



Law Society
of Scotland

Law Society of Scotland

Civil Courts Online Survey Summary- Analysis of Research

April 2021



Introduction

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

The coronavirus pandemic continues to affect each and every one of us. Over the last year we have had to adapt both our working and our personal lives in order to minimise the spread of infection and save lives. While there appears at present to be some progress with regard to easing of current restrictions, we will all be required to adapt our daily lives for the foreseeable future.

This research is the latest in a number of Covid-19 related reports by the Society since the outbreak of the pandemic which have been undertaken to gain a better understanding of the impact coronavirus has had on the profession.

It is anticipated that this research into remote civil court procedures and the use of technology in remote civil courts will help inform discussions with key stakeholders such as Scottish Government, Scottish Courts and Tribunals Service (SCTS) and Scottish Legal Aid Board (SLAB) as to how civil courts can better operate during the pandemic. Its findings should also build upon how the profession has already adapted during the pandemic and help contribute towards a more efficient and effective justice system for the future,

It is also anticipated that this research will help inform discussion and debate at a virtual conference to be held on 10th May 2021. This virtual conference is to be chaired by Sheriff Alistair Duff, Director of the Judicial Institute for Scotland at the request of Lord Carloway, the Institute's President. This conference will consider, among other things, how civil court business should operate post pandemic.

Methodology Responses to Questionnaire

The Society's Civil Justice Committee agreed on a series of survey questions which were incorporated into the questionnaire at Annex 1 to this report. The Society thereafter published the survey on its website, in Journal online, Lawscot News and social media inviting its members to respond. The survey was open from Friday 19 February 2021 and closed on Sunday 7 March 2021.

448 responses to the survey were received. According to the Society's records, 1013 solicitors currently carry out civil court work giving a response rate of 44%.

This is a high response rate in a relatively short time. Almost half of the available survey population responded to this survey over a two-week period.

We would very much like to thank all members who participated in the survey.

Summary

The response rate shows us that there is a fantastic level of engagement within the profession with regard to both the advantages and disadvantages of remote civil court working as disclosed in the survey's findings.

Our members have been generally positive about remote civil court working. Benefits such as the reduction in both travel and waiting time and cost savings were cited by a large number of respondents as well as remote civil courts being a useful addition to physical court appearances. Increased efficiency in court business was also considered an advantage by many respondents. Procedural hearings were thought to be working particularly well remotely by most respondents.

A majority of respondents stated that they would like to continue with remote hearings, particularly for procedural hearings, after the pandemic.

A significant number of respondents had, however, highlighted a number of issues, both with regard to the technology required for remote appearances. These included not having the right equipment, not having a good internet connection and not having had the appropriate training in the use of the technology required. Concerns were also expressed by some regarding the practical difficulties experienced with remote court hearings such as obtaining clients' instructions and clients struggling to fully understand and participate. Inconsistencies in the approach of different courts to remote hearings were also highlighted. Remote proofs and other evidential hearings were also cited by the majority of respondents as not working well and being less engaging for clients.

The Scottish solicitor profession has had to adapt to the changes brought about as a result of the pandemic in ways that may not have been anticipated at its outset in March 2020. The results of this survey disclose that our members who carry out civil court work continue to adapt and innovate in response to the challenges and opportunities brought about by remote court working. It is anticipated that consideration be given to remote courts operating post-pandemic, at least in those areas of work such as procedural hearings, unopposed motions and unopposed applications where it has been considered so far to be operating well.

It is also anticipated that better use of or upgrades to existing technology be considered as well as the necessary measures required to reduce the level of inconsistency of practice across Scottish courts at present.

In this respect, the Society welcomes the opportunity to continue its work with Scottish Government, SCTS and SLAB in order that this can be achieved.

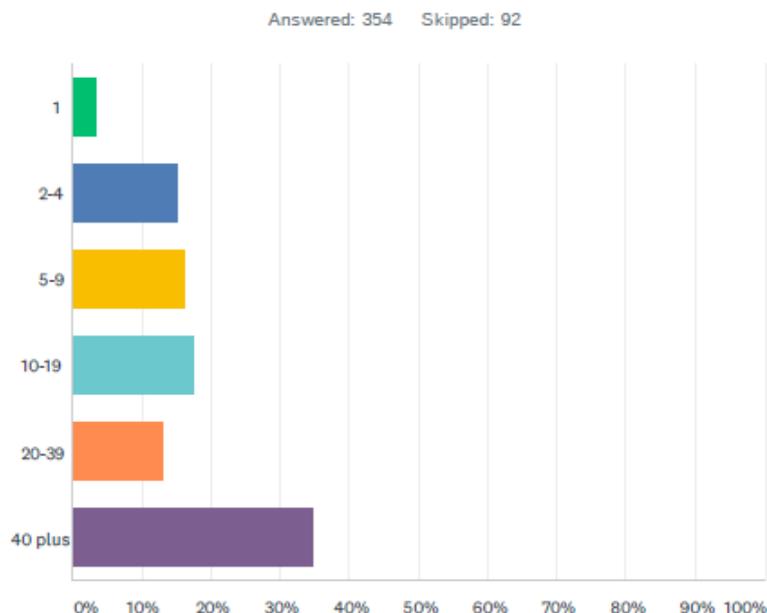
Responses to Questionnaire

The following charts provide respondents' answers to the questionnaire with some accompanying analysis

Q1. What is your IMIS number? (This is the membership record number which appears as part of your username for logging in to our website and is listed on your practising certificate.)

The first question asked respondents for their membership number to readily identify a number of key characteristics from the respondent which could be used in analysis. On the basis that this number could be provided, respondents could then skip to question 8. Those who could not provide their membership number were asked to complete the questions at 2-7.

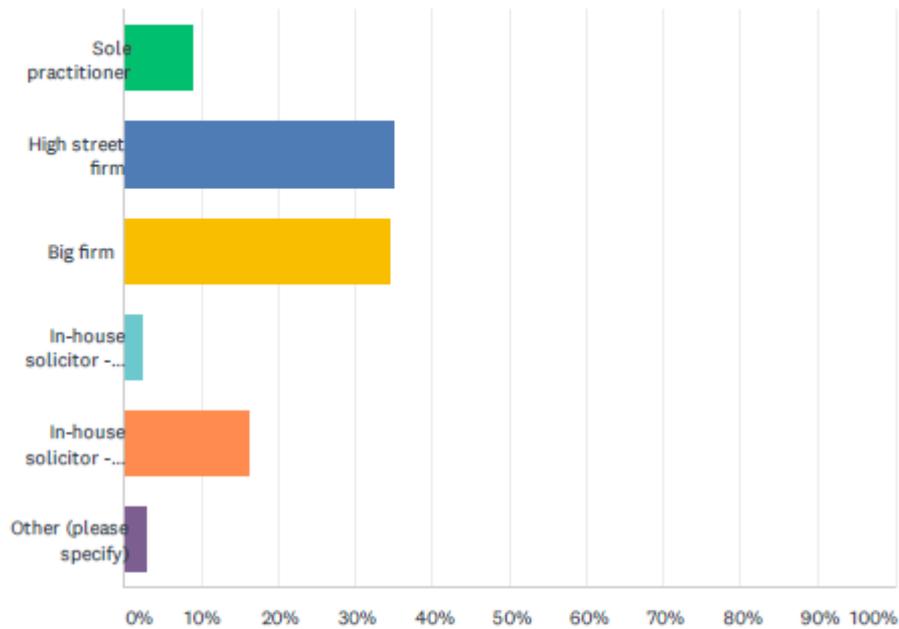
Q2. What is the size of the legal team in your firm/organisation, including solicitors, paralegals and trainee solicitors?



