

# LIVE LINKS IN CRIMINAL COURTS

## GUIDANCE

### Introduction

1. [Section 51 Criminal Justice Act 2003](#) (as substituted by the Police, Crime, Sentencing and Courts Act 2022 with effect from 28 June 2022) enables courts to require or permit a person to take part in eligible criminal proceedings through a live link (“a live link direction”), including at preliminary hearings, trials (whether summary or on indictment), sentencing, appeals and other identified types of hearing (see [section 51\(3\)](#)).
2. This statutory guidance is provided by the Lord Chief Justice pursuant to [section 51\(5\)](#) of the 2003 Act. It should be read with the [Act](#), [Criminal Practice Directions 3N: Use of live link and telephone facilities](#) and the extracts from the [Equal Treatment Bench Book](#) that deal with live links.

### Statutory criteria

3. A live link direction may only be made in respect of those who are taking part in the proceedings (including counsel, solicitors, witnesses and defendants). It may not be made for those who are not taking part in the proceedings (eg public observers or journalists). Those who are not taking part in the proceedings are entitled to apply to observe the proceedings remotely under section [section 85A of the Courts Act 2003](#). Separate guidance is in place in respect of such requests.
4. The court may only make a live link direction if:
  - (a) the parties to the proceedings (and where the defendant is under 18, the relevant youth offending team) have been given the opportunity to make representations, and
  - (b) the court is satisfied that it would be in the interests of justice.

### Application of statutory criteria

5. In deciding whether the statutory criteria are met, the court must consider this guidance and all the circumstances of the case ([section 51\(5\)](#)). In particular, the court must consider (as appropriate to the circumstances of the individual case) ([section 51\(6\)](#)):
  - (a) The availability of the person to whom the direction would relate,
  - (b) Any need for that person to attend in person,
  - (c) The views of that person,
  - (d) The suitability of the facilities at the place where that person would take part in the proceedings in accordance with the direction,

- (e) Whether that person would be able to take part in the proceedings effectively if the person took part in accordance with the direction,
- (f) In the case of a direction relating to a witness—
  - (i) the importance of the witness's evidence to the proceedings, and
  - (ii) whether the direction might tend to inhibit any party to the proceedings from effectively testing the witness's evidence, and
- (g) the arrangements that would or could be put in place for members of the public to see or hear the proceedings as conducted in accordance with the direction.

6. The process for seeking representations need not be elaborate. In some cases, the written request might make it clear that it is agreed, or might include the representations that all parties wish to make. In other cases, the parties (and, where appropriate, the youth offending team) can be asked by email from the court staff to submit any written representations. Where the request is made orally in the course of the hearing then oral representations from all parties can be obtained there and then.
7. It will not be in the interests of justice to make a live link direction unless live link facilities are available and are in working order, and will allow all participants to hear and (in the case of a video live link) see each other clearly, with no distractions, and the person attending by live link has the necessary technology available and is able to operate it. Nor is it likely to be in the interests of justice to make a live link direction unless a member of staff is available (without unreasonably impacting on other work) to set up the live link, test that it is working, and monitor its operation. In some instances, a participant in criminal proceedings may have a disorder or disability that prevents effective participation via live link. In those instances, too, it will not be in the interests of justice to make a live link direction.
8. Defendants: It may be in the interests of justice to allow or require a defendant to attend hearings (particularly preliminary hearings) by live link so as to avoid delays and disruption. As well as the parties' representations, the court will wish to take account of any mental health or other medical assessment before deciding if a live link is in the interests of justice. Pre and post court conferences between advocate and defendant may not be able to take place effectively by live link: where such conferences are desirable a live link is less likely to be in the interests of justice.
9. Factors to consider in deciding whether the defendant should attend a sentencing hearing via live link include: the potential penalty; ensuring the explanations of sentence can be given satisfactorily for all participants and for the public; and the preferences of the maker of any Victim Personal Statement which is to be read.
10. In the case of youths, arrangements must be made in advance of any live link hearing to enable the youth offending worker to be at the secure establishment where the youth is in custody. In the event that such arrangements are not practicable, the youth offending worker must have sufficient access to the youth via the live link booth before and after the hearing.
11. It is rarely appropriate for a youth to be sentenced over a live link. Potentially, this may be acceptable where the youth is (i) already serving a custodial sentence and either the

sentence to be imposed is bound to be a further custodial sentence, or a non-custodial sentence is likely to be imposed which will have no material impact on the sentence being served; (ii) detained in a secure establishment a long way from court, and being produced would materially affect them, (iii) so disturbed their production would be a significant detriment to their welfare.

