



Response 1 - anonymous

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?

I think the present rules are perfectly clear. Mode of attendance, even before the pandemic, included remote video access on a case by case basis. Mode of attendance should be by decision of the court allowing any input from the parties.

Dundee Sheriff Court has very clear guidance notes that are appended to every interlocutor assigning a hearing. I attach a copy to this response as appendix.

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?

It seems straight forward enough to me. I regularly (as the main administrative civil sheriff in my court) deal, regularly with requests both from agents and parties to convert in person to Webex and vice versa.

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

I have experienced no problems- on the contrary it facilitates ease of access, both for practitioners and the parties – including party litigants. Courts are rarely located to facilitate 21st Century access – trains – bus or car parks- and with the closure of some local courts eg Forfar (which has no train link) and Dundee cover the whole east coast territory from north of Montrose – St Andrews and (following the closure of Cupar) to edge of Kirkcaldy). From the East neuk of Fife to Dundee is an 90 minute bus ride.

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

Not in my experience – the reality is that sheriffs tend to direct the mode of attendance at the time – eg a Proof in person with a pre-proof by Webex.

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

In my experience very positive. They combine ease of access, that reflect how busy everyone's life has become with the reality of online communications in this day and age. GPs – Banks etc. all emphasis the need to use online appointment and application systems. Other advantages include providing a cheap and easy way to facilitate vulnerable peoples needs. They can appear /attend – observe but leave screens off. They can be in environment familiar to them and safe. They can be on the move. I have had people (eg in a Child Support case) who have been unable to take time off work but have appeared virtually from a works van to negotiate a payment to avoid being sent to gaol. It also enable struggling high Street practitioners to be efficient and thereby continue to provide a local service. Reverting to 100% in person attendance could be fatal to the survival of such legal practices.

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

I accept that there requires to be a review of how Webex is delivered. Some cases are of course private (AWI- adoptions etc.) but I deliver Webex from the bench and if any one wishes to attend in person or just to view proceedings we facilitate this at the Civil Justice Hub here in Dundee.

This works perfectly well. We have party litigants in person – sometimes advocacy support workers and the general public. One example was a case under the Land Reform Act 2016 – to acquire a site for a community purpose – hybrid hearings- allowed local residents to be in court.

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?

No – occasionally a party (usually unrepresented) phones in owing to some comms failure. This is never satisfactory and generally leads to a continuation. I would not consciously assign such a hearing.

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

I have not experienced any real technical problems. IT generally works well for me. However, for true open access "live streaming" or some other more "open" link system would be preferred.

Question 9 – Should more use be made of hybrid hearings and if so, how do you envisage these working? By hybrid hearings we mean a hearing where the judge or sheriff is sitting in court, with the potential for everyone to attend in person, and one or more other participants attend remotely. Does it matter who is attending remotely (eg lawyer, witness, party)?

I would refer to my answer to question 6 - Webex (save for private hearings by law) should be delivered from the bench – I have presided over every variant – agents in person – clients remote- parties in person – agents remote. I have facilitated other access – for example in a foreign national permanence care order – by consent of the parties the Legal Counsellor of the Polish Embassy was able to participate by Webex – everyone else was in court.

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?

NO – see my answers above

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.

I fully support virtual attendance subject to the full powers of the court to assign hearings in whatever format will best assist in delivering fair justice. This represents :

1. Good use of judicial resources

Respondent Information Form

2. Efficient use of practitioners resources
 3. Promotes economic delivery of local services from the High Street and thus access to professional help
 4. Promotes participation by parties who have jobs – busy lives – child care etc. and cannot attend court. They may face loss of income – or indeed loss of employment. Physical attendance is equally not efficient for parties who may have only one case and the court is far distant from their homes.
 5. Vulnerable parties can stay in a known and safe environment. This can reduce stress and encourage participation.
 6. Modern access to electronic form of communication is wide spread and familiar across the demography of court users.
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1.a - DUNDEE SC GUIDANCE NOTES – attached to all interlocutors assigning hearings

Attending Court

1. The above court order advises you when a Sheriff will next deal with the case. Cases are now either dealt with:-

- in a court room (sometimes referred to as “in person”) or
- by video link (sometimes referred to as “by WebEx”).

Cases can generally only be dealt with in a court room or by video link - it is not normally possible for one person to appear in court and another by video link unless the court directs otherwise. Either way, you are entitled to attend court.

If you arrive late for a court or video link hearing, the case will usually be dealt with in your absence.

Cases Dealt with in a Court Room

2. If the above order states that the case will “call in person”, it will be heard on that day at that time within Dundee Justice Centre, Quadrant House, Dundee, DD1 4NY.

3. Please:-

- arrive at least 15 minutes beforehand
- speak to the court reception desk
- identify yourself and ask to be directed to the court room in which the case will be heard.

4. If, for some physical or other practical reason you cannot attend court, you must contact the Sheriff Clerk to see if an alternative method can be arranged. Please contact the Sheriff Clerk as soon as possible, at latest 48 hours before the date of the hearing. the Sheriff Clerk can be contacted:-

- by email at DundeeCivil@scotcourts.gov.uk
- by telephone on 01382 229961

Cases Dealt With by Video Link

5. If the order does not state that the case will “*call in person*” or states it will call “*by WebEx*”, it will be dealt with by video link on that day and at that time. To attend court by video link, please follow these instructions:-

- at least 48 hours before the case is due to be dealt with, tell the Sheriff Clerk that you want to attend court by video link. The Sheriff Clerk will then send you an e-mail containing details of how to join the video link. If you have previously provided your contact details, the Sheriff Clerk will automatically e-mail details to you
- if you cannot access the internet you must contact the Sheriff Clerk at least 48 hours before the date to see if an alternative method can be arranged
- the Sheriff Clerk can be contacted:-

- by email at DundeeCivil@scotcourts.gov.uk
- by telephone on 01382 229961
- you can obtain more information at <http://www.scotcourts.gov.uk/coming-to-court/access-to-virtual-hearings>

How to Act During a Video Call

6. Until you hear your case called, please mute your microphone and turn off your video camera – you can do so by pressing the relevant buttons at the foot of your screen.
7. You must behave as if you were in a court room –find a quiet place to join the video link, dress smartly, do not interrupt anyone else speaking and make sure others cannot interrupt you.
8. You must act respectfully – for example, you must not smoke, vape or drink tea or coffee.
9. You are not allowed to video or audio record what happens in court, even during a video link. If you do so, you risk being found in contempt of court.

Response 2 - Scottish Law Agents' Society

The Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Attendance at Hearings) 2023 came into force on 3 July 2023. This added new chapters into the two main procedural codes:

- Rules of the Court of Session (RCS): Chapter 12C: Mode of Attendance at Court Hearings; and
- Sheriff Court - Ordinary Cause Rules (OCR): Chapter 4A: Mode of Attendance at Court Hearings

The Access to Justice Committee is undertaking a review of these rules.

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?

The Ordinary Cause Rules lack clarity in three respects;

- 1) They do not define “procedural business” see O.C.R 4A.2
- 2) They do not explain how a party can establish “cause shown” to justify physical attendance at a hearing which would otherwise be by “electronic means”.
- 3) O.C.R. 4A.2(2) is routinely not deployed where party litigants are involved, and we wonder why this provision exists at all.

Chapter 4A of the Ordinary Cause Rules states that;

Application

4A.1. *This Chapter is without prejudice to any enactment under which provision has been made regarding the mode of attendance of persons at hearings.*

So this would appear to be subject to the following, in relation to family cases;

33.36. *All parties must, except on cause shown, attend personally case management hearings under rules 33.36J (Initial Case Management Hearing) and 33.36P (Full Case Management Hearing).*

Mode of attendance at hearings – procedural business

4A.2. *(1) Hearings at which only procedural business is to be considered are to be attended by electronic means.*
(2) Paragraph (1) does not apply to hearings at which a party is unrepresented or utilising an interpreter.

Alternative mode of attendance at hearings

4A.3. *(1) The sheriff may, at the sheriff's own instance or on the motion of a party on cause shown:*
(a) in relation to hearings to which rule 4A.2(1) applies, order physical attendance at a hearing;
(b) in relation to any other hearings, order attendance at a hearing by electronic means.
(2) The sheriff may revoke an order granted under paragraph (1) or this

paragraph and, where the sheriff does so, the sheriff may make such further order as the sheriff thinks fit.

(3) Before the sheriff makes an order under paragraph (1) or (2), the sheriff is to give parties the opportunity to make representations about the mode of attendance.

Hybrid hearings

4A.4. *An order under rule 4A.3(1) or (2) may include provision for a person to attend a hearing:*

(a) both physically and by electronic means;

(b) by one mode and another person to attend by the other mode, and at different times or dates.

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?

In terms of procedure it is neither straightforward nor too complicated; a motion is made. What is complicated is knowing what to state in the motion in order to justify the change in mode of attendance. Guidance would be helpful.

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

There is no definition of procedural business. For example, is a debate “procedural business”? What about a motion for summary decree?

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

Yes. There is bound to be given the absence of any definition.

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

Negative. It is discriminatory towards people who do not use or want to use computers. The fact is that many ordinary people dislike or feel uncomfortable using remote communications. It can feel isolating. Forcing them to do so seems unfair if only because their discomfort may compromise the otherwise good presentation that they could make in person. One so often hears “Mr X, you’re on mute.”

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

Negative. The notion that the public has the ability to contact the sheriff clerk to access a hearing is, we believe, a token or hollow exercise. The last Lord President talked of “platitudes about justice being seen to be done”. We do not think that calling for open justice is platitudinous. The courts require to be open to the public as much as possible, even if the public seldom choose to observe proceedings. There are sound constitutional reasons for this. Also, if litigants want privacy they can always arbitrate instead.

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?

Yes. It was convenient

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

It appears to work very well. The staff of Scottish Courts and Tribunals Service are to be commended on how efficient they have been in putting this technology in place.

Question 9 – Should more use be made of hybrid hearings and if so, how do you envisage these working? By hybrid hearings we mean a hearing where the judge or sheriff is sitting in court, with the potential for everyone to attend in person, and one or more other participants attend remotely. Does it matter who is attending remotely (eg lawyer, witness, party)?

We had had experience of such hearings. They are undoubtedly useful in avoiding travel time. However, there is the risk that those physically present will have an advantage over those who are not in that their participation may seem and feel more effective simply by reason of their being in the same room as the sheriff.

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?

We have generally not found there to have been serious technical issues. We have had problems where more than one microphone is in use at the one remote location; this can create feedback and aural distortion. This was resolved simply by switching off one microphone, with multiple users sitting at one screen/microphone. On the whole, such issues are not serious.

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.

From a time management and cost perspective we appreciate the value of virtual attendance. It is efficient and it cuts down on travel and waiting time. For proofs and debates we feel that more business should return to being in person. It aids access to justice and the quality of evidence is better. In addition, younger solicitors have the benefit of observing more experienced practitioners in action. This is good for the general quality of lawyers appearing in our courts.

Scottish Law Agents' Society

SCJC Consultation on Modes of Attendance

About us

Consumer Scotland is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020, we are accountable to the Scottish Parliament. The Act defines consumers as individuals and small businesses that purchase, use or receive in Scotland goods or services supplied by a business, profession, not for profit enterprise, or public body.

Our purpose is to improve outcomes for current and future consumers, and our strategic objectives are:

- to enhance understanding and awareness of consumer issues by strengthening the evidence base
- to serve the needs and aspirations of current and future consumers by inspiring and influencing the public, private and third sectors
- to enable the active participation of consumers in a fairer economy by improving access to information and support

Consumer Scotland uses data, research and analysis to inform our work on the key issues facing consumers in Scotland. In conjunction with that evidence base we seek a consumer perspective through the application of the consumer principles of access, choice, safety, information, fairness, representation, sustainability and redress.

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consumer.scot

Consumer Principles

The Consumer Principles are a set of principles developed by consumer organisations in the UK and overseas.

Consumer Scotland uses the Consumer Principles as a framework through which to analyse the evidence on markets and related issues from a consumer perspective.

The Consumer Principles are:

- Access: Can people get the goods or services they need or want?
- Choice: Is there any?
- Safety: Are the goods or services dangerous to health or welfare?
- Information: Is it available, accurate and useful?
- Fairness: Are some or all consumers unfairly discriminated against?
- Representation: Do consumers have a say in how goods or services are provided?
- Redress: If things go wrong, is there a system for making things right?
- Sustainability: Are consumers enabled to make sustainable choices?

We have identified access, choice and information as being particularly relevant to the consultation proposal.

Our response

Consumers experience the impacts of different hearing types in different ways, according to their individual circumstances. Consumer Scotland recommends maintaining sufficient flexibility to allow the system to meet this range of needs, including the use of hybrid hearings. We consider that consumers are likely to need significant support and guidance to understand their options in relation to attending hearings and to ensure that they can ask for what they need, in the appropriate procedural form. There is a need to ensure clear communication of the Rules to parties who are unused to court proceedings, and in particular, to unrepresented parties, in advance of any hearing.

Previous research has identified a lack of data on mode of hearings, posing challenges to robustly and fully assessing the impact of remote hearings. It is unclear whether previous recommendations to address this have been actioned. We recommend that any data that has been collected should be published and that any future decisions should be informed by appropriate impact assessments to allow evidence-based decisions to be made.

More generally, Consumer Scotland recommends that the SCJC and SCTS work to develop an Inclusion Framework, setting out the principles, standards and mechanisms necessary to ensure that the need for inclusive justice is recognised from the outset in the design and implementation of processes.

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?

The Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Attendance at Hearings) 2023 inserted new chapters into the Court of Session Rules and the Ordinary Cause Rule. The Rules set out the Court's general preference for procedural hearings to take place by electronic means, although exceptions to this are provided for where a person is unrepresented or an interpreter is to be used. More generally, the Rules provide that the Court may - at its own instance or on the motion of a party - order that attendance at procedural hearings by any person is to be by means of physical attendance instead. The Court may also order that attendance at other kinds of hearings by any person, which would otherwise be attended physically, may instead be attended by electronic means. Hybrid attendance, where one party attends in person and others remotely, is also permitted. Before making any order about the mode of attendance, the Court is to allow opportunities for the parties to make representations about the mode of attendance.

The Rules appear to be clear and to provide maximum flexibility for the Court to respond to the needs of the parties. We consider that the Rules are likely to be understood by regular and professional court users such as expert witnesses, court staff, advocates and solicitors. However, it is not apparent from the consultation how these Rules are communicated to

parties who are unused to court proceedings, and in particular, to unrepresented parties, in advance of any hearing.

Research conducted for the Scottish Government on the Civil Justice System's Pandemic Response (2023) found both diverse practice and diverse views within court settings on the use of virtual hearings, with no single, consistent opinion on their impact or their continued use. While the report found some advantages of virtual hearings for young people, those with additional needs or vulnerable court users, it also highlighted some challenges including issues arising from technical problems; digital exclusion and literacy (particularly, though not only, among parties); and challenges around communicating, both verbally and non-verbally. It is fundamentally important that parties know what to expect and can understand what adjustments can be made, and how to ask for these. Therefore our view is that while the Rules themselves are clear, we would welcome further thought being given to how to communicate these to parties.

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?

The SCTS website contains helpful videos about how to participate in digital proceedings. However, it is not clear what parties should do if they cannot participate or are not comfortable participating in digital proceedings. We consider that clear signposting and explanation of the various options – and how to ask for them to be applied – is essential for consumers.

Research by Kantar for HMRC on Assisted Digital and Digitally Excluded Support Needs (2014 and 2020) looked at the proportion of UK adults who were able to access public services digitally. UK adults were grouped into three main categories: Digitally Capable; requiring Assisted Digital support (AD); and requiring Digitally Excluded support (DE). Digitally Capable adults are able to interact with government services online independently. AD adults needed support to complete at least some online interactions with government. DE adults report that they never use the internet either at home or elsewhere. All those who need DE support also fall into the total AD support category. Follow up research in 2020 indicated that the proportion of UK adults who require AD support is at 22%. This group was, on average, older than digitally capable adults and more likely to have problems with literacy or numeracy. Based on these figures, it is likely that a significant number of court users may benefit either from assistance to access digital court services, or from the ability to attend in person.

In 2023, Consumer Scotland commissioned YouGov to undertake research on Using Legal Services in Scotland (2024). We explored how confident consumers in Scotland are in relation to legal issues and their perception of how accessible justice is. Using internationally approved standardised measures of legal confidence and accessibility the survey of consumers found that just over a third (37%) of respondents have low levels of legal confidence. This means a significant minority of respondents are not confident they could

personally achieve a positive outcome in certain common legal scenarios. In addition, YouGov's survey found 24% of respondents have a low accessibility of justice score indicating they think the justice system is not particularly accessible. Based on this research, we consider that consumers are likely to need significant support and guidance to understand their options in relation to attending hearings and to ensure that they can ask for what they need, in the appropriate procedural form. We were unable to find such advice on the SCTS website and recommend that it be developed (or made more prominently available if it already exists).