| ANSWER CHOICES | RESPONSES | |
|----------------|-----------|-----|
| 1 | 3.39% | 12 |
| 2-4 | 14.97% | 53 |
| 5-9 | 16.10% | 57 |
| 10-19 | 17.51% | 62 |
| 20-39 | 13.28% | 47 |
| 40 plus | 34.75% | 123 |
| TOTAL | | 354 |

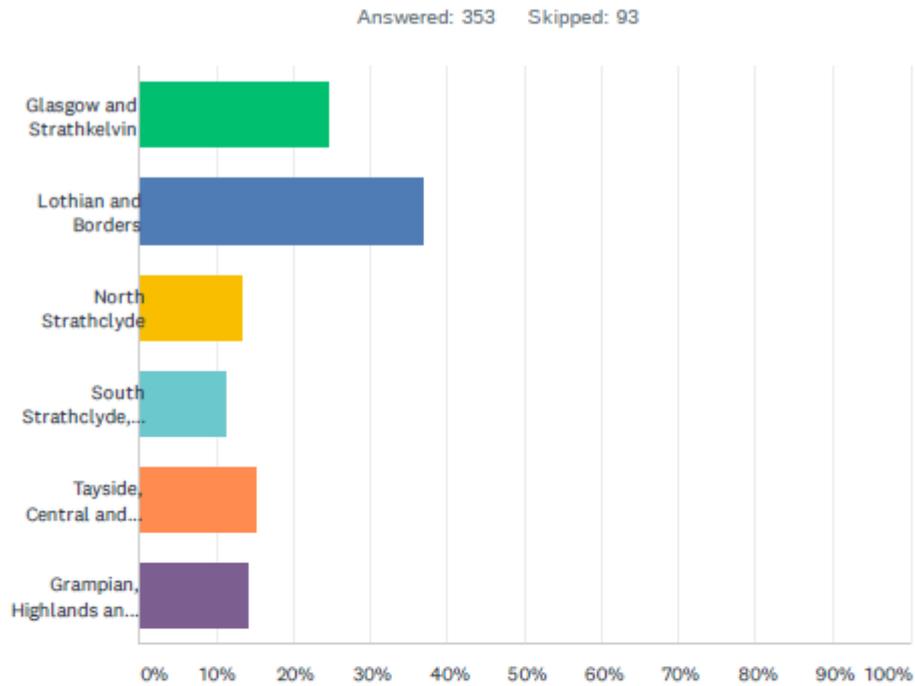
Q3. Which sector do you work in?

Answered: 353 Skipped: 93



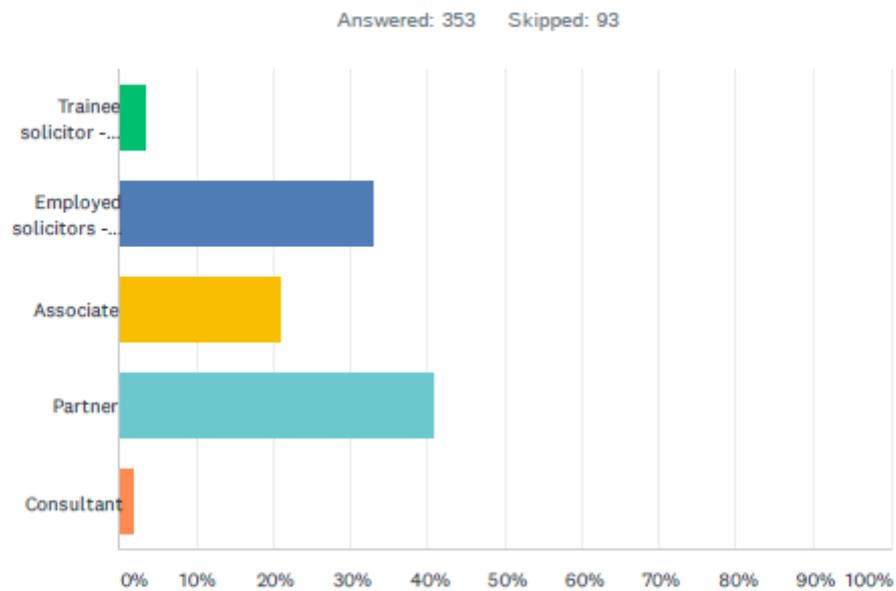
| ANSWER CHOICES | RESPONSES | |
|-------------------------------------|-----------|------------|
| Sole practitioner | 9.07% | 32 |
| High street firm | 35.13% | 124 |
| Big firm | 34.56% | 122 |
| In-house solicitor - private sector | 2.27% | 8 |
| In-house solicitor - public sector | 16.15% | 57 |
| Other (please specify) | 2.83% | 10 |
| TOTAL | | 353 |

Q4. In which sheriffdom do you principally appear in court?



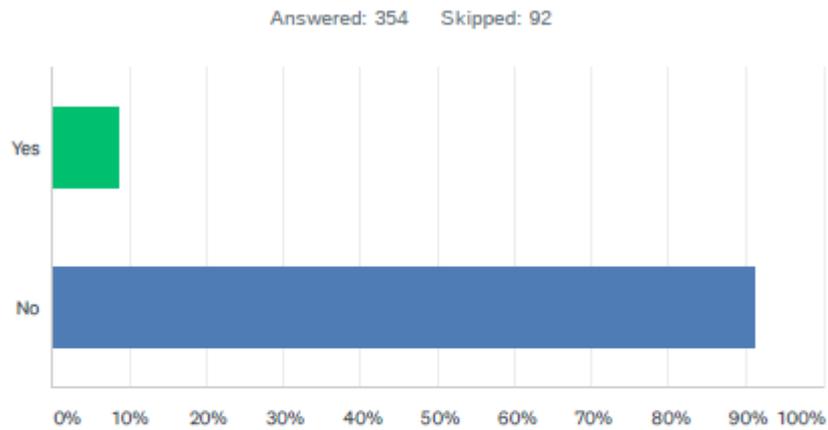
| ANSWER CHOICES | RESPONSES | |
|--|-----------|-----|
| Glasgow and Strathkelvin | 24.65% | 87 |
| Lothian and Borders | 36.83% | 130 |
| North Strathclyde | 13.31% | 47 |
| South Strathclyde, Dumfries and Galloway | 11.33% | 40 |
| Tayside, Central and Fife | 15.30% | 54 |
| Grampian, Highlands and Islands | 14.16% | 50 |
| Total Respondents: 353 | | |

