



Standing Committee
for Youth Justice

**“They just don’t understand what’s happened or why”:
A report on child defendants and video links**

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Introduction

Over the last decade, defendants of all ages have increasingly been appearing in court on a live video screen rather than attending hearings in person. This slow but steady change to the administration of justice has occurred with little scrutiny or consultation, and there is a dearth of research into the impact appearing on video can have on a defendant's ability to effectively participate in their hearing, and on justice outcomes. There is even less available research that specifically considers the impact of 'virtual justice' on vulnerable groups, especially children.

SCYJ member Transform Justice recently produced a report, *Defendants on video – conveyor belt justice or a revolution in access?* (2017), which aims to address the general lack of research into video links, especially on their impact on vulnerable groups. This report draws on the research gathered and produced by Transform Justice, looking specifically at the impact that appearing in court via video link has on children in trouble with the law.

Sources of information

This report draws on qualitative data gathered by Transform Justice through two sources:

1. A SurveyMonkey survey which was circulated via twitter and e-bulletins of criminal justice organisations such as the Criminal Bar Association and the Chartered Institute of Legal Executives (CILEx). Respondents could skip some of the questions, but on average 180 people responded to each question. All had some experience of defendants' video hearings, whether as magistrates, probation officers, lawyers, Youth Offending Team (YOT) workers, intermediaries or other. Dr Tim Bateman of the University of Bedford helped design this survey.
2. Eight in depth telephone interviews were conducted with some of the survey respondents. These were conducted by Mia Harris, a PhD student with the University of Oxford Centre for Criminology.

This report looks at responses that specifically discuss the impact of video links on children, from respondents with experience of children in court. The majority of relevant respondents were YOT workers, but there were also responses from criminal lawyers, magistrates, appropriate adults, legal advisers, police officers and more.

Frequently used terms

Children– anyone between the age of 10 and 17, as 10 is the minimum age of criminal responsibility in England and Wales.

Respondents – anyone who contributed evidence to the Transform Justice report via the survey or interview.

Video link – the use of live video and sound such that defendants can appear in court remotely, for example from a police station or custody.

Virtual hearing – a court hearing where some or all parties are appearing via video link.

YOT – Youth Offending Team

Children in court

Children who have committed or are alleged to have committed a crime in England and Wales usually have their cases heard in the youth court, a form of magistrates' court adapted to deal with children. A child may also appear in an adult magistrates' court or the crown court under certain circumstances, for example if they are accused of a serious crime, or if their first court appearance follows detention by the police.

Due to their young age, developmental immaturity, and the prevalence of vulnerabilities among children in trouble with the law, children in court are afforded protections to ensure they can understand and participate in proceedings (HO & LCD, 2001; MoJ, 2017). These include:

- Proceedings should be explained to defendants, with trials conducted in a language that the defendant can understand;
- Courtrooms should be arranged so that participants are all on the same level, with children sitting with their advocate and/or supporters rather than in the dock;
- The atmosphere should be less formal, with defendants addressed by their first name;
- The general public are not permitted to enter the youth court, and can be excluded from a crown court hearing;
- Reporting restrictions are in place unless revoked in the youth court, and can be put in place in the crown court;
- A parent or guardian should be present in court, legally required for under-16's;
- A YOT worker is required by statutory guidance to appear in court; and
- Intermediaries can be provided under Section 104, Coroners and Justice Act 2009. However, in practice they rarely are as the section of the Act has not been implemented (Carlile, 2014:27)

Children can be brought to court from police custody, from a custodial institution (secure children's homes, secure training centres, or Young Offender Institutions), or from home. The use of video link enables children to appear in court remotely rather than being brought to court.

Hearings in court can generally be split into the following types:

- Case management hearings - generally administrative.
- Preliminary hearings - the child may indicate their plea.
- Remand hearings - it is decided whether the child will be granted bail or be remanded in custody.
- Trials - evidence is examined and testimony is taken. Defendants must be present in court during their trial but are able to give evidence by video link provided that they meet the vulnerability criteria set out in the Youth Justice and Criminal Evidence Act (1999).
- Sentencing hearings - the child will receive a sentence including: a discharge, a fine, a referral order, a Youth Rehabilitation Order (YRO), or a custodial sentence.

Background

The rationale behind the introduction of video link around the turn of the century was to reduce the need for defendants to travel overly long distances to court in the back of a van, thus minimising the inconvenience for a defendant, reducing the risk of escapes, and cutting costs (The BBC, 1999; The BBC, 2002). Since the introduction of video link, the government has expanded its use with the intention of addressing delay and waste in the court system, increasing efficiency and saving the government money, for example on transportation costs and court custody staff (MoJ, 2010; MoJ 2012). Today, the government aims to modernise the courts and tribunals system, reducing the number of buildings, with more adaptable courtrooms used more efficiently, and a greatly increased role for virtual hearings (HMCTS, 2015; Lord Chancellor, Lord Chief Justice & Senior President of Tribunals, 2016).

