Article

Remote parole oral hearings: More efficient, but at what cost?

David Peplow (iD)
Sheffield Hallam University, UK

Jake Phillips (iD)
Sheffield Hallam University, UK

Abstract

The Parole Board (PB) is responsible for deciding whether some prisoners are safe to be released into the community. COVID-19 accelerated the PB's move towards using remote oral hearings. Little is known about how this shift towards remote working has impacted the work of the PB and prisoners. In this article, we present the findings from a study that sought to understand the differences between remote and in-person hearings. Through analysis of interviews with 15 PB panel members we identify benefits and disbenefits of remote hearings. We suggest that in-person hearings are perceived to be better and that remote hearings pose challenges to participation, especially for certain prisoners. However, we also find that remote hearings bring benefits, such as greater efficiency for the organisation. We conclude that the Board needs to reconcile the tension between the efficiency afforded by remote working and the risks to justice that exist in this context.

Keywords

COVID-19 pandemic, justice, parole, remote working, risk, video-mediated communication

Introduction

The Parole Board (PB) in England and Wales, as in some countries around the world, is responsible for deciding whether prisoners are safe to release from prison. In England

Corresponding author:
David Peplow, Department of Humanities, Sheffield Hallam University, City Campus, Sheffield S1 1WB, UK.
Email: d.peplow@shu.ac.uk

and Wales, the Board decides on release for prisoners serving indeterminate and certain determinate sentences (such as terrorist or serious child sexual offences) and those who have been recalled to prison for breach of their licence conditions. The Board does this by initially examining a dossier that is compiled by His Majesty's Prison and Probation Service (HMPPS) to decide whether there is no realistic prospect of a recommendation of a move to open conditions or release, and no prospect that an oral hearing could lead to a different outcome.[1] If this is the case, then no oral hearing will be held and the case is concluded 'on the papers'. These dossiers have been found to be helpful for PB members in coming to a decision (Bradford and Cowell, 2012) although they can contain inconsistencies and contradictions (Fitzgibbon, 2008). In oral hearings, PB panel members consider evidence received from the prisoner, the prison, the prisoner's probation officer and other relevant professionals (e.g. psychologists) to 'get a fuller impression of the prisoner's credibility' and decide whether the prisoner is safe to release (Bradford and Cowell, 2012: 7). Prior to COVID-19, the PB had been moving to more remote working, with the 2018–2019 annual report highlighting a 'Case Conferencing pilot' which was intended to 'keep complex cases on track' (The Parole Board, 2019: 16) and small numbers of hearings had been held over video-link since 2010 (Padfield, 2017). As with other areas of professional life, the pandemic resulted in a swift move towards remote working, with all oral hearings running remotely, either via telephone-link or video-link. One effect of this move has been to avoid a significant backlog of outstanding cases and the PB is currently working to decide the extent to which remote hearings should become the norm in a post-pandemic context. Remotely held oral hearings use specialist software that ensures a high level of security. During the strictest lockdowns, all parties were situated in separate venues. Since the relaxation of lockdowns, the PB has adopted a hybrid approach for many hearings whereby some participants are co-located and others are online. In the hybrid form, there can be around eight people on screen (three PB members, the prisoner, their legal representative, witnesses, such as probation officers and psychologists, and a MoJ representative). Increasingly, the legal representative is re-allowed access to the prison, so that, they can be co-located with their client. At the time of writing (December 2022), around 93% of hearings are being carried out online with just 7% being held wholly in-person.

Remote hearings hold significant potential in terms of efficiencies, yet they also present barriers to participation for certain prisoners. Remote communication presents a challenge, not least of all because interactions via technologies, such as video-link are less 'foundational' and, unlike in-person talk, require specific 'skills' (Licoppe, 2021: 365). Functional communicational channels are required, so that, oral hearings can be effective, and so that, this shift to remote needs to be fully understood. In this article, we present the findings from a series of interviews with PB panel members to consider the relative advantages and disadvantages of remote hearings. We address the following research aims:

1. To investigate the advantages and disadvantages of remote oral hearings;
2. To consider particular groups of prisoner and/or professional witness who may be particularly disadvantaged by remote oral hearings;
3. To identify ways in which potentially competing aims of efficiency and justice can be reconciled.

Literature review

We draw on three separate but relevant areas of academic literature: remote working in the criminal justice system (CJS), communication across different settings, and the pressures of efficiency as examined through the lens of new public management.

Remote working in the CJS

The use of remote communication technology in the CJS has been increasing in recent years, and almost, all forms of CJS practice were conducted remotely during the height of the pandemic. Exceptions included prison work and the supervision of some very high-risk people on probation. Prior to the pandemic, concerns had been raised about whether remote working was appropriate in criminal justice settings (e.g. Byrom et al., 2020; McKay, 2018; Rowden, 2018). Technology is not neutral and can serve to promote or impede participation for certain actors. Thus, remote working needs to be implemented in a way which improves rather than denigrates user participation and must adhere to the fundamental principles of fairness, impartiality and access to justice (Donoghue, 2017). However, the move towards greater use of technology in justice settings, which was pursued by policymakers prior to the pandemic, was without a clear strategic rationale nor adequate measure of 'success' over and above 'efficiency and cost reduction' (McKeever, 2020: 1). Donoghue's (2017) warning that technological solutions need to be weighed against economic rationalisation is important to heed now given the mass move to remote working in 2020 and the persistence of this beyond the pandemic.