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

No response. Consumer Scotland does not support individual consumers in relation to taking court action so cannot answer this question.

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

No response. Consumer Scotland does not support individual consumers in relation to taking court action so cannot answer this question.

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

The Scottish Government's 2023 report noted a number of implications for access to justice. In particular, perceived barriers arose from digital exclusion and technological issues, including a lack of connectivity due to poor broadband connections for both court users and parties, use of devices that were inadequate for the purpose or a lack of IT support. Concerns were also raised regarding the degree to which virtual hearings permitted communication between parties and their representatives or whether virtual hearings made the chances of settlement between the parties less likely. The report also notes concerns raised by the Faculty of Advocates and Law Society of Scotland around communication and around the ability of clients to follow and understand proceedings. However, the report also noted that for some users, particular those with a health condition, disability, or additional support need which could present additional challenges for traveling or being in a new and potentially physically inaccessible place, then virtual hearings had increased access to justice.

There is no therefore definitive answer to this question, consumers are experiencing impacts in different ways, according to their individual circumstances. Consumer Scotland recommends the maintenance of sufficient flexibility to allow the system to meet this range of needs and for these flexibilities to be clearly signposted, with support put in place to allow users to access these.

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

The Scottish Government's 2023 report reflects concerns that there were too many obstacles for members of the press or public to overcome to join remote hearings, and that the process needed to be made easier. Professional and judicial users felt that access to hearings was easier for in-person compared to virtual hearings. It is unclear at the time of writing whether measures have subsequently been taken in response to the concerns outlined in this report.

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?

No response. Consumer Scotland has not been directly engaged in court hearings so cannot answer this question.

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

No response. Consumer Scotland has not been directly engaged in court hearings so cannot answer this question.

Question 9 – Should more use be made of hybrid hearings and if so, how do you envisage these working? By hybrid hearings we mean a hearing where the judge or sheriff is sitting in court, with the potential for everyone to attend in person, and one or more other participants attend remotely. Does it matter who is attending remotely (eg lawyer, witness, party)?

In line with our answer to Question 5, we note that consumers experience the impacts of different hearing types in different ways, according to their individual circumstances. Consumer Scotland recommends maintaining sufficient flexibility to allow the system to meet this range of needs, including the use of hybrid hearings.

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?

No response. Consumer Scotland has not been directly engaged in court hearings so cannot answer this question.

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.

The Scottish Government's 2023 report concluded that in assessing the impact of remote hearings and other measures, it would be important to continue to gather data from across different participants – including parties. The report noted that the lack of data on mode of hearings and on party litigants posed a challenge to robustly and fully assessing the impact

of remote hearings, noting that strengthening the collection and recording of data about the mode of individual hearings would enable analysis of variations in their use across the court estate. The report suggested better recording of information about party litigants and a programme of further survey research to monitor how well supported and trained clerks and members of the judiciary feel with respect to remote hearings specifically, to identify further training or support needs as well as gathering structured feedback from a sample of parties who participate using different modes. It is unclear whether these suggestions have been taken up. We recommend that any data that has been collected should be published and that any future decisions should be informed by appropriate impact assessments to allow evidence-based decisions to be made.

More generally, Consumer Scotland recommends that the SCJC and SCTS work to develop an Inclusion Framework, similar to that proposed by the Online Procedure Rule Committee in England and Wales. The Framework recognises that people may struggle to achieve access to justice because they do not understand their rights, are not aware of the support available, have vulnerabilities or additional needs, or are intimidated by lengthy and difficult processes. It sets out the principles, standards and mechanisms necessary to ensure that the need for inclusive justice is recognised from the outset in the design and implementation of the system. It proposes a number of ways in which the user experience can be better designed and delivered including design principles and standards, assisted access for digitally excluded or other vulnerable groups, user testing, data monitoring and service improvement.

Response 4 – Faculty of Advocates



FACULTY OF ADVOCATES

Response to Scottish Civil Justice Council's Call for Evidence on Modes of Attendance

The primary focus of this response relates to hearings in the Court of Session. While members of the Faculty of Advocates regularly appear in the sheriff court, there may be specific issues affecting solicitors that we are not best placed to address.

For the reasons given below, we consider that the default should be that hearings are to be conducted in person. That should be the default for all Court of Session hearings, regardless whether they are of a procedural or substantive nature. Virtual hearings should only take place at the joint request of the parties, or by order of the court; and a decision that a hearing is to proceed virtually should be taken at the latest by 12 noon on the working day prior to the hearing.

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?

While the court rules provide that a hearing at which only procedural business is to be considered is to be attended by electronic means (RCS 12C2(1)), in practice, physical attendance or hybrid hearings are ordered as a matter of course and without reference to RCS 12C.3 or 4. We are unaware of RCS 12C.3(3) routinely being complied with in circumstances where the court is considering altering the mode of attendance at hearings.

Although the rules default to virtual attendance for hearings involving only procedural business, there is a lack of certainty in practice regarding the mode of attendance for hearings. This is often determined at the last minute. That forces counsel, agents and often parties to attend Parliament House. If the hearing is ultimately a virtual one, alternative arrangements then require to be made. That is particularly problematic for solicitor advocates who have attended Parliament House for a possible in-person hearing as they don't have access to the Faculty's AV Rooms or the Lord Reid Building should that hearing become virtual. We are of the view that the rules should include a requirement that the mode of attendance for a hearing be determined and communicated by a set time before the said hearing. In our view, a deadline of 12 noon on the working day before the hearing would be appropriate.

There is no definition of "procedural business" in RCS 12 or anywhere else in the RCS. In context of the RCS as a whole, and as a matter of practice, "procedural business" can - and often is - interpreted in several different ways. For example, it can be taken to mean any hearing that is not the substantive hearing. We consider that a definition for this term is necessary.

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?

It is necessary to start from a position where it is clear what the mode of attendance is for a particular hearing. As outlined in our response to Question 1, the mode of attendance is often determined last minute, leaving little to no time to request a change.

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

It is not our experience that the default position is that procedural business is conducted virtually (see our response to Question 1 above). We are regularly being advised last minute what the mode of attendance will be. Certainty is essential and the current approach causes confusion.

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

As noted in our response to Question 1 above, there is no definition of “procedural business” in RCS 12 or anywhere else in the RCS. That causes confusion as the term “procedural business” can - and often is - interpreted in several different ways.

We consider that 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 Reviews).

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

On balance, we consider that virtual hearings have a positive, albeit limited, impact on access to justice. A notable benefit is that they allow proceedings to be conducted more efficiently and cost-effectively for parties/agents who are based outwith the central belt. However, in our view, virtual hearings are inappropriate for certain types of proceedings, such as opposed motions. Any benefit that may be derived from an access to justice perspective is outweighed by the negative impact such hearings can have on the speedy resolution of disputes.

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

One positive impact of virtual hearings on open justice is that, because physical attendance is no longer required, individuals who would not otherwise be able to travel to Edinburgh can still observe the proceedings. However, when the mode of attendance is not confirmed until the last minute, this benefit is undermined, and open justice is negatively affected. We consider that our suggestion in answer 11, below, would not have a negative impact on open justice, but that continuing with last minute changes to the mode of attendance might.

The “Scots Courts” website is difficult to navigate, which undermines the positive impact that virtual hearings could have on promoting open justice. It can be difficult to locate the link from which to observe certain hearings by WebEx. Further, if there is a last minute change to the mode of attendance, the court rolls may not be updated timeously which can result in the public/ the press proceeding on the assumption that a hearing will be heard in Parliament House only to discover upon arrival that it has been moved to online.

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?

Given the availability of the WebEx platform, we are of the view that telephone hearings are unnecessary and should not be used. Our experience of them is unsatisfactory, with limited numbers of people being able to dial into the call. At times only the judge and counsel are able to be in attendance given technological limitations.

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

Our experiences with the WebEx platform are generally positive and we consider it a stable platform for virtual hearings.

Question 9 - Should more use be made of hybrid hearings and if so, how do you envisage these working? By hybrid hearings we mean a hearing where the judge or sheriff is sitting in court, with the potential for everyone to attend in person, and one or more other participants attend remotely. Does it matter who is attending remotely (eg lawyer, witness, party)?

We consider that hybrid hearings can be beneficial. For example, in certain circumstances it is valuable to have a witness give evidence remotely.

In our experience hybrid hearings can work well when the judge and counsel are in the court, with the potential for agents, parties and other interested parties to attend remotely.

We do not consider that hybrid hearings are appropriate in circumstances where one party is a party litigant, attending remotely with the judge and counsel in the court.

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?

See answer to Question 8 above.

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.

While there is a place for virtual hearings, we consider that the default position in the rules should be that hearings are to be conducted in person.

The primary issue at present is a lack of certainty. Some judges routinely order physical attendance or hybrid attendance as a matter of course and without reference to RCS12C.3 or 4. This is especially true in areas of practice where in-person attendance is typically the most suitable mode of attendance for a hearing, such as in the commercial and family courts.

Flexibility is important, as certain hearings are suitable for virtual attendance - for example, uncontroversial hearings where the parties are agreed on further procedure. The rules should allow parties to request that a hearing be conducted virtually or in a hybrid format. Similarly, the court should have the power to order a hearing to be virtual or hybrid. Any order changing the mode of attendance from in-person must be issued with sufficient notice to allow parties to prepare; as suggested above, a deadline of 12 noon on the working day before the hearing would be appropriate.

The discussions that take place before and after a hearing between counsel, agents and parties are often extremely important. Virtual attendance provides a barrier to those discussions.

Response 5 – anonymous

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?

Yes. However, the rules specifically state that the provisions for attending procedural hearings electronically do not apply to hearings at which a party is unrepresented. This seems to be a redundant provision that is not followed, and in many instances could not be followed where it is unknown in advance of an initial hearing whether a party is unrepresented.

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?

The motion process for requesting a change to mode of attendance is straight-forward.

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

We consider this approach has worked. Acting mainly for pursuers, we have noticed an increased uptake in attendance by the defender in actions. The virtual mode allows more flexibility for people to attend hearings and takes away the stigma of going to the court building which some individuals experience. Before remote hearings the attendance levels were lower and engagement by defenders was poor, resulting in increased enforcement action by our creditor clients.

We have noticed, however, that the “default” position is being applied inconsistently across courts and Sheriffdoms in that some courts appear to have now reverted back to all hearings being in-person (whether procedural or not). For the foregoing reasons we consider there are benefits to remote hearings for procedural business. We would welcome clarity and consistency across all sheriff courts on the approach to remote hearings.

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

From our perspective, it is clear what a procedural hearing is.

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

Positive - they have allowed for increased access to justice, for the reasons outlined at Question 3. With virtual hearings/attendance defenders who have been unable to instruct a solicitor have been more inclined to attend hearings to put their position before the court, without having to take time off work or navigate travelling to court etc.

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

A neutral or slightly positive impact on open justice. In-person hearings allow for members of the public/school pupils/trainee solicitors to sit in the 'public gallery' and watch hearings that may be of interest to them. We consider people will be less inclined to do this with virtual hearings due to the way webex links are distributed each week. However, with the increased attendance by party litigants we consider there has likely been a positive impact from their perspective.

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?

Yes, a prearranged conference call. It was time and cost efficient. However, in our view these are only appropriate for strictly procedural hearings where all parties are legally represented. Whilst convenient, there is a draw-back to not having visual cues/body language and eye-contact particularly where party litigants are involved.

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

The Webex platform is adequate. There have been some instances where the Webex chat function has not been working, so solicitors have been unable to 'speak' to the clerk, causing some inconvenience. There are also some days where the Sheriff has in-person business before virtual business and agents are not always advised of this in advance, so are left sitting on Webex for up to an hour with no update. It would be helpful if clerks could inform agents who are logged in if there is to be in-person business first, and a likely timescale for completing that.

Question 9 – Should more use be made of hybrid hearings and if so, how do you envisage these working? By hybrid hearings we mean a hearing where the judge or sheriff is sitting in court, with the potential for everyone to attend in person, and one or more other participants attend remotely. Does it matter who is attending remotely (eg lawyer, witness, party)?

The default for substantive hearings should be in-person. This avoids interruption by any technical issues, thereby facilitating the efficient leading of evidence etc. We consider hybrid substantive hearings to be appropriate when, for example, certain witnesses are furth of Scotland. We act for many financial organisations based in England and where a representative from the client is required for a proof, particularly where their evidence is simply to speak to certain documentation which has not been agreed between the parties, it is beneficial to allow that evidence to be given remotely. This saves on costs, which in certain litigations (enforcement of standard securities, for example) are passed onto a defender under the terms of their mortgage/standard security, so it also benefits the defender. Solicitors and parties representing themselves should attend substantive hearings in-person.

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?

Minimal technical issues. Sometimes camera has not worked on the Webex platform but the Sheriff has been agreeable to allowing parties to present by audio only.

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.

We support virtual attendance for procedural hearings. It is more cost effective for clients and more time efficient for solicitors.

Response 6 - CMS

Response by CMS Cameron McKenna Nabarro Olswang LLP To the SCJC Call for Evidence on Modes of Attendance at Hearings

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?

The rules themselves generally provide reasonable clarity regarding the mode of attendance for hearings, in particular, by setting down a clear default rule for procedural hearings. However, in practice, there is a degree of unpredictability and inconsistency around the operation of the default rule.

In particular, in the **Court of Session**:

- Decisions to require in-person attendance are often communicated at very short notice, sometimes only on the morning of the hearing or when an unallocated hearing is allocated. This can result in last minute changes to arrangements and difficulties in advising clients of developments.
- In the case of unallocated hearings, agents may feel constrained to attend court in person in case the judge the hearing is ultimately allocated to decides on an in-person hearing. This may lead to wasted time and expense.
- The rationale for deciding on in-person format appears, at least in some cases, to be based on individual judicial preference rather than objective criteria. This makes it difficult to predict how a particular hearing will be treated.
- Where a decision is made to change a hearing format from virtual to in-person, there is inconsistency as to whether the court will nevertheless provide a link to the hearing for anyone who intended to attend virtually but can't travel to the location in time.

In the **sheriff courts**, in our experience, most courts conduct procedural hearings in ordinary cases virtually by calling them on the roll through a Webex link that all agents are invited to join. However, some sheriff courts require such hearings to be conducted in-person. Again, the rationale for this is unclear but our impression is that this is more often based on individual sheriff preference rather than factors related to the cases in question.

It would be helpful if either the rules could be expanded or guidance published to improve consistency and predictability, for example by:

- Setting out clear protocols for when and how decisions about hearing formats are made and communicated, with reasonable advance notice (recognising that there may be urgent/ exceptional cases);
- So far as possible, identifying the relevant criteria for determining the mode of attendance; and

- Ensuring, so far as possible, that when a hearing is changed to in-person at short notice, a virtual link is provided for those unable to attend in person.

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

- Most of our experience with this is in the Court of Session.
- The rules envisage that any such request will be dealt with by way of a formal motion. In practice, that is not what tends to happen. Requests from agents / parties tend to be made by email and dealt with informally.
- That approach works reasonably well, and we would not wish to see unnecessary formality and cost imposed for no good reason. However, consistent with our response to question 1 above, the issue should, in most cases other than urgent cases, be raised within a reasonable period prior to the hearing to avoid last minute changes to arrangements.

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

- As set out above, the default rule for procedural business is generally effective, but practical difficulties are common due to inconsistent application and communication.

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

- It is not clear to us how the court characterises *ex parte* hearings in which interim or emergency orders are sought. In practice, however, the nature of these hearings is such that there is generally close communication with the clerks from the outset in relation to the hearing arrangements. For what it is worth, we would tend to view such hearings as leaning more towards having a ‘substantive’ character in light of the nature of the orders they may give rise to. However, equally, having flexibility around the format of such hearings can be very useful given these may take place out of hours and on short notice.

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

- Overall, we consider virtual hearings have had a positive impact on access to justice. They offer a useful alternative, particularly for disabled or remotely located parties and agents.
- However, we have seen some instances where party litigants have struggled to operate technology and/or had more difficulties in following what is happening in a virtual hearing (usually when cases are calling on the roll in the sheriff court). In our experience, judges usually notice any such difficulties and will take a pragmatic approach e.g. pausing/slowing to investigate the issue and/or continuing the case to the end of the rolls or to another date to be heard in person. It may be helpful to formalise some of this in the form of guidance or protocols.

