

Video Enabled Justice Evaluation

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3 Executive Summary

The evaluation, which was funded via the Video Enabled Justice (VEJ) Programme, examines the impact of a new booking tool used in the organisation of first appearance remand hearings in video court. The booking tool, which is a web-based software program, was piloted at a centralised remand court, as well as seven custody suites across the relevant police force area (PFA). The tool was used to book appointments for first appearance remand hearings in situations where defendants were arrested, denied bail, and had their court hearing conducted via secure video link whilst remaining physically located in police custody. Following its implementation into the courtroom, the booking tool was used to establish the video links between the remote locations and police custody. In addition to an appraisal of the performance of the booking tool, the evaluation also examines other pertinent features of video courts in contrast to traditional in person contexts, such as communication and the impact on other processes within the courtroom.

The evaluation aimed to:

- Document the conduct of first appearance remand hearings during the initial implementation of the VEJ Programme.
- Assess the extent to which the implementation of the booking tool and other processes associated with the VEJ Programme, such as the incremental roll-out of enhancements enabling a wider range of users to participate in video hearings via the booking tool, and the provision of onsite technology support at various stages of installation and implementation by the Strategic Business Partner, affected the functioning of the video court.
- Discriminate between teething problems associated with the installation of the booking tool and any longer-term impacts.
- Identify any unintended consequences associated with the booking tool and other changes introduced by the VEJ Programme, including the performance of other courtroom technology, such as the audio-visual (AV) equipment.

The evaluation employed a quasi-experimental non-equivalent control group design involving observations inside the video court both before ('pretest') and after ('posttest') the installation of the booking tool. Observations were also conducted across two non-video court control group settings, one where the defendant was denied police bail and transported to the court for their hearing and another where the defendant had previously been granted police bail and/or appeared in court via a postal requisition or summons. A total of 631 observations of first appearance remand hearings were completed across the four evaluation conditions. The data from the observations was supplemented with data from 46 semi-structured interviews conducted with courtroom professionals, former defendants and other key stakeholders from across the criminal justice system. Comparative analysis of the observation and semi-structured interview data supports the systematic appraisal of the differences and similarities as experienced by courtroom participants between non-video court hearings and video court hearings before and after the introduction of the booking tool.

3.1 Key findings from the evaluation

Findings highlighted here relate primarily to the booking tool and the AV technology with which it interacts, and to matters of current concern in respect of both.

3.1.1 The impact of the booking tool on the listing process

- Training provided towards the use of the booking tool was generally regarded in positive terms by those who received it. The tool was simple to use and required little formal input (Section 7.1).
- The introduction of the video court administrator and usher roles increased judicial control over the listing process but at a cost to existing working practices and direct access to police data inside the courtroom. Whilst the impact of the change was minimal and broadly positive, particularly with respect to reduced disruption, video court administrators and ushers indicated that they would have welcomed a more general understanding of the operation of the court and custody systems that formed the context of the listing process (Section 7.4).

- Once participants became acclimatised to it, the booking tool had relatively modest, positive effects on the listing processes. The booking tool provided improved oversight of the day's list, including cases added during the day, although users identified improvements they would like to see made to the tool (e.g. real-time updates on delays, pop-up notifications regarding additions to the list) (Section 7.5).
- There was some evidence of initial roll-out issues with the booking tool (e.g. difficulties connecting/disconnecting from endpoints and moving participants from the Video Waiting Area to the courtroom), although these did not persist. The need to manually update the booking tool was cited as a source of frustration by users, whilst connectivity issues with the courtroom's wireless internet disrupted the functionality of the booking tool. However, many of the issues experienced with the booking tool could be resolved via workarounds (Section 7.7).
- Whilst the booking tool provided more information about cases on the list, it did not offer participants any more sense of certainty as to when their case would be heard. Furthermore, delays between hearings occurred more frequently after the introduction of the booking tool (Section 7.6). Resource constraints (e.g. police custody staffing levels) and infrastructure constraints (e.g. video booth/endpoint availability) inhibited the optimal performance of the booking tool and demonstrated necessary investment in the court and police estate.
- The absence of the defendant from the courtroom, as well as the involvement of agencies outside the courtroom (e.g. police custody), contributed towards a sense of uncertainty within the listing process experienced by courtroom professionals. There was a perception that control of the listing process had shifted away from legal advisors/judiciary, who in turn highlighted their dependency upon ushers to keep them updated on the status of the cases on the list (Section 7.6).

3.1.2 The contemporary experience of appearing in the video court

- The implementation of the booking tool had no effect on hearing length. Hearings in video court were generally shorter than those conducted in non-video court (Section 6.3).

- The provision of introductions designed to orientate defendants in video court increased after the introduction of the booking tool, which is related to a revision of the guidance issued by the Senior Presiding Judge (SPJ) for England and Wales during the introduction of the booking tool (Section 8.1).
- Video links to remote locations were established ahead of time and held in a Video Waiting Room. Consequently, defendants were more likely to be sat in the video booth waiting for their hearing to commence after the introduction of the booking tool, suggesting a possible efficiency gain. Video links were successfully established first time in nearly 90% of hearings (Section 8.5).
- Defence advocate attempts to speak with clients during hearings decreased whilst defendants' attempts to speak with the bench increased at the after-stage. The loss of face-to-face contact in video court can create challenges in terms of advocates developing trust and rapport with their clients (Section 8.2.1).
- Defendants in hearings observed at the after-stage were more likely to become involved in some way in their hearing e.g., via an interjection. Defendants involved in after-stage hearings were the most likely across all conditions to attempt to make interjections appraised as being helpful in nature (e.g. to correct a piece of information). Hearings involving some form of self-initiated participant involvement took longer to complete, but the effect on hearing length was greater in non-video court where bail had been denied (Sections 8.3 and 8.3.1).
- The profile of general demeanour recorded for defendants varied little between the video court hearings observed after the introduction of the booking tool and those conducted in non-video court where police bail had been denied. However, compared to the non-video condition, we see a general shift towards more positively characterised momentary displays of demeanour, such as being appraised as 'good natured and helpful' (Section 8.3.2).
- Revisions to the printed guidance given to defendants prior to hearings were made during the life of the evaluation but interviews with former defendants suggest the guidance had limited effect (Section 8.1).

- Disruptions to hearings were more common in video court but decreased after the introduction of the booking tool. Disruptions were more likely to be defendant-caused than technology-caused and there was little evidence to suggest the booking tool caused any disruption during hearings. Accordingly, disruptions caused by failures of the video link were extremely rare, occurring twice each in the hearings observed before (n=195) and after (n=159) the introduction of the booking tool.
- The introduction of the booking tool was associated with less need for efforts to address disruptions in video court, but when disruptions did occur they were either ‘moderately’ or ‘extremely’ disruptive, i.e., not trivial. Hearings affected by disruptions took on average longer to complete in video court at the after-stage but nevertheless were not as long as hearings affected by disruptions in non-video court hearings where police bail had been denied (Section 8.4).
- The VEJ Programme provided funding to upgrade the audio-visual equipment in the courtroom and we see this reflected in the findings, as the quality of the video image and the framing (position on the TV screen) of remote parties both improved at the after-stage (Section 8.6). Issues with the quality of the audio were recorded, with ratings of the stability of the sound, the synchronicity of the audio and the video, the loudness of the sound (being at a conversational level), and background noise, all worsening at the after-stage. The quality of the audio in the courtroom was influenced by the introduction of voice-activated microphones and cameras used to enlarge the image of the remote participant addressing the court in three-way video links, which was introduced at the same time as the booking tool. The performance of audio-visual equipment is dependent upon existing court infrastructure, including the connection speeds offered via the Justice Video Service (JVS), and it is noted that there has been no testing of the JVS network to ensure it can meet the demands of the video court (Section 8.6).
- Overlapping speech was more prevalent in after-stage hearings, becoming more problematic in hearings with more than one remote participant, or when hearings were

affected by issues with the quality of the audio and video in the courtroom (Section 8.2.3).

- In general, concerns were raised about the quality of the audio-visual environment of the courtroom and video booths, including comments on the size and location of the screens, as well as the view of the courtroom from the remote location. The booking tool is not a standalone technology and, because it interacts with the AV technology that underpins the operation of a video court, impaired functionality in either can affect court hearings. Users do not experience the booking tool and the AV equipment separately but understand their experience in a hearing as that of appearing in a 'video court' (Section 8.7).
- Video court made it more challenging for defence advocates and other court professionals to assess defendant demeanour and also more difficult for defence advocates to build rapport with their clients. The loss of courtroom formalities (e.g. standing to address the court) could exacerbate the sense of distancing experienced. These issues were reported by both courtroom professionals and former defendants (Section 8.2.5 and 9.1).

3.1.3 Impact on legal processes in the magistrates' court and on justice

- Defendants in video court were less likely to have legal representation than compared to non-video hearings where police bail had been denied. The booking tool presently flags a case as ready to proceed regardless of representation. This could be altered if representation was thought to be essential. If so, it should be taken into account that despite a perception from jurists and prosecutors that cases involving unrepresented defendants took longer to complete, this was not supported in the evaluation data on hearing length (Section 9.3).
- The booking tool could block a case from proceeding if relevant papers are missing. Presently, when users indicate their 'readiness' to proceed they can do so without necessarily having the required paperwork.
- Video court reduced opportunities for informal conversations between legal professionals (e.g. 'corridor conversations') and could make communication feel

disjointed. Communication was more challenging when defence advocates appeared from remote locations, although such appearances already occur in just under one-third of all video court hearings (Section 9.1). Studies of video-conferencing applications in business settings indicate that communicative competence using these systems grows with experience.

- Prosecutors and defence advocates recognised some of the potential challenges associated with appearing from remote locations. There was a concern that appearing over the video link could make defence advocates less effective, particularly in relation to bail applications (Section 9.2). Difficulties with communication limited the ability of advocates appearing from remote locations to discuss the details of cases with those in the courtroom as part of pre-hearing conversations.
- In terms of the outcome of hearings, the rate of adjournments was higher in video court and increased in the hearings observed after the introduction of the booking tool. Custodial sentences were more common in video court but decreased in the hearings observed at the after stage. Since the booking tool does not flag a case to proceed until all necessary documentation is in place it may be that the decline in custodial sentences relates to information provided by the documentation. Bail (conditional and unconditional) was also more common in video court compared to either of the two non-video court control groups. The denial of bail in the video court (i.e. remand) showed a clear relationship with the type of hearing, being more likely in hearings classified as 'either-way' and 'indictable only' hearings (Section 9.4).
- Participants considered the impact of video court on open justice, local justice, and trust and confidence in the criminal justice system. Whilst in their view the move to centralised remand courts afforded opportunities to deal with cases from a larger geographical area, concerns were raised about the importance of local knowledge (e.g. when setting bail conditions), as well as about the loss of personal 'case history' on defendants (Section 9.5).

- Video court was seen as being more impersonal and former defendants commented on the inability to view family members sat in the public gallery during their hearings (Section 9.5).

3.2 Recommendations

On the basis of the research evidence from the Evaluation study we would make the following recommendations:

- Planning for the introduction of a booking tool needs to be comprehensive, including all criminal justice agencies whose staff have a role in the court process.
- All those with a role in the court process should be amply briefed in a timely way prior to the introduction of the booking tool.
- Where a role involved in the court process plays a frontline part in the courtroom, dedicated training should be provided, with comprehensive takeaway documentation and the availability of ongoing guidance, advice and support.
- The booking tool piloted and introduced during the evaluation period would benefit from a number of modest adjustments and additional features; these include the facility for backchannel communication between users; a note-making feature, for instance, to record observations about defendants or the advice provided; pop-up notifications regarding additions to the list or alerts about time-sensitive matters; automatic page refreshing and/or the ability to save page settings; the ability to 'batch' cases and/or provide a clearer indication of the running order of cases; as well as a clearer indication as to whether an interpreter is needed/has been booked.
- Interview participants suggested that a limit to the number of cases that can be included on the court's list in a single day should be introduced (albeit this may be a matter for a court service protocol rather than being imposed by the tool).
- Given the limitations of older-generation video equipment currently installed in parts of the court estate, there is a need for significant investment in improved audio-video equipment, more end-points to enable access to online hearings, and enhanced internet connectivity to enable reliable and secure connection. The VEJ Programme provided

funding for the upgrading of audio-visual equipment in the courtroom and the cost of such investments needs to be factored into any wider roll-out.

- Daily equipment checks in both custody and the courtroom to ensure minimum standards of operation prior to the start of a day's court session could help to minimise delays caused by faulty equipment or technology breakdowns. This could include checking network connection speeds as well as ensuring all of the microphones are fully charged and functioning properly. Robust contingency plans are required for instances where other courtroom technology fails.
- Interview participants suggested that consideration should therefore be given to the positioning of the screens, to enable the bench to more easily keep the courtroom and the remote participant in view. Larger, adjustable screens were also cited as possible improvements.
- The introduction of enhanced digital working through programmes such as the Common Platform were seen as ways through which some issues could be overcome – highlighting that the introduction of the booking tool needs to go hand in hand with more comprehensive solutions for electronic protocols in court.

4 Introduction to the Video Enabled Justice Evaluation

4.1 Context

Funded through the Police Transformation Fund, the Video Enabled Justice (VEJ) Programme is a three year £12m initiative sponsored by the Sussex Police and Crime Commissioner. It involves the development and implementation of a new video technology solution to assist the administration and co-ordination of the bookings process for Magistrates' video remand court hearings across three force areas, as well as enabling police witness Live Link in summary trials across five police force areas, and police witnesses' participation in Crown Court trials in one police force area. This evaluation focusses on the implementation of a new booking service, specifically a new technology solution, designed to facilitate the administration of adult first appearance remand hearings at a centralised remand court facility. For the purpose of this report we have anonymised the names and locations of the magistrates' court and police force areas involved in this evaluation.

The new technology solution, from now on referred to as the 'booking tool', has been installed into the video court at South Eastern Magistrates' Court (a pseudonym), as well as seven police custody suites in the South Eastern County Police Force Area (PFA), and is responsible for controlling the video linking process between the courtroom and the remote locations. The installation of the booking tool represents 'the intervention' around which a quasi-experimental research design was developed.

The video court at South Eastern Magistrates' Court has been in operation for approximately 10 years and hears the majority of adult first appearance remand hearings where police bail has been denied¹. Unlike traditional magistrates' court hearings where defendants appear in person at the courthouse, video court hearings are conducted via secure video link, whilst the defendant remains physically located in police custody. Other court participants, including the magistrates or district judge; legal advisor or court associate; prosecutor; probation officer, and

¹ Certain cases were deemed unsuitable for video court and therefore excluded from the VEJ pilot initiative. These include cases involving multiple defendants, youth cases, and cases involving vulnerable defendants.

usher remain located in the court. Defence advocates involved in video hearings have the option to appear either physically in the courtroom, or from a remote location. This could be from the same location as the defendant, or from a separate remote location which would typically be another custody suite or less frequently another magistrates' court.

4.2 Objectives

In this evaluation comparative analysis of observation data from first appearance remand hearings² held in the customary face-to-face medium and the video-enabled medium, alongside data from semi-structured interviews, supported the systematic appraisal of the differences and similarities as experienced by courtroom participants (professional and lay) between those two mediums (i.e. video and non-video court). Where possible, Ministry of Justice (MOJ) management information (MI) was used to examine representativeness of the evaluation sample against local (e.g. South Eastern Magistrates' Court) and national level data.

The aims of the evaluation were to:

- Document the conduct of first appearance remand hearings during the initial implementation of the VEJ Programme.
- Assess the extent to which the implementation of the booking tool and other processes associated with the VEJ Programme, such as the incremental roll-out of enhancements enabling a wider range of users to participate in video hearings via the booking tool, and the provision of onsite technology support at the various stages of installation and implementation by the Strategic Business Partner, affected the functioning of the video court.
- Discriminate between teething problems associated with the installation of the booking tool and any longer-term impacts.

² The observations were conducted over the course of a day's sitting and included a number of 'other' hearing types, including, for instance, case management hearings and sentencing hearings.

- Identify any unintended consequences associated with the booking tool and other changes introduced by the VEJ Programme, including the performance of other courtroom technology, such as the audio-visual (AV) equipment.

4.3 Structure of the evaluation report

The initial sections of this report outline the evaluation design, including the definition of the before and after-stages used to evaluate the impact of the booking tool; the fieldwork methods (section 5); as well as the sample characteristics of the observation and semi-structured interview data, including an analysis of the data that was used to appraise the representativeness of the observation data (section 6).

The findings sections (sections 7 through 9) have been structured to focus first on those areas where the impact of the booking tool, and the relationship between the before and after-stage conditions, are most strong. To that effect, Section 7 considers the impact of the introduction of the booking tool on the listing process, as well as some of the unintended effects this introduced. Section 8 looks at the contemporary experience of appearing in the video court, considering the differences between the before and after-stage conditions in relation to two non-video court control groups. Here we examine some of the broader changes to the way first appearance remand hearings are conducted that were introduced during the life of the VEJ Programme, but also consider other important aspects such as the use and performance of the audio-visual technology and its impact on the communication in the courtroom. Here the direct effects of the booking tool are less certain. Section 9 considers the broader aspects of the technology mediated courtroom, such as the potential impact on legal processes, the broader impact on justice (e.g. hearing outcomes), and finally the future of video court, including participants' suggestions for ways in which the experience of video court could be improved.

5 The Video Enabled Justice Evaluation

This section of the report considers the evaluation design, the definition of the different evaluation conditions, as well as the fieldwork methods that were employed.

5.1 Evaluation design

The evaluation employs a quasi-experimental pretest-posttest non-equivalent control group design to examine the effects of the implementation of a booking tool on the conduct of adult first appearance remand hearings at South Eastern Magistrates' Court. The evaluation employed a non-equivalent control group design because it was not possible to randomly allocate the hearings observed within each of the evaluation conditions. This was because the cases observed in the pretest, posttest and control group conditions were governed by existing administrative processes that were beyond the control of the evaluation (e.g. the severity of the offence, the decision to grant police bail etc.). The majority of eligible adult first appearance remand hearings in the South Eastern County pass through the centralised video court at South Eastern Magistrates' Court. However, to account for concerns regarding the selection of cases within the pretest and posttest group, efforts were made to vary the timings of the fieldwork to account for any weekly trends in hearings (e.g. more severe cases occurring after the weekend). A consideration of the potential differences between the pretest, posttest and control conditions can be found in Section 5.1.1.

The pretest group refers to hearings observed in video court at South Eastern Magistrates' Court 'before' the installation of the booking tool, whilst the 'posttest' data are those from the hearings observed 'after' its installation. The difference between the two groups in terms of any changes serves as an estimate of any treatment effect e.g., the degree to which the posttest treatment group differed from pretest scores (Mark and Reichardt, 2009), in this case because of the booking tool. The use of pretest data enables some control for the possible risks around the selection of cases, with the pretest scores representing the initial difference that is due to selection.

To further isolate the potential effects of the booking tool, scores from the pretest and posttest data were compared against data from two control groups. The first control group consists of hearings observed in first appearance remand hearings conducted in the traditional in-person medium where the defendant has been denied police bail and is transported from police custody to the courthouse. This type of hearing does not customarily take place at South

Eastern Magistrates' Court, therefore Southern Magistrates' Court A was used as the fieldwork location for this condition³. The observations conducted under this condition are those which are most directly comparable to the pretest and posttest hearings and are treated as the primary comparator control group in this evaluation.

The second control group consists of observations of first appearance hearings where defendants have previously been granted police bail or appear via a postal requisition or summons and were conducted across three different magistrates' court complexes. These observations were primarily conducted at South Eastern Magistrates' Court, although a smaller number were also observed at Southern Magistrates' Court A, as well as at Southern Magistrates' Court B⁴. They typically involved less serious offences than either the pretest, posttest or primary control groups and the data collected under this condition came from a mixture of 'guilty anticipated' (GAP) and 'not-guilty anticipated' (NGAP) cases. Data from this control group are reported alongside the pretest ('before'), posttest ('after') and principal control group findings, however, caution should be taken when drawing comparisons with this group due to the nature of the case-mix i.e., less serious offences.

A full explanation of the evaluation's four main conditions can be found in Section 5.2.

5.1.1 Limitations, counterfactuals and caveats

Several steps were taken to address concerns regarding internal validity i.e., the confidence with which the observed differences between the pretest and posttest scores can be attributed to the intervention. Below we consider the counterfactuals relevant to this evaluation and the steps taken.

South Eastern Magistrates' Court has been operating a video court for approximately 10 years, therefore the processes associated with its functioning are well established within the court

³ Southern Magistrates' Court A was selected on the advice of Her Majesty's Courts and Tribunal Service (HMCTS), with it being within the same Crown Prosecution Service (CPS) area as South Eastern Magistrates' Court. Consideration of the differences between the fieldwork locations can be found in Section 5.1.1.

⁴ Southern Magistrates' Court B is located within the same CPS area as South Eastern Magistrates' Court and Southern Magistrates' Court A.

and familiar to those who regularly participate in hearings. Whilst South Eastern Magistrates' Court is not a green-field location for the use of video in first appearance remand hearings, the well-established and familiar processes around the use of the video link in court help to isolate the effects of the booking tool. Had the booking tool been installed into a court that had previously not used video then the potential effects of the tool might be indistinguishable from the broader effects associated with the introduction of the medium of video into the courtroom. To account for any differences between medium of hearing (i.e. video and non-video) the evaluation includes two non-video court comparator groups.

There were a number of extra-experimental events that occurred during the life of the evaluation, the presence of which needs to be accounted for when interpreting the results. These events were beyond the control of the evaluation and include: changes in relation to the provision of case files for hearings (January, 2018); the new processes introduced in relation to Digital Mark-Up (DMU)⁵; the introduction of new printed guidance issued to defendants prior to video court hearings; a revision to the guidance from the Senior Presiding Judge (SPJ) for England and Wales⁶ on the introductions process used at the start of hearings to orientate defendants (Spring 2018); the upgrading of the court infrastructure (wireless internet access and audio-visual (AV) equipment); upgrading of custody infrastructure (Summer 2019); as well as the introduction of a new HMCTS-resourced role - video court administrators (VCA) and the reintroduction of ushers into the video court⁷ – to support the implementation of the booking tool in October 2018. Many but not all of these events occurred because of the additional scrutiny the first appearance remands process was placed under as part of the VEJ Programme (and may be considered useful enhancements prompted by it). Where relevant the potential for these events to obscure the interpretation of the findings has been made clear.

⁵ Digital Mark-Up (DMU) is a browser-based application used in the courtroom to assist legal advisors with resulting.

⁶ Reference to the SPJ in the report are to the incumbent prior to January 2020.

⁷ Whilst ushers are a common feature of traditional courtrooms, their role in video court was previously carried out by Video Court Officers (VCOs), a South Eastern Police resource.

Consideration also needs to be given to the timing of the fieldwork in relation to the delivery of the VEJ Programme objectives. For instance, the observations and semi-structured interviews were conducted at a time when some users had full access to the tool, some had partial access to its features, and other courtroom participants did not have access to the booking tool. For instance, ushers had full access to the tool; prosecutors had access to the tool to indicate their 'readiness' for a case; whilst defence advocates had no access to the tool. By the conclusion of the VEJ Programme, the booking tool will enable its users to video link directly into the courtroom from a wider range of locations than observed in this evaluation. This functionality was not available during the evaluation fieldwork.

The effects of testing, particularly in relation to the reactivity of the participants to the evaluators (Campbell, 1957), were minimised by the duration of time the fieldworkers spent at each location. This can be considered in terms of the total length of the fieldwork, but also because the fieldworkers tended to observe an entire day's proceedings within a given courtroom. As a consequence, any initial reactivity to the fieldworkers is likely to have reduced over the lifespan of the evaluation as familiarity set in.

Prior to the commencement of the main pretest (before-stage) observations time was spent in both video and non-video court to enable the fieldworkers to familiarise themselves with the first appearance remand process. This time was also used to develop and fine-tune the main research instrument used in the evaluation, the Structured Observation Schedule (SOS). During the main-stage fieldwork, regular discussions and meetings between team members helped to ensure that events and behaviours occurring during the observations were consistently recorded; several formal inter-rater reliability checks were conducted. To further aid inter-rater reliability a guidance document was also created to assist with the completion of the SOS.

The observations were conducted across a number of different fieldwork locations and the potential differences between these locations are explored in Sections 6.4, 6.4.2, and 6.4.3. Caution should be taken when interpreting the differences between the pretest, posttest and control groups and we have avoided placing any weight on small differences between the conditions. Where possible, findings from the observations are contextualised with data from

the semi-structured interviews. In presenting findings we have focused on those that cannot be dismissed as representing teething troubles or as issues unlikely to recur.

5.2 Defining the before-stage, after-stage and control groups

In order to isolate the effects of the booking tool observations were conducted within four different conditions across three different magistrates' court complexes. Details about the total number of observations within each hearing can be found in Table 1.