Q5. Which of the following best describes your position in your firm/organisation?



| ANSWER CHOICES | RESPONSES | |
|---|-----------|------------|
| Trainee solicitor - private practice/ in-house public/ in-house private | 3.40% | 12 |
| Employed solicitors - private practice/ in-house public/ in-house private | 32.86% | 116 |
| Associate | 20.96% | 74 |
| Partner | 40.79% | 144 |
| Consultant | 1.98% | 7 |
| TOTAL | | 353 |

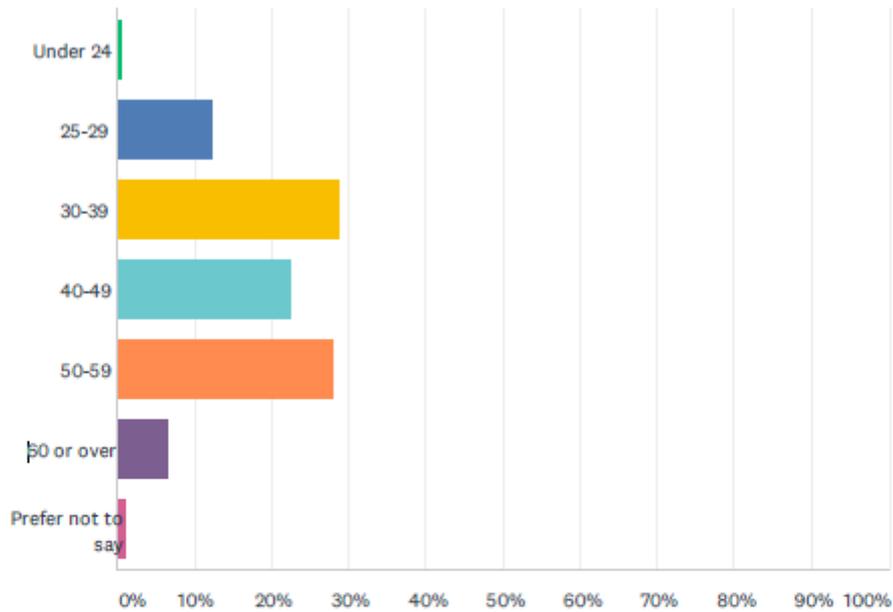
Q6. Are you a solicitor advocate with rights of audience in the Court of Session?



| ANSWER CHOICES | RESPONSES | |
|----------------|-----------|------------|
| Yes | 8.76% | 31 |
| No | 91.24% | 323 |
| TOTAL | | 354 |

Q7. Which of the following age brackets do you fall into?

Answered: 354 Skipped: 92



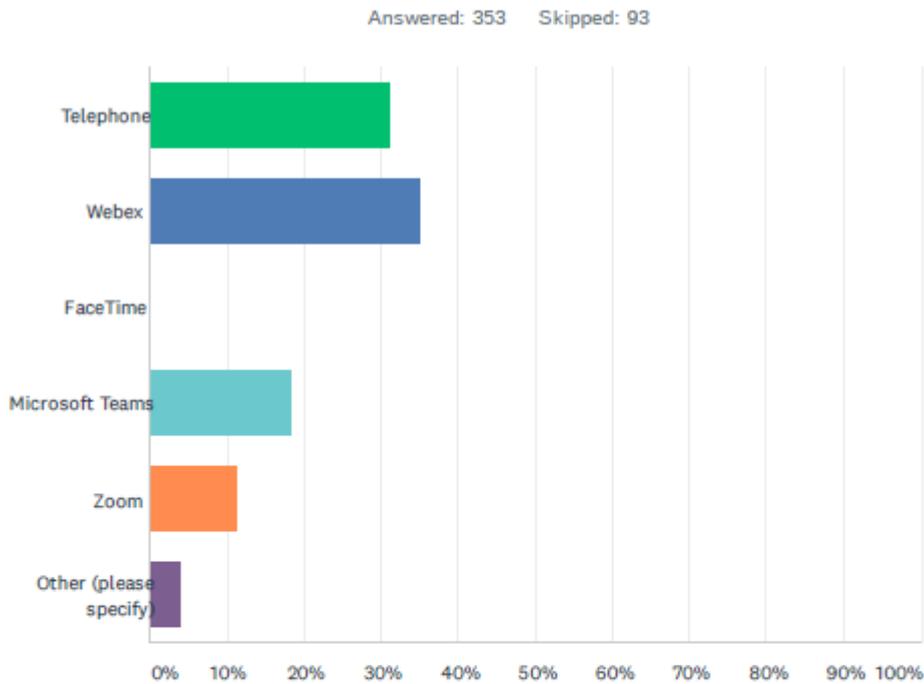
| ANSWER CHOICES | RESPONSES |
|-------------------|------------|
| Under 24 | 0.56% 2 |
| 25-29 | 12.43% 44 |
| 30-39 | 28.81% 102 |
| 40-49 | 22.60% 80 |
| 50-59 | 27.97% 99 |
| 60 or over | 6.50% 23 |
| Prefer not to say | 1.13% 4 |
| TOTAL | 354 |

Questions at 2-7 were asked in relation to-

2. size of legal team in firm/organisation.
3. sector the respondent works in.
4. sheriffdom the respondent principally appears in court.
5. respondent's position in firm/organisation.
6. whether the respondent was a solicitor advocate.
7. the respondent's age.

The responses received to questions 2 to 7 indicated that the survey sample was broadly representative of that sector of the profession which conducts civil court business as a whole and provides a sound basis for the survey's findings

Q8. On the basis that you cannot appear in court in person, what is your preferred method of remote appearance?