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

- Overall, we consider virtual hearings have had a positive impact on open justice, allowing easier access to non-parties who wish to observe hearings. The livestreaming of Inner House business has been a notable success, not only by making the broadcast hearings more accessible but also by drawing more public attention to the existence of the cases in question.
- The only situation we are aware of where there is a particular difficulty with open justice is in relation to telephone hearings which do still take place in the sheriff courts. To our knowledge, members of the press and the public are currently unable to attend such hearings.

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?

- From an agent's perspective, telephone hearings are the least useful form of hearing. We have experienced more technical problems with these than with more complicated technologies such as Webex.
- Anecdotally, we have had regular experiences of hearings in which the line has cut out, sometimes repeatedly, for one or more of the parties. Agents/parties have no ability to resolve technical issues as the call is commenced by the presiding sheriff.
- In addition, without being able to see the other participants, it can be more difficult to follow telephone hearings, particularly where there are multiple parties and voices are difficult to distinguish.
- We would welcome the replacement of telephone hearings with Webex hearings.

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

- In our experience, Webex now works well. Whilst some participants will experience technical difficulties from time to time, the court clerks are adept at dealing with such problems and these are usually resolved fairly quickly.
- No doubt, in time, the platform will offer additional useful functionality. For example, it would be useful for the court to be able to mute and unmute attendees, e.g. in case of inappropriate interruptions from observers.

9. Should more use be made of hybrid hearings and if so, how do you envisage these working? By hybrid hearings we mean a hearing where the judge or sheriff is sitting in court, with the potential for everyone to attend in person, and one or more other participants attend remotely. Does it matter who is attending remotely (eg lawyer, witness, party)?

- We welcome the flexibility that hybrid hearings offer. In our experience, these have been utilised usefully in many cases to enable hearings to take place and make progress that might otherwise have stalled due to e.g. counsel being in a different location.
- That said, it has to be recognised that the experience of having one person online when most people are present in the room does present practical difficulties that require to be managed, particularly when that person is an active participant. Hybrid hearings will generally be a less useful approach than having everyone in the room in person. For example:
 - If one counsel is appearing remotely and the others are in person, the counsel who is online may struggle to hear or parse everything that is being said in the court room.
 - If a witness is giving evidence online, the lack of eye contact and ability to read body language may have an impact on the dialogue between that witness and those in the court room which may affect how their evidence is given and received. Moreover, there may be a need for additional practical matters to be addressed such as arranging to have a local agent in the room with the witness.
- With these difficulties in mind, we tend to the view that allowing a person to attend a hearing remotely when the other participants are in-person, should be carefully managed and not permitted in all circumstances.
- In particular, where the person is a witness (especially where they are a witness to fact) we consider that the default requirement should be attendance in person and that, if the party calling the witness wishes them to appear remotely, that party should make a specific motion to this effect setting out reasons for the application.

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?

- While technical difficulties do still arise from time to time on Webex, we tend to find that the judges, clerks, agents and counsel are, for the most part, generally used to this and able to resolve matters fairly quickly and with minimal fuss. We have not had a recent experience in which we have not been able to meaningfully participate in a hearing.

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.

- In our view, the most optimal form of hearing is a fully in-person hearing as this maximises the potential for all to participate as fully as possible as well as being the most effective administration of the court's authority.
- That said, not every hearing requires to take the most optimal form. Virtual and hybrid hearings provide much-needed flexibility and numerous benefits, such as time, cost and travel savings. They can ensure more expeditious progress than might otherwise be possible. In every case, it will be a question of balancing the relevant factors to reach a reasonable and proportionate outcome.

- We consider virtual and hybrid hearings are a useful option that should be retained and used in appropriate cases, for appropriate hearings.
- There should, however, be greater consistency and transparency of the approach to be taken in practice. Clearer protocols/guidance would assist with this.

CMS Cameron McKenna Nabarro Olswang LLP

Scottish Courts and Tribunals Service



Response 7 - SCTS

By email to:

scjc@scotcourts.gov.uk

Legislation Implementation Team
Legislation and Information Unit
O1 Spur, Saughton House
Broomhouse Drive
Edinburgh
EH11 3XD

17 December 2025

DX: ED 545309

Dear Sir/ Madam,

SCJC Modes of Attendance - Call for Evidence

I refer to the above consultation to which I respond on behalf of the Scottish Courts and Tribunals Service (SCTS). The response is submitted by the SCTS acting in its role to provide efficient and effective administration to the courts and tribunals and does not include the views of the Judiciary.

Whilst we cannot comment on the specific questions posed in the call for evidence, I have provided some comments on the potential operational impact for SCTS.

The SCTS is supportive of virtual attendance at court, where appropriate. In particular, we support the flexibility and efficiency that virtual attendance provides for procedural hearings.

The SCTS also supports the access to justice that virtual attendance provides to court users. For example, persons who would not ordinarily be in a position to attend in person or those in rural areas where it may not be an efficient use of time to travel a distance for a short procedural hearing. Journey times, costs and periods of waiting are also reduced for professional court users, providing efficiencies and sustainability benefits for them and the organisations they represent.

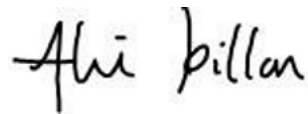
Virtual attendance has been used in procedural hearings for more than 5 years. The flexibility this affords is essential to allow SCTS to programme business efficiently and effectively, in line with estate capacity. It is our view that a move away from virtual hearings, should they not be considered the most appropriate mode, could result in significant programming issues and additional costs for the SCTS. Potential changes to court rules and procedure may also result in costs for any IT changes required to the civil case management system.

Should such costs arise as a consequence of the decisions taken by the Council SCTS would appreciate there being a period of time ahead of their implementation, in order that a case could be made to the Scottish Government for additional resourcing to meet those costs.

Whilst SCTS is yet to receive its budget allocation for 2026-27 the overarching message being issued by the Scottish Government is that the public finances will be exceptionally tight over the coming years. All public bodies are being encouraged to explore ways in which digital systems can be used to realise appropriate efficiencies. Against this backdrop it may be challenging to secure additional funding to support a move away from an approach of that nature. If SCTS is not able to secure additional funding then any changes would need to be achieved through the realisation of efficiencies elsewhere in the organisation or through a reduction in programmed business.

The SCTS are content for this response to be published and would be grateful if we could be kept informed of the progress of this consultation and related matters.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Alison Dillon'.

Alison Dillon
Legislation and Implementation Manager
Legislation Implementation Team

Tel: 0131 444 3477

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Response 8 - APIL

Scottish Civil Justice Council

Call for Evidence - Modes of Attendance

A response by the Association of Personal Injury Lawyers

November 2025

Introduction

APIL welcomes the opportunity to respond to the Scottish Civil Justice Council's call for evidence on the modes of attendance for court hearings. We support the greater use of technology and remote hearings for procedural matters and welcome the efficiency that this has brought.

We believe that the default position in relation to proofs should remain that they take place face to face, unless the parties agree to depart from this position, or the court, on careful consideration of a range of factors, decides that a remote hearing is appropriate. All substantial hearings, whether by debate, trial or proof, should take place in person as a default.

We have consulted members in Scotland and have responded to the call for evidence based on their experience of the current rules on the mode of attendance.

Consultation questions

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?

Our members' view is that the rules are working effectively. The main problems experienced relate to consistency in the application of the rules. It appears that some courts/ judges prefer in-person hearings, while others tend to be more inclined to remote hearings. We believe that the cases should be assessed on a case-by-case basis and that a one-size-fits-all approach should not be the rule on whether hearings are held in person or virtually. However, we suggest that further guidance could help improve consistency between courts when deciding on the mode of attendance.

One of the difficulties experienced by members is late decisions by judges in the Court of Session as to whether the hearing will be held remotely or in person. Often, decisions about the mode of attendance are made on the morning of the hearing, only hours beforehand, leaving parties and counsel on standby. It should be considered that parties travel from different parts of Scotland, and we suggest that the rules should include the need for fair notice on whether the hearing will take place remotely or in person. While virtual hearings are working effectively, there is still scope for improvements around communication and fair notice.

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

Our members find the process for requesting a change of attendance mode clear and straightforward.

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

Overall, our members' experience is that the default position for procedural hearings has worked well. Procedural hearings can often last only around 20 minutes, and the possibility of attending remotely has increased efficiency by reducing time and travel costs for parties.

While virtual procedural hearings are effective, they pose a training issue for junior solicitors who do not have much exposure to being in a courtroom and observing court etiquette in person.

Our members also report that it becomes more difficult to communicate with and properly instruct Counsel in virtual hearings in comparison to a courtroom setting, where Counsel can easily converse with their instructing solicitors. For example, in a remote hearing, Counsel have to halt proceedings to type a message to their instructing solicitors and await a reply. The solicitor, on the other hand, is trying to send a message as quickly as possible, and there are times when neither the full information nor accurate information is conveyed.

Members also report that remote hearings tend to encourage a more casual attitude from parties. Examples include witnesses joining a hearing while walking down the street, during a train journey, not wearing appropriate clothing, or in a room with other people. There are other examples of appellants being contacted to attend a hearing remotely and simply hanging up their phone because they are at work. Others have not dialled into their appeal hearing at all. It is assumed that this is because they have abandoned their appeals, but in the absence of a formal withdrawal, the courts have had no choice but to continue the appeals, as it could not be determined for certain why the appellants had not attended, therefore wasting court time and resources. There have also been issues with the conduct of parties when joining remotely, including examples of parties swearing and conducting themselves in a manner that they perhaps would not have done had they attended court in person.

In order to address the issue of overly casual conduct during remote hearings, there should be a requirement when remote hearings are conducted that parties attend at an appropriate location to maintain a degree of formality. This will also avoid any issues relating to technical difficulties or unstable internet connections.

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

In our members' experience, overall, there is no confusion about this - the distinction between procedural and substantive hearings is generally well understood.

However, one member reported a lack of clarity as to what ought to be heard in person and what can be conducted remotely in the Court of Session. On that occasion, the Lord Ordinary allocated to hear the debate decided it should be conducted remotely, which caused issues with communication and instructions between the solicitor and Counsel. As mentioned throughout our response, we believe that substantive hearings, including debates and proofs, should be heard in person as a default.

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

Where virtual hearings are considered appropriate by the court and parties, we believe they have had a positive impact on access to justice. Remote attendance has simplified access to hearings for parties and reduced costs as they do not have to attend the court in person. For example, in cases where the parties are located in the north of Scotland or islands, and only have to attend a short procedural hearing, remote hearings have been more convenient and more cost-effective.

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

A drawback of virtual hearings is that they have taken away the ability for members of the public to observe hearings. In place of simply being able to go to a court building and watch a hearing, for remote hearings, journalists and members of the public have to apply to the court for a dial-in number to hear telephone hearings or apply to see and hear video hearings through a link. The links are not readily available on the court's website, except for the Inner House, which has a live stream.

There should be an effort to ensure that virtual hearings are conducted in as much of an open manner as those that are conducted face-to-face.

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?

Our members' view is that telephone hearings should be restricted to very limited circumstances. As mentioned above, remote hearings tend to encourage a less formal and more casual attitude from parties. This is particularly the case for telephone hearings, which, in our view, are not appropriate and outdated. Telephone hearings lack formality and transparency, and limit parties from seeing each other or the judge, as well as their ability to gauge reactions. It also makes it harder for parties to know when to speak, and our members report occasions where people were speaking over each other. Logistically, telephone hearings are also less convenient to set up than virtual hearings with WebEx, where a link is simply provided to all parties.

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

Our members' experience is that the platform works effectively at the moment. They have not had experiences of hearings that could not proceed due to technical difficulties with the platform.

Question 9. Should more use be made of hybrid hearings and if so, how do you envisage these working? By hybrid hearings we mean a hearing where the judge or sheriff is sitting in court, with the potential for everyone to attend in person, and one or more other participants attend remotely. Does it matter who is attending remotely (eg lawyer, witness, party)?

We agree that more use should be made of hybrid hearings, depending on the particular circumstances of the case. For example, where the pursuer is vulnerable or lives in a remote location, it is far more reasonable for evidence to be given remotely. Hybrid hearings are also helpful for expert witnesses to give evidence remotely due to availability constraints. Our members report that it is often difficult to secure a date with experts, in particular in very specialised areas. The use of hybrid hearings is also efficient when experts have to travel long distances to attend court or when the evidence is not going to be long.

Our members' feedback is that the court's approach seems to vary, with certain Sheriffs more accepting of allowing expert witnesses to give evidence remotely, while others prefer in-person evidence. We understand it is a matter for the Sheriff to decide how they want to hear evidence, but it would be beneficial if witnesses could attend remotely more often. We would welcome more guidance for the courts to facilitate witnesses providing remote evidence.

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?

Our members have no experience of this.

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.

Overall, APIL supports virtual attendance at court for procedural matters that are simple and can effectively be dealt with remotely. However, we believe that in-person hearings are essential and that substantive hearings, including debates and proofs, should take place in person as a default. Pursuers must be entitled to a court hearing and have the confidence that their case was fully and properly articulated and that the other side's contentions were tested. Parties are also entitled to know why their case was won or lost, and how the justice process operates. To have proofs heard remotely as a matter of course would chip away the fundamental fairness of the law.

One concern is around access to the internet. While the vast majority of the population has access to the internet, this does not necessarily mean that they have quality access – there are huge problems with Wi-Fi quality in rural areas – and even where there is “access”, this does not mean that people will have the knowledge or confidence to take part in an online hearing competently. Many people will also not have access to the appropriate technology required to be able to join a hearing remotely. While many will have access to the internet via a mobile phone, far fewer will have access to a laptop, and joining a hearing via a mobile phone camera is far from ideal.

There must be caution exercised to ensure that the whole population is able to continue to access the courts on a level playing field. It should not be the case that whether a person can be heard is dependent on whether they have quality Wi-Fi or whether they are of a certain generation or in a profession, which means that they are comfortable using online technology.

Any queries related to this response should be directed, in the first instance, to:

Ana Ramos

Legal Policy Officer

Ana.ramos@apil.org.uk

Citizens Advice Scotland

Response to the Scottish Civil Justice Council's Call for Evidence on Modes of Attendance Rules

December 2025

Background

The Citizens Advice network in Scotland plays a crucial role in supporting people across the country to realise their rights. We inform people of their rights and responsibilities and provide holistic, person-centred advice – including advice on social security, debt, energy, housing, employment, family and relationships, complaints processes and legal proceedings. We empower people to secure access to justice by supporting them to navigate systems and procedures to resolve their issues, prevent detriment, and pursue recourse when things go wrong.

The network provides advice via multiple channels: in person in over 300 locations across the country, as well as by phone, email, and other channels, and via our freely accessible online advice pages.

Our holistic advice and support changes lives. In 2024/25, we supported nearly 200,000 people, leading to £169.4 million back into the pockets of people who need it most. Many of the people we support are from the most marginalised and intersectionally disadvantaged communities and backgrounds in Scotland. Last year

- almost two thirds of people we supported reported having a disability or long-term health condition,
- more than half were women,
- one third resided in the most deprived areas in Scotland,
- and more than 1 in 10 identified as belonging to a minoritised ethnic group.

More people have been coming through our doors for help each year since the pandemic – and the cost-of-living crisis shows no sign of relenting. Just as the volume of need is increasing, so is the complexity. Across the last five years, we have seen one in seven people accessing our advice across multiple years. We see crises that are predicated by chronic injustice, often years in the making, which can take hours to understand and untangle – and achieving justice often requires multiple contacts and building up of trust.

In this context, the **CAB network continues to provide vital, life-changing support on legal issues:**

- The Law and Courts pages on our public advice site were viewed more than 970,000 times in 2024/25 and remain some of the most viewed among all our advice pages.
- On legal proceedings, bureaux provided more than 41,000 pieces of advice in 2024/25, which is, on average, more than 3,400 pieces of advice every month.
- Advisers throughout the Citizens Advice network in Scotland routinely support people in accessing and navigating court and tribunal hearings, whether they be virtual, by teleconference, hybrid or in person. In 2023/24, the network supported 1,427 clients at courts and tribunals. This includes CAB advisers acting as authorised lay representatives such as in debt and housing cases or in social security and employment tribunals.

Based on the experiences of the people we support and our advice data, as well as expertise from across the Citizens Advice network in Scotland, our **policy work on Human Rights and Access to Justice** aims to ensure that people's human rights are protected and realised, that people in Scotland have equal access to the justice system, to legal services and to effective remedies; can navigate and engage appropriately in legal proceedings; and that processes are transparent and fair.

