

# Telephone Hearings in Civil Proceedings

**Response to Consultation**

CP 14/05

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Response to consultation carried out by the Department for Constitutional Affairs.

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## Introduction

This document is the post-consultation report for the consultation paper, on the proposals that the use of telephone hearings in the county court be extended.

It will cover:

- the background to the report;
- a summary of the responses to the report;
- a detailed response to the specific questions raised in the report; and
- the next steps following this consultation.

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## Background

The consultation paper Telephone Hearing in Civil Proceedings was published on 12 July 2005. It invited comments on the proposals that the use of telephone hearings in the county court be extended. The consultation was aimed at court users, court staff and the judiciary in England & Wales.

- The civil justice reforms of 1999 introduced a new set of rules of court with an overriding objective of dealing with cases justly. Dealing with a case justly includes so far as is practicable ensuring that it is dealt with expeditiously and uses an appropriate share of the court's resources, while taking into account the need to allot resources to other cases and save unnecessary expense.
- Courts must further the overriding objective by actively managing cases which includes dealing with the case without the parties needing to attend court and making use of available technology.
- Civil courts in England and Wales can already host telephone hearings as provided in the practice direction to Part 23 of the Civil Procedure Rules.
- Extending the use of telephone hearings clearly fits with the civil justice reforms and offers potential cost, travel and time savings for litigants, legal professionals and witnesses (including expert witnesses) as well as making more efficient use of court and judicial time. Importantly this scheme aims to improve access to justice by enabling people to participate in the legal process without having to travel long distances to get to court.

The Consultation period closed on 4 October 2005 and this report summarises the responses, including how the consultation process influenced further development of the proposal consulted upon.

A list of respondents is at **Annex A** except for two who had asked their replies to remain anonymous, but have been included in the numerical count of responses.

## Summary of responses

1. A total of 34 respondents provided comments to the consultation paper. Of these, 10 were from individual members of the judiciary and from associated bodies representing sections of the judiciary; 13 were from legal professional's including professional bodies and individual firms; 4 were received from other Government Departments; 3 were from other interested bodies and organisations and 2 were from court officials. 2 further respondents requested to be remain unnamed. We are very grateful to all those who took the time to respond.
2. Respondents were invited to answer specific questions surrounding the use telephone hearings in civil cases under the pilot scheme or outside it and any potential benefits or problems that may ensue following a nation-wide rollout.
3. In terms of overall support 91% of respondents welcomed the intention to extend the general scope of hearings that could be dealt with by telephone and were broadly supportive of our proposals for it to be rolled out to civil courts nation-wide. However, there was almost universal agreement that telephone hearings were unsuitable for litigants in person due to the perceived lack of control the court would have on proceedings. There was also concern that telephone hearings with time estimates over 30 minutes were invariably more complex and therefore not suitable for a telephone hearing.
4. There was widespread support for increased use of telephone hearings and agreement to the benefits that would emerge as a result of their much wider use. In fact 31 respondents agreed that they were beneficial. Some of those benefits identified by respondents included reducing waiting times involved, or the necessity to instruct agents or counsel giving solicitors more time to familiarise themselves with the case before hearings, and a reduction in the associated costs. Stricter adherence to time estimates and hearing start times were among other benefits identified.

## Responses to Specific Questions

### 1. Have you ever participated in a telephone hearing either as part of the pilot or outside it?

*Of the 34 responses, 27 (79%) directly answered this question. Of those 27:*

- 25 (92%) had experience of telephone hearings; and
- 2 (7%) had no experience of telephone hearings.

There were 27 responses to this question. Of these, 25 respondents had participated in a telephone hearing as part of the pilot scheme or outside of it. The areas where respondents had been involved included personal injury litigation, landlord & tenant litigation and general commercial and contract claims. Other areas noted by respondents included arbitration and adjudication proceedings. Seven respondents simply confirmed having participated in a telephone hearing. Some of the responses are detailed below.

**The Association of District Judges (ADJ).** “Our members of regularly participate in telephone hearing, and have encouraged their use in appropriate cases for a number of years”.

**Lovells.** “A number lawyers at this firm have experience of telephone hearings, both as part of court proceedings and in arbitration and adjudication proceedings”.

**Herbert Smith LLP.** “Many members of this firm have participated in telephone hearings. They are used particularly in county court matters such as landlord and tenant and personal injury claims”.