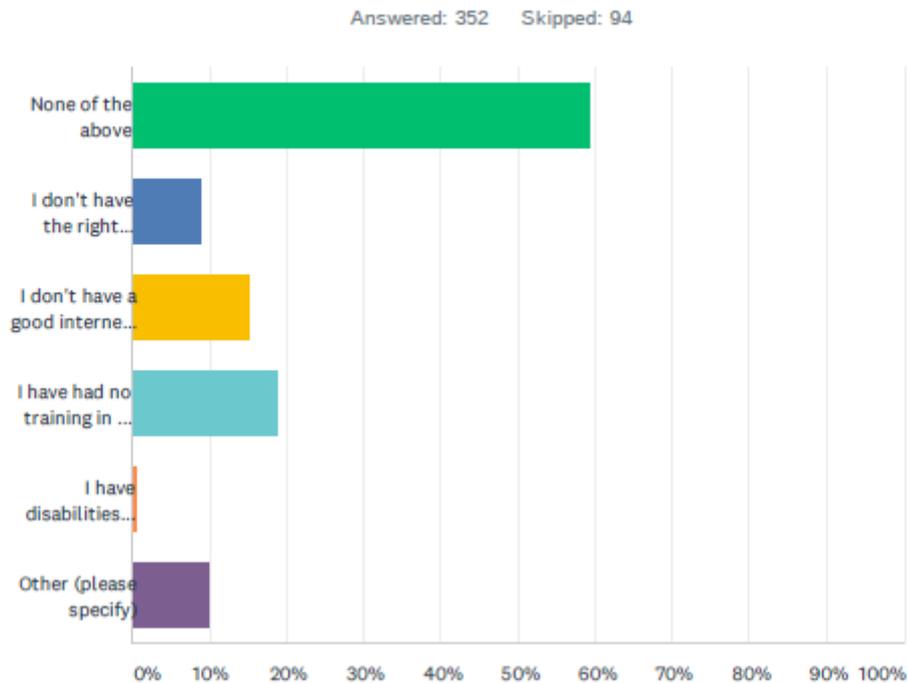


| ANSWER CHOICES | RESPONSES | |
|------------------------|-----------|------------|
| Telephone | 31.16% | 110 |
| Webex | 34.84% | 123 |
| FaceTime | 0.28% | 1 |
| Microsoft Teams | 18.41% | 65 |
| Zoom | 11.33% | 40 |
| Other (please specify) | 3.97% | 14 |
| TOTAL | | 353 |

Question 8 asked respondents for preferred method of remote appearance. 353 respondents answered. Roughly one third of respondents (31%) preferred telephone and just over one third (35%) preferred Webex. Microsoft Teams (18%) and Zoom (11%) were the other main preferred options.

The various means of being able to attend remotely tends to suggest that there is an inconsistency in courts' approach as referred to in the survey responses.

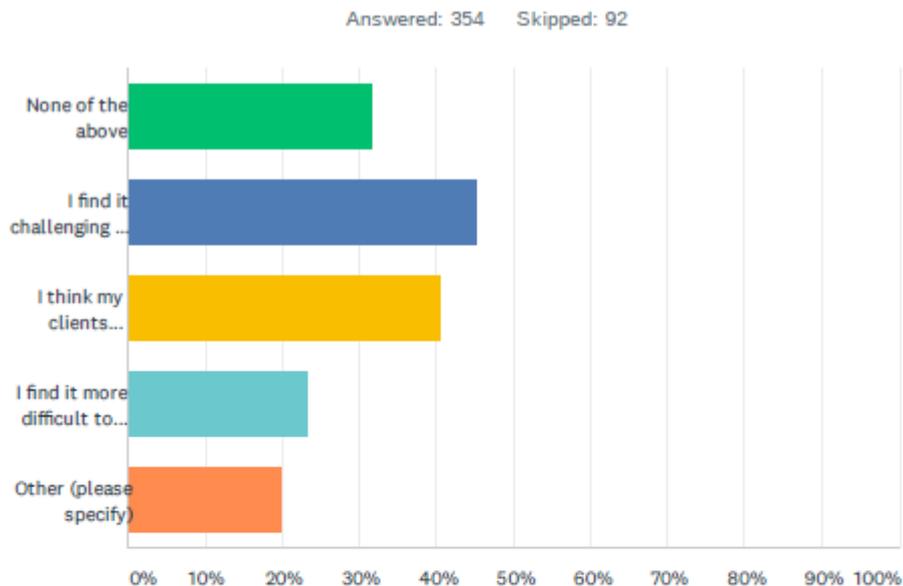
Q9. Which of the following present you with difficulties with the technology required for remote appearance? (Please select all which apply.)



| ANSWER CHOICES | RESPONSES | |
|---|-----------|-----|
| None of the above | 59.38% | 209 |
| I don't have the right equipment | 9.09% | 32 |
| I don't have a good internet connection | 15.34% | 54 |
| I have had no training in the use of the technology required | 18.75% | 66 |
| I have disabilities which make it harder to interact remotely | 0.57% | 2 |
| Other (please specify) | 9.94% | 35 |
| Total Respondents: 352 | | |

Question 9 related to difficulties with technology. 352 respondents answered this question and were invited to make multiple responses. The majority (59%) stated that they had no difficulty with technology. Out of those respondents who opted for the listed difficulties, 19% stated that they had no training in the use of the technology and 15% replied that they did not have a good internet connection. Two respondents cited disabilities which made it hard to interact remotely. Almost 10% stated other reasons such as an inconsistency of courts' approach, employers' IT security policy prohibiting the use of certain platforms and home- schooling arrangements resulting in issues around use of wifi in the home.

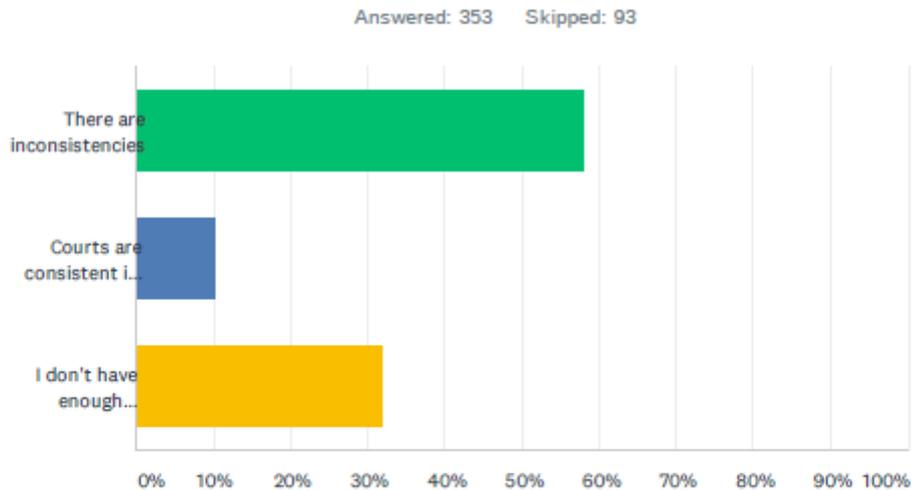
Q10. What other practical difficulties do you experience with remote court appearances? (Please select all which apply.)



| ANSWER CHOICES | RESPONSES |
|---|------------|
| None of the above | 31.64% 112 |
| I find it challenging to get instructions from my client during remote proceedings | 45.20% 160 |
| I think my clients struggle to fully understand/fully participate in remote proceedings | 40.68% 144 |
| I find it more difficult to articulate my position to the court remotely | 23.16% 82 |
| Other (please specify) | 19.77% 70 |
| Total Respondents: 354 | |

Question 10 asked about other practical difficulties experienced with remote court appearances. Respondents were invited to select more than one response. 354 respondents answered the question. While almost one third of respondents (32%) stated that they had no practical difficulties, 45% found it challenging to obtain clients' instructions during remote proceedings, 41% thought that their clients struggled to either understand or participate in remote proceedings and almost a quarter (23%) found it more difficult to articulate their position in remote proceedings. One fifth of respondents cited other difficulties such as no proper analysis of witness credibility, interruptions due to delays in speaking, difficulty in gauging the reaction of the sheriff and other participants, difficulty in liaising with other agents before proceedings commence and clients' lack of respect for the gravitas of proceedings when conducted remotely.