5.2.1 Video court: before-stage hearings (pretest group)

The video court baseline was assessed at South Eastern Magistrates' Court between 15 May 2018 and 16 October 2018 and includes hearings observed under two sub-conditions. The first sub-condition includes observations of video court hearings conducted prior to the installation of the booking tool (15 May 2018 to 25 June 2018). The second sub-condition includes observations of hearings during which the booking tool's diary assistant feature was being used but the video links from the custody suite to the courtroom were still manually initiated by Virtual Court Officers (VCOs)⁸. These observations were conducted between 26 June 2018 and 15 October 2018. As the booking tool was not responsible for controlling the video links between custody and the court and the new usher⁹ role had yet to be implemented in the video court, the observations on these two sub-conditions have been combined to construct the 'before-stage'. We have labelled this condition: Condition 1 (C1).

5.2.2 Video court: after-stage hearings (posttest/treatment group)

The posttest after-stage video court observations at South Eastern Magistrates' Court commenced on 17 October 2018, the date on which the booking tool began controlling the video links from the courtroom to the custody suite video booth and ushers newly trained to incorporate the video link role entered the courtroom to replace the VCO role. The

⁸ Video Court Officers (VCOs) were a South Eastern Police resource working inside the courtroom. VCOs were responsible for liaising with the various parties required in remand hearings as part of the court listing process. The booking tool diary assistant function replaced the use of spreadsheets, which had been used by VCOs in the listing process to record the progress of cases towards court readiness.

⁹ Ushers are an HMCTS resource that have taken on the role previously held by VCOs.

observations continued until 31 July 2019. We have labelled the ‘after- stage’ condition: Condition 2 (C2).

The observations of non-video court hearings were conducted across two separate conditions. Below we outline each of these conditions.

5.2.3 Non-video court: police bail denied (primary control group)

The primary comparator group to the observations in video court is the data collected from hearings involving defendants who had been arrested, denied police bail and transported from police custody to court. As first appearance remand hearings in South Eastern County are primarily conducted via video¹⁰ it will be recalled that it was necessary to identify an alternative court complex in which to conduct these observations. Observations under this condition were primarily conducted at Southern Magistrates’ Court A,¹¹ between 23 May 2018 and 27 August 2019. This condition has been labelled as: Condition 3 (C3). Sections 6.4, 6.4.2 and 6.4.3 consider the comparability of the two primary fieldwork locations.

5.2.4 Non-video court: police bail granted/postal requisition/summons (control group)

Data on a further control group was also collected, although this is not the primary comparator group. These data come from observations of hearings where the defendant had previously been arrested and granted police bail and/or appeared via a postal requisition or summons. These observations include a mixture of guilty-anticipated plea (GAP) and not-guilty anticipated plea (NGAP) hearings. The majority of these observations were undertaken at South Eastern Magistrates’ Court (n=99), although a number were also completed at Southern Magistrates’ Court A (n=23) and Southern Magistrates’ Court B (n=10). These observations took place between 15 May 2018 and 15 August 2019 and have been labelled Condition 4 (C4). Although this condition is not the primary non-video comparator group, these observations have been included in the evaluation as they reflect aspects of the administrative process associated with

¹⁰ With the exception of cases involving youths, those deemed unsuitable for video court, and multi-handed cases.

¹¹ A small number (n=18) of observations of defendants who had been denied police bail and were transported to the court were conducted at South Eastern Magistrates’ Court.

the first appearance process, courtroom culture, and sentencing outcomes as those that were applicable at the same court complex as the video court conditions.

5.3 Fieldwork methods

5.3.1 Structured observation

The primary data collection method employed in this evaluation was the structured or systematic observation of first appearance remand hearings at Magistrates' Courts via the use of a Structured Observation Schedule (SOS). Structured or systematic observation involves the use of explicitly formulated rules concerning the observation and recording of events and behaviour (Bryman, 2004). These rules are articulated in the SOS, which resembles a cross between a structured interview schedule and a paper survey and includes a mixture of closed questions (e.g. numerical counts and scales) and open questions (e.g. free-text field notes). Some of the items within the SOS are nominal (e.g. absent/present binaries), some are ordinal (e.g. rating scales) and others are simple measures such as hearing length. Structured observation ensures that events and behaviour are systematically recorded to enable the aggregation of data. The resulting data that is generated from the observations is similar to that of a traditional survey research design and can be analysed using standard statistical packages. SOS are a standard fieldwork tool that have been employed in criminal justice programme evaluations since the 1960s (Black, 1980; Sampson and Raudenbush, 1999). The observations were typically conducted during a day's sitting and as a result included a number of 'other' hearing types, such as case management hearings and sentencing hearings. A full breakdown of the hearing types observed during the evaluation can be found in Table 3.

The SOS was developed through preliminary fieldwork visits to the video and non-video court at Southern Magistrates' Court B, as well as some initial sensitising visits to the primary fieldwork location, South Eastern Magistrates' Court. The structure of the SOS was designed to replicate the regularly occurring procedural features of first appearance remand hearings, including items which recorded matters relating to the case (e.g. offences, plea, outcome), as well as communicative features of hearings (e.g. the behaviour of participants, communication between parties). Two versions of the SOS were created, one for use in non-video court and a

further version for use in video court which included items specifically relating to the use, performance and interaction with the video technology.

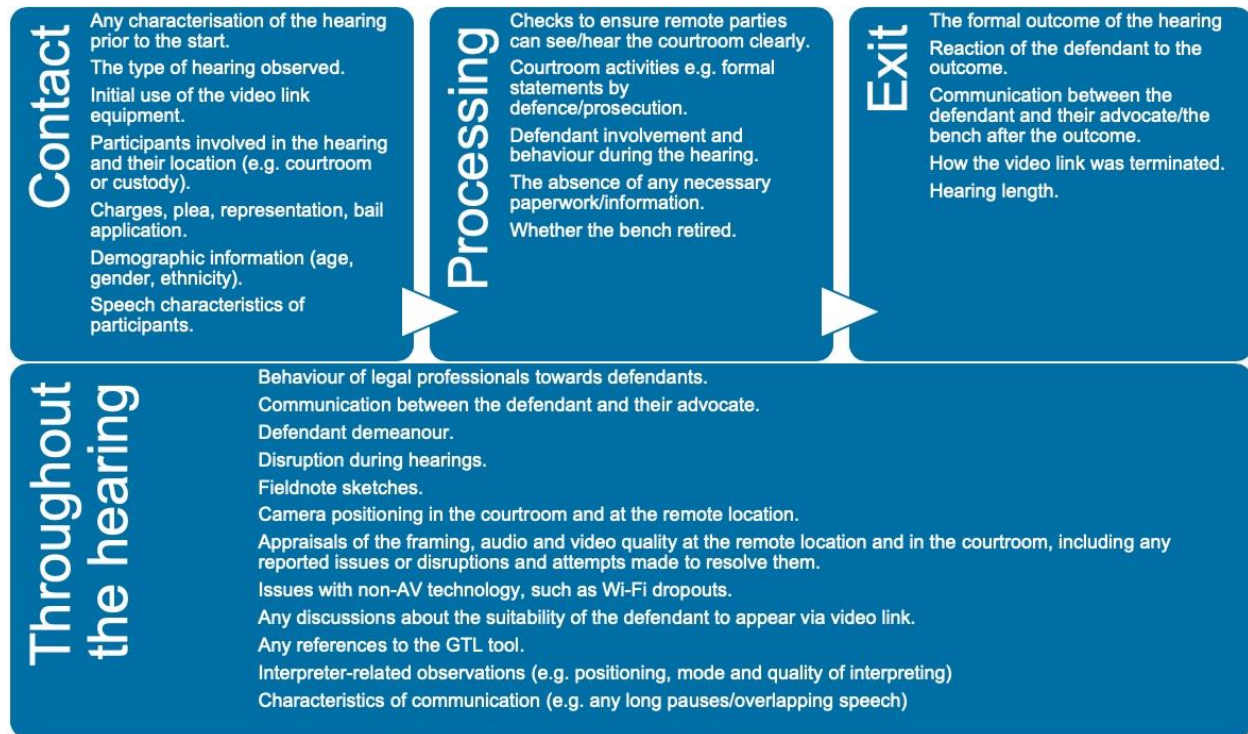
Both versions of the SOS were structured around the three key stages standardly termed in the literature relating to structured observation as Contact (opening of the hearing), Processing (main body of the hearing) and Exit (conclusion of the hearing), although there were certain variables that were observed throughout the course of a hearing. The main data points within each of these sections are displayed in Figure 1.

The data collected during the observations included information relating to the characteristics of the participants involved in hearings (e.g. gender, ethnicity, age, speech characteristics); details about the nature of the case (e.g. offences, plea, legal representation, whether participants had the necessary information about the case); the use and performance of the video link technology (e.g. image and sound quality, checks to see that remote participants can see and hear the court); the activities of the courtroom (e.g. formal statements); the behaviour of participants and the communication between parties (e.g. the nature of the defendants involvement in their hearing, conferrals between defence advocates and their clients, turn taking between parties); the outcomes of hearings (e.g. adjournment, punishment); defendants' reactions to outcomes; and any disruptions experienced during hearings (e.g. participant-initiated disruptions, issues with the video link). A record was also made of the length of each hearing¹², including the length of time associated with bench retirements (e.g., instances when the bench retires from the courtroom to consider an outcome). Free-text fieldnotes were taken to enable a more detailed description of events. These could be used to confirm the understanding of a given situation during instances where it was unclear how to code the data. Basic sketches of the layout of the courtroom were also made, including the positioning (framing) of the remote participants on the screen as they appeared in the courtroom. The sketches of the positioning of the remote participants on the screen were

¹² Hearing start times were generally identified as the point in time at which the legal advisor/court associate addressed the defendant. The conclusion of a hearing was identified as the point in time at which the legal advisor/court associate or chair of bench indicated the conclusion of the hearing.

particularly useful, as they helped to determine the quality of the framing of remote participants across the hearings.

Figure 1: SOS data collection fields



The data from the 631 observations of first appearance remand hearings made across three magistrates' court complexes between 15 May 2018 and 31 July 2019 were entered into an online survey tool (Qualtrics) which enabled the creation of a quantitative data file. Prior to analysis the data were cleaned for data input error, where necessary referring back to the original paper version of the SOS used in the fieldwork observations. During the data cleaning a total of two hearings were removed from the data set due to high levels of missing data (e.g. the hearing was adjourned during the Contact stage). The data were analysed (using SPSS version 24) via the use of descriptive statistics (e.g. cross-tabulations), with statistical tests of significance (t-tests) carried out on items such as rating scales of audio-visual quality. The results of statistical significance test should however be treated with caution and have been included to demonstrate indicative differences between the evaluation conditions or participants.

5.3.2 Semi-structured interviews

Semi-structured interviews were conducted with various stakeholders including participants involved in video court first appearance remand hearings at South Eastern Magistrates' Court, former defendants with experience of appearing in video court at South Eastern Magistrates' Court, as well as with individuals from various agencies within the criminal justice sector with a professional interest in the VEJ Programme.

The sample for the interviews with courtroom participants included magistrates and judges, legal advisors and court associates, prosecutors, defence advocates, probation officers, video court administrators and ushers. A total of 31 telephone interviews with courtroom professionals (magistrates/district judges; legal advisors/court associates; CPS prosecutors; defence advocates; probation officers; video court administrators; and ushers) were completed, with the interviews being broadly focussed around the experience of being involved in video court hearings. The topics addressed included: the main differences for each role in terms of appearing in video and non-video court; the impact on communication and preparation; the benefits and challenges of video court; disruptions and instances where technology impaired the functioning of the courtroom; prior training for video court; as well as views on the increased use of video court and the prospect of fully video/virtual courts. The interviews also focussed on elements specific to the VEJ Programme, considering: general awareness of the changes introduced by the VEJ Programme; perceptions towards the booking tool and its impact on roles; the training received in relation to the use of the booking tool; the performance of the technology (booking tool and audio-visual) during hearings and the extent to which the changes introduced by the VEJ Programme had addressed the challenges faced in video court.

Semi-structured face-to-face interviews were also conducted with former defendants who had previously been involved in video court hearings at South Eastern Magistrates' Court. These participants were recruited via the Community Rehabilitation Company (CRC) that covered the primary fieldwork area, with service users invited to participate in a brief interview about their experience of video court following their meeting with their probation officer. A total of five

defendants were recruited, with two participating in a formal interview and three accepting the invitation to participate in a conversation about their experiences in the video court, from which fieldnotes of the topics discussed were taken¹³. These interviews explored the experience of video court from the defendants' perspective but avoided going into any detail about the specifics of the individual's charges. The topics covered included whether any issues were experienced during hearings, the benefits of video court, the receipt of any guidance prior to the hearing, any additional support that would have been helpful, as well as a consideration of the adequacy of the consultation booths used.

A further 10 semi-structured telephone interviews were conducted with other stakeholders working across various criminal justice agencies with a professional interest in the VEJ Programme. The agencies represented in these interviews included senior officers from the police forces participating in the VEJ Programme, the Crown Prosecution Service (CPS), Her Majesty's Courts and Tribunal Service (HMCTS), Accenture (as Strategic Business Partner to the VEJ Programme this consultancy practice provided on-the-ground IT support during the 'technology drops' constituting the incremental stages of VEJ implementation, and interview topics were directed to this), as well as those acting on behalf of the judiciary. It should be noted that those selected for stakeholder interviews had either a direct role in the implementation of VEJ or a managerial role relating to the effectiveness of the courts. Accordingly, general opinions and attitudes about video courts or courtroom technology were not sought. Rather, stakeholder interview schedules focused on detailed operational matters at particular stages of the implementation of VEJ and/or the view of the effects of VEJ from the managerial standpoint. Analysis of these data was alert to the presence of accounts motivated by beliefs and/or attitudes not grounded in factual realities of the implementation and operation of VEJ (Deutscher, 1973) As well as exploring themes relevant to each stakeholder organisation, these interviews also helped to shape the interpretation of the observational data

¹³ Attempts to interview defendants immediately after video court hearings from police custody were also made. Two visits to police custody suites were made, however, none of the cases heard on those days satisfied the interview criteria (i.e., approval was not given to interview defendants involved in live/ongoing cases).

analysis. Information concerning the number of interviews conducted by each role can be found in Table 2.

Each of the interviews was professionally transcribed and checked for accuracy, after which the data were then entered into a qualitative data analysis package (maxQDA 2018). A modified form of Grounded Theory (Strauss and Corbin, 1998) was used to analyse the data, with the findings from these interviews used to help contextualise the relationships found in the observation data.

5.4 Number of completed observations

Table 1 shows the distribution of observed hearings across the different conditions. In total there were 631 observations of hearings, 354 within the two video court conditions and 277 within the two non-video court conditions. For purposes of comparison, between June 2018 and the end of March 2020, nearly 5,000 first appearance video remand hearings took place at South Eastern Magistrates' Court. Over the same time period a total of 10,792 First Appearance hearings took place across all the sites using the VEJ Programme's booking tool, with 7,270 being First Appearance Video Remand Hearings.

Table 1: Number of completed observations per condition

Condition ¹⁴		Total observations
Video court		
	Before-stage	
C1	Prior to the implementation of the booking tool (15 May 2018 to 16 October 2018)	195
	After-stage	
C2	Video links controlled by the booking tool (from 17 October 2018 to 31 July 2019)	159
	Video court total	354
Non-video court		
C3	Police bail denied (23 May 2018 to 27 August 2019)	145
C4	Police bail granted/postal requisition/summons (15 May 2018 to 15 August 2019)	132
	Non-video court total	277
	Grand total	631

¹⁴ An explanation of how each condition was constructed can be found in Section 5.2

Base: all observations

The Condition 1 before-stage includes hearings across two sub-conditions: hearings prior to the introduction of the booking tool (n=60); and hearings conducted during the period in which the booking tool's diary assistant feature¹⁵ was active but the video links between the courtroom and the custody suite video booth were still manually initiated by VCOs (n=135). Overall, there were n=195 before-stage observations (C1). Following the launch of the booking tool a total of n=159 observations of after-stage (C2) hearings were conducted.

The majority of non-video court observations were conducted in the condition where the defendant had been denied police bail (C3: n=145), whilst n=132 observations were conducted of hearings where the defendant had previously been granted police bail and/or appeared via a postal requisition or summons (C4).

5.5 Number of completed semi-structured interviews

A total of 46 interviews were conducted with the various stakeholders. This includes the parties involved in video remand hearings at South Eastern Magistrates Court (36), as well as 10 interviews with other stakeholders relevant to VEJ across the criminal justice sector.

Table 2: Number of completed user and stakeholder interviews

Role	Number of interviews
Magistrate/district Judge (MDJ)	6
Legal advisor/court associate (LALC)	6
CPS prosecutors (PR)	3
Defence advocates (DA)	6
Probation (PO)	2
Video court administrator (VCA)/usher (CU)	8
Defendants (x2 formal interviews, x3 informal conversations) (DEF)	5
Other stakeholders (police, judiciary, CPS, HMCTS, Accenture)	10
Total number of interviews	46

¹⁵ Diary management feature shared between custody and the court

6 Sample Characteristics

This section of the report provides an overview of the observation data, including the types of hearings and charges observed. The section concludes by considering the representativeness of the SOS data sample against Ministry of Justice (MOJ) Management Information provided for South Eastern Magistrates' Court, as well as Police Force Area (PFA) level data on offence and ethnicity profiles for South Eastern County and Southern County.

6.1 Types of hearings observed

Overall, the majority of observations were conducted in first appearance hearings (68.9%), however, the proportion of first appearance hearings observed between Condition 1 (70.8%) and Condition 2 (64.8%) decreased. Breach of bail hearings were more commonly observed in video court and in equal measure between Condition 1 (11.3%) and Condition 2 (11.9%). The proportion of breach offence hearings observed by the evaluation increased between the before (C1: 12.8%) and after (C2: 17.0%) stages, with this type of hearing most frequently observed in Condition 2. Sentencing hearings were more commonly observed in non-video court and most frequently in Condition 4.

A small number of other hearing types were also observed by the research team during the fieldwork observations; case management hearings (n=7), domestic violence protection order hearings (n=6), and 'other' hearing types (n=13), which includes instances where the fieldworkers were unable to ascertain the classification status of the hearing being observed.

The classification of hearing types was often self-evident, given the matters being put to the defendant and the process followed during the hearing. In the cases of breach offence and breach of bail hearings where there were further charges put to the defendant, a judgement call was made by the fieldwork researcher as to the appropriate classification of the hearing. This included making an assessment of the 'index' offence for which the defendant was appearing in court that day.

Table 3: Types of hearing observed

	C1: VC: 'before'	C2: VC: 'after'	C3: NVC (police bail denied)	C4: NVC (police bail granted)	Total
First appearance	138	103	108	86	435
	70.8%	64.8%	74.5%	65.2%	68.9%
Breach offence	25	27	11	15	78
	12.8%	17.0%	7.6%	11.4%	12.4%
Breach of bail	22	19	7	0	48
	11.3%	11.9%	4.8%	0.0%	7.6%
Sentencing hearing	9	5	11	19	44
	4.6%	3.1%	7.6%	14.4%	7.0%
Case management	0	1	3	3	7
	0.0%	0.6%	2.1%	2.3%	1.1%
Domestic Violence Protection Order (DVPO)	0	0	1	5	6
	0.0%	0.0%	0.7%	3.8%	1.0%
Other hearing type	1	4	4	4	13
	0.5%	2.5%	2.8%	3.0%	2.1%
Total	195	159	145	132	631
	100.0%	100.0%	100.0%	100.0%	100.0%

Base: all observations

6.2 Type and number of charges dealt with during hearings

A record was made of each charge or matter (e.g. breach of bail) put to defendants. This included a description of the offence (e.g. drug offences), the type of offence (e.g. summary, either-way, indictable only), as well as the plea entered. Where possible, the description of the offence was used to align the observation data (e.g. offence type and group) with Ministry of Justice Offence Group Classifications¹⁶. Due to low numbers of recorded incidences of certain charges we have grouped together 'violence against the person', 'sexual offences' and 'robbery' into a single 'violence' category (a grouping often used for broad comparison of offence types). In total, information about the charges or matters put to defendants was recorded in 614 hearings, with data collected on 1,365 charges or matters. The figures presented in Table 4 indicate the number and proportion of charges/matters put to the defendant per condition. The data presented here provide a profile of the distribution of business between the courts under comparison during the fieldwork.

¹⁶ Source: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2018>

Overall, the most frequently observed charge was theft offences. Theft offences were more frequently observed in the non-video court condition where police bail had been denied (C3: 25.7%), whilst the proportion of theft offence charges decreased in the hearings observed after the introduction of the booking tool (C1: 21.5%; C2: 14.5%). The proportion of 'violence' offences observed increased after the introduction of the booking tool (C1: 7.5%; C2: 16.6%) and this appears to be driven by a higher proportion of violence against the person (C1: 7.3%; C2: 13.3%) and sexual offence (C1: 0.0%; C2: 3.0%) charges observed at the after stage. The data also indicate that the proportion of summary non-motoring charges (C1: 2.5%; C2: 7.5%) and breach offences (C1: 8.3%; C2: 11.4%) was higher in the hearings observed at the after stage, whilst the proportion of drug offence charges decreased (C1: 8.5%; C2: 1.5%).

Whilst we imply no direct link between the implementation of the GTL tool and the offences observed, it is possible that change to the criteria used to determine the suitability of defendants for video court could account for the decrease in drug offence charges in the after-stage observation data. As wider reliance on video court proceeds our understanding of its impact should take account of developing understandings of vulnerabilities and their place in determinations of suitability. At the time of this evaluation it would be fair to say that there remained variation and uncertainty in such determinations.

It remains unclear why the profile of charges put to the defendant should vary, particularly between Conditions 1 and 2. Acknowledging the potential for random error in our observations, possible sources of systematic error include changes associated with local police remand processes implemented in January 2019 (e.g., each application for police remand had to be signed off by a senior police officer), as well as a revision of the guidance surrounding the use of video court, including the criteria used to determine whether a defendant is suitable for video court. Further consideration of the differences between the observation data and police recorded crime by offence group can be found in Section 6.4.2.

Table 4: Types of charges/matters put to the defendant

	C1: VC: 'before'	C2: VC: 'after'	C3: NVC (police bail denied)	C4: NVC (police bail granted)	Total
Theft offences	86	48	96	23	253
	21.5%	14.5%	25.7%	11.0%	
Summary non-motoring	76	59	69	31	235
	19.0%	17.8%	18.4%	14.8%	
Violence (incl. violence against the person, sexual offences, robbery)	30	55	38	17	140
	7.5%	16.6%	10.2%	8.1%	
Summary motoring	10	25	31	57	123
	2.5%	7.5%	8.3%	27.1%	
Breach offence	33	38	22	21	114
	8.3%	11.4%	5.9%	10.0%	
Miscellaneous crimes against society	39	31	31	5	106
	9.8%	9.3%	8.3%	2.4%	
Criminal damage and arson	31	29	26	10	96
	7.8%	8.7%	7.0%	4.8%	
Drug offences	34	5	17	11	67
	8.5%	1.5%	4.5%	5.2%	
Public order offences	16	14	14	5	49
	4.0%	4.2%	3.7%	2.4%	
Possession of weapons	6	12	7	8	33
	1.5%	3.6%	1.9%	3.8%	
Fraud offences	12	4	3	10	29
	3.0%	1.2%	0.8%	4.8%	
Other (incl. unknown, missing and not applicable)	27	12	20	12	71
	6.8%	3.6%	5.3%	5.7%	
Total (excl. breach of bail)	400	332	374	210	1316
Breach of bail	22	19	8	0	49
	5.2%	5.4%	2.1%	0.0%	
Total (incl. breach of bail)	422	351	382	210	1365

Base: all hearings where a charge/matter was recorded (hearings could involve multiple charges, percentage figures based on number of charges/matters put to the defendant)

On average, perhaps reflecting the more serious nature of the hearings, the number of charges or matters put to the defendant per hearing was higher in the conditions where bail had been denied. There was a small increase in the number of charges/matters put to the defendant per hearing in the video court between Condition 1 (mean = 2.12) and Condition 2 (mean = 2.19). In non-video court, on average 2.61 charges/matters were put to the defendant in the condition where bail had been denied (C3), whilst 1.59 charges/matters per hearing were put to defendants in hearings where bail had been granted (C4).

To examine the comparability between the video and non-video conditions we also assessed whether the defendant entered a guilty plea to all matters at the earliest possible opportunity. This assessment was often made when a guilty plea was entered for each charge dealt with by the court during that hearing and the bench indicated credit for an early guilty plea. Overall, there was little variation in terms of the proportion of defendants entering early guilty pleas between the conditions where bail had been denied (C1: 68.2%; C2: 66.7%; C3: 68.0%). The proportion of defendants entering an early guilty plea was highest in the non-video court where bail had been denied (C4: 83.8%). However, the observation data for this condition contains a high number of hearings observed in the Guilty Anticipated Plea (GAP) court meaning the higher guilty plea rate is to be expected.

