



SHERIFFDOM OF LOTHIAN AND BORDERS

COVID-19

GUIDANCE IN RESPECT OF THE CONDUCT OF VIRTUAL HEARINGS IN THE ALL SCOTLAND SHERIFF PERSONAL INJURY COURT

Introduction

[1] Further to the guidance dated 5 June, 19 June and 26 June 2020, this document contains practical guidance¹ in respect of virtual hearings in the All Scotland Sheriff Personal Injury Court (ASSPIC).

Procedural Court / Opposed Motions

[2] From 13 July 2020 the ASSPIC procedural court will transition to proceeding on a remote basis using WebEx technology unless the court directs otherwise. Telephone conference facilities will be available as a back-up should technical difficulties be encountered and may also be used when the court so directs.

[3] The WebEx technology uses the following terminology which should be noted:

- (1) Host – This is the individual who is responsible for co-ordinating and controlling the video conference (“VC”) hearing. Normally this will be the sheriff clerk.
- (2) Panellist - This is an individual who is able to interact with the other participants to the VC hearing. The panellists will be the sheriff, the clerk, the agents / counsel and a witness when he or she is giving evidence.
- (3) Attendee – This is an individual who is able to view or listen to the VC hearing without having the ability to interact with the panellists. This function could be

¹ This guidance note has been informed and assisted by the work completed by the Judicial Institute in respect of conducting remote summary trials.

used by a witness after having given evidence or by members of the public or the press.

(4) Practice Session – This is a subconference within a VC hearing which attendees are unable to view or listen to.

[4] Guidance on the conduct of opposed motions in ASSPIC issued on 5 June 2020 remains in place and should be followed when preparing for and conducting hearings both by teleconference or using WebEx technology.

[5] The procedural court will be scheduled via the WebEx portal by the clerk. In order to schedule the procedural court the clerk will require the email address of all persons who wish to participate (whether as a panellist or as an attendee) by 4pm on the Wednesday prior to the court (agents should also provide the clerk with the a contact telephone number for the day of the procedural court). Therefore if both an agent and counsel wish to participate the email address of both will be required (if counsel is instructed the agent will normally be invited as an attendee only). Where the case is calling in respect of an opposed motion, the email address of all proposed participants should be included, in clear terms, on the Form G6A and G9A. If this is not possible (e.g. if counsel has not yet been instructed or there is late change of counsel) the clerk should be sent the email address of counsel by the above deadline. In advance of the procedural court the clerk will send invitation emails with joining instructions. Media representatives may apply to join a WebEx hearing as an attendee by contacting the Judicial Communications Office.

[6] Cases will be grouped together in allocated time slots (there are likely to be time slots at 10am, 11.30am and 2pm). Parties should join the procedural court at their allocated time slot and listen until their case is called (parties will either immediately have panellist status or be promoted from attendee status to panellist status when their case calls). Parties are free to engage in other business while waiting on their case to call but they must have their microphone muted if they have panellist status. If a party has joined the meeting but fails to engage when their case is called, the clerk will send one (only) email reminder.

Proofs

Prior to the Proof Diet

[7] VC proofs, using the WebEx technology, will be conducted from 4 August 2020. As a result of the pre-planning required for VC proofs it is not possible, at this stage, for the court to accommodate multiple VC proofs at the same proof diet and so, initially, the court will fix a maximum of two VC proofs to proceed at any particular proof diet. Where parties have lodged the form seeking the proof diet to be retained and proceed by VC (see appendix 1 of the guidance issued on 26 June 2020) the following steps must be taken:

- (1) 8 working days before the proof diet, agents must email the clerk to confirm that the proof is still due to proceed and confirm the estimate of the number of days required;
- (2) 7 working days before the proof diet, the sheriff will consider each case where the agents seek to proceed by VC and identify: (i) a priority VC proof; (ii) a back-up VC proof; and (iii) issue a direction allowing both the priority and back-up proof to proceed by VC using the WebEx technology. Parties for the priority and back up VC proof will be notified by the clerk.
- (3) 6 working days before the proof diet agents for both the priority proof and the back-up proof should provide the clerk with: (i) the email addresses of all participants to the proof (see para 5 above); (ii) the agent's contact telephone number; and (iii) a marked up witness list containing, for each witness: (a) their email address; (b) the location where they will be giving evidence from (which could be home, work place, solicitor's office or other location); and (c) whether the witness wishes to take the usual oath / other oath / affirm;
- (4) Thereafter the clerk will arrange with agents later in the week prior to the proof: (i) full VC testing for the priority proof; and (ii) partial VC testing for the back-up proof.
- (5) 4 working days before the proof diet parties should email the clerk with the core bundle of productions² (see para 8 below) and the up to date pleadings in pdf format (the core bundle of productions should be in a single pdf where possible and a hard copy should also be lodged with the court);
- (6) not later than 4 working days before the proof diet agents must ensure the following matters:

²This should contain only those documentary productions which are going to be put to witnesses at the proof.

- (a) that all participants including witnesses have access to an appropriate laptop or other device, which has a suitable broadband connection to enable the use of the WebEx technology (technical guidance will be provided to agents but the court has been advised that the WebEx technology should work on most modern devices);
- (b) that appropriate arrangements are in place to contact counsel (if instructed), their client, their opposite number and each of their witnesses during the proof via a device not being used for the VC proof;
- (c) that the core bundle of productions has been sent to each witness who will be referred to it;
- (d) that the witnesses have been instructed that the core bundle of productions they have been sent is to be left sealed / unopened until the proof commences and that after their evidence has been given the productions are to be returned to the party's agents;
- (e) that witnesses have been instructed that when they give evidence they will be required by the court to confirm the following:
 - (i) that they are alone in the room;
 - (ii) that to record any part of the proceedings in any manner without the court's permission may constitute Contempt of Court;
 - (iii) that they have not viewed the core bundle of productions sent;
 - (iv) that they have no means of receiving communications from other persons during the giving of his or her evidence (including that any mobile phone used for communicating with the agent calling them is switched off whilst they are giving evidence);
 - (v) that they are aware that:
 - (i) if they are required to temporarily leave the hearing, (e.g. if a legal issue arises) they will be told that by the sheriff and the clerk will temporarily close down their WebEx connection;

- (ii) they will need to have access