

Advice NI Briefing Paper

Digital Social Security Appeal Hearings

June 2020

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Background

In light of public health concerns associated with the COVID-19 pandemic, Northern Ireland’s president of Tribunals and The Appeals Service (TAS) have suspended all in-person tribunal hearings until further notice. This means that anyone who wishes to appeal a decision in relation to their social security benefits must do so on paper, over telephone, or the video conferencing service SightLink.¹ Otherwise, they face an indefinite wait for an in-person hearing. Although these measures have been introduced on a temporary basis in order to protect public health, remote hearings are likely to become a permanent fixture of our justice system in the future—in a 2016 White Paper entitled *Transforming Our Justice System*, the UK’s Lord Chancellor, Lord Chief Justice and Senior President of Tribunals announced that they foresee a future in which some court hearings will be conducted entirely online,² and that “Tribunals will be digital by default.”³ Parliament recently confirmed that online hearings will become a permanent aspect of our justice system post-COVID-19.⁴ The introduction of remote hearings will therefore have a significant long- and short- term impact on the independent advice sector and those who rely upon it.

Digital Social Security Appeal Hearings - the possible advantages

There are a number of benefits associated with virtual hearings. In addition to the fact they protect Court employees and the public against the spread of COVID-19, the UK’s National Audit Office estimates that once properly implemented, a digitalised court system will lead to public savings of £244 million per year.⁵ Furthermore, remote appeals eliminate the logistic burden of travelling to the tribunal building, which is a particular concern for rural populations, as well as for individuals with mobility impairments: a 2018 report from the International Disability Alliance found that 88% of disabled persons organisations (DPOs) believed that technology could be used to improve access to justice for persons with disabilities.⁶ Remote hearings may also create a more comfortable atmosphere for appellants. Many appellants report that they are intimidated by the atmosphere of a courtroom or tribunal, and research into the experience of witnesses who have testified in criminal cases via video link has indicated that testifying in a remote environment can lead to a more comfortable experience.⁷ Recent communications from the Department for Communities confirmed that appellants who choose to proceed with remote appeals will be able to have their family members or friends present with them during the appeal, and this may serve as an additional source of support and comfort during the appeals process.

¹ Instructions on the use of SightLink can be found in the appendix

² p. 6

³ p. 15

⁴ HC Deb 9 June 2020, vol 677 col 148

⁵ National Audit Office, ‘HM Courts & Tribunals Service: Transforming courts and tribunals—a progress update’ (13 September 2019, HC 2638) p. 4

⁶ Global Institute for Inclusive ICTs, ‘Results: Global Survey on Technology & Access to Justice for Persons with Disabilities’ (14 June 2018) < <https://bit.ly/2TLoGPz> >

⁷ Helen McNamee, Frances Molyneaux, & Teresa Geraghty, *Key stakeholder evaluation of NSPCC Young Witness Service Remote Live Link (Foyle)* (NCB Northern Ireland, January 2012)

Digital Social Security Appeal Hearings – the possible disadvantages

However, there are negative consequences associated with the rapid introduction of remote hearings.

Digital exclusion

A report from the law reform organisation JUSTICE noted that online courts and tribunals are likely to prevent “digitally excluded” individuals (i.e. those who have low digital skills and/or no internet access) from accessing the justice system.⁸ This concern is particularly acute in Northern Ireland, as it houses the UK’s largest digital divide. According to NISRA’s 2018-19 continuous household survey, 15% of Northern Ireland’s population live without access to internet.⁹ Furthermore, a 2017 report commissioned by the Department of Finance’s Digital Inclusion Unit revealed that 32.2.% of Northern Ireland’s population aged 16-65 “have low or no digital skills.”¹⁰ Digital exclusion rates are even higher for those who are economically disadvantaged. In a 2019 report on the UK’s digital divide, the office for national statistics found that economically inactive individuals are the least likely to have access to the internet—while less than five percent of the UK’s total population are classified as internet non-users, this rises to 22% of economically inactive individuals. Given that economically inactive individuals largely rely upon social security benefits, this has significant implications for the introduction of remote appeals. Individuals who do not have internet access or who possess low levels of digital literacy will not be able to access online benefits appeal proceedings, and there are few opportunities to address this situation at present due to the ongoing public health crisis.

