

Civil Business post COVID

Our Vision and Digital Ambition

The Scottish Courts and Tribunal Service (SCTS) vision for civil justice is:

To develop and deliver excellence through collaboration and innovative systems which support the administration of civil justice in Scotland, promote the rule of law and provide access to justice for all users.

This vision underpins SCTS's future direction for civil justice, where users are at the heart of the change process. It supports a change framework with strategic initiatives that deliver new ways of working and removes barriers to create efficiencies.

Innovation, including digital innovation, is, of course, not new to the SCTS.

Our 5 year Digital Strategy, published in 2018, anticipated a continuation of trends that were emerging as a result of an increasing reliance on the benefits of technology such as:

- The continuation of the shift from paper based to electronic processes;
- Uptake of digital services would lead to a reduction in the number of people attending court facilities – and to the frequency of visits required for those who do need to attend;
- The public expectation for information and advice to be available online and for services to be delivered digitally continuing to grow;
- Our understanding of what constitutes the “best evidence” to be presented in a hearing changing – as we consider both the role technology can play and the impact of appearances in person on particular groups – especially child and vulnerable witnesses;
- The desire of participants to move to electronic evidence presentation and virtual courts.

Our strategy is to maximise the opportunities provided by technology to improve processes, access to information and support better outcomes.

To achieve this our intention is to focus on the following strategic objectives:

- Reduce the need for physical attendance at proceedings where it adds little or no value by exploiting the technology introduced across Scotland's courts;
- Improve access to justice by expanding and enhancing the range of digital services we provide;
- Invest in the ongoing maintenance, security and usability of our digital network and systems — as it underpins an increasing proportion of what we do.

To help meet these objectives, we have increased the capability and capacity of our Change and Digital Innovation (CDi) team with a renewed emphasis on delivery of value at pace.

Civil Court Reform

There has already been substantial reform across the civil courts. We continue to develop digital systems enabling more types of cases to be administered through Civil Online, including end-to-end processing for simple procedure cases. This has been accelerated in response to COVID-19 as we adapt to a model where civil business is processed using the optimal balance of virtual and traditional processes — supported by more comprehensive digital case management platforms.

In the Court of Session we have introduced our integrated case management system (ICMS) for personal injury cases, facilitating their online submission. This will be extended to include family actions before a wider roll out to other case types.

A new facility (Objective Connect) was launched on 22 February 2021 to support the lodging of large documents.

In the sheriff courts we developed an API (Application Programme Interface – machine to machine transfer) allowing participating firms to submit simple procedure cases from their own case management systems straight into ICMS, supporting the recent temporary rule change that all simple procedure claims must be submitted using Civil Online.

We are also currently piloting the ability to upload documents in Ordinary Actions in the sheriff court through Civil Online.

These reforms have reduced the processing of paper during COVID-19 and delivered steps towards meeting our strategic objectives.

Response to COVID-19

Scotland's courts have experienced unprecedented change over the past year, as a result of COVID-19. We could not have anticipated the speed with which we would need to realise our aim of developing an increasingly digital service, in particular the extent of conducting business remotely.

Throughout the pandemic we have been guided by three key priorities:

- Support the public health response – protecting the life and safety of all staff, judiciary and court users;
- Maintain all essential business so far as possible — ensuring cases are not lost;
- Minimise accumulation of case backlogs so far as possible — to facilitate the most effective recovery.

Achieving these priorities has required significant innovation and a range of different approaches over the course of the year. This has included: the adoption of new, predominantly virtual, operating models; the use of written submissions; the digital transmission of documents; and the use of electronic signatures, all of which have enabled swift process changes, enabling us to operate our services efficiently.

One of the main tools that has been integral to this innovation is the Webex platform. This has ensured that SCTS has been able to support civil business being dealt with electronically. When the first COVID-19 restrictions were announced in March 2020

this was not a platform we used, yet from the beginning of this year until mid-April 2021 over 14,000 Webex meetings and hearings have been conducted across SCTS.