In video court, where it was possible to classify hearing case type (summary, either-way, indictable only) for an observation (C1: n=142; C2: n=110; C3: n=121; C4: 103), we see a decrease in the proportion of summary cases (C1: 31.0%; C2: 24.5%; C3: 32.2%; C4: 57.3%) and an increase in either-way (C1: 59.2%; C2: 61.8%; C3: 54.5%; C4: 42.7%) and indictable only cases (C1: 9.9%; C2: 13.6%; C3: 13.2%; C4: 0.0%) in video court at the after stage. Equally, in video court we recorded a decrease in the proportion of hearings where it was recorded that the bench accepted jurisdiction between the before (C1: 62.1%) and after (C2: 56.1%) stages (C3: 66.1%; C4: 86.2%). One theory might be that the added scrutiny of the VEJ Programme resulted in benches being reluctant to accept jurisdiction of more serious cases held in video court, where prior to the booking tool they might have done so. Hearing case type is discussed in more detail in Section 6.4.1.

6.3 Hearing length

Overall, there was no difference in terms of the overall length of hearings between those in video court at the after-stage facilitated by the booking tool and those observed at the before-stage. It would thus appear that hearings making use of the booking tool are comparable to the norms familiar to courtroom professionals in their existing practice in video courts. Moreover, before and after-stage hearings were on average shorter than hearings conducted in non-video

court where police bail had been denied (Table 5), which is again as one would expect in that the latter hearings are of cases that on the face of it are more serious.

Some differences in terms of hearing length by hearing type were identified within the evaluation conditions. On average, the hearing length of after-stage first appearance hearings (C2: mean = 18 minutes) was longer than for the before-stage (C1: mean = 17 minutes). Breach of bail hearings also took longer to complete during hearings observed at the after-stage, however, there is evidence to suggest that this hearing type took less time in the video court (C1: mean = 14 minutes; C2: mean = 17 minutes) than compared to the non-video court condition where police bail had been denied (C3: mean = 30 minutes). Finally, breach offence hearings were shorter for hearings observed after the introduction of the booking tool and took more time to complete in non-video court. In the later sections we consider the impact of other features of hearings e.g., missing paperwork, on hearing length.

Table 5 Average hearing length (minutes)

	C1: VC: 'before'	C2: VC: 'after'	C3: NVC (police bail denied)	C4: NVC (police bail granted)
All hearings				
Minutes (mean)	16	16	22	17
Minutes (median)	15	15	16	15
Sample size (n)	190	155	142	130
First appearance				
Minutes (mean)	17	18	22	15
Minutes (median)	15	17	16	13
Sample size (n)	135	100	107	84
Breach of bail				
Minutes (mean)	14	17	30	N/A
Minutes (median)	14	15	25	N/A
Sample size (n)	20	18	7	0
Breach offence				
Minutes (mean)	15	12	15	17
Minutes (median)	12	09	13	16
Sample size (n)	25	27	10	15

Base: all hearings/all first appearance hearings/all breach of bail hearings/all breach offence hearings.

6.4 Sample representativeness

6.4.1 Ministry of Justice Management Information

To assess the representativeness of the South Eastern Magistrates' Court observation sample, comparative analysis of MOJ MI against the SOS data was undertaken for the third and fourth quarter of 2018 and the first quarter of 2019. The areas assessed include: the proportion of cases completed in one hearing; the types of cases dealt with (summary, triable either-way (TEW), and indictable only (IO)); plea at first hearing; and time from offence/charge to first appearance.

SOS data was configured to correspond as closely as possible to MOJ MI, however, there are a number of caveats that need to be taken into consideration when making comparisons between the two datasets. MOJ MI does not enable a distinction to be made between video and non-video hearings (a lacuna that we understand has lately been addressed), therefore the SOS data for South Eastern Magistrates' Court from these two mediums of hearing have been combined for the comparison to MI data. The SOS data also contains a high proportion of first appearance remand hearings conducted in video court and as a consequence may not reflect the broader nature of the business the court deals with. Furthermore, it was not always possible to replicate the counting procedures employed in the MOJ MI. Where this is the case, we have outlined the procedure used in the SOS data.

Overall, there were similarities between the SOS data sample and the MOJ MI for South Eastern Magistrates' Court in relation to the proportion of cases completed in one hearing, as well as the types of cases dealt with. SOS data were less reflective of MOJ MI in relation to plea at first hearing and time from offence/charge to first appearance. Further detail on this analysis can be found in Section 12.2 of the appendix.

6.4.2 Police recorded crime and offences

Another pole of comparison for the purpose of determining the representativeness of observed hearings relative to those prevailing in the relevant police forces and courts was statistics on police recorded crime. Analysis of police recorded crime by offence group (rate per 1,000 population) for Southern and South Eastern police force areas (PFA) for the year ending

September 2019 reveals certain differences in terms of the pattern of offences recorded in the evaluation conditions and the data reported at the PFA level¹⁷.

Theft, criminal damage and arson, possession of weapon and public order offences were more frequently recorded in South Eastern PFA data than in Southern PFA data, and these offence type were more frequently recorded in the observation data for South Eastern Magistrates' Court than Southern Magistrates' Court A. Violence against the person offences were more frequently recorded in the South Eastern PFA data than in Southern PFA data, however, this offence type was recorded more frequently in the observation data collected at Southern Magistrates' Court A. Finally, drug offences were more frequently recorded in the Southern PFA data, but were recorded more frequently in the observation data for South Eastern Magistrates' Court. A full description of the differences between the recorded offences and the PFA data can be found in the appendix (see Section 12.3). Thus, compared to our non-video court comparator, South Eastern Magistrates' Court sees substantially more violence, criminal damage, miscellaneous crimes against society, summary non-motoring and breach matters but fewer theft, and fewer summary motoring cases.

In broad terms the comparison between our sample and the PFA data indicates a considerable degree of consistency in the case mix of video hearings held at South Eastern Magistrates' Court and our non-video comparator courts. These courts' case mix varies little with the exception of summary motoring offences. The overall picture is that, regardless of whether they are conducted via video or face-to-face, bail-denied courts deal with the more serious cases.

Collectively, these courts heard a mix of cases that was constituted of fewer serious cases compared to the proportion of serious offences recorded by the police for the region these courts serve. This may be due to reasons of geography and population distribution, with the region in which South Eastern Magistrates' Court is located having a border with a major city. A

¹⁷ Source: Crime in England and Wales, year ending September 2019 – PFA tables (<https://www.ons.gov.uk/file?uri=%2fpeoplepopulationandcommunity%2fcrimeandjustice%2fdatasets%2fpolicforceareadatable%2fyearendingseptember2019/policeforceareatablesyearendingseptember2019.xlsx>)

large share of the region's population lives in that part of the region and suspected offences committed in that area may be heard at courts in the area of the major city that abuts the region in which South Eastern Magistrates' Court is located.

6.4.3 Demographic profile of defendants

Analysis of police workforce data also enabled an appraisal to be made between the SOS data and PFA-level data in terms of ethnicity¹⁸. Overall, the proportion of hearings involving defendants who had their ethnicity recorded as Asian, Black, Mixed, or Other was higher in the observations conducted at Southern Magistrates' Court A (17.2%) than compared to South Eastern Magistrates' Court (13.7%). This relationship resembles the data on ethnicity recorded at the PFA-level, where 2011 Census data quoted in police workforce statistics for 2019 reports that 9.7% of the population in Southern PFA and 6.9% of the population in South Eastern PFA had reported their ethnicity as non-White. The impact of ethnicity on outcomes between video and non-video hearings is discussed in section 9.4.

Defendants in hearings conducted at Southern Magistrates' Court A were more likely to be male (91.3%) compared to South Eastern Magistrates' Court (85.9%). There was also evidence of a wider age profile of defendants observed at Southern Magistrates' Court A, with 19.2% aged 18-24 years old and 6.8% aged 55 years or older, compared to 17.8% and 4.6% of defendants aged 18-24 and 55 years or older respectively at South Eastern Magistrates' Court. Variation by demographic profile of defendants at the sampled courts is considered in analysing patterns in the use of the video medium for hearings.

7 The VEJ Programme: implementing a booking tool

This section of the report considers the impact of the introduction of the booking tool at South Eastern Magistrates' Court, including the impact of any training; the changes in relation to courtroom processes brought about by the introduction of the booking tool; as well as

¹⁸ Source: Police workforce statistics (published 4 October 2019), table 4: By ethnicity and area (police officers) (<https://www.ethnicity-facts-figures.service.gov.uk/workforce-and-business/workforce-diversity/police-workforce/latest>)

unintended consequences associated with the booking tool, such as the perceived loss of control of the court listings process discussed by some participants.

7.1 Training for video court hearings

Interview participants seldom reported receiving any formal training on how to conduct video remand hearings. If received, training for video court was typically delivered ‘on-the-job’ by colleagues and covered the technical aspects relating to using the video equipment, or procedural matters such as how to address defendants. There was no evidence to suggest that participants had received any training on how to communicate in video hearings (e.g., 105_LACA), with one defence advocate remarking that insufficient consideration had been given to the possible implications of dealing with hearings via the video link,

“I don’t think there has been adequate training to deal with all the issues which arise from video link hearings... it’s been very much practical, the procedure bits, rather than other implications of dealing with cases on a video link” (125_DA)

Whilst the implementation of the booking tool is a relatively modest innovation, the VEJ Programme has placed processes associated with the video court at South Eastern Magistrates’ Court under increased scrutiny. Many of these local processes have developed over time and will need to be reviewed as the use of video evolves.

Limited training with respect to the conduct of video court hearings may be apparent in terms of the overall framing quality ratings recorded for defence advocates appearing from remote locations reported in Section 8.6.1 (C1: mean = 2.45; C2: mean = 2.51). These ratings were generally lower than those recorded for defendants (C1: mean = 2.59; C2: 2.61), with defence advocates far more likely to be observed as having their face partially or fully obscured (see Table 19). It is possible that defence advocates’ lack of familiarity with the technology, insufficient guidance from custody staff on how to use the equipment, or lack of formal training may have led to the differences observed between the ratings for defendants and defence advocates. Section 8.1 considers the guidance given to defendants.

A number of participants recalled their experiences of video court with respect to Live Link hearings (i.e. video links to connect police officers to court to give testimony). However, it was acknowledged that the appearance of professional witnesses (e.g., the police) over the link was intrinsically different to that of defendants. Despite minimal formal training, legal advisors and magistrates recognised the importance of personal experience with regards to appearing in the video court, particularly with respect to learning to predict trends in the behaviour of defendants,

“...I think you’re not prepared, for example, other than your own mindset, for defendants to behave differently. I think that comes with experience. You start to spot trends in behaviour. But otherwise, no, I don’t think you really are given any sort of heads up on what to expect. I think it’s just, you know, go in, do what you would normally do and try and pretend it’s no different.” (127_MDJ)

In addition to more training concerning communicating during video hearings, interview participants indicated that they felt they would benefit from further training on the broader processes associated with the video court, including a better understanding of how custody operates. Concerns emanating from courtroom professionals about the conduct of video hearings further highlight the importance of the guidance given to defendants prior to video hearings e.g. how to position themselves in front of the camera, how to address the court etc.

7.2 Training with respect to the booking tool.

With the exception of video court administrators and ushers, whose roles centred around the use of the booking tool, participants spoke of receiving limited training with regards to the use of the booking tool. Where training was mentioned, its focus was technical in nature e.g., how to log in to, and navigate around, the software. Few spoke of the need for any additional training.

The majority of video court administrators and ushers reported receiving training in the use of the booking tool, with attitudes towards the training received broadly positive. The exercises conducted during the training days were deemed to be helpful, although some commented that experience of using the booking tool during live hearings was vital. Suggestions for further

training included participation in mock hearings inside the courtroom, additional assistance with other pieces of software such as Skype®, as well as guidance on how to deal with errors. Participants also indicated a desire to receive additional training on the booking tool, particularly as its functionality develops.

7.3 Communication of updates to the booking tool

Video court administrators and ushers reported that changes to the appearance and functionality of the booking tool were made during the early stages of the rollout without prior communication, with one such example relating to the process of moving video links from the Video Waiting Area to the courtroom. These incidents appear to have had little impact on hearings and were resolved with minimal delay. One of the concerns cited by this user group was the amount of email communication concerning the booking tool and the VEJ Programme, as this could make updates specific to the functionality of the tool difficult to find. Advanced notice of changes to the booking tool would be desirable, as they would avoid instances where users are confronted with unfamiliar screens or processes immediately prior to a court session. The extent to which these issues experienced by video court administrators and ushers are also experienced by custody staff at remote custody suites would help provide a fuller picture of improvements that could be made when more widely rolling out case scheduling software.

7.4 The changeover to video court administrators and ushers

The introduction of the booking tool saw the creation of a new role associated with the video court listing process: 'video court administrators' (VCA), as well as the reintroduction of ushers into the video court. These two roles took over the responsibility for administering the video court listing process previously carried out by a South Eastern Police resource. Whilst there was some recognition, particularly from legal advisors, of the increased level of judicial control over the listing process, the removal of the police resource from the courtroom also had implications in terms of established work practices and access to certain information. The removal of the police resource from the courtroom introduced new points of contact when attempting to locate information,

“... it might be something we needed to prove a breach of bail, whereas now we’re trying to liaise with the Criminal Justice Unit which we can’t always get in contact with, so it makes things a lot more difficult sometimes managing a case.” (120_PR)

There was some evidence in the interviews to suggest that the changeover to video court administrators and ushers had felt abrupt, disrupting established working patterns, and that a smoother transition could have been facilitated by a longer handover period. Given the short transition period, those appointed to the new roles took time to build the necessary knowledge and experience around the inner workings of a live courtroom. This had the potential to introduce minor delays to proceedings, as ushers would often need to check information before updating the court. Video court administrators and ushers recognised these concerns and demonstrated a desire for a more complete understanding of the court system in the hope that they could play a fuller role in the process,

“I think a little bit more of an overall view of how the other parts of it work might be beneficial, in terms of how custody have to deal with things etc. But at the moment, I’m a bit of a middleman and the less questions we have to bother people, because we have that knowledge, would be helpful.” (108_VCA)

Despite these challenges, there was evidence in the interviews to suggest that the introduction of video court administrators and ushers had had a positive effect on the courtroom environment. Primary responsibility for liaising with police custody and the other parties involved in video court cases was transferred away from the courtroom and this reduced the amount of disruption that had previously been experienced with the virtual court officers who frequently had to leave the court to make and receive phone calls,

“I personally didn’t like the disruption, didn’t like the person going in and out of court on their phone, I thought that was unprofessional and disruptive...” (109_LACA)

In addition to a “calmer” and “more dignified environment” (e.g. 105_LACA), there was also evidence to suggest that interview participants regarded the introduction of the new HMCTS resources as an improvement compared to the old system,

“...now it is much slicker. I’m guessing that the software or whatever it is in the back office where they’re all doing the work behind the scenes is better, whereas before from what I could see it was someone making phone calls and if someone didn’t answer the phone or they weren’t there then you couldn’t get the link set up.”
(128_MDJ)

Although not a feature of the booking tool, the ability to communicate with parties outside the courtroom was of benefit to ushers as it enabled the expedient passing of information to police custody officers via the video court administrator. Through their oversight of the list, ushers recognised the role they could play in ensuring that all parties had the necessary information to proceed before the start of their hearing, “we can get the court ready before we actually hear the hearing.” (119_CU) These changes appeared to have tangible benefits in the courtroom, where magistrates felt there was improved coordination of the cases on the list,

“It certainly improved things because they [ushers] seemed to be much more aware of where to go to next and they are gathering all of the information, so they know which advocate you're seeing, which person, and when they're ready to come into court.”
(130_MDJ)

Recognition was given towards the new roles and processes introduced to support the functioning of the booking tool within the listing process. These were seen as helping to improve the level of coordination, reduce delays and potentially to create a better experience of justice for defendants. Referring to the work carried out by video court administrators and ushers,

“...the video court administrators that sit in that room outside and the court clerk and the police are, you know, talking remotely electronically to make sure that one case finishes, the next one’s ready, and that’s how it’s supposed to work, and when it does, there’s no doubt it creates a better experience for justice.” (127_MDJ)

7.5 Impact on of the booking tool on courtroom processes

In general, once participants became acclimatised to it, the booking tool had relatively modest effects on the listing process and wider courtroom procedures. Participants approached their

roles in court in the same way, whilst there was little evidence to suggest that the booking tool had any effect on the way hearings were conducted in terms of procedure. Overall, the tool helped to provide improved oversight of the cases on the list compared to video hearings without the tool. This was particularly useful with regards to extra cases added to the list during the day e.g., warrants, although legal advisors raised separate concerns about the reduced level of control they felt they now had over the listing process (see Section 7.6). Other user groups reported the benefits to their roles provided by the booking tool. For instance, probation officers remarked that the booking tool provided them with information about the day's listing earlier than would have been provided in traditional list/bail courts. This was useful in enabling any pre-hearing checks they might need to conduct. Similarly, prosecutors could use the booking tool to gain advanced knowledge of the cases due to be heard in court the following day and begin their preparations,

“the main benefit of the tool for me is that I can go into it any time, even if I’m in the virtual court on the Monday, I can pop in quickly Sunday evening and it gives me an idea who’s in custody, who’s up for review, how many we’ll likely be having that next day. I can also look first thing in the morning before I leave for court and then again I know roughly what we’re going to be starting off with, what sort of cases I’ve got, that is really, really, really useful and it’s also very useful being able to look through the day if you’ve got time, to see what else is coming through. So you’re prepared if possible for more cases coming onto the pending list. That’s the best aspect I can think of it.”
(120_PR).

Whilst the booking tool provided up to date information on the list, there was less evidence to suggest that it had provided parties with any more certainty as to when their case would be heard. Legal advisors and benches customarily seek to prioritise certain cases when managing the list and take into account time limits when calling a case on, and there has always been a measure of uncertainty in when a particular case will be listed in the remand court. Participants raised a number of challenges associated with the listing process in the video court, many of which existed prior to the installation of the booking tool and reflected resource and infrastructure constraints. Examples of the types of challenges cited by participants include

concerns around technology infrastructure (e.g. equipment quality, wireless internet access, number of video booths) and staff resourcing (e.g. the number of video court designated detention officers). Owing to the enhanced scrutiny the first appearance remand process was placed under, many of these challenges were addressed during the delivery of the VEJ Programme. For instance, investments in the court infrastructure were made after the installation of the booking tool, including upgrades to the court's wireless internet service and audio-visual technology. In custody suites, additional video court designated detention officers were recruited. The introduction of the booking tool also coincided with other changes to processes, such as those associated with Digital Mark-Up (DMU), which increased the burden on legal advisors. Where relevant, attention has been drawn to these features as they impact on the listing process, although no weight is placed upon their significance in terms of the functioning of the booking tool. The point they do make, though, is the need for a comprehensive view of court infrastructure when planning resource allocation for any wider roll-out.

Participants recognised the prospective benefits of the booking tool in video court, including the potential for a "more streamlined and efficient day" (127_MDJ). However, dealing with cases involving defendants appearing from different custody suites across the county introduced complexities into the court's listing process not present in traditional list/bail courts and these could lead to delays. Delays were often experienced because of an insufficient number of video booths, with many remote locations fielding a single video booth. This meant that it was often not possible to hold either a consultation or interview and a video remand hearing at the same time from the same custody suite. The pressure for time on the video link resulted in the need to balance the opportunities afforded to defence advocates and probation officers to conduct consultations and interviews with defendants alongside the need to minimise downtime in the courtroom. This presented a significant challenge to the listing process and importance was placed upon the need to have cases "stacked up" and "ready to go" (131_MDJ) to ensure the efficient running of the court.

At the conclusion of each hearing a record was made of the activities that immediately followed inside the courtroom, including whether there was a delay before the next hearing was ready to proceed. Factoring out instances where the court session ended (e.g., for lunch), the observations recorded an increase in the number of delays between hearings following the introduction of the booking tool (C1: 25.5%; C2: 50.0%). The reason for the sharp increase in delays to proceedings between the before and after stages in video court is unclear, although we find evidence to suggest that the efficiency of the listing process could be influenced by a series of other factors (see Section 7.8). Problems with the booking tool or other technology seldom led to these delays.

Table 6: Courtroom activities immediately following an observed hearing

	C1: VC: 'before'	C2: VC: 'after'	C3: NVC (police bail denied)	C4: NVC (police bail granted)	Total
Delay/no case was ready to be heard	38	63	30	15	146
	25.5%	50.0%	25.6%	15.5%	29.9%
Hearing followed soon after	111	63	87	82	343
	74.5%	50.0%	74.4%	84.5%	70.1%
Total	149	126	117	97	489

Base: all hearings (excludes missing data and instances where the court session finished for lunch/the end of the day)

The introduction of the booking tool removed the process of manually dialling custody suites and other remote locations prior to the start of each hearing. Instead, the video links to the remote locations involved in hearings were established ahead of time and placed in a Video Waiting Room¹⁹. Pre-establishing the links between the remote parties involved in cases enabled the video court administrators to quickly transfer parties from the Video Waiting Area to the courtroom. Magistrates felt that this process was an improvement on the manual dialling process previously used (e.g., 127_MDJ), which could lead to delays due to unfamiliarity with the technology, technical difficulties establishing a connection, or uncertainty as to the correct number to dial via the remote control in the courtroom. Reflecting on the changes in process introduced around the booking tool one magistrate remarked, “I think the links are established much quicker or ahead of the game so when it comes into court it’s ready to go” (128_MDJ).

7.6 Uncertainty and loss of control over the listing process

There was a perception that the introduction of the booking tool had shifted control of the listing process away from legal advisors, whilst defence advocates who had experience of appearing from remote locations relayed concerns that advocates appearing from the courtroom had an advantage in terms of having their cases heard first.

In contrast to traditional list/bail courts, legal advisors indicated that they felt they had lost some degree of control over the listing process in video court. Hearings could involve one or

¹⁹ The Video Waiting Room did not enable communication between the different parties appearing from separate remote locations.

more remote parties and this introduced challenges in terms of physical oversight the legal advisor had over of the individuals involved in hearings. Delays concerning the identities of the defence advocates, as well as the remote locations they were to appear from (if relevant), also caused complications when attempting to determine the running of cases in the list. The limited number of custody suite video booths available at each location meant that those managing the video court's list tried to avoid holding consecutive hearings from the same location, as doing so could prevent a consultation from taking place. This meant that concerns other than case readiness had an impact on when a case could be heard, highlighting the importance of ensuring there is adequate infrastructure in place to support the processes associated with listing in the video court (e.g. see Sections 7.7 and 7.8).

The introduction of the booking tool increased the reliance legal advisors placed upon receiving updates concerning the readiness of cases from ushers. However, the involvement of different members of staff in relation to the queuing of cases via the booking tool introduced further concerns regarding the risks associated with time-sensitive matters e.g., breach of bail, as legal advisors had less oversight of the prioritisation of cases,

“...we have different members of staff that are queuing the cases on, it may be that those that are dealing with that system don't understand the time sensitivities or the legalities of cases, so things may not be prioritised in the right order, because we're very much at the mercy of other agencies really to make those decisions now ...”
(105_LACA)

Suggestions for improvements to the booking tool included the use of pop-up notifications to alert the court to new cases added to the list. Such notifications could also be used to provide reminders about time-sensitive matters, such as breaches, or to give real-time updates on delays to cases.

The complexities of the listing process in video court introduced complications into the listing process that were either less evident or non-existent in traditional list/bail courts. One particular area of concern related to the pre-hearing consultations between defence advocates and their clients and the progression of cases towards case readiness,

“I’m not in physical control of which lawyer has seen which client. When people are ready, what the stage is, when people have been contacted. Have they had a consultation? So, that is a little bit frustrating.” (113_LACA)

Issues originating outside the courtroom, such as the availability of custody suite video booths and considerations regarding custody staffing and safety requirements were also perceived as having an impact on the ability of the court to call on cases. These issues were not present in traditional list/bail courts where defendants are transported to the courthouse from police custody,

“If you’ve got a lawyer in consultation with somebody at a particular venue, that then means we cannot connect to the Court, at that venue, for another prisoner. So, in that regard, it is a little bit frustrating, and it’s a little bit out of our hands and control.” (113_LACA)

The additional complexities associated with the listing process in video court were to some extent exacerbated, at least in the short-term, by the new processes introduced in relation to Digital Mark-Up (DMU). This was seen by legal advisors as having a more significant impact on their role in court as it could have an effect on how quickly cases could be completed after hearings (e.g. 105_LACA). This additional responsibility meant that to some extent legal advisors were increasingly reliant upon the ushers to provide them with verbal updates on the progress of cases, a fact that was not lost on ushers e.g., “...the clerk always looks to me for direction and I can advise them about which cases we can move forward with...” (107_CU). Concerns regarding the progression of cases within the listing process were not restricted to legal advisors and effective communication between video court administrators and usher was essential in terms of keeping the court updated on the readiness of cases.