Available research

There is currently no data available on the number of virtual hearings involving child defendants taking place (HC Deb 14 Feb 2018 c 127038W). There is no Ministry of Justice (MoJ) research on virtual hearings from police stations or custody involving children. There is no research, other than the Transform Justice report (2017), on the effect of appearing on video on a child's ability to participate in proceedings, on their relationship with their lawyer or YOT worker, or on justice outcomes (HC Deb 14 Feb 2018 c 127041W; HC Deb 14 Feb 2018 c 127043W).

In 1999 and 2000, Joyce Plotnikoff and Dr Richard Woolfson published research on UK prison-court video links. The research reported the use of video link had a positive impact on court proceedings overall, but does not consider children, and the reports are now almost 20 years old.

In 2010, the MoJ published an evaluation of a virtual court pilot in Kent and London, where video link was introduced for defendants detained by police, appearing in court from police stations. The pilot programme did not involve any children, however the findings showed virtual courts to be more expensive than traditional courts. As well as this, defendants were less likely to take up legal advice and more likely to receive a prison sentence.

When video links are used with children

Custody-to-court video links were originally established in the 1990s, and video links from police stations began in 2009. Nowadays, almost every criminal court, most custodial institutions (except for secure training centres and secure children's homes), and some

police stations have facilities for virtual hearings. Children initially never appeared in court via video link, but over time all young offender institutions (YOIs) built video facilities (HC Deb 14 Feb 2018 c 127039W), and a few courts began to use video links for children held in police stations.

Video links were originally intended to be used for case management and remand hearings, but over the years their use has expanded to a greater range of hearings, with defendants submitting pleas, having bail considered, and being sentenced over video. The Youth Justice Board (YJB, 2016), the Magistrates Association (MA, 2017), and a recent Criminal Practice Direction (Lord Chief Justice, 2017: 3N.13) recommend that children should usually be produced in person at court, with applications for video link considered on a case-by-case basis, taking into account individual needs and involving consultation of relevant parties including YOTs. They recommend that video links should only be used when deemed appropriate, for example for onward remand hearings where there is no bail application, or case management hearings. Both the YJB and Criminal Practice Directions are clear that sentencing children over video link is inappropriate, although the latter provides caveats such as overly long distances to court or significant mental health difficulties. Despite these recommendations, Transform Justice survey responses suggest the use of video link for children is quite widespread, including appearing from police stations, submitting pleas, bail applications, and even sentencing. Appropriate consultation by the court on whether video link should be used does not appear to be occurring, with some respondents stating they had tried and failed to persuade the bench that vulnerable children should not be appearing over video.

[Government proposals for expansion of virtual justice](#)

Both the government and the senior judiciary are enthusiastically pursuing the modernisation of the court system, despite acknowledgement that there has been little opportunity for evidence gathering or conducting quantitative analysis on the impact of suggested reforms, particularly on child defendants or any other vulnerable users (Leveson, 2015).

A joint statement from the Lord Chancellor, Lord Chief Justice, and the Senior President of Tribunals in 2016 laid out a vision for a modernised court system where, “In many cases, attending hearings in person will only be needed where there is no other alternative; parties will be able to engage virtually or online rather than have to take time to attend hearings in person”.

The Prisons and Courts Bill, introduced in February 2017 but abandoned due to the 2017 general election, proposed extensive expansion of virtual hearings (Bill 170, 2016-17, Cl 32, 33, Sch 4, 5). The Bill would have allowed all hearings other than Crown Court trials to be held partially or even wholly over video, with all parties including judges able to attend

the hearing remotely. It also would have allowed expanded use of telephone hearings, where all parties participated via a telephone conference call.