While individuals who do not have internet access are able to conduct an appeal via telephone, they will not have access to online support materials, which will leave them at a disadvantage in the appeals process compared to those who do have internet access. Furthermore, many digitally excluded individuals will have no choice but to conduct appeals on paper or wait until in-person appeals are available. However, paper appeals are over 30 times more likely to be rejected than in-person appeals,¹¹ and appellants who choose to wait for an in-person appeal face an indefinite delay. This means that many people may be left without the financial support they would otherwise be awarded through in-person appeals.

Immediate steps can be taken to provide more people with internet access. Participation and the Practice of Rights (PPR) has called for internet providers and the Northern Ireland Assembly to immediately open internet hotspots and waive charges for households who cannot afford internet access during the COVID-19 crisis. This would help more people access information and advice and participate in online appeals.

In the long term, groups throughout Northern Ireland such as Supporting Communities, Advice NI, and the Department of Finance’s digital inclusion team, have organised workshops, courses,

⁸ Amanda Finaly, *Preventing Digital Exclusion from Online Justice* (JUSTICE 2018) p. 4

⁹ NISRA, ‘CHS Results’ (NISRA, 14 June 2018) available at < <https://bit.ly/3eqXgpV>>

¹⁰ Citizens Online, Digital Resilience, Digital Partnership- A Baseline of digital inclusion in Northern Ireland (BT, 5 September 2017) p. 8

¹¹ Bob Strong, John Duffy, and Emma Murphy, ‘Social Security Claimants Urged to Seek Independent Advice’ (Advice NI, 29 March 2018) available at <<https://bit.ly/2AfEGCq>>

and training days to help digitally excluded populations develop the skills they need to navigate online resources. These initiatives have been temporarily suspended due to social distancing measures, but they will help close Northern Ireland's digital divide when they return.

Advocacy in remote tribunals

Even individuals who *can* access online appeals may find that the atmosphere of an online hearing negatively impacts their ability to participate in proceedings. Virtual court hearings have already taken place in England due to the COVID-19 emergency measures, and the lessons learned by those who participated in online trials are directly applicable to virtual tribunal hearings in Northern Ireland. Legal practitioners who took part in England's first virtual court hearing reported that although they encountered some minor technical difficulties, the experience was a positive one overall.¹² They were able to effectively participate by creating a complex set up of multiple computer screens which enabled them to address the judge, conduct private communications with colleagues, and assess documents at the same time.¹³ However, such systems are not accessible to individuals who have low digital skills or outdated technology, and many of Advice NI's clients have expressed concern that they are not confident with the technology involved in remote appeals.

Furthermore, lay persons who have taken part in virtual hearings have reported that they felt that technology has had a negative impact on their ability to participate in the legal process. Research into virtual hearings in other countries has revealed that lay individuals who participated in online courts without legal representation found it particularly difficult to understand or contribute to the proceedings.¹⁴ While this is consistent with findings that individuals who attend tribunals without representation are twice as likely to be unsuccessful as those who use a representative,¹⁵ the witness who testified in the UK's first online trial was able to deliver her testimony from her solicitor's offices, but she still felt that it was more difficult to communicate with legal professionals over video than it is in person.¹⁶ This difficulty will be heightened for appellants who have to rely on remote support. Although the new online and telephone appeals systems allow representatives to remotely join appeals in order to assist appellants with the process, tribunal representatives have raised concerns that it will be more difficult to go over evidence and effectively support clients in remote hearings. This is because phone and video link technology creates a disconnect between appellants, representatives, and tribunal judges. Recent communications from TAS have noted that appellants can attend virtual tribunals with a member of their household for added support, but many appellants who rely upon the independent advice sector have expressed concern that their family members are unwilling or unable to help them with the appeals process. Furthermore, while being physically removed from a court room may be less intimidating for some individuals, the casual atmosphere of online hearings detracts from the gravity of the situation, which can leave people less likely to advocate for themselves.¹⁷

¹² Nageena Khaliq QC and Sophia Roper, 'Skype in the Court of Protection' (2020) *New Law Journal* 7880

¹³ Christopher Sharp QC, 'Making Remote Hearings Work' (*St John's Chambers*, 8 April 2020) available at <<https://bit.ly/3c9MS4n>>

¹⁴ Ingrid V Eagly, 'Remote adjudication in immigration' (2015) 109 *NW University Law Review* 933

¹⁵ Bob Strong et. al (see footnote # above)