Issues regarding the ordering of cases in the list were also of concern to others involved in video remand hearings such as probation officers, who often found it challenging to conduct pre-sentence reviews with defendants over the link due to video booth availability, as well as prosecutors, who found advance notice of the ordering of hearings important when preparing for complex cases. Prosecutors said that they would often prepare for a hearing in anticipation

that the case would be called next only to find that the video suite booth at the remote location was in use for a consultation. This would often mean the court would take the next available case and this may be one that the prosecutor has yet to prepare for,

“...if you’ve got several difficult cases, which quite often you can do, you will tend to concentrate on looking at those first of all... you need to prepare those obviously more carefully and then you’ve got the case ready they go to call it on and, “Oh no can’t do that case now, so and so’s in consultation now.” And they go to a case that you haven’t looked at. So, it is really frustrating and again it gets very stressful.” (120_PR)

It was suggested that the ‘batching’ of cases, particularly on days where there was a busy list, could be helpful. The ‘batching’ of cases was regarded as being particularly helpful for prosecutors, as it would help towards preparations for upcoming hearings.

Defence advocates, who at the time of their interviews did not have access to the booking tool, also relayed concerns about the ordering of cases within the listing process for the video court. Particular concerns were raised by those who had experience of appearing in video court from remote locations, such as police custody suites, who reported experiencing long waiting times to have their cases heard. This promoted a concern that defence advocates appearing from outside the courtroom were at a disadvantage, as they were unable to speak directly to legal advisors and ushers to indicate their readiness and could therefore lose their place in the queue. In general, defence advocates indicated that they would have liked to have played an active part in the development of the booking tool. Suggestions for improvements to the listing process from those appearing from remote locations included greater certainty over the ordering of cases, including allocated time slots for hearings. Although there was evidence that the court is given some advanced notice of the next case to be heard it is likely that uncertainty in the listing process, due in part to existing resource and infrastructure constraints, could prevent ushers and video court administrators from being able to provide advance notice of the running order of cases.

Reduced travel was an important benefit of video court discussed by participants across a number of different roles. However, appearing from remote locations also introduced other

complications. For instance, long waiting times in police custody had financial implications for defence advocates, who often also reported being unable to access the internet to prepare other work. When appearing in person defence advocates can sometimes progress other matters, such as those relating to NGAP cases or sentencing, while waiting. Issues with internet access in custody suites meant that defence advocates also found it difficult to receive papers for cases that had not previously been sent and downloaded prior to traveling to the video booth location. Defence advocates also relayed further concerns about their experiences of representing defendants when one or both appeared in court via the video link (see Section 8). Concerns about waiting times were also raised by former defendants, “...I’ve had it before where it’s not been quite swift...” (007_DEF), suggesting that there is some degree of variability in terms of the amount of time defendants have to wait for their hearings to be called on. This defendant would later express a view that having a traditional in person hearing should be a fundamental, “...I think people should have their right to, if they want, to be sitting here [in the courtroom]”. (007_DEF). These concerns represent a significant consideration in respect of satisfying criteria of perceived fairness of the justice process.

A further concern regarding the listing process in video court related to the number of cases that could be added during the day, “...the listing element is a little bit out of our control, and the number of prisoners. It’s a rolling list. And that can cause ... some pressure as well.” (113_LACA). Busy lists made it difficult to prepare for hearings, particularly when new cases were added to the list,

“...once court has started it's very difficult for the prosecutor to prep a file properly, if you're in the middle of court and you're dealing with other cases. So, I think they need to put a limit on it really, so at least you know in the morning how many cases you've got to deal with, how many you've got to read.” (122_PR)

Therefore, whilst the booking tool provided improved oversight of the cases added to the list, some suggested there needed to be a limit on the number that the court could be expected to hear in a single day. Busy lists could result in late working and there was a perception that the functioning of the court to some extent relied upon the goodwill of courtroom professionals. To

that extent, it was common to see legal advisors from other courtrooms offer to take cases away from the video court on days when it had a busy list.

7.7 Booking tool functionality, issues and failures

Video court administrators and ushers did report experiencing issues with the functionality of the booking tool. Users also experienced failures when connecting and disconnecting from video endpoints, as well as problems moving remote parties from the Video Waiting Room to the courtroom in hearings involving more than one video link. The functionality of the tool was interrupted by failures associated with the courthouse's wireless internet, which was, however, upgraded during the life of the VEJ Programme as a result of problems revealed by the introduction of the booking tool (and not all such problems related to connectivity; see section 8.6 for discussion of AV issues). Unless there was a total failure of the communication system, users of the tool were able to use workarounds to continue hearing cases (e.g. manual dialling in to police custody suites). However, these came with additional administrative burden, with users recognising the cumulative effects of minor delays within the listing process.

As a web-based application, users were required to manually refresh the various pages contained within the tool to receive updated information. However, this also had the effect of resetting the pages to their default settings, therefore requiring users to reset the parameters and filters on each page. Automatic page refreshing, or the ability to save page settings, would increase efficiency when using the tool. There was also limited evidence to suggest that users experienced delays migrating between the three main pages used within the tool i.e., the session summary; the pending list; and the video controller. As a workaround, users reported opening these pages on three separate tabs in order to increase the speed at which they could navigate between the main pages.

Problems could also be experienced when attempting to link with endpoints, or when attempting to move parties from the Video Waiting Room to the live court session. However, this issue appeared to be restricted to hearings involving more than one remote party. Issues establishing links with endpoints could be resolved by users of the tool via workarounds, although this required video court administrators to log-out of the system so that the usher

could establish the links using manual dialling and incurred additional administrative burden for court staff (e.g., recording start and end times),

“We had a couple of cases whereby we had the defendant at one police station, we had a solicitor who appeared remotely at another court... and the VCA up in the back office had to disconnect completely and I had to do a manual dial in to the multi room and because of the problems with the system we had problems linking everybody up.”

(115_CU-VCA)

Users of the booking tool also reported experiencing issues when attempting to disconnect from endpoints at the conclusion of a hearing. This could lead to situations where defendants remained connected to the courtroom and would often require someone at the remote location e.g., a member of custody staff, to manually disconnect their link.

“The only problems I’ve ever had, using the VEJ tool in general, is calls not ending when your case is complete and that’s happened to me quite a few times and then you have everybody saying, “Are you ending it?” And I’m like, “Yes I have but it’s just not working.” And then the defendant is still being loud and it’s still going on. So, I end up having to get the remote, turning the volume down.” (123_CU)

The extent to which defendants might be aware that their video link to court remained connected after the hearing was unclear. However, instances such as these may further the sense of distancing that defendants experience during hearings as their hearings are more abruptly ended in comparison to the processes associated with physical in-court appearances. It may also lead to occasions where defendants disclose information to custody officers that they might not wish said in court.

Issues with network connections to police custody suites, or with the wireless internet service could disrupt the functionality of the booking tool and result in the need to either produce defendants to court or use the old system of manual dialling. Both of these types of issues were unrelated to the functioning of the booking tool and would affect any such software. However, they did prevent it from controlling the video links between the courtroom and police custody.

Whilst video court administrators located in the back-office accessed the booking tool and instant messaging services via hardwired internet connections, those in the courtroom were reliant upon wireless internet connections to access the tool. Testimony to the effects of connectivity problems was given by users of the booking tool but did not include programming or software engineering detail of the causes of the technical faults involved. It is possible that the IT team of the VEJ Strategic Partner gathered such details but our focus here is on the user experience. Problems with the wireless internet in the courtroom disrupted communication between video court administrators and usher and meant that ushers were unable to refresh the booking tool in order to update the court on the progress of cases,

“...without the internet you can’t message the person in the back office to ask questions as to something you might need an answer to for somebody who’s in a custody suite somewhere or perhaps you’ve got an interpreter appearing remotely and there’s nothing ticked on the tool so therefore you need to ask is this interpreter ready...” (115_CU-VCO)

Whilst issues with the wireless internet were disruptive it was rare that they prevented the video court from hearing cases, or resulted in the need to produce the detainees into court, as users were still able to use manual dial-ins to connect to remote locations and could communicate via mobile phones. The observation data indicate that issues with technology other than the video link equipment, which included issues with wireless internet connectivity as well as issues with computers and printers, occurred in 8.6% of hearings observed prior to the installation of the booking tool and 8.5% of hearings observed afterwards.

“We’ve had an instance here where the court’s server has dropped completely, so we’ve had no outgoing connections at all, and we couldn’t connect to the tool. So, when that happens... we can’t use it to facilitate anything, everything is done manually.” (VCA_108)

Further issues with the wireless internet were cited by users with respect to bandwidth and occasions during which multiple users attempted to simultaneously download large case files. Upgrades to the courthouse’s wireless internet shortly after the introduction of the booking

tool limited the impact of these issues. A minimum standard for technological aspects of the video court would desirably include a bandwidth criterion, the function of the standard being that a case would not proceed until all minimum standards were satisfied.

Despite many of the issues experienced in the video court, the suggestion was made that the tool was functioning as well as could be expected when taking into account existing infrastructure and resource constraints,

“It’s rare that I will be unable to do anything because the tool doesn’t facilitate it; the more likely it is that we just don’t have the hardware to have everybody sat where they need to be to put them through.” (108_VCA)

Participants identified the need to establish robust contingency plans for instances where the technology failed. Whilst there were often workarounds to mitigate issues concerning the functionality of the booking tool, or issues with the wireless internet, users recognised the cumulative effects minor problems and delays could have on the efficient functioning of the courtroom,

“...nothing major has ever gone wrong since I’ve done it, it’s never stopped working entirely or anything like that but it’s so many little things that just add up the time, I think. Like not being able to case complete. That might take five minutes and then the next call not being able to connect, that might take five minutes...” (123_CU).

While these issues can mostly be regarded as teething troubles, wider roll-out will make for serial problems at scale and allowance should be made for them in planning roll-outs and in the advance briefing and training of relevant court professionals.

7.8 Other factors affecting the efficiency of the listing process

Interview participants discussed a number of other factors that could impact on the efficiency of the courts listing process. These issues were not caused by the booking tool, but their presence had an effect on the listing process, particularly in relation to delays.

“I think the major concerns were delays in paperwork, solicitors not being ready, not enough endpoints to have consultations which was causing delays, not enough rooms

so that you couldn't have a consultation and a court hearing. I think a lot of those still exist, a lot of those problems that we started with still exist and without the resources the issues of the endpoints, the not enough rooms, that's never going to change" (106_LACA).

These other issues represent counterfactuals for our evaluation but also bear messages about necessary investment in resources for the court estate.

7.8.1 Incomplete information

The timeliness with which case files were served in video court could introduce delays to proceedings. There was some evidence to suggest that the introduction of the booking tool led to minor confusion around the status of paperwork, as cases were sometimes moved into the pending list too early. However, interviewees referred to long delays in defence advocates receiving their paperwork. This prevented defence advocates from conducting pre-hearing consultations with their clients and had the potential to introduce delays to proceedings, "The reason you can't get on is either because the prosecution haven't got any papers, or we can't get the defence papers from the CPS..." (102_DA). Interview participants suggested that knowing the identities of the defence advocates involved in the cases on the day's list before the start of the court session would help improve the efficiency of the listing process. This was because it would help ensure that advocates would be served with their papers earlier in the day and ease the pressure associated with arranging pre-hearing consultations with defendants.

Delays to paperwork were also problematic for prosecutors in terms of their preparation for hearings particularly once the day's court session had begun. One prosecutor remarked that it was, "...very difficult when you've already started court and you're dealing with other cases, to then have a chance to look at the papers that are coming in for the extra cases." (122_PR). Here we again encounter an issue that is not directly related to the booking tool but that is exposed or highlighted by introduction of the booking tool. The point is that technology is only the first step in court reform. Reaping its benefits requires change in working practices. In many cases

this change is relatively modest and readily negotiated rather than being a matter of root-and-branch ‘culture change’.

During the observations, a record was made when a participant stated that they were missing some or all of the information they required to deal with a case. This included instances where participants stated they had incomplete information (e.g. missing statements or information on some but not all of the matters put to the defendant), or that they were missing complete case files.

Some form of incomplete information affected 10.1% of the hearings observed before and 16.7% of hearings observed after the introduction of the booking tool (Table 7). Of the 26 hearings observed at the after-stage that were affected by missing paperwork, 15 involved legal advisors stating that they had incomplete information, seven involved defence advocates with incomplete information and four had prosecutors citing incomplete information. Defence advocates involved in after-stage hearings were more likely to cite incomplete information compared to all other conditions.

Table 7: Hearing length by missing paperwork

	C1: VC: ‘before’	C2: VC: ‘after’	C3: NVC (police bail denied)	C4: NVC (police bail granted)
Incomplete information (%)	10.1% (n=19)	16.7% (n=26)	13.2% (n=19)	11.6% (n=15)
No incomplete information				
Minutes (mean)	16	15	19	17
Minutes (median)	15	14	15	16
Sample size (n)	167	126	122	113
Incomplete information				
Minutes (mean)	18	20	36	18
Minutes (median)	18	18	35	11
Sample size (n)	17	26	19	14

Base: all hearings (excludes missing data)

Hearings affected by incomplete information were on average longer than those unaffected (Table 7). There was little difference between the before and after-stage observations in terms of the length of hearings affected by incomplete information, whilst the impact of incomplete

information on hearing length is most apparent in non-video court where police bail has been denied (Condition 3).

7.8.2 Determining suitability for video court, vulnerable defendants

During fieldwork the fieldworkers noted that the proceedings in video court would generally begin with a statement that all the cases to be heard were deemed suitable for a video hearing. While they also noted in text fields of the observation schedule occasions where an issue was discussed, and these included discussion of characteristics that suggested that the individual was vulnerable, they made no classification of vulnerability themselves. In the same respect as many sane people would regard all murder as an act of insanity, jurists sometimes argue that all defendants are vulnerable because all are at risk of custody. That is not the usual sense in which contemporary discussions of vulnerability proceed, and in our evaluation we saw courts operating on the basis of the defendant's fitness to proceed. Recognition was given to the importance of dealing with those with vulnerabilities as quickly as possible, however delays were sometimes experienced when attempting to determine in court whether a defendant was suitable to have their case heard over the link. Therefore, clear guidance on suitability was deemed essential to ensure the efficient running of the court. At the time of the evaluation understandings of vulnerability and suitability were still under debate. From the perspective of current legal arrangements and the business of the courts, vulnerability per se is not germane. Rather, what pertains is the degree to which communicative competence is affected by vulnerability, as indicated in Criminal Practice Directions²⁰. It is in scope, for instance, to regard a strongly built man in perfect physical and mental health as 'vulnerable' if he is inebriated at the time of a hearing to the point where he is unable to respond to questions in a way that is understandable.

Consideration was given by participants as to the ability of the court to determine the suitability of defendants for video court, with a suggestion that this was more easily done face-to-face.

²⁰ Criminal Practice Directions - I 3N.6 and N.7 pp. 37 available at: <https://www.judiciary.uk/wp-content/uploads/2019/10/CrimPD-9-CONSOLIDATED.pdf>

Decisions relating to the suitability of defendants to appear over the video link had to be tempered against the risk associated with transporting vulnerable people to court,

“I think that’s when the video link facilities aren’t very helpful because essentially, it’s difficult for us to gather who is suffering from a vulnerability and how genuine those are and then secondly, the best way to overcome those... the defence lawyer needs to be in the same location as the person that’s feeling vulnerable and therefore having them remotely is not helpful.” (106_LACA)

Some form of vulnerability was a feature of most defendants appearing before the courts and there was a view that perhaps only the most extreme cases of defendant vulnerability were being filtered out of the video court process, “...it’s only when it comes down to what seemingly seems to be really serious mental health issues in the court entertains them being too vulnerable for virtual court.” (104_DA). Legal advisors spoke of ensuring that defendants did not become lost in the system’s focus on dealing with volume rather than the quality of the service delivered (106_LACA).

At times, legal advisors indicated that the court was not provided with sufficient information on the needs of defendants and this could introduce delays to proceedings as the court would have to determine whether it was suitable for the defendant to appear in video court, “we wouldn’t necessarily get information if they’ve got physical disabilities, for instance, such as hearing loss or sight impairment and it’s having all the documents that are in front of you” (109_LACA). It may be that a useful enhancement of the booking tool would be to include a feature flagging such issues). Due to the present lack of such information, decisions made about the suitability of the defendant to appear over video made earlier in the process could be questioned once the individual appeared on the link due to concerns about the way they presented in court,

“...somebody goes into custody, they’re assessed as being fit for interview, fit for detention, fit for the CVC. They then come onto the video screen and present in a rather concerning and vulnerable way, but nobody has given that information to the judge in advance. And if it doesn’t come to the judge in advance so the magistrates

can make an informed decision as to whether or not this person should in fact appear, you end up with a built-in delay, because you're dealing with something that should have been organised before the court day starts" (127_MDJ)

Whilst facilities in police custody could offer defendants access to a greater range of services than those provided in the court's cells (e.g., nursing staff and Liaison and Diversion Services), video hearings involving vulnerable defendants were further complicated by their physical separation from defence advocates or mental healthcare professionals, "...if they're produced in person everybody's at the same location, everybody can have that physical and emotional connection with the person who's looking after them." (127_MDJ). However, custody can also be an intimidating and stressful environment and can present further risks for those with mental health problems, as was identified in one of the former defendant interviews, "...no matter what people say, custody is ... it's sort of ... it's got to be done, but I think it's sort of a form of abuse...", and later, "And then expect them to come out and not have no mental health issues..." (007_DEF). Additional administrative work was also created for the court when it determined a defendant unfit to appear via video link as it was necessary to justify the decision as to why the person was produced in person,

"...who makes the final decision about whether the case is appropriate for the video link, that again, it's in a bit of a state of flux at the moment. Ultimately the senior presiding judge wants it to be a judicial decision, but sometimes that's misunderstood by members of HMCTS staff but also detention officers and the police and other agencies, and there may be more work generated afterwards where we're having to justify why the magistrates made a decision to bring someone before the court properly rather than via video link..." (105_LACA),

There were other factors to take into consideration when conducting hearings involving vulnerable defendants. For example, one legal advisor described a situation in which a victim of domestic abuse had their location identified via an automatic pop-up on the screen identifying the location of the video booth (e.g., 105_LACA). Although this hearing did not take place under the VEJ Programme, it demonstrates a risk that should be accounted for when conducting video hearings in court. Probation officers also outlined concerns about interviewing defendants

involved in complex cases via video, with some cases meriting face-to-face interviews. Face-to-face interviews were also preferable in some contexts because of the ability to read body language and pick up on other issues the defendant may not initially speak about.

7.8.3 Video booth/endpoint availability

Interview participants frequently discussed the delays caused by an insufficient number of video link booths/endpoints across the court and police estates. This issue was experienced by participants appearing at South Eastern Magistrates' Court, where two booths were available, as well as by those who appeared from police custody, where often only a single video booth was in operation.

The limited number of video link booths resulted in the queuing of cases and also meant that those appearing from the courtroom had to schedule a slot in which to conduct their consultation with the defendant. As more defence advocates gain access to the tool such scheduling can be initiated by the advocate, but during fieldwork the issue was dealt with by making a request to those administering the tool. Furthermore, the challenges associated with the limited number of video booths were exacerbated on days where large numbers of defendants appeared from the same custody suite. The level of demand for video booths introduced a sense of time pressure to the consultations and interviews with defendants and contributed towards the uncertainty experienced within the listing process. As most custody suites fielded a single booth it was not possible for defence advocates and probation officers to speak with defendants at a given custody suite when another hearing was taking place from the same block.

"At the moment the main challenge is just working around the equipment that we have and what's in place. We are limited by the availability of video-links at custody suites or the video-link booths at the magistrates should the solicitors be here, but here we can only ever have one ... link going on at a time, which of course shouldn't be impeding court hearings, so if the court needed the link, that means the consultation will be delayed..." (108_VCA)

The cost of upgrading South Eastern Police's custody estate to meet health and safety standards for video court and consultation rooms was estimated to be in excess of £500k, although there are additional police costs associated with video court such as the constant supervision of defendants whilst they use the video equipment. The high costs associated with the upgrading of custody suites that would have to be met by the police led to the identification of alternative options to ease the demand on video booths. For instance, temporary 'safe booths', which could be installed inside police custody suites within two hours, could provide extra video booth capacity at around 1/6 of the cost spread out over the life of the contract. Although no hearings using this type of solution were observed, this was one of the alternative options explored by the VEJ Programme to ease the pressure caused by insufficient police custody video booths.

Video booth availability was a particular issue for defence advocates and probation officers, as they encountered challenges finding a suitable slot in which to conduct timely consultations and interviews with defendants held in police custody, noting that in seeking a slot they were liaising with the administrators dealing with the booking tool. Defence advocates recalled experiencing delays to hearings because they had been unable to find time to speak with their clients. Delays had financial implications for defence advocates, who are not paid waiting time. They were also a source of considerable frustration and contributed towards concerns relating to the sense of uncertainty within the listing process and delays.

"...more often and nearly always, you can't get in the room because somebody else is using it." (102_DA).

"I'll find that there's wasted time when I'm waiting for another lawyer to have their consultation with a client of theirs who happens to be at the same station as my client and I can't have a consultation at the same time because there's insufficient staff."
(104_DA)

Similarly, probation officers commented on the challenges they faced when attempting to conduct interviews with defendants, including meeting certain performance indicators (e.g.

completing reports on the same day), as demand for video booths outstripped supply. This could also have implications for the adjournment of cases,

“...there is not enough video link booths and link ups to enable anyone other the defence to speak to their client, just to get the hearing heard, so they’re still adjourning before the courts which means we might as well, as a Probation Service not sit in that court because we could be doing stand-downs in other courts” (116_PO)

The need for further investment in the number of video booths/endpoints available to enable consultations and interviews was widely recognised by participants as an important step towards improving the efficiency of the court.

7.8.4 Custody staffing

Custody staffing levels were perceived to have an effect on the number of video link booths custody suites could field, contributing to the high demand for time on the video link. Limited resources meant that delays could also be experienced between hearings as police custody staff had to process defendant paperwork after hearings and accompany the next defendant to the video booth for the next scheduled hearing or consultation. Custody staff were also required to constantly supervise defendants and this placed additional pressure on the time available to process other work,

“Because they're so short staffed, sometimes it can take about 20 minutes to do a change-over. And of course, you’re sitting there doing nothing.” (122_PR)

Video booth availability and staffing levels also impacted on the court’s listing process (e.g., 111_LACA). Those responsible for administering the listing process often cited the difficulties experienced in police custody e.g., “...if we’re doing it on the link then we are kind of in the hands of the custody suites at whatever police station they’re at...” (107_CU) and this contributed towards concerns around the uncertainty experienced in the listing process.

Whilst the implementation of the booking tool appeared to have modest effects on courtroom procedure, the interviews suggest that a number of counterfactuals constrained the efficiency of the court’s listing process due to delays in receiving paperwork and challenges finding time

to speak with defendants via the video link. In general, the delays experienced in terms of the listing process were related to broader infrastructure, resourcing and process concerns, such as the timely provision of paperwork and endpoint availability rather than the functionality of the booking tool,

“...at the moment it feels like the tool itself is far ahead of where we are with the hardware required, so again I think it would just be more endpoints, more options for the various parties to be able to do what they need to do. At the moment we are restricted by the number of endpoints that we can connect to...” (108_VCA)

8 Contemporary experience of appearing in video court: AV and other issues

This section of the report considers the contemporary experience of appearing in video court, both from the perspective of court professionals and former defendants. It begins by exploring some of the broader process changes introduced during the life of the VEJ Programme, before considering the impact of video court on the communication between parties, the behaviour of defendants involved in hearings, and the prevalence and cause of courtroom disruptions both before and after the introduction of the booking tool. The section concludes by considering the use and performance of the audio-visual equipment between the before and after-stages. Here the relationship between the introduction of the booking tool and the evaluation conditions is less certain and where relevant we discuss the impact of possible counterfactuals that should be taken into consideration when interpreting the data.

8.1 Introductions and guidance for defendants

Over the life of the evaluation adjustments were made to the guidance documents provided to defendants concerning what to expect and how to behave during a video hearing²¹. Further

²¹ Defendants’ Guide to Video Remand Hearings, HM Courts and Tribunals Service; Video Enabled Justice Court Room Guide, South Eastern Police

guidance was also issued to legal advisors concerning the process by which the defendant is introduced to the courtroom at the beginning of a hearing.

