



SHERIFFDOM OF LOTHIAN AND BORDERS

COVID-19

FURTHER GUIDANCE IN RESPECT OF FORTHCOMING PROOF DIETS IN THE ALL SCOTLAND SHERIFF PERSONAL INJURY COURT

Introduction

[1] Further to the guidance dated 19 and 26 June 2020, this document contains more information for practitioners in relation to forthcoming proof diets in the All Scotland Sheriff Personal Injury Court (ASSPIC).

[2] Part 1 2 of Schedule 4 of the Coronavirus (Scotland) Act 2020 suspends the requirement for physical attendance at court unless the court directs otherwise. Under these provisions all hearings in ASSPIC will be conducted remotely until further notice unless the court directs otherwise.

Presumed mode of hearing

[3] The default position is that proofs in ASSPIC will proceed on a remote basis using Webex technology unless the court otherwise directs. Proofs may proceed as live hearings "in-person" where physical distancing can be accommodated and the court so directs. Where a party considers that a hearing cannot proceed by WebEx video conference, or cannot entirely be conducted in this manner, that party should advise the court of the reasons for that. It will be a matter for the sheriff to determine whether the hearing is suitable for a WebEx video conference. If the sheriff determines that WebEx is not suitable, consideration will be given to whether a physically distanced live "in-person" hearing can be accommodated. Any live hearings must be conducted in line with government

restrictions and subject to any conditions and guidance set by the court. There will be no civil jury trials meantime.

Live hearings

[4] Where one or more parties seek a live hearing, intimation of such must be given to the court as early as possible and in any event by not later than the date on which the pre-trial minute is to be lodged. Requests for a proof to be heard live will be considered by the court on a case by case basis. Cause must be shown why a case is not suitable for a hearing by VC. The factors set out in the Appendix hereto are matters which the court is likely to consider relevant to that issue.

[5] Where a request is made to hold a live hearing, the court may fix a pre-proof hearing to hear parties thereon. At that stage, parties will be expected to be in a position to provide the court with the fullest information to enable it to properly consider and determine the most suitable mode of hearing the proof.

Mhairi M Stephen

**Mhairi M Stephen QC
Sheriff Principal of Lothian and Borders**

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Appendix

Number of issues to be tried

The extent of agreement or disagreement over primary liability (duty, breach thereof, causation); contributory negligence; and quantum. (Practitioners may wish to consider whether in some cases a liability only proof would be of assistance).

Scope and nature of issues to be tried.

Are all the issues to be tried clear and well defined or is there a risk of a hearing punctuated by objections?

Sources of evidence

What is the evidence that is to be adduced and assimilated by the court e.g. is it written or oral, given by a skilled or lay witness, contested or uncontested, or factual or expert evidence?

Number of witnesses

A large number, thereby increasing witness management and scheduling problems for the parties and the court.

Duration of proof

Proofs which are likely to extend to multiple days or exceed the court days allocated.

Type of witnesses

Involvement of party litigant.

The involvement of lay witnesses who have communication or language issues.

The giving of evidence of a sensitive or private nature (see below).

Evidence from multiple skilled persons and/or which is of a highly technical or complex nature or requires reference to multiple documents.

Witnesses for whom personal attendance at court would pose health risks.

Witnesses who do not have access to or would have difficulty using computer devices.

Connection and privacy

Witnesses who cannot access suitable phone internet connection and appropriate location where they can participate undisturbed.

Public or Private Hearing

The need for evidence to be heard in private.

Documents

The requirement for large numbers of documents to be put in evidence or referred to.

Other productions

Are witnesses to be referred to items of real evidence?

Other factors

Are there other specific features of the case which make it unsuitable for a VC hearing?

Is a hybrid hearing is feasible, with some evidence being heard in person and the remainder by VC?

Is there any reason why an urgent determination of the case is desirable?

Might justice might be better served by the proof being discharged to a date when the court may again be able to accommodate live proofs without constraint?