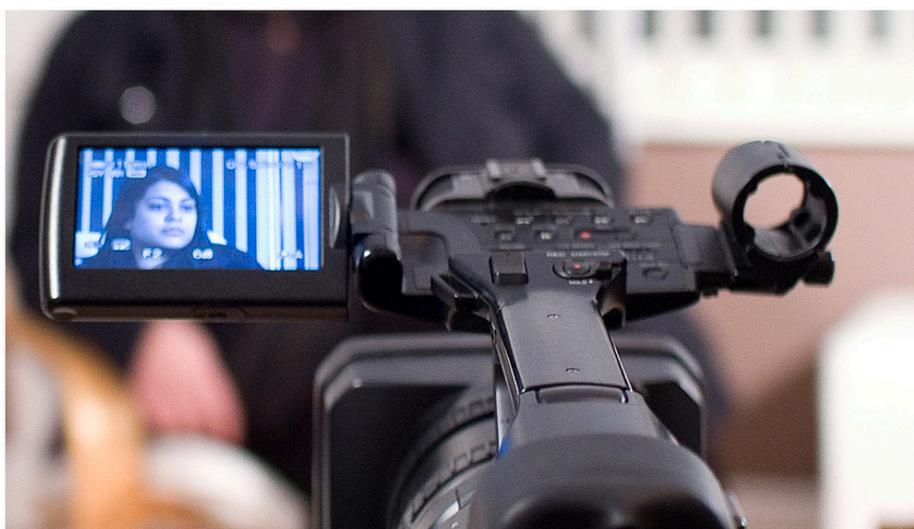
When the government was re-elected in June 2017 it was announced that a new Courts Bill would be introduced this Parliament. We are still awaiting information on when the Bill will be introduced and what it will include, however, primary legislation is not even necessary for the government to pursue many areas of expansion of virtual justice, and it is clear that they intend to do so. A Ministry of Justice consultation, launched in January 2018, on the future of the courts and tribunals estate states that:

The starting point for our approach is that only what has to be done at a physical venue – most trials and sentencing – will be done there. The remainder will be dealt with outside the courtroom using modern technology.

(MoJ, 2018)

Changes to Criminal Practice Directions and Criminal Procedure Rules, which do not need to be consulted on or approved by parliament, may be enough to allow for hearings to be increasingly held over video or telephone. While the most recent amendments to the Criminal Practice Directions recommend that the use of virtual justice be carefully considered for children, the changes allow any court process to be held over video or telephone other than a trial (Lord Chief Justice, 2017). With respondents providing evidence that courts are not heeding the guidance relating to children, the use of video link for children is at risk of continued expansion without further primary legislation.

As we set out below, the evidence indicates that the government should be placing additional constraints on the use of video link for children, rather than seeking to increase its use via additional legislation.



The problem with virtual justice

Disrupting a child's right to fair trial, eroding support, interfering with statutory duties

The younger the defendant the less likely they are to understand and also concentrate on what is going on. I am sure some of them leave there having not understood anything of what has just happened to them. As far as I know there is no one to check they understood.

(Magistrate 1)

For young people, under 18, this is likely to be their first appearance in court and it can be very confusing and scary for them. Not having a person to meet face-to-face can minimise the seriousness of the offences but also prevent the opportunities for questions and a unique individualised approach to their needs based on the welfare principle.

(YOT worker 1)

A child's right to a fair trial is enshrined by Article 6 of the European Convention on Human Rights (ECHR) and enhanced by Article 40 of the United Nations Convention on the Rights of the Child (UNCRC). It is generally accepted that in order for someone to exercise their right to a fair trial, they must be able to effectively participate in the process (UN, 2007; UN, 1985 Para 14.2). "Effective participation" presupposes that the defendant has a broad understanding of the nature of the proceedings, what the implications are, and, if necessary with the assistance of, for example, an interpreter or lawyer, an understanding of the general idea of what is said in court (R(TP) v West London Youth Court. 2005; T and V v UK European Court of Human Rights, 1999).

Respondents to the Transform Justice survey are in widespread agreement that the use of video link has a negative impact on children's ability to participate in court proceedings. In fact, around two thirds of 180 respondents stated that the use of video link has a particularly negative impact on children, with just 12% believing the impact is positive. The main reason cited for this is the **lack of communication**, and therefore understanding, that video link affords a child.

All child defendants are vulnerable due to their young age and developmental immaturity. On top of this, the proportion of children coming into contact with the criminal justice system who have speech and language difficulties, disabilities, and other vulnerabilities is very high. They are often appearing in court for the first time and are unfamiliar with their surroundings, court processes, and legal jargon. When appearing in person in court, children are therefore afforded extra protections and support (HO & LCD, 2001; MoJ,

2017), but even so, various high-level reports have drawn attention to the significant difficulties children face in understanding court proceedings (Taylor 2016; Carlile 2014).

The following evidence outlines how video link exacerbates the problems children face in understanding and effectively participating in their court proceedings, by significantly reducing levels of communication, undermining protections and support in place for children, and preventing agencies from fulfilling their statutory duties to children in court.

Practical Issues

Respondents outlined how often practical issues with the technology itself interfere with the ability of the court to communicate fully and effectively with a child defendant, and vice versa. Frequent connectivity issues combined with strict time constraints can leave the whole process feeling rushed, while low quality audio and visual creates a lack of clarity and understanding and ensures nuances in facial expressions and body language are missed. Examples were given where the sound was muted but went unnoticed, or where the camera was so dark the young person was no more than a silhouette.

Youth defendants often appear from institutions where the video link is poor and cuts out after a certain amount of time, and this can cause difficulties.

