



# Virtual Courts

Information for defence representatives

CRIMINAL JUSTICE SYSTEM



# Virtual Courts: Information for defence representatives

This document is designed to provide you with the information you need if the Custody Sergeant has decided your client is to appear at a Virtual Court hearing. It is split into three sections:

- The Virtual Court process
- Legal Aid arrangements
- Background information about the Virtual Courts pilot

# The Virtual Court process

## What is a Virtual Court?

Virtual Courts enable a defendant to appear in a magistrates' court for a first hearing over a video link whilst still physically located in the police station where they are charged. Case papers are shared electronically to enable the hearing to take place within hours of charge.

## Which police stations are involved?

The following police stations are participating in the pilot:

London (all cases heard at Camberwell Green Magistrates' Court)	
Belgravia	Paddington Green
Bexleyheath	Peckham
Brixton	Plumstead
Bromley	South Norwood
Charing Cross	Streatham
Croydon	Sutton
Kennington	Walworth
Lewisham	

Kent (all cases heard at Medway Magistrates' Court)	
North Kent	

## Where can I find the relevant law?

The legislative framework for Virtual Court hearings can be found in ss.57C – 57D of the Crime and Disorder Act 1998 (as amended). The Coroners and Justice Act 2009 amended the 1998 Act to remove the requirement for defendant consent to participate in a live link hearing, and these provisions were brought into force on 14 December 2009.

## Which defendants will be put before a Virtual Court ?

Once a decision has been made to charge a defendant with an offence, and a decision has been made on bail, the Custody Sergeant will consider whether a defendant is suitable to have a Virtual Court hearing scheduled. They will make this decision by applying the suitability criteria (attached at Annex A). All types of offences may be considered suitable. You may make representations to the Custody Sergeant about any matter that you consider makes your client unsuitable in accordance with the criteria.

Where a case is deemed suitable by the police and a live link hearing is scheduled, the court retains its discretion throughout to terminate the hearing if it considers that it is contrary to the interests of justice for the defendant to appear via live link. The court will give the live link directions at the start of the hearing where appropriate.

If you think your client's case should not be heard over a video link, you should alert the judge/magistrate at the beginning of the hearing.

If the Custody Sergeant considers your client unsuitable for Virtual Courts, or a hearing slot is not available, a court hearing will be scheduled for your client to appear physically at the magistrates' court.

## How are cases listed?

If the Custody Sergeant considers a defendant suitable, a Virtual Court hearing slot will be booked: generally for about 3-4 hours after the defendant is charged during Virtual Court operating hours; or the next day if the case cannot be heard on the same day. Defendants who are granted bail when they are charged may be released on 'live-link bail' (see s.47(3)(b))

and s.46ZA of the Police and Criminal Evidence Act 1984 (as amended)) and required to return to the police station one hour before the scheduled hearing time. If you are not at the police station when your client is charged and the Virtual Court hearing is scheduled, you will be informed of the hearing time by telephone.

### Do I attend for the hearing at the police station or the court?

You may appear in either location – it is your choice. You should attend at the relevant police station or court at least 30 minutes before the notified Virtual Court Hearing time; you do not have to attend immediately you accept a call. Please confirm with the police custody staff whether you intend to appear at the police station or the court.

### Where will my client be during the hearing?

The defendant will be taken to an interview room equipped with video conferencing and a link will be made with the court room at the magistrates' court. The video link is secure and high-definition quality. During the hearing a member of police custody staff will be present in the interview room and will operate the video link equipment.

### Will there be any differences in the way the hearing is conducted?

The hearing will be conducted in the conventional way, except for the defendant and possibly the defence representative appearing over the video link.

### What facilities will be made available for me to consult privately with my client?

If you choose to appear with your client at the police station, a room will be booked for a 30 minute consultation immediately prior to the hearing. On arrival, please report to the front desk or use the dedicated phone line to the custody suite (if there is one) to let the custody staff know you have arrived.

If you choose to appear physically at the court, arrangements will be made for a confidential consultation via video link – again for the 30 minutes immediately prior to the hearing. A video link booth will be booked at the court, as will the interview room at the police station. The custody staff at the police station will escort the defendant to the interview room and set up the video link. They will then leave the room to ensure the consultation is confidential. The ushers at court will be able to assist you in gaining access to the video booths.

If you are waiting at a police station in advance of a Virtual Court hearing, facilities have been identified in each location where you can complete other work. Please check with the custody staff if you wish to use these facilities.

### When will I receive an Advance Information bundle?

The Advance Information will be available no later than 30 minutes before the scheduled hearing time. It can be collected from the custody staff at the police station or at court – from the CPS office at Camberwell Green or the front counter at Medway.