As a consequence, business across the civil courts has been able to proceed:

- ***Court of Session***

Business is able to be conducted virtually, running at business as usual levels. Remote management of business and hearings remains the norm at this time. All hearings which do not require the leading of evidence are conducted remotely, unless the court directs otherwise. Where evidence is required to be led, the presumption is that these hearings will also be conducted remotely unless exceptional circumstances exist. Fixing of civil jury trials re-commenced on 11 January 2021 and will be delivered using a remote jury centre model similar to that in place for criminal trials.

- ***Sheriff Appeal Court***

Business is at the same level as prior to lockdown with three substantive appeal hearings per fortnight conducted virtually.

- ***All Scotland Sheriff Personal Injury Court (ASSPIC)***

Business continues to be conducted virtually, with only proofs citing exceptional cause being considered for physical appearances.

- ***Sheriff Courts***

Video conferencing functionality is being used daily to support sheriff court civil business. Proofs, debates and fatal accident inquiries continue to be programmed virtually, where appropriate, with the decision as to the appropriate format for an evidential hearing being taken by the individual judge or sheriff.

Volume of business

The ability to conduct the majority of processes online has meant that civil court business has experienced less of an impact from the pandemic than criminal business. Indeed there was a small increase in the number of proofs proceeding in the Court of Session, but a decline in the number of sheriff court cases lodged. We expect case volumes to recover to normal levels over the course of the coming year – See **Annex 1**.

Challenges around remote hearings

These changes and innovations would not have been possible without the support, input and effective participation from staff, practitioners and users. SCTS are also aware that change, especially at pace, can provide challenges and this has been particularly acute around the increase in use of remote hearings. The following are some of the concerns raised:

The use of technology can be daunting for some. Legal commentators have said that many suffer “**considerable anxiety**” while waiting to make sure that the technology works, witnesses join on time, and documents are shared electronically with ease during questioning. As practitioners become more used to virtual hearings and experience how they can run smoothly, it is anticipated that this anxiety may diminish. Indeed some practitioners are helpfully sharing good practice for virtual court hearings. The key, like preparation for any type of hearing, is significant effort and preparation

in advance. Communication with the clerk in advance is required. The additional challenges are for all participants to be familiar with the technology and have access to the necessary equipment, including sufficient broadband coverage.

Some practitioners are concerned that **technology issues** may arise during a hearing which will cause disruption. However, over 99%¹ of virtual hearings that have taken place since remote hearings were introduced have proceeded without technical incidents related to SCTS infrastructure. Where incidents have arisen, the vast majority were due to a combination of not following process, user error and poor local broadband connectivity.

The SCTS network success is largely credited to the underpinning infrastructure which has been steadily introduced and expanded upon within the past year. This has provided the backbone for the Webex meetings this year shown in Table1.

No. of meetings hosted	14,015
Total time of meetings in minutes	792,993
Total number of participants	71,347
Average length of meeting (mins)	57

Table 1 – All Webex statistics 2021 (1/1/21-8/4/21)

As the Cisco Webex hosting is cloud based and there is no direct connection between SCTS and the external participants, the few issues which are reported are usually due to the broadband connectivity of the external participants. The use of network monitoring tools have provided SCTS with information as to where issues lie. A troubleshooting guide for practitioners has also been created: <https://www.scotcourts.gov.uk/coming-to-court/virtual-courts>. In addition, the SCTS CDi team offer practice sessions before substantive hearings to educate and advise on best practices for hosting/attending such events.

It has been said that **virtual hearings take longer** than physical hearings. However, virtual hearings increase the need for effective judicial case management which has the benefit of narrowing the issues, potentially leading to a shorter hearing time. They also reduce the in-court logistics related to participants' physical movement around the court premises and enable speedier sharing of productions. Whilst regular breaks are scheduled for the comfort of the participants, in practice, these have no impact on the length of the actual hearing as physical hearings also have regular breaks.

Some commentators bemoan the **loss of the “majesty” of the courtroom**. The existing solemnity of the proceedings is, however, replicated in remote hearings by the continuation of physical court traditions such as dress code, etiquette and court practices.

¹based on ticketed incidents raised with SCTS support against number of virtual hearings

It has been suggested that **physical hearings are more appropriate** for certain types of hearing such as sensitive family cases and those where extensive cross-examination is required. However, others have observed that technology does enable complex, sensitive and serious proceedings to take place virtually and allows the credibility of witnesses to be assessed. It may also be less forbidding than appearing in person.