Digital exclusion and the justice system

CAS has a number of **concerns about digitisation within the justice system**, an issue that lies at the intersection of our impact work on Human Rights & Access to Justice and on Digital Exclusion. CAS understands that the use of digital technologies - such as electronic submissions, email, e-signatures, virtual and hybrid hearings – can enable greater efficiency in court services and operations, which can also be beneficial for those involved in proceedings.

Yet our data shows that many people in Scotland experience digital exclusion – whether due to the cost of devices or tariffs, a lack of skills or confidence to navigate the digital realm, or a lack of robust digital infrastructure, particularly in Scotland's rural and island communities.

- For many people, their local Citizens Advice Bureau (CAB) is the only way they can access digital services. During 2021/22, the Citizens Advice Network in Scotland recorded 1932 people who were digitally excluded. In 2024/25, this figure rose to over 4100, representing an increase of over 110%. This highlights the continuing and increasing issue of digital exclusion within our network.
- Focussing on our latest data for 2024/25, digital exclusion is linked with a number of advice areas. Benefits advice was sought by around 80% of digitally excluded people who visited their local Citizens Advice Bureau. Tax was also a key advice area for digitally excluded people, as was housing, debt, energy, utilities, and communications. This

shows the breadth of advice sought by those that are digitally excluded across our network, and how often this advice relates to essential services.

- Polling by YouGov on behalf of Citizens Advice Scotland¹ found that 1 in 5 people (19%) in Scotland had to go without internet access at home or without a mobile phone in the past year.²

For significant numbers of people in Scotland who face digital exclusion, the increasing use of these technologies can therefore create additional barriers to navigating court and tribunal processes and can impede their right of access to justice.

While the increase in digital by default approaches across essential services has been accompanied by a range of measures aimed at boosting digital inclusion, CAS nevertheless advocates that channel choice for those engaging with public services and systems is essential in order to mitigate the detriment faced by those less able to access the online world. CAS works to secure changes within public government policy to ensure that people in Scotland do not encounter barriers to digital exclusion and to improve public bodies' awareness, so that services are made more inclusive and accessible for all.

We therefore welcome this opportunity to contribute to the Scottish Civil Justice Council's Call for Evidence on Modes of Attendance Rules. Below we will focus on the questions where we can provide an informed response.

Our response

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?

Citizens Advice Scotland has had, overall, positive feedback from CAB advisers in our network who support people in a variety of court settings about the Rules of the Court of Session (RCS): Chapter 12C: Mode of Attendance at Court Hearings and Sheriff Court - Ordinary Cause Rules (OCR): Chapter 4A: Mode of Attendance at Court Hearings.

From their understanding, the rules make clear that, generally, substantive business will be heard in person while procedural business will be heard virtually, unless unrepresented parties or interpreters are involved in the hearing. Advisers welcomed the introduction of an element of channel choice by allowing courts to make and revoke orders changing these default modes of

¹ The 2025 CAS Tracker Survey was run by YouGov from 27 - 31 March 2025. A sample representative of the Scottish population, with 1,008 respondents, was used. Findings for specific demographic categories are included where the results showed noticeable differences between groups.

² Men were noticeably more likely to be affected by experiences of digital exclusion due to running out of money before payday than women, with 27% of men saying they had to go without internet access at home (compared to 13% of women), and 26% of men were left without access to a mobile phone (compared to 13% of women).

attendance and requiring the court to give parties the opportunity to make representations about the mode of attendance before making such order.

However, CAB advisers report concerns that the rules provide no guidance on what the criteria are for granting a party's request for a change to the mode of attendance and whose needs should be prioritised in the court's consideration if there is no agreement between parties and the court. This can, in practice, **impede the realisation of channel choice for individuals whose access to justice relies on a particular mode of attendance.**

Advisers also raised the issue that virtual procedural hearings can be difficult for individuals to navigate and can lead to misunderstandings when people they support have no idea what is happening in those discussions as they can be quite technical and inaccessible for laypersons. In addition, even decisions taken in procedural hearings can have substantive impacts on proceedings affecting CAB clients as James' experience³ illustrates:

James⁴ sought support from his North of Scotland CAB. He had attended a virtual procedural hearing where the Sheriff had determined that he had no jurisdiction and had dismissed the case. James was unrepresented, could not follow the legal arguments made around jurisdiction and had no understanding of the decision reached or the reasons for it. To compound things, no decision form was issued in the case (until CAS later intervened to raise the matter with the Scottish Courts and Tribunal Service), leaving him unaware of any arrangements or deadlines for appeal.

We would therefore like to reiterate that more support is needed to enable vulnerable and digitally excluded groups to equally access justice and that the best way to mitigate these potential detriments is through **full realisation of channel choice. This would allow rights-holders to choose the most appropriate method of participation in court or tribunal processes to best suit their needs**, rather than the default channel being determined by stage/type of proceeding or action. The latter risks running counter to a person-centred justice system that puts rights-holders at its heart.

CAS believes that until the court rules fully enable channel choice, more clarity and information is required for the public to understand how and on what grounds they can request a specific/change to the mode of attendance under the current rules.

³ **Citizens Alerts** are based on a real-time case reporting system operated by the Citizens Advice network in Scotland. These qualitative cases are shared with us from individual Citizens Advice Bureaux (CAB), which provide CAS with unique and unparalleled insight into the lived experiences, situations, and detriment which individuals seeking our support are facing. While Citizens Alerts represent individual client experience, they can also highlight patterns and structural issues which need to be addressed. We anonymise this data and compile and analyse it to effect change in policy, law, and practice.

⁴ All names have been changed.

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?

CAS reiterates our concerns that the rules provide no guidance on what the criteria are for granting a party's request for a change to the mode of attendance and how the court will reach a decision. As set out above, CAB advisers have raised that this can **impede the realisation of channel choice for individuals whose access to justice relies on a particular mode of attendance**. Full channel choice would enable rights-holders to choose the most appropriate method of participation in court or tribunal processes to best suit their needs, rather than the default channel being determined by stage/type of proceeding or action.

One adviser in Central Scotland, for example, raised the following concerns about the implementation of rules on modes of attendance:

"My opinion is that the current setup fails in the duties under the Equality Act and doesn't take into consideration health, commuting and digitally excluded people. Hearings are often set by the Sheriff Court via interlocutor, and there is no explanation or option provided to alter to a remote hearing etc. The heritable court is heard in person, I've known a rare few cases to be heard via telephone instead, but this option only tends to become available once people have sought advice or if the person we support has told the council solicitors they can't attend due to living in a rural setting.

The Sheriff Court can be intimidating for folk, especially for those who are vulnerable with mental health issues, so often people don't attend. Thankfully some instruct us, but in other cases decrees are made in people's absence. I think all hearings should follow the Tribunal process where participants are clearly asked to provide a preference. I still think, generally, the Sheriff should be court based with counsel/rep given the option to attend in person. This way the two sides can still communicate extra judicial, which is often very helpful in agreeing actions."

CAS is aware of cases where party litigants' request of a specific mode of attendance was not granted and would urge that all courts operate a channel choice model, ensuring that people can participate in court proceedings in a manner that is truly accessible and convenient to them.

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

Q4: Has there been or is there confusion about what a procedural hearing is and what is not?

Please see our responses to Q1 and 2.

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

CAS believes that virtual hearings have had both positive and negative impacts on access to justice. We understand that the use of digital technologies such as virtual hearings can enable greater efficiency in court services and operations, which can be beneficial for those involved in proceedings. Advisers in our network report that virtual hearings can enable some rights-holders' participation in court proceedings where barriers such as a lack of transport connections, health and mobility or care issues would have prevented them from attending court in person. Virtual hearings can also make it easier for advice providers such as CAB to provide support during court proceedings, as one adviser from a rural area explained:

"I will say that we in Dumfries & Galloway find the Webex really useful due to living in a really rural area - for instance we cover both Dumfries and Stranraer Court and if we had to appear in person, it means an around 130mile round trip. Also, if the Sheriff advises that the person we support has to appear in person, in my experience, they can sit with the Sheriff Clerk who is very helpful. This helps when a client is not familiar with Webex or is afraid to go on it. But, generally, I would like to see more help given to the general public on how to access Webex."

CAS thus recognises that the option to access and participate in court and tribunal proceedings digitally improves accessibility for some in certain circumstances, while efficiencies which help court backlogs to reduce are in everybody's interests. **However, these benefits must not come at the expense of access to justice for the most vulnerable in society.**

Advisers in our network have significant concerns about people experiencing digital exclusion, and in many areas across Scotland our bureaux are the only source of support available for people to access virtual court hearings confidentially and safely, as Mark's experience shows.

Mark sought a West of Scotland CAB's support prior to proceedings at the local Sheriff Court in which he aimed to challenge a decree regarding the arrestment of his car for a debt he owed. Mark was unrepresented in the ordinary cause proceedings as he was unable to find a solicitor willing to take on his case.

Mark stated he required assistance from the court to lodge documents but was told by court staff that no assistance could be provided and if he made one more mistake on the forms, they would refuse to accept the documents altogether. He had no facilities to attend the WebEx court hearing. The CAB provided assistance in identifying suitable solicitors and, when Mark could not access one in time, explained the required documents to him and provided use of CAB facilities to secure his digital access to the hearing.

As a CAB adviser from the North of Scotland told us,

"clients do often need support from CAB to help them get set up. They come into CAB to access court hearings, as they don't feel confident or don't have digital access and so rely on CAB. Adviser can then be present with them during online proceedings."

While the Citizens Advice network in Scotland regularly provides this support where possible, it should be noted that CAB are rarely funded to do so. Furthermore, specialist In-Court advice projects run by CAB in several Sheriffdoms, offering free and independent advice and support for people pursuing or responding to some civil actions are in a precarious funding situation and may not continue to be available/accessible in the future.

Advisers also raised concerns about the nature of virtual hearings which can negatively impact people's ability to meaningfully participate and can lead to misunderstandings, especially for unrepresented parties. A person's ability to participate and navigate a hearing may rely on physical co-presence and immediacy which tend to be significantly impaired in virtual and telephone hearings. The following comment by a CAB adviser in the North of Scotland illustrates this:

"The feedback we get from clients who have represented themselves without support is that, in hearings that are not in-person, quite often it comes to misunderstandings, for example, what was said by sheriff or pursuer. There's issues with poor connectivity too, and it can be even more difficult [in virtual hearings] to meaningfully participate for people."

In cases where interpreters are involved to assist a party's participation in proceedings, it is often crucial that interpreter and client are in the same (quiet) room so that they can communicate clearly and confidentially with each other during the hearing. This will often disqualify public libraries or other (semi-) public spaces, which may enable digital access for those experiencing digital exclusion, for purposes of participating in virtual court or tribunal hearings. The same is true for communication between representatives/advisers and clients where virtual/remote hearings can impede their confidential communication and real-time advice.

CAS therefore remains concerned that the use of remote and virtual hearings can disproportionately disadvantage unrepresented party litigants, those who are assisted by CAB, or others with additional support needs. We believe that it is unrealistic to expect vulnerable groups or those with additional support needs to engage with remote and virtual proceedings without providing some one-to-one support. Without attending physical court room locations, party litigants may also not be signposted to advice and advocacy services (such as In-Court advice provided by CAB where these are available).

CAS would therefore urge that any shift towards digital by default in court proceedings must be matched with enhanced support for rights-holders who face barriers to navigating these processes digitally, and court rules as well as public-facing information should enable full

realisation of channel choice to prevent people's exclusion from court or tribunal processes and uphold everyone's right of access to justice.

We would also suggest that the Scottish Courts and Tribunal Service regularly conducts qualitative assessments of people's experiences of virtual hearings in order to fully understand barriers some rights-holders face as well successes in implementing measures to address these, so that they can be replicated in/adapted to other parts of the country where suitable.

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? And

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?

CAB advisers regularly report that even when users physically have digital access, limitations and failures of the technology both in virtual and telephone hearings can create significant problems and impact rights-holders' experience and pursuit of justice. While the below cases relate to tribunal proceedings, we believe they are instructive for court proceedings too.

An adviser in a North of Scotland CAB supported Brian in a tribunal hearing when the online hearing platform experienced technological problems which could not be resolved despite several attempts. This resulted in the adviser having to operate three different lines of communication – mobile phone in one hand, landline phone in the other, while he could see the court online, but the court could see neither Brian nor him. These issues resulted in the hearing overrunning by 2 hours and a very distressing experience for the vulnerable client.

Jameel, for whom English is an additional language, was supported by a West of Scotland CAB in a virtual first-tier tribunal hearing contesting a Department for Work and Pensions decision. The online hearing started late, then problems arose due to the interpreter not speaking the client's native language. The hearing had to be recessed to give the adviser a chance to separately take instruction from the client in which he made clear that he wanted the hearing adjourned so that an interpreter speaking the correct language could assist him in the proceedings. Several attempts to resume the video hearing afterwards failed, as the adviser and client could not be added to the virtual hearing room due to technical problems, so the hearing had to proceed by telephone instead. When the client started to become more and more agitated, the hearing was brought to a stop by ending the call. The adviser called the client to advise on what will happen next.

As these experiences show, technical problems can negatively impact on rights-holders and their ability to meaningfully participate in proceedings when something goes wrong with

technology. Often they are left without any real-time support to bring this to the court's attention. CAB advisers have told us of clients who experienced technological issues which prevented them from joining virtual platforms at short notice. They were unable to find a way of alerting court staff to this, meaning the sheriff assumed they had simply opted not to participate and proceeded to grant orders, such as those for eviction or custody, with far-reaching negative impacts on them.

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

While some advisers in our network report that the use of virtual hearings and the WebEx platform has worked well for them, overall, they agree that like all Online Video Platforms, WebEx can be difficult to use for people who are digitally excluded. As an adviser in Central Scotland reported,

“Webex can be difficult to operate for those lacking digital knowledge, so isn't the best option for many.”

As set out above, CAS knows that many people will be unfamiliar with WebEx or afraid to go on it and require information and practical support to be able to use it. CAB often support people attending WebEx hearings, by providing people with a quiet space and a device with WebEx installed and assistance in connecting them to the hearing, without being funded to do so.

In addition, CAS is aware of cases in which people experience technical problems but have no way of alerting court staff to this and are unable to receive real-time support. This can be very distressing for party litigants. Advisers have reported cases where people suddenly found themselves unable to join the WebEx hearing, but the court assumed they had opted not to participate, making decrees in their absence with far-reaching impacts.

CAS would urge that alongside fully implementing channel choice and making enhanced support available for people whose access to justice relies on it, courts should ensure they are accessible and provide real-time points of contact for those experiencing technical issues with WebEx.

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.

Overall, CAS believes that enabling a range of modes of attendance is positive where channel choice is fully enabled and implemented effectively. As detailed above, potential benefits of virtual attendance at court must not come at the expense of access to justice for those who rely on a specific mode of attendance, often the most vulnerable in society. For example, women

and children fleeing domestic abuse, people who are socio-economically marginalised and/or require additional support due to, for example, disability or language issues often experience digital exclusion.

We would recommend that to ensure that courts are inclusive and provide equal access to justice for everyone, we need effective mechanisms which support people impacted by digital exclusion, those disproportionately affected by civil justice issues such as disabled people, and those with additional support needs. It is essential that:

- effective channel choice is offered and fully resourced, to enable rights-holders to access digital and online services if they choose to do so or utilise another channel if that is more suitable and required.
- If a virtual hearing is the default for specific types/stages of proceedings or actions, the process and criteria for changing to an alternative channel should be made transparent and clear for the public. Any negative decisions on requests for alternative modes such as physical in-person hearings should provide clear explanations.
- Information on additional support and assistance available as well as people's right to request reasonable adjustments should be communicated early and in a clear way to the public.
- Person-centred, free support should be provided by or made available at courts for those requiring additional support.
- Rights-holders with lived experience of court proceedings and those who may experience barriers to engaging with courts, as well as organisations that represent and/or serve them, should ideally inform regular monitoring and reviews/development of policies and practices.

Contact:

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Citizens Advice Scotland (CAS), Citizens Advice Bureaux (CAB) and the Extra Help Unit form Scotland's largest independent advice network. The Citizens Advice network in Scotland is an essential community service that empowers people in every corner of Scotland through our local citizens advice bureaux and national services by providing free, confidential, and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.

Response 10 - Morton Fraser MacRoberts

MFMac response to Modes of Attendance Consultation

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?

