

HERE AND THERE

The traffic commissioners' last annual report, published in October 2019, mentioned a study of the feasibility of introducing virtual hearings. Doing so might allow for more flexibility in the use of tribunal facilities, in contrast to the standard procedure of conducting all hearings face-to-face. However, in March, the UK government's lockdown forced them all to be suspended for the time being.

In April, a spokesman added: "Traffic commissioners have adapted a number of their processes and methods of communication in order to support operators and the public during these challenging times. They have continued to keep the use of remote hearings under review."

Exploring the potential of using videoconferencing for the work of traffic commissioners, as well as considering the consequences of doing so, was Andrew Woolfall, director of specialist transport law firm Backhouse Jones. He gave his views about the potential use of the technology before the lockdown. In early March, he predicted: "This situation might gather momentum for this, even if it is not implemented, for how we use

Before COVID-19 hit, the office of the traffic commissioner was considering using videoconferencing for some of its proceedings. The Coronavirus pandemic has brought home the utility of such tools for all kinds of business communications

technology in public inquiries. It might hasten people's thinking."

He points out that video links are already used in two scenarios. First, in criminal cases, defendants in custody are 'beamed' into the courtroom via a video link from the prison for procedural hearings after the first hearing but before the trial takes place. Second, during trials, testimony by video link is allowed for vulnerable witnesses - children for example - who might be intimidated by a courtroom environment, or in exceptional circumstances when expediency wins out. Woolfall recalls that former north east traffic commissioner Tom McCartney was called as a witness in a CV trial a few years ago. As it happened

he was in New Zealand at the time, so instead of going to the expense of flying him home, the court asked him to travel to the nearest consulate, where he gave his evidence remotely.

A video link allows two-way communications. And like on consumer products, speakers see an image of themselves in a small box, and the person talking in a big box (pictured, p26). In the courtroom, a voice-activated camera picks up on the person stood up talking. The clerk can also control the cameras.

In addition, the traffic commissioners spokesman points out that the Courts and Tribunal Services has been piloting video hearings in civil and family courts in Manchester and Birmingham (see also www.is.gd/vexube). He adds: "The overriding concern will be fairness to the parties, and we need to take account of disclosure, how to look after vulnerable tribunal users as well as securing the attendance of witnesses.

"The need to uphold the integrity of evidence given at public inquiry would be a major consideration of any work undertaken." These video links also include a measure of security to prevent hacking or spoofing, he points out.

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Andrew Woolfall



To that end, Woolfall cautions that the technology is potentially open to abuse. “When giving evidence, there needs to be careful constraints to make sure that you know that no-one else in the room is assisting the witness. You don’t want someone off-camera giving them prompts.” He suggests that a code of conduct would be the place to set out such stipulations.

Woolfall himself says he uses videoconferencing for internal company meetings, and feels comfortable doing so. But he cautions that the technology might not convey as much meaning as do face-to-face meetings.

First, nonverbal cues, such as facial expressions and tone of voice, play a big role in any human interaction, no less the formal setting of a public inquiry (PI). Those subtle details might not be picked up in a poor-quality internet video link. “That might potentially deprive the traffic commissioner of important observational evidence. TCs aren’t just looking at what operators say orally or in a witness statement. They are looking at an operator to get a feel for them. Can they trust them? Should they give them another chance? Are they believable? By not being in the same room as them, TCs lose that vital piece of the jigsaw.” The same is true for legal counsel: “it can be difficult to read a witness, if, as an advocate, I were to cross-examine them.”

Second, much of the work of a solicitor in a public inquiry takes place outside of the hearing itself, contends Woolfall. From the point of view of the operator called to public inquiry and its solicitor, the ideal scenario involves having a discussion with the DVSA witness beforehand (Unlike normal

court proceedings, this is perfectly acceptable, he points out).

“If a DVSA enforcement officer is giving evidence about maintenance, you may have a chat before the hearing to sound out what their views are about what’s not in the report.”

He continues: “As an advocate, you can get a feel for what they are going to say. And you could offer a potential roadmap for future compliance: ‘If it the operator did X, Y and Z, would you be happy?’ Whereas if you took a punt asking that in an actual hearing, you would run the risk of getting an answer that you don’t like. Part of the skill of an advocate is getting the best evidence out before the traffic commissioner.”

However, Woolfall admits that DVSA examiners’ roles have changed since he started in the business 25 years ago, when they were always called. Now, the attendance of traffic and vehicle examiners at PIs is not the norm. “Giving evidence by video is just another step along that path.”

“I went to a PI not too long ago, which was in Golborne in the North West. The examiner was based in Bristol, and he came up to give evidence. If he had

done that by video link, there would have been a huge saving in monetary and time terms. But the conversation that I was able to have with the examiner beforehand was worth its weight in gold; that’s to the benefit of the operator and the traffic commissioner.”

Of course, there are ways around this, Woolfall admits – the same conversation could have been carried out over the phone the day before.

PRACTICAL BENEFITS

The Backhouse Jones director goes on to point out that videoconferencing would be particularly useful to replace face-to-face pre-hearing reviews, where lawyers get together with the traffic commissioner to discuss the ambit of the inquiry hearing, what kind of evidence there is, the structure and how long it is listed for. “It’s worth noting that civil courts, and the coroners’ jurisdiction, often do a lot of those process hearings by telephone conference call already.”

These hearings tend to smooth the way for a PI, or remove the need for it altogether. Holding them by conference call would reduce their cost, and so might encourage more of them to take place, Woolfall contends.

The final word goes to the spokesman, who in mid-April made this comment: “One straightforward matter was heard using remote conferencing software. The traffic commissioner will now look at what lessons can be learned from that experience but it is unlikely to offer a solution for the majority of hearings, which are too factually complex to hear remotely. Traffic commissioners will continue to explore other opportunities for flexible working, but remote hearings are not necessarily the shape of things to come.” 