Q11. In your experience are remote hearings approached in a consistent way in different courts?

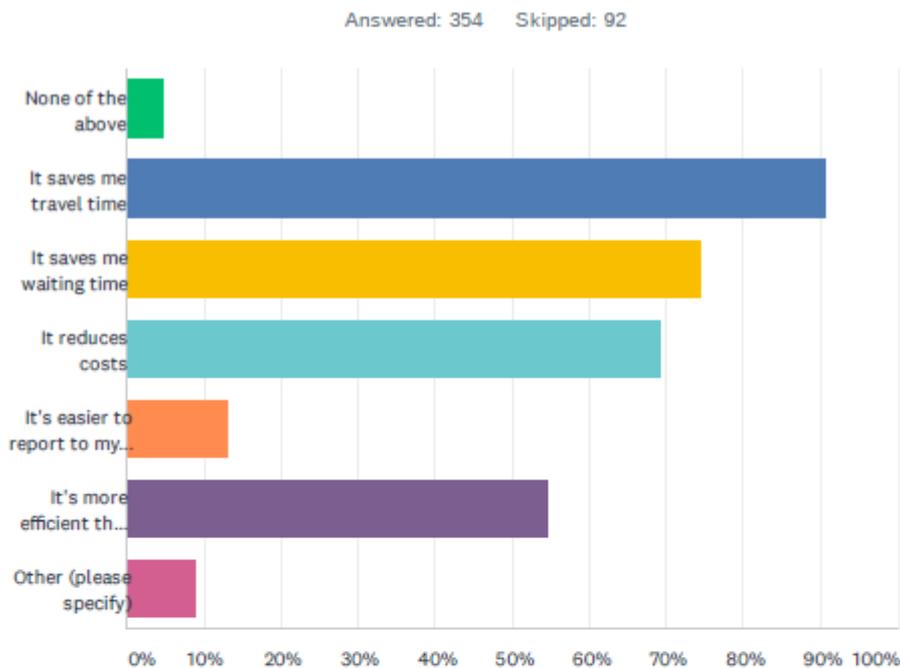


| ANSWER CHOICES | RESPONSES |
|--|------------|
| There are inconsistencies | 58.07% 205 |
| Courts are consistent in their approach in my experience | 10.20% 36 |
| I don't have enough experience of different courts to be able to comment | 31.73% 112 |
| TOTAL | 353 |

Question 11 related to whether, in respondents' experience, remote hearings are approached in a consistent way in different courts. 353 respondents answered this question. 58% stated that there were inconsistencies, 10% stated that courts were consistent and 32% stated that they did not have enough experience to comment.

Inconsistencies cited included different time limits for written submissions, some courts required written submissions while others did not, different remote platforms for different courts, some courts calling the agent and others asking the agent to dial in. Also, there were differences in timings of hearings with some courts allocating specific times for each hearing while others allocated a fixed time for all hearings that days resulting in agents having to keep the remote link clear until their case called.

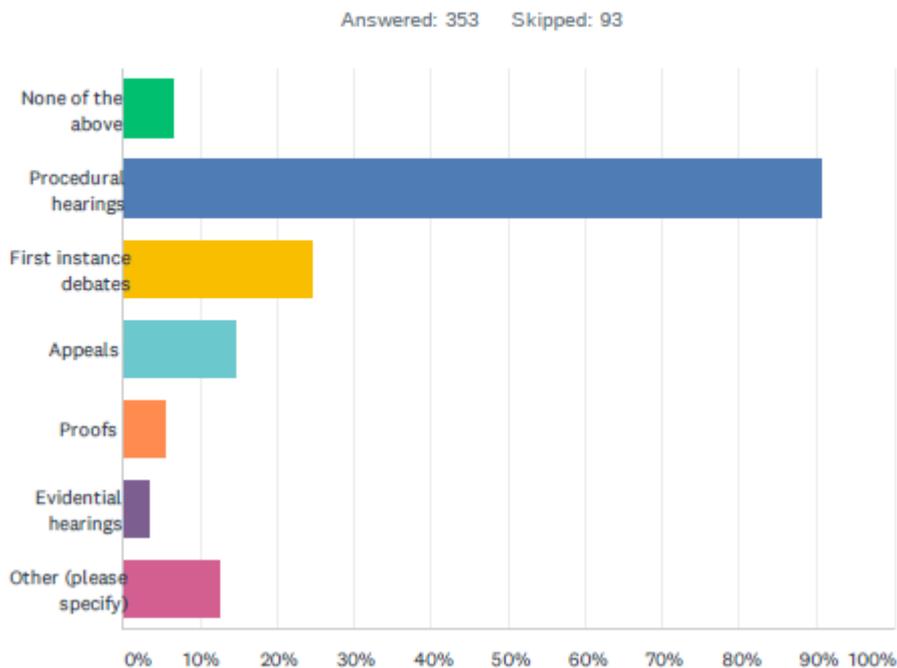
Q12. What are the benefits, if any, of using technology in relation to remote civil courts? (Please select all which apply.)



| ANSWER CHOICES | RESPONSES | |
|--|-----------|-----|
| None of the above | 4.80% | 17 |
| It saves me travel time | 90.68% | 321 |
| It saves me waiting time | 74.58% | 264 |
| It reduces costs | 69.21% | 245 |
| It's easier to report to my clients | 13.28% | 47 |
| It's more efficient than being personally present in court | 54.52% | 193 |
| Other (please specify) | 9.04% | 32 |
| Total Respondents: 354 | | |

Question 12 asked about the benefits, if any, of using technology in relation to remote civil courts. Respondents were invited to select more than one response. 354 respondents answered. The vast majority (91%), indicated that it saved travel time, 75% that it saved waiting time, 69% that it reduced costs and over half (55%) that it is more efficient than being personally present in court. From the 9% who indicated other benefits, one respondent cited the benefit in instructing expert witnesses on a national basis without increasing cost. Another mentioned the benefit of appearing remotely in geographically distant courts. The benefit of keeping staff safe was also mentioned as was the reduction in one's carbon footprint.

**Q13. Which aspects, if any, of civil court procedure do you think work particularly well remotely?
(Please select all which apply)**



| ANSWER CHOICES | RESPONSES |
|------------------------|------------|
| None of the above | 6.52% 23 |
| Procedural hearings | 90.65% 320 |
| First instance debates | 24.65% 87 |
| Appeals | 14.73% 52 |
| Proofs | 5.38% 19 |
| Evidential hearings | 3.40% 12 |
| Other (please specify) | 12.46% 44 |
| Total Respondents: 353 | |

Question 13 asked which aspects, if any, of civil court procedure do respondents think work particularly well. Respondents were invited to select more than one response. 353 respondents answered. The vast majority (91%) indicated procedural hearings, 25% first instance debates, 15% appeals, 5% proofs and 3% evidential hearings. From the 12% who indicated other aspects, child welfare hearings, child protection orders, unopposed motions and applications and adults with incapacity hearings were mentioned. 7% indicated that no aspects of civil court technology worked particularly well.