**Wragge & Co.** “As a firm, we have considerable experience of telephone hearings acting on behalf of both sides in all types of claims ranging from personal injury, mortgage repossession and general commercial and contract claims and in relation to all types of applications including interim application and case management conferences”.

**Treasury Solicitors.** “The use of telephone hearings in Treasury Solicitor is mainly confined to the Private law litigation teams, in particular the Personal Injury team for the Ministry of Defence. Prison service and the General Private Law litigation team. The types of hearings conducted by telephone have been case

management conference direction hearings. Both lawyers and non-lawyers have been involved in conducting these hearings. The hearings were often instigated at the direction of the Court. The Companies & Regulations and the Business Regulations & Special Projects Teams have had more limited experience of telephone hearings. The telephone hearing was an application to amend an Order to attach a penal notice. A lawyer conducted the hearing”.

**Medical Defence Union (MDU).** “We have participated in telephone hearings throughout England and Wales. They are particularly helpful for the MDU as we act for doctors and dentists throughout the country and they can save considerable costs. There seems a general willingness on the part of the courts and most parties to hold case management conferences and hear applications on notice and even pre-trial reviews by telephone. The only frustration is that there is not complete consistency throughout England and Wales. In a small minority of cases, a reasonable request for a telephone hearing is refused and yet that same request would have been agreed in the overwhelming majority of courts”.

**Her Majesty’s Revenue and Customs Solicitor’s Office.** “The use of telephone hearings is not an experience encountered by the majority of caseworkers in the Direct Tax and Rating teams. It is a commonplace experience for members of the Corporate Services group who specialise in Employment Law. Members of the Personal Injury team and the Insolvency & Recovery group also encounter it. The types of hearing conducted by telephone have been case management conferences, direction hearings also applications to extend the time for service of documents and a costs hearing. Specific examples from the Insolvency Group include a setting aside a statutory demand hearing in Truro County Court when a lawyer and Counsel, provided representation at the hearing from a telephone in Maitland Chambers and a costs hearing following a hearing in Birmingham Mercantile Court. There were obvious savings in costs and time in being able to conduct these hearings by telephone. HMRC does not think anyone felt that the standard of justice had suffered and the lawyers involved were positive about the experiences. Both lawyers and non-lawyers have been involved in conducting these hearings”.

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## 2. Do you think that telephone hearings are beneficial? If so how?

*Of the 34 responses, 31 directly answered the question. Of those 31:*

- *31(100%) agreed that telephone hearings were beneficial*

All the 31 respondents to this question were of the opinion that telephone hearings were beneficial in one way or another. The general consensus amongst respondents was that of telephone hearings being beneficial to all those involved in the civil litigation process with savings to be achieved in both time and costs. Many practitioners pointed out that telephone hearings encouraged fee earners with conduct of the file and full knowledge of the case to deal with the hearing in person rather than sending someone unfamiliar with the issues to court. This, as noted by the judiciary, encourages advocates in making more focussed and succinct submissions, which will ultimately reduce the time taken in comparison with oral hearings.

A number of the responses are detailed below.

**Treasury Solicitor's.** "The general consensus is that telephone hearings are beneficial both for the management of the case as well as for the lawyers. The benefits include savings in time both travelling and waiting as well as cost. It is noted that telephone hearings require more preparation on the part of the parties but this has the benefit of ensuring that all relevant issues have been identified to make the hearing more conducive. Also, clients have not expressed the view that they felt excluded from the litigation process by telephone hearings. This is an important consideration from a client-care perspective and maybe something that the Courts should bear in mind".

**Lovells Solicitors.** "Our general view is that telephone hearings are beneficial, particularly for procedural or administrative matters such as allocation, listing or pre-trial reviews. The most obvious benefits lie in the reduction in the time and costs that would normally be incurred as a result of lawyers and clients having to travel to court and wait for hearings. Furthermore, in cases where the court is at some distance from the location of one or all of the parties a legal representative, it would normally be necessary either to incur the cost of travelling to the court or instructing an agent to attend on their behalf. The benefit of a telephone hearing in such circumstances means that the solicitor responsible for the case would be able to deal with the matter, which would be more efficient as he/she would clearly be more knowledgeable about the case than an agent. A further benefit of telephone hearings is that, where the matter is to be dealt with by a judge, he/she can hear the parties in his/her own chambers, thus freeing up court space".

