

Aberdeen City Council Legal Services consultation response

Question 6 – For the categories of case listed as suitable for an in-person hearing:

- Do you think the general presumption given is appropriate? and

Yes

- Would you make any additions or deletions and if so why?

Draft rule 28ZA.2.(e) states that legal debates which raise a point of law of general public importance/particular difficulty or importance will be heard in person. It is submitted that this should be broadened out to include all legal debates. Generally, debates require consideration of documentation (whether authorities or otherwise). The respondent's experience suggests that it is difficult to share documents using video conferencing software and address the court simultaneously. Accordingly, it is easier for such hearings to be held in person. As an alternative, where hearings are being held virtually and there is a requirement for documents to be shared on screen provision should be made so that documents can be shared by someone other than the solicitor appearing (e.g. sheriff clerk or bar officer).

It is submitted that provision should be made for cases where parties are unrepresented. The respondent has encountered cases where unrepresented parties have not had access to a suitable device and/or an internet connection to enable them to participate in a web ex hearing. This also begs the question of upon whom the onus to provide devices/connections to allow unrepresented parties to partake in virtual hearings will fall. During the pandemic Local Authorities provided IT equipment to families without internet access to ensure that all children could effectively participate in virtual and blended learning. In some instances the Local Authority struggled to secure the return of the equipment supplied and it also came to light that some individuals had been using the equipment for personal purposes unrelated to the education of their child. The respondent is concerned that similar issues may arise in, for example, permanence cases involving unrepresented parties if the Local Authority is expected to provide the means for such parties to participate in remote hearings. It may be that an appropriate response to this is the convening of a hybrid hearing whereby those participants without the appropriate equipment/connections attend court to join the virtual hearing from there and other parties attend virtually but guidance is required on the expectations here.

Question 7 – For the categories of case listed as suitable for attendance at a hearing by electronic means (both video or telephone attendance):

- Do you think the general presumption given is appropriate? and

Yes

- Would you make any additions or deletions and if so why?

It is submitted that applications for Child Protection Orders ("CPO's") should be specifically included. It is accepted that such hearings will be covered by draft rule 28ZA.3.(2)(dd) however it is submitted that given that such matters usually involve matters of some gravity for the individuals involved and that such applications are often heard *ex parte*, they merit specific mention. Since the onset of COVID-19 lockdowns CPO applications have been dealt with by telephone conference call which, in the respondent's experience, has led to better

use of court and solicitor time, increased efficiency in dealing with applications, and cost savings. The respondent considers that putting this on a statutory footing would ensure that this good practice which arose as a consequence of the pandemic continues.

Question 8 – The parties can apply to change the mode of attendance if their circumstances warrant a departure from the general presumption:

- Do you think lodging a motion is the right way to do that?

Yes, a motion is appropriate and would allow the applicant party to explain/justify why a departure from the general presumption is being sought, ensuring that the opposing party is given fair notice (and potentially the option to oppose the motion). Whilst the lodging of a motion may present a barrier to party litigants it is noted that party litigant would not be precluded from making an oral motion at a hearing or from inviting the Sheriff to invoke their the general dispensing power in cases where the rules of court have not been followed due to mistake, oversight or other excusable cause.

- Is there any need for an application form to accompany the motion (in similar terms to RCS)? Please explain your answers

Not if all the necessary information is contained within the motion itself (e.g. the nature of the motion and justification for same).

Question 9 – The courts can change the mode of attendance if circumstances warrant a different choice to the general presumption

- Do you agree that the court should have the final say? Please explain your answer

Yes, the court should have the final say to ensure that neither party is disadvantaged by the proposed mode of attendance. However, where there is an agreed position between the parties it is hoped that this would be adhered to by the court unless exceptional circumstances exist which justify a departure from the agreed position.

Question 10 – Do you have any other comments to make on the proposed changes within the Ordinary Cause Rules

The rules should provide for a uniform way of submitting authorities and productions to court. The respondent has encountered a variety of different practices at different Sheriff Courts and has, on occasion, had documents rejected on the basis that they are not in the format preferred by the particular Sheriff Court dealing with the case. It would be useful if practice was standardised so that practitioners are aware of the requirements for submitting documents.