

Second Study Commission
Civil Law and Procedure
65th Annual Reunion of the IAJ – Tel Aviv, Israel
Questionnaire 2022

VIRTUAL TRIALS IN CIVIL PROCEEDINGS

The Second Study Commission will focus on how our jurisdictions used, and will use, virtual trials and hearings before, during and after the Pandemic. We have limited the questionnaire to six questions, and we expect to receive short and concise answers. The questions are as follows:

1. Did your jurisdiction offer complete or partial virtual civil trials or hearings before the Pandemic? If yes, please describe what was offered and how often the offer was exercised.

Prior to the pandemic, it was possible to call witnesses in a civil trial remotely. However, this was a rare occurrence occurring principally when witnesses were absent the jurisdiction or were expert professional witnesses. Furthermore, the evidence of such witnesses would generally not be central to the case.

2. Did your jurisdiction offer civil virtual trials or hearings during the Pandemic? If yes, was there a change in how, what and when it was offered? Were protocols published? Also, if yes, when were the virtual trials/hearings offered and what was the uptake?

Ireland offered civil virtual trials and hearings during the Pandemic in all non-witness civil cases in the Superior Courts, namely the High Court and the Appeal Courts. This related to all aspects of civil trials to include the trial proper and pre-trial applications. Every type of civil case proceeded by remote hearing, except cases which required witnesses to be called. In respect of these cases, once improvements were made to the technology employed by the Court Service for remote hearings, if the parties were amenable to calling the witnesses

remotely, then these cases also could proceed remotely. As restrictions lifted, the possibility of holding hybrid hearings emerged whereby some witnesses could be called remotely and more central witnesses could be called in Court.

The manner by which remote hearings were facilitated was by the roll out of virtual courtrooms. Courtrooms had not been technology enabled prior to the pandemic except in a very limited number of courtrooms dealing with criminal matters where video link facilities had already been established with prisons. A pilot project had only just begun in relation to civil remote hearings prior to the Pandemic. The Irish Courts came from a position where from a technology perspective, the possibility of facilitating the holding of remote hearings was in its infancy to within a three month period being able to conduct remote hearings in all Superior Court hearings which were not witness based.

Several practice directions issued governing the holding of remote hearings. Legislative change was also required to make appropriate provision where necessary for remote hearings.

The first virtual trial was held on 20 April 2020. By May 2020, a vast array of civil matters were dealt with remotely. From January 2021, improvements were being made to the facilities for calling witnesses remotely. However, the uptake for witness cases to proceed remotely was low.

Civil lists in non-witness cases in the Superior Courts proceeded as normal remotely. As the pandemic restrictions which were in place meant that physical hearings were difficult to facilitate, the uptake for remote hearings which were not witness based was very high.

3. Presuming that civil virtual trials were offered, was there any improvements made in the technology/software that the government provided? How were documents and exhibits managed?

As referred to above, an entire new system had to be established of virtual courtrooms. The concept of such remote technology was in its infancy at the start of the pandemic, but the role out of this technology expedited in the weeks after the pandemic commenced. This technology was provided by the Court Service.

With respect to Court papers to include proceedings, exhibits, submissions and case law, the requirement to file hard copies with the Court remained. Hence, an obligation rested with the parties to the litigation to lodge such papers with a nominated person several days prior to the hearing.

With respect to some lists, the electronic filing of Court papers, as referred to above, commenced. Filing papers in soft copy format was in conjunction with filing hard copies. A move to a complete soft copy filing did not materialise during the pandemic.

4. What does the future hold in your jurisdiction with respect to the continuation of virtual trials? What are the issues and or benefits that have arisen?

Virtual hearings are now an established feature of the Irish legal system. While the majority of legal practitioners and judges have a preference for in person hearings, that is not exclusively the case. The benefits of remote hearings, separate from the primary benefit of enabling cases to proceed almost at a normal volume during the pandemic, are many. With respect to pre-trial and case management matters, dealing with these remotely results in a vast saving of time for legal practitioners who no longer are required to travel to Court.

However, remote hearings do not facilitate the same level of engagement between the court and practitioners. Remote hearings run the risk of a predetermined submission being made to the Court which does not benefit from nuance or involvement from the Court. Furthermore, access to remote hearings obviously requires access to a smart device together with a minimum level of technological capability as well as sufficient network capability. Lay

litigants may also have difficulties in engaging in a trial hearing remotely. Furthermore, hearings have not been easily available to the public, a core constitutional requirement in Ireland. Litigants also complained that they felt there was a level of informality about the process.

5. Has or is research being done in your jurisdiction to help ameliorate some of the concerns that have arisen with virtual trials?

A recommendation was made to an Oireachtas hearing that research be conducted into remote hearings with reference made to the significant research which had been conducted in the United Kingdom in this area during the pandemic.

6. How did the digitally excluded people in your jurisdictions have access to justice and specifically to virtual trials during the Pandemic?

The Irish Courts remained open during the pandemic and urgent cases involving lay litigants were facilitated in person. Litigants were entitled to attend their remote court hearing on condition that certain requirements were observed. However, to access a virtual trial, access to a smart device, sufficient network capability and having some technological knowledge is required.