

Response of AJI to 2023 Questionnaire of the 1st Study Commission IAJ-UIM
“The effects of remote work on the judicial workplace and the administration of justice”

1. Remote work of Judges in Ireland:

- (a) *Pre-pandemic:* Apart from being free to do reading and preparation for cases that at home, and, if it suited, to write judgments at home (and in the case of appeal courts, discuss cases with colleagues via telephone), judges did not otherwise work remotely in Ireland prior to the covid pandemic; in particular, remote court hearings were rarely held.

During the pandemic: During the pandemic, remote hearings via videoconferencing applications became the norm in civil proceedings in the High Court for argument-based, non-witness hearings and applications/motions in civil proceedings. Remote hearings were generally not conducted for civil witness hearings save that some witnesses (in particular expert witnesses) could give their evidence remotely. Criminal trials were not the subject of remote hearings. Remote hearings were the norm for appeals heard by the Court of Appeal and Supreme Court. Remote hearings were much less used in the Circuit Court and District Court [**confirm**].

- (b) *Remote work now:* Judges in all courts remain free to prepare for cases at home should they wish and to write judgments at home. Court hearings have largely reverted to physical hearings although remote hearings are sometimes held in the High Court, with the agreement of the parties, in respect of non-witness hearings such as judicial reviews. Remote hearings are also used routinely now for short procedural applications (typically on a “hybrid” basis i.e. physically in court or remotely via video-conference log-in at the option of the lawyers/parties). Remote hearings are not generally used for trials, appeals or longer legal applications. The selective use of videoconferencing to hear the evidence of certain types of witness (such as expert witnesses in civil litigation) has become more widespread post pandemic

2. Effect of remote work on judicial work

- (a) *Remote work for better or worse?* Remote hearings have brought some improvements in efficiency in dealing with court lists which deal with short applications. The general perception is that remote hearings were an adequate fix for an exceptional situation during the pandemic but judges (and lawyers/parties) generally prefer physical hearings where the judge, lawyers and parties of witnesses are present in one courtroom as this results in fairer and more effective administration of justice. There were shortcomings in the video-conferencing application used in the Irish Courts for remote hearings (Pexip) and issues were

also experienced at times with the quality of connections for such hearings which impacted on the effectiveness of remote hearings as a substitute for physical hearings.

- (b) *Impact on judicial workplace:* while judges often conducted remote hearings during the pandemic from their homes, that has now changed post-pandemic and even where a hearing involves a video-conference dimension, judges will generally sit in a physical courtroom to conduct such a hearing. Many (but by no means all) courtrooms are now set up to conduct video-conferencing hearings but work is needed to ensure a country-wide roll-out of the necessary technology.
- (c) *Future effects:* remote work in terms of video conferencing hearings has the potential to leave judges more flexible in managing lists with some potential costs savings for litigants. However, further evidence-based research is needed to assess the effectiveness and utility of deployment of remote hearings, and in particular the types of cases/applications in which such hearings are (or are not) appropriate.

3. Effects on administration of justice

The answers below focus on the most significant aspect of remote work being remote hearings.

- (a) and (d) *Pros and cons of remote hearings on administration of justice:*
Remote hearings can assist in the more efficient administration of the justice in respect of the hearing of shorter applications and individual witnesses such as expert witnesses by saving on travel cost and time and parties and waiting time in court. The downside of remote hearings is that it is harder for the judge (and lawyers) to judge the credibility of witnesses in cases where witness credibility can play a significant role. The quality of the videoconferencing platform used by the Courts Service in Ireland has also justifiably come in for criticism.
- (b) *Impact on administration of justice:* We believe that a wider debate is needed as to the impact of remote hearings on the quality of administration of justice. There is a danger that “online” administration of justice lessens respect for the solemnity and public importance of judicial work and creates the impression, at least among some litigants, that they are not getting a “proper” hearing. As noted above, detailed research is needed to assess the impact of remote hearings on the administration of justice more generally.
- (c) *Public perception:* There is little or no available data in terms of public perception of remote hearings. Proper research needs to be conducted into this issue to ascertain the extent to which remote hearings contribute to or undermine respect for the administration of justice.

4. Remote work and judicial independence:

Ireland enjoys a robustly independent judiciary. While questions have been raised as to the impact of remote hearings on the quality of justice, we do not believe that remote work (in terms of remote hearings) has had a negative effect on judicial independence in Ireland.

5. Limits on remote work for judges:

- (a) *Limits on remote work (esp remote hearings):* Criminal trials do not proceed by remote hearing. Other remote hearings are generally at the discretion of the judge conducting the case or list but as noted earlier, remote hearings are not generally used for trials, appeals or longer legal applications. The selective use of videoconferencing for certain types of witness (such as expert witnesses in civil litigation) has become more widespread post pandemic
- (b) *Proposals to permit more or limit remote hearings:* There are no such proposals of which we are aware at present.
- (c) *Should there be changes to permit more or limit remote hearings:* As noted earlier, there is a dearth of evidence-based data on the impact of remote hearings and the extent to which they have added to or taken away from the effectiveness of the administration of justice in Ireland and any changes in this area should be preceded by proper evidence-based, thought-through proposals making the case for the most effective use of, and appropriate limits to, the use of remote hearings.