We are of the view that the rules themselves are straightforward. If there is a difference of opinion between the parties then generally the Sheriff will take a view. The rules themselves don't need to be prescriptive however the rules do need to be applied consistently. Our view is there is a lack of consistency across Sheriffdoms (i.e. some courts insist that procedural business takes place in person). There was an example of a court insisting on an in person hearing when it could have been by Webex (and parties were in agreement that Webex was suitable). On the other hand, other courts are quite happy to have substantive hearings on Webex when perhaps the hearing should have been in person. There was also an example of trying to organise a hybrid proof but the Sheriff wouldn't agree to this mode of attendance. Our general view is that it would be better if there was a uniform approach across Sheriffdoms.

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?

In general, there is no issue with requesting a change. Although there was an example of a court taking a long time to consider a motion to change the mode of attendance, by which time it was too late.

However, it isn't clear from the rules (or any another guidance) what considerations will be taken into account by the court when deciding if an order to change a mode of attendance will be granted or refused.

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

There has been no confusion in the Sheriff Court. However in the Court of Session, there has been some confusion in relation to starred motions. It is not always clear whether a starred motion is going to be in person or virtual and the decision is often made very close to the hearing. Practitioners have tried to confirm in advance of the hearing with the clerk but the clerk was unable to give an answer. Parties, agents and Counsel need notice if a hearing is going to be in person. It can be problematic and confusing if the mode of attendance isn't stated in the interlocutor. It would be better if it was mandatory to let parties know the mode of attendance in advance.

One of the key impacts of whether a procedural hearing is in person or virtual is cost (and in particular the reduced cost to the client of a virtual hearing). This can make a significant difference when appearing at the more remote courts in Scotland.

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

Our overall view is that it is usually fairly obvious. However, to avoid confusion the interlocutor could confirm the mode of attendance.

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

There are arguments for both positive and negative impacts on access to justice:

On the negative side, we think the use of technology can result in access to justice being restricted, for example some people struggle with Webex (especially older party litigants). We understand that it is possible for individuals who aren't able to use Webex, or don't have access to Webex, to ask the clerk if they can attend court in person (even if the hearing is being held virtually). This option should be

promoted more widely, particularly for party litigants.

We have also had issues with witnesses not having access to Webex (for example civil servants can't use Webex as access is restricted).

We are of the view that court etiquette, and the seriousness of a court hearing, is undermined in virtual hearings. This could be mitigated by the Sheriff setting out guidance at the start of the hearing (or in the interlocutor).

On the other hand, many people have had good experiences of virtual hearings (including substantive hearings) and virtual hearings have had a positive impact on access to justice. A key positive impact on access to justice is the costs saving to clients, particularly for procedural hearings. It is also more likely the principal agent will be able to appear. In addition, it can be easier for party litigants or witnesses to attend a virtual hearing (for example they don't need to travel or take a long period of time off work in order to attend court).

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

We believe virtual hearings have had a negative impact on open justice. It is no longer possible for people to watch court proceedings easily. It is not clear if it is possible to ask the clerk to provide a link for a hearing and what the rules / guidance is governing access to Webex if you are not participating in the hearing. This is particularly an issue for trainees as they are unable to easily observe court proceedings. It is also difficult for members of the public to observe court proceedings.

The livestreaming of proceedings in the Inner House however is a good enhancement and has had a positive impact on 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?

Yes, solicitors at the firm have attended a court hearing by telephone. We do not find telephone hearings to be effective (it is difficult to know when to interject; when to stop speaking; and how the other parties are reacting). Telephone hearings are used by Glasgow Sheriff Court and by the First Tier Tribunal (Housing Chamber). It is not clear why they are unable to use Webex.

One benefit is that telephone hearings have a fixed time slot. Telephone hearings can also be useful for simple procedure cases as they can be quick.

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

On the whole, our view is Webex works well. As mentioned above, there can be issues if other users are unable to access Webex due to IT restrictions. It is not clear why Webex was chosen over other platforms.

There is also an issue that court etiquette deteriorates when hearings take place on Webex. In addition, it can be difficult to contact the clerk if there is an issue with Webex whilst the court is taking place.

We suggest the following improvements:

- having a running list that is circulated in advance (some courts already do this).
- having time slots
- looking into whether other platforms (Teams etc) might be more suitable. It is understood that Tribunals and the courts in England & Wales use different software for virtual hearings.
- Guidance on court etiquette is sent out in with the Webex invitation and set out at the beginning of each hearing.

Question 9 – Should more use be made of hybrid hearings and if so, how do you envisage these working? By hybrid hearings we mean a hearing where the judge or sheriff is sitting in court,

with the potential for everyone to attend in person, and one or more other participants attend remotely. Does it matter who is attending remotely (eg lawyer, witness, party)?

Our view is the default position for substantive hearings should be that everyone attends in person.

However, hybrid hearings are particularly useful where there are expert witnesses who may be in different locations and are well versed in giving evidence. The courts usually take a sensible approach to whether witnesses should attend in person. In general, the lawyers should be physically present in court.

We have come across an issue when an individual is cited as a witness, as they have no say in whether they attend virtually or in person. There is no mechanism for the witness to advocate for one of the other modes of attendance.

It would also be good to know in advance who will be in attendance in person, for example in an FAI the deceased's family might attend in person in which case other parties might also want to attend in person.

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?

We find that there aren't as many technical difficulties with virtual or hybrid hearings now as there were when they were first introduced. One issue is if the Sheriff and Sheriff Clerk are both in the same room at court, as there can be a lot of feedback noise. This makes it difficult to hear what is being said. The person in the room who isn't speaking therefore needs to make sure they are on mute.

It is also important that all court staff and judges / sheriffs know how to use the technology and receive training and support with this.

An example of a technical difficulty (but not a recent one) is a witness attending remotely and the technology didn't work on the day. It would be beneficial if a test link could be issued the day before the hearing.

We have also had issues with the judge or sheriff not having the papers available to them during the hearing. Although the introduction of Civil Online should help reduce this issue.

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.

We don't agree that more, or all, civil business should be held in person. Certainly, all procedural business should be dealt with virtually. The cost saving, time saving and convenience all support the continued use of virtual hearings.

For substantive hearings, the default position should be in person with the option of requesting a hybrid or virtual hearing.

Response 11 – anonymous

Providing your response

If you have chosen to provide a separate written response, then please complete the first page of this Respondent Information Form and attach it to your response.

If you wish to include your responses within this Respondent Information Form, please insert your responses to each consultation question in the (expandable) boxes below:

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?

Yes there is sufficient information regarding this.

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?

Practices across Sherifffdom's do seem to vary. If a change in mode of attendance is to be requested, uniformity about the way to do so would be good. The most obvious suggestion would be that this can only be done by formal motion (as opposed to emailing the court, for example). This would have cost implications, however.

It would be helpful for some guidance around what circumstances are sufficient to request a virtual hearing rather than it taking place in person. Is convenience alone sufficient? Again, practices seem to vary, sometimes from Sheriff to Sheriff, as to what is acceptable.

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

Procedural business being virtual has worked overall. It has greatly assisted solicitors in terms of their efficiency and time management, which can then be passed on to the client. It also assists clients in terms of their ability to attend hearings.

It can be difficult for party litigants, particularly if older and not as familiar with technology. There is also a concern about the impact on junior solicitors who are perhaps not getting the same court room experience as they might have had pre-covid. They can however sit on the Webex court to hear the cases call and the agent's submissions.

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

No.

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

Positive overall. It has allowed more parties to attend hearings who otherwise may have struggled to take

Respondent Information Form

time off or struggled with childcare etc. It may make things more difficult for the older generation who would prefer to attend in person as perhaps not good with technology however you do routinely see parties and party litigants on virtual hearings so it must be achievable.

Respondent Information Form

Virtual hearing can make it easier for solicitors outwith the Sheriffdom to agree to act on behalf of a party, therefore improving the public's access to legal representation.

Overall, the move to virtual hearings for some procedural or non-contentious matters has been a good thing.

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

Positive overall. There is less reason for parties not to attend court as they can do so from their workplace on a break, for example, rather than taking a full day off. It also allows parties to attend hearings which they perhaps wouldn't have in the past because they are not technically required to. Allows parties access to all hearings and gain a fuller knowledge of their case and the procedure followed, if they wish to do so.

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?

Telephone hearings are very difficult. These typically took place at the beginning of the covid pandemic. Not used much at all now, for good reason. It was very difficult to conduct a hearing over the telephone as there was no ability to read body language or social cues. This often led to agents or the Sheriff interrupting one another or two parties speaking at the same time.

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

Overall, the Webex platform is very good for virtual hearings. One improvement would be a bit more clarity around when you can expect your case to call. Often you are left sitting in the virtual court or in a waiting room with no idea where your case is on the list of cases down for that day. A list being emailed or shown in the comments section on Webex that agents can check would be good. The Sheriff clerk could perhaps update this as cases were dealt with to give an idea of likely time scales for your case to call.

Time slots for certain hearings could also assist, rather than everything being assigned for 10am or 2pm and everyone having to wait throughout the full court.

Question 9 – Should more use be made of hybrid hearings and if so, how do you envisage these working? By hybrid hearings we mean a hearing where the judge or sheriff is sitting in court, with the potential for everyone to attend in person, and one or more other participants attend remotely. Does it matter who is attending remotely (eg lawyer, witness, party)?

Hybrid hearings should be the exception. Hearings should take place either remotely or in person, unless there is very compelling reason for a hybrid hearing. Where evidence is being led, hearings should be in person. Witnesses joining remotely if there is a geographical reason for them to do so may be unavoidable but, where possible, key witnesses should be in the courtroom for the Sheriff to assess demeanor and body language etc.

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?

Technical issues are somewhat unavoidable when you have users of different abilities. No technical issues have been encountered which have been the Court's fault. Where parties or agents are having technical issues, the Sheriff and Sheriff clerk are good at moving on to the next case and recalling the case when issues have been resolved.

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.

Overall, supportive of virtual hearings for procedural or non-contentious matters. Where issues are contentious and require the presence of parties, such as child welfare hearings, these should be in person. This allows discussions to take place prior to the hearing commencing, or indeed during the hearing if something new arises. This is not possible when a hearing is virtual.

Where evidence is being led, these hearings should be in person. As above, it is important that the Sheriff is able to assess the witnesses and that nothing is lost over video, such as a parties' body language or one parties' behaviour towards the other.

It would be helpful if procedural family hearings such as case management hearings could be held virtually, unless they are calling alongside a child welfare hearing. If they are calling in isolation, it would be helpful if these could be virtual like other procedural hearings.

Response 13 - Harper Macleod

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?

- Rules of the Court of Session (RCS): Chapter 12C: Mode of Attendance at Court Hearings; and
- Sheriff Court - Ordinary Cause Rules (OCR): Chapter 4A: Mode of Attendance at Court Hearings

It is considered that both rules are sufficiently clear, at least to solicitors. The rules are, in our experience, applied relatively consistently by the Court of Session. It is also our experience, however, that at times their application between Sheriff Courts and Sheriffdoms is not uniform. It is this absence of uniformity within the Sheriff Courts that can cause issues, rather than the guidance or clarity of the applicable rule itself that appears to be giving rise to lack of certainty and consistency.

It is considered that it would be useful if there were a more uniform approach to how the Sheriff Courts conduct hearings across the various platforms. By way of example, where hearings are fixed in person, or by hybrid means, to have those cases called separately as there has been reported experience of movement between platforms causing issues. It is suggested that the Sheriff Court might adopt a practice similar to the Court of Session, by which hearings in a specified mode (i.e. by Webex) are fixed to call at a particular time while hearings by an alternative mode (i.e. hybrid or in person) are fixed to call at a different time.

The current practice of the Sheriff Court can cause difficulties in the conduct of hearings. In situations where participants are attending a hearing using different modes of attendance, difficulties experienced include sound quality, the ability to interact with participants, issues where certain participants may seek to lodge or rely on documents not otherwise made available to other participants.

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?

It is straightforward to engage with the Court of Session in relation to any request for a change to the mode of attendance. As the judge dealing with a case is often known (cases usually being allocated to a specific judge at an early stage in the court process in order to ensure effective case management from the outset) it is straightforward to correspond directly with the clerk to the relevant judge. If the identity of the clerk is not clear, the General/ Petitions or other relevant Department staff will quickly direct agents to the correct point of contact.

The difficulty, again, is the variety of approaches taken by the Sheriff courts. Some courts will require mode of hearing to be addressed by way of formal motion, while others may only require an email to the clerk.

It is suggested that, in the first instance parties should be afforded the opportunity to seek to informally agree the mode of attendance. This is the approach adopted in the Court of Session and in our experience is an approach that works well. Accordingly, parties should be encouraged to engage on the proposed mode of attendance and, only failing the ability of the parties to reach agreement (even within a defined period), a formal motion should be enrolled for the Court to determine the mode of attendance.. This is submitted to be an appropriate means of addressing such matters on account of factors including: (i) the cost to parties occasioned by the motion procedure; (ii) the potential delay of the motion procedure, particularly where hearings may be imminent and given that virtual hearings will principally be for procedural business; and (iii) to make best and most efficient use of Court time, where suitable terms may be capable of being agreed without formal motion procedure.

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

On the whole, procedural business defaulting to virtual hearings has proved to be significantly better for agents and there are not considered to be any particular issues identified in procedural business defaulting to being virtual. It has been noted that, whilst we have not encountered any particular issues in relation to hearings in Court of Session proceedings, at times, it can cause confusion with party litigants in the Sheriff courts, as detailed below.

It has been specifically noted that many Sheriff Court interlocutors are worded in such a way that they inadvertently cause confusion. By way of example, Sheriff Court interlocutors we have seen have stated: “fixes [date] for [hearing] to take place in person at [address], said hearing to take place by way of Webex...”. Plainly such wording can create confusion as whether or not the hearing is in person or via Webex (or, indeed, by hybrid means). It is considered that Courts, when issuing interlocutors, should ensure clarity in how any particular hearing is to take place. Whilst agents will be comfortable contacting a Court for clarity, unrepresented parties may feel unable so to do and there has been experience reported of party litigants attending court in person erroneously, on account of this confusion.

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

To agents, it is known what a procedural hearing is and therefore there is no particular confusion in this regard.

Again, we have not noted any issues in the Court of Session, however greater cause for confusion seems to arise in the Sheriff court setting. In that respect, it is noted more generally that opposed motion hearings that are contentious perhaps ought not be included on the usual procedural rolls. It is suggested that opposed motions requiring full submissions by parties be put to the end of the roll or be given specific timings for submissions in order to avoid delays to the conduct of less contentious procedural business. Doing so would lead to greater efficiencies in terms of both court time and time/cost of legal representatives to litigants than present arrangements of such business calling (often at random) within busy procedural courts.

Separately, Courts will generally indicate that joint positions should be intimated to the Court prior to a hearing. There is a lack of uniformity as what should happen with joint positions. Whilst the Court of Session will acknowledge joint positions and often dispense with the need for a hearing in light of written representations made through to Judge’s Clerks, some Courts (primarily Sheriff Courts) still insist on the case calling; others will notify agents very late that the case need no longer call on account of the joint position; others will suggest that if a joint position is intimated it should be taken as read that the case will be dealt with administratively. There should be uniformity and clarity as how joint positions will be dealt with, on a timeous basis, by the Courts.

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

It is considered that virtual hearings are of benefit to agents, clients and party litigants. Joining virtual hearings is not difficult; it avoids otherwise unnecessary travel to Courts; it improves the ability of unrepresented parties attending hearings by virtue of the provision of additional means of attendance. It is considered that the positive factors associated with virtual hearings generally outweigh any negative impact.

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

Virtual hearings widen public access to proceedings in Scotland's courts and, therefore, open justice by reducing the need to observe proceedings through physical attendance at a court building. Where any negative impact is felt, it is suggested that this arises as a result of lack of progress in rolling out the relevant video technology within court settings and failures to publicly circulate links to online hearings. This is being addressed to some degree within the Court of Session, however, there is no link on Sheriff Court websites enabling access the hearings by the general public or media.

It is assumed that somebody with a particular interest in attending as an observer need only request a link from the court in advance of a hearing, but it is not clear how widely publicised such an option may be.

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?

Yes. It is generally considered that a Webex video call is preferable as it enables participants to see who is speaking who you are speaking to and for clients and others with an interest in the case to observe.

It is noted that Glasgow Sheriff Court previously conducted procedural business by telephone and there was no difficulty with this form of attendance as the Sheriffs at Glasgow were very good in regulating who was speaking and when to ensure that there was no talking over and Sheriffs were good at organising the hearing to ensure everybody had the chance to speak. In the modern age of video-conferencing, however, closed telephone hearings seem a sub-optimal solution. With the availability and regular use of Webex, the Courts should reflect on whether or not telephone hearings should continue being used. It is noted that parties can join Webex via telephone where they do not have a camera.