Recent research has shown that remote working poses benefits and challenges for justice-focused institutions. Harker and Ryan (2022) found that many parties in family court settings were positive about remote hearings because of the flexibility they afforded, with most feeling that there was good reason to continue remote hearings for some cases. However, these participants also raised significant concerns about the fairness of remote hearings, citing 'the difficulties in reading reactions and communicating in a humane and sensitive way when there was no face-to-face contact' (Harker and Ryan, 2022: 214). Similar concerns have been raised in the context of probation work (Dominey et al., 2021; Phillips et al., 2021) in which probation workers and people under probation supervision have found remote communication to be an impediment to the development of productive, working relationships. Phillips et al. (2021) also found that remote working poses significant issues to staff well-being, exacerbating the emotional dirty work that much criminal justice work entails. Such issues are likely to be as relevant to remote parole work.

The Law Society (2022) found that remote court hearings can work well for administrative hearings and where parties are well-equipped to participate. By contrast, it was found that remote hearings work less well in criminal hearings and when parties present with vulnerabilities, such as age, disability, mental health problems, learning difficulties and English as a second language. The Law Society (2022) concluded that decisions around remote hearings should be made on a case-by-case basis with the following factors being considered: the nature of the proceedings, the type of parties to the case and

whether parties have legal representation. Similarly, McKeever (2020) found that remote settings create additional barriers 'particularly where digital exclusions apply' (p. 8), and that the system needs to be designed in a way which serves the interest of all parties and not just a select few, such as judges and other professionals.

Prior to the pandemic there were moves towards using remote communication in parole hearings, and concerns were raised about this shift (Gibbs, 2017a, 2017b). Beyond speeding up the process of justice, Gibbs (2017b) argued that remote parole hearings provide very little benefit for participants, suggesting that 'there ha[d] been a gradual erosion of personal contact between probation officers and their clients' partly driven by the increased use of video communication in parole hearings (Gibbs, 2017a: 14). Very little research has been undertaken with prisoners in relation to remote parole hearings (Gibbs, 2017b), however, there is literature that sheds light on prisoners' experiences of remote hearings in other criminal justice contexts. The architecture of the court plays an important role in conveying social structure, and the removal of this in remote court hearings can result in reduced levels of legitimacy for both prisoners and the members of the public (Rowden, 2018). McKay (2018) has similarly argued that remote justice is deficient compared to in-person justice, with remote hearings privileging certain sensorial experiences (namely, sight) over others (being in a 'dignified courtroom'), which 'diminishes opportunities for expressive participation in legal procedure' (p. 262). There is a reasonable consensus among researchers who have considered the pros and cons of delivering justice remotely, that despite certain benefits offered by remote hearings, the CJS is the 'wrong place to experiment' because the 'brunt of the experiment' impacts upon participants, like defendants, who 'are disproportionately indigent and often receive representation of dubious quality' (Poulin, 2004: 1093). Indeed, Plotnikoff and Woolfson (2000) found that defendants in their research did not experience any benefit from remote hearings.

This body of work highlights that there are serious and long-standing concerns over the roll-out of remote hearings in CJS. Remote hearings appear to make procedural justice more difficult to achieve thanks to the spatial, corporeal and visual demarcations, which such modes of justice delivery entail (McKay, 2018). As de Vocht (2022) argues, several assumptions underpin the debates in relation to remote hearings: that technology diminishes human interaction, impedes an effective defence, influences decision-making and affects the legitimacy of the trial but that, simultaneously, there is a lack evidence around how these assumptions manifest. This research seeks to make an empirical contribution to this question in the context of parole hearings in England and Wales.

Remote interaction: Video-mediated communication and telephone communication

The PB has used video-links and telephone conference calls to conduct remote hearings, and here, we offer a brief overview of these modes of communication. In the United Kingdom, communication by telephone has been a ubiquitous and significant feature of everyday life for over a century. Offering 'intimacy at a distance' (Horton and Wohl, 1956; cited in Hutchby, 2001: 84), the telephone allows for 'synchronous, real-time, conversational interactions' between physically dislocated interactants who 'do not have

visual access to one another' (Firth et al., 2005: 3). By contrast, video-mediated communication (VMC) is a newer mode, comprising a 'distinct and relatively recognizable domain of interaction' that takes place between people 'residing in at least two different sites' (Licoppe, 2021: 365). While the telephone only allows interaction via the 'verbal channel', VMC allows the option or expectation that participants will also be able to see one another in a way that is 'fairly similar to . . . face-to-face encounters' (de Fornel, 1996: 49).