Q14. Please use this space to provide reasons for your answer to the previous question:

Answered: 314 Skipped: 132

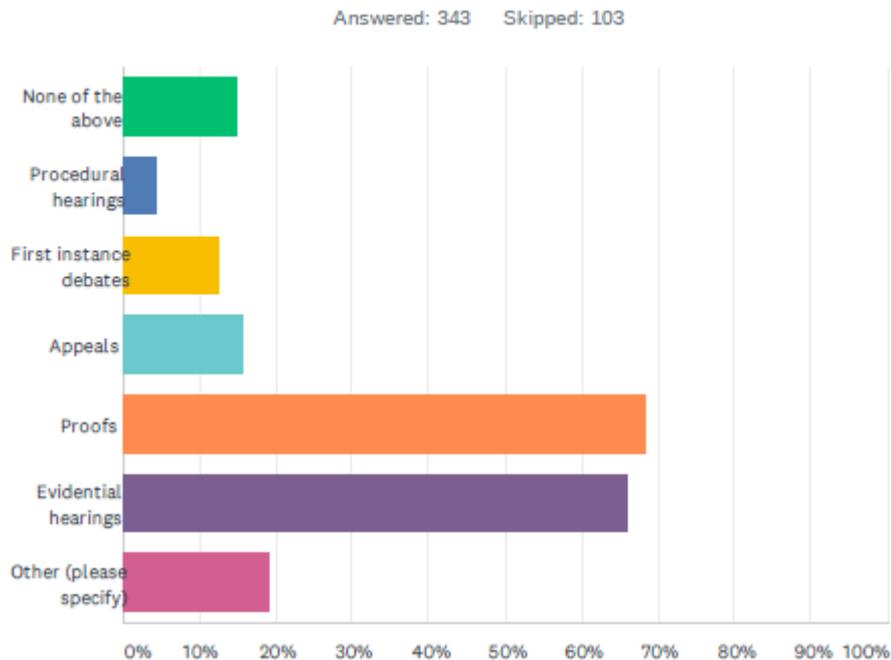
Question 14 provided respondents an opportunity to provide reasons for their responses at question 13. 314 responses were provided. Among those responses, some common themes were:

- (i) In comparison with proofs, procedural and administrative hearings are already relatively short. Conducting them remotely means that a larger number can be undertaken without having to factor in travel time.
- (ii) The benefit of dealing with short procedural hearings and unopposed applications remotely as opposed to more contentious proofs or child welfare hearings.
- (iii) Applications could be both lodged and determined more quickly when undertaken remotely.
- (iv) The benefits of no travel and waiting time.
- (v) The benefit of not having to attend court for a procedural/administrative calling.

In terms of specific comments, one respondent noted the benefit of not having to instruct local agents if no physical court appearance is required. Another saw a benefit in dispensing with urgent local authority applications remotely. Another respondent remarked upon the increased benefit of not having to travel long distances to make personal appearances in sheriff courts in different parts of the country.

Some respondents commented on the benefit of remote proofs from a time saving perspective.

**Q15 Which aspects, if any, of civil court procedure do you think do not work at all well remotely?
(Please select all that apply.)**



| ANSWER CHOICES | RESPONSES |
|------------------------|------------|
| None of the above | 14.87% 51 |
| Procedural hearings | 4.37% 15 |
| First instance debates | 12.54% 43 |
| Appeals | 15.74% 54 |
| Proofs | 68.51% 235 |
| Evidential hearings | 66.18% 227 |
| Other (please specify) | 19.24% 66 |
| Total Respondents: 343 | |

Question 15 asked which aspects, if any, of civil court procedure do respondents think do not work particularly well. Respondents were again invited to select more than one response. 343 respondents answered. 69% indicated proofs, 68% evidential hearings, 16% appeals, 13% first instance debates and 4% procedural hearings. 15% answered none of the above.

Interestingly, there was more than double the number of respondents who answered “none of the above” to this question on what was not working well, compared with respondents who answered “none of the above” in response to question 13 which related to which aspects of remote court procedure were working well.

From the 19% who indicated other aspects, child welfare hearings, more complex proofs, contentious hearings and opposed applications were mentioned.

Q16. Please use this space to provide reasons for your answer to the previous question:

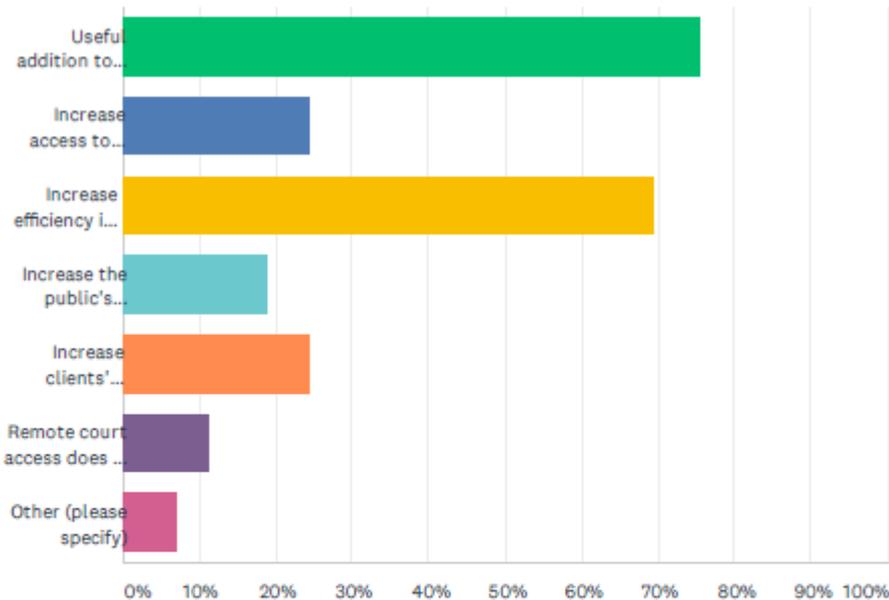
Question 16 provided respondents with an opportunity to provide reasons for their responses to question 15. 286 responses were provided. Among those responses, some common themes were:

- (i) Difficulties in assessing witness credibility and reliability remotely.
- (ii) The loss of the formality of court proceedings when conducted remotely,
- (iii) The lack of opportunity for proper face to face interaction (with other agents, with witnesses and with the bench)
- (iv) Clients feeling disconnected/disengaged from proceedings.
- (v) General difficulties in effective participation in proceedings
- (vi) General difficulties with technology.
- (vii) The need for all parties' personal presence in a courtroom

One respondent commented specifically on the difficulties encountered with witnesses providing evidence from their own home when distracted by, for example, doorbells etc. Another commented on the lack of uniformity in how productions are displayed to witnesses in remote proceedings which once more highlights inconsistencies in different courts' approach as referred to in this summary.

Q17. In what way would you suggest that remote court access improves the civil justice system, if at all? (Please select all which apply.)