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

We have had no significant difficulties in accessing or conducting hearings by Webex. We have had no major issues with the system. Typically any issues encountered arise from the users, e.g. participants in the calls, talking over live hearings without being muted.

In the Court of Session, greater consistency of links being issued to legal representatives/ parties not later than 24 hours before hearings would be welcome (it is not uncommon to have to ask for a link late afternoon the day before a hearing because no link has yet been circulated).

A key alteration that would be suggested is the process by which Sheriff Clerks issue Webex hearing invitations. All too frequently, the invitations provide a link to a Webex hearing, but does not disclose from which Sheriff Court the Clerk is issuing the invite. As a large firm, we routinely have hearings in multiple courts on the same day with various agents across the firm and from within different departments appearing. It would be extremely helpful if there was consistency in the issue of Webex invitations so that it was abundantly clear which court was issuing it (i.e. Webex – Procedural Business – [Sheriff Court] – [Date & Time (where appropriate)]).

Additionally, Webex links might be published with the Court Rolls on the Scottish Courts website, acting as a back-up for agents in the event of an email not being issued by a Clerk and a primary means of access for interested members of the public.

There has been confusion reported where some clerks leave parties in waiting rooms pending cases calling. This has raised concerns as to whether the correct link has been used. It is suggested that the Court reflect on how such concerns may be addressed, such as by making use of call overs where clerks can explain how the Court will be dealt with, if not specific time slot has been allocated to individual cases.

Question 9 – Should more use be made of hybrid hearings and if so, how do you envisage these working? By hybrid hearings we mean a hearing where the judge or sheriff is sitting in court, with the potential for everyone to attend in person, and one or more other participants attend remotely. Does it matter who is attending remotely (eg lawyer, witness, party)?

It is our experience that hybrid hearings on procedural business work well.

It is observed that, where hybrid attendance pertains to matters of substance, particularly where evidence is to be adduced, Judges and Sheriffs should (and indeed do) consider whether or not such witnesses should give evidence remotely.

Motions to allow virtual/ hybrid hearings, and/or the attendance of specific witnesses by video call, can be determined at the Judge/ Sheriff's discretion.

In terms of conducting business, the manner in which a hybrid hearing is conducted should be strictly moderated. By way of example, where agents have appeared by Webex but the Sheriff and others are physically in Court, other parties can often not be seen on Webex and the hearing can become echoey, causing difficulty to the agent conducting the proceedings. Having said that, where a party is physically present, there have been occasions where Sheriffs have ensured steps are taken (such as by the Sheriff appearing via Webex from chambers and an unrepresented party utilising the Sheriff Clerk's Webex) to enable the hearing to be conducted effectively.

It is generally considered that hybrid hearings are more effective where the Judge/ Sheriff, agents and principal parties are in Court, utilising Webex principally to enable expert witnesses or witnesses who may otherwise have difficulty attending proceedings (and indeed for clients and the public) to attend.

Significant time and cost wastage is accumulated through clients and their legal representatives sitting in court buildings waiting for hearings in their cases to call, so the use of currently available technology that allows for minimisation of such wastage is welcome. Effective case and time management, assisted by the appropriate use of virtual and hybrid hearings, is not only welcome but expected as a minimum by all of those engaging (and paying to engage) with courts in modern times.

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?

No. Any issues usually stem from the user rather than the system. We have experience of attending "test" hearings in advance of hybrid Proofs, which work well in providing an opportunity to the parties and witnesses who are making use of the remote to become accustomed to the process.

It is considered that those unfamiliar with the use of Webex (including witnesses) should be further encouraged to make use of test hearings to be conducted in advance of any hybrid hearings where witness evidence is to be taken by that means.

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.

We support the continued provision (and as appropriate, expansion) of the option of virtual attendance at hearings for civil court business. In general there is no issue with virtual attendance at court for procedural business. Equally ex parte submission hearings such as debates or motions are suitable for Webex use.

Where a witness is able to attend in person, it is considered that proofs are better conducted in person due to the nature of the matters being discussed and it is considered likely to make it easier for the Judge/ Sheriff to gain an impression of a witness if they are attending in person. As above, however, it is acknowledged that there are certain witnesses or classes of witnesses (such as expert witnesses) from whom evidence can effectively be taken remotely, noting that Judge/Sheriffs will consider motions for evidence to be taken in such a manner.

Response 14 - Shared Parenting Scotland

Shared Parenting Scotland received the SCJC call for evidence in September.

Shared Parenting Scotland runs a daily helpline as well as hosting monthly group support meetings in Edinburgh, Glasgow, Dundee, Aberdeen and online.

We urge separated/divorcing parents to consider all available alternatives to court to resolve their disagreements about arrangements for parenting their children. Nevertheless, a considerable proportion of the 1,000+ individuals - mothers, fathers and grandparents - who contact us each year are already navigating sheriff courts and, occasionally, the Court of Session.

An increasing proportion of pursuers and defenders who approach us are representing themselves as Party Litigants, most reluctantly.

With this in mind, we cut and pasted the SCJC questions into a MailChimp survey. We sent one version to Party Litigants on our mailing list since July 2023, and a separate version to parties who have been represented by a solicitor.

We trust the responses from Party Litigants in particular may give the Civil Justice Council access to direct experience that should help in building a broader picture.

The strongest messages seem to us:

- 1 In-person is generally preferable in contact/residence proceedings;
- 2 Represented parties felt they weren't really involved in decisions about modes of attendance. There was suspicion that decisions were driven by court/solicitor convenience rather than the full airing of the case;
- 3 There is a need for public information - easy to understand video and/or online plain English step by step guidance to the options that are possible, the decisions that are involved and the practicalities of taking part remotely. Shared Parenting Scotland would be keen to assist in preparing such guidance, based on the insights we draw from our casework;
- 4 There is a calculation that needs to be acknowledged between the costs of in-person against the apparent convenience of online attendance that takes into account the current problems of solicitor availability for family cases;
- 5 Technical reliability remains an issue in some courts. The cost of rescheduling, or catching up with a solicitor after a system failure comes at a financial cost to the party if they are not legally aided. It does not seem fair that the party has to pay for system failure.

Although the numbers - 30 in total - are modest and self-selecting, it is evident that the participants were thoughtful in their responses.

Responses covered experience in the following sheriff courts: Elgin, Glasgow, Edinburgh, Stirling, Inverness, Aberdeen, Falkirk, Livingston, Forfar, Paisley, Hamilton, Perth, Greenock, Kilmarnock, Dumfries, and the Court of Session.

We have combined the experiences of both Party Litigants and represented parties in the above list as insurance against accidental identification.

John Forsyth
Policy Manager

Modes of Attendance responses – Party Litigants

Summary

There was an overall preference expressed for in-person hearings, specifically to offset potential for 'exclusion' of the party litigant in the course of a Webex call. The view of hybrid calls was similarly nuanced. There were perceived dangers to the fairness of proceedings if a solicitor or advocate was in the same room as the sheriff and the party litigant online.

It is apparent in the comments below that there should be clearer guidance on the procedures for agreeing to conduct a hearing by Webex, and then making it work for all parties on the day.

Most were mindful of the potential benefits of being able to schedule a hearing with more precision, and of potential savings in travel and time off work. However, there was consensus that the in-person hearing created a better opportunity for the sheriff or judge to assess the demeanour of the parties, and gain insight into the dynamics of the areas of disagreement and their potential resolution.

Question 1 Sufficient guidance

- 1 I couldn't find any.
- 2 On the single instance I was forced to represent myself I wasn't provide any guidance of how it would work.
- 3 As a party litigant, having rules in layman's language would be helpful.
- 4 The court was reluctant to give me guidance as a Party Litigant. Even the most simple basic information. This helped the court remain the domain of the solicitor. When one enters the court process one should be set up with an online account, just like every other business these days, and one should be treated like a customer of the court which should include guidance and forms to fill in.

Question 3 Procedural Hearings

- 4 There is the benefit of reducing travel time if short procedural hearings can be dealt with online.

Question 5 Impact on Justice

- 5 My only concern was a family hearing in a shared session, with other people hearing all discussions.

Question 8 Webex

- 6 My Webex hearing was one of a number of sheriff cases that day. I felt the fact it was on Webex and that I was representing myself allowed the sheriff to effectively cut me out of the proceedings.

The purpose of the hearing was to consider an independent Child Welfare Report. The Sheriff had not read the report and openly scanned it in barely a minute in the actual Webex hearing.

As you can understand I was extremely upset given I had spent a lot of money on the report. It was hardly even looked at by the sheriff. I may be naïve, but I don't think the sheriff would have been so brazen about scanning it on the bench if all parties had been there in person.

7 My concern is about privacy on Webex. At a procedural hearing it was apparent other people could hear the call. And in a child welfare hearing there is no guarantee that other people aren't listening in the background.

Question 9 Hybrid hearings

8 Because my ex-partner stays on mute and with video off, and it has been over a year since she was last addressed directly by the Sheriff for anything other than a confirmation of attendance. It does not seem that my ex-partner has much reason to attend and could be excused. There does not seem to be a worthwhile point to restricting our CWH's to taking place online. There could be a "live link" very easily set up in court so that she may attend remotely while the litigants attend in person. This is done for Proofs, to my knowledge.

9 Remote attendance would be particularly suitable for witnesses who live a long way from the court, or for whom travelling to appear in person would be difficult, for example, for work reasons.

10 It depends on who is remote and who is in person. It gives advantage to the person in the room with the sheriff. In my case it was obvious that they were having one kind of hearing and when I was brought in, it was different. I'd never allow that to happen again.

Question 10 Technical difficulties

11 The sound kept dropping out.

12 I got the clerk of the court to carry out a test with me the night before. We discovered something in my laptop was not compatible with Webex. I had to find an alternative laptop. My participation in the hearing was negatively impacted by the stress of getting the technology to work. There was no guidance on what is required for participation.

13 I tried once but could not hear properly. I am hearing impaired. We had to reschedule for a hearing in person.

14 There is an awkwardness to video calls, such as slight lag that leads to people talking over each other, and scope for technical difficulties which could influence hearing outcomes. I have experienced technical difficulties at a couple of hearings. The Sheriff was not all that patient with them.

Question 11 Overall opinion

15 I feel a lot of body language is lost in virtual hearings. In-person provides a better medium for getting your point across, and seeing other parties and the sheriff all at once can provide better feedback on how your argument is landing. Something like a child welfare hearing or a Proof should always be in person.

16 I feel it should be conducted in person and all parties attend. It prevents parties being coached in the background how to answer, off camera. I know that happened in my case.

17 A face-to-face hearing would have been far better and allowed more time and more in depth exchanges back and forth. The sheriff appeared more interested in dealing with my case in a quick manner and not allowing any significant verbal input by myself about the recommendations he hadn't read in the report. It was terrible.

18 I vastly prefer in-person hearings. Video calls are my least-preferred format.

19 I have experience of this issue from my own work where I am involved in pursuing and resolving civil disputes. I rarely if ever agree to video calls and will either hold telephone calls or in-person meetings in my work.

This has never adversely affected my work. It is much more comfortable to be in the room with the others who you are dealing with and not feel like you are exposing yourself to "the ether".

20 Video calls do not allow the sheriff to observe body language or get a sense of the authenticity of the parties.

21 In my court case, Child Welfare Hearings occur only remotely as my ex-partner lives far away. This always means having to fix an online hearing for dates that suit her. It slows the case up.

Modes of Attendance responses – represented parties

Summary

There was an overall preference expressed for in-person hearings.

A clear majority felt disempowered in the process first, of agreeing to move to Webex or telephone and, secondly, how it would work on the day.

The client is dependent on the attitude of their solicitor in explaining both the procedures and their rationale, and then the practicalities. Confusion may be sourced to the interaction with the solicitor rather than the procedures themselves.

Several offered a view that there should be an easy-to-follow official video that would help their understanding and make them feel less anxious about the practicalities at the expense of focusing fully on the issues to be discussed.

Most were mindful of balancing potential benefits of being able to schedule a hearing with more precision, and of potential savings in travel, time off work, and above all, solicitor's fees. Some felt the decision was driven by their solicitor's own preference.

However, as with the Party Litigants, there was consensus that the in-person hearing created a better opportunity for the sheriff or judge to assess the demeanour of the parties, and gain insight into the dynamics of the areas of disagreement and their potential resolution.

Question 1 Sufficient Guidance

81% said there was not sufficient guidance

- 1 A step by step guide, also a video of a likely scenario would also be great.
- 2 I was not provided with any information on this. I was not trained on Webex system. As an autistic person I did not know when to speak or how to know if anyone could hear me.
- 3 Very little advice was given. It was not clear what to do if I wanted to speak.
- 4 A guide on what the rules are would be helpful. I have never been made aware of them.
- 5 Information should be provided to parties in layman's language, especially with regard to the technology involved. There needs to be support to enable/encourage testing before a decision is made. I believe there is a Webex testing feature available.
- 6 I found moving into a virtual base removed the stresses usually associated with court of attendance.

Question 2 Clarity in rules

65% said too complicated

- 7 I was never asked. The decision about the hearing being held in-person or virtual was made without any input from me.
- 8 I was not given any options of alternatives to virtual hearing.

Question 3 Procedural Hearings

65% said problematic or caused confusion

Question 4 Confusion about procedural hearing

71% said there was confusion

9 The whole process is confusing. There's no guidance by the court as to what each hearing is for or what to expect. Your solicitor will talk you through it (at your expense) but it's difficult to grasp until you experience it.

10 It would appear to ultimately be the sheriff's decision and therefore not necessarily consistent. It would be good if there was a basic guide but it seems to be down to each solicitor to decide how much to explain.

Question 5 Impact on Justice

66% said virtual hearings have had a negative impact on access to justice

11 True and deep emotions of not seeing your kids is lost. Face to face in court is better. At least a father has a chance of showing their true selves. That is too important to be done virtually. I think all that is lost virtually.

12 I believe an experienced sheriff can gauge parties and their behaviours in person. In virtual hearings parties are normally kept hidden and it is difficult for sheriffs to see their reactions and behaviours.

13 We feel given the sensitive nature of our hearing that unless absolutely necessary the hearing should be in person. Granted it is an additional cost to those involved. However, from a personal point of view we would have preferred it.

14 Virtual hearings were more convenient but communicating with my solicitor while the hearing was taking place was impossible. That's a big loss.

15 In principle virtual hearings should have had a positive impact on access but only if the parties themselves can cope with the technology, and the set up enables audio and video with all participants. In practice it seems likely that the parties don't really get a say as virtual hearings suit the lawyers and the court. There is insufficient support to allow the individual to have the same awareness of proceedings as they would if appearing in person. The low level of legal aid fees (and the scarcity of legal aid solicitors) is likely to push solicitors to virtual or hybrid hearings and minimise the time they allocate to guiding their client.

Question 6 Impact on Open Justice

68% said virtual hearings have had a negative impact on open justice

Question 7 Telephone hearings

16 It is a cold way of dealing with something so important. There were problems with hearing what everyone was saying and no way of letting the sheriff know you want to speak apart from shouting. The sheriff does occasionally ask if you have anything to say but the moment has passed by then.

17 It was very impersonal and harder to understand what was going on.

18 It worked but I felt removed from the process. Webex was better.

Question 8 Experience of Webex

33% said good, 67% said needs improvement

19 Too many people were listening in.

20 There have sometimes been technical issues with various participants in hearings. I believe it would be useful to the sheriff to have multiple screens on their bench so he can see all parties.

21 My personal experience was one of frustration. It failed to work and I had no way of informing anyone that I could not log on. We were then left with having to contact our solicitor (at cost) to find out what had happened.

Question 9 More use of Webex hearings

41% said there should be more use of Webex hearings (27% said no)

55% said it does matter who is attending remotely (14% said it does not)

22 I feel people can lie more easily if they are remote. In court a sheriff can see faces and true emotions and what it means in the case.

23 All participants should appear in person. If they actually want to be heard, they should turn up.

24 Nothing really beats being in the room where you can gauge the mood, react quickly and get your points across. It also allows the sheriff to see if the parties are actually engaging.

25 I feel it suits more flexibility. Taking a whole day out of your work/life to attend a hearing tests your employer. A virtual hearing can be fitted in better.

26 I think the benefits outweigh the disadvantages. In my case I lost my daughter because contact was withheld for months while the court went through its agonising process.

27 Complex cases need to be had in person. Online is not good for these. People who aren't obeying court orders shouldn't be given the luxury of not turning up in person to explain themselves.