(Legal Adviser 1)

However, even when everything runs smoothly, and the video and audio are of high-quality, respondents commented on many practical problems intrinsic to appearing on video link. A child will only be able to see certain parts of the court at a time, and those present in the court will not have a clear view of the child, meaning body language and non-verbal clues are lost, and discerning the size of the child is difficult. Video link does not enable organic conversations or for the child to participate in the flow of proceedings: where in a conventional court a child could discreetly ask an adult near them if they did not understand what was being said, in virtual hearings a child doesn't have the opportunity to ask a question or for clarification without interrupting the entire court.

Participation in hearings is more than "just" communicating. Being physically present when talked to or about makes it easier for the young person to ask questions if he/she does not understand or to challenge what others are saying about them.

(YOT worker 2)

Communication is not only verbal. It is hard to pick up on body language or offer support if the camera is not focused on the right person.

(YOT worker 3)

Relationship with lawyer

When children appear in court via video link, they have less contact with their lawyer before, during, and after proceedings. Respondents with experience of children in court believe this has a negative impact on their ability to participate. Insufficient conference time before court was cited as a key issue. Having just one conference session lasting 15 minutes – or often less if there are technical issues – to explain the proceedings to a child and ensure they understand is simply not enough. This is then exacerbated when, during the hearing, a lawyer will struggle to confer or take instruction from a client over video link.

Young people I have worked with have found the video link impersonal and have complained about the lack of time spent with their legal advocate.

(YOT worker 4)

Affects ability to explain to [children] what is happening, opportunity to explain evidence, plea, credit, make timely decisions. Young adults and children need far more time to explain things.

(Criminal Lawyer 1)

Children can often be frightened or mistrustful of court proceedings, and they need time to build a relationship with their lawyer, for their lawyer to gain their trust. Building this relationship can be a problem even when children appear in court in person (Wigzell, A., Kirby, A., Jacobson, J., 2015), but criminal lawyers who responded to the survey specified the inability to build a rapport with young defendants over video link as a key barrier to a child's understanding and participation in proceedings. The recent Lammy Review (2017) expressly referred to the loss of trust in lawyers by BAME defendants. The lack of time for a lawyer to build a relationship with a child is therefore likely to especially impact BAME children, who are already disproportionately represented in the youth justice system.



For young clients it is impossible to build a rapport with them. Also, everything takes longer to explain as you have to modify your language to ensure they understand.

(Criminal Lawyer 2)

I think with the youths you need that personal contact with them because otherwise you're just some old guy on a screen. You know, even if you're only like 25, you're still old to a youth, like, you're an adult, why should I trust you?

(Criminal Lawyer 3)

Time with Youth Offending Team

YOT workers who responded to the survey raised concerns over the lack of interaction between YOT staff and the child throughout proceedings conducted via video link. If a child is produced in court, a YOT worker will: visit them to prepare them for the hearing; provide information and advice about them during the hearing; and conduct a post-court interview to check if they understood, how they are feeling, and whether there are any safeguarding issues. When a child appears via video link, there is no opportunity for a pre-hearing consultation, no opportunity for a post-hearing interview, and while the YOT worker may offer advice on the child in court, the child will likely not be able to see or interact with the YOT worker. This lack of communication makes it harder for a YOT worker to interpret and respond to any welfare issues and offer the necessary support.

If somebody appears via video link for either a standard hearing or a sentencing even, it's just a case of we're in the court room, but, they might be told that we're there, but they can't see us, they don't have any interaction with us at all. So really, for all intents and purposes we don't have any role at all.

(YOT worker 5)

Of particular concern is the YOT's inability to conduct a post-court interview, as this is a vital safeguarding check: a key opportunity not only to discern whether the child has understood what just happened to them, but whether they have become more likely to self-harm or commit suicide after the news they have received. Conducting this interview is part of a YOT's statutory duty (YJB 2013; YJB 2014), and therefore the use of video link with child defendants is interfering with a statutory agency's duties. In fact, over 80% of YOT workers who responded to Transform Justice's survey question on the impact of video link on workload stated that video link made carrying out their duties more difficult. No YOT worker believed video link made their work easier.

There's no means of us doing a post-court report because neither the court nor the establishment provide us with any opportunity to speak post-court with the young person. Because the video links are very, very strictly diarised...So there's no kind of room to have a conversation...because obviously they're serving quite a lot of courts. So, I've just not found any way around that.

(YOT worker 5)

Much more difficult as we cannot complete the required post-court report and fulfil our statutory responsibilities.

(YOT worker 6)

Support from family and carers

As well as a lack of interaction with their lawyer and YOT worker, children appearing in court via video link have little to no support from a family member, carer, or other supporting adults. Having a family member or carer present while in court can provide emotional support for the child, help the child to understand proceedings, and importantly can help the judge to be aware of any vulnerabilities the child has. Over video link, the child is unlikely to be able to see their family or carer if they are present in court, let alone talk with them and receive support.