¹⁶ Celia Kitzinger, 'Remote justice: a family perspective' (Transparency Project, 29 March 2020) available at <<https://bit.ly/3eshNdl>>

¹⁷ Eagly (see footnote # above)

Family law practitioners in England have also raised concern that virtual court rooms are inappropriate settings for highly sensitive and “emotionally charged” matters, such as those discussed in benefits appeal hearings.¹⁸

In addition to the fact that it will be difficult for appellants to access effective representation for remote tribunal hearings, many will also be unable to access independent advice and information before remote hearings, as advice centres are currently working on a remote-only basis due to public health guidelines. While this is a necessary measure, many advisers have reported that it is more difficult to provide advice to clients via phone or video link than it is face-to-face, as it is more difficult to create a relationship of trust with clients and collect all necessary documents for an appeal via phone or video call. This creates a risk that appellants will not have access to all the information they need to effectively advocate for themselves in remote hearings.

These circumstances indicate that remote appeals may interfere with appellants’ right to a fair hearing, which is protected under the Human Rights Act 1998. A key principle of the right to a fair hearing is equality of arms. This is the idea that all parties to a dispute should be able to communicate their case before a court or tribunal, and that one party to a legal dispute should not be placed at a significant disadvantage in comparison to another.¹⁹ It is clear that without adequate advice and representation, individuals who attend tribunal hearings face a significant disadvantage and are more likely to have their appeal rejected. This disadvantage may be further amplified by the informal atmosphere and communication barriers that exist in remote appeals. The right to a fair hearing also means that individuals should have a fair chance to communicate their case to the court, and they should be assured that their arguments will be considered by tribunal officers. This clearly does not happen when individuals feel that they are unable to express themselves in court proceedings. In a parliamentary debate on 9 June 2020, Chris Philip MP stated that it will be up to the judge in each particular case to determine whether a remote hearing is appropriate for the circumstances of a particular case.²⁰ However, due to the difficulties associated with advocacy in remote hearings, it may be necessary to ensure that appellants are given the option of participating in an in-person hearing as soon as is permissible according to public health guidelines.

Supporting people in remote appeals

As long as public health concerns require remote appeals, it is important to ensure that appellants are provided with adequate advice and representation if they choose to participate in a remote hearing. While in-person advising appointments are not taking place at the moment, Advice NI is currently providing advice via email and telephone.

Furthermore, TAS and the Department for Communities have confirmed that representatives can still support people during remote hearings by joining phone or video hearings as a third party. If

¹⁸ Anna Khoo, ‘Remote hearings for family courts ‘horribly cruel’ (BBC News, 4 June 2020) available at <<https://bbc.in/3dwtWyd>>

¹⁹ European Court of Human Rights, *Guide on Article 6 of the European Convention on Human Rights – Right to a fair trial (civil limb)* (Council of Europe, 2019) p. 67

²⁰ HC Deb 9 June 2020, vol 677 col 149

appellants choose to proceed with remote appeals, representatives can provide confidential advice to appellants during appeals process through a third communication channel, such as email.

While some appellants may wish to proceed with online or telephone appeals instead of waiting for in-person appeals to return, the above-discussed concerns demonstrate that it is important to ensure that in-person tribunal hearings should return when safe to do so and remain an option for all appellants. Otherwise, there is a strong risk that appellants will be denied their right to a fair hearing and will not receive the social security benefits that they would otherwise be awarded in an in-person appeal.

Eleanor Good
Advice NI Policy Volunteer

Appendix- SightLink user guide

The Appeal Service SightLink Hearing Room

Important Notice

'In accordance with Section 102C of Part 9A of the Judicature (Northern Ireland) Act 1978

it is an offence

for a person to make an unauthorised recording or an unauthorised transmission :-

- 1. of an image or sound which is being transmitted through a live video link or transmitted through a live audio link.*
- 2. of an image of, or sound made by, any person while that person is participating in court or tribunal proceedings through a live video link or live audio link.*

The images and sounds relating to the proceedings being held under the enclosed instructions, are being transmitted through either, a live video link or through a live audio link or will be an image of, or a sound made by, a person while that person is participating in a tribunal proceeding through a live video link or live audio link. '

SIGHTLINK: A USER GUIDE

SightLink is a cloud based video conferencing solution that makes it simple to create a secure link to the Appeal Hearing Tribunal from a range of devices including corporate video conferencing systems, PCs / laptops (using a browser and web camera, Microsoft's Lync, Skype, etc.) smartphones, tablets, or even a standard phones. In addition to standard video links, Sightlink facilitates the sharing of information, presentations and promotes collaboration.

