

Call for Evidence for Modes of Attendance

Introduction

1. The Access to Justice Committee launched a Call for Evidence in October 2025. The questions were designed to gather feedback on the operation of:
 - Chapter 12C in the Court of Session
 - Chapter 4A in the sheriff courts

Responses

2. A total of 20 responses were received with 18 to be published on the SCJC website.

Question by Question Analysis

Question 1 - Is there sufficient guidance and clarity in the rules about holding a court hearing either in-person, virtually or by hybrid means? If not, what would be helpful?

3. Many respondents noted that the rules and guidance were themselves clear, but that the application of the rules was problematic. Various responses referred to last-minute confirmation of the hearing mode. This issue appears to be more pronounced in the Court of Session, with responses detailing the inconvenience caused with a lack of clarity and ongoing uncertainty. One response suggested that the rules could include a deadline of 12 noon on the previous working day for the hearing mode to be confirmed.
4. Some respondents noted inconsistency in the application of the rules across courts and sheriffdoms. One respondent suggested that a national practice note would help deliver predictability.
5. There is a clear call for more to be done to support party litigants, especially those who are likely to be digitally excluded. This support should include guidance to help people understand the difference between procedural and substantive hearings, as well as information on how to request a change to the mode of attendance. It was also suggested that a code of conduct be developed to ensure the formality of the court was maintained when a person was attending virtually. Many respondents noted an erosion of standards and etiquette when a person attended remotely.
6. More generally, a strong message conveyed by many respondents was the desire for a clearer definition of what constitutes a procedural hearing. Although some respondents considered this to be self-evident, many others did not share that view. There was considerable support for all proofs to be held in-person. Some respondents went further and stated that debates, preliminary proofs and proofs before answers should all be in-person. Other responses suggested that opposed motion hearings should be in-person.
7. Other respondents noted the absence of clear guidance explaining how the court reaches decisions on modes of attendance. It was noted that clarity on this point would assist those applying for a change to the mode of attendance. Furthermore, it was stated that changes to the mode of attendance were managed differently across courts. Some respondents explained that less

formal mechanisms like email exchanges sufficed, whilst others stated that a motion had to be lodged with the court.

8. Some responses expressed a desire for the mode of attendance to be decided entirely by the parties, or at least for more informal means to agree the mode without requiring a motion to be lodged. Under this approach the court would only become involved if agreement could not be reached.

Question 2 - Is the process for requesting a change to the mode of attendance straight forward or too complicated? If so, what would be helpful?

9. Most responses acknowledged that the process set out in the rules was straight forward but stated that it is not consistently applied across different court forums.
10. Various responses noted the inconvenience caused by last-minute confirmation of the hearing mode. In particular, when the mode changes from in-person to virtual, then legal representatives may need to find facilities at short notice to enable participation.
11. It was proposed that a standardised form could replace the need to lodge a motion with the court. One respondent suggested that including the criteria used in the court's decision-making process would be helpful, so that the relevant information could be included from the outset.
12. Various respondents highlighted the difficulties for party litigants who are unfamiliar with court rules and with lodging motions that contain the appropriate information. One respondent asked, "is convenience alone a sufficient reason?" Many respondents expressed a desire for more guidance on how to request a change to the mode of attendance and on what options are available.

Question 3 – With procedural business defaulting to being virtual, has this approach worked or has it been problematic or caused confusion?

13. In general, virtual procedural hearings are seen as a positive addition to Scotland's civil justice system offering significant time and costs savings. However, many respondents articulated a number of concerns including the following:
 - Virtual hearings can encourage a more casual attitude. One respondent stated that witnesses can join whilst walking down the street, travelling on a train or without wearing appropriate clothing.
 - Additional examples were provided about virtual attendees swearing and conducting themselves in a manner that they perhaps may not have done had they appeared in-person.
 - Junior solicitors are not receiving the same level of exposure to more experienced colleagues in a court setting and attendance via WebEx is considered less effective for learning.
 - Some responses noted the lack of notice when the mode changed with one response detailing the impact on party litigants. An example was

provided where a party litigant turned up at court only to find the hearing had changed to being conducted online.

