

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:

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