**Wragge and Co Solicitors.** "They allow the solicitor having conduct of the case, and who can most assist the court, to utilise their advocacy skills and attend the hearing personally wherever the action may be proceeding. This avoids the need to instruct an agent where the matter is proceeding in a non-local court. Clients

invariably prefer their own solicitor to attend hearings rather than an agent. The unfortunate scenario of an agent not being fully briefed is also avoided. They are convenient. If the hearing is delayed for whatever reason, the solicitor can use his or her time effectively in the office. Solicitors are able to better prepare for the hearing in the sense that they can have all of the relevant material in front of them at the start of the hearing rather than being ushered in and immediately having to start with insufficient time to order their papers. They save costs, both in relation to travelling to and from court, waiting at court, and in instruct agents”.

**Institute of Legal Executives (ILEX).** “The use of telephone hearings offers major advantages and should be encouraged. The use of telephone hearings encourages parties to communicate prior to the hearing. This in turn can save valuable court time, as in most cases; the parties are more likely to agree draft directions in advance of the hearing than they would be if they had to attend the hearing in person. Telephone hearings are also more cost effective than hearings in person due to the elimination of travelling and court waiting times. The geographic flexibility of this type of hearing ensures that the fee earner with conduct of the file is able to deal with the hearing in person so that the individual with full knowledge of the case is able to attend rather than having to send someone to court in their place who may be unfamiliar with the issues. This benefits both the court and the client and may further reduce costs and time through efficiency. This might also save on costs of instructing an agent solicitor where the court hearing is in a different geographical location to the solicitors firm. The use of such hearings can save court resources, as the judge is able to take the call in chambers rather the court room, therefore leaving the court room free for use by other parties if possible. An additional benefit of this type of hearing is that the time estimate for the duration of the hearing and the start time tend to be more strictly adhered to due to the nature of the hearing”.

**Medical Protection Society (MPS).** ...”MPS represents its members throughout the country and actions can be commenced against members in any Court within the jurisdiction of England and Wales. Telephone hearings have the considerable benefit in that: They remove the need for MPS’s in-house or panel solicitors to travel around the country to various courts, thereby effecting a considerable saving in costs, both for time spent in travel and also the actual cost of the travel itself. With hearings conducted by telephone, the disruption to the working day is minimised again leading to more effective use of resources”.

**Forum of Insurance Lawyers (FOIL).** “Benefits include: Savings in time and cost, particularly for compensators and Before the event or After the event insurers

whose panels of solicitors may be based many miles away from the court where proceedings are issued. The requirement to serve and file a case summary can improve parties' preparation. Additional preparation cost *tends* to be offset by the reduction in travel and waiting times...Better and advance preparation can lead to better outcomes. It has, on occasion, led to agreement on future steps and/or resolved part or all the issues in advance of the hearing, thus shortening the length of hearing and taking the matter further towards resolution or trial".

**The Association of District Judges (ADJ).** "We recognise the saving in costs that is achieved by the use of telephone hearings, particularly where one or both parties' solicitors may be located some distance from the court. Our experience is that, in most cases, agreement to a telephone conference encourages the parties to discuss and agree draft directions, or draft an order, before the judge joins the telephone hearing".

**Stephen Davies** from **Legal Connect** and **Alliance & Leicester** both agreed that telephone hearings were beneficial however one drawback was that these types of hearings are those in which trainee and articled clerks "cut their teeth" and gain invaluable experience. And felt that telephone hearings were unlikely to have the same beneficial effect.

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**3. Do you think that there are any types of hearing which are not suitable to be dealt with by telephone hearing? If so please specify?**

1. *Of the 34 responses, 29 directly answered this question. Of those 29:*
2. *8 (27%) had concerns over the time limits for telephone hearings*

As detailed in the consultation paper, the proposals seek to extend the range of hearings heard by telephone to include allocation or listing hearings, interim applications, case management hearings and pre-trial reviews with time estimates of no longer than 1 hour. Many of the responses however focused on identifying specific occasions where a telephone hearing would not be suitable. Telephone hearings were deemed not appropriate in the following cases:

- Applications where the hearing could result in the final determination of the matter, such as application's to strike out or for summary judgment.
- A hearing involving substantial reference to the texts of reported cases.