## What if there are delays or technical failures?

If the hearing is likely to be delayed, you will be informed by the police custody staff as soon as possible.

If there is a technical failure with the video link that cannot be resolved, the defendant will either be: taken to the local magistrates' court building to appear physically at the next opportunity (if they are in custody); or rebailed to attend physically for a hearing at the magistrates' court that would otherwise have dealt with the case.

## Will probation reports be done on the day?

If there is sufficient time for a probation report to be completed on the day, a Virtual Court sentencing hearing will be scheduled for later the same day. The probation officer will conduct a confidential interview with the defendant over the video link from a video link booth at the court. The custody staff at the police station will escort the defendant to the interview room and set up the video link. They will then leave the room to ensure the consultation is confidential.

If there is not sufficient time for a report to be scheduled on the day, a sentencing hearing will be scheduled at the court that would otherwise have heard the case.

## Will my client be sentenced at a Virtual Court hearing?

Yes, s.57D of the Crime and Disorder Act 1998 enables sentencing to take place if appropriate.

## What happens after the hearing?

Any orders or notices generated by the court as a result of the hearing (eg bail notices, warrants) will be sent electronically from the court to the police station and given to the defendant by police custody staff. Depending on the outcome of the hearing the defendant will either be released or transported to prison directly from the police station.

## What if the case is adjourned to a second hearing or trial?

Following the first hearing the case and defendant will be treated in exactly the same way as under the existing process:

- Subsequent hearings will be held at the magistrates' court that would otherwise have dealt with the first hearing (eg defendants charged at Charing Cross will have their trial at City of Westminster Magistrates' Court);
- Where the case is committed or sent to the Crown Court, a hearing will be scheduled at the Crown Court where the case would have been heard had it been committed or sent by the magistrates' court that would otherwise have dealt with the first hearing;
- Where probation reports cannot be completed on the same day an appointment will be scheduled in the probation area covering the magistrates' court that would otherwise have dealt with the first hearing;
- If the defendant is remanded or given a custodial sentence at the Virtual Court hearing, they will normally be taken to the prison where they would have been sent from the magistrates' court that would otherwise have dealt with the first hearing.

## What are the operating hours for Virtual Courts?

Virtual Courts will operate during normal court hours, Monday to Friday, in London and Kent. In addition, extended hours of operation will be piloted in London, with the court sitting until 6pm initially and then later during the first half of 2010. For the latest information on sitting hours, please check the Legal Services Commission's website at [http://www.legalservices.gov.uk/criminal/magistrates\\_court.asp](http://www.legalservices.gov.uk/criminal/magistrates_court.asp).

The Law Society has published a practice note on Virtual Courts, which is accessible via their website.

# Legal aid arrangements

## How will representation at Virtual Court hearings be funded?

In order to ensure that the Virtual Court process is as efficient as possible, representation will be provided through advocacy assistance (a non-means tested form of legal aid) and paid as a Virtual Court Fixed Fee. This form of legal aid is granted by the defence solicitor and will cover a single hearing at the Virtual Court.

Where the case is disposed of at the first hearing, the solicitor will claim the Virtual Court Fixed Fee. Where the case is adjourned to a second hearing, the defendant will then apply for a Representation Order in the normal manner. The application will have to meet the Interests of Justice and pass the means test. If the application is successful then the Virtual Court fee will be rolled in to the final Standard Fee claimed. If the application is not successful or no application is made then the Virtual Court Fixed Fee will be claimed.

Following an LSC consultation the necessary amendments to the Unified Contract and Crime Specification to support the Virtual Court pilot were made. Where the Virtual Court sits within business hours (9.30am to 5.30pm, Monday to Friday), the Virtual Court Fixed Fee will be paid at £200 + VAT in London and £150 + VAT elsewhere. Where the Virtual Court sits outside these hours the fee will be paid at £240 + VAT in London and £180 + VAT elsewhere. Where the Virtual Court falls within a designated area, as defined in the Unified Contract: Crime Specification, the fee includes travel and waiting. Disbursements can be claimed in addition to the fee. Where the Virtual Court falls outside a designated area the fee includes travel

and waiting. Disbursements can be claimed in addition to the fee. However if in a non-designated area the case is adjourned, as noted above, and the standard fee becomes payable then travel and waiting can be added when calculating the standard fee.