- 12.** Advocates: The interests of justice are wider than the circumstances of the individual case. They include the efficient despatch of business and the availability of judicial, staff, technical and other resources. So, provided that it would not cause any detriment to the individual case, it may well be in the interests of justice to allow an advocate to attend by live link if that will enable the advocate to undertake other work at another court centre on the same day. However, if the defendant is required to attend a hearing in person, then the interests of justice will usually require the defence advocate also to attend in person.
- 13.** Mentions, bail applications, ground rules hearings, CTL extensions, uncontested POCAs and hearings involving legal argument only will generally be suitable for remote attendance by all advocates. PTPHs will normally require advocates to attend, unless there has been sufficient engagement and preparation in advance. Sentencing hearings will require case-by-case consideration.
- 14.** Advocates must adopt the court dress and standards of conduct that would be applied if they were in the courtroom. The court must be able to communicate with all advocates throughout the time the list is being heard. Advocates must be ready and available as soon as the case is called on.
- 15.** Witnesses: A live link may be used as a special measure under [section 24 of the Youth Justice and Criminal Evidence Act 1999](#). Even when not used as a special measure, the court may allow a witness to give evidence by live link where that is in the interests of justice (for example to save a witness from a long journey to court where all parties agree the evidence can be given remotely, or to allow a medical expert witness (or any other witness) to give evidence without having to take the entire day off work). Where a live link direction is given for a witness, the witness must give evidence by the live link unless the live link direction is revoked ([section 52\(2\), \(4\)](#)).
- 16.** The court: Members of the court may conduct a pre-trial hearing by live link from a location other than the court. It is unlikely to be in the interests of justice for a member of the court to attend the trial, or part of a trial, by live link, and it will only be appropriate for other hearings in exceptional cases. If, exceptionally, it is considered that a live link for the court may be appropriate that should be raised with the Resident Judge before a decision is made.

### **Jury attendance by live link**

- 17.** A live link direction may be made for the jury, but only if it is made for all members of the jury and only if all members of the jury are present at the same place ([section 51\(2\)](#)). It is likely to be very rare that live link directions are made for a jury. If, exceptionally, it

is considered that a live link for the jury may be appropriate that should be raised with the Resident Judge before a decision is made.

### **Live link to connect participant outside the United Kingdom**

- 18.** Where the participant is abroad, then (depending on the country concerned) the court will wish to consider whether a live link would risk damaging international relations so as to be contrary to the public interest. The factors to consider, and the checks that can be made, are set out in [Agbabiaka \(evidence from abroad; Nare guidance\)](#) [2021] UKUT 00286 (IAC).

### **Risks of live links**

- 19.** The court does not have the same level of control over those participating in court proceedings remotely that it does over those who are physically present in the courtroom. It follows that a live link potentially gives rise to risks that will need to be considered. This is not likely to be an issue for professional participants, but in some cases it may be an issue for others. Defendants or witnesses might misuse the remote access that is provided by a live link so as (for example) to record the proceedings or take screen shots that depict the jury or a witness. A witness giving evidence by live link, from premises other than the court, might be subject to off-screen pressures that will not be evident to the court. If the participant is outside the jurisdiction then these risks may be greater. For the purpose of section 1 of the Perjury Act 1911, evidence from outside the United Kingdom by live link is treated as being made in the proceedings ([section 52A\(5\)](#)). It is unlikely that sanctions for contempt (eg putting screenshots on social media / breaching reporting restrictions) could in practice be imposed.
- 20.** A live link may also give rise to significant administrative burdens. Court staff will need to confirm the identity of the participant, administer appropriate warnings, monitor that the link is working, and address any technical issues. Criminal courts are unlikely to have significant excess administrative resource, so the making of a live link direction can give rise to administrative burdens that are not easy to accommodate. The use of live links should not undermine the court's ability to meet the needs of other cases. The court must bear in mind the need to allocate its scarce resources in an appropriate way between the cases that come before it.

### **Practical considerations**

- 21.** Each court will have established its own process for dealing with live link attendance. Ways of working which suit local conditions should be maintained, and it is good practice to communicate regularly with court users, prisons and local police stations. Resident Judges should, by 30 July 2022, promulgate local practice notes for the use of live links in their courts so that the process to be adopted for those courts is clear to the judges and staff of those courts, and those who practise in those courts.

- 22.** Live links should be tested before the court hearing starts. Witnesses should be given an opportunity to practise using the live link. For anyone who has not used a live link before (such as a witness) it may be appropriate for the link to be tested before the day of the hearing to ensure that it works at both ends (and, if not, that any problem can be remedied or else the live link direction can be revoked).
- 23.** Steps should be taken to ensure that anyone participating remotely is able to follow the proceedings (so, for example, they can see any video presentation and they have access to any written material that is necessary). If a witness is to give evidence remotely, the advocates must, in advance, consider what material they are likely to ask the witness to consider so that can be made available in the remote location. Where the witness wishes to take an oath, rather than affirm, it will also be necessary to ensure that the applicable holy book is available to them. The words of the oath/affirmation will also need to be made available to them (or else that the oath/affirmation is administered via the live link by a member of court staff).
- 24.** A person who takes part in proceedings by a live link is treated as being present in court for the purposes of those proceedings ([section 52A\(2\)](#)). The proceedings are to be treated as taking place in the courtroom where the members of the court are located (or, where all members of the court are not in the same courtroom, the place that is determined in accordance with [section 52A\(3\)](#)).
- 25.** Where a request for a live link is determined, short reasons should be given. It will normally be enough simply to identify in a sentence why the court considers that it is in the interests of justice for a live link to be used. It will not usually be necessary for the court separately to address, in its reasons, each of the factors identified in [section 51\(6\)](#) – it will only be necessary to address those factors that have had a significant impact on the decision.
- 26.** A live link direction may be rescinded at any time (either on application, or the court's own motion) if that is in the interests of justice (see [section 52\(3\)](#)). Reasons should be given for rescinding (or declining to rescind) a live link direction. In the Magistrates' Court the reasons must be entered in the register of the proceedings ([section 52\(7\)](#)). If not rescinded, the live link will continue in operation until the end of the hearing (unless the direction itself only applied for a set duration).