This system will allow the Appellant, anyone who wishes to provide the Appellant with support during the hearing, their Representative and the departmental representative to appear before the hearing panel, remotely from different locations simultaneously. In advance of a hearing, TAS are content to conduct a test with the appellant/representative. If you would like to avail of a test, please contact TAS for further hearings.

The Appeals Service (TAS) operates only one SightLink service – TAS SightLink 1. **These instructions apply ONLY to this particular service.**

The TAS Administrator will book SightLink service for your video link appearance.

CONNECTING TO TAS SIGHTLINK 1

There is a number of different ways to connect to Sightlink.

1. SKYPE

This is the most common connection option. Details on how to connect shall be shared with the appellant/representative in advance of the hearing.

Note: make sure that your Skype Privacy settings are set to allow calls from anyone. This can be reset back to your original setting after you have completed your Skype call with the Appeal Tribunal.

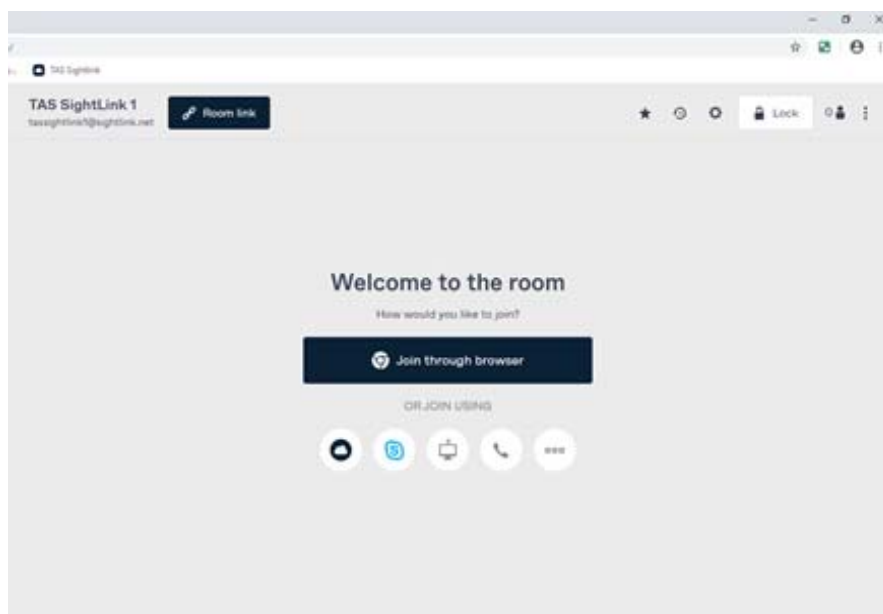
For further information on Skype settings check out:

<https://support.skype.com/en/faq/FA140/how-do-i-manage-my-privacy-settings-in-skype-for-windows-desktop>

2. WEB BROWSER (CHROME OR INTERNET EXPLORER)

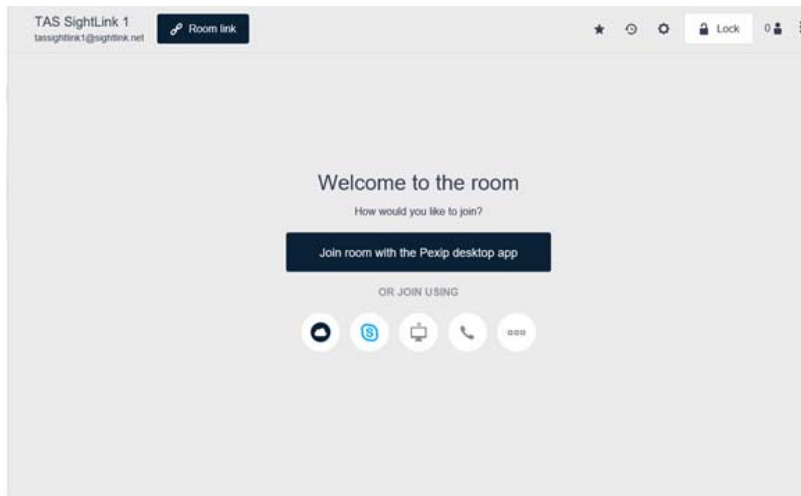
Details on how to connect shall be shared with the appellant/representative in advance of the hearing.