The impact of the change to guidance concerning the introductions process used at the beginning of video hearings, which was issued in close proximity to the launch of the booking tool, registered in the observation data. The proportion of hearings during which it was recorded that the main courtroom participants were introduced to the defendant in video court increased after the introduction of the booking tool from 18.9% (C1) to 60.8% (C2). The proportion of hearings during which there was a check to ensure that the defendant could see and hear the court also increased, occurring in 37.2% of Condition 1 hearings and 61.0% of Condition 2 hearings. Whilst we infer no direct link between the booking tool and the increased level of checks made prior to hearings, this finding illustrates where increased scrutiny over the first appearance remands process during the life of the evaluation led to a measurable effect in the SOS data. In this instance, it appears that the provision of the guidance rather than the introduction of the tool led to the differences between the before and after-stage conditions.

The provision of guidance prior to hearings was discussed by one of the former defendants during their interview. Whilst their last appearance in video court was at least two years prior to the interview date, this participant commented on the limited information they were provided with prior to their hearing.

“I think I was very briefly. My first time I think it was very brief. I think I was just told it's a video link, you'll be in the court but only via camera and you'll see inside the court, you'll see the judges. I think that was pretty much it. It was quite a while ago, but I think that's all they told me.” (008_DEF)

Later in their interview the participant suggests that they would have liked to have received a leaflet concerning the conduct of video hearings, “...it would be nice if you could be provided with some sort of leaflet that lets you know exactly how it works...” (008_DEF). This finding appears to indicate that some defendants may not receive the guidance document prior to their hearing.

Defendants demonstrated an awareness of the needs of the system when considering any further support that could be offered with respect to their appearance in video court. This included acknowledgement of the financial pressures within the criminal justice system alongside the rights of defendants, demonstrating their awareness of considerations beyond self-interest,

“Don't know, it's quite a fine line, isn't it? Because we have to protect, you know, whether you should be ... it's a money-making thing, isn't it? Save money, I suppose we've got to save money, can we spend it all on the justice system, making sure human beings get a right.” (007_DEF)

The provision of guidance may best involve a degree of redundancy – issuing guidance more than once, including a repetition of the guidance as part of the introductory stage of a hearing and so on, bearing in mind that defendants may have limited reading ability and communication skills, lack confidence before the court or be blinded to their own best interest by arrogance, anger or frustration. The booking tool could support this by flagging the need for checks that printed guidance has been received and understood and/or the need for repeating the gist of the printed guidance at the start of a hearing.

8.2 Communication between parties

8.2.1 Defence communication with clients

Requests made by defence advocates to speak to clients during hearings were less common in video court and decreased following introduction of the booking tool (C1: 10.7%; C2: 6.0%), whereas such requests occurred in 23.7% of hearings observed in non-video court where police bail had been denied (Condition 3). Communication between defence advocates and defendants without a formal request being made to the bench (e.g. conversations in open court or private conferrals) was more likely to occur in after-stage hearings (C1: 22.9%; C2: 27.8%), but less so than compared to non-video court hearings where police bail had been denied (C3: 54.4%).

Whilst the reasons for the decrease between the ‘before’ and ‘after’ conditions in relation to formal requests from the defence to speak with their clients are uncertain, the interview data

suggests that the loss of face-to-face contact in video court could act as a barrier in terms of building rapport and trust between defence advocates and defendants. The loss of non-verbal communication in the video court may inhibit the ability of defence advocates to identify when defendants may wish to speak with them, with some commenting that video court felt more detached (e.g. 107_CU) and impersonal (e.g., 122_PR; 103_DA; 125_DA), e.g., "...if it's on a video link, it's not that social, it's become very sanitised..." (125_DA). Communication issues were relayed by former defendants, who recognised the gravity of the situation they found themselves in, "Difficult, difficult looking at my solicitor, because unless you're... it's a very personal thing, you know, where they've got the power to pick you up and put you in custody" (007_DEF).

Issues with audio-visual and framing quality could further inhibit communication between defence advocates and their clients (see Section 8.6). The increase in the proportion of hearings involving informal communication between the defence and the defendant may signify a greater confidence on the part of defendants to speak with their representative as a result of the revised guidance provided to defendants. However, there was also evidence to suggest that defendants may be less willing to raise any issues with communication during video court hearings, owing to a perception that they would not be able to request a traditional in person hearing, "...it's not going to change nothing, it is?... They're not going to say, "Just a minute we'll get a van there for you and bring you to court for what should be your... human rights."" (007_DEF).

Issues with communication were identified in three of the five interviews conducted with former defendants, both in relation to their ability to communicate with their advocates and with the courtroom. For instance, one former defendant described having a meeting with their defence advocate face-to-face whilst in police custody, but by the time of their hearing their advocate appeared from the courtroom. Further issues, including the defendant having more questions about their case, had arisen during the time between the initial meeting and the hearing, but the participant did not feel able to raise these when in court (007_DEF). Communication issues were raised by three of the five defendants interviewed.

8.2.2 Communication with the bench at the conclusion of the hearing

Overall, defendants were more likely to attempt to communicate with the bench at the conclusion of their hearing following the introduction of the booking tool (C1: 14.6%; C2: 21.2%). The number of hearings during which the defendant attempted to speak to the bench but the video link was terminated before they could do so decreased from 7 (4.1%) before the booking tool was introduced to 2 (1.3%) afterwards, suggesting a benefit of the booking tool.

8.2.3 Long pauses and overlapping speech

We assessed the prevalence of long pauses in communication between participants, and instances of disruptive overlapping speech, using a scale where 0 = 'none'; 1 = 'rarely'; 2 = 'occasionally'; 3 = 'frequently'; and 4 = 'very frequently' (see section 12.4.3 of the appendix).

Disruptive long pauses were rare and only occurred in video court. Overall there were 12 instances, affecting 3.2% (n=6) of hearings before-stage (C1) and 3.8% (n=6) 'after'.

Disruptive overlapping speech was observed in all four conditions but was most prevalent in video court. Such instances affected 36.6% of before-stage (C1) and 50.9% of after-stage (C2) video court hearings. The proportion of non-video court hearings affected by disruptive overlapping speech was considerably lower than video court (C3: 17.2%; C4: 17.1%).

Disruptive overlapping speech was also more pervasive in video court, being recorded 'frequently' or 'very frequently' in 4.2% (n=8) of before-stage hearings (C1) and 7.5% (n=12) of after-stage (C2) hearings (C3: 1.4%; C4: 0.0%).

Table 8 Overlapping speech and AV quality issues

	C1: VC: 'before' mean (n)	C2: VC: 'after' mean (n)
Overlapping speech (overall)		
1 remote participant	0.48 (n=131)	0.78 (n=110)
2 or more remote participants	0.71 (n=59)	1.35 (n=48)
Overlapping speech and issues with AV quality		
1 remote participant		
No AV quality issues	0.43 (n=99)	0.74 (n=90)
AV quality issues	0.65 (n=31)	0.95 (n=20)

2 or more remote participants		
No AV quality issues	0.70 (n=43)	1.15 (n=33)
AV quality issues	0.75 (n=16)	1.80 (n=15)

Base: all hearings affected by overlapping speech

Table 8 shows that mean score ratings for overlapping speech increased in line with the number of remote participants involved in hearings via the video link. Overlapping speech was more prevalent in video court after the installation of the booking tool, with mean scores increasing from $m=0.78$ for hearings with one remote participant to $m=1.35$ where two or more participants appeared via the link. Clearer signalling of the end of a submission and the introduction of the next speaker may help to make the communications process clearer in video court. This could be particularly helpful for those appearing from the remote location, as there was evidence that it was not always clear when remote parties were being addressed by the courtroom.

The presence of audio-visual (AV) quality issues is associated with an increase in the ratings for overlapping speech, regardless of the number of remote participants involved. For instance, mean score ratings for overlapping speech after the introduction of the booking tool increased from $m=1.15$ where there were no AV quality issues to $m=1.80$ where AV quality issues were recorded for after-stage hearings involving 2 or more remote participants. Thus, AV quality issues exacerbate the prevalence of overlapping speech.

8.2.4 The involvement of interpreters

Interpreters were involved in 36 (5.7%) of the hearings observed. On average, hearings involving interpreters took longer to complete (mean = 24 minutes; median = 21 minutes; $n=35$) compared to hearings where an interpreter was not involved (mean = 17 minutes; median = 15 minutes, $n=582$) and disruptive long pauses. and overlapping speech occurred more frequently.

One factor that may explain the longer duration is the mode of interpreting and specifically the absence of (whispered) simultaneous interpreting in many of the interpreter-assisted hearings. Of the 36 cases involving interpreters, only 13 had simultaneous interpreting, 8 of which occurred in the video court (C1: 6; C2: 2; C3: 4; C4: 1). It needs to be noted that in the video court, simultaneous interpreting is not possible with the present videoconferencing system

when the defendant is remote and the interpreter is in court (additional audio channels would be required).

Across all interpreter-assisted hearings, irrespective of the mode of interpreting, disruptive long pauses and overlapping speech occurred more frequently. Disruptive long pauses occurred in 14.7% of the hearings involving interpreters, compared to 1.2% of hearings where an interpreter was not involved. Similarly, overlapping speech was an issue in 64.7% of hearings involving an interpreter compared to 29.8% of hearings where there was no interpreter.

Interview participants discussed some of the challenges associated with accommodating interpreters during hearings. From a listing perspective, legal advisors were not always informed about whether a defendant required an interpreter and this could lead to delays and adjournments. It was not clear from the interview data whether the new procedures introduced by the VEJ Programme about the listing process and the booking tool had addressed this problem. The involvement of interpreters during hearings introduced additional challenges in terms of communication during hearings, particularly around turn-taking, which was deemed by court personnel to be more straightforward when interpreters attended court and may suggest the need for further training or guidance for courtroom staff when involved in hearings with interpreters,

“...when they’re here in person, the court breaks very clearly both the prosecutor and defence to give the interpreter time to relay the message but when they appear via video link, they kind of just talk through all of it.” (123_CU)

Issues with the clarity of the audio meant it was difficult to anticipate the flow of the conversation and to establish when an interpreter had finished speaking. These issues are likely to have an effect on the instances of disruptive long pauses and overlapping speech recorded in the observation data,

“If you have interpreters at the police station, it’s often very difficult to hear them interpreting... I never know when they’ve finished interpreting and I can carry on” (120_PR).

“...sometimes you get crackles or interference which is bad enough but then if you add an interpreter and then there’s the time delay sometimes, it can take forever to get to the end... sometimes what’s lost in communication is further lost with an interpreter especially if they’re on the defendant’s end of the hearing...” (116_Prob_Off)

These points are corroborated by earlier research into the involvement of interpreters in video court hearings across different countries, which highlights that interpreters who are co-located with the remote participant are not always given enough time to interpret (Braun et al. 2018).

A further observation from our fieldwork relates to the visibility of the interpreter. In video court hearings where the interpreter was located in the courtroom, s/he was often seated away from the camera and unlikely to be visible for the remote defendant. Similarly, when the interpreter was co-located with the defendant, it was unclear whether the interpreter was able to see all participants in court. This points to issues with the visibility of interpreter for other court participants and the need for the interpreter to have a good view of all court participants, matters which have been discussed in previous research (Braun et al. 2016, 2018; Licoppe & Veyrier 2017).

8.2.5 The distancing effect experienced by remote parties

One concern cited in the interviews about video hearings was the sense of ‘detachment’ and the ‘distancing’ effect. Court professionals suggested that defendants may appear less engaged during video hearings, with their demeanour suggesting reduced engagement (e.g., head down and not looking directly at the camera), making it harder to build rapport. While defendant engagement is clearly desirable, aspects of the court professional’s perspective on the need for rapport may strike some as at odds with the accompanying emphasis on due respect for the court’s authority and the solemnity of the occasion. The broader point is that moving to a technology-mediated courtroom environment poses an opportunity to think anew about courtroom communication and the rationale for customary working practices. It may be that such opportunities to think afresh lead to an endorsement of existing practice, but it may equally be that a public that has grown up in the television age and that is comfortable with contemporary technologies would understand open justice differently to previous generations.

Nevertheless, for magistrates and legal advisors, video court reduced the level of non-verbal communication (e.g. eye contact) with those appearing over the link. This made it more difficult to assess body language and inhibited the ability of participants to pick up on any issues the defendant might be experiencing. As indicated earlier in relation to the communication between defendants and their advocates, courtroom participants also recognised that defendants who appear via video may also feel uncomfortable or unable to bring a matter to the court's attention during a hearing,

“...we could miss their body language and they could feel, although they're not able to verbalise it, they could feel that they're not able to speak freely, they may not be encouraged to do that in the same way as they would if they were in a court room with us and we could pick up on how they were feeling and empathise more with them. I think there's inevitably always going to be a distancing.” (105_LACA)

This concern may be of particular importance to unrepresented defendants. Both former defendants and defence advocates also reported experiencing a sense of 'detachment' or 'exclusion' when participating in video hearings. Video court was seen as being more impersonal (007_DEF), and it was suggested that video court could also have an impact on the ways defendants felt they were being appraised in the courtroom, “...because you can't really judge a character over a camera, if that makes sense. You can always see and assess, but you still need to see body language, all of it matters, it definitely matters.” (008_DEF).

The loss of some of the formalities associated with appearing physically in the courtroom may have had some effect on the sense of detachment experienced e.g., not being asked to stand and identify oneself when appearing over the video link. Reflecting on their experiences of video court, one former defendant remarked, “...you feel a little on the outside” (009_DEF), whilst another articulated the sense of distancing they experienced from their hearing,

“At one stage when I was sitting in there, I kind of felt like I was watching it, if that makes sense... That wasn't my trial though, that was a hearing. So that was quite quick and just small. Yes, more like you're ... it's like you're not there... It's like you're watching it, you're watching all this take place.” (008_DEF)

For defendants appearing via video link from police custody, it could also be unclear when somebody in the courtroom was addressing them and it is possible that this had an effect on the increased prevalence of turn-taking issues found in the observation data for video court. The extract below highlights the importance of clear communication inside the courtroom, including the need to directly address remote parties by name,

“You don't know if you're being spoken to... whereas if you're in, presented in court, the judge would ask you to stand and obviously you'd get body language, eye contact, but with the video link it's not as the same. You just hear a bunch of people talking, you mainly have to listen out for your name, that's how you know if you're being spoken to...” (008_DEF)

However, views concerning the effects of distancing were not universally negative. For instance, one of the former defendants thought that the use of video links for witnesses and victims when giving evidence in court was beneficial, as it could obviate the need for face-to-face proceedings where victims and witnesses did not want to face the defendant. However, the use of video links for victims and witnesses could also place defendants appearing physically in court under more pressure (009_DEF).

For defence advocates this sense of detachment experienced in video court could be either from their clients when appearing in the courtroom, or from other legal professionals when representing clients from remote locations,

“...it's the disconnect between me and the client in the video link hearing or if you choose to do it at the police station, it's the disconnect between you and the prosecutor as a Defence Lawyer as opposed to when the person is produced in court, you have that face to face contact.” (104_DA).

Issues with the quality of the audio-visual and framing could exacerbate the problems associated with distancing, whilst concerns were also raised about the efficacy of defence advocates when appearing from the remote location. Recognising the benefits of video court for certain hearing types, former defendants also expressed concerns about the consequences of appearing over video,

“But some people may not find it comfortable. Yes it's more convenient as in ... because if it's a ... what's the word I'm looking for? If it's just a hearing then, yes, I suppose it's convenient, because it's just plea. But for a trial, I think it's a bit harsher, because you don't have the same emotional impact as you would do if you was in the dock.” (008_DEF).

8.3 Defendant behaviour during hearings

Aspects of defendants’ observed behaviour included whether defendants remained silent during the prosecution and defence statements and whether defendants attempted to speak during their hearings at other times, such as via an interjection. More general aspects of behaviour, for instance whether they appeared cooperative, were also captured.

Overall, most defendants remained silent during the prosecution and defence statements but this was least likely in the ‘after’ condition (C2: 53.8%), where they were more likely to attempt to make both ‘helpful interjections’²² (C2: 20.5%) and ‘inappropriate interjections’²³ (C2: 15.4%). The nature of each interjection was appraised on the basis of what was said, how it was said and how it was received by the court. For instance, if a defendant attempted to politely correct an address or other factual information by interjecting this was deemed ‘helpful’. Such interjections also occur in traditional hearings; incorrect details in paperwork, benches not knowing where certain locations were in relation to bail conditions, and other occasions eliciting defendants helpfully chipping in, are commonplace. No booking tool can obviate the need for them as the requirement emerges in real time during the hearing.

The ‘other’ category included defendant behaviours that were observed in fewer than ten hearings. Here defendants involved in after-stage video court hearings were more likely to be assessed as: ‘attempting to communicate but the reason was unclear’ (C1: 0.6%, n=1; C2: 3.8%,

²² Helpful interjections included offering details or spontaneously clarifying points. For instance, the defendant may provide additional details about a previous hearing if the legal advisor is struggling to understand the chronology of a case. If this information was accepted or acknowledged then the interjection was deemed to be helpful.

²³ Inappropriate interjections included those which were unwelcomed by those in the courtroom. For instance, the interjection is ignored, or someone has to stop the individual from interjecting.

n=6); 'angry or hostile with gesticulation' (C1: 0.6%, n=1; C2: 3.2%, n=5); or 'attempts to communicate ignored by courtroom' (C1: 0.0%, n=0; C2: 1.9%, n=3).

Table 9 Defendant behaviour during hearings

	C1: VC: 'before'	C2: VC: 'after'	C3: NVC (police bail denied)	C4: NVC (police bail granted)	Total
Remained silent, did not speak during the facts or defence	106 59.2%	84 53.8%	100 70.9%	78 60.9%	368
Seeks to make helpful interjections	32 17.9%	32 20.5%	16 11.3%	15 11.7%	95
Makes inappropriate interjections	21 11.7%	24 15.4%	20 14.2%	11 8.6%	76
Justifies behaviour	14 7.8%	13 8.3%	9 6.4%	7 5.5%	43
Makes interjections to disagree with a piece of information	10 5.6%	6 3.8%	10 7.1%	6 4.7%	32
Denies facts of the case	9 5.0%	7 4.5%	6 4.3%	5 3.9%	27
Apologising for actions that led to case	4 2.2%	4 2.6%	3 2.1%	10 7.8%	21
Cooperative	1 0.6%	6 3.8%	3 2.1%	8 6.3%	18
Requesting clarification or explanation	4 2.2%	3 1.9%	1 0.7%	4 3.1%	12
Verbally or physically disrupting the courts proceedings	3 1.7%	5 3.2%	2 1.4%	2 1.6%	12
Other behaviours	40 22.3%	50 32.1%	25 17.7%	28 21.9%	143
Total	179	156	141	128	604

Base: all hearings (excludes missing data)

Interview participants discussed the differences between appearing in court via video link versus in person and considered the impact this could have on the demeanour and behaviour of defendants. One difference was that defendants involved in video court were requested to remain seated behind a desk during hearings. As a consequence, the demeanour of defendants could at times suggest lower levels of engagement (e.g., slouching, looking down/not at the screen, removing items of clothing during hearings) or result in other forms of inappropriate behaviour,

“...they actually behave in a way that you wouldn’t do if you were in the courtroom. So, they’ll call you mate, for example. You know, you’re the judge, you’re making the decision whether they’re going to prison or not, and they’re calling you mate...”
(127_MDJ)

8.3.1 Defendants' involvement in proceedings

A record was made when defendants intervened in proceedings other than when invited to do so. Such disruptions include inappropriate behaviour, e.g., verbally or physically disrupting court proceedings, or attempting to make interjections intended to be helpful or otherwise.

Table 10: Hearing length by self-initiated defendant involvement

	C1: VC: 'before'	C2: VC: 'after'	C3: NVC (police bail denied)	C4: NVC (police bail granted)
No self-initiated involvement				
Minutes (mean)	14	14	17	18
Minutes (median)	13	13	14	16
Sample size (n)	119	88	92	98
Self-initiated involvement				
Minutes (mean)	19	19	30	14
Minutes (median)	17	19	27	13
Sample size (n)	71	67	50	32

Base: all hearings (excludes missing data). Self-initiated involvement includes participant disruption, interjections and other forms of self-initiated involvement.

These types of interventions occurred in 35.3% of hearings, were more common in video court, and increased after the introduction of the booking tool (C1: 36.4%; C2: 42.8%; C3: 35.9%; C4: 24.2%). Rates of defendant disruption were marginally lower where the defendant had legal representation (represented: 33.0%; unrepresented: 35.5%), a pattern which persisted across all conditions albeit less marked in Condition 2 (represented C2: 41.8%; unrepresented C2: 42.8%).

On average, hearings affected by self-initiated defendant involvement took longer to complete (mean = 21 minutes; median = 18 minutes; n=220) than those where this did not occur (mean = 16 minutes; median = 14 minutes; n=397). The impact was more substantial in non-video court, where the mean hearing length for those hearings was 30 minutes, compared to 19 minutes in the 'before' and 'after' conditions.

8.3.2 Defendant demeanour

Assessments of defendant demeanour were made, including both primary demeanour, i.e., the prevailing demeanour of the defendant, and secondary demeanour, i.e., prominent displays of

demeanour more momentary in nature, drawing on categories adapted from previous studies (Hunter, 2005; Mack & Anleu, 2010; see Appendix 12.4.1).

Table 11: Defendants' primary demeanour

Defendant primary demeanour	C1: VC: 'before'	C2: VC: 'after'	C3: NVC (police bail denied)	C4: NVC (police bail granted)	Total
Angry/hostile	0	1	1	0	2
	0.0%	0.6%	0.7%	0.0%	
Agitated/frustrated	8	6	5	2	21
	4.2%	3.8%	3.4%	1.6%	
Visibly upset/crying or sobbing	3	2	2	2	9
	1.6%	1.3%	1.4%	1.6%	
Anxious or nervous/ alarmed	10	3	6	5	24
	5.2%	1.9%	4.1%	3.9%	
Confused/unprepared/tired/ intoxicated	10	6	7	8	31
	5.2%	3.8%	4.8%	6.2%	
Withdrawn/minimal responses	18	10	5	3	36
	9.4%	6.4%	3.4%	2.3%	
Calm/business-like	134	125	117	96	472
	70.2%	79.6%	80.7%	74.4%	
Good natured/helpful	8	4	2	13	27
	4.2%	2.5%	1.4%	10.1%	
Total	191	157	145	129	622
	100.0%	100.0%	100.0%	100.0%	

Base: all hearings (excludes missing data)

Overall, the majority of defendants' primary demeanour was 'calm/business-like' across all conditions. The proportion of video court defendants appraised as 'calm/business-like' increased following introduction of the booking tool (C1: 70.2%; C2: 79.6%) to a level comparable with the non-video court condition where bail had been denied (80.7%). The pattern of recorded demeanour between Conditions 2 and 3 was broadly similar, but defendants observed after the installation of the booking tool were less likely to have a primary demeanour of 'anxious/nervous' (C2: 1.9%; C3: 4.1%) and more likely to be 'good natured/helpful' (C2: 2.5%; C3: 1.4%) or 'withdrawn/minimal responses' (C2: 6.4%; C3: 3.4%). It is likely that these facets of defendant demeanour relate to the shorter length of hearings in the video medium.

Regarding defendants' secondary demeanour there was a large increase in the proportion of defendants observed in after-stage hearings displaying a 'good natured/helpful' demeanour,

whilst the proportion of video court defendants appraised as 'confused/unprepared/tired/intoxicated' fell following installation of the booking tool.

Table 12: Defendants' secondary demeanour

Defendant primary demeanour	C1: VC: 'before'	C2: VC: 'after'	C3: NVC (police bail denied)	C4: NVC (police bail granted)	Total
Angry/hostile	3	5	1	1	10
	3.7%	8.8%	2.2%	2.2%	
Agitated/frustrated	21	11	17	10	59
	25.6%	19.3%	37.0%	21.7%	
Visibly upset/crying or sobbing	7	7	7	4	25
	8.5%	12.3%	15.2%	8.7%	
Anxious or nervous/ alarmed	11	2	1	8	22
	13.4%	3.5%	2.2%	17.4%	
Confused/unprepared/tired/ intoxicated	8	5	3	3	19
	9.8%	8.8%	6.5%	6.5%	
Withdrawn/minimal responses	13	2	6	4	25
	15.9%	3.5%	13.0%	8.7%	
Calm/business-like	8	2	1	5	16
	9.8%	3.5%	2.2%	10.9%	
Good natured/helpful	11	23	10	11	55
	13.4%	40.4%	21.7%	23.9%	
Total	82	57	46	46	231
	100.0%	100.0%	100.0%	100.0%	100.0%

Base: all hearings where a secondary demeanour was recorded (excludes missing data).

These measures suggest little overall difference in demeanour between video and non-video conditions (Conditions 2 and 3) but a shift towards more 'positive' forms of demeanour following introduction of the booking tool (Conditions 1 and 2), most prominently demonstrated by the defendants' secondary demeanour profile. One possible interpretation of the shift towards more positive forms of demeanour in the after-stage hearings could be because defendants are put before the court sooner than had they been transported to court. However, the installation of the booking tool coincided with the revision to the guidance given to defendants and it is likely that could also have had an effect on their behaviour in court. Differentiating these possible interpretations would be a worthwhile endeavour in further research.