## How will duty solicitors support the Virtual Court?

The LSC is concerned to ensure that the defendant has access to a defence solicitor throughout the Virtual Court process. It is possible, for a number of reasons, that a defendant may be without a solicitor when they are due to appear before the Virtual Court. When this occurs, the defendant will be offered a choice of instructing the Court Duty Solicitor (CDS), based at the magistrates' court (except in Medway as this is a different duty scheme), who will provide representation over the video link; or the Virtual Court Duty Solicitor (VCDS), who will provide face-to-face advice to the defendant at the police station and then represent them at the Virtual Court hearing.

The VCDS Scheme is made up of local solicitor firms who have volunteered to participate in the scheme. These firms commit to providing a solicitor to represent defendants when requested by the Defence Solicitor Call Centre. Payment for the VCDS is made on the same basis as representation before the Virtual court by an own solicitor.

If an accredited representative attends the police station pre-charge and has no rights of audience, would the defendant be deemed to be unrepresented for Virtual Courts purposes such that the VCDS would be called upon?

Yes. However, it is possible for the accredited representative to advise their firm that the defendant is going to appear before the Virtual Court. That firm can then deploy a solicitor to represent the client at the hearing and claim the Virtual Court attendance fee or the standard fee where a Representation Order is subsequently issued. The VCDS will only be offered to the defendant where they do not have any legal representation after they have been charged.

What happens if the provider attends the relevant police station at the correct time to represent at the Virtual Court hearing and the defendant fails to appear?

In these circumstances the Virtual Court fee can be claimed. This is subject to a completed CDS3 endorsed by either the Virtual Court clerk or the custody staff at the police station being obtained and no other Virtual Court matter being dealt with at the same visit. The fee claimable will be calculated from the time that the scheduled hearing should have taken place.

What LSC forms have to be completed and signed when attending the Virtual Court?

All that is required is for the solicitor to complete and sign the CDS3, the client's signature is not required. The CDS3 should be annotated to show that it is in relation to a Virtual Court hearing and remain on the case file.

What happens with Legal Aid Applications?

As described above representation at the Virtual Court is provided through advocacy assistance, a non-means tested form of legal aid. No Legal Aid Application is necessary and the grant of legal aid has no impact on the operation of the Virtual Court. Where the case is disposed of at the Virtual Court hearing the solicitor will claim the Virtual Court Fee.

If the case is adjourned to a second hearing the defendant will have to apply for a representation order in the normal way and the application will have to meet the Interests of Justice and financial eligibility criteria. In these cases Legal Aid Applications will have to be completed and signed by the defendant and presented to the court for assessment in the usual manner.

Where the solicitor and the defendant are located together at the police station, (most cases), the completion and signing of the forms will be the fairly straight forward matter of the defendant giving the solicitor details, the client signing the form and the form being sent to the court.

There will be instances where the client is represented remotely by their solicitor from the Magistrates Court. Under these circumstances the client cannot sign the form on the day, which in turn cannot be processed without a signature. For the purposes of the pilot it is expected that the second hearing will be scheduled between 48 hours and two weeks after the Virtual Court hearing. This should be sufficient time to complete the application forms and submit them to the relevant magistrates court for processing before the second hearing.

However on occasions where this has not been possible the current arrangements that are in place to ensure remuneration for the solicitor at the second hearing will apply. It is anticipated that under these circumstances the applications will be completed and submitted on the day of the second hearing.

The provider will be entitled to claim the early cover fee (£75+vat) if the application for the rep order is refused and they have provided representation at the second hearing. They keep this in addition to the Virtual Court fixed fee of £200 / £240 (London pilot sites) or £150 (Kent pilot). All figures are exclusive of VAT. If the client fails to show then the solicitor will retain the Virtual Court Fee.

## How do I claim the fee?

The fee is claimed on the Virtual Court Pilot – Solicitor Claim Form. This is an Excel Spreadsheet that can be downloaded from the LSC website and will be used to report all work that you undertake in the Virtual Court. You can complete and submit the form at any time. To send the form to us you will have to create a user account and then download the form.

Payment will be as an ad hoc payment. Each claim will appear on the relevant BACS statement with the relevant ID.

An example of the spreadsheet, a Provider Training Manual and link to create a user account can be found on the Legal Services Commission's website at [http://www.legalservices.gov.uk/criminal/magistrates\\_court.asp#VC](http://www.legalservices.gov.uk/criminal/magistrates_court.asp#VC)

## Are Counsel able to cover the Virtual Court hearing - either at the Court or at the Police Station?

You may instruct counsel to cover a Virtual Court hearing. When counsel is instructed it is the providers' responsibility to agree the brief fee and to pay counsel directly.