The screenshot below shows what you should see when using Chrome.

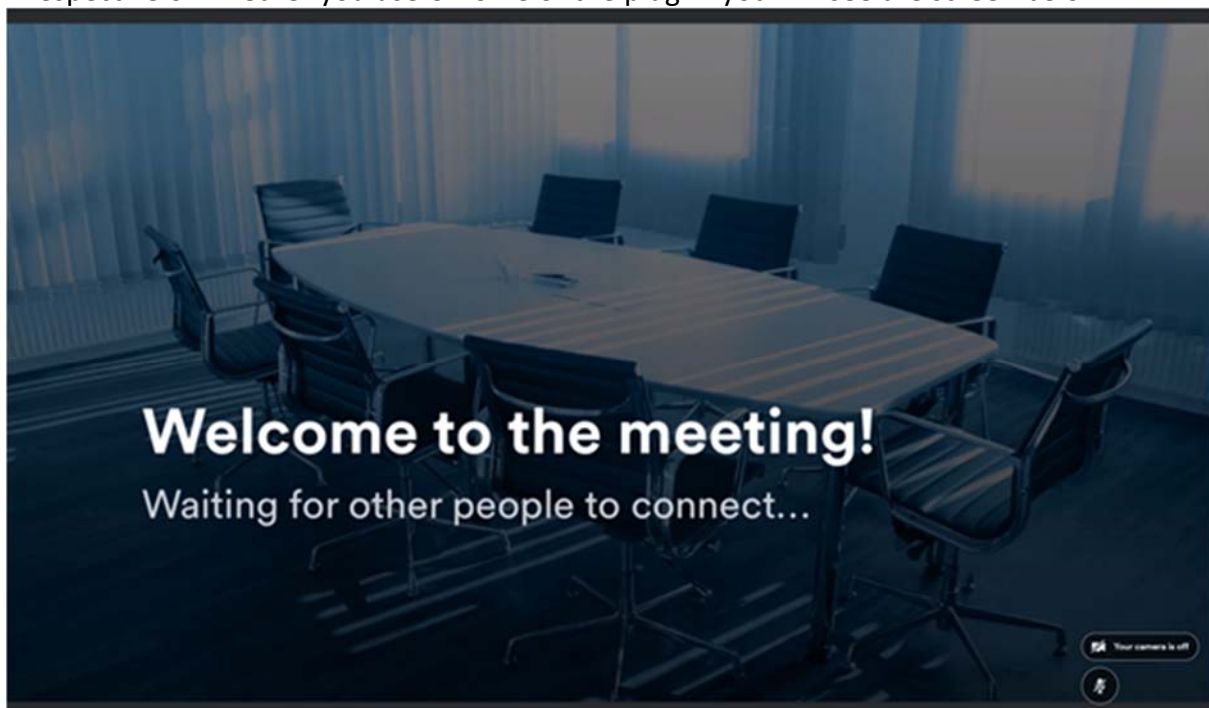


Make sure to check that you are using the correct SightLink service; in this case we are using TAS Sightlink 1.

If you wish to use Internet Explorer, you may first need to install the Pexip desktop app, so you will see a slightly different screen.



Once you have downloaded the plug-in and installed it you should be able to connect to Sightlink. It should only be necessary to download the plug-in, once. Irrespective of whether you use Chrome or the plug-in you will see the screen below



which indicates that you have successfully connected to the conference.