We examined the relationship between defendant age and primary demeanour to evaluate whether there was any evidence that younger defendants are more comfortable appearing over video link as 'digital natives'. However, defendants observed in video court aged between 18 and 24 were less likely to have a 'calm/business-like' demeanour (72.4%) than those aged between 35 and 44 (78.0%) or those aged 45 years or older (82.8%). This contrasted with

younger defendants involved in non-video court hearings whose prevalent demeanour was 'calm/business-like' (80.8%) relative to all other ages (25-34: 77.2%; 35-44: 77.6%; 45+: 75.5%). Such findings may have significance in relation to the level of recorded crime by age group reported in official statistics in England and Wales. It may be that, while younger people are more familiar and comfortable with digital technology, the effect of the seriousness of a court appearance exceeds the effect of such familiarity.

8.3.3 Defendant demeanour and relationship with hearing outcome

Defendants involved in non-video court hearings where matters were sent to a higher court, or to a magistrates' court for trial (C3: 84.5%; C4: 86.7%), were more likely to have a 'calm/business-like' demeanour compared to video court participants (C1: 75.0%; C2: 81.8%). However, the proportion of defendants displaying a calm/business-like demeanour when this outcome was delivered increased after introduction of the booking tool. Likewise, where a hearing resulted in some form of punishment being issued, those observed in video court at the after-stage were more likely to be observed as 'calm/business-like' (C2: 82.7%) compared to all other conditions (C1: 70.7%; C3: 82.4%; C4: 75.0%).

Defendant reaction to hearing outcome

There is some evidence that defendants may be less engaged in video court hearings when the outcome is delivered. Defendants in video hearings are more likely to be 'passive/expressionless' (C1: 39.4%; C2: 31.3%) compared to non-video court (C3: 15.3%; C4: 18.5%) and less likely to be 'nodding and listening to the chair' (C1: 26.9%; C2: 37.3%) compared to non-video court (C3: 55.6%; C4: 48.7%). However, the proportion of defendants observed as 'passive/expressionless' decreased, whilst the proportion 'nodding and listening to the chair' increased in hearings at the after-stage.

Levels of perceived dissatisfaction with the hearing outcome decreased after installation of the booking tool (C1: 14.3%; C2: 12.0%), although the rate still exceeded the non-video court conditions (C3: 11.1%; C4: 7.6%).

8.4 Courtroom disruptions

A hearing was considered to have experienced some form of disruption when one or more of the following occurred:

- There was a disruption caused by the AV equipment/video link.
- There was an issue with any other technology installed in the courtroom that caused disrupted to proceedings, such as connectivity issues with the wireless internet.
- A participant disrupted a hearing, such as via inappropriate behaviour.
- There was another form of disruption, such as missing information, confusion or delays dealing with complicated issues, the need for further private consultation, key participants absent from the courtroom when needed, incomplete paperwork, or other disturbances such as mobile phones.

Overall, some form of disruption was recorded in 34.9% of hearings. Disruptions were more common in video court but decreased following installation of the booking tool (C1: 41.5%; C2: 37.1%). In non-video court, disruptions to hearings were more frequently observed in the condition where police bail had been denied (C3: 33.8%; C4: 23.5%). The difference in terms of the recorded incidence of disruptions between the video and non-video conditions is not unexpected, given that there is more to go wrong in a technology mediated courtroom. Since introduction of the booking tool saw a reduction in disruptions relative to video court without the booking tool it appears that the booking tool itself did not cause disruptions experienced during hearings.

Disruption was more likely to be participant-caused than technology-caused. Participant disruption primarily included disruptions from defendants. However, disruptions caused by those in the public gallery, as well as from other participants (e.g. custody staff, legal professionals interrupting proceedings) were also captured. As indicated in Table 13, the proportion of disrupted hearings affected by AV issues increased slightly following the introduction of the booking tool (C1: 30.9%; C2: 33.9%). The proportion of disrupted hearings

affected by ‘other’ types of issues increased following the introduction of the booking tool (C1: 23.5%; C2: 33.9%).

Table 13: Disruptions recorded during hearings

Type of disruption	C1: VC: ‘before’	C2: VC: ‘after’	C3: NVC (police bail denied)	C4: NVC (police bail granted)	Total
Audio/video issue	25	20	0	0	45
	30.9%	33.9%	0.0%	0.0%	
Other technology issue causing a disruption (e.g. Wi-Fi)	7	5	4	5	21
	8.6%	8.5%	8.2%	16.1%	
Participant disruption	40	27	32	16	115
	49.4%	45.8%	65.3%	51.6%	
Other type of disruption	19	20	18	11	68
	23.5%	33.9%	36.7%	35.5%	
Total	81	59	49	31	220

Base: all hearings affected by a disruption (multiple disruptions could be recorded during each hearing so percentage figures sum to more than 100%).

The interviews suggest that it could become necessary to remind defendants about the standards of behaviour expected in the court, but that enforcing these standards may be more challenging in video court, “...I think probably that’s easier addressed when they’re in person and obviously they can see the gravity of the courtroom when they’re standing there.” (106_LACA). Separation from the courtroom had the effect of removing some of the physical cues associated with in-person court appearances - “I don’t think it makes people behave more inappropriately but I think perhaps they are less aware of the need to behave appropriately.” (130_MDJ) – and “it’s not so much disruption as inappropriate behaviour.” (103_DA). Lack of legal representation and the stress of appearing in court, were also cited as factors influencing defendant behaviour, “...our sort of clients seem to get much more stressed up and they’re much more likely to start talking over everyone during the course of a hearing, than they do in the dock” (122_DA). Reflecting on the behaviour of defendants one magistrate remarked, “It’s not every defendant you see on the video link that has a bad demeanour. I think people just want to get the matter over and done with really...” (131_MDJ).

The video court distancing effect could lead to more extreme displays of behaviour like physical aggression, “I’ve seen more people kick off with the magistrates over video link than I have in a courtroom” (116_PO). Damage or risk could result.

“...some defendants, they kick off and they are rude, and they almost certainly wouldn’t do that if they’re actually there in person. I’ve had one or two of them who have actually hit the equipment and smashed it up and kicked off. Because they’re in a police station and they’re not actually in the court, there’s no real sanction for that.” (103_DA)

“...the detainee was in the room with the detention officer and when the magistrates were sentencing him, he kicked off big time and it was awful really...” (114_VCA).

However, these comments should be contextualised against the very small number of actual occurrences of verbal or physical disruption, just 12 in over 600 hearings (Table 9).

Overall, attempts made to minimise the impact of disruptions occurred in 71.7% of hearings (Table 14). This activity decreased after the installation of the booking tool (C1: 72.5%; C2: 67.8%) to a level that was lowest across all conditions (C3: 73.5%; C4: 75.0%).

Table 14: Attempts to minimise disruptions/disruptiveness by condition

	C1: VC: 'before'	C2: VC: 'after'	C3: NVC (police bail denied)	C4: NVC (police bail granted)	Total
Attempts made to minimise disruptions (yes)	50	40	36	21	147
	72.5%	67.8%	73.5%	75.0%	71.7%
How disruptive were these instances: not/somewhat disruptive	52	25	21	18	116
	68.4%	43.1%	42.9%	62.1%	54.7%
How disruptive were these instances: moderately/ extremely disruptive	24	33	28	11	96
	31.6%	56.9%	57.1%	37.9%	45.3%
Mean score rating of disruptiveness	1.43	1.98	1.92	1.55	

Base: all hearings affected by a disruption.

The overall disruptiveness of each type of disruption was recorded on a scale where 0 = ‘not disruptive’, 1 = ‘somewhat disruptive’, 2 ‘moderately disruptive’ and 3 ‘extremely disruptive’ (see Section 12.4.2). The impact of disruptions on video courts increased after introduction of the booking tool, with 31.6% of disruptions being moderately or extremely disruptive prior to the booking tool compared to 56.9% afterwards (Table 14). There was little difference in terms of the impact of disruptions between the after-stage conditions and the non-video court

condition where police bail had been denied (C3: 57.1%). Analysis of the mean score ratings for disruptiveness revealed that disruptions experienced during video court hearings after the installation of the booking tool (C2: $M=1.98$, $SE=0.12$) had more impact than those recorded before the introduction of the tool (C1: $M=1.43$, $SE=0.11$). This difference was statistically significant ($t(132)=-3.39$, $p<.001$). Thus, fewer disruptions are recorded after the installation of the booking tool but have a greater impact.

Hearings affected by disruptions take longer to complete: 20 minutes (median = 17 minutes, $n=219$), compared to 16 minutes (median = 14 minutes, $n=398$) for hearings unaffected by disruptions. After-stage video court hearings affected by disruptions were on average longer than before-stage hearings, whilst the opposite is true for video court hearings unaffected by disruptions (Table 15).

Table 15: Hearing length and disruptions to hearings by condition

	C1: VC: 'before'	C2: VC: 'after'	C3: NVC (police bail denied)	C4: NVC (police bail granted)
No disruptions				
Minutes (mean)	15	14	18	17
Minutes (median)	14	13	14	15
Sample size (n)	109	97	93	99
Disruptions				
Minutes (mean)	17	19	28	16
Minutes (median)	15	18	23	13
Sample size (n)	81	58	49	31

Base: all hearings (excludes missing data)

After-stage hearings affected by an AV disruption were on average six minutes (mean) longer than those unaffected by such issues after the introduction of the booking tool (Table 16).

Table 16: Hearing length and AV disruptions or issues raised by condition

	C1: VC: 'before'	C2: VC: 'after'
No AV disruptions		
Minutes (mean)	16	16
Minutes (median)	15	15
Sample size (n)	165	135
AV disruptions		
Minutes (mean)	14	20

Minutes (median)	13	19
Sample size (n)	25	20

Base: all hearings (excludes missing data)

To attempt to isolate the effect of the booking tool across the video and non-video conditions, an analysis was run that excluded AV disruptions and AV issues (Table 17). This analysis included instances where there was general participant disruption, as well as defendant interjections and other forms of inappropriate behaviour recorded in Table 7 that were not previously coded as causing a disruption²⁴.

Table 17: Disruptions, excluding AV issues

Type of disruption	C1: VC: 'before'	C2: VC: 'after'	C3: NVC (police bail denied)	C4: NVC (police bail granted)	Total
Participant disruption	40	27	32	16	115
	47.6%	36.5%	52.5%	35.6%	
Defendant interjections/ inappropriate behaviour	7	9	10	4	30
	8.3%	12.2%	16.4%	8.9%	
Defendant helpful interjections	20	28	12	12	72
	23.8%	37.8%	19.7%	26.7%	
Other technology issue causing a disruption (e.g. Wi-Fi)	7	5	4	5	21
	8.3%	6.8%	6.6%	11.1%	
Other type of disruption	19	20	18	11	68
	22.6%	27.0%	29.5%	24.4%	
Total	84	74	61	45	264

Base: all hearings affected by a disruption or participant interjection, excluding AV disruptions and issues (multiple disruptions could be recorded during each hearing so percentage figures sum to more than 100%).

Overall, participant disruptions, as well as instances of inappropriate interjections/inappropriate behaviour by defendants not previously recorded as disruptions, were less commonly observed in video court hearings compared to the non-video court condition where bail had been denied. Furthermore, instances of defendant interjections deemed as being helpful in nature were more frequently observed in video court hearings after the installation of the booking tool (C2: 37.8%) than compared to all other conditions (C1: 23.8%; 19.7%; 26.7%). The increase in the proportion of helpful interjections seen at the after-stage may in part be related to the revised guidance offered to defendants.

²⁴ This analysis included defendants who made 'helpful interjections'; 'inappropriate interjections'; 'interjections to disagree with a piece of information'; and those 'verbally/physically disrupting the court proceedings.

8.5 The use of video links

Despite concerns about the time it could sometimes take to move defendants from the custody cell to the video link suite, defendants were more likely to be sat waiting at the remote location when the video link to the remote location was established at the after-stage (C2: 92.3%; C1: 56.4%). This suggests a potential efficiency saving as hearings are more likely to be able to proceed immediately after the video link to the remote location is established, rather than incurring any delay as defendants are moved from their cell to the video booth. Although only measured at the after-stage, video links to custody were successfully established at the first attempt in 87.8% of hearings. Where video links to remote locations were not established at the first attempt, the use of manual dialling was often used as a workaround. Examples of the types of scenarios observed when the video link was not successfully established first time include:

- An eight-minute delay while the VCA, usher and legal advisor attempt to establish a link with a remote location.
- An instance where the defence lawyer appeared and then the connection was lost. During this hearing there appeared to be an issue with connecting all three sites using the booking tool, so the sites had to be connected manually.
- An instance where the defence advocate, who was at a separate remote location to the defendant, could not see the courtroom. The advocate agreed to proceed into the hearing whilst the backroom staff addressed the issue. This was fixed, however, the advocate briefly disappeared from the screen in the courtroom.
- An instance where the defendant could not see the courtroom, resulting in the need to disconnect/reconnect with the courtroom.
- An instance where there were multiple attempts to connect to the remote location using manual dialling because of issues with the audio and sound.
- Instances where connections were made to the wrong remote location, or there were unspecified issues with the video link.

Whilst defendants were more likely to be present in the custody suite at the time the video link was established, this introduced a further risk that the initial impression the courtroom gets of the defendant could be garnered from an unguarded moment. This was because the links in custody booths were established without any prior warning, or countdown, to inform remote parties that the hearing was about to commence, “I have seen, for example, clients when the screen flicks on in court, clients with their feet up on the desk ...” (104_DA).

Video link failures were extremely rare, occurring twice each in the hearings observed before and after the introduction of the booking tool. As a subset of problems with video links they were negligible relative to problems establishing links, and AV disruptions. The use of audio muting decreased after the introduction of the booking tool. Audio muting was used when the bench retired in 28.5% of hearings before the booking tool and 26.3% of hearings after its installation. The use of audio muting at times other than when the bench retired demonstrated a larger decrease, occurring in 27.4% of before and 11.5% of after-stage video court hearings. Muting can, understandably, be experienced negatively by defendants.

We also assessed the framing of participants on screen, as well as various aspects of the audio and video image quality. Table 18 presents compendium statistics from the framing, audio and image quality observations for defendants, as well as for defence lawyers when appearing from a remote location.

8.6 Framing, audio and image quality assessments

During the interviews participants spoke of some of the challenges they faced with the audio-visual equipment during hearings. The VEJ Programme provided funding to upgrade the audio-visual equipment in the courtroom and differences in terms of the metrics used to assess the quality of the audio-visual feeds between the before and after-stage registered in the SOS data. Overall, issues with sound quality appeared to be most problematic, however, there was also some evidence that the quality of the framing could also impact on the ability of those in the court to see remote participants. One possible explanation for these differences could be the introduction of voice-activated microphones and cameras used to increase the size of the view of the person on the screen who is addressing the court in three-way video link hearings. Prior

to the introduction of the booking tool the presentation of parties involving more than one remote participant was via a static split screen. Therefore, issues with the audio-visual quality caused by the voice-activated microphones appeared to be more problematic during hearings with multiple remote participants (e.g. three-way links). The involvement of multiple remote parties inevitably places more demand upon the video link technology.

8.6.1 Framing quality

Framing quality improved between before and after-stages for both defendants and defence lawyers but room for improvements remained with respect to that of defence lawyers (Table 18). This may indicate a training need for defence advocates in terms of helping to ensure they remain in frame (see Section 7.2). The proportion of hearings during which there was a clear view of the defence lawyers' facial features decreased after the installation of the booking tool. Here, we observed an increase in the proportion of hearings where defence lawyers were either too far away from the camera (C1: 34.5%; C2: 48.9%), or the video quality was too poor (C1: 9.1%; C2: 13.3%).

After installation of the booking tool, the framing of the defendant was more likely to give an impression of eye contact (C1: 82.1%; C2: 91.8%). There was also a small increase in the proportion of hearings during which there was a clear view of the defendants' facial features (C1: 28.8%; C2: 29.1%). Whilst there is some evidence that the placement of the defendant in relation to the camera may have improved, as demonstrated by a decrease in the proportion of hearings in which the participant was deemed to be too far away from the camera (C1: 62.7%; C2: 57.6%), there was an increase in the proportion of hearings where the image quality resulted in an unclear image of the defendant's facial features (C1: 14.1%; C2: 19.6%). Since the proportion of hearings during which the defendant remained visible on the screen varied little between the before and after-stages, the increased proportion of unclear images reflects the fact that defendants became animated enough to change their position, thus moving out of frame.

Issues with the framing of participants were less frequently cited by interview participants, although there did appear to be an issue with the positioning of some of the cameras in the

police custody booths, as these could not be adjusted, “...all you get is sort of his nose and his eyes and the top of his head at the bottom of the TV and I look at it and I go oh, you know, and then you say to the custody office, “Can you reposition the camera?” and they go, “No, it’s fixed, I don’t know how to do it.” (107_CU). As a solution, it was suggested that it would be helpful if ushers could reposition the view of the camera from the courtroom.

Issues with participant framing were also reported when defence advocates and their clients appeared side-by-side at the same remote location. Hearings with multiple remote participants could become confusing or disorientating and issues were reported with the use of the multiscreen, a function used in three-way links that would switch the view of the remote location to the person who was speaking,

“I know in the earlier days, sometimes there were some problems with the audio quality. That was particularly when it went to like the multiscreen mode... when it flicked between the screens sometimes the audio quality would be different in the different locations, so it was a bit more difficult sometimes to hear and it wasn’t sort of synced up. But I will say, I think recently they’ve obviously enhanced something, because just a more recent sitting I had, it seemed to be a lot, lot better.” (128_MDJ)

Participants also discussed the impact on framing introduced by the use of voice-activated microphones and cameras to highlight the remote party addressing the court in three-way video link hearings, a change which coincided with the introduction of the booking tool. This caused some initial confusion and required further explanation to participants unfamiliar with this new functionality. Defence advocates appearing from remote locations also suggested the introduction of this new feature could be off-putting and distracting, “...if I’m on the other end and... the screen keeps flicking between the people who are speaking it can be quite off-putting. You’d rather have a view of everything” (101_DA), and,

“...it can make life a bit difficult. It’s just when the image in front of you suddenly disappears from the court... I’m addressing magistrates and for some reason or another, like all technologies this doesn’t always happen at the right moment, it will suddenly switch and I’ll be looking at the defendant...” (112_DA)

Issues with this feature were also experienced in the video courtroom. Unlike non-video court, where the defendant would be seated in the dock, sound delays and background noise meant defendants often remained in small-view mode and this made it difficult to make assessments of behaviour and demeanour,

“...when the advocate is in a large picture you can’t actually see the defendant and his emotions, his facial expressions, his reaction to what’s been said so again, it’s another of these elements of are they engaging, do they know what’s happening, do they realise this is about them?” (109_LACA)

8.6.2 Audio quality

The proportion of hearings during which the sound was stable, there was synchronicity between the audio and the video, and the loudness of the sounds was at a conversational level, all decreased between the before and after-stages for both defendants and defence lawyers (Table 18). The proportion of hearings with background noise or audio interference also increased after installation of the booking tool for both defendants and defence lawyers. Audio quality decreased for both sets of participants after the booking tool began controlling the video links between the courtroom and police custody. The differences in the mean score rating for both defendants (C1: $M=3.26$, $SE=0.06$; C2: $M=2.93$, $SE=0.07$; $t(345)=3.64$, $p<.001$) and defence lawyers (C1: $M=3.28$, $SE=0.11$; C2: $M=2.87$, $SE=0.14$; $t(101)=2.33$, $p<.005$) was statistically significant.

The quality of the audio in the courtroom may also have been affected by the introduction of the voice-activated microphones and cameras. Ratings of the audio quality may have been affected by the sensitivity of the microphones, as they could pick up on background noise from remote locations such as tapping, typing and shuffling papers when switching between views, and broadcast this within the courtroom,

“...if the solicitor was tapping or typing or writing or moving papers, then you’d be trying to look at details for the defendant but actually what you’d be seeing was the solicitor because the solicitor was the person making the noise.” (109_LACA)

“...what tends to happen is if your microphone, for example, is set to a high sensitivity and if you’re, for example, the solicitor, every time you make the slightest noise like turn a page in your notes the camera automatically reverts to you and what often happens, if your client on that particular case has a camera that’s got a low sensitivity setting then nine times out of ten you’re always looking at the lawyer instead of the detainee on screen.” 107_CU

The initial performance of this feature was described as “very temperamental” (109_LACA), whilst another stated, “...[it] sometimes doesn’t work because the technology is not as good to allow instant communication. You still have that delay, where perhaps sometimes, two people want to speak at the same time.” (110_PO).

During the observations a record was made of instances when either a remote participant, or a participant inside the courtroom, reported an issue with the audio quality. In terms of audio issues reported at the remote location, this increased from 7.2% of hearings at the before stage to 9.5% of hearings at the after stage. A similar increase was observed for audio issues reported inside the courtroom, with this occurring in 7.7% of hearings before the installation of the booking tool and 11.3% of hearings after its introduction.

An assessment of the disruptiveness of the audio issues inside the courtroom was made by the fieldworkers, with the evidence suggesting the impact of these disruptions increased after the introduction of the booking tool. Accordingly, whilst 2.0% (n=1) audio issues were deemed to be either ‘moderately’ or ‘extremely’ disruptive at the before-stage, this increased to 18.5% (n=5) of after-stage hearings (noting that while this is a considerable percentage change the number of occurrences remains very small). Overall, audio quality issues were appraised as being more disruptive after the introduction of the booking tool (C1: $M=0.59$, $SE=0.09$; C2: $M=1.15$, $SE=0.17$) and this difference in the mean scores was statistically significant ($t(74)=-3.19$, $p<.001$); the impact of this artefact of screen switching between small and large views was discussed above.

Evidence from the interviews suggests that the quality of the audio in the courtroom could also be inconsistent between hearings. One possible explanation for this was the different set-ups at each of the custody suites.

“I think one of the main things is the clarity of communication; a lot of the suites where the detainees appear from in the police stations, they’re all varied in terms of their, the way they’re set up to capture sound so quite often we have complications with poor microphone set ups or the defendants not quite, not positioned particularly well via the camera...” (107_CU)

Poor quality audio could lead to delays to hearings, although there was a view amongst participants that the quality of the audio had improved over recent months. Poor quality audio was a source of frustration but it was rare that hearings had to be adjourned because of issues with the equipment. One of the implications of poor quality audio was the additional burden placed upon magistrates to ensure they followed proceedings, “...you just have to concentrate extra hard to make sure you do hear everything correctly.” (126_MDJ).

Issues with poor quality audio appeared worse during hearings involving multiple remote participants. Background noise from custody suites (e.g. slamming doors, alarms, shouting) could also be distracting,

“...there were a couple of sessions, particularly on the multilink, where the audio quality was poor. We didn’t necessarily know who was speaking. It could be distorted, or it would go loud or quiet sort of thing. It wasn’t like a constant level.” (128_MDJ)

Participants also experience hearings suffering from feedback and this was particularly difficult for prosecutors who could hear their own voice projected back at them whilst speaking,

“...the equipment's not great. If they have to turn the volume up quite high at their end, so they can hear you, when you're trying to talk to them, you keep hearing yourself feeding back. So sometimes if you're talking and then you're answering your own question, so it's very difficult to communicate over a video link I would say.” (122_PR)

Defence advocates appearing from remote locations also reported issues with the audio. For instance, the positioning of the microphones in court could sometimes lead to difficulties in hearing participants. Those who were unfamiliar with appearing in video court were often unaware of the importance of ensuring a microphone was near-by when speaking,

“...for some reason or another those microphones they use either weren't working very well or whatever, I had to stop the hearing several times so that we could get a mic put in front of somebody who wanted to talk... If you get anybody who isn't a regular, they, in that sense, they'll be less likely to be on the ball with it.” (112_DA)

Table 18: Framing, audio and image quality assessments

	C1: VC: 'before' defendant	C2: VC: 'after' defendant	C1: VC: 'before' defence advocate	C2: VC: 'after' defence advocate
Framing quality				
Impression of eye contact (yes)	156 82.1%	145 91.8%	45 77.6%	38 84.4%
Always visible (yes)	180 92.8%	146 92.4%	36 62.1%	37 82.2%
Clear view of facial features:				
Yes (exclusive)	51 28.8%	46 29.1%	18 32.7%	11 24.4%
No, too far away	111 62.7%	91 57.6%	19 34.5%	22 48.9%
No, face partially/fully obscured	10 5.6%	8 5.1%	18 32.7%	13 28.9%
No, video quality too poor	25 14.1%	31 19.6%	5 9.1%	6 13.3%
Total	177	158	55	45
Overall framing quality rating (mean)	146 2.59	158 2.61	44 2.45	45 2.51
Audio quality				
Sound stable (yes)	147 77.0%	94 60.3%	48 82.8%	29 64.4%
Synchronicity of audio/video (yes)	178 100.0%	152 98.1%	54 100.0%	39 88.6%
Loudness of sound at a conversational level (yes)	174 91.1%	132 84.6%	53 91.4%	39 86.7%
Background noise/audio interference (yes)	40 20.8%	49 31.4%	13 22.4%	18 40.0%
Overall audio quality rating (mean)	191 3.26	156 2.93	58 3.28	45 2.87
Image quality				

Video image stable (yes)	189	149	57	41
	99.0%	96.8%	98.3%	91.1%
Image of remote participant clear/natural (yes)	90	80	22	30
	52.0%	51.6%	42.3%	66.7%
Overall image quality rating (mean)	169	155	48	45
	3.15	3.35	2.94	3.47

Base: all video court hearings involving defendants and defence lawyers (excludes missing data)

8.6.3 Image quality

An increase was observed in the proportion of hearings during which the image of the defence advocate was deemed to be clear and natural after the booking tool began controlling the links from the courtroom to custody (C1: 42.3%; C2: 66.7%). There was a statistically significant increase in the overall image quality assessments made for both defendants (C1: $M=3.15$, $SE=0.05$, C2: $M=3.35$, $SE=0.06$, $t(322)=-2.60$, $p<.005$) and defence lawyers (C1: $M=2.94$, $SE=0.09$, C2: $M=3.47$, $SE=0.10$, $t(90)=-3.94$, $p<.001$) following the introduction of the booking tool.

