

Consultation Response

Scottish Civil Justice Council

Modes of Attendance – Call for Evidence

January 2026



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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 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

speaking, 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-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. 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 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)?

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 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.

**For further information,
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