The benefits of remote forms of communication have been acknowledged for many years, and indeed many businesses, organisations and institutions were increasingly offering services via phone and/or videocall before 2020, for example, primary care consultations and business meetings. Remote forms of communication are associated with problems, however. For instance, telephone interaction is relatively 'cueless' (Rutter, 1989) due to the lack of visual context, with the upshot that 'community' and 'social presence' can be difficult to maintain (Jenks and Firth, 2013: 220). In-person communication, by definition, involves participants being 'copresent' with one another in a single space such that they are 'close enough to be perceived' by others and 'close enough to be perceived in this sensing of being perceived' (Goffman, 1963: 17). Participants in remote communication interact without this co-presence, which has implications for participants' 'mutual monitoring' (Goffman, 1964) of one another. This lack of absolute co-presence in VMC means that 'collective control is not possible', resulting in interactions that can be 'extremely fragile' and may be threatened by 'various intrusions' (de Fornel, 1996: 53), such as technological and connectivity problems. A more persistent problem concerns the inherent asymmetry between participants in VMC (Heath and Luff, 1993), resulting from interactants not sharing 'the same physical space environment' and having 'asymmetrical access to visible surroundings' (Mlynar et al., 2018: 78).

A frequent problem identified with remote communication, particularly VMC, is transmission delay (Olbertz-Siitonen, 2015). VMC 'inherently suffers from some latency', and although the delays may be short, 'in social interaction where participants work with split-second timing they quickly present problems' (Seuren et al., 2021: 64). Such delays can 'severely interfere with the structure of conversation', especially in highly interactive contexts where turn-taking is not predetermined, causing interactants to interrupt one another unintentionally and/or producing involuntary silences, 'while not really becoming aware of the actual reason' for these problems (Olbertz-Siitonen, 2015: 203). Indeed, Schoenenberg et al. (2014: 486) found that interlocutors often blame each other, rather than technology, for transmission delay. VMC and telephone present possible issues in any interactional situation and it is likely that these issues are magnified in a high-stake context, such as a parole oral hearing. Such problems may impact on people's perceptions of fairness, their ability to convey their perspective or, for PB members, their ability to assess risk accurately and make decisions around release.

Parole as managerialist endeavour

Over the last 30 years, criminologists have established that the penal system has become increasingly managerial in operation. Rather than the system being designed to punish or rehabilitate it now exists, primarily, to manage and control risk (Feeley and Simon,

1992). In many respects, the PB epitomises this way of functioning, in that, it views prisoners as 'aggregates or mere statistical units' within impersonal frameworks . . . employing probabilistic risk calculations' to distribute 'offenders' according to risk (Cheliotis, 2012: 247). One feature of such organisations is an emphasis on efficiency with managerialist forces having 'subjected the police, courts, probation, and prisons to a regime of efficiency and value-for-money, performance targets and auditing, quality of service and consumer responsiveness' (Loader and Sparks, 2007: 88).

The PB has struggled to respond successfully to this imperative for efficiency, with increasing numbers of prisoners waiting longer for hearings and long delays in decisions and releases, all of which are partly driven by an increasing prison population (Ministry of Justice, 2020). PB annual reports (The Parole Board, 2019, 2020, 2021) show that around £500,000 has been paid to prisoners in compensation for delays to parole hearings over a 3-year period. This 'culture of delay' (Padfield, 2018) has thus beset the Board for several years. Although these delays are often the result of forces outside the PB's control,[2] the Board has come under considerable pressure in recent years to improve its efficiency. A JUSTICE (2022) report confirms that 'an efficient, effective, and well-functioning PB is vital for the criminal justice system', while acknowledging that this drive for efficiency needs to be undertaken carefully:

> delays, disruption, and mistakes mar a system that is unable to operate as it should. Those whose liberty is at stake, as well as the public at large, pay a heavy price. It is important that we get this right. (p. 9)

There is, thus, a potential tension between improved efficiency and improved decision-making in the PB's work, and these are two important criteria by which the organisation is assessed internally and externally. The PB could, in theory, decide to release all or no prisoners, thus improving its efficiency but at huge cost to prisoners and/or the public. Remote oral hearings provide opportunities for greater efficiency, enabling the PB to comply with the managerialist demands being placed upon it, but simultaneously risk introducing a system that does not enable the full participation of prisoners and other witnesses in the process. In this article, we explore this tension between efficiency and justice.

Methodology[3]

To address our research questions, we conducted interviews with 15 PB panel members. This sample was decided upon due to the information power (Malterud et al., 2016) that each participant held. Participants were recruited because they had significant familiarity with oral hearings and were able to talk in depth about their experience. We asked for views on the move to remote hearings, inviting participants to share perspectives on broader topics, such as the aims of the PB, good questioning techniques, and whether/how these questioning techniques differed across settings. Each interview lasted around 1 hour and were designed to investigate how remote hearings were perceived by panel members and specifically the effectiveness of remote hearings compared with in-person hearings.

Our sample comprised 11 women and four men, and all but one of our participants identified as White British. The majority ($n=11$) of our sample were 'independent' members (i.e. they had no specialist background), while the others were judicial ($n=1$), psychologists ($n=2$) or psychiatrists ($n=1$).[4] Panel members were recruited via an email sent out by the Head of Research at the PB. Participants were given full information about the study prior to giving consent to participate. The research was approved by the ethics committee at Sheffield Hallam University (ER29879416). This is a relatively small sample and only represents one side of the parole process. This is because these interviews were undertaken as part of a wider study on the use of language across hearings in different settings (the analysis of which is being written up for publication elsewhere). However, the findings presented below highlight the need to undertake further research in this area, such as prisoners, legal representatives, probation staff and professional witnesses.