They just don't understand what's happened or why. They've not got the benefit of having a family member or an appropriate adult sat with them. They've got nobody to ask questions of, because the prison officers are just there to deal with the video link and they're on a strict schedule. So, I think it's probably quite, on a range of frightening through to completely pointless because they just don't have anybody to support them, or ask questions of really.

(YOT worker 5)

Judges should not legally hear cases of children under 16 if there is no parent or carer present in court (Section 34A, Children and Young Persons Act 1933), and attendance is strongly encouraged for any hearing involving a child under 18. Although we know that parents and carers do not always attend a child's hearing when they are appearing in person, when children are appearing in court via video link, judges presiding over these cases appear more likely to forgo this requirement. A YOT officer explained that parents and carers often do not think it worthwhile to attend court when their child is appearing via video link, and that as a result the YOT had struggled to ensure a family member or carer attended. Not only does this leave the child unsupported, it removes an element of parental responsibility and reduces opportunities for familial engagement with YOTs.

[The child] might be told that [family] are there, but they wouldn't have any chance to interact, and they wouldn't see them. So quite often we have parents saying 'oh I'm not going to bother coming then today; they won't know I'm there anyway.'

(YOT worker 5)

Failing to properly and suitably engage with the process

When appearing via video link, a child may not fully appreciate or understand the seriousness of their situation, as compared to when produced in court. As a result, respondents reported children appearing to take their hearing more lightly. While some respondents commented that children's familiarity with technology may make appearing via video link more comfortable for them compared to other vulnerable groups, this familiarity can contribute to a child failing to appreciate the significance and consequence of their actions or the gravity of the situation.

Not having a person to meet face-to-face can minimise the seriousness of the offence.

(YOT worker 1)

Children do not appreciate they are in a court not on a computer game.

(Magistrate 2)

This, along with above factors impacting a child's ability to understand proceedings via video link, means that a child is often disengaged with the process and seems unaware of what is going on. The exclusionary practicalities of video links can leave defendants feeling left out of the proceedings, detaching and alienating a child from the court process that can have a defining impact on their future.

The young person's overall engagement with the proceeding is clearly lower. They say less & look confused. They don't know who people are in the court room. They express themselves less easily.

(YOT worker 7)

It is perceived that if a child cannot understand what is happening, is generally disengaged with the process, and may not appreciate the gravity of a court appearance, this may increase the incidence of difficult behaviour. This can also be strongly inferred by the psychological evidence on children and brain development, whereby children are less likely to consider the longer-term impacts of a conviction, less capable of mature judgment, more impulsive, and lack consequential decision-making (Farmer E, 2011, cited in Centre for Social Justice, 2012:203).

As well as this, respondents outlined how feelings such as frustration, isolation, a lack of confidence, nervousness, and anger at their circumstances can lead to body language and behaviour that is interpreted by those present in court as aggressive, moody, bored, or having a lack of remorse for their actions. A YOT Officer reported that, when a child is present in court, there will be time before the hearing to unpick their behaviour and then, during proceedings, to explain to the court why they present as they do. This time and communication is not afforded via video link.

Young adults and children need far more time to explain things and often do not conduct themselves well on the video link.

(Criminal Lawyer 4)

Assessing and adjusting for vulnerabilities

The YJB are clear that the presence of any speech, language or communication needs are likely to represent "a significant barrier to children and young people effectively participating in, and engaging with, court processes, particularly if the hearing is conducted over video link" (YJB, 2016).

Respondents to the Transform Justice survey agree, widely believing the use of video link exacerbates communication and understanding difficulties for defendants who have vulnerabilities. Given the prevalence of learning difficulties, mental and physical illness and disability, and other complex needs amongst children in trouble with the law, it is particularly worrying that children are appearing in court via video link:

- The rate of mental health problems amongst children in trouble with the law is thought to be at least 30%, and three times higher than within the general population (Hagell 2002, Jacobsen et al, 2010: 68);
- 60% of children in the youth justice system have a communication disability (Bryan et al, 2007, cited in RCSLT, 2009);
- Around a third of children in custody have identified special education needs (Gyateng et al, 2013: 39); and
- Almost a third of children in custody who have ‘persistently offended’ have IQs of less than 70, signifying a learning disability (Rayner et al, 2008, cited in Hughes et al, 2012: 26).

The vulnerabilities of children appearing in court must be identified, and children should not appear via video link when it is assessed that doing so will damage their ability to understand and participate in proceedings. However, when asked how easy or difficult it is to discern the physical or mental difficulty of a child over video link, two thirds of respondents believed it is ‘very difficult’ while the remaining third stated it is ‘quite difficult’. YOT workers noted that the lack of face-to-face interaction means subtle indicators and non-verbal behaviours are missed. Lawyers detailed that there is also no easy way for a mental health team to assess a child over video link without a further adjournment.