28 Hybrid hearings could overcome geographic disadvantage who might struggle with the time and expense of attending in person. However, attendance in person would allow for more positive participation without the technology becoming a hindrance. The most

important aspect would be that individuals should be given clear information on the options and allowed to decide for themselves rather than solicitors and courts deciding for them. They can have their own reasons for online that aren't to do with the case.

Question 10 Technical difficulties

61% said they had experienced technical difficulties

29 Difficult to connect and connection dropping off.

30 Sound not connecting on two occasions. Forced to reschedule. More time lost.

31 Constant problems. Webex doesn't seem to connect as well as some other well known video conferencing systems. It seems to lose connection too easily. It would help if the court could contact you if the link fails.

32 On more than one occasion the court had technical difficulties with audio and video. There should be a person employed by the courts to make sure the IT requirements are met. It was 2024 but felt like 2004.

33 I had no clue how it worked and it was not private. I had no idea who was viewing.

Question 11 Overall view

64% said more civil business should return to being held in person

34 I believe people are able to get away with so much more while online/Webex as they are just sitting looking at a screen. You can't get a sense of that person at all.

35 Generally, face to face is better as it removes the possibility of IT problems or lack of IT competence. The provision is that if either of the parties is not getting legal aid and their solicitor is not close to the court, the costs can get out of control.

36 My ex had her camera off most times. Noone could know if she was even there.

USER SURVEY HIGHLIGHTS (2024)

- ✓ 58% report increased contact with their children
- ✓ 20% improved communication with their ex-partner
- ✓ 67% experience less stress or anxiety
- ✓ 22% better communication with their child's school
- ✓ 21% improved communication with their children

21% said attending a Shared Parenting Scotland group meeting was “life-saving”.

16% found contact with the Shared Parenting Scotland helpline “life-saving”.

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REPORT

SHARED PARENTING SCOTLAND

Impact Report - 2024

Supporting separated mothers and fathers to share parenting, because children have a right to both parents



OUR REACH IN 2024

- ✓ 5,000+ engagements via helpline, WhatsApp, face-to-face support & outreach
- ✓ 511 fathers, mothers, and grandparents attended support meetings
- ✓ Policy and political engagements advocating for family law reform
- ✓ Increased support for minority ethnic groups and minoritised communities
- ✓ 35,000+ website visits for online support and training

SERVICE DELIVERY: SUPPORTING FAMILIES & STRENGTHENING RELATIONSHIPS

- ✓ 4,389 enquiries handled through helpline & digital support
- ✓ 22,000+ WhatsApp messages exchanged, offering 24/7 peer support in five regional and thematic groups
- ✓ 5+ monthly group meetings (online and in-person)
- “SPS helped me navigate an incredibly difficult time, giving me the confidence and knowledge to maintain contact with my child.” – Parent

ADVOCACY & OUTREACH: CHAMPIONING CHANGE

- ✓ Updated 'Representing Yourself in Family Court' guide with inclusive visuals & flowchart
- ✓ Meetings with policymakers & membership in key stakeholder groups influencing family law Partnership with Men Matter
- ✓ Scotland, providing weekly drop-in support sessions
- ✓ Growing engagement from mothers & grandparents
- ✓ Increasing engagement with local authorities on key policy issues affecting shared parenting
- ✓ Specialised services for 100s of veterans & families, supported by The Veterans Foundation
- ✓ Fortnightly Armed Forces & Veterans drop-in sessions at Lothian Veterans Centre
- “SPS's advocacy was instrumental in ensuring my voice was heard in family court.” – Veteran

POLICY & INFLUENCE: CREATING A FAIRER FAMILY JUSTICE SYSTEM

- ✓ Policy consultations & legislative contributions addressing user needs
- ✓ Secretariat for the Cross-Party Group (CPG) on Shared Parenting
- ✓ Active in other CPGs & international collaborations, including International Council of Shared Parenting
- ✓ Published 'Just a Quick Question' report, improving court communications
- ✓ Finalist in the Scottish Legal Awards 2024 (Community Contribution category)
- ✓ Increased partnership with organisations seeking to change perceptions of parenting in modern Scotland

TRAINING: SKILLS & CONFIDENCE-BUILDING FOR PARENTS

NEW WAYS FOR FAMILIES

Ten-module online course to help separated parents learn key behavioural skills to support themselves and their children through separation. which could allow you to avoid costly legal fees later on

- ✓ Increasing enrolment across Scotland and elsewhere in the UK

“The course material is varied and presented in a comprehensive way, including numerous formats such as videos, role-playing scenarios, journal and reflective exercises, and quizzes”
NWFF Coach

“I really wish I did the New Ways for Families course before commencing the court process. However, better late than never. Thanks for your help getting me on this course.” – Parent

LOVE, LOSS & LIVING

Interactive, 6-week online course with additional in-person training sessions to help you understand and manage the grief of being separated from your child(ren).

- ✓ Increased number of courses across Scotland
- ✓ 55 enquiries, 19 commenced, 15 completed
- ✓ Funding for courses from Edinburgh, Aberdeen, and Dundee
- ✓ 100% of participants improved their understanding of separation & grief

“The course gave me tools to manage my mental health and reconnect with my child” – Parent

AWARENESS & COMMUNICATIONS: RAISING VISIBILITY

- ✓ Increased media take-up of Shared Parenting Scotland press releases
- ✓ Growing social media engagement, boosting awareness of shared parenting.

“The information SPS shares online is invaluable – it helped me understand my rights and responsibilities as a parent.” – Parent

THE FUTURE: BUILDING A RIGHTS-RESPECTING SCOTLAND

Our work aligns with Scottish Government priorities in tackling poverty, reducing social isolation, preventing suicide, improving justice access, and legal reform. We continue to promote non-adversarial solutions, reducing stress for parents and protecting children's rights under the United Nations Convention on the Rights of the Child (UNCRC)

- ✓ Shaping policy & improving family law practices
- ✓ Educating and awareness-raising on UNCRC and shared parenting

Response 15 - anonymous

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?

The principle, virtual attendance for routine procedural business and in-person attendance for substantive business, is clear. In practice, however, application varies between courts, particularly where a party litigant is involved. Divergent local approaches to categorising hearings and to arranging virtual attendances make preparation more complex than it should be. A single national practice note for the sheriff courts, setting out expectations and illustrative examples, would provide the predictability the rules intend.

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?

Yes. Using a motion to seek departure from the default position is familiar and functions adequately for court practitioners.

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

Yes. Virtual procedural hearings have materially reduced travel time and cost for clients, especially in cases listed in rural courts. The principal inefficiency arises where all cases are fixed to call at the same time, requiring agents to wait online, sometimes for more than two hours, for a brief calling. Where courts allocate a dedicated time slot for each case, the efficiency gains of virtual hearings are fully realised. Wider adoption of slot-based listing would therefore be beneficial.

More generally, we have also observed some dip in formality by participants at virtual hearings (dress, environment, attention), which risks perceptions of reduced respect for the court and for opposing agents. A short “remote-etiquette” guidance note would help reinforce expected decorum.

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

Yes. Interpretations continue to vary across courts, with some hearings treated as quasi-substantive in one court but wholly procedural in another. As noted in response to Q1, a single national practice note for the sheriff courts would promote consistency.

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

Overall positive. Virtual hearings reduce geographical and cost barriers for represented parties. The friction point is hybrid capability: where a party litigant must attend in person and a courtroom cannot accommodate remote participation by the other party, hearings are adjourned, adding delay and expense. For example, not all courtrooms in Glasgow Sheriff Court are hybrid-enabled, which has resulted in adjournments.

In addition, the reduction in in-person procedural business has made it harder to secure local agents for short in-person listings; on occasion we have had to send a fee-earner to Glasgow for a five-minute procedural hearing after several local firms were unable to assist. Investment in more hybrid-enabled courtrooms would preserve the benefits of virtual procedure while avoiding adjournments and unnecessary travel.

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

Yes, generally positive. Virtual hearings can enhance openness when access links and observer processes are handled well. This is usually achieved, but not universally. See further at Q9.

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?

Generally satisfactory, but video is materially preferable where technology allows, offering clearer communication and better ability to gauge judicial cues.

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

WebEx is generally stable. A recurring issue is the provision of late joining instructions, often necessitating multiple emails to clerks to chase access details. Publishing service-level timelines for issuing joining instructions, together with a named escalation contact, would reduce wasted effort and anxiety around attendance.

Question 9 – Should more use be made of hybrid hearings and if so, how do you envisage these working? By hybrid hearings we mean a hearing where the judge or sheriff is sitting in court, with the potential for everyone to attend in person, and one or more other participants attend remotely. Does it matter who is attending remotely (eg lawyer, witness, party)?

Yes. Greater use of hybrid hearings would reduce adjournments and provide courts with flexibility. Minimum audio-visual standards and a brief pre-hearing technology check should be required where party litigants or remote witnesses are involved.

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?

The principal problems have been (i) room/equipment limitations for hybrid hearings, and (ii) late or missing virtual access instructions. Resolution is typically ad hoc: brief pauses to reconnect, informal engagement with clerks, or adjournment if the problem persists. A simple published fallback plan and clear service levels for joining instructions would make outcomes more reliable.

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.

We support virtual attendance for routine procedural business and in-person attendance for substantive hearings as the default structure. With modest, practical refinements (uniform guidance, slot-based listing, minimum hybrid standards, timely joining instructions, and clear remote-etiquette expectations) the system can deliver consistent, efficient hearings while preserving the formality and fairness required where credibility and witness assessment are central.

Response 16 – Clyde & Co

In the following, questions as put by the Scottish Civil Justice Council are in bold black font and answers from Clyde & Co are in bold blue font.

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?

The rules should be changed and accompanied by a Scottish civil courts-wide guidance note.

We are of the opinion that the rules should provide that -

- By default, all court hearings (at both Court of Session and sheriff court level) are conducted remotely, except for the following which, by default, are conducted in person -**
 - Proofs (including preliminary proofs and proofs before answer), jury trials (where competent), and debates.**
 - Any hearing where, at the time of that hearing, a party is not represented in the action by a Scottish solicitor. This includes hearings following withdrawal of solicitors when it may not be known whether the party is to be represented again in the action.**
- Any change to the default positions should require discussion, then agreement, in correspondence between the parties, with the court ordinarily, following agreement between the parties then joint correspondence with the court (i.e., not motion procedure) facilitating parties' joint requests.**

The drafting of guidance around these rules could usefully be based, as a starting point, on the All-Scotland Sheriff Personal Injury Court (ASPIC) guidance of 17 August 2022, effective from 1 September 2022, link [here](#).

In the re-drafting of this guidance note, it must be noted that it has been superseded by (i) the introduction of the current court rules on modes of attendance from 3 July 2023, and (ii) the fact that, as we understand it, no new Objective Connect workspaces are being created at ASPIC from 31 October 2025.

We add the following points on the hoped for new Scottish civil courts-wide guidance note

-

- It should be moulded around the hoped for new rules (noting again that the ASPIC guidance note pre-dates even the current rules).**
- It should not replicate paragraphs [28] (4) (c) and (d) of the superseded ASPIC guidance note that, when evidence is to be heard remotely, the core bundle of productions should be sent (in hard, physical copy) to each witness who will be referred to it, with instructions that the package sending it should be left sealed / unopened until after the proof commences and, after their evidence has been given, the contents must be returned to the (citing) party's agents. We see no need for this practice. In our experience, remote showing of productions to witnesses giving evidence remotely has worked well on the WebEx platform. There are at least two very good reasons for this practice not to be used - (a) it gives rise to data protection risk, and (b) the witness might well, let us assume inadvertently, open and consider the contents prior to giving evidence.**

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

The current process for requesting a change is cumbersome, especially at sheriff court level. Confusion also arises under the current rules by different courts doing different things, including entirely at the court's own instance. Our solution is part of our answer to question 1.

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

Overall, we think that remote attendance for procedural business has been a positive addition to the civil justice system in Scotland.

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

We are not aware of any confusion on what is meant by "a procedural hearing".

Confusion has arisen not on the meaning of words in the current rules but from the fact that different civil courts across Scotland have been, and are continuing to do, significantly different things on mode of attendance.

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

We know of no evidence of any impact on access to justice by Scotland's use to date of remote hearings in civil litigation.

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

We know of no evidence of any impact on open justice by Scotland's use to date of remote hearings in civil litigation.

We accept that considerations of access to justice and open justice are valid in this context.

Also valid are considerations of efficiency in litigation and cost-effectiveness of litigation, especially in a "full cost recovery" environment.

Our answer to question 1 takes, as we see it, due and sufficient account of all relevant considerations.

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?

Yes, many of our solicitors have attended a court hearing by telephone. Our general experience of such attendances is not good, for these reasons -

- One of the most important features of any court hearing is that people should not "talk over each other". All those permitted to speak in a court hearing will be heard but must wait their turn. The court must be able to impose discipline in this regard. That is not nearly as easy for the court in a telephone hearing as it is in a video conference. In the latter but not the former, a person can be muted, and a person can even be removed from the hearing, both with the minimum of disruption to the hearing and the court roll more generally. We have had several experiences in

telephone hearings of people “talking over each other”.

- The “visual” of video conferencing adds considerably to the audio experience. Absent a visual, one cannot adapt to visual “cues”. Absent a visual, one cannot assess whether a person is suitably situated, alone (or at least focused and uninterrupted) in a safe and secure environment, suitable for the taking part in a court hearing.
- Scheduling, which impacts on planning of a day’s work and efficiency in that work, has not always worked well for telephone hearings. For certain telephone hearings with which we have been involved, we were only told the day when the hearing would happen, which meant waiting, ready to speak “in court” for, sometimes, hours before the call happened. This has improved more recently with time slots for a call being given in advance and with courtesy calls from clerks if the call needs to be moved to a different slot. Scheduling, and awareness of one’s position in a queue, can work better with video conference remote hearings because, with those, one can log into the conference for the whole court roll for the day and get a better idea of where one is in the queue such that other work may more readily be carried out while one is waiting (i.e., knowledge that one is not immediately next, and broad knowledge of when one is likely to call, enables other work to be carried out with sufficient focus for certain periods).

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

We think that the WebEx platform is the best such platform we have experienced. We have been very impressed with the WebEx functionality and ease of use.

We wish to make one point on the operation of the platform in certain sheriff courts where the court roll for the day starts in person then, when in person hearings are all done for the day in that court, shifts to remote hearings. Some courts do not “start the link” at the start of the in person hearings. This means that those attending the court roll remotely see, on their screens, “not started yet” on trying that link when the court roll has, in fact, started (dealing with business in person). This can cause uncertainty on whether the link is the correct one and is working. Some courts do “start the link” at the start of the in person hearings. That is preferable because then those attending the court roll remotely are placed in a “holding room”. Being in such a room gives peace of mind that one is in court. Starting the link at the start of the court roll should be the standard practice.

9. Should more use be made of hybrid hearings and if so, how do you envisage these working? By hybrid hearings we mean a hearing where the judge or sheriff is sitting in court, with the potential for everyone to attend in person, and one or more other participants attend remotely. Does it matter who is attending remotely (e.g. lawyer, witness, party)?

In our experience, court attendance in the time since the first use of remote hearings as part of the Scottish civil justice system has worked best when all necessary people for the particular hearing attend by the same mode. That said, we see considerable scope for most expert evidence to ordinarily be given remotely.

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?

There have been some technical difficulties, more so in the early days, with remote hearings but, by and large, these have, in our experience, been dealt with efficiently with little or no impact on meaningful participation.

A lack of Wi-Fi for agents in certain of Scotland's sheriff courts is the root problem of the most frustrating difficulties we have encountered but presumably all of Scotland's sheriff courts now have strong and stable Wi-Fi for agents. If not, they certainly should.

Overall and by a considerable margin, our experiences with remote hearings have been more positive than negative.

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.

To the extent summarised in our other answers to questions in this consultation, we support remote hearings, for the reasons given in those answers. These reasons include efficiency in litigation and cost-effectiveness of litigation, especially in a "full cost recovery" environment.



Response 17 - Equality Human Rights Commission

Call for Evidence response

Modes of Attendance Rules

Call for evidence details

Title: Modes of Attendance Rules

Source: www.scottishciviljusticecouncil.gov.uk

Date: 22 December 2025

For more information please contact

Jennifer Laughland

Choose a building block.

0141 228 5910

Scotland@equalityhumanrights.com

Introduction

Who we are

1. We are Britain's equality and human rights regulator. Our human rights powers in Scotland extend to reserved matters. The Scottish Human Rights Commission has a mandate to promote and protect human rights in Scotland that fall within the competence of the Scottish Parliament.