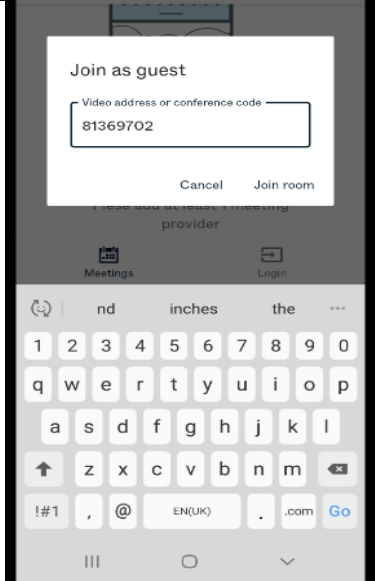
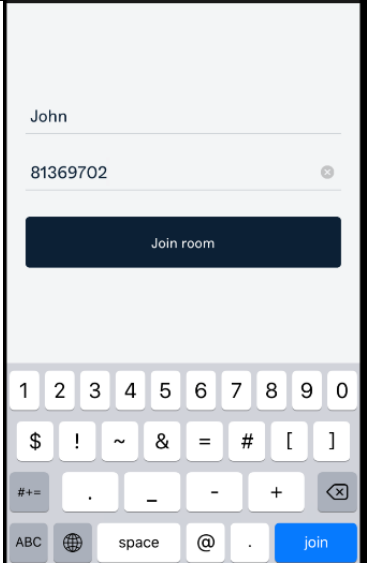
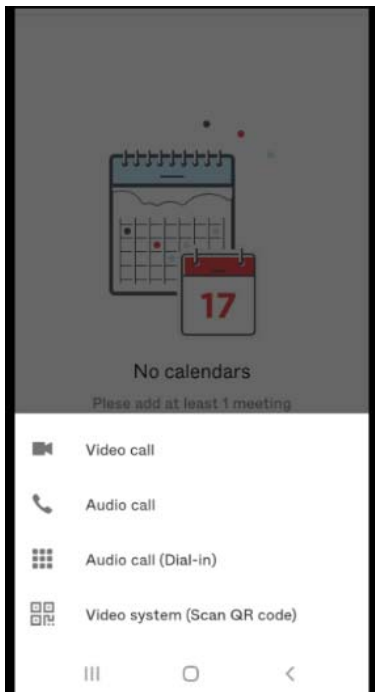
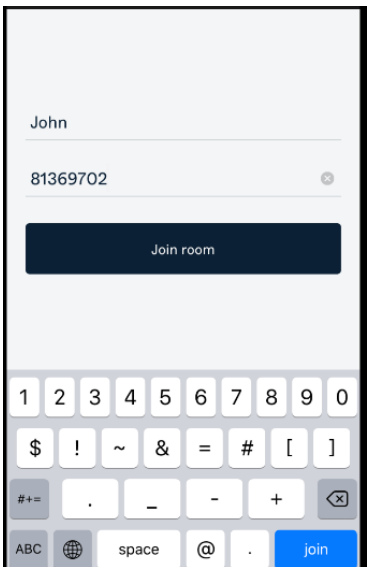
3. CORPORATE VIDEO CONFERENCING SYSTEMS