Almost impossible. You can only see their face and there is little interaction. In my experience unless you have time with the young person to prepare, it is very hard to tell the difference between surly teenage behaviour, a total lack of confidence and/or significant learning difficulties and a lack of understanding.

(YOT worker 6)

Respondents reported that even when children have been assessed as having a vulnerability that may damage their ability to participate in video link proceedings, this usually has no impact on whether the child appears via video link or in person. Although one or two respondents had positive experiences where an assessment of a child’s vulnerabilities and ability to participate led to them being produced in person, others relayed experiences of advocating that a vulnerable child should not appear via video link but having their concerns dismissed. Some respondents believed the decision over whether a vulnerable child appears via video link was determined by practicalities relating to travel, court space, time and budget rather than consideration of the defendant’s ability to understand and participate.

I have unsuccessfully argued many times for a Defendant to be produced to court due to difficulties with communication (mental health, very low IQ, youth, etc.). I am always told that policy is to conduct hearing by video-link, and my judgement is ignored.

(Criminal lawyer 5)

According to equality legislation (Equality Act, 2010), reasonable adjustments should be made to any service being used by a person with a disability. Yet there is no guidance available on what would constitute reasonable adjustments on video link, and respondents had rarely witnessed or heard of any adjustments being made when children with vulnerabilities appear in court via video link. Just one respondent said there would usually be an adjournment to request a child's social worker to attend with them.

I have not personally witnessed or been informed of any such adjustments being made for young people with additional needs.

(YOT worker 4)

It is never clear whether the young person can hear what is happening but either way it is highly unlikely that they understand. 9/10 they do not understand when they are physically in the courtroom, but they have their solicitor, family/carer and YOT staff to help and explain. They also have emotional support from parents/carers/YOT. Most young people are intimidated about participating or do not understand and this is amplified by the video link.

(YOT worker 6)

What is best for the child?

Some respondents highlighted that there are certain circumstances that make appearing via video link quicker and preferable in terms of protecting a child's welfare. Children are often held in institutions a long way from their home and the location of the offence, and therefore must travel for hours in the back of a van, nicknamed the "sweatbox", for a relatively short hearing. In this case, some children have welcomed the ability to appear in court via video link from their institution, rather than travelling extensively and remaining in a cell for sometimes hours around their court appearance.

For courts there is a tension... is video evidence better than a 15-year-old who has spent 3-4 hours travelling to court?

(Parole Board CEO)

For some children with particularly acute social anxiety, travelling to and appearing in court can be a distressing experience that can cause anxiety, and appearing via video link may make this easier. Some respondents suggested that in some such cases, judged on a case-by-case basis and for non-sentencing administrative hearings, appearing via video link may be preferable for a child.

Video link should be an option used when assessed as being suitable for all concerned - not routinely because it is cheaper.

(YOT worker 7)

This impact on a child's immediate welfare must be carefully balanced with their right to a fair trial and the possible impact on justice outcomes of poor participation, made all the more important given the long-term implications of childhood criminal records (HC 416, 2017) and unsafe conditions in youth custody establishments (HC 208, 2017).

The Taylor review of the Youth Justice System and the Carlile Review both found that court procedures are frequently not understood by children and emphasised the need to increase courts' involvement with children. The government's own strategy highlights the importance of children's "engagement with and participation in, proceedings" (MoJ, 2016). Yet the problems associated with video links and child defendants outlined thus far, such as practical issues and the implications on the child's communication with their lawyer or YOT worker, are very widely accepted by survey respondents to have a damaging impact on a child's ability to engage with and effectively participate in court proceedings. As well as this, the findings of this report point to the role of the court environment in reinforcing the seriousness of the situation and encouraging positive presentation during proceedings.

Appearing in person in court, and receiving support from family members or carers, lawyers, and YOT workers can help a child understand and appropriately engage with court proceedings, ensuring their right to a fair trial is fulfilled. Rather than increasing the use of video link in children's cases due to long journeys to court affecting a child's welfare, reforms to the youth justice system should be implemented such that: children in the secure estate are held closer to their home and relevant court; children are transported in smaller, more comfortable vehicles, accompanied by a known member of staff and never transported with adults; and children's court proceedings are brought to them through suitable "pop-up" courts within or near the establishment they are being held.

There are certain defendants who for instance value no physical prisoner transfer and for whom video link seems a positive experience. However for other groups it appears to discourage interaction, the young in particular are in this group as they seem to disengage in a way I do not see when same group is face to face.

(Criminal lawyer 6)

Justice outcomes

Does the use of video link impact on court hearing outcomes?

