

## CHAPTER 7

# The law of evidence

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### *Live television links at preliminary hearings p 214*

*Delete all of the text under the heading 'Live television links' and before 'Live television and other links in criminal proceedings generally' and replace with:*

*General* CDA 1998, s 57 was substituted by Police and Justice Act 2006.s 45 which inserted a Part 3A (ss 57A, 57B, 57C, 57D and 57E) into the Act.

Section 57A applies to preliminary hearings and sentencing hearings in the course of proceedings for an offence and enables the court, in the circumstances described in the other sections to direct the use of a live link for securing the accused's attendance at a hearing to which Part 3A applies. The accused is to be treated as if he were present in court when he attends a live link hearing by virtue of a live link direction under Part 3A. A preliminary hearing means a hearing prior to trial including a preparatory hearing in a Crown Court in a case of serious or complex fraud, or in other serious, complex or lengthy cases. For the purposes of Part 3A, 'custody' includes secure juvenile accommodation. It does not include police detention but there are separate provisions which may apply in such a case, (see s 57C below).

The term 'live link' means an arrangement by which a person (when not in the place where the hearing is being held) is able to see or hear, and to be seen and heard by the court during a hearing (and for this purpose any impairment of sight or hearing is to be disregarded).

*Where the accused is in custody* Section 57B is concerned with preliminary hearings in a magistrates' court or a Crown Court. Where it appears to the court that the accused is likely to be held in custody during the hearing, a court may give a live link direction, ie a direction requiring the accused, if he is in custody during the hearing, to attend it through a live link from the place where he is being held. The court must give the parties the opportunity to make representations before giving or rescinding a live link direction.

*Where the accused is at a police station* Section 57C provides that a magistrates' court may give a live link direction to attend a preliminary hearing over a live link from a police station. This applies –

- (a) to person in police detention at a police station in connection with the offence, who appears likely to remain there until the beginning of the preliminary hearing; and
- (b) to an accused if he is at a police station in answer to live link bail in connection with the offence. In this connection a live link requires the accused to attend the preliminary hearing through a live link from the police station.

A direction given in relation to an accused to whom (a) above applies has no effect if he does not remain in police detention at a police station until the beginning of the

preliminary hearing. An accused's consent must be obtained before a court can make such a direction. An accused who answers 'live link bail' is to be treated as if he has surrendered to the custody of the court.

*Continued use of live link bail for sentencing hearing following a preliminary hearing*  
Section 57D provides that where:

- (a) an accused attends a preliminary hearing by means of a live link and
- (b) he is convicted in the course of it (after a plea of guilty or an indication of an intention to plead guilty);and
- (c) the court wishes to move immediately to sentence,

the accused may continue to attend by means of live link provided that he consents and the court is satisfied that it is not contrary to the interests of justice. The accused may give oral evidence only if he has agreed to give evidence in that way and the court is satisfied that it is not contrary to the interests of justice.

*Use of live link in sentencing hearings* Where it is likely that a convicted accused will be held in custody during a sentencing hearing, the court may, either of its own motion or following an application from either party, direct that the accused (if he is in custody) attend over a live link, provided that he agrees and the court is satisfied that it is not contrary to the interests of justice. The accused may give oral evidence only if he has agreed to give evidence in that way and the court is satisfied that it is not contrary to the interests of justice.

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*The following heading and material should appear after that which sits under the heading -*

***'Live television and other links in criminal proceedings generally' p 215***

***Evidence of vulnerable accused***

Police and Justice Act 2006, s 47 inserted into the YJCEA 1999 new ss 33A to 33C to make provision for the giving of evidence by means of a live link in the case of certain vulnerable accused.

Section 33A allows a court, on the application of the accused, to direct that evidence given by the accused should be given over a live link. The court must be satisfied that it would be in the interests of justice and for the accused to give evidence through a live link, and:

- (a) if the accused is under the 18 that his ability to participate effectively as a witness is compromised by his level of intelligence or social functioning, and that use of a live link would enable him to participate more effectively as a witness;
- (b) if the accused is 18 or over, that he is unable to participate in the proceedings effectively as a witness in court because he has a mental disorder or a significant impairment of intelligence and social function, and that use of a live link would enable him to participate more effectively as a witness.

The provisions of s 33A are intended to provide a structured approach to decision-making and to ensure that the giving of evidence in this way is reserved for exceptional cases. Where a juvenile is concerned the test is less strict as there is no reference to mental disorder or impairment.

Where a direction has been given an accused must give all of his evidence through a live link and cross-examination should be carried out by the same means. A court may discharge a direction where it appears to be in the interests of justice to do so.

For the purposes of s 33A a 'live link' is an arrangement by which an accused, while absent from the place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by the judge, magistrate, other accused, legal representatives and any interpreter or any other person appointed by the court to help the person.

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***Witness unavailable p 229***

The Court of Appeal considered a number of cases of murder and attempted murder involving the use of guns. In each case, witnesses would not give evidence without protective measures, such as voice modulation, screening and other special measures which ensured witness anonymity. The court said that there was clear jurisdiction at common law to admit incriminating evidence given against a defendant by an anonymous witness; counterbalancing procedures such as cross-examination by counsel existed. The rights of witnesses include, where necessary, the preservation of their anonymity. This was not inconsistent with the right to a fair trial, provided that the need for anonymity was clearly established, that cross-examination of the witness by an advocate was permitted, and that the trial should be fair. [*R v Davis & Ors* [2007] Crim LR 70]