

2023 QUESTIONNAIRE OF THE 1ST STUDY COMMISSION IAJ-UIM

“THE EFFECTS OF REMOTE WORK ON THE JUDICIAL WORKPLACE AND THE ADMINISTRATION OF JUSTICE”

RESPONSE OF ENGLAND & WALES

Questions:

1) Remote work of judges in your country

- a. Were judges permitted to work remotely in your country prior to and/or during the COVID-19 pandemic? If yes, please give examples (for example, studying cases at home; discussing cases with colleagues via videoconference applications or the telephone instead of personal meetings; holding hearings online via videoconferencing applications; etc.). Was technical equipment made available to the judges to enable them to work remotely?**

Prior to early 2020 and the start of the pandemic remote working (i.e. outside a court or tribunal hearing centre) by judges in England and Wales was uncommon. Some judges in some jurisdictions may have undertaken writing up or other IT based tasks from home, but hearings, including telephone hearings, were conducted from court or tribunal buildings. Most jurisdictions were still paper-based and therefore case preparation and box work were invariably undertaken from the hearing centre.

During the pandemic many judges worked from home as a result of lockdowns, including undertaking video and telephone hearings. Those jurisdictions which had moved towards electronic systems through the court and tribunal reform programme were better placed to undertake this. For some jurisdictions, particularly the County Court (civil cases), the paper based system meant that the move to remote working was particularly difficult. In crime, jury trials were paused from March to May 2020 because they could not be undertaken remotely.

Aside from jury trials, case law quickly established that there was no difficulty with the judge being in one place within England and Wales and the parties, representatives and witnesses being in different locations, and this principle extended to the judge's home within England and Wales. Practice Directions were issued across many jurisdictions to establish guidelines for remote hearings and Guidance was issued by the senior judiciary on conducting remote hearings, which included the need, for example, for judges to be aware of their background and surroundings when conducting hearings from home.

- b. What is the status of remote work by judges in your country now? Do many judges still work remotely in your country, and to what extent? (for example, all or just a certain percentage of judges? Only in certain fields of law or for certain types of cases? Only in lower courts or higher courts? etc.)**

In October 2021 the Lord Chief Justice and Senior President of Tribunals issued guidance to the effect that no judge or lay magistrate should conduct hearings from home, even if all other participants are attending remotely, save in exceptional and unavoidable circumstances, emphasising the importance of judicial powers being exercised from court and tribunal buildings.

This has been the default position since that time, subject only to some limited exceptions, notably the ‘virtual regions’ for civil and employment cases, where cases are pooled nationally for remote hearing and allocated to a Judge who is permitted to hear that case from home. There may also be some exceptions where insufficient rooms or video conferencing facilities are available in court or tribunal buildings.

Improved technology has meant that in some jurisdictions files can be accessed online and therefore some judges undertake case preparation, writing up and other IT-based tasks from home, but in general most judges now conduct the majority of their work from court and tribunal hearing centres.

The majority of judicial training has also now returned to face-to-face delivery and therefore judges are unlikely to attend or deliver training from home.

2) Effect on judicial work

- a. Did remote work change judicial work in general for better or worse – or both – in your country? Please give examples.**
- b. Does the remote work of judges have an impact on the judicial workplace in your country? Negative, positive or both? Please give examples.**
- c. From your point of view, what future effects of remote work on the judicial workplace – negative, positive or both – can be expected?**

It is difficult to distinguish between the impact of remote working by judges from the impact of remote hearings, and the change in practice and technology necessitated by the pandemic.

Anecdotally, remote working meant that it was harder to train and support newly appointed judges and camaraderie and discussion amongst judicial colleagues was reduced. This may have had negative impacts on the administration of justice.

3) Effects on the administration of justice

- a. What are the pros and cons of remote work on the administration of justice?**
- b. Does remote work have a positive or negative impact on the administration of justice in general in your country? Please give examples that include, but are not limited to, the quality of the administration of justice.**
- c. Are you aware of the public’s perceptions of remote work by judges? Please give examples of positive or negative perceptions.**

c. What are the positive and/or negative effects of holding remote hearings/conferences?

a. The pros during the pandemic consisted mainly of the ability to continue dealing with cases which otherwise could not be dealt with. Since the pandemic ended, that necessity no longer exists. On balance and in general, it is better that cases are dealt with non-remotely. However, it is recognized that in some instances remote hearings are beneficial. This, however, is not directed at the location of the judges since we consider that judges should be working from courts, rather at being able to have litigants and lawyers in appropriate cases (typically short cases where travel would be involved) being able to participate remotely.

b. See above.

c. Not directly, no. however, it seems likely that the public will expect judges to be working from court buildings.

4) See above.

5) a. See above.

b. No.

c. No.