- Hearings involving the examination of witnesses.
- Complex multi-track case management conferences.
- Family matters
- Infant settlement approval hearings
- Complex injunctions or childcare hearings
- Applications to suspend warrants of possession
- Multi party cases of more than 4 parties
- Any contested hearing involving a litigant in person
- Hearings lasting more than 15 minutes/ 30 minutes /1 hour /2 hours

**Lovells.** “Our view is that telephone hearings are not appropriate, unless the parties consent, in the following cases:

Applications where the hearing could result in the final determination of the matter, such as applications to strike out or for summary judgement; Hearings with a time estimate of more than one hour; Hearings where it is necessary to examine witnesses; Hearings where there is to be detailed reference to authorities; Hearings where it is likely that documents, for example witness statements, will be exchanged by the parties at the last minute, after the deadline of 4pm on the last working day before the hearing. Such hearings should, in our view, continue to be held “in person”, unless the parties agree (and the court consents) that they should be held on the telephone”.

**Herbert Smith LLP.** “We assume this question refers to those hearings it is being suggested are conducted by telephone in the Consultation Paper. Of those, we consider that it may not be appropriate to deal with complex multi-track case management conferences and interim hearings of up to an hour by telephone. In a complex case, face to face interaction is often helpful between the parties and the judge; for example to gauge whether points need to be pursued further; to see whether opponents need to be immediately corrected on factual issues; to debate issues which arise at the hearing (or as it more generally the case), to hand up additional documents or correspondence which are relevant to an unexpected issue which arises. Further, clients are likely, in important cases, to wish to attend

case management conferences or longer interim applications and it is more difficult for them to participate effectively if the hearing is on the telephone. In addition, points are often clarified outside of court before a complex hearing, thereby reducing the time of the hearing itself. Although this is possible by telephone it is perhaps less likely. Accordingly, we suggest the time limit for telephone hearings is reduced to 30 minutes with the parties being able to ask for a telephone hearing on longer applications if appropriate”.

**ILEX.** “Telephone hearings are primarily suitable for straightforward interlocutory hearings, allocation hearings, case management conferences and application hearings. Final hearings and trials should not be dealt with by way of telephone conference. Summary judgement hearings should not be dealt with in this way either. Telephone hearings are not suitable for hearings with a time estimate of over one hour or in multiparty cases where there are more than four parties. This type of hearing would also not be appropriate in certain family matters, for example infant settlement approval hearings. Complex injunctions or childcare hearings should continue to be dealt with in person at court. However, straightforward family interlocutory hearings are suitable for telephone hearing”.

**MPS.** “From its experience, MPS takes the view that almost all hearings of an interlocutory type, to include Case Management Conferences, applications, allocation hearings and listing hearings can be dealt with by telephone. We would agree that it is probably inappropriate for a hearing to be conducted by telephone where there is to be a final judgement on a case – especially where one party is a litigant in person – and/or where there are witnesses – either lay or expert – to be examined or cross examined.”

**MDU.** “Cases where courts are asked to consider large amounts of paperwork and where there are significant areas of disagreement between the parties may be better served if both parties attend court. However, these cases are not common and supplemental practice direction Part 23 2.3 can be used to request an attendance in person if either party considers this necessary.”

**ADJ.** “We do not think that telephone hearings are suitable for hearings estimated to last more than 30 minutes, hearings where any party is underrepresented, or where there are more than 4 participants, because it is difficult for the judge to identify who is speaking unless each time the party identifies him or herself, which is cumbersome. It may be more appropriate to limit the number to 3 rather than 4”.

“...applications or other hearings lasting over 30 minutes tend to include some seriously contested issues, and may also involve reference to case reports or other written material”.

“Under the existing provisions of Part 23, there are strict conditions for participation in a telephone hearing by a litigant in person. While we fully accept that these conditions are in need of some relaxation, we would oppose any presumption of a telephone hearing in a case where a party is acting in person”.