The recordings were transcribed and then analysed using Braun and Clarke's (2021) reflexive thematic analysis. Each researcher began by familiarising themselves with the data before coding the data using two overarching sensitising concepts: benefits of remote hearings and disadvantages of remote hearings. Through this process, a set of themes were generated, which encapsulate the relative strengths and weaknesses of each setting.

Findings

Overall, the panel members' views on the quality of remote hearings were mixed. A minority were happy with the shift to remote-as-normal, while a similar number expressed significant concern with this move. Most panel members fell somewhere in the middle of these two extremes, reporting that remote settings had significant advantages *and* disadvantages. All interviewees were impressed with the way that the PB had managed this wholesale switch to remote hearings at the onset of the pandemic.

Benefits of remote

The reported benefits clustered around issues of efficiencies, environmental factors and the belief that remote hearings served as a good proxy for in-person hearings.

Efficiencies: Cost, environment and streamlined processes. All interviewees reported that remote hearings could be conducted in a way that was cheaper and quicker than in-person counterparts, reinforcing claims in the existing literature about the perceived benefits of remote hearings (Poulin, 2004). These efficiencies of cost and time were seen as significant for the operation of the PB as an organisation, although as discussed later, concern was expressed over the possible effects of these efficiencies. Panel members said that the PB stood to make significant savings on 'travel costs' through the shift to remote-as-normal (PB1[5]). One interviewee went further, saying that in-person hearings set up were a 'ridiculous waste of resources' (PB11). Others pointed to the environmental benefits of remote hearings: for example, 'I'm helping the environment without the emissions' (PB1), which is supported by extensive research that finds that videoconferencing

saves energy (O'Brien and Yazdani Aliabadi, 2020) and that remote meetings use less than 10% of the energy required for an in-person meeting (Ong et al., 2014).

Another efficiency identified was around streamlining processes, particularly the ability for remote hearings to be organised 'at relatively short notice' (PB5). This had benefits for prisoners, who could usually get a hearing earlier if they opted for remote. Increased work flexibility due to lack of travel and overnight stays was an important factor here, and panel members reported that they were more willing to 'work' the hours that otherwise would have been spent travelling, resulting in 'a lot less wasted time' (PB8). One panel member described being able to do 'another day's possible work' if working remotely (PB12), while another interviewee reported having the option to 'do more hearings' (PB6). Indeed, some interviewees stated that their current productivity was improved, with one lauding their personal efficiency as 'absolutely amazing' since the introduction of remote hearings (PB8). Increased flexibility in working patterns was positively reported by most of the interviewees, especially because this meant that hearings could be concluded quicker: one interviewee reported an unprecedented situation where panel members organised the post-hearing discussion for early evening to accommodate childcare responsibilities (PB13).

Interviewees argued that the shift to remote had resulted in panel members being used more effectively, with an improved pooling of staff resources. This was particularly true of specialist members like 'psychologists and psychiatrists' who could be 'better used' through being able to attend hearings around the country (PB1, PB5 and PB7). This increased efficiency has had real benefits for the Board, and it has been able publicise reduced numbers of outstanding cases since before the pandemic (The Parole Board, 2021).

Remote hearings as a good replica of in-person hearings. Panel members discussed the ways in which remote hearings can be a good replica for in-person hearings, reflecting participants' comments in the work of Gibbs (2017a: 2) that video-links have allowed defendants to participate 'as if they were in court' without being 'disadvantaged' or 'advantaged'. Several members commented that effective hearings were just as possible in remote settings, especially in hearings by video-link, which were more highly regarded due to the 'cue-rich' nature of VMC platforms (Croes et al., 2019: 1226). For some interviewees, technology was the only element that could jeopardise an otherwise effective remote hearing: 'for the majority of cases, if the technology works well, you can have an effective hearing' (PB8). We will return to the issue of technology below (see the 'Technological problems' section). Some members reported that the questioning of prisoners was similar across the two contexts, and that it was equally possible to 'put prisoners at ease' in remote hearings (PB8). Although there was a lack of support for the idea that remote hearings are an improvement on in-person hearings, one panel member expressed some disquiet with in-person hearings:

> the [in-person] set-up is really intimidating . . . I've seen people cope really badly with the live oral hearing and that can be used as evidence that they're not ready for release and it's not always the case. It's a really, really false, stressful situation where they are powerless or feel powerless. (PB13)

This member felt that remote hearings, by contrast, were potentially less intimidating because of the physical distance between the panel members and the prisoner.