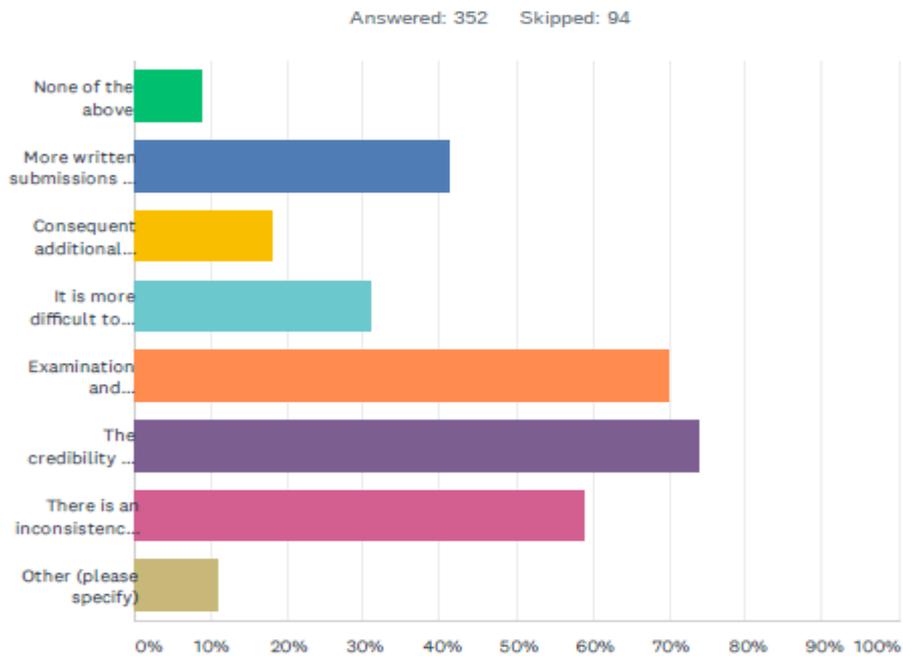
Answered: 351 Skipped: 95



| ANSWER CHOICES | RESPONSES |
|---|------------|
| Useful addition to physical court appearances | 75.50% 265 |
| Increase access to justice | 24.22% 85 |
| Increase efficiency in court business | 69.52% 244 |
| Increase the public's accessibility to the courts | 18.80% 66 |
| Increase clients' accessibility to the courts | 24.22% 85 |
| Remote court access does not improve the civil justice system | 11.40% 40 |
| Other (please specify) | 6.84% 24 |
| Total Respondents: 351 | |

Question 17 asked respondents in what way they would suggest that remote court access improves the civil justice system, if at all. Respondents were invited to select more than one answer. 75% stated that remote court access was a useful addition to physical court appearances, 70% that it increased efficiency in court business, 24% that it increased access to justice, 24% that it increased clients' accessibility to the courts and 19% that it increased the public's accessibility to the courts. 11% stated that remote court access does not improve the civil justice system and 7% mentioned other improvements such as allowing for the expansion of options for expert witness evidence without increasing costs, the continued operation of courts in bad weather, increased safety during the pandemic and taking evidence from child and vulnerable witnesses and witnesses who may be abroad.

Q18 In what way do you think that remote courts by way of increased use of technology have had detrimental effect on the civil justice system? (Please select all which apply.)

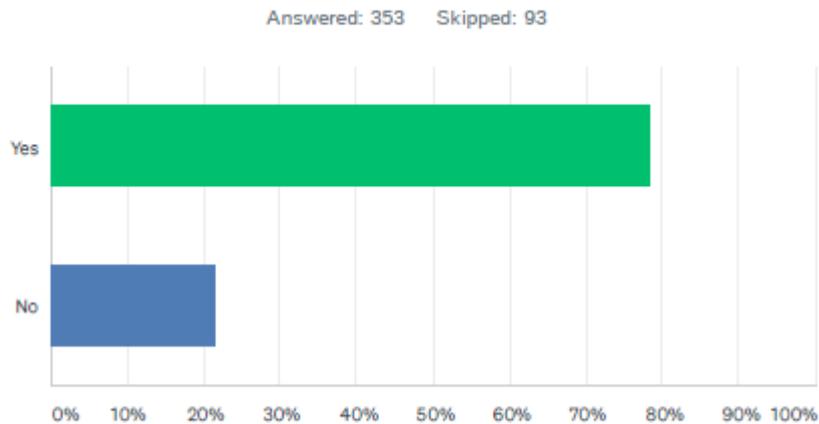


| ANSWER CHOICES | RESPONSES |
|---|------------|
| None of the above | 8.81% 31 |
| More written submissions are required in advance | 41.19% 145 |
| Consequent additional expense is incurred in having to purchase/upgrade my existing technology | 17.90% 63 |
| It is more difficult to make an oral submission before the court in remote proceedings | 30.97% 109 |
| Examination and cross-examination of witnesses is more difficult in remote proceedings | 70.17% 247 |
| The credibility and reliability of witnesses is harder for the judge/sheriff to ascertain in remote proceedings | 73.86% 260 |
| There is an inconsistency of approach across the court/tribunal estate | 59.09% 208 |
| Other (please specify) | 11.08% 39 |
| Total Respondents: 352 | |

Question 18 asked in what way respondents thought that remote courts by way of increased use of technology had had a detrimental effect on the civil justice system. Respondents were invited to select more than one answer. 352 respondents answered. 74% stated that the credibility and reliability is harder for the judge/sheriff to ascertain in remote proceedings, 70% that examination and cross examination of witnesses is more difficult in remote proceedings, 59% that there is an inconsistency of approach in the court/tribunal estate, 41% that more written submissions are required in advance, 31% that it's more difficult to make an oral submission before the court in remote proceedings and 18% that there was consequent additional expense in having to upgrade existing technology. 9% stated none of the above and 11% stated other detrimental effects such as data protection issues around which productions witness have a right to access, general

access to justice issues, particularly for party litigants and remote advocacy being more tiring (than a physical court appearance).

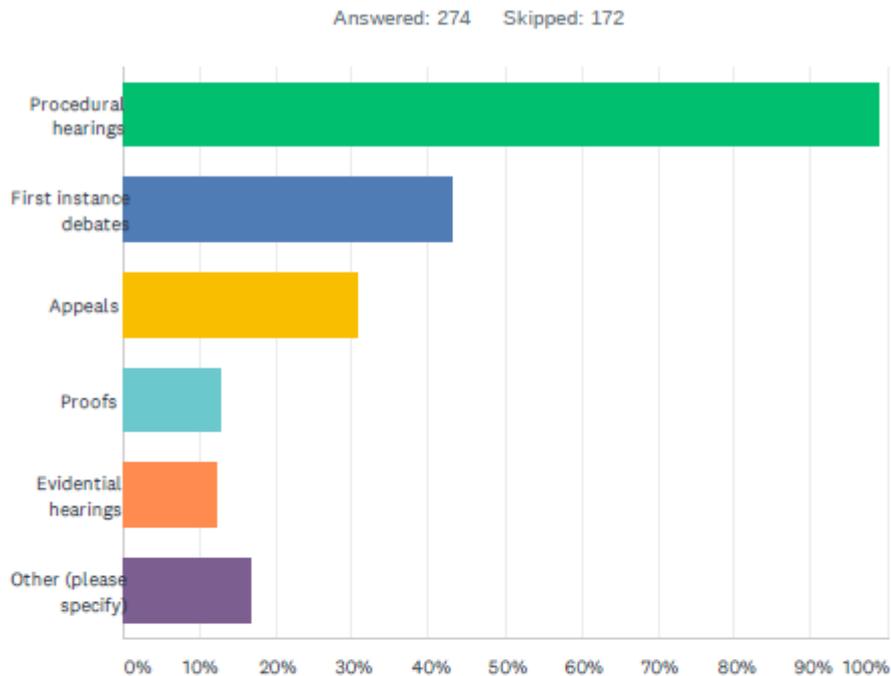
Q19. After the Coronavirus pandemic would you like to continue with remote court hearings?