- One respondent raised a concern at the confusion caused by sheriff court interlocutors which were unclearly worded. They highlighted that the interlocutor states; *“fixes [date] for [hearing] to take place in person at [address], said hearing to take place by way of WebEx...”*. The respondent argues that such wording creates confusion about whether the hearing was in-person, virtual or hybrid.
14. Some responses noted concern for those who may be digitally excluded and noted that users should have a clear choice as to the mode of attendance best suited to their needs. In this regard, an inclusion framework was proposed by one respondent to ensure the rules were designed in a way which met the needs of users who may find digital engagement challenging.
 15. Other responses welcomed virtual hearings but noted the inefficiency from having all agents wait online until their hearing called. It was reported that this wait could be up to 2 hours. A scheduling system is proposed to aid in managing this inefficiency.
 16. The subject of guidance was a common theme and users suggested more is needed, additionally in-court support services were no longer accessible when users attended virtual hearings. For party litigants attending important hearings, this loss is significant, since many do not fully understand the implications of the courts' decisions.

Question 4 – Has there been or is there confusion about what a procedural hearing is and what is not?

17. Responses to this were mixed with some respondents stating that it is clear what a procedural hearing is whilst another stated, *“the definition of “procedural business” should be more restrictive than anything short of the substantive hearing. For example, the definition could exclude hearings which could determine the cause (e.g. opposed motions for summary decree/permission hearings in Judicial Review)”*.
18. It was noted that interpretations vary across courts. One respondent sought clarity on initial hearings for sequestration and liquidation proceedings. Whilst these are procedural in nature, final orders can be granted and the respondent considered that such hearings should be heard in-person.
19. Many responses noted that it is generally clear what is procedural and what is not but acknowledged the need for guidance, particularly to assist those who are not legally qualified and experienced.
20. It was suggested that opposed motion hearings involving contentious matters requiring full submissions should be heard in-person.

Question 5 – Have virtual hearings had a positive or negative impact on access to justice?

21. The majority of responses were positive about the impact of virtual hearings on access to justice. Many respondents noted that without virtual hearings,

- attendance would have been more difficult for some users, including those with disabilities or those required to travel long distances.
22. Responses consistently highlighted that not everyone has access to suitable technology or the ability to engage digitally and that this can present a barrier to access to justice.
 23. One respondent noted the wider impact for “high street” legal practitioners who are able to operate more efficiently and continue offering local services under the current model. It is suggested that moving away from this approach could have a negative impact on such practices.
 24. Some acknowledged that there is no single correct answer to this question as different consumers experience the system in different ways. Flexibility was proposed as a key principle to ensure that access to justice is maintained for all.
 25. Several respondents emphasised that guidance is an essential component in encouraging participation and helping user groups to feel more supported and able to attend virtually.
 26. Other responses touched on the overall user experience, including long waits in a virtual hearing waiting room before hearings begin. One respondent suggested that court users are customers and that this experience should be improved.
 27. One drawback highlighted was that party litigants attending virtually do not have the same opportunity to speak to in-court advisors or access other support services.
 28. Overall, the clear message is that a balance must be struck between in-person and virtual attendance. Where virtual attendance is required users must be adequately supported to participate meaningfully and understand the proceedings in which they are involved.

Question 6 – Have virtual hearings had a positive or negative impact on open justice?

29. Some responses appeared to confuse access for parties with public access to court proceedings. However much helpful information was provided which suggests there is confusion about how members of the public can gain access to a virtual hearing should they wish to do so.
30. The general feeling is that virtual hearings have diminished the public’s ability to attend and observe any court proceedings. Live streaming of Inner House proceedings has been welcomed as a positive step towards enhancing open justice. There are mixed views on what happens in the sheriff courts.
31. Some respondents stated that they did not know how a member of the public could obtain a link to a virtual hearing, whilst others suggested that the links should be published on the court rolls.
32. One respondent regarded the move towards virtual hearings as a positive development for open justice since physical attendance is no longer required. However, they noted this potential is limited by insufficient technology across the court estate and inconsistent sharing of links with the public.