Central to the move to virtual hearings is the **electronic lodging of Court documents**. Bundles must be agreed in advance of a proof. These are submitted electronically and made available to the witnesses. There is now less chance of page numbers in different paper copies being inconsistent. Paperless systems also have an environmental benefit.

Beyond mitigating the risk to personal health and safety, **virtual hearings also provide additional benefits**. Costs for clients can be saved with solicitors spending less time waiting in courts and travel time eliminated. There can be flexibility in the hearing, and creative use of technology to present evidence. One commentator referred to a personal injury proof in ASSPIC that proceeded as scheduled at 10am, with preliminary business having been dealt with the day before. Witnesses, including expert witnesses, did not have to hang around outside the court but received a text when it was their time to connect and enter the virtual court. This is particularly beneficial for medical experts whose time away from their patients is minimised.

Virtual hearings are also well suited to clients and courts in **rural and remote locations**. The practice of instructing local agents is no longer necessary.

Virtual hearings are more **accessible to the media and the public** as they enable the public to observe or hear court proceedings without the need to attend a building. Indeed almost 1000 people dialled into to a high profile hearing in July 2020. Information on how to access virtual hearings can be found on the SCTS website <https://www.scotcourts.gov.uk/coming-to-court/access-to-virtual-hearings>

The Future

As we move through the response to COVID-19 and into recovery we will continue to do so in partnership. The pandemic has underlined the fact that the justice system can change to meet need. It will require to keep doing so. We will work with agencies across the system to ensure that innovations are retained and developed.

Virtual courts are different from traditional hearings. However, experience has shown that they are still able to facilitate a comprehensive enquiry into the facts, to scrutinise evidence, and to deliver justice. Indeed they offer additional benefits such as reducing delays, increasing efficiencies and improving access to justice.

Virtual courts do not represent “justice on the cheap.” Indeed considerable investment has been made in equipping the courts, the judiciary and staff with the necessary equipment and infrastructure to enable virtual hearings to take place efficiently and smoothly.

As one commentator has described virtual courts

“They are an example of a modern, creative justice system that is willing to adopt new technology to better meet the needs of society.”

In achieving recovery we must create a better system—learning from the new approaches and opportunities that are now apparent. Courts should be regarded as a service, not a building—efficient, accessible and, above all, fair.

As the Lord President stated in June 2020

“It is a misconception to regard the court as a building. It is not just a physical space. It is a public service. Virtual courts and online services should, and now will, be viewed as core components of the justice system, rather than short-term, stopgap alternatives to appearances in the courtroom.”

It has been said by one legal commentator that:

“The steps that have been taken have brought the court system forward years rather than months..... One thing’s for sure, there can be no going back.”

Another has said:

“It’s my hope that, moving forward, much of what has been put into practice since the start of the pandemic can remain in place.”

Whilst there will be a desire for some types of business, particularly proofs, to return to court buildings there are opportunities to be explored from the pandemic operating model, with a range of business and hearing types lending themselves well to remote or virtual processes in the longer term. There will also be a continuing need to preserve some of the physical capacity previously used for civil business if the backlogs that have arisen in relation to criminal business are to be effectively addressed.