# Background information about the Virtual Courts pilot

## Why are we doing it?

We are committed to delivering simple and timely justice that makes the best use of all available resources. A key lever for achieving this is the innovative use of technology to reduce inefficiencies, speed up processes and improve the experience of using the system for everyone involved.

The Virtual Court initiative looks to build on the positive use of video conferencing technology within many parts of the criminal justice system by linking up police stations to magistrates' courts to allow first hearings - and, in some cases, sentencing - without the need to produce a defendant at court.

Additionally, Virtual Courts could be a catalyst for other changes that could remodel and transform current practice, such as potentially extending and aligning court sitting times to better meet demand, increasing the promptness of charging advice provided by the CPS, and improving the management of documents and media used in a case.

## What are the benefits?

The key advantage is that justice can be delivered in a matter of hours as defendants are brought before a Judge or bench using video conferencing technology whilst they are still at the police station. Virtual Courts can therefore make justice faster, cheaper to administer and more efficient, without any loss of quality – specifically:

- For victims and witnesses, Virtual Courts support a quick resolution of cases and a more immediate demonstration that justice is being done, which will have a positive impact on public confidence;

- Virtual Courts enable a reduction in delays caused by non-appearance of defendants or delays to paperwork;
- Virtual Courts allow for a reduction in prisoner movements, saving money on transport costs and reducing the risk of prisoners absconding. They also free police cell capacity, as they enable more defendants to be dealt with on the same day as they are charged;
- Virtual Courts also support our duty of care to defendants by reducing the time spent in the custody of the police, the courts or in transit between them (which will help reduce the opportunities for self-harm by prisoners in transit or in court cells). By dealing with more cases on the same day as charge, Virtual Courts will enable defendants to avoid overnight stays in police cells.

## How is the pilot being evaluated?

The evaluation of the pilot is now underway and is due to report in September 2010. This will provide an assessment of the extent to which Virtual Courts enable resources to be used more efficiently. It will also explore the wider impact of the Virtual Court process to ensure that there is no adverse impact on the fairness of the process for defendants, and gather feedback from practitioners.

Should the pilot be rolled out more widely, arrangements for providing representation via legal aid will be reviewed based on the experience and evaluation of the pilot.

If you have any feedback on the Virtual Courts process or are willing to be interviewed about your experiences as part of the evaluation process, please email the Office for Criminal Justice Reform's Virtual Courts team at: [vc\\_enquiries@justice.gsi.gov.uk](mailto:vc_enquiries@justice.gsi.gov.uk)

# Annex A: Virtual Courts suitability criteria

Before a Virtual Court hearing is offered to a defendant, the Custody Sergeant must determine whether the case is suitable to be dealt with by live link. In determining whether a case is suitable, the Custody Sergeant should take account of representations received from all parties involved, and these representations should be recorded on the custody record.

The suitability of a defendant in police detention for a Virtual Court hearing should be kept under constant review by the Custody Sergeant following an initial decision that a case is suitable. Where a defendant is granted live link bail at the point of charge, a risk assessment should be carried out when the defendant returns to the custody suite to answer live link bail.

There is a presumption that where a defendant is charged with an offence the case is suitable for a Virtual Court hearing in the magistrates' court unless:

- i The defendant (or if there is more than one defendant, at least one of them) involved in the case is under 18 years old;
- ii The case involves more than two defendants or, in a case with two defendants, one of the defendants is not suitable. Space constraints in the interview room may also need to be considered;
- iii The defendant requires immediate medical attention;
- iv The defendant has been identified as vulnerable and requiring an appropriate adult. Defendants identified as vulnerable and requiring an appropriate adult should be considered unsuitable for Virtual Courts if they have not received face-to-face legal advice. Where such a defendant has received face-to-

face legal advice, they should only be considered suitable if their legal representative is in agreement;

- v The defendant requires an interpreter and it is not possible for an interpreter to be found to attend in sufficient time to enable the Virtual Court hearing to take place;
- vi Information in the case file is classified above RESTRICTED under the Government Protective Marking Scheme;
- vii The case papers requiring upload to the collaboration space for the first hearing consist of more than approximately 50 pages;
- viii Items of evidence essential for Advanced Information cannot be produced digitally/electronically in time for the hearing (eg video clips);
- ix As a result of the ongoing risk assessment by the custody officer, conducted in accordance with the Home Office circular 034/2007 (with the right for the defence solicitor to make representations as appropriate, which must be recorded on the custody record), the custody sergeant considers that there is a substantial risk of the defendant becoming violent before, during or after the Virtual Court hearing, and considers that this makes them unsuitable for the Virtual Court.



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