33. One respondent noted that there was no published evidence to support either view and could not comment.
34. Overall, there is a strong sense that the process of the requesting access to virtual hearings via email is not comparable with the ability to just walk into any open court in Scotland. Improving this process could enhance open justice.

Question 7 - Have you attended a court hearing by telephone? If so, can you provide feedback on your experience of attending a court in this way?

35. Responses were quite mixed. Many respondents stated that telephone hearings can be convenient but have limitations. One respondent noted that telephone hearings were more common at the start of the pandemic but are now less frequently used as it's difficult to conduct hearings without visual interaction. The inability to read body language or social cues were noted as significant disadvantages.
36. WebEx hearings are generally preferred to telephone hearings. However, it was also acknowledged that sheriffs in Glasgow were skilled at managing telephone hearings and ensured that all participants had the opportunity to speak.
37. One response noted the need to have a fallback option in circumstances where other mechanisms fail, or where a party does not have access to the internet.
38. It was also suggested that telephone hearings encourage informality, are no longer appropriate, and outdated.

Question 8 - How do you find the WebEx platform for conducting virtual hearings and are there any improvements you would like to see?

39. Most respondents stated that WebEx was adequate and generally stable. Suggested improvements included:
 - Clerks informing agents logged in online if in-person business is to be heard first, together with an estimated timescale;
 - The court having the ability to mute and unmute attendees where there are inappropriate interruptions;
 - Circulation of a running list in advance (some courts already do this);
 - Use of time slots;
 - Consideration of alternative platforms (such as Teams), noting that tribunals and the courts in England & Wales use different software;
 - Issuing guidance on court etiquette which is sent out in with the WebEx invitation and set out at the start of each hearing;
 - A background or blurring feature;
 - A test link would be good for new users and party litigants;
 - Greater consistency in the issuing WebEx invitations including clear identification of the issuing court and hearing details;
 - Additional training or enhanced screen sharing tools to improve efficiency.

Question 10 - Did you encounter any technical difficulties during a virtual hearing or a hybrid hearing? If so, can you provide details on how the issue was resolved and if you were able to meaningfully participate?

40. Very few respondents reported having technical difficulties. Where issues did arise, staff were generally described as effective in resolving them.
41. It was suggested that a short troubleshooting guide could be issued. This could include changing audio settings or downloading WebEx and using it for the first time. One respondent noted that the laptop used for one hearing was incompatible with WebEx.
42. For hybrid hearings, a common complaint was poor sound quality.

Question 11 - Overall, do you support virtual attendance at court or do you feel that more civil business should return to being held in person? Please give reasons for your answer.

43. There is an overwhelming agreement that virtual attendance should continue given the significant benefits to court users and to the use of the court estate. The flexibility, convenience time and cost savings were repeatedly emphasised.
44. In person attendance was nevertheless regarded as the optimal method for engagement, particularly in supporting learning and development for junior lawyers.
45. Many respondents considered that access to justice has improved for users who would have otherwise struggled to participate.
46. While open justice was considered to have been adversely affected by virtual hearings, respondents noted that this could be improved by developing a consistent method of publishing links.
47. The responses raised several overarching questions, including:
 - Whether the default position should be that hearings are held in-person unless an exception applies (noting that any changes to the rules would require an Equality Impact Assessment);
 - Whether full channel choice should be incorporated into the new rules and how this could that be managed at court and sheriffdom level;
 - Should motion procedure remain the procedure for requesting a change to the mode of attendance;
 - How far consistency can realistically be achieved;
 - What guidance should be published to support court users;
 - Whether telephone hearings should be used only a last resort; and
 - What additional data should be captured and maintained to understand the impact of virtual hearings;
48. It was also noted that any changes must be carefully considered, as increasing in-person hearings is likely to have a knock-on effect on court programming. A shift in balance could result in delays to criminal business. Additional IT system changes may be required which would require a lead in time and costings by SCTS.

49. Overall, respondents supported continued virtual attendance, but emphasised that its legitimacy depends on consistency, clarity, and meaningful support for users.