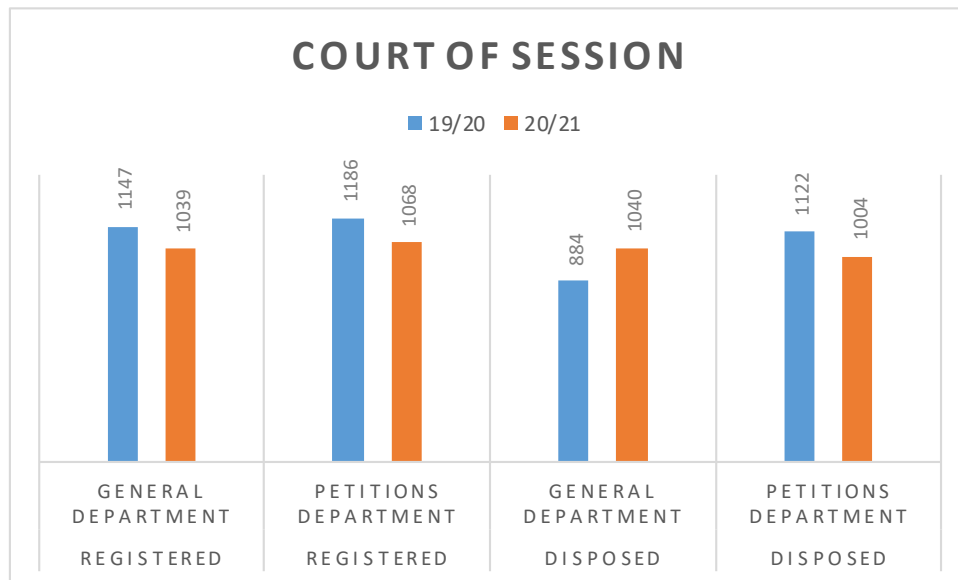
The current guidance for the Supreme Courts and Sheriff Courts, issued on 5 March 2021, confirms that the vast majority of civil business will continue to be conducted virtually until further notice. SCTS modelling predicts that, even with additional trial capacity in place, the criminal case backlogs in the High Court and Sheriff Courts will take some 3–4 years to clear. During this period, particularly while physical distancing restrictions are in place, there will be a continued need to maximise the levels of both civil and criminal business that can appropriately be undertaken by virtual means.

Longer term we anticipate that virtual hearings will continue to be an integral way of conducting civil proceedings, particularly where the matter is of a procedural nature or is taking place in a court that is not within the locality of the lawyers or clients. This will, however, always be at the discretion of the judiciary.

Our intention therefore is to build on the innovations introduced to support the justice system during the pandemic, to provide a modern, flexible and digitally enabled justice system in which all users have a role to play.

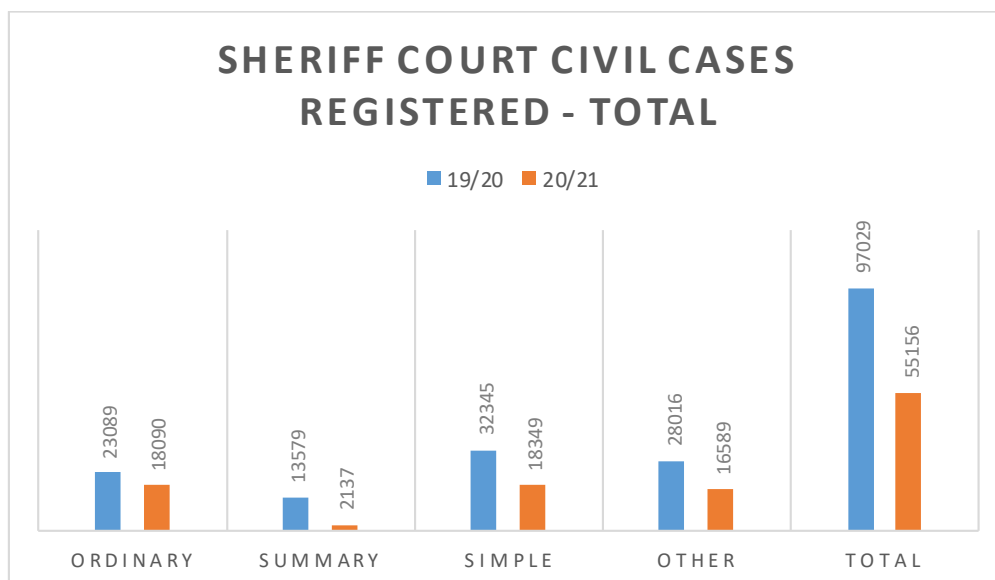
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Court of Session



The Court of Session has seen a relatively minor decrease in business over the year, with overall cases registered down by 10% in comparison with 2019/20 (2,107 cases compared to 2,333). In relation to disposals the overall figures were almost identical to the previous year with 2,044 cases disposed of this year compared to 2,006 in the previous year.