How we have approached this response

2. We welcome the opportunity to respond to the Scottish Civil Justice Council's Call for Evidence on Modes of Attendance Rules.
3. We have only answered the questions relevant to our remit and where we feel we have value to add to the Scottish Civil Justice Council's consideration.

Equality legal framework

The Equality Act 2010

4. The Equality Act 2010 (the Act) prohibits discrimination, harassment and victimisation of protected characteristic groups. Our recommendations serve to reflect the obligations of the Act.

The Public Sector Equality Duty

5. The Public Sector Equality Duty (PSED), set out in section 149 of the Equality Act 2010, requires public authorities, including the Scottish Government, in the exercise of their functions, to have due regard to the need to:
 - eliminate discrimination, harassment and victimisation that is prohibited under the EA 2010
 - advance equality of opportunity between people who share a protected characteristic and those who do not
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it
6. This is known as the general duty. The broad purpose of the PSED is to advance equality by integrating consideration of non-discrimination, equality and good relations between and for protected groups into the day-to-day business of public authorities.
7. There are Scottish specific duties (SSDs) to support implementation of the general duty, which apply to certain listed authorities in Scotland.

Equality Impact assessments

8. A robust Equality Impact Assessment (EIA) is essential in determining the overall impact of the Rules against all three of the needs of the general duty of the PSED. This means making sure that the proposal does not unlawfully discriminate and thinking about how it will help to advance equality and foster good relations
9. We understand that the SCJC has previously carried out Equality Impact Assessment in relation to new rules. This is a useful step as the SCJC is covered by the PSED general duty and the Scottish Courts and Tribunal Service is covered by the general and Scotland specific duties. A similar, or revised, EIA should be carried out when considering a new rule or proposed rule change. An EIA must guide the development of new or refreshed policy, guidance or strategies which reflect the change in law.
10. An EIA should be updated periodically to ensure the actual impact of the change in rules is being reviewed, as per the needs of the SSDs.
11. The Scottish Civil Justice Council should ensure that, in developing the proposals being consulted upon, all equality law obligations have been met
12. For further guidance on equality impact assessments and the PSED, read our [Technical Guidance on the Public Sector Equality Duty in Scotland](#).

Questions

13. The Commission has responded to two questions in respect of this Call for Evidence: Question 5 - 'Have virtual hearings had a positive or negative impact on access to justice?' and 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?'

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

14. In June 2020 EHRC published findings and recommendations from its inquiry into the experiences of disabled defendants and accused people in the criminal justice system. That publication was titled '[Inclusive Justice: a system designed for all](#)'.
15. That inquiry focused on criminal justice but there are principles that can be looked at when considering justice in the civil courts.
16. A positive impact was that the use of technology can assist and empower disabled people but professionals must ensure it is used appropriately and does not isolate them. One result of this is that fewer people need to appear in court.
17. Negative impacts of virtual hearings identified included that professionals considered that video hearings do not enable people to participate effectively and reduces opportunities to identify if they have a cognitive impairment, mental health condition and / or neuro-diverse condition.
18. The report recommends that 'all relevant public bodies ensure any new court processes are designed with disabled people in mind. This should include a process to assess whether defendants (in the case of criminal trials) with impairments can participate fully in video hearings and whether that affects their outcomes.'

19. Overall, we recommend that, in reviewing the Consultation responses, the SCJC will need to consider whether they have sufficient relevant evidence including the views of people with protected characteristics about the impact of the categorisation of different types of hearings. More information about the requirement to consider relevant evidence (in terms of the Scotland specific duties) is available in para 6.31 onwards of the [Technical Guidance on the Public Sector Equality Duty: Scotland](#). The Guidance emphasises the importance of relying on objective evidence rather than stereotypes or assumptions about particular protected characteristics.

Overall do you support virtual attendance at court or do you feel that more civil business should return to being held in person?

20. Our 2020 report noted that “A system that is designed to be accessible to disabled defendants and accused people would shift focus away from adjusting a generally inaccessible system, to identifying and providing adjustments for those with the greatest need. This makes the whole system more effective, efficient and potentially less costly.”
21. We do not state a view on the volume of court business held virtually or in person but participants in the court process must be able to use an alternative process if the written or online system is not accessible to them.

Contacts

This publication and related equality and human rights resources are available from [our website](#).

Questions and comments regarding this publication may be addressed to: Scotland@equalityhumanrights.com. We welcome your feedback.

For information on accessing one of our publications in an alternative format, please contact: correspondence@equalityhumanrights.com.

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Response 19 - Society of Solicitor Advocates

Society of Solicitor Advocates response to Modes of Attendance - Call for Evidence

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?

The Sheriff Court Ordinary Cause Rules do not provide enough guidance or clarity.

Firstly, O.C.R 4A.2 refers to procedural business but the rules fail to define what is meant by that terms Secondly the rules do not give guidance on how a party can establish “cause shown” which would justify physical attendance at a hearing which would otherwise be held by “electronic means”.

In our experience, O.C.R. 4A.2(2) is frequently not used in cases involving party litigants. In addition, it is often not used in family actions where, under O.C.R. 33.36, parties are required to attend personally (although there seems to be no uniformity about the practice in applying that rule; some hearings are physical, some are hybrid and sum are wholly in person.

In the Court of Session, in general, the guidance is straightforward in respect of modes of appearance. There are some hearings, however, where there are inconsistencies. For example, in Case Management Hearings and some motions, the approach can be dependent on the preference of the judge rather than the general rule. Agents require to check the position with the court and make representations. A more consistent approach for each type of hearing would be helpful.

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?

Procedurally, it is easy; a motion is made under the appropriate rules. The complication lies in knowing what reasons or factors should be included in the motion which would justify the mode of attendance sought by the party making the motion. There is definitely a need for guidance.

Further, if the default position was clearer as to which hearings were remote, and parties then wished to make representations for an in-person hearing, that would make the process more straightforward. This could be achieved by a more comprehensive list of procedural hearings.

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

There needs to be a definition of “procedural business”. It is fair to assume that a proof or debate is not merely procedural, but a motion for summary decree or interim decree could have an impact not unlike that of a debate; are such motions “procedural” or not?

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

Yes. That is inevitable.

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

There are positives and negatives to virtual hearings.

The positives are that the technology works well and there is a saving in terms of time and costs for the profession and litigants who do not have to attend a particular court. It also means that principal agents can more easily attend procedural hearings instead of relying on local agents.

The negative effect is it is a barrier to litigants who dislike or are unfamiliar with computers or technology, which is likely to be those people who are already disadvantaged by a lack of education, reading or writing skills or qualifications etc or who do not customarily use computers, such as many elderly people. The courts are meant to accommodate the public that they are there to serve, not vice versa.

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

Negative. Courts are supposed to be open spaces, accessible to whoever wants to go and observe them. Even if many public benches in the courts are often empty, the opportunity needs to be given for people to go along and watch. Court business is public, something that seems to have been overlooked in the aftermath of the restrictions imposed during Covid lockdowns. Further, people should be encouraged to go and see the courts in action. Business there is not meant to be private. There is a public interest in making the courts as accessible as possible. Virtual hearings by their nature are exclusive. They are detrimental to open justice.

Having said that, there are some positives as mentioned in answer 5. Parties can access the court from a wide geographical area instead of incurring the expense and time necessary to travel to court.

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?

Yes. It was very convenient and worked well, saving time and cost.

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

It appears to be very successful. We cannot see any improvements that need to be made.

Question 9 – Should more use be made of hybrid hearings and if so, how do you envisage these working? By hybrid hearings we mean a hearing where the judge or sheriff is sitting in court, with the potential for everyone to attend in person, and one or more other participants attend remotely. Does it matter who is attending remotely (eg lawyer, witness, party)?

These are convenient but there is the danger of their disadvantaging the litigants who are not actually present in the courtroom. Audio quality can be challenging. This mode of attendance cuts down on expense to parties in relation to expert witnesses and assists with diary management.

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?

No, the system works very well in general.

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.

There are good arguments on both sides. Virtual attendance makes for reduced travel and waiting time, which benefits clients, the Scottish Legal Aid Board and insurers. Proofs should always be conducted in person unless in exceptional circumstances the standard of evidence is better. In person attendance is conducive to access to justice and it helps to allow less experienced lawyers see more experienced colleagues conducting business. This assists in lifting standards in the courts.

Response 20 - LSS

Consultation Response

Modes of Attendance – Call for Evidence

January 2026



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Civil Justice Committee and Access to Justice welcomes the opportunity to consider and respond to the SCJC Modes of Attendance – Call for Evidence. The Committees have the following comments to put forward for consideration.

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?

The Civil Justice Committee are of the view that, for the most part, there is sufficient guidance and clarity in the rules about the mode of court hearings. Overall, the changes to the rules have made it easier for both practitioners and unrepresented parties to conduct and participate in hearings. However, a few issues were raised on which the Committee would welcome more guidance and clarity.

The Civil Justice Committee noted that most procedural hearings are now held virtually via Webex. However, the Committee observed that the court rules provide no clear definition as to what constitutes a '*procedural hearing*' and would like further guidance or clarity in the court rules. See our response to Question 3.

It was also noted that there can be inconsistencies between the Sheriff Court and the Court of Session about the mode of a court hearing. For example, it was noted that different judges in the Court of Session have different approaches to how a hearing is conducted, and some Judges have been slow to return to in-person hearings, even for substantive matters. This can create uncertainty for solicitors

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as the mode of hearing is not usually confirmed until very late, making it difficult for agents to instruct Counsel.

The Access to Justice Committee commented that unrepresented parties can often struggle with basic aspects of virtual hearings—when to log in, when to speak, or how to mute/unmute themselves. It was also noted that party litigants are not being notified that “in person” attendance has been changed to online and vice versa, leading to some unrepresented parties coming to court when their case is in fact calling online.

Both Committees agreed that a short “code of conduct” or guidance note for party litigants attending online hearings would be extremely useful and welcomed. Simple reminders about microphone and camera use could also prevent disruption.

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?

The Civil Justice Committee noted no difficulties with requesting a change to the mode of court hearings. It was, however, noted that some courts require a formal motion to change the mode of a court hearing and/or a detailed, evidence-based justification. The Access to Justice Committee commented that this paperwork can often be difficult for unrepresented parties to complete. It was suggested that a standardised online form and clearer information about timescales and criteria for decision-making would make the process more transparent.

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

Overall, both Committees agreed that this approach has worked well as it saves time, reduces cost and enables smoother case management. However, as noted in Question 1, the Civil Justice Committee would welcome more clarity and guidance about what constitutes a ‘procedural hearing’ as they feel it is not well defined. An example was provided of situations where a procedural hearing is fixed but a more substantive hearing, such as an opposed motion, is then scheduled to call at the same time. It is unclear whether this hearing remains a procedural one or not, and this may lead to confusion about whether the hearing is calling virtually or in-

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person.

The Access to Justice Committee agreed, commenting that for unrepresented parties, who are trying to navigate the court rules themselves, it may not always be clear to them when a hearing is procedural or substantive.

It was noted that virtual hearings, even for procedural business, may be difficult for party litigants, who struggle with digital literacy or lack adequate access to technology, to access.

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

The Committees responses to Questions 3 and 1 above covers this question. They have nothing further to add.

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

The Civil Justice Committee said that virtual hearings have had a positive experience on access to justice in many respects. They have increased efficiency, reduced travel time and costs for solicitors, and allowed solicitors to represent remote clients more easily. However, it was noted that one potential downside of remote hearings is that the formality of the court process can be lost. The Committee noted that there are issues in the Sheriff Court with party litigants not knowing the court etiquette. A balance needs to be struck with regards to the formality of proceedings. If virtual hearings are overly formal, unrepresented parties, who may already find the process challenging, may struggle to participate. On the other hand, if the formality of proceedings is lost entirely then this may undermine the importance and seriousness of the hearing.

The Access to Justice Committee noted that, for the most part, virtual hearings have had a strong positive impact on access to justice. They allow participation by individuals who would otherwise face significant barriers—such as distance, disability, caring responsibilities, or residence abroad. For many participants, remote hearings have meant the difference between being able to take part in their hearing or not at all. Virtual hearings, therefore, promote fairness and efficiency. However, it was noted that there is no one size fits all approach.

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Concerns were raised about unrepresented parties who do not have, or struggle with, technology possibly being excluded from the court process due to a loss of in-person support that previously helped vulnerable court users.

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

The Civil Justice Committee considered that one of the downsides to virtual hearings is that the ability of members of the public to see the court process working is lost. For example, in the Sheriff Court, it was noted that a party requires an invitation from the court to log in to a virtual hearing. While the public can presumably email the Sheriff Clerk to request the link, this process is not comparable to a member of the public walking into court to watch justice in action. The Committee agreed that members of the public may not know who to contact to receive a Webex link, and that those without reliable internet may be unable to join virtual hearings. Such issues may deter members of the public from observing court proceedings.

The Access to Justice Committee agreed that virtual hearings can limit public access; however, the ability to livestream or register for observer links has effectively maintained transparency. Allowing people to watch some hearings online or by livestream has helped more people see how courts work, but there are still issues to consider, such as ensuring that privacy of participants is respected.

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

The Committees feel that telephone hearings are unsatisfactory and do not consider that they are an appropriate way to conduct hearings. It was noted that it is very difficult to conduct a hearing in which a substantive/contentious matter is being discussed on the telephone for the following reasons.

Telephone can be difficult for both solicitors and unrepresented parties to conduct hearings as there is no visible cues which often results in participants speaking

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over each other, making meaningful participation difficult. Poor sound quality, interference, and background noise can also hinder participation.

Another drawback of a telephone hearing is silence: there can be no “reading the room” or seeing the Sheriff’s reaction to arguments/submissions.

Further, it was observed that although solicitors are given a time slot for when they should expect a call, there is no system in place to notify the parties if the sheriff is running late due to other business. This can often result in solicitors and clients waiting without any indication of the reason for the delay, reducing the efficiency of the process.

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

The Civil Justice Committee noted that Webex is a good and secure platform from which to conduct virtual hearings for the most part. However, the Committee feel that document sharing is not that straightforward on Webex and issues can arise in this regard. It is not clear who can share documents during a hearing at times and some judges experience difficulties opening or navigating documents which can slow down proceedings. Both Committees proposed that additional training or screen-sharing tools could enhance efficiency.

Further, both Committees observed that technical issues can arise with Webex such as problems with sound, connection and accessibility. Better instructions, technical support from the court on the day of a hearing and clearer joining instructions would perhaps assist less experienced users.

Question 9 - Should more use be made of hybrid hearings and if so, how do you envisage these working? By hybrid hearings we mean a hearing where the judge or sheriff is sitting in court, with the potential for everyone to attend in person, and one or more other participants attend remotely. Does it matter who is attending remotely (eg lawyer, witness, party)?

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It was agreed that hybrid hearings can be beneficial in some situations, such as when an expert witness is in different part of the UK or abroad. Allowing the expert to give evidence remotely removes the need for them to take time away from work to travel to court and is more cost effective for the party instructing them.

However, it was noted that there are occasions when a solicitor and/or their client will dial into a hearing remotely while the other participants are sitting in court. In those situations, it was felt that the party appearing remotely is at a disadvantage because they are not physically in court. The screens in the court are set up in such a way that it can be difficult to see the person on screen, which can make participation more difficult. This can be problematic for a number of reasons, especially if the individual is vulnerable. It was suggested that equal visual access for all participants would improve the format as it is imperative that everyone feels included.

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?

The Committees noted no other technical issues apart from screen positioning in some courts and the ability to document share. Overall, it was felt that technical problems have been relatively rare, apart from the common issues of poor internet connection, camera or microphone malfunction, or occasional platform freezes. Court IT staff usually resolve these swiftly, allowing the hearing to continue meaningfully.

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.

While the Civil Justice Committee supported virtual attendance for procedural matters, they commented that in-person or hybrid hearings are still required for substantive business, complex cases or hearings where evidence is led such as proofs and debates. The Committee also noted some disadvantages of virtual attendance. These included the loss of informal, pre-hearing discussion with opposing agents which often helped to narrow or focus issues, and the difficulties

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in obtaining instructions from clients or providing instructions to Counsel when participants are in separate locations. Further, there was a concern amongst the Civil Justice Committee that online hearings have led to a loss of learning opportunities for younger lawyers as it is more difficult to observe other practitioners and learn advocacy skills in online settings.

Members of the Access to Justice Committee supported the continued use of virtual and hybrid hearings. They enhance efficiency, inclusivity, and sustainability. However, a single, blanket approach will not work. For cases involving vulnerable parties, complex evidence, or credibility assessments, the option of in-person attendance remains essential.

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