evidence. Risk that future witnesses might observe the proceedings or be tipped off about the evidence.
Proceedings in absence of jury	Risk of things said in absence of jury coming to their attention (for example by publication on social media). Those on a remote link may be less likely to understand the restrictions and any such publication may be difficult to detect.
Sentence	Privacy/anonymity questions (eg in light of content of victim impact statements), whether there is any question of a text, impact on rehabilitation.

Practical considerations

23. Courts will wish to adopt arrangements to enable requests for transmission directions to be made in a way that enables them to be determined efficiently. It may be appropriate to adopt standard templates for the making of such requests. An example (which may be adapted as considered appropriate) is attached to this guidance.
24. Where a request for a transmission direction is determined short reasons should be given. It will normally be enough simply to identify which of the factors has been decisive in the decision to grant or refuse such a direction. Examples are set out below. Where the request is permitted then it must include the provisions required by [reg 5 of the Regulations](#). Again, an example (which may be adapted as considered appropriate) is attached to this guidance.
25. It will be for the court to consider whether checks on the identity of remote observers should go beyond the provision of a name and email address (the default in the Regulations). The court could for example direct the provision of photo ID which could be checked visually by staff. The court will wish to consider whether those attending remotely should be visible on the court's screen (so that they can be viewed and so that inappropriate conduct might be more easily detected) or whether they should be directed to keep their camera turned off (so as not to be a distraction). The court may also wish to consider whether there should be any restriction on what the remote observer should be able to see and, if so, whether that can be accommodated. If a witness is screened from the accused under [s23 Youth Justice and Criminal Evidence Act 1999](#) then that does not in itself justify the witness being screened from members of the public. But, just as a judge might decide that it is in the interests of justice to screen a witness from the public gallery and that such a departure from open justice can be justified, so too the judge might decide that a remote observer should not be able to see certain witnesses. Remote screening might be achieved either by ensuring that the physical screen obscures the cameras view of the witness, or by ensuring that the camera is not pointed at the witness, or by turning off the video feed.

- 26.** Where a transmission direction has been given, the court will wish to ensure that repeated warnings are given about the law of contempt. In some cases (for example, where reporting restrictions are in place) it might be appropriate to direct that the transmission is dependent on it being activated at least 5 minutes before proceedings start (so that the court clerk can read out the contempt warning and any reporting restrictions).
- 27.** In the event of any concern about the conduct of those attending remotely, or if the link becomes burdensome to administer, or if developments in the trial (eg reporting directions, or discussions in absence of jury) mean that it may not be appropriate to continue to permit remote observation, the court should consider whether to revoke the direction (or amend it, for example to exclude some but not others). If the judge decides to revoke the direction then short reasons should be given, for example: “I now revoke the live link direction because [I am no longer satisfied it is in the interests of justice] [there is no longer administrative support for the link] and the court will now disconnect the link.” Proceedings should not be delayed if the link arrangements malfunction or if the operation of the technology becomes an unreasonable administrative burden on the court.
- 28.** The court will address any contempt in the face of the court appropriately.

Examples

- 29.** It will be for the judge in each case to make an individual decision by applying the statutory criteria and considerations to the particular circumstances of the individual request. The examples that are attached to this guidance are intended only to be illustrative and are not intended to fetter the exercise of a judge’s judgment on the facts of each case.

Livestreaming

- 30.** The legislation also permits proceedings to be live streamed to designated premises (which may be another court room) (see [section 85A\(3\)\(a\)](#)). This was done, for example, in the prosecution of Hashem Abedi in respect of the Manchester Arena Bombing, enabling a large number of relatives of the deceased to follow the proceedings from a more convenient and remote location. This power is unlikely to be frequently used. It may only be used where the premises have been designated by the Lord Chancellor under section 85A(4). Where it is available, it will not necessarily give rise to the same acute problems that potentially arise with live transmission. That is because court staff will ordinarily be present at the designated premises which are therefore more akin to an extension to the public gallery.

<u>Scenario</u>	<u>Principal considerations</u>	<u>Decision</u>	<u>Reasons</u>
Courtroom does not have technological capacity for transmission, and it would create an unreasonable administrative burden to move the hearing to a courtroom that does have capacity.	Capacity / administrative burden	Refuse	The court does not have the capacity and technological capability to enable transmission without creating an unreasonable administrative burden.
Late application which will interfere with the case itself	Administrative burden / interests of justice	Refuse	The application is not timely and the court does not have the capacity to process it without adversely affecting the administration of justice in the proceedings.
Request made day before hearing where it is not practicable to confirm the identity of the applicant and set up the transmission without impacting on capacity of court staff to undertake other tasks.	Administrative burden	Refuse	The court does not have the capacity and technological capability to enable transmission without creating an unreasonable administrative burden.
Request by known and trusted journalist to observe health and safety prosecution that does not raise any particular privacy interests.	Open justice	Allow	It is in the interests of justice to make the direction, having regard to the need for open justice, and the court has the capacity and technological capability to enable transmission without creating an unreasonable administrative burden.
Request to observe prosecution of gang related offence by associate of defendant (or victim) .	Potential impact on evidence / administration of justice	Refuse	It is not in the interests of justice to make the direction, having regard to the potential impact on the evidence and the administration of justice.
Request by mother of deceased victim to observe sentencing .	Open justice / public understanding	Allow	It is in the interests of justice to make a transmission direction, having regard to the need for open justice and the desirability of the applicant being able to observe the proceedings without having to attend the court.
Request by blogger to observe evidence of complainant, who has benefit of special measures , in case of alleged rape.	Privacy of witness / impact on evidence	Refuse	It is not in the interests of justice to make a transmission direction, having regard to the privacy rights of the witnesses and the potential impact on the evidence.