**HMRC Solicitor’s Office.** “The benefits outlined under 2 only accrue if all the parties know what they are doing. Problems are encountered with litigants in person, which is frequently the case in telephone hearings in employment tribunal proceedings. In cases where there is a litigant in person who is unfamiliar with the process, the risk of holding a telephone hearing in all but the simplest of issues (for example an application for an extension of time, a routine case management conference in a simple case or where the Litigant in Person is evidently acting in a vexatious manner) means that the other individuals participating in the telephone hearing can not pick up on non verbal cues as to their understanding of the process. Litigants in person do not always ask for what they need and therefore need to come back and have more hearings – if it is considered appropriate to have telephone hearings then it might be necessary to factor in additional time for the Litigant in Person to consider his position for example a 5 minute break during the telephone concurrence or a second conference call. There is a risk that there may be several telephone hearings rather than one hearing in person with no consequent saving in costs. Problems also occur in cases, which are complex and/or involve large amounts of documentation. It is very difficult for litigants in person to deal with this satisfactorily when the hearing takes place on the telephone. HRMC is not submitting that telephone hearings are necessarily inappropriate when a litigants in person is a party but does emphasise that the issues needed to be straightforward and not ones involving large amounts of documentation”.

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**4. Are there any grounds other than the number of parties and time estimate, on which you think a telephone hearing is not appropriate?**

*Of the 34 responses, 19 directly answered the question. Of those 19:*

- *17 (89%) listed cases where litigants in person were involved as being inappropriate*

Many of the respondents to this question referred back to their response to question 3. Of the 19 responses received, 17 identified cases where litigants in person were involved as being inappropriate for a telephone hearing. The common theme expressed was of many litigants in person not being focused in the presentation of their arguments and frequently not having the relevant papers to hand when appearing in court. Furthermore, the view was that litigants in person would require greater assistance and detailed explanation within an already limited time frame of a telephone hearing. A number of respondents also were keen to point out that many cases with time estimates over 30 minutes tended to include complex and contested issues which could not be suitably conducted by a telephone hearing.

**Senior Master Turner.** “I am not sure that telephone hearings are always suitable for litigants in person where such persons are sometimes of an obsessive nature, because of the need to maintain the discipline of speaking in turn without interruption. Control of some litigants is a very difficult task even when they are present in a hearing and this is likely to be more difficult if they are on the telephone. The other worry I have is the extent to which they may be prompted or assisted by others”.

**HHJ Oliver-Jones QC.** “In addition whilst I can understand the suggested benefit of extending telephone hearings to allow litigants in person to participate, on balance I would not be happy to see such an extension. Many LIPS are not focused in the presentation of their arguments and frequently do not have relevant paperwork to hand when appearing actually in court. The necessary sensitive handling of such litigants in the arena of a courtroom or chambers would be difficult to replicate by telephone communication in the case of some litigants”.

**Timothy Ryland – Central London County Court.** “In my view to have litigants in person would be a disaster. To have more than 3 parties is impractical as is to have a longer than 30 minutes CMC or application. Other applications are difficult too especially if there are legal arguments involved where authorities are to be cited unless there is a very fully skeleton argument sent to the Judge and the other parties in advance so that everyone is working on the same basis and on the same information. It is hopeless when one of the other parties seeks to refer to a case, which has not been referred to in a disclosed skeleton. The judge then has to adjourn the telecom and order an oral hearing. I fully approve of telecons especially for directions in CMC’s when there may be a less antagonistic approach and the parties Solicitors have previously got together and agreed directions in

principle at least. Hence my very deep rooted objection to allowing LIPs to become part of the telecom process”.

**ILEX.** “A telephone hearing would not be appropriate where the hearing involves dealing with complex issues of law or where there is expert evidence. In cases such as these it would be preferable for the parties to attend the hearing in person. In cases where it would assist the judge to see one or more of the parties, it may be preferable to attend the hearing in person. A telephone hearing may not be appropriate where one party to the case is a litigant in person and could be perceived to be disadvantaged by the use of a telephone hearing, particularly where the other side is a major commercial litigant with full representation”.

**Law Reform Committee of the General Council of the Bar.** “Hearings involving extensive documentary evidence, or likely to involve detailed citation from authority. Anything involving attendance of lay client, or the calling of witnesses, or substantial dispute between the parties is unsuitable for telephone hearing because Counsel should have the opportunity to meet client/witness/solicitor/opposing counsel and discuss issues before and after hearing. CMCs can often be very substantially shortened (and other issues in the cases addressed) if both counsel attend in person, with their solicitors. Telephone hearings are inappropriate where one party is not legally represented. Similarly it is felt that special training will be necessary for those conducting telephone hearings. It is more difficult to control the participants and in particular to prevent a participant simply continuing to talk despite interruptions than it is when the person is physically present. The impact on litigants in person and allocation of court time should be monitored. There is a significant danger that a litigant in person whose body language cannot be read by the judge dealing with the case may be placed at a disadvantage due to a lack of confidence (or hesitation) in expressing himself orally. If the parties are present the judge is more likely to be able to notice and compensate for this lack of confidence. The use of telephone hearings, in other words, places even greater emphasis on the ability of a person to express themselves orally...”