Sheriff Courts

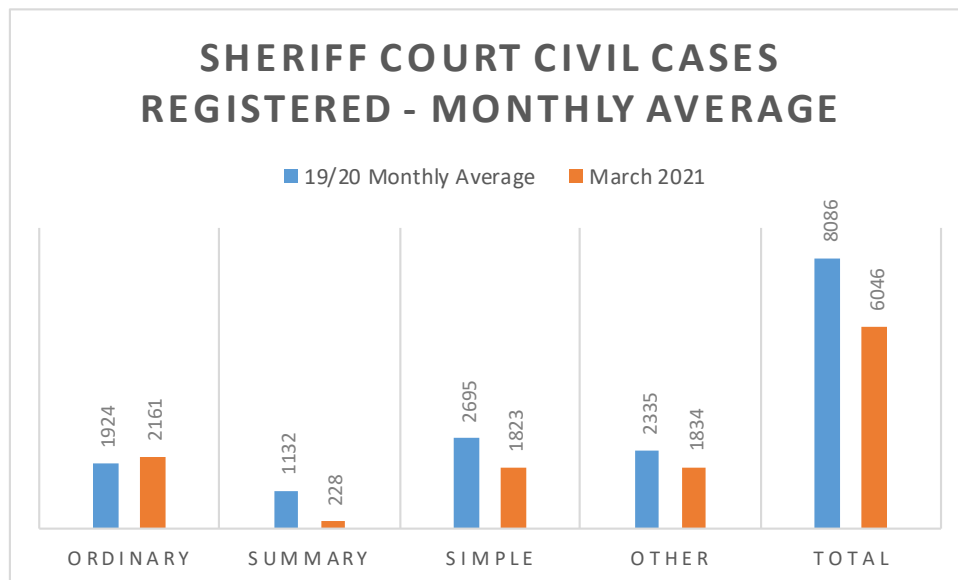


Overall the **civil cases registered** in the sheriff courts decreased by 43% from the previous year (55,156 ²cases registered in 20/21 compared to 97,029 in 19/20). The

² All figures for 2020/21 are provisional as March 2021 figures are not finalised. It is expected the finalised figures will be slightly higher.

decrease in cases has differed across the procedures with ordinary cause cases seeing a 22% decrease, summary cause an 84% decrease (almost all related to heritable) and simple procedure cases decreasing by 43%.

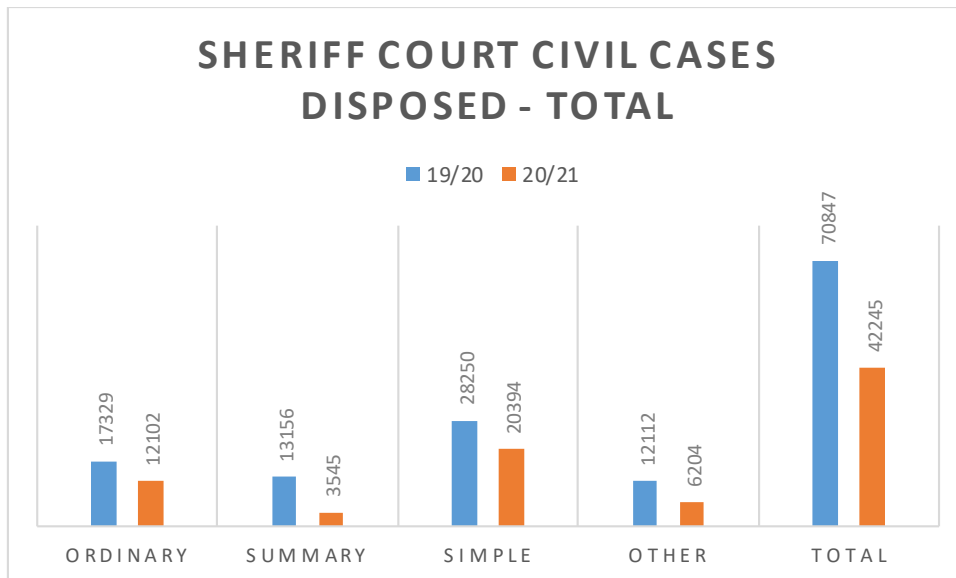
However, this is not reflective of the recent work across the courts as there were very few cases registered in April and May given the immediate response to the initial lockdown. Looking at the cases registered in March 2021 against the monthly average for 2019/20 gives a more realistic picture of the current level of business in comparison to the position pre-pandemic.