We have seen how the use of video links can damage a child's ability to understand and participate in court proceedings. Before the use of video link is expanded, it is vitally important that we find out whether video links impact on justice outcomes, such as the child's likelihood to plead guilty or not guilty, to be refused bail, or to receive a more severe sentence.

While not enough is currently known about video links to be certain of the full impact, respondents had an overall sense that a child appearing via video link negatively prejudices outcomes. A child struggling to understand proceedings over video link, failing to appreciate the seriousness of their court appearance, and generally disengaging with the process is more likely to display difficult behaviour or behave in a way that will be negatively perceived over video by the court. It is difficult to discern vulnerabilities and ensure appropriate adjustments are made, and as a result the judge may misinterpret behaviour and the court may not take full consideration of a child's welfare needs and reasons behind coming into contact with the law.

We are particularly concerned that there are indications that the use of video links may disproportionately impact outcomes for BAME children. Unconscious biases, stereotyping, and negative perceptions of a child's behaviour could be exacerbated by the lack of physical presence of the child. As outlined above and highlighted by the Lammy review (2017), there is a lack of trust of lawyers amongst BAME children, and therefore building a relationship over video link will be particularly difficult with BAME defendants. BAME children are already disproportionately represented in the youth justice system, and especially in custody. Analysis must be undertaken as to whether video links lead to more negative justice outcomes for BAME children.

Guilty or not guilty plea

Some respondents believed a child appearing in court via video link was no more or less likely to plead guilty or not guilty, with a child likely to follow the advice of their solicitor either way. Other respondents mentioned that children appearing via video link may feel resigned to indicating a guilty plea as they are potentially already in custody.

I feel it feels more like a 'done deal' especially when they are already serving prisoners.

(YOT worker 6)

Refusal of bail

The majority of respondents felt that a child is more likely to be refused bail and remanded in custody when they appear in court via video link. When a child appears over video from custody, respondents felt it appears easier to refuse bail and maintain the status quo – they are already in custody, so they may as well remain there. Given that almost a quarter of children in youth custody are on remand (YJB, 2018), yet to receive a sentence, and that 65% of children given a custodial remand do not subsequently receive a custodial sentence (YJB, 2018), the courts system should be taking steps to decrease the number of children remanded in custody, not pursuing video link reforms that may increase numbers.

There's something about physical presence in the dock that makes me feel that there is a chance of bail. When appearing via video link it's like a forgone conclusion that bail won't be granted.

(YOT worker 8)

Severity of sentence

Supposedly, court protocol is that children should not be sentenced via video link (Lord Chief Justice, 2017: 3N.14). Whilst this was the experience of some respondents, others stated they were aware of children being sentenced over video link, and government proposals for court closures and reforms would likely lead to children regularly being sentenced over video link. Considering video link's impact on behaviour and on how a young person is perceived, and considering that mitigating factors such as vulnerabilities may be missed, children should not be sentenced over video link.

The district judge is unable to see the vulnerabilities of the young person as clearly and is also removed from sentencing.

(YOT worker 1, who believes sentences over video link are more severe)

Expansion

Should hearings be conducted wholly via video link or telephone?

The last government proposed to expand the use of video links so that all participants in a hearing may appear on video rather than in person. The assumption of these ‘fully virtual’ hearings are included in the 2018 courts consultation (MoJ, 2018). Over 90% of survey respondents were against the idea of fully virtual hearings, due to: a lack of communication and understanding; the court process not feeling real to the young person; it being difficult to carry out assessments and gauge vulnerabilities; and the process not aiding restorative practice. If all parties to the court hearing could potentially be appearing from different venues, this also reduces the opportunity for joint conversations and information sharing between the prosecution, YOT and defence.

Working with a young person who is vulnerable and who may have learning difficulties is difficult over a video screen. It is also difficult to complete a full and comprehensive assessment.

(YOT worker 9)

It is very difficult to get an appropriate understanding of how the young person reacts to what is going on and therefore ensure appropriate support is given where it is necessary.

(YOT worker 2)

The last government also proposed that some court hearings be conducted partially, or wholly, by telephone rather than in person or by video. The Magistrates’ Association have said they “cannot conceive of a situation where it would ever be appropriate for a child or young person to participate in a hearing via audio link only. No under-18s should be required to do this in any circumstances” (MA, 2017). Survey respondents agreed, being overwhelmingly against this idea as they believed such hearings would make it impossible to gauge non-verbal communication, make it even harder to judge vulnerabilities and to offer support when needed, and would have a terrible impact on a child’s engagement with the process.

Human beings are more than a voice alone. Unethical to routinely base any life changing decisions on something heard via a telephone.

(YOT worker 7)

Reduces communication far too much. Not in a young person’s interests at all. May impact on reoffending as the fear of going to court is reduced.