Issues with the video image quality were rare, occurring in 10 (5.2%) of the before and 8 (5.1%) of the after hearings.

8.7 Audio-visual environment

8.7.1 Layout of the courtroom

The physical design of courtrooms has been a regular feature of research on the courts for many years (see, e.g., Rock 1993) and an acknowledged landmark in our understanding of the courts includes a major theme specifically directed to the physical layout of magistrates courts (Carlen 1976). Likewise, the most effective physical layout is a substantial feature of research on video courts, with the Dutch courts largely if not entirely standardised in their design to facilitate a common experience of video hearings across the court estate. In this context, comments were made by participants about the physical layout of the video courtroom at South Eastern Magistrates Court, as well as the quality of the equipment.

Both the television screens and camera were positioned to the side of the courtroom and this could make it difficult for the bench to engage with the person appearing over the video link and those in the courtroom, “I think it’s the layout. It is impossible to watch the screen, be

courteous and look at the person who's addressing you, keep an eye out on the public gallery, who might be misbehaving..." (127_MDJ). Interview participants suggested that consideration should therefore be given to the positioning of the screens, to enable the bench to more easily keep the courtroom and the remote participant in view. Larger, adjustable screens were also cited as possible improvements.

The use of computers or tablet devices in court was also cited in reference to the position of the camera. The side-on view the remote participant had of the courtroom could potentially lead to an impression of being excluded from proceedings. Although those physically appearing in court had a side-on view of the court from the dock, they also had the opportunity to adjust their position or view of the court by moving seats. This option would not be available to those appearing from the remote location as the view of the courtroom was typically fixed for the duration of the proceedings,

"...the legal advisor and the magistrates and most people in court are now looking at their computers, it means that those on the screen are kind of looking side on and their perception may be that they're not included in the session, although it's all about them, they might not feel as if it is all about them." (105_LACA)

Those who had experience of appearing from a remote location also highlighted issues with the camera angle and the view of the courtroom. Participants complained that it was not always possible to see all of the participants involved in hearings,

"...what you see remotely is really not good sometimes. I very often only see the prosecutor, or I only see the clerk, or I only see the magistrates. I would say very rarely do you see the whole court." (101_DA).

The view from the remote location was often side-on. Whilst this would be the same for defendants appearing in the dock in the courtroom, the view from the remote location could not be adjusted and this could increase the sense of exclusion and detachment experienced. Former defendants highlighted concerns about the view of the courtroom from the remote location, particularly in reference to their ability to see the public gallery and any family members in attendance for their hearing (see Section 9.5)

Probation officers also highlighted their concerns with the physical layout of the court. Probation officers were typically seated next to the usher to the side of the court, underneath one of the television screens. This meant that whilst they were not visible to the parties appearing from the remote location, they also could not see the image of the remote location. The positioning of the probation officer meant that when they were required to address the bench they had to move to a space in the well of the court. As a consequence, probation officers were concerned that it may appear as if they were not prepared for hearings,

“...every time I speak in a video link court I have to pluck a microphone from someone who isn’t using one so that takes a second and it’s a bit embarrassing because you’re like, it looks like you’re not prepared but I’m not prepared because the court’s not prepared for me so” (116_ProfOff)

Daily equipment checks in both custody and the courtroom to ensure minimum standards of operation prior to the start of a day’s court session could help to minimise delays caused by faulty equipment or technology breakdowns. This could include checking network connection speeds (it was noted that no test of the JVS network capability had been conducted prior to the installation of the booking tool), as well as ensuring all of the microphones are fully charged and functioning properly,

“...probably the most important of all is a check being made every day with all of the equipment at the different endpoints, in police stations and prisons, you know, someone overseeing that to make sure that the equipment is fit and working. Even down to silly things like the microphones we use in court, we must make sure that our ushers change the batteries and check those, but because of reduced staff, that’s not always done.” (105_LACA)

8.7.2 Suitability of video booths

One issue raised by defence advocates related to concerns about the potential for breaches of confidentiality owing to soundproofing issues with the video booths. These issues appeared to relate more directly to the soundproofing of the video booths in police custody. Two defence advocates recalled situations in which someone had informed them after a hearing or

consultation that they could be heard from outside the booth. These issues appeared to be caused by the volume of the audio being set too loud and the issue could be easily resolved,

“...there should be adequate sound proofing, there should be adequate checks and balances in place that no one standing outside should be able to hear what’s being said, but that’s another worry for a Defence Lawyer certainly.” (104_DA)

Participants also discussed the quality of the courthouse and custody suite video booths, including the size of the screens, the quality of the audio, as well as the general working environment,

“...the quality of the booths is not good enough either, in summer there’s never any air conditioning in there it’s just horrendous, you feel like you’re in a sweat box, you’ve got 20 minutes and you feel like you’re going to die, it’s just awful.” (104_DA)

Concerns about the confidentiality of the video booths were also raised by former defendants, “...obviously I don’t know how confidential it really is because it’s just video to video... I suppose it’s as confidential as it’s supposed to be” (007_DEF). Evidence from the interviews suggests more could be done to reassure defendants about the confidentiality of their consultations with advocates, “...you don’t know, so anyone could be listening. You don’t know who’s in the room. You just see literally a desk, your camera and his camera” (007_DEF).

9 Impact on legal processes in the magistrates’ courts and on justice: wider issues

This section of the report considers the broader impact of video court on the legal process within the magistrates’ courts, as well as some of the broader implications around open justice, local justice and trust and confidence in the legal system.

9.1 Communication inside the court room

One of the biggest implications of video court was that it removed opportunities for informal ‘corridor conversations’ between legal professionals and court staff in-between hearings and as a consequence communication and interaction between the parties involved in hearings could

become “disjointed” (129_MDJ). The disjointed nature of the communication and interaction in video court could become a source of frustration, particularly when it had an impact on the number of hearings the court was able to get through during a session. Further support towards enabling some form of communication between the different parties involved in hearings could help mitigate some of these concerns. One suggestion offered was the use of an open forum in which to leave messages for parties involved in cases on the day’s list.

Hearings involving a defendant as a single remote participant were less problematic, particularly where they had legal representation as defence advocates could explain legal processes (e.g., 120_PR). Issues with disjointed communication were more prevalent when defence advocates appeared from remote locations. For legal advisors, reduced interaction with defendants and defence advocates prompted further concerns that they had less control over the functioning of the courtroom (e.g. 111_LACA). Such concerns can be regarded as opportunities for technology developers to enhance system functionality and for court professionals to reflect on innovative ways of working.

Teamwork inside the courtroom was another dimension of the face-to-face interaction issue,

“...it’s not ideal to communicate with people without some face-to-face interaction... it’s not just a one-to-one with a client, although obviously solicitor/client, that’s the main relationship as far as I’m concerned but you have to liaise with all other parties. In court, it’s a teamwork, you might have to speak to the legal advisor, probation service and other parties and it’s a lot easier if the parties are there, physically, in close proximity.” (125_DA)

Face-to-face contact helped to bolster professional working relationships. The building of trust and rapport, particularly between the prosecution and defence, is an important asset when working to resolve complex issues. Communication inside the courtroom involved an element of “give and take” between the different parties (e.g., 111_LACA; 103_DA) and reduced face-to-face contact made it difficult for prosecutors and advocates to engage in informal communication about sensitive matters relating to hearings e.g., around the plea,

“...you can’t underestimate the rapport between a prosecutor and a defence lawyer who have known each other for years. They trust each other’s judgement, and you can have really honest conversations, you know, outside court with a prosecutor or vice versa about the reality of a case rather than what you read on the papers.” (127_MDJ)

While acknowledging court professionals’ views on these matters, overly close working relationships may seem to some as less than optimal in terms of open justice and of equivalent treatment across courts and jurisdictions. Historically, physical separation had made processes such as completing paperwork or case management more challenging in video court as participants were unable to physically pass documentation on to one another. Criminal cases increasingly involve various types of audio and visual evidence (e.g. CCTV or body-worn camera footage; photographs) and defence advocates also reported challenges showing this material over the link. Electronic document sharing/signing was seen as one way to improve the efficiency of this process, despite issues with access to computers and wireless internet at remote locations. Whilst participants recognised these challenges, the introduction of enhanced digital working through programmes such as the Common Platform were seen as ways through which these issues could be overcome.

9.2 The efficacy of legal representation in bail applications

Participants suggested that those appearing over the link did might not have the “same effect” (122_PR) as those present in the courtroom and particular concerns were raised in relation to bail applications. Communication issues (e.g. reduced opportunities for corridor conversations) made it difficult to talk to prosecutors about bail conditions, particularly on days where there is a full list. Defence advocates reported less “back and forth” with prosecutors over bail conditions (103_DA). This was due in part to the complications arising from reduced opportunities for corridor conversations with prosecutors, but also because consultations with defendants over the link tended to be a “one off” occurrence. As a consequence, defence advocates had to try and prepare as much as possible before their consultations to minimise complications during hearings (e.g., 103_DA). Remote defence advocates also found it more difficult to liaise with probation officers, for instance in terms of getting updates on community

orders. Insufficient information could be, “very damaging to what we’re trying to say for the defendants” (101_DA).

Issues associated with the availability of video booths created scheduling problems and placed advocates under pressure to complete their consultations in a timely manner (see Section 7.8.3). Additional time during pre-hearing consultations could be taken up explaining video court process to defendants and this issue was often more apparent when dealing with vulnerable or ‘excitable’ defendants. Defendants were often only interested in discussing their bail applications and this could make it a challenge to deal with other aspects of the client’s defence. Face-to-face communication enabled much more frank discussion to occur about the facts of the case and the mitigation being offered by the defence,

“It’s quite difficult sometimes to stop them, and start talking to them about mundane matters, like the Legal Aid application, which is necessary, and more importantly the defence. Have they got a defence, and, if so, what is it? They’re really not interested in that. They just want to talk about getting out...” (102_DA).

9.3 Legal representation

Defendants involved in video hearings were less likely to have legal representation (C1: 82.6%; C2: 84.3%) than compared to in-person hearings where the defendant had been denied police bail (C3: 93.8%). Lower representation in video hearings reflects the relatively early stage at which the fieldwork found defence advocates in their engagement with the video court. As in many courts, a small number of law practices accounted for a large proportion of representation at South Eastern Magistrates’ Court, and the move to an online environment occasioned by the booking tool meant that a device (e.g., a laptop) that had formerly been used for behind-the-scenes work necessarily became the defence advocate’s frontline point of access to the hearing. It would be reasonable to regard this as a temporary obstacle (an obstacle that may be overcome even more quickly due to the impact of legal changes occasioned by the unfortunate circumstance of the COVID-19 pandemic). Moreover, the rate of represented defendants was lowest in Condition 4 (72.0%), so the present position in the video

court is not only consistent with the comparator chosen to reflect the traditional face to face court, it actually registers this feature regarding represented defendants more strongly.

Interestingly, while some jurists and prosecutors suggested that hearings involving unrepresented defendants took longer to complete (e.g. 127_MDJ), analysis of the observation data contradicted this view. Hearings involving defendants with legal representation took longer to complete (mean = 18 minutes; median = 16 minutes; n=514) than hearings where the defendant did not have legal representation (mean = 13 minutes; median = 12 minutes; n=103). There was little difference in terms of the mean hearing length between the before and after-stage hearings.

Table 19: Hearing length by legal representation and condition (minutes)

	C1: VC: 'before'	C2: VC: 'after'	C3: NVC (police bail denied)	C4: NVC (police bail granted)
Legal representation				
Minutes (mean)	17	17	22	17
Minutes (median)	15	15	17	16
Sample size (n)	157	131	133	93
No legal representation				
Minutes (mean)	13	12	14	14
Minutes (median)	10	13	9	13
Sample size (n)	33	24	9	37

Base: all hearings (excludes missing data)

9.4 Hearing outcome

In addition to understanding the functioning of the booking tool within the first appearance remand process it was also important to consider the impact of court reform programmes on the outcomes for defendants. To account for this a record of the outcomes of each hearing was also made during the observations. As hearings often involved the court dealing with multiple matters, or multiple outcomes (e.g. fines and community orders), the observations recorded each decision made by the bench separately.

The figures presented below therefore represent the range of difference outcomes delivered within hearings, rather than the specific outcome of each hearing i.e., multiple outcomes were recorded therefore the percentage figures will not sum to 100%.

9.4.1 Adjournments

Some form of adjournment was recorded in 30.1% of hearings observed across the four conditions. Adjournments included hearings that ended whilst awaiting further evidence; the arrival of a relevant legal professional; a decision on another matter before the court; probation reports; medical/mental health reports; a sentencing slot in the court calendar; for a case management hearing; or for a trial at a magistrates' court.

Adjournment outcomes were recorded more frequently in video court, although a small decrease was observed in after-stage hearings. (C1: 31.8%; C2: 33.3%). Adjournments were less commonly observed in non-video court and were least common in the condition where the defendant had been granted police bail (C3: 29.0%; C4: 25.0%). It was not possible to distinguish between adjournments and cases put back to later in the day to enable, for instance, a pre-sentence report (PSR). Defendants who had their ethnicity recorded as non-White were less likely to have their cases adjourned in either video court (C1 & C2: 28.2%)²⁵ or non-video court where police bail had been denied (C3: 24.0%) compared to defendants who had their ethnicity recorded as White (C1 & C2: 33.6%; C3: 29.5%)

9.4.2 Matters sent to the Crown Court

Just under one-fifth (19.5%) of hearings involved an outcome where matters were sent to a higher court. This type of outcome was most frequently recorded in non-video court where the defendant had been denied police bail (C3: 27.6%). The proportion of hearings involving matters sent to a higher court increased following the introduction of the booking tool (C1: 21.0%; C2: 22.6%). There was little difference between the after-stage (28.0%) and the non-video court condition where police bail had been denied (28.6%) in terms of the early guilty plea rate where matters were sent to a higher court. Non-White defendants (C1 & C2: 41.0%; C3: 32.0%) were more likely than defendants whose ethnicity was classified as White (C1 & C2: 19.4%; C3: 26.8%) to have their cases sent to the Crown Court.

²⁵ Due to low sample size, the data for Conditions 1 and 2 has been combined.

9.4.3 Bail (conditional and unconditional)

Hearings in which the defendant was awarded bail (conditional or unconditional) were more frequently observed in video court, with the rate increasing after the introduction of the booking tool (C1: 31.3%; C2: 39.0%). Bail was least frequently observed as an outcome in the non-video court condition where police bail had previously been granted (C4: 16.7%). The rate for hearings involving defendants who had been denied police bail and transported to the court (C3) was 24.1%. In video court, defendants whose ethnicity was recorded non-White were more likely to be granted bail (C1 & C2: 41.0%) than White defendants (C1 & C2: 33.6%). This compared to C3: 24.0% of non-White and C3: 25.0% of White defendants involved in non-video court hearings where police bail was denied.

The denial of bail demonstrated a clear relationship with hearing type, with this being more likely to occur in hearings classified as either-way (C1: 62.5%; C2: 66.7%; C3: 72.2%) and indictable only (C1: 64.3%; C2: 73.3%; C3: 81.3%), than compared to those classified as summary hearings (C1: 16.5%; C2: 16.9%; C3: 14.1%). Further information about the method used to classify hearing types can be found in the appendix (Section 12.2).

In January 2019 revisions to the police remands application process were made, which included the requirement that all applications for remand were signed-off by a senior police officer. We see evidence of an effect in the data that may be related to this change in policy and practice in relation to bail as hearing outcome. Accordingly, the proportion of cases resulting in bail being denied increased in the hearings observed after 1 January 2019 from 28.1% to 39.4%. Furthermore, the granting of bail (conditional/unconditional) decreased from 43.8% of hearings observed before 1 January 2019 to 25.4% of hearings observed after this date.

The trend in the relationship of denial of bail to hearing type suggests that video hearings do not in this respect differ from what would be expected in a traditional court. Similarly, the likelihood that the trend in respect of remands arose from a policy and practice change rather than being a distinctive feature of video hearings also suggests consistency with decision making in a traditional court.

9.4.4 Sentencing outcomes

A record of was made of the sentence delivered to defendants in each hearing. The observation data recorded each of the various sentences given, which included: custodial sentences; fines or the awarding of costs and compensation; community orders; disqualification from driving and licence endorsements. Information on other outcomes, such as drug treatment orders or taking a drink driving rehabilitation course was also collected but has been excluded from this analysis.

Overall, defendants were sentenced to some form of punishment in 40.9% (n=258) of hearings. The proportion of hearings in which a sentence was given decreased in the hearings observed after the introduction of the booking tool (C1: 38.5%; C2: 32.7%), however, the rate in video court was not dissimilar to that observed in the non-video court condition where police bail had been denied (C3: 35.2%). Sentences were most commonly observed in the non-video court condition where police bail had been granted (C4: 60.6%). Defendants whose ethnicity was recorded as non-White were less likely to receive some form of punishment in video court (C1 & C2: 12.8%) than compared to non-video court where police bail had been denied (C3: 28.0%). For defendants whose ethnicity was recorded as White, there difference between the video (C1 & C2: 39.5%) and non-video (C3: 36.6%) is smaller and in the opposite direction. Further cases could be required to conduct an analysis of defendant ethnicity by type of sentence.

Where a defendant was sentenced:

- The use of custodial sentences was more likely to be recorded in video court hearings (C1: 48.0%; C2: 46.2%; C3: 19.6%; C4: 15.0%). The proportion of unrepresented defendants receiving custodial sentences was higher (58.3%, n=7) than the rate for represented defendants (42.5%, n=17) at the after-stage. However, across all observations, only 13 unrepresented defendants received a custodial sentence and further cases would be required to establish whether any representation premium was in operation.
- The use of fines was more frequently recorded in non-video hearings (C1: 36.0%; C2: 38.5%; C3: 54.9%; C4: 48.8%).

- The awarding of other costs (e.g. costs, victim surcharge, compensation) was more frequently recorded in non-video court hearings (C1: 61.3%; C2: 59.6%; C3: 86.3%; C4: 88.8%)
- The use of community orders was also recorded more frequently in non-video court hearings (C1: 10.7%; C2: 15.4%; C3: 27.5%; C4: 33.8%).

9.5 Open justice, local justice, trust and confidence

Interview participants considered the impact of the video court on concepts such as open justice and local justice, as well as the importance of trust and confidence in the criminal justice system. There was a concern that the increased use of video could remove the public's opportunity to see justice being done and that this might undermine trust and confidence in the system.

"I think if you make everything remote, you run that risk that the public doesn't have the faith in the justice system, because we deal with so many cases, most people's first contact with the system is with us, and if they can't see it and they don't know what's going on, then I think that leads to accusations of secrecy which are completely unfounded, but are very important." (111_LACA)

Video court offers the potential for centralised remand courts such as South Eastern Magistrates' Court to service work from a broader geographical region, however, participants also considered the effects of video court on local justice. Court closures and the move to centralised remand courts meant that magistrates' courts were taking cases from a larger area. Knowledge of the geographical locations of defendants (e.g. roads, schools etc.) is important, particularly when dealing with bail applications, "...its eroded away the idea of local justice... the disadvantages are often people dealing hearings, they don't really know much about the locations and the backgrounds, which actually can sometimes be important." (101_DA). The essence of accustomed understandings of the magistrates' court, with its reliance on a lay bench, is the reflection of prevailing community norms and standards as they apply in the area in which the court is located. Thus, local knowledge and the human factor are important considerations. Video court risked creating situations where those in court were unfamiliar with

either the defendants or the locations in which they lived and this risked removing the human element of justice,

“...I've heard magistrates, judges often remind the defendant about what he said last time, or they said to him last time he was in court, or the promises that he's made last time he appeared in court. And that becomes lost in this remote system.” (112_DA)

Again, the accretion of this kind of personalised ‘case history’ on a defendant could readily be supported by enhanced software functionality e.g., somewhere to record reflections of notes about a hearing and any guidance given to the defendant. Other concerns are less readily addressed:

“... face to face is sometimes easier, you can have a bit of joke, offer them a glass of water, if they cry give them a tissue, you know, you can't do any of those nice human things over a video link.” (116_PO)

However, it may well be that custody officers have acquired such sensitivities and skills but this remains unseen by court professionals because it is done off-screen before or after their appearance. Regardless of the facts of the matter, it is common practice in face-to-face courts to extend such basic support, even though ushers in a previous study were clear that they should not do it (Fielding, 2006). Given that most jurists accept that such support can serve the interests of justice by enabling lay people to play their part in proceedings, it may be that the greater use of video court is an opportune time to standardise the practice.

As in other studies participants were concerned that some defendants may not view video court appearances with the same respect as when physically attending court and this could have an effect on their behaviour in court. Physical separation from the courtroom could undermine the sense of solemnity.

“I've had instances where they've [a defendant] come into court on a second hearing, actually physically into court and it's been referred to that they had a previous hearing and this and that happened. And it has been said by defendants, "I've not been in

court before." And it's been explained that they were in a police booth and that that was then appearing in court." (121_PR)

From the viewpoint of a former defendant, video court was seen as being "very impersonal" (007_DEF), particularly as there was a risk of being remanded until trial,

"It's very impersonal for a very personal... what could be a very personal outcome in being put in custody and a chance of you being held without even being guilty of committing a crime, you know, than being able to stand in front of the dock, which is to stand in front of the magistrates and let them see, look at you in your eye, you know."

Two former defendants made references to the caging of animals, with one going on to state,

"Well, they treat you a bit more like a human being, aren't then, when you walk up and stand... well, yes, rather than... it's your name and number, so I think it's quite a personal time (007_DEF).

Whilst there was some evidence from the interviews with courtroom staff to suggest that fewer families are attending first appearance remand hearings conducted in video court, the inability to view the public gallery when appearing as a remote participant was discussed by former defendants. Particular reference was made to the impact this could have on family members attending the courtroom,

"...the only problem I had was I couldn't see my family. I don't know if you're allowed to or it's not, but you could only see the judge, so you can't see who's there to support you, so you didn't really... let's just say if I could see my family supporting me it could have made me feel better." (008_DEF)

"...it would have been nice to be able to have a look in the [public gallery], just to see like what type... because mum would have been in tears and that, just to see how, you know, because they're quite personal things, aren't they?" (007_DEF)

As the extracts also suggest, this can have an impact on defendants as well. Such considerations draw attention to the differences between video and non-video court as experienced by

defendants. They also point to the need to consider whether the delivery of justice in technology-mediated courtrooms should replicate traditional in-person practices, or whether there is a need to re-imagine justice in the digital era, including finding other ways of enabling family support.

10 Conclusion

Overall, the evaluation data suggest that the booking tool had relatively modest, positive effects on the listing process. Some initial teething problems were reported (e.g. uncommunicated updates, issues moving multiple parties from the Video Waiting Area to the courtroom), but these problems did not appear to persist. Although users identified issues with the functionality of the tool (e.g. the need to manually update the screens), it appeared to be generally reliable. The booking tool was relatively unobtrusive and did not appear to affect individual roles beyond its intended purpose within the listing process. However, one unintended consequence associated with the booking tool was the reduced sense of control over the listings process described by legal advisors at interview. This highlighted the importance of teamwork within the courtroom and the particular reliance legal advisors placed on the updates from video court users concerning the progress of cases towards court readiness.