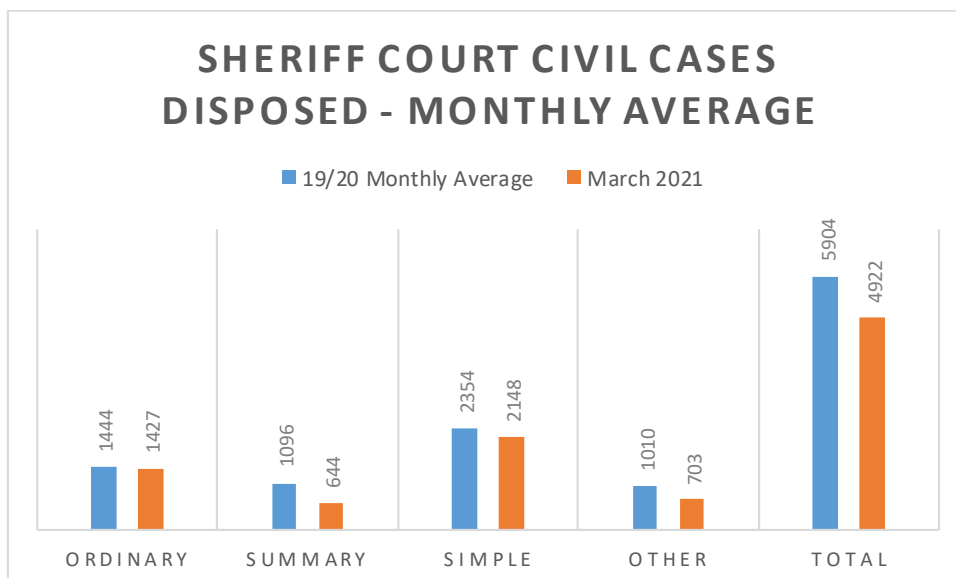
This shows that whilst there is a 25% decrease overall in monthly cases registered in comparison to last year's average, there is actually a 12% increase in ordinary cause cases registered.

One of the main procedural changes in the last year was the temporary rule change to mandate the use of Civil Online for simple procedure cases which came into effect in September 2020. This has had a significant effect with 84% of simple procedure cases registered through Civil Online this year compared to 11% last year.

In relation to **disposals** the overall picture is similar with a decrease of 40% in cases disposed compared with the previous year (42,245 this year, compared to 70,847 last year). Again summary cause is showing the biggest decrease with cases down by 73% compared to 30% for ordinary cause and 28% for simple procedure.



The monthly position once more shows that the current business levels, particularly in relation to ordinary cause, are similar to the position pre-pandemic. Although, summary cause cases are significantly below previous levels, mainly related to the decrease in heritable cases.



All Scotland Sheriff Personal Injury Court (ASSPIC)

As with the sheriff court, business in ASSPIC was minimal in April and May following the initial response to the lockdown restrictions. As such the number of cases registered this year is 20% down compared to 2019/20 (6,466 compared to 8,036). Similarly, the number of cases disposed decreased by 33% compared to last year (4,537 compared to 6,752).

However, the business levels in March 2021 show that the court has returned to pre-pandemic levels with the cases registered (665) and disposed (571) both within 1% of the 2019/20 monthly average.

Another effect of the pandemic has been an increase in the average number of weeks from registration to disposal (excluding cases that have spent time sisted or in avizandum) from 25.6 weeks in 2019/20 to 29.8 weeks this year. However, this time has been decreasing from a high of 36.1 weeks in July 2021.

Sheriff Appeal Court

As expected the decrease in overall civil business in the sheriff courts is reflected in the Sheriff Appeal Court, with 129 appeals lodged this year compared to 294 in 2019/20 (a decrease of 56%). In relation to disposals, there was less of an impact with 130 cases disposed compared with 168 in the previous year (a 23% reduction).

Given the relatively low volume of cases heard in the Sheriff Appeal Court using a monthly average would not be particularly illustrative of a return to pre-pandemic levels.