**Patricia Hitchcock – Barrister.** “Anything involving attendance of lay client, or calling witnesses, or substantial dispute between the parties is unsuitable for telephone hearing because Counsel should have the opportunity to meet client/witness/ solicitor/ opposing counsel and discuss issues before and after hearing. Most such hearings would be excluded under current framework anyway but e.g. CMCs can often be very substantially shortened (and other issues in the case addressed) if both counsel attend in person, with their solicitors”

**MDU.** “We suggest that there may be problems in some cases where the claimant is a litigant in person. Travelling to court may be onerous and time-consuming for a litigant in person and the judge is able to explain process and to ensure that the litigant understands the role of the court and what the terms of the court order require. It may be more difficult to convey this type of information adequately by telephone, but the fact that the claimant is a litigant in person does not necessarily mean that a telephone hearing is inappropriate”.

**Treasury Solicitor’s.** “Cases involving litigants in person and complex issues are not thought to be suitable for telephone hearings. Perhaps also the issue of whether the parties are willing to co-operate to ensure an effective hearing should be considered. It is felt that some guidance should be given to the Courts in respect of cases where the evidence is complex”.

**HMRC Solicitor’s Office.** “HMRC would emphasise the need to carefully consider the issues surrounding litigants in person and when ordering telephone hearings whether as a matter of practice or in individual cases, the courts ought to take into account the following issues: - it is undoubtedly true that although appearing at court is costly in time and money because the parties are in close physical proximity this does encourage discussion. Discussion can produce a number of desirable outcomes. Many litigants in person want their day in court. It does not need to be a day in which the substantive issues are heard. It often is an opportunity for some kind emotional catharsis and humanisation of the opposition. Some litigants in person are difficult to deal on the telephone and often abusive. Once they have actually met the caseworker and especially when they have had some opportunity to vent their feelings in front of a third party they very frequently calm down and either settle, or if they do not settle, all of the substantive issues at least allow some of them to fall away. This allows for a shorter, cheaper substantive hearing. A third possible desirable outcome is that even if they persist with the whole of their substantive application they are frequently easier to deal with. Nonetheless we believe that on balance despite this caveat the court should have the discretion of dealing with hearings involving Litigants in person over the phone – the court does not of itself regard itself as providing some type of emotional panacea”.

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**5. In general are you in favour of nation-wide rollout of telephone hearings for the types of case specified in the proposal?**

*Of the 34 responses, 26 directly answered this question. Of those 26:*

- *25 (96%) were in favour of a nation-wide rollout of telephone hearings for the types of case specified in the proposal*

26 responses were received to this question. All bar one of the respondents agreed with the proposal for a nation-wide roll out and for the roll out to be 'staged' to allow courts time to put their systems in place. This view on this proposal is summed up in the response from the **Treasury Solicitor**:

"In general Treasury Solicitor is in favour of expanding the telephone-hearing scheme nation-wide. There are obvious costs benefits to the client and Treasury Solicitor as well as savings on time. Although Option 2 would ensure consistency throughout the Court system immediately, it is recognised that this may place quite a heavy burden on the Courts. Treasury Solicitor is of the view that Option 3 is the best method of rolling out a nation-wide programme".

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### **Additional Comments**

Many of the comments provided here sought to build upon points already made in answers to the specific questions asked. Although impossible to include all such comments, below is a selection of some additional important issues that were flagged:

**HHJ Oliver-Jones QC** "The success of telephone hearings is dependent upon the availability of the best technology, namely (at present) the so-called 'Starfish'-type equipment. In many courts such equipment is shared between members of the Judiciary. This means that if two or more telephone hearings have been arranged at the same time of day (as has occurred!) one or more will have to be delayed or postponed. It will thus be necessary for each Judge's Chambers to be provided with this equipment".

**District Judge Hewetson-Brown.** "It is surprising that there is no question relating to areas of difficulty – there are several such areas. The lack of eye contact and the ability to indicate a view by body language can be a real drawback. Inability to persuade parties to go to a private room to try and settle. If a document has been omitted from the bundle, it cannot be rectified over the telephone. With advocates present, it would normally be found in the solicitor's file in a moment".