There was a general sense that the booking tool was functioning as well as it could given the presence of confounding factors such as changes in other, unrelated courtroom technologies during the implementation of the booking tool. We should note that our fieldwork was conducted at a time when the booking tool was used to establish links with custody suites while some users had access to limited functionality of the tool and others did not yet have access to the tool. The findings drawn from this evaluation are based on observations in an ongoing process of change.

The implementation of the booking tool had no effect on overall hearing length. After the introduction of the booking tool, the video links to remote locations were established ahead of the start of the hearing (e.g. defendants were more likely to be sat in the video booth waiting

for their hearing) and this suggested a possible efficiency gain relative to the position of video court prior to implementation. Furthermore, in most cases, the video link to the remote location was successfully established at the first attempt. However, despite interviewees' perceptions of improvements in the listing process, the observation data identified an increase in the number of delays between hearings following the introduction of the booking tool.

Introductions designed to orientate defendants at the start of hearings increased following the introduction of the booking tool, although this change was partly due to the revision of the guidance in relation to the introductions used in video court. Participants discussed the impact of video court on communication within the courtroom, including the distancing effect and the impact of camera positioning and screen framing, the challenges associated with identifying vulnerabilities, and issues that might affect behaviour during a video court hearing.

Disruptions were more common in video court but decreased at the after-stage. Disruption was more likely to be participant-caused than technology-caused and there was little evidence to suggest that the booking tool caused any disruption to hearings. Defendants were more likely to attempt to make helpful interjections following the introduction of the booking tool, although again, one possible explanation for this is the revision of the guidance provided to defendants prior to hearings.

Issues with the quality of the audio were identified in the after-stage hearings. To mitigate these concerns participants suggested the implementation of daily equipment checks and the establishment of minimum standards in relation to the functioning of the technology both in terms of the network connection speeds and operation of the equipment. Inconsistencies in the set-up of custody suites (e.g. with regard to the quality and positioning of the camera and microphone) could create differences in terms of the audio-visual quality across hearings and suggest the need for standardisation.

Participants also discussed concerns relating to open justice (e.g. fewer families attending) and the broader implications for public trust and confidence in the criminal justice system. Concerns were raised by defendants regarding the view of the public gallery from the remote location,

highlighting that the management of the public gallery in video court is an issue that requires further attention. Whilst the move to centralised remand courts provides the opportunity to service work from a broader geographical location, participants were mindful of issues regarding local knowledge (e.g. when setting bail conditions) or the loss of personal ‘case histories’ for defendants.

There are also critical points where the interaction of the booking tool and courtroom AV as an overall system has exposed ongoing issues that are a bar to optional functionality. These have their basis in longstanding issues applicable across the court estate, and include matters relating to support for the work of interpreters in hearings requiring their services, ensuring that all parties to a hearing have what is required to proceed effectively and do not signal ‘readiness’ before these are in place, and the thorny issue of defining vulnerability in the context of suitability to participate in a video hearing beyond present criteria confined to communicative competence such that the definition attracts the widest possible professional and public agreement.

Although participants saw limited direct benefits for their roles, most recognised the broader role that video technology could play in the criminal justice system, particularly with respect to the giving of evidence over video link during trials. Reservations about the increased use of video centred around the importance of having a properly resourced system. While due caution obliges us to note that a fully comprehensive evaluation would require assessment of a fully operational end-state system, the evidence from the present evaluation suggests that even the use of a partially built booking tool service can present benefits to the management of the listing process for first appearance remand hearings in video court, along with a benefit in respect of identifying points where both the booking tool and the video environment with which it interacts could be improved.

Whilst the implementation of the booking tool was generally regarded as a positive step forward in terms of the listing process, resource constraints (e.g. police custody staffing levels) and infrastructure constraints (e.g., wireless internet issues, availability of video link booths) limited its optimal functioning. These issues were exacerbated by delays to the provision of

paperwork to defence advocates. The convergence of these issues could result in delays to pre-hearing consultations, and thus reduce the number of cases that could be court-ready at any one time, ultimately leading to delays to cases. Such issues reflect many of the key dependencies essential to the efficient running of the video court. Key Dependencies, and Recommendations arising from them, are detailed below.

Key Dependencies and Recommendations

Dependencies

Staffing/Training

- There is a relationship between delays to hearings and insufficient knowledge and/or experience of the inner workings of a live courtroom and of the court system more generally on the part of those involved in delivering the video court listing process. Delays occur when staff need to check information before updating the court. This dependency applies particularly to Video Court Administrators and ushers who have been newly appointed and/or tasked with a video court role.
- An effective first appearance remand hearing process depends on appropriate staffing levels across the various agencies involved. This is particularly pertinent to police custody, where the availability of police custody staff and their ability to focus on the demands of the hearing competes with associated demands on their time (supervising detainees, completing paperwork, updating the booking tool and so on). These demands can result in delays inside the courtroom as defendants cannot be produced in court when called.

Processes

- The ability of the video court technological and procedural infrastructure to deliver an effective hearing depends on timely and complete case file provision. As more parties appear from remote locations as the courts move towards a fully technology-mediated

system of hearings, case file provision becomes more critical. Evidence from the primary fieldwork site at South Eastern Magistrates' Court testifies to delays to proceedings being caused because case files had not been received by defence advocates, preventing them from conducting pre-hearing consultations. Timely provision of paperwork assists parties with their preparations. To support this process early identification of the defence advocates involved in hearings is important; once this information is received a booking tool can facilitate the necessary dissemination.

- Efficient running of the video court depends on clarity about the criteria for determining suitability to appear in the video hearing environment as opposed to a face-to-face hearing. Misunderstanding around the acceptance criteria can generate additional work including the need to adjourn hearings so the defendant can be transported to the courthouse.
- The efficiency gains associated with new ways of working in the courts and that can be delivered by technology depend to an extent on moving to centralised remand courts. Where centralised remand courts are in operation the effectiveness and perceived fairness of the hearings conducted in them depend to an extent on their ongoing ability to source local information relevant to their deliberations and, more broadly, to reflect local norms and standards in these deliberations. Local information is particularly important when decisions are made about outcomes such as bail conditions.

Communication between parties

- The delivery of an effective hearing depends on adequate channels for appropriate and necessary communication between the parties involved prior to hearings. This includes those involved in supporting the listing process (e.g., ushers) and those involved in the hearing itself (e.g., defence advocates). An instant messaging service was available during the VEJ programme to enable ushers and Video Court Administrators to communicate with each other. However, those appearing from remote locations found

it difficult to contact those inside the court, making it more difficult to share information or discuss details about cases.

- Where hearings require translation of the defendants or others words, the effective use of an interpreter depends on the calibre of the audio feed. Since paralinguistics (gesture) also facilitate understanding, the interpreter must be fully visible to all participants, including those at remote sites. Courts also need to afford the interpreter time to perform their task and to ensure that the recipient of translated speech has understood and can respond adequately.

Infrastructure

- A principal technological infrastructure dependency impacting the operation of the booking tool and many other elements of an effective hearing is network connection speeds between endpoints, and the network capability in respect of supporting reliable, high quality video and audio feeds. Prior to proceeding with the launch of the booking tool at the primary fieldwork site there was no test of the capabilities of the JVS network in respect of supporting the requirements of the video court.
- Wider roll-out of web/cloud-based listing solutions such as the booking tool requires reliable internet connections inside the courtroom but also at the various remote locations. During the VEJ Programme, upgrades were made to the wireless internet in the courtroom and at the various custody suites. As cases frequently involve some form of digital evidence (e.g. CCTV), bandwidth and connection speeds must also be adequate to support the use of such evidence from the remote sites at which each relevant party, including prosecution advocates and defence advocates, are sited.
- The ability of the video court to call cases on is affected by the available number of video booths across the court and police estates. An insufficient number of video booths limits opportunities for pre/post-hearing consultations, or for other work such as PSRs. This can increase the time taken to get cases court ready and generate delays.

Challenges associated with insufficient video booths include the need to avoid holding consecutive hearings from the same remote location. The ability to establish links to the court from laptop computers could alleviate this issue.

- It is recognised, even by defendants, that the wider roll-out of video court is likely to have cost implications for the police custody estate, both in terms of meeting health and safety standards for video court as well as ensuring there are a sufficient number of video booths to service demand. These costs should be factored into any future roll-out of video court.
- Sub-standard video equipment can impair communication and impede the efficiencies associated with the booking tool. Hearings affected by disruptions to the AV take longer to complete. Effective hearings also require a design standard sensitive to the requirements of the video court, e.g., with careful attention to the positioning of screens to enable the bench to more easily keep the courtroom and the remote participant in view and to accommodate the requirements of courtroom interpreters. Both the calibre of the equipment installed, and the design and layout of courtrooms for use as video courts, comprise significant dependencies.

Consideration of these dependencies underpins our Recommendations.

Recommendations

- Planning for the introduction of a booking tool needs to be comprehensive, including all criminal justice agencies whose staff have a role in the court process.
- All those with a role in the court process should be amply briefed in a timely way prior to the introduction of the booking tool.
- Where a role involved in the court process plays a frontline part in the courtroom, dedicated training with regards the booking tool should be provided, with comprehensive takeaway documentation and the availability of ongoing guidance, advice and support.

- There needs to be clear guidance on the acceptance criteria for video court (e.g. the suitability of defendants to appear via video link).
- The use of centralised remand courts has implications for local justice. Processes need to be put in place to ensure that benches can access local information when making decisions about outcomes such as bail conditions.
- Video court lessens opportunities for informal face-to-face conversations between those involved in the listing process and those involved in the hearing themselves. Consideration should therefore be given to facilitating an appropriate method of communication between, for instance, those involved in the listing process and defence advocates, and between defence advocates and prosecutors.
- Consideration should be given to issues such as network connection speeds between endpoints, and the capability of the network to support high-quality reliable video and audio feeds, prior to implementing the booking tool and/or video equipment at a given court. It should be a requirement to test the capabilities of the network to support the demands of the video court in the round, including for all relevant parties accessing the hearing remotely, including prosecution and defence advocates.
- A constraint on the operation of the video court is where there are too few video booths across the court and police estates, lengthening the time taken to get cases court-ready and thus generating delays. The ability to establish links to the court from laptop computers could partly alleviate this issue.
- The wider roll-out of video court has cost implications for the police custody estate, which must meet health and safety standards for video court and ensure there are enough dedicated video booths to service demand. These costs should be factored into any future roll-out of video court.
- High quality, reliable audio/video technology is required in order to deliver effective video court hearings. Both the standard of the equipment, and a courtroom design

standard tailored to the requirements of an effective video court hearing, represent significant but necessary investments.

- In interpreter-assisted video court hearings, a clear and high-quality audio feed from and to the interpreter is crucial for the avoidance of inaccuracies and disruptions. Moreover, the interpreter needs to be visible to all court participants (incl. the remote participants) and needs to have a good view of all participants.
- The interpreter needs to be given sufficient time to relay the message. This is particularly important when the interpreter is co-located with the remote defendant, where it is often more difficult for the interpreter to make him/herself heard and intervene in a non-disruptive manner.
- The booking tool piloted and introduced during the evaluation period would benefit from a number of modest adjustments and additional features; these include the facility for backchannel communication between users; a note-making feature, for instance, to record observations about defendants or the advice provided; pop-up notifications regarding additions to the list or alerts about time-sensitive matters; automatic page refreshing and/or the ability to save page settings; the ability to 'batch' cases and/or provide a clearer indication of the running order of cases; as well as a clearer indication as to whether an interpreter is needed/has been booked.
- While it may be a matter for a court service protocol rather than achieved by way of an enhancement of the booking tool, it should be noted that a range of key stakeholders and frontline users maintain that a limit to the number of cases that can be included on the court's list in a single day should be introduced.
- Robust contingency plans are required for instances where other courtroom technology fails. Daily equipment checks in both custody suite and the courtroom to ensure minimum standards of operation prior to the start of a day's court session could help to minimise delays caused by faulty equipment or technology breakdowns. This could

include checking network connection speeds as well as ensuring all of the microphones are fully charged and functioning properly.

- The introduction of enhanced digital working through programmes such as the Common Platform was seen as ways through which some of the issues noted above could be overcome – highlighting that the introduction of the booking tool needs to go hand in hand with more comprehensive solutions for electronic protocols in court.

11 Glossary of abbreviations and acronyms

- AV: Audio Visual
- CU: court usher
- C1: Condition 1 (video court 'before' the booking tool)
- C2: Condition 2 (video court 'after' the booking tool)
- C3: Condition 3 (non-video court, police bail denied)
- C4: Condition 4 (non-video court, police bail granted, postal requisition, summons)
- CPS: Crown Prosecution Service
- CRC: Community Rehabilitation Company
- DEF: Defendant
- DA: Defence advocate
- DMU: Digital Mark-Up
- HMCTS: Her Majesty's Courts and Tribunals Service
- IO: Indictable only
- JVS: Justice Video Service
- LACA: Legal advisor/court associate
- MDJ: Magistrate/district judge
- MOJ: Ministry of Justice
- MI: Management Information
- NRC: National Research Committee
- NVC: Non-video court
- OSPCC: Office of the Sussex Police and Crime Commissioner
- PFA: Police Force Area
- PO: Probation officer
- PR: CPS prosecutor
- PSR: pre-sentence report
- SOS: Systematic Observation Schedule
- TEW: Triable either-way

- VC: Video court
- VCA: Video court administrator
- VCO: Virtual court officer
- VEJ: Video Enabled Justice

12 Appendices

12.1 Appendix A: References

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12.2 Appendix B: Ministry of Justice Management information and observation data

To assess the representativeness of the observation data, checks were conducted against Ministry of Justice (MOJ) Management Information (MI) for Q3/Q4 2018 and Q1 2019. The areas appraised include the proportion of case completed in one hearing; the types of case dealt with (e.g. summary, triable either-way (TEW), indictable only (IO)); plea at first hearing; time from charge to first appearance.

- Proportion of cases completed in one hearing:** This figure was reached by examining the proportion of hearings for which there was a non-adjourment outcome. Within the SOS data, the proportion of hearings completed in one hearing were 73.1% in 2018 Q3, 70.1% in 2018 Q4, and 77.6% in Q1 of 2019. The rate was broadly in line with the national level data (2018 Q3: 74.4%; 2018 Q4: 74.0%; 2019 Q1: 74.8), with the figures for South Eastern Magistrates' Court: 2018 Q3: 78.1%; 2018 Q4: 69.0%; and 2019 Q1 61.5%..
- Types of cases dealt with:** Efforts were made to replicate the counting procedures used to construct the figures for the proportion of summary, TEW and IO cases in the SOS data. MOJ MI separates out summary motoring from summary non-motoring cases and for this analysis these two case types have been combined. In the SOS data, where a mixture of summary, TEW or IO matters were recorded in a single hearing we have coded the case type for that hearing to align with the most serious charge, a customary approach in such coding. The allocation of hearings to the TEW category in the SOS data where there were a mixture of summary and TEW matters has been done on the basis of whether the court accepted jurisdiction. Therefore, hearings with summary and TEW matters where jurisdiction has been declined have been coded as IO. Overall, 74.4% of the hearings observed were classified as 'summary'; 15.5% as 'TEW'; and 10.0% as 'IO'. Compared to the data for the South Eastern Magistrates' Court and the national level data, the SOS data under-represents the proportion of summary cases (South Eastern Magistrates' Court: 80.0%; National: 78.3%) and over-represents the proportion of IO cases (South Eastern Magistrates' Court 3.0%; National 1.8%). The figures for TEW cases in the SOS data was broadly in line with the picture for the South Eastern Magistrates' Court (17.0%) and the national level data (19.9%). These differences are likely explained by the coding procedure used in the SOS data to separate out hearings involving a mixture of summary, TEW and IO matters.
- Plea at first hearing:** SOS data recorded whether the defendant indicated that they intended to enter a guilty plea to all matters. Overall, the proportion of hearings during which it was recorded that the defendant entered a guilty plea to all charges was: 2018

Q3: 63.6%; 2018 Q4: 56.9%; 2019 Q1: 57.7%. This was considerably higher than the rates recorded for either South Eastern Magistrates' Court (2018 Q3: 13.3%; 2018 Q4: 12.3%; 2019 Q1: 9.0%) or at the national level (2018 Q3: 17.4%; 2018 Q4: 17.7%; 2019 Q1: 18.4%).

- **Time from offence/charge to first appearance:** SOS data on mean time from offence/charge to first appearance (2018 Q3: 60 days; 2018 Q4: 55 days; 2019 Q1: 71 days) was considerably lower than the mean number of days recorded in MOJ MI timeliness data for the number of days from offence to charge and charge to first listing for South Eastern Magistrates' Court (2018 Q3: 205; 2018 Q4: 205; 2019 Q1: 227). It is that this difference is driven by the likely higher proportion of video court cases included within the SOS data.

12.3 Appendix C: Offences and police recorded crime data

Comparison of offences recorded by the evaluation and police recorded crime data per 1,000 of the population by Police Force Area (PFA). Percentage figures for the observation data are based on the total number charges recorded (excluding breach of bail).

- Theft offences were more frequently recorded in the hearings conducted at Southern Magistrates' Court A (C3: 19.5%) than at South Eastern Magistrates' Court (18.4%). However, theft offences were more frequently recorded in the South Eastern PFA data (31.6) than in the Southern PFA data (23.2).
- Violence against the person offences were recorded more frequently at Southern Magistrates' Court A (10.1%) than at South Eastern Magistrates' Court A (8.2%). However, violence against the person offences were recorded more frequently in the police recorded crime data for the South Eastern PFA data (41.3), than the data for the Southern area (19.9).
- There was little difference in terms of the proportion of hearings involving criminal damage and arson offences between South Eastern Magistrates' Court (7.3%) and Southern Magistrates' Court A (7.1%). This offence type was more frequently recorded

by police in the South Eastern PFA data (11.9) than compared to the Southern PFA data (8.0).

- Drug offence charges were more frequently recorded in the data for South Eastern Magistrates' Court (5.5%) than Southern Magistrates' Court A (4.2%). However, police recorded crime data reveals that the number of drug offences per 1,000 of the population was higher in the Southern PFA data (2.5) than compared to the South Eastern PFA data (1.8).
- Possession of weapon charges were more frequently recorded in the South Eastern Magistrates' Court data (2.9%) than compared to Southern Magistrates' Court A (1.5%). Possession of weapons offences were more frequently recorded in the South Eastern PFA data (0.8) than compared to the Southern PFA data (0.5).
- There was little difference in terms of the proportion of hearings involving public order offences between South Eastern Magistrates' Court (3.9%) and Southern Magistrates' Court A (3.1%). Public order offences were more frequently reported in the South Eastern PFA data (8.6) than compared to the Southern PFA data (6.4).
- There was little difference in terms of the proportion of hearings involving miscellaneous crimes against society offences between South Eastern Magistrates' Court (8.1%) compared to Southern Magistrates' Court A (8.3%). Miscellaneous crimes against society were more frequently recorded in the data for the South Eastern PFA (2.9) than compared to the Southern PFA data (1.4).

12.4 Appendix D: Data analysis assessment criteria

12.4.1 Defendant demeanour (primary and secondary)

- **Angry/hostile/rude** e.g. raises voice; gesticulates towards bench; harsh language; interjects (rude)
- **Agitated/frustrated** e.g. irritated; impatient; short with legal professionals; questioning; lack of respect
- **Visibly upset/crying** or sobbing e.g. extremely emotional; crying; very remorseful of actions; apologising

- **Anxious or nervous/alarmed** e.g. unsettled, ill-at ease; shaking, voice broken; clearly upset; lacking confidence; sniffing; generally remorseful
- **Confused/unprepared/tired/intoxicated** e.g. appears confused with details; possibly intoxicated; tired and distant in demeanour
- **Withdrawn/minimal responses** e.g. appears somewhat disconnected with hearing; short answers; disinterested
- **Calm/business-like** e.g. polite; respectful; courteous; full responses; does not interrupt; emotionally flat
- **Good natured/helpful** e.g. very polite and respectful; full responses; interjects to provide helpful information

12.4.2 Disruptions: disruptiveness scale

- **Not disruptive** (scale value = 0): issue does not require intervention or participants ignore disruption
- **Somewhat disruptive** (scale value = 1): issue requires intervention and is resolved quickly/minimal disruption to hearing (less than 30 seconds delay)
- **Moderately disruptive** (scale value = 2): issue requires more substantial intervention/issue reoccurs requiring further intervention (30 second to 1-minute delay)
- **Extremely disruptive** (scale value = 3): issue requires lengthy intervention/issue reoccurs requiring several further interventions (more than a 1-minute delay)

12.4.3 Long pauses and overlapping speech scale

- **None** (scale value = 0): no disruptive long pauses/overlapping speech
- **Rarely** (scale value = 1): no more than once
- **Occasionally** (scale value = 2): two to three instances
- **Frequently** (scale value = 3): four to five instances
- **Very frequently** (scale value = 4): more than 5 instances

12.4.4 Audio and video image Disruption rating criteria (remote location and courtroom)

- **Not disruptive** (scale value = 0): issue does not require intervention or participants ignore disruption
- **Somewhat disruptive** (scale value = 1): issue requires intervention and is resolved quickly/minimal disruption to hearing (less than 30 seconds delay)
- **Moderately disruptive** (scale value = 2): issue requires more substantial intervention/issue reoccurs requiring further intervention (30 second to 1-minute delay)
- **Extremely disruptive** (scale value = 3): issue requires lengthy intervention/issue reoccurs requiring several further interventions (more than a 1-minute delay)

12.4.5 Overall framing quality rating criteria

- **Very poor** (scale value = 1): framing quality same as that for 'poor' rating, but in this case there was a significant disruption due to framing which had a material impact on the hearing, participants commented on the poor quality of framing.
- **Poor** (scale value = 2): participant not centred on screen; image of participant partially/significantly cut-off by poor framing (side/top of image); participant may not always be visible on screen; participant may appear in side-profile (may have to turn to address bench); camera angle unnatural (e.g. too high/low requiring participant to move head to address bench); participant too far/close to camera to appear in proportion; image provides an unnatural impression/framing of participant; expressions/gestures not clearly perceptible; no/minimal impression of eye contact.
- **Acceptable** (Scale value = 3): participant broadly centred on screen; minimal/no part of participant cut-off due to framing (side/top of image); participant always visible on screen; participant in portrait view or slight side profile (minimal turning to address bench); camera angle provides a generally natural view of participant (minimal head moving to address bench); participant's distance from camera presents them in proportion; image provides a generally natural impression of participant; expressions/gestures generally perceptible; general impression of eye contact.
- **Good** (scale value = 4): participant centred on screen; no part of participant cut off (at side/top of image); participant always visible on screen; participant in portrait view;

camera angle provides a natural view of participant (no head turning to address camera); participant's distance from camera presents them in proportion; image provides a natural impression of participants; expressions/gestures always perceptible; good/strong impression of eye contact.

- **Very good** (scale value = 5) framing quality same as that for 'good' rating, but in this case courtroom participants made positive reference about image framing.

12.4.6 Overall audio quality in the courtroom rating criteria

- **Very poor** (scale value = 1) quality same as that for 'poor' rating, but in this case communication completely broke down or there was a significant disruption which resulted in errors or misunderstandings that had a material impact on the hearing, participants commented on the poor quality of the audio.
- **Poor** (scale value = 2) sound unstable; unstable synchronicity of audio with image; loudness not at conversational level; audio interference; background noise; issues with sound quality which disrupt the hearing.
- **Acceptable** (scale value = 2) sound mostly stable; synchronicity of audio with image; loudness close to conversational level; minimal/no audio interference; minimal/no background noise; no issues with sound quality; minimal issues with sound quality amounting to 'not disruptive'.
- **Good** (scale value = 4) sound stable, synchronicity of audio with image; loudness at conversational level; no audio interference; no background noise; no issues with sound quality.
- **Very good** (scale value = 5) quality same as that for 'good' rating, but in this case, courtroom participants made positive reference to the audio quality.

12.4.7 Overall video image quality in the courtroom rating criteria

- **Very poor (scale value = 1)** image quality same as that for 'poor' rating, but in this case there was a significant disruption due to image quality which had a material impact on the hearing, participants commented on the poor quality of the video image.

- **Poor** (scale value = 2) image quality unstable; image quality results in unclear/unnatural image of remote participant which may be due to resolution, pixilation, colour balance, graining; unable to see remote participants facial expressions clearly; issues with video image quality which disrupt the hearing.
- **Acceptable (scale value = 3)** image quality mostly stable; image quality results in a mostly clear/natural image of remote participant when considering resolution, pixilation, colour balance, graining; mostly able to see remote participants facial expressions; no issues with video image quality; minimal issues with video image quality amounting to 'not disruptive'.
- **Good (scale value = 4)** image quality stable; image quality provides a clear/natural image of remote participant when considering resolution, pixilation, colour balance, graining; no issues with video image quality.
- **Very good (scale value = 5)** quality same as that for 'good' rating, but in this case courtroom participants made positive reference about the video image quality.