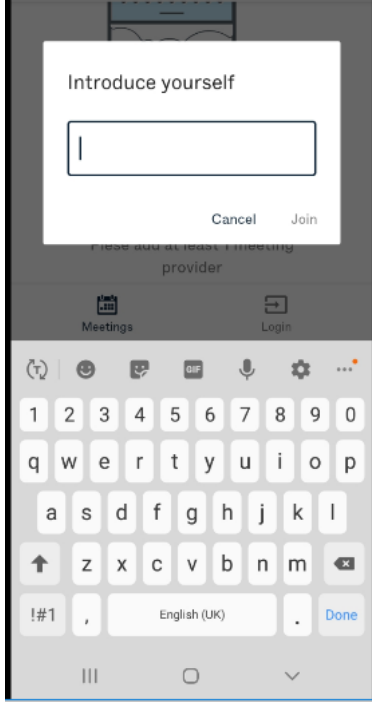
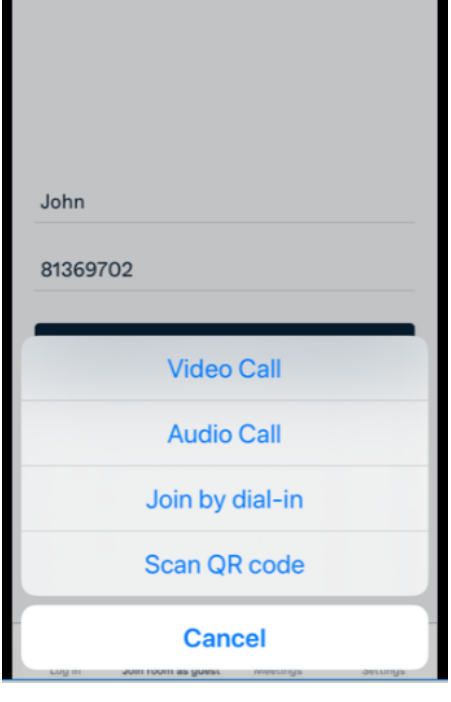
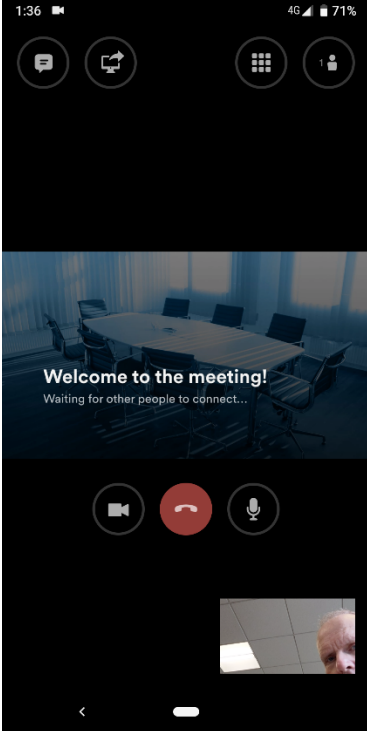
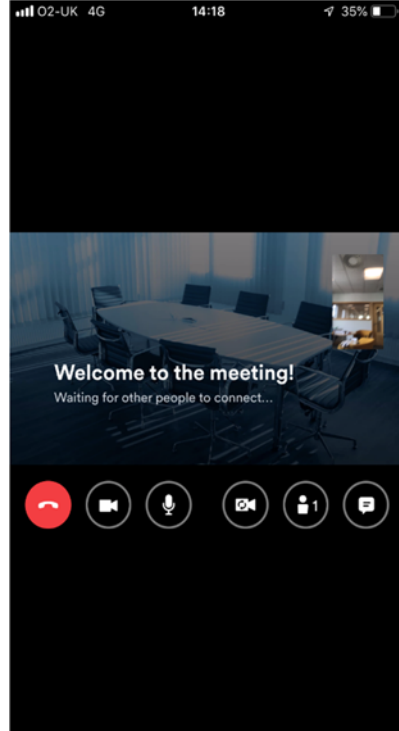
There are three ways of connecting corporate video conferencing solutions to Sightlink by and details on how to connect shall be shared with the appellant/representative in advance of the hearing

4. SMARTPHONE

It is also possible to use either Android or iPhones to connect to Sightlink; but first you will need to download a free app called “Pexip (My Meeting Video)” to your Smartphone. The screen shots below shows the relevant screens of how to download the app and use it to connect to Sightlink 1.

	GOOGLE PLAY STORE (ANDROID)	APPLE STORE (IPHONES)
<p>LOCATE THE APP</p>		
<p>INSTALL APP Once installed ‘Open’ the App from here or the by selecting the icon on your phone (see below).</p> <hr/> <p>IOS Install the app by selecting “Get”, then open the app</p>		
<p>LOCATE APP ON YOUR PHONE</p>		
<p>LAUNCH APP</p>		

<p>Select the <i>“Join as a Guest”</i> via the 3 dots on the top right of screen and Enter the TAS Sightlink 1 Conference ID (Number will be on the instructions) then <i>“Join Room”</i></p> <hr/> <p>IOS Select <i>“Join a video meeting as a guest”</i></p>		
<p>On the Next screen select <i>“Video Call”</i></p> <hr/> <p>IOS Enter your name i.e <i>“John”</i> (to identify to other conference users who you are (this is not mandatory), then enter the Sightlink 1 Conference ID (Number will be on the instructions) then <i>“Join Room”</i></p>		
<p>Enter your name i.e <i>“John”</i> (to identify to</p>		

<p>other conference users who you are select “Join”</p> <hr/> <p>IOS Select “Video Call”</p>		
<p>Once you have joined the conference, you will see a screen similar to this. If required you can turn your screen to landscape and you will see a larger image. In this example, there were no other callers in the Conference. To hang-up, simply touch the screen and then press the red telephone symbol</p>		

5. TELEPHONE

Sightlink also allows for voice only telephone link. Details on how to connect shall be shared with the appellant/representative in advance of the hearing

Where the appellant has chosen an oral hearing using tele-conference, the Appeals Service are using a solution called BTMeet Me and details on how to connect shall be shared with the appellant/representative in advance of the hearing.



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