

**Advice and information on appearances after early admission**

1. **Background**
	1. The ‘*Guidance notes for training managers’* notes that training managers are responsible for certain functions including: “*allocating work and tasks of an appropriate level, gradually increasing the level and complexity of the work over time including a fair allocation of work between trainees, whilst encouraging a trainee to suggest solutions*.”
	2. The Guidance notes outline that: “*The Admission Regulations allow for trainee solicitors to apply for admission after they have completed their first PEAT 2 Quarterly Performance Review and having successfully completed mandatory sitting in and the required advocacy course. Separate guidance outlines these matters as well as the range of activities a trainee can undertake once admitted. Training Managers are responsible for determining that a trainee solicitor is fit and proper to be admitted. Training Managers are reminded that this is a solemn duty of the utmost importance. More than this, it is of fundamental importance that trainee solicitors – particularly those admitted early – are only allocated work that they are ready and competent to undertake*.”
	3. Trainees should not be allocated work without adequate training, adequate supervision, and without having gained sufficient knowledge and experience in the area of work which they are seeking to carry out.
	4. This advice and information looks to assist compliance with the guidance notes for training managers and to ensure that trainees are supported as they begin appearing on behalf of clients.
	5. Training managers should not have hard and fast ideas of how soon a given trainee will appear on behalf of clients. Whilst a training manager may well plan for appearances shortly after admission that should only occur if the trainee is ready, able and competent to do so.
2. **Support prior to first appearance**
	1. Any trainee admitted between the end of month 3 and the end of month 12 of their traineeship must undertake 20 hours of sitting-in with solicitors from their training unit in courts that they will be eligible and likely to appear in once they are admitted and have a practising certificate. Trainees must also undertake a required advocacy course. The Admissions Regulations do not permit sitting in at Tribunals to be counted towards the sitting-in requirements unless a waiver has been granted by the Admissions Sub Committee.
	2. These requirements are the baseline and training units may wish to consider how else they can support trainees prior to first appearance. This will vary from training unit to training unit and from trainee to trainee as they will all develop at different speeds.

Training managers should give appropriate support in the build up to first appearance and in the early months of appearing. Trainees will require support, guidance and insight throughout their traineeship although the nature and extent of such may change over time.