(YOT worker 8)

Conclusion

While some judges and lawyers may argue in favour of the general expansion of virtual justice, when it comes to considering children in trouble with the law and their unique vulnerabilities, there is a clear consensus that the use of video link must be carefully considered. The evidence we have suggests virtual hearings compromise children's right to a fair trial, erode the support currently afforded to children in court, and prevent statutory duties from being met. By pursuing the expansion of video links with child defendants, HM Courts and Tribunals Service is therefore not meeting its duty of care to users, to ensure children are safe and their wellbeing is assured. Such hearings may also negatively affect children's outcomes, and certainly go against the recommendations of major reviews of the children's court system.

Virtual justice has a detrimental impact on a child's ability to understand and participate in court proceedings, largely due to the overall lack of communication afforded by the process. Practical issues and strict time constraints leave the process feeling rushed, with a child having few opportunities to ask any questions and clarify information. There is no time for a lawyer to build trust and a rapport with a child, nor for a YOT worker to provide the appropriate level of support before, during and after a hearing. There is a reduction in opportunities for a YOT to re-assess a child's safety and wellbeing, as well as to engage with the child's family to help safeguard the child.

A child appearing in court can often feel intimidated and scared, yet when they appear via video link they lose vital emotional support from their parent, carer, or YOT worker, and can be left feeling more isolated and confused. Overall children are more likely to disengage from the process, may fail to appreciate the seriousness of their situation and present themselves poorly as a result.

A child's behaviour may be misinterpreted by the court, with subtle body language missed over a video screen. This is particularly true for children with vulnerabilities, which are difficult to gauge and adjust for over video link. Given the high proportion of children with speech and language difficulties and physical and mental disabilities in the youth justice system, and the potential impact on justice outcomes, the expansion of virtual justice for children is particularly problematic.

Although some children may prefer to appear via video link rather than travel extensively to court, until it is ensured that a child's right to a fair trial is not disrupted, and appropriate analysis into the impact of virtual justice on outcomes has been carried out, children should not be appearing via video link, unless there are exceptional circumstances.

If children are unable to effectively participate in video link proceedings, the expansion of such hearings will risk an increase in unlawful convictions, miscarriages of justice, and therefore judicial reviews and appeals. This would risk negating any efficiency and cost savings the government is hoping to make, while damaging a child's wellbeing and undermining trust in the justice system.

Over the past ten years, a range of major inquiries have called for reforms to youth proceedings in a bid to improve their child-focus and effectiveness. These include reviewing children's progress, ensuring continuity of judge throughout the child's case, and the implementation of problem-solving approaches. The development of these reforms, and the positive impact they could bring to youth justice, will potentially be threatened by the expansion of video link, as they will likely be harder to incorporate and may not be as effective in a video link setting. Rather than pursuing the expansion of virtual justice with child defendants, the government should be developing reforms, such as those above, towards a court system that maximises a child's understanding and chance of rehabilitation.

Recommendations

Adjustments should be made to improve a child's experience of attending court hearings in person. Where a child may be faced with a long journey to court, rather than conducting the hearing over video link, adjustments should be made to improve the comfort of their journey. Children should be transported in smaller vehicles, with a known member of staff, and never transported with adults. Children should be prioritised when being transported to and from courts to minimise time spent in court custody. Alternatively, "pop-up" courts in custody could be created, much like parole board hearings are often held in prison. Appropriate spaces in youth custody establishments could be used as courts on an ad hoc basis, adapted to replicate the conditions in youth courts. This would eliminate the need for a child to travel to court, or to appear in court via video link.

The use of video links for child defendants should be urgently reviewed. Existing research shows that children already struggle to understand and engage with court proceedings, and evidence in this report indicates these issues are exacerbated by video links. Data on the use of video links with children should be collected and monitored, and research should be conducted to assess the impact of video links on participation and on justice outcomes.

The expansion of video links should be halted until there is appropriate analysis available on the impact of video links on a child defendant. There should be no new legislation to allow for the expansion of hearings conducted wholly or partially over video link or telephone, and current guidance on the use of video links with children should be refined, as it is currently too open to interpretation and misuse.

Video link should be used only in exceptional cases, with appropriate adjustments. The default position ought to be that it is never appropriate for a child to appear in court over video link for non-administrative hearings, unless there are exceptional circumstances. Exceptions might include that a child has particularly acute social anxiety, with the decision to use video link made on a case-by-case basis. Criminal Practice Directions around the use of video links with children should be tightened to prevent widespread video link sentencing and remand hearings, and compliance with the Criminal Practice Direction should be better monitored to prevent misuse. If all relevant parties deem the use of video link preferable for a child's welfare and outcomes, thorough assessments should be carried out to determine any vulnerabilities, and adjustments should be made to ensure the child is able to participate effectively in court proceedings.

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