Request for transmission direction

The court may make a direction for the electronic transmission of court proceedings to identified individuals who are not taking part in the proceedings. In deciding whether to make an electronic transmission direction, the court will consider whether it would be in the interests of justice to make the direction, whether the court has the capacity and technological capability to enable transmission, and whether giving effect to the direction would create an unreasonable administrative burden. If a direction is made it may be revoked at any time, and proceedings will not be delayed if the technology malfunctions.

Any request for such a direction in respect of proceedings at [name of court] should be made to [name, and contact details] as soon as reasonably practical and where possible at least 7 days before the hearing to allow sufficient time for the request to be considered. The form below should be completed and signed and submitted [together with [photo] proof of identity. It is not always necessary to provide proof of identity (particularly if the request is made by somebody who is known to the court), but a request might be refused if the court is not satisfied as to identity]. A separate form should be completed by each person seeking access. If you have any connection with any participant in the proceedings (including any witness) you must say so in the reasons for seeking access.

Important: See the attached rules for those who attend court remotely. If you do not obey the rules then that might amount to a criminal offence or a contempt of court which may be punished by imprisonment.

Case details (name of case, court reference and date of hearing):	
Name:	
[Proof of identity:]	
Contact details (email address and postal address):	
Reasons for seeking access:	
Signature and date:	

Rules for third-party observers (public hearing)

You are being given remote access to a public court hearing. The judiciary and court service are committed to open justice. This is subject to five simple rules to protect the court process.

1. **Do not share your link without permission.** The link must only be used by someone else if that has been approved by the court.
2. **Behave respectfully.** A court hearing is a serious matter. Behave as if you were in a physical court room. Do not disturb or interrupt. Follow any instructions of the judge. Your access may be terminated if you do not.
3. **Do not record the hearing.** It is a criminal offence to record a court hearing. You must not record video or audio or take photos or screenshots of the hearing.
4. **If you want to report, take care.** You can report live in writing if you are a journalist or you have the specific permission of the Judge conducting the hearing. Otherwise, reports must be after the event. In all cases there may be reporting restrictions which you must obey. It is your responsibility to find out whether restrictions apply.
5. **Take all these rules seriously.** If you break them you might not just lose your access. You might be guilty of an offence or contempt of court for which you could be fined or sent to prison for up to 2 years.

To make sure these rules are followed we advise you to

- find somewhere private to join the hearing
- turn off your microphone and camera
- switch off any other device, unless you have permission to use it
- check whether reporting restrictions apply

Example transmission direction

[Case heading]

Upon the request of [name] (“the applicant”) for a direction under section 85A(3)(b) of the Courts Act 2003 (remote observation of proceedings by direction of a court or tribunal)

And upon the court being satisfied that the applicant is entitled to be present at the proceedings and being satisfied as to the capacity in which the applicant is so entitled

And upon considering the information provided in support of the request

And upon the court concluding that it is in the interests of justice to make the direction, having regard to the need for open justice, and the court has the capacity and technological capability to enable transmission without creating an unreasonable administrative burden.

IT IS DIRECTED THAT:

1. Proceedings on [date] shall be transmitted via the video/audio link to the applicant (“the link”).
2. The applicant shall ensure that nobody else is able to hear or view the proceedings via the link unless that person has first identified themselves to the court and has been provided with permission by the court to view the link.
3. The applicant shall, as a condition of continued access, conduct themselves appropriately and in particular in accordance with any instructions of the judge for persons observing the proceedings (remembering that they will be treated as if they were physically present in the courtroom).
4. Transmission via the link is dependent on the link being activated at least 5 minutes before the proceedings start, so that information may be provided by the court staff before proceedings start.
5. This direction may be varied or revoked at any time and without notice by further direction of the court.
6. Any party who wishes to vary or set aside this direction may do so on written application made within 2 days of notification of this direction.

Important note: See the attached rules for those who attend court remotely. If you do not obey the rules then that might amount to a criminal offence or a contempt of court which may be punished by imprisonment.

GDPR: Your personal data will be processed for the purposes of facilitating your attendance at the hearing, ensuring that the proceedings are conducted without disruption, and enforcing the applicable laws and directions, including those requiring orderly behaviour during proceedings, prohibiting live text-based communication from court, and the making of audio-visual recordings. They will not be used for any other purposes, and will not be kept on file for longer than is necessary for those purposes.

Dated ...

July 2022

A handwritten signature in black ink, consisting of a series of fluid, connected strokes. The signature is positioned above the printed name and title.

Dame Victoria Sharp
President of the Queen's Bench Division
Deputy Head of Criminal Justice