**Herbert Smith LLP.** “If telephone hearings are to be used as a matter of routine it is important, as the MR pointed out in *Heyward v Plymouth Hospital NHS Trust (CA)* [2005 EWCA Crim 939, that the judge has the documentation in advance. In our experience, that has not always been the case and obviously makes conducting such hearings much more difficult than they would otherwise be. As Lord Phillips suggested it would be useful if the Court Service introduced electronic case files to alleviate this problem. This is not something that was considered in the Partial Regulatory Impact Assessment and it may be that this needs to be considered now before the rollout, although it would obviously increase the costs substantially”.

**ILEX.** “In certain cases it is suggested that the court could consider imposing the use of telephone hearings. However, it is important that it is always open to the parties to request that a hearing be dealt with by attendance at Court and where such a request is made it should be granted unless there are compelling reasons not to do so”.

**Master Whittaker.** “Over the last 3 years I have become experienced and adept at handling telephone hearings by dint of daily practice and large volume of such hearings. I recognise that less experience judges without the throughput of telephone hearings are not likely to be able to cope as I do. I therefore favour the limited scheme proposed but am quite clear that both short applications and CMCs can be handled in this way even by inexperienced judges. I suspect that there will be resistance to this by many who feel they were not appointed to spend large amounts of time at the telephone. However, I have become a total convert to this method of working which in fact I find less stressful than ‘live’ hearings. I should add that generally people are more respectful at the telephone and easier to handle. Personality and ‘body language’ clashes are avoided! I thoroughly endorse the extension of this scheme”.

**Law Reform Committee of the General Council of the Bar** “...careful monitoring needs to take place to ensure that litigants in person are not placed at a disadvantage in conducting such hearings. To that end we recommend that specific training should be given to the judges dealing with these types of hearing to draw attention to the potential disadvantages and to ensure that the judges compensate for them...”.

**Patricia Hitchcock - Barrister.** “There should not be a financial penalty – e.g. application fee - for requesting an oral hearing, and there should be provision for late application, if circumstances warrant this. The presumption that hearings

should be by telephone should not become the removal of the right to an oral hearing, especially for any party acting in person”.

**Legal Connect** “...Court telephone infrastructure. This has been cited as a major concern for the smaller courts. My experience leads me to believe that this is not as big an issue as first perceived. It was thought that delays occur because of the lines into the court. In fact, only one line is used for each telephone hearing, as the lines into the conference are held by the provider. The difficulties occur when more than one telephone hearing is scheduled at a particular time i.e. if two judges are sitting, and both have telephone hearings scheduled for 10am. As long as the listings officer in the court can schedule telephone hearings with a gap of as little as five minutes, the existing telephone systems in each court will undoubtedly be sufficient to continue the roll out”.

“Capacity within the teleconferencing industry. LegalConnect is part of InterCall, which is one of the largest providers of conferencing in the world. I cannot comment on other providers positions, but I can categorically state that we have no capacity issues...with lines and/or operators, and could conceivably cope with a mass roll out today”.

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## Conclusion and Next Steps

1. It is clear from the response to the consultation that there is widespread support for the proposal to extend telephone hearings in the civil courts on a national basis. The general consensus amongst respondents was that the extended use of telephone hearings would bring about considerable savings in time and costs for all those involved.
2. By the same token we must also acknowledge the concerns that have been raised as well. The majority of respondents, who happened to be from the legal professional sector, hold the view that telephone hearings are not suitable where litigants in person are involved. This is mainly due to the perceived need for greater assistance and detailed explanation within a limited time frame and the difficulties that might occur in controlling the litigant in person. Furthermore, it was felt by a number of respondents that telephone hearings should be limited to cases with time estimates no longer than 30 minutes.
3. In our view these potential concerns are unfounded, as there is no evidence to support them, since litigants in person could not under previous rules of court participate in telephone hearings. In fact the evidence obtained from the pilot courts has demonstrated that those instances where litigants in person have participated in a telephone hearing they were very successful with no disruption to the proceedings. We do however acknowledge that the numbers of litigants in person involved in the pilot were low. This could be attributed to the type of hearings conducted under the pilot.
4. On the question of the time estimate for telephone hearings, the concern was that hearings over 30 minutes had the tendency to be contested and involve more complex issues and therefore inappropriate. Again, although limited in its scope, the evidence from the pilot courts did not highlight any issues with time estimates.
5. However, in light of strength of feeling expressed by respondents in these particular areas, we will undertake a further limited evaluation of the scheme in the two areas of most concern – on the presumption of a telephone hearing in a case where a party is acting in person; and on the question of length of a telephone hearing.
6. In January 2006, HMCS announced that the pilot scheme was to be extended unaltered to all county courts between April and October of this year. The roll out is now underway and is being staged on a regional basis so as to enable