Efficiency of system for prisoners. Some interviewees identified benefits of remote hearings for prisoners. As mentioned above, some of the perceived benefits for prisoners were associated with the remote setting being less intimidating than in-person hearings:

> it's probably easier not to have us all staring at them around the table. (PB1)

> [prisoners have] said they much prefer not having us staring over a table at them. (PB8)

> there must be some element of, I feel more comfortable because you're on the screen and you're not physically eyeballing me the whole time. (PB6)

These three quotations pit the intimidating and 'eyeballing' setting of the in-person hearing against the more 'comfortable' context of remote. This physical demarcation (McKay, 2018) may, according to our participants, bring some benefits for prisoners. The increased efficiency associated with remote hearings was also seen as a benefit for prisoners:

> The advantage to the prisoner . . . is having the hearing listed more quickly. (PB7)

Although this can be seen as a benefit for prisoners, we need to bear in mind concerns raised by Gibbs (2017b) that prisoners will likely choose remote hearings *because* they will get their hearing more quickly in spite potential of risks to procedural justice laid out above. Although some could see benefits for prisoners, we acknowledge that these are merely members' views on how prisoners feel about remote hearings, and many argued that further research on this is needed (see the 'Conclusion' section for more on this). Members' experiences are inadequate proxies for understanding prisoners' experiences, and these claims stand in contrast to research undertaken with prisoners in other CJS contexts wherein the use of video-link is seen to jeopardise procedural justice and reduce prisoners to little more than 'pixels on a screen' (McKay, 2018: 142). Nonetheless, these findings point to some important for further inquiry.

Problems with remote hearings

Panel members identified various disadvantages with remote hearings, ranging from general to specific issues: remote hearings as deficient (compared to in-person), technological problems, difficulties in chairing, problems of developing rapport with others and disadvantages for prisoners.

Remote as deficient: Lack of co-presence. Many of our interviewees' concerns with remote hearings centred on an implicit comparison with in-person hearings, which were regarded by many as gold standard. An oft-cited deficit of remote hearings was the lack of access that panel members felt that they had to other participants' 'non-verbal' and 'body' language. For some of the panel members, being co-located with others in the same room

made a 'massive difference' (PB5). It was felt that panel members in remote hearings were missing out on picking up on important microexpressions of other professional witnesses. One interviewee described a typical scenario from an in-person hearing that was difficult to replicate in a remote hearing:

> when you've taken the offender's evidence . . . out the corner of your eye you'll see the probation manager raise an eyebrow . . . and then you basically take that up when they come to give their evidence . . . You miss that completely'. (PB1)

Panel members reported having to work harder to pick up on non-verbal cues and other subtleties of interaction, which suggests that some of these nuances are being lost in remote hearings. It was deemed harder to assess the honesty of a prisoner, with one panel member reporting that it can be 'useful to be in the room' with prisoners where there are 'concerns about . . . honesty' (PB15). This point is doubly troubling, suggesting that prisoners may be construed as dishonest by default and that panel members may be less able to pick up on potentially untruthful comments. Moreover, research suggests that humans are poor at detecting deception (Bond and DePaulo, 2006), and so that, we should question whether this is an appropriate position to take in any case. Related to this, panel members discussed the possibility that prisoners are 'depersonalised . . . by virtue of being remote' (PB7), raising another potential significant disadvantage for prisoners (see the 'Disadvantages for prisoners' section).

Technological problems. One of the most infamous problems with remote hearings is technological failure or deficiency. Wi-Fi connectivity problems, laptop/computer performance and participants' ability to resolve these issues were all seen as significant problems by all the panel members interviewed. Issues with getting hearings started were reported in the interviews, with connection issues blamed for these delays. One panel member (PB2) said that 'connectivity issues' at the beginning of hearings are a 'bit of a nightmare', and that although the PB has good tech support, it was quite often 'an external witness' laptop or Wi-Fi speed that was causing the problem. Another interviewee (PB5) reported that successful interaction in remote hearings was 'much more difficult' to achieve because slight time delays caused participants to 'talk over' others, which made conversation 'a bit messy'. This sentiment was echoed by another member who stated that delays on a line can make conversation in the hearings 'difficult to manage', resulting in 'things get[ting] lost' due to people speaking 'over each other', all of which could result in a significantly altered conversation (PB1).

Remote hearings as more difficult to manage. The management of remote meetings can be harder than in-person counterparts, often because of the extra demands put on participants (Bailenson, 2021; Hinds, 1999; Oittinen and Piirainen–Marsh, 2015). Our interviewees raised concerns over the extra burdens that remote hearings placed upon panel members, namely, that remote hearings tended to be longer and more tiring than in-person hearings and that they imposed a greater stress on the chair of the hearing. Several interviewees specifically reported that remotely held oral hearings were longer than in-person hearings:

> a remote hearing seems to take an awful lot longer than a face-to-face one. (PB1)

> [remote] hearings take longer online. (PB3)

> hearings are taking much longer. (PB6)

In Padfield's (2017) study of oral hearings held over video-link, all hearings were limited to 2.5 hours, but this stipulation appears to have been abandoned. It may be that the added flexibility of working from home that the pandemic necessitated meant that restrictions on the length of the hearing were no longer needed. Three of the interviewees speculated over why remote hearings were taking longer, arguing that panel members were compensating for the deficiencies associated with remote hearings. Information needed to be checked 'a lot more' and questions asked in 'different ways' (PB2). The lack of 'cues' was also cited as a reason for longer hearings:

> not being able to give those cues to a witness, actually I've heard enough now, please stop talking. (PB6)

While a third panel member stated that remote hearings were more time-consuming than in-person hearings, especially on occasions when a participant's connection 'drops out' (PB12). All of these issues are likely to create the sense, for prisoners especially, that participation is more difficult, thus reinforcing findings from other research that has questioned the use of video in court and probation settings (Dominey et al., 2021; Harker and Ryan, 2022; Phillips et al., 2021). Several panel members reported that remote hearings are more tiring, particularly when panellists worked two hearings in a day, something that is now much more possible with the shift to remote-as-normal. One panel member mentioned 'the fatigue aspect' as the worst thing about remote hearings, citing a recent occasion where they had two challenging hearings in a day and the possible effect that this had on 'decision making':

> there is inevitably fatigue in the afternoon and inevitably decision making is impacted. (PB10)

Another interviewee made a similar point, arguing that their 'concentration' was negatively affected in remote hearings:

> wo in a day online is too much for me. (PB13)

This burden of being in two remote hearings a day was discussed specifically in relation to chairing:

> sometimes as a chair you can have two three and a half hour cases . . . It's just exhausting. (PB8)

Several panel members reflected on the extra work that chairs had to undertake in remote hearings. These meetings involve chairs doing 'a lot of juggling' (PB12) and extra

'housekeeping and admin' (PB1), as well as having to deal with the potential for 'technical' issues (PB5). Extra effort and concentration were required to ensure that participants were still present and were able to take part in the hearing, for example:

> Sometimes you've got ten faces on the bottom of the screen . . . it can be tricky to remain focussed on everything equally. (PB10)

Focusing additional attention to the 'technical stuff' and 'sorting everyone out', as well as 'managing the hearing and . . . my co-panellists' was a problem for several interviewees, for example:

> In-person you can give them a little nudge! Or you can call a break and then reflect on what you've heard . . . That's harder over a remote hearing, not least because you're worried that that link is going to fall apart at some point. (PB5)

Relational work as more difficult: Rapport and questioning. As discussed above, remote hearings were seen to offer limited opportunities for interacting with co-panellists. In addition, it was seen by many as more difficult to build relationships with other participants in remote hearings, again reflecting findings from other research in this area (e.g. see McKay, 2016 for a discussion of how VMC can impact on client–lawyer communication and relationships). This limitation was seen as acutely problematic when it came to interacting with prisoners and professional witnesses in remote hearings, and several interviewees argued that it is harder to achieve effective questioning. Panel members reported over-compensating for the assumed deficiencies of the remote setting, thus producing lower quality questions:

> we presume, which we shouldn't do, that the prisoner might not understand the question and so maybe we make it long-winded . . . and that just makes it more complicated. (PB1)

Another panel member told us that questioning in remote hearings tends to be un-focused, and that doing the basics of the job is more difficult:

> We're there to do a job and to find out what the risks are and make a balance of those risks . . . that's probably slightly more difficult online. (PB5)

The lack of co-presence in remote hearings can lead to the discussion going off on 'tangents' that are not helpful for conversation:

> It's very easy when you're sat in your own room . . . and everyone else is on mute and no one can interrupt you to go off on your own little tangent! . . . [I]t becomes less conversation like. (PB5)

This raises questions about the extent to which prisoners can fully participate in remote hearings. At the same time, panel members were confident that they can adapt to the nuances and differences of remote interaction. One interviewee stated that they had

'significantly changed' their questioning style to be 'more forensic' (PB8). However, this was reported to result in longer hearings because

> we need to ask more questions to be able to make our risk assessment. It's harder to make a risk assessment remotely I would say but it is possible. (PB8)

Panel members reported that engaging in conversation and building rapport with other participants was more difficult in remote hearings. As seen in the 'Remote as deficient: Lack of co-presence' section, remote hearings were regarded as being deficient, requiring special interactional work on the part of the panel members that was not needed in in-person hearings. One panel member reflected on the extra burden of ensuring that participants feel 'included' in remote hearings, which is more difficult 'when you've got little boxes of people' rather than physical co-presence (PB8). Other panel members discussed the need to engage in additional rapport work with prisoners, especially at the start of remote hearings. One interviewee reported that it is more difficult for panellists to show 'a human side', and so that, this needed to be compensated for through extra rapport work at the very start of a remote hearing:

> I do make a point either to say to the prisoner or the officer, 'how's things at Wymott today? Are you out a bit more? Are you back working?' (PB1)

Likewise, another panel member reported that extra 'preamble' was required at the start of hearings conducted remotely, describing strategies they used to alleviate prisoners' sense of nervousness in in-person hearings that are not possible 'online':

> when they come in I make sure that it's me who pours them their water . . . it helps a bit with that dynamic . . . That kind of thing you can't do online'. (PB5)

As well as reporting that it was more difficult to engage in rapport work with prisoners remotely, panel members also told us that remote hearings had greater potential for becoming acrimonious, with one panel member relating that remote hearings were more likely to be 'really awkward' and that things could quickly get 'out of hand' (PB1).