| ANSWER CHOICES | RESPONSES | |
|----------------|-----------|-----|
| Yes | 78.47% | 277 |
| No | 21.53% | 76 |
| TOTAL | | 353 |

Question 19 asked respondents if they would like to continue with remote court hearings after the pandemic. 353 respondents answered. 277 (78%) answered yes and 76 (22%) answered no.

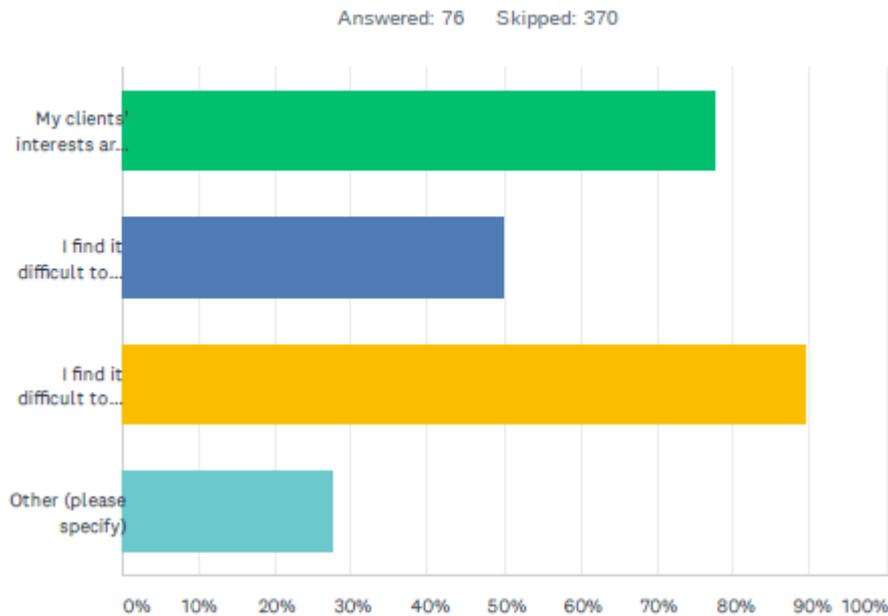
Q20. Which aspects of civil court procedure would you like to see continue remotely? (Please select all which apply.)



| ANSWER CHOICES | RESPONSES | |
|------------------------|-----------|-----|
| Procedural hearings | 98.91% | 271 |
| First instance debates | 43.07% | 118 |
| Appeals | 30.66% | 84 |
| Proofs | 12.77% | 35 |
| Evidential hearings | 12.41% | 34 |
| Other (please specify) | 16.79% | 46 |
| Total Respondents: 274 | | |

Question 20 asked respondents which aspects of civil court procedure would they like to continue remotely. They were invited to select more than one response. 274 respondents answered. Almost all respondents, 271 (99%) stated procedural hearings, 43% first instance debates, 31% appeals, 13% proofs and 12% evidential hearings. From the 17% who opted for other aspects, child welfare hearings, opposed motions, child protection orders and adults with incapacity hearings were mentioned.

Q21 Why would you not like to continue with remote court hearings? (Please select all which apply.)



| ANSWER CHOICES | RESPONSES |
|---|-----------|
| My clients' interests are at a disadvantage if hearings are remote | 77.63% 59 |
| I find it difficult to effectively participate due to technological issues such as connectivity | 50.00% 38 |
| I find it difficult to effectively participate due to practical issues such as examination and cross-examination of witnesses | 89.47% 68 |
| Other (please specify) | 27.63% 21 |
| Total Respondents: 76 | |

Question 21 asked respondents why they would not like to continue with remote court hearings and were invited to select more than one response. 76 respondents answered this question. 59 (78%) stated that their clients' interests were at a disadvantage, 68 (89%) stated that they find it difficult to effectively participate due to practical issues such as examination and cross examination of witnesses, 38 (50%) that they find it difficult to effectively participate due to technological issues such as connectivity and 21 (28%) referred to other reasons such as clients being less able to understand remote procedure, lack of ability to discuss and negotiate (with other parties) prior to a hearing, there being no substitute for in person hearings, and again the lack of formality.

However, this question has a very low response rate of only 76 respondents who indicated a reason as to why they would not like remote courts to continue. This should be considered in the context of the 277 respondents who, in answer to question 19 above, indicated that they would like remote courts to continue and the 274 respondents who answered question 20 by indicating the aspects of civil court procedure which they would like to continue.

Annex

1. What is your IMIS number? (This is the membership record number which appears as part of your username for logging in to our website and is listed on your practising certificate.)
2. What is the size of the legal team in your firm/organisation, including solicitors, paralegals and trainee solicitors?
3. Which sector do you work in?
4. In which sheriffdom do you principally appear in court?
5. Which of the following best describes your position in your firm/organisation?
6. Are you a solicitor advocate with rights of audience in the Court of Session?
7. Which of the following age brackets do you fall into?
8. On the basis that you cannot appear in court in person, what is your preferred method of remote appearance?
9. Which of the following present you with difficulties with the technology required for remote appearance? (Please select all which apply.)
10. What other practical difficulties do you experience with remote court appearances? (Please select all which apply.)
11. In your experience are remote hearings approached in a consistent way in different courts?
12. What are the benefits, if any, of using technology in relation to remote civil courts? (Please select all which apply.)
13. Which aspects, if any, of civil court procedure do you think work particularly well remotely? (Please select all which apply)
14. Please use this space to provide reasons for your answer to the previous question:
15. Which aspects, if any, of civil court procedure do you think do not work at all well remotely? (Please select all that apply.)
16. Please use this space to provide reasons for your answer to the previous question:
17. In what way would you suggest that remote court access improves the civil justice system, if at all? (Please select all which apply.)
18. In what way do you think that remote courts by way of increased use of technology have had

detrimental effect on the civil justice system? (Please select all which apply.)

19. After the Coronavirus pandemic would you like to continue with remote court hearings?
20. Which aspects of civil court procedure would you like to see continue remotely? (Please select all which apply.)
21. Why would you not like to continue with remote court hearings? (Please select all which apply.)



For further information, please contact:

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