service providers adapt their business to handle the increased demand for the service, whilst at the same time giving courts time to prepare. Although the scheme will not apply to the High Court, it will extend to District Registries. The time table is as follows;

- **North East Region: 3<sup>rd</sup> April 2006**
- **North West Region: 1<sup>st</sup> May 2006**
- **Wales and Chester Region: 1<sup>st</sup> June 2006**
- **South West Region: 3<sup>rd</sup> July 2006**
- **Midlands Region: 1<sup>st</sup> August 2006**
- **South East Region: 1<sup>st</sup> September 2006**
- **London Region: 2<sup>nd</sup> October 2006**

7. There will also be an on-going rolling programme with courts that cannot implement the scheme under the timetable, joining the scheme when local conditions permit. A list of participating courts will be maintained and continually updated on our website.
  8. HMCS is in favour the extension of telephone hearings for a number of reasons It will result in benefits to court users, including no longer having to attend court for hearings so reducing time wasted getting to court and awaiting the hearing and less travel. This improves access to justice for those that cannot or find it difficult to attend court through the reduced need to attend in person. It also accords with the objectives of the Courts and Tribunals modernisation Programme (CTMP) in its aim of reducing unnecessary attendance at court and sought to improve access to justice by reducing costs. The judiciary and courts should also benefit from a more efficient use of both judicial and accommodation resources.
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## **Consultation Co-ordinator contact details**

If you have any complaints or comments about the **consultation process** rather than about the topic covered by this paper, you should contact the Department for Constitutional Affairs Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622 or email him at [consultation@dca.gsi.gov.uk](mailto:consultation@dca.gsi.gov.uk)

Alternatively, you may wish to write to the address below:

**Laurence Fiddler  
Consultation Co-ordinator  
Department for Constitutional Affairs  
5<sup>th</sup> Floor Selborne House  
54-60 Victoria Street  
London  
SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given on page 3.

## **The Consultation Criteria**

The six consultation criteria are as follows:

9. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
10. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
11. Ensure that your consultation is clear, concise and widely accessible.
12. Give feedback regarding the responses received and how the consultation process influenced the policy.
13. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
14. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents

## Annex A – List of Respondents

1. Newcastle Combined Court
2. Mr Justice Rupert Jackson – Technology & Construction Court
3. Jacky Cooper – P & A Receivables Services plc
4. Saira Singh – Lovells Solicitors
5. Association of District Judges
6. Declan Tomany – Department for Environment, Food & Rural Affairs (DEFRA)
7. His Honour Judge Stephen Oliver-Jones
8. Robert Horwill – HM Revenue & Customs (HMRC)
9. Treasury Solicitors
10. Herbert Smith LLP
11. Institute of Legal Executives (ILEX)
12. Motor Accident Solicitors Society (MASS)
13. HM Revenue & Customs (HMRC) Solicitors Office
14. Carmela Clarke – Forum of Insurance Lawyers (FOIL)
15. City of London Law Society
16. The Law society
17. Jane Bates – Wragge & Co Solicitors
18. Law Reform Committee of the General Council of the Bar
19. Simon Hardy – CK Edrupt & Co
20. Master Ungley
21. District Judge Susan Jackson
22. Court Managers – London Area-Civil
23. Timothy Rylany - Central London County Court

22. Mike Burke - Court Managers – London Area
  23. Timothy Ryland – Central London County Court
  24. His Honour Judge Crawford Lindsey
  25. Patricia Hitchcock – Cloisters
  26. District Judge Peter Hewetson-Brown – Luton County Court Service
  27. Dr Gerard Panting – Medical Protection Society
  28. Mary-Lou Nesbitt – Medical Defence Union
  29. Stephen Davies – Legal Connect
  30. Senior Master Turner
  31. Jackie McGuirk – Alliance & Leicester plc
  32. His Honour Judge Richard Holman
- Two responders requested they be unnamed

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