Disadvantages for prisoners. Panel members widely reported that the remote mode engendered a greater power imbalance between panel and prisoner, hindered prisoners' access to legal representation, and was potentially unfair to prisoners with neurodiversity and mental health conditions. We noted above that there appears to be a consensus within research undertaken with prisoners and defendants that remote communication has a deleterious impact on their experiences, and the PB members in our sample would seem to agree here.

Some panel members reflected on the in-built power asymmetry associated with oral hearings (and in remote communication settings more generally – see Heath and Luff, 1993), and the ways in which remote hearings seemed to exacerbate this imbalance, for instance:

we . . . sometimes perhaps forget that power imbalance and we sometimes think this is fine, it doesn't make a difference, we've got the same format, we're still practising fairness but I think that's perhaps one of the imperceptible differences. (PB7)

Other members picked out specific aspects of remote hearings that contributed to this asymmetry, for instance the prisoners' relative inexperience of using video-call technology:

for prisoners it's the first time they've done it remotely. It may be the first time they've done it full stop but we're very, very used to it and we're very used to the technology, measuring our conversation to make sure that it's quite focussed. (PB5)

Interviewees also discussed prisoners' mental health and neurodiversity as another aspect of the power imbalance between panel and prisoner that may be amplified in remote hearings. Panel members raised this concern in relation to technological problems:

[when someone loses connection] bearing in mind we're dealing with very vulnerable people . . . they start catastrophising that the hearing's going to cancel . . . so I'm trying to . . . deal with the prisoner whilst at the same time trying to liaise with our tech support to try and chase up the COM[6] to get them back. (PB8)

[if the prisoner is] telling you something really quite personal and then suddenly I have to interrupt and say I'm really sorry, we're going to have to pause for a minute because so and so's dropped out of the hearing, I imagine that can have quite a significant impact on how they feel about it and how they feel about sharing that information. (PB10)

The latter quotation highlights a concern that prisoners may be discouraged from divulging important information where there are technological problems. Further research needs to investigate the extent of this problem.

Finally, prisoners were regarded as having relatively limited access to legal representation in many remote hearings, with panel members expressing widespread concern that legal representatives were often not in the same room as the prisoner. Some of these fears were practical in nature, for example, the prisoner's lack of access to 'last minute paperwork' and to 'breaks' (PB2), while other concerns raised significant implications for fairness:

the prisoner doesn't have immediate access to their legal representative so that's quite a major difference and that affects them . . . when we speak about fairness then that I think is an issue. (PB7)

in terms of the impact on fairness or just being able to pick up when a prisoner might need a break or is maybe saying things that are going to be unhelpful to them, the solicitor being in the same room is quite helpful. (PB13)

these young men who've had no background, no support in their lives, they've been traumatised and they've done terrible things and they're sitting in a room in a prison completely on their

own, the solicitor's somewhere else, facing us. An oral hearing's bad enough but I just don't know whether it's fair. (PB3)

VMC makes confidential communication between clients and their lawyers more difficult McKay (2016) and our data suggest other ways in which VMC impacts on this important relationship. Furthermore, panel members stated that unrepresented prisoners were further disadvantaged in remote hearings because they are 'utterly alone':

> if the prisoner is unrepresented, period, then he or she is utterly alone and talking to people who are 100, 200 miles away and being talked to by a Community Offender Manager who is a similar distance and a psychologist somewhere else and so must feel I think a huge disadvantage and therefore perhaps unlikely to give the best account of him or herself to the panel. (PB11)

Finally, panel members agreed that prisoners with neurodiversity and mental health issues were likely to be negatively impacted by remote hearings. One panel member speculated that remote hearings might be seen by prisoners as less 'formal' occasions, which could have damaging implications:

> some of our prisoners with learning issues, cognitive impairments, learning difficulties, personality disorders, they can become over-familiar. (PB8)

This panel member further argued that this raised questions around fairness:

> issues around cognitive style is something that we need to look at more closely, the fairness, you know, how remote hearings may impact on people with learning difficulties. (PB8)

In sum, our interviewees raised serious concerns with the roll-out of remote hearings as default for prisoners, namely, that groups of offenders may be disadvantaged and that these hearings may not be as fair as in-person hearings. These views need exploring in more detail, and prisoners' perspectives need to be sought on this shift in practice.

Conclusion

Our findings suggest that the PB initially dealt well with the shift to remote hearings caused by the COVID-19 pandemic. This shift enabled the Board to avoid a backlog of cases developing and to be, on the face of things, more efficient. There has been no change to headline decisions to release, with the same proportion of prisoners being released as prior to the pandemic. These findings cohere with much of the existing literature discussed above. Our data also reflect many of the findings and concerns raised in relation to the use of VMC in CJSs, and also add depth and detail to the specific ways in which these perceived benefits and disadvantages manifest. Remote hearings can bring many benefits, mainly practical, which, given the pressures on the PB, are important to consider. Our findings would also suggest benefits for participants, including prisoners, and it seems that having remote as an option will help expedite the process of getting a hearing, which is important considering the numbers of Imprisonment for Public

Protection (IPP) prisoners, for example, many of whom have remained in prison for several years after the expiration of their tariff. In many respects, then, the pandemic has enabled the PB to demonstrate greater levels of efficiency and thus 'success' when viewed through the lens of new public management.