* 1. Training units can enhance the minimum requirements in a variety of ways including the following:
* Requiring trainees to undertake more than the minimum of 20 hours of sitting-in with solicitors from their own practice unit. Any such sitting-in will be enhanced by taking the time to speak to trainees in advance of any such sitting-in, and afterwards, to explain why certain things happened, and to allow them to ask questions.
* Offering trainees the opportunity to observe a wider range of hearings and tribunals, watching representatives from other training units. This will not count for the minimum 20 hours yet will still be useful for development.
* Sitting-in can continue after admission and may well be advisable if the trainee is working in a new area of law during their traineeship.
* Offering additional training on written or oral advocacy in your office or in collaboration with other firms or local faculties/Bar associations. This may include role play or mock court work.
	1. The nature of preparation for an appearance will differ depending on whether it is in person or online. Training Managers should consider this and help prepare the trainee accordingly. This may be particularly important in cases involving vulnerable clients.
	2. Observation, discussion and formal training are useful first steps. These can be aided further by the following:
* Allowing trainees to appear in courts or tribunals where a practising certificate is not needed eg Simple Procedure.
* Ensuring the opportunity to work on the case prior to appearing to help them understand it fully.
* Ensuring that trainees have any necessary paperwork timeously and giving them the opportunity to clarify anything in advance wherever possible.
* Briefing the trainee thoroughly on the matter including checking that they understand what is required of them.
* Having the training manager or another experienced solicitor attend alongside the trainee at early appearances if possible.
* Debriefing the trainee thoroughly afterwards. The debrief should include constructive feedback on their performance, praising where things went well and outlining any areas (if there are any) for improvement.
	1. It is natural that trainees may be concerned about appearing and may think they are not ready to appear in a given matter, whilst you are more confident in their abilities. The traineeship is developmental and will inevitably require trainees to do things they haven’t done before or that may stretch them. Training units should look to create an environment where a trainee can raise concerns about appearing or to raise when they are uncomfortable. It is the role of the training manager to consider these concerns in light of their assessment of the trainee’s abilities as well as the needs of the business. A starting point is to involve the trainee in the discussions about upcoming and planned appearances.
	2. Some trainees may be comfortable attending alone quickly whereas others may want longer time to shadow or be supported. Decisions on what appearances may be appropriate for a trainee to undertake will always be on a case-by-case basis. The decisions should follow on from discussions with the trainee, their supervisor and anyone else with day-to-day involvement in the case.
	3. Deciding how, what, and when to admit trainees and when to allow them to represent the training unit in courts and tribunals is a matter for the training manager’s professional judgement. It is for the training manager to decide what appearances are appropriate for the trainee by evaluating the following:
	+ The confidence, competence, and experience of the trainee
	+ The potential ramifications for the client.
	+ The nature of the client (clients who may require additional support).
	+ The facts and law of the matter they will be appearing in.
	+ The complexity, sensitivity, value and subject matter of the case.
	+ The opponent (if there is one)
	1. Particularly in the early months of appearances training managers should exercise caution. Trainees should not be “*thrown in at the deep end”*. A solicitor must act in the best interests of their client. A poor choice may have significant ramifications: for the client; for the trainee’s development, for the training unit, for the training manager, and for the reputation of the profession.
	2. Trainees should be aware that once they are admitted and hold a practising certificate they are subject to direct regulatory oversight and may be the subject of a complaint. They should not act where they are not competent to do so.
	3. [The published guidance as to what a trainee can and cannot do](https://www.lawscot.org.uk/qualifying-and-education/qualifying-as-a-scottish-solicitor/the-traineeship/information-for-trainees-and-practice-unit/what-cancant-you-do-as-a-trainee/) is a useful starting point. This is further outlined in the [Admission Regulations 2019 (Schedule 3)](https://www.lawscot.org.uk/media/368407/admission-as-solicitor-scotland-regulations-2019-amendment-3-feb-2020-clean.pdf). There is a difference between what a trainee is allowed to do and what work is appropriate to be given to a trainee in the early months of having a practising certificate eg A trainee at month 20 of the traineeship should be able to undertake more challenging and complex work than a trainee at month 4.
	4. It is accepted that training managers cannot know or foresee everything. This is an area where there are shades of grey and on occasion it is recognised that a matter that does not appear complex can rapidly become so during the course of the appearance. In the early months of the trainee being asked to appear, caution should be at the forefront of the training manager’s mind.
1. **What sort of hearings might be appropriate for newly admitted trainees?**
	1. When we asked training managers the sorts of matters that were appropriate for newly admitted trainees, there was a consensus that the focus should be on procedural, routine and unopposed hearings. These should generally come before contentious, substantive matters.

We have also sought advice from the Immigration, Mental Health and Disability, and Employment Law Sub-Committees of the Society.

The following are only indicative examples to aid training managers to use their professional judgement:

* + Simple Procedure Case Management Conferences.
	+ Summary Cause virtual court appearances.
	+ Unopposed Ordinary Cause actions.
	+ Uncontentious Child Welfare Hearings.
	+ Personal appearance at Peremptory Diets.
	+ Lower value road traffic Proofs.
	+ Uncontentious ASPIC hearings.
	+ Deferred sentences where there is no or minimal risk of a custodial disposal being imposed.
	+ Long-deferred sentences where the accused has been of good behaviour.
	+ Custody appearances where bail is not opposed and the accused will be entering a plea of Not Guilty.
	+ Bail Undertakings where bail is not opposed and the accused will be entering a plea of Not Guilty.
	+ Intermediate Diets where the accused will be maintaining their plea of Not Guilty.
	+ Instructing Counsel at Preliminary Hearings.
	+ First calling and subsequent procedural callings in respect of Applications under s93 or s94 of the Children’s Hearings (Scotland) Act 2011.
	+ ICSO callings where a variation has been agreed, but not when they are contentious.
	+ Employment tribunals
		- Preliminary hearings for case management (typically though not exclusively by telephone).
		- Low value “short track” final hearings (eg usually listed for up to one day).
	+ Immigration Tribunals
		- Case Management Reviews/Hearings.
		- Immigration Bail Hearings.
		- Substantive hearings before the First Tier Tribunal.
	+ Mental health tribunals and AWI cases (please see section 5).
1. **What sort of hearings might be not appropriate for newly admitted trainees?**
	1. In the same way it is difficult to be definitive about what appearances are appropriate, it is similarly difficult to define what is inappropriate. If the watchwords for early appearances are unopposed, routine, and procedural then it follows that opposed, complex, and non-standard should wait until further into the training contract or when experience has been gained. As trainees gain more experience, the nature, number and complexity of cases can be built upon and those sorts of matters will become more appropriate.
	2. Appearances that are likely appropriate may not be if a trainee is not properly supported, briefed, debriefed or where they receive the information at the last minute.
	3. When we asked training managers their views on the sorts of appearance that should be avoided in the early months of appearance there were common responses. This is not to say that trainees can never appear in the below but rather to note that in the early stages of appearing these appearances are likely to be beyond many trainees’ abilities and should usually be avoided. Again, these are indicative examples:
	* Complex or Opposed motions.
	* Contentious Child Welfare Hearings.
	* Interim interdict hearings.
	* Solemn matters or any matter that requires experience or is obviously complex (eg deferred indictment, jury trials and pleas).
	* Deferred Sentences where custody is a realistic or likely disposal.
	* Custody appearances where bail is opposed or the accused will be pleading Guilty.
	* Bail Undertakings where bail is opposed or the accused will be pleading Guilty.
	* ICSO callings where the application is to be opposed or where a variation is being sought that has not been agreed.
	* Proofs – particularly those which are of higher value and/or are complex cases.
	* Contentious appeals or debates.
	* Employment Tribunals
		+ Equality Act claims – these tend to be more complex, as evidenced by tribunal judges having additional training prior to hearing such claims.
		+ “Open” preliminary hearings to determinate a preliminary issue (e.g. jurisdiction or disability status), judicial mediations, and subject to the exception referenced above – final hearings (ie the Employment
		Tribunal equivalent of a proof).
	* Immigration Tribunals
		+ Full Protection Hearings.
		+ Human Rights Hearings.
		+ Upper Tribunal Proceedings.
	* Mental health tribunals and AWI cases (please see section 5 below)\_
2. **Adults with Incapacity and Mental Health Tribunal For Scotland cases**

Adults with Incapacity (AWI) cases and proceedings before the Mental Health Tribunal for Scotland (MHTS) can be complex, nuanced and require an approach which reflects the seriousness of these proceedings. Training managers should also ensure that when dealing with these matters trainee solicitors are appreciative of the needs, complexity, and vulnerability of clients with mental health and disability issues as well as legal matters.

Trainee solicitors are not normally be permitted to observe more than four hearings at the MHTS in a 12 month period. We would recommend to training managers that trainees should observe in the MHTS prior to appearance regardless of whether they meet, or have met, the wider sitting in requirements for admission as a solicitor. We would recommend training managers consider specialist preparation and training in these areas.

1. **Other relevant Society guidance**

It is recommended that Training Managers consider the following Society rules, regulations and guidance in conjunction with this advice and information:

* + [The Admission as Solicitor (Scotland) Regulations 2019](https://www.lawscot.org.uk/media/368407/admission-as-solicitor-scotland-regulations-2019-amendment-3-feb-2020-clean.pdf)
	+ [The Guidance notes for training manager](https://www.lawscot.org.uk/media/372500/5-guidance-notes-for-training-managers-march-2022-for-publication-approved-at-feb-asc.pdf)
	+ [Guidance notes on the fit and proper person requirements for admission as a solicitor](https://www.lawscot.org.uk/media/367851/fitness-and-properness-guidance.pdf)
	+ [The Law Society of Scotland Practice Rules 2011](https://www.lawscot.org.uk/members/rules-and-guidance/rules-and-guidance/section-d/rule-d2/rules/d2-2-practice-management-course/)
	+ [Applying for admission as a trainee](https://www.lawscot.org.uk/qualifying-and-education/qualifying-as-a-scottish-solicitor/the-traineeship/information-for-trainees-and-practice-unit/applying-for-admission-as-a-trainee/)
	+ [Remote supervision hints and tips](https://www.lawscot.org.uk/qualifying-and-education/qualifying-as-a-scottish-solicitor/the-traineeship/information-for-trainees-and-practice-unit/support-for-traineeship-providers/remote-supervision-of-trainees/)

*This advice was last reviewed on 11th August 2022.*