At the same time, our participants raised significant concerns with remote hearings and there is little evidence that remote is *better*. Some of these problems are likely to be resolved in time: broadband infrastructure, for example, will improve. Other identified problems with remote hearings, however, are more endemic and require further research to ensure that fairness is achieved across all hearings, regardless of mode of communication. We are concerned that the experiment of using remote hearings in parole contexts will result in diminished forms of justice, especially because as Poulin (2004) argues, 'if videoconferencing improves the ease of processing cases but diminishes the quality of justice, there may be no one to complain' (p. 1093).

There are some important limitations to our research. First, our sample size of 15 PB members is relatively small. However, each interview was around one hour in duration and participants were experienced panel members who had significant knowledge of both in-person and remote hearings. Participants thus had a high level of information power (Malterud et al., 2016) making a small sample size more acceptable. Our sampling strategy was purposive and convenience in nature meaning that our participants and data will be skewed towards people who had relatively strong feelings about, and interest in, the move towards remote hearings. Finally, we have only spoken to PB members, thus presenting a partial view of the situation. Future research should focus on capturing the views of other involved in hearings. Prisoners should be prioritised here, but the perspectives of other professional witnesses need to be heard too.

Our findings suggest that there is a need for careful decision-making in relation to whether a prisoner's oral hearing takes place remotely or in-person. While most people want prisoners to have a hearing as soon as possible, it should sit uneasily to have a situation longer term where prisoners can have an oral hearing more quickly simply by opting for remote. We would also recommend that the Board investigates the possibility of panel members over-working due to the perceived ease of conducting hearings remotely. The length of remote hearings needs to be considered as it was widely reported that these were typically much longer than in-person. This is highly inefficient for panel members but efficient for the Board, which can report more hearings being undertaken with the same or fewer resources. This raises questions about who the beneficiaries of the remote hearings really are: the Board, or the prisoners, the professionals who take part in them or the general public. Indeed, the PB is ultimately working to protect the public and although our participants felt that they were able to assess risk adequately in remote settings, it is possible that the issues raised above impact on decisions to release. This suggests a need to compare reoffending among people who are directed for release following hearings held in different contexts once the data become available.

Some important implications arise from this research that should be highlighted. In terms of research, our data point to the need to understand the experiences of prisoners, with a focus on whether people with certain characteristics (such as mental ill health, disability, legal representation and sentence being served) are receiving a similar level of service across remote and in-person settings. This research should focus on the accuracy

of the decision but also on participation and access to justice for prisoners. We would also suggest that the Board implements an effective triage system that allows for a case-by-case decision to be made on whether someone should or should not be given a remote hearing. We would recommend that the Board errs away from a 'default remote' position, at least until more is known about how prisoners experience hearings across the two settings. This raises questions about who should and should not be screened into remote hearings, how much say the prisoner should have over this decision and who the ultimate arbiter should be. Finally, the PB needs to be mindful of the pressure that remote working places on panel members, who report working longer hours, feeling pressure to do more hearings than is manageable and have less time to decompress following hearings by virtue of having no commute and fewer opportunities to debrief with colleagues. While working from home brings certain benefits, it can also increase the risk of burnout and poor staff-member well-being and this needs to be acknowledged.

The move towards a greater use of remote hearings seems to bring more benefits for the organisation than the prisoners who are the subject of decisions made in the hearings. Remote hearings are more efficient and they also risk alienating certain groups of prisoners, and/or coercing prisoners into opting for a remote hearing in the interests of speed, when this does not serve them or their chances of release. If the PB wants to remain confident that it is making decisions that are fair to all prisoners, then this tension needs to be reconciled.

Declaration of Conflicting Interests

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ORCID iDs

David Peplow (iD) https://orcid.org/0000-0001-6535-8095

Jake Phillips (iD) https://orcid.org/0000-0002-7606-6423

Notes

1. This initial review is also used to determine whether a prisoner can be released without the need for an oral hearing.
2. For example, a lack of appropriate prison programmes has resulted in IPP prisoners languishing in prison long beyond their tariff expiration.
3. For further information, and access to the underlying data set, please contact the lead Author.
4. Our sample is largely representative of PB panel membership in terms of member type (i.e. most members are 'Independent'), although the sample was somewhat skewed towards White and female members. In the total membership, around 60% of panel members identified as female and around 17% identified as BAME (Parole Board, 2021).
5. Participant codes go from PB1 to PB15
6. Community Offender Manager.

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Author biographies

David Peplow is Senior Lecturer in English Language at Sheffield Hallam University. His research considers communication in everyday and institutional settings. He has conducted research on parole hearings, reading groups and digital environments.

Jake Phillips is Reader in Criminology at Sheffield Hallam University. His research focuses on the intersection between policy and practice in the field of probation, parole and prisons. He has conducted research on probation culture, people who die after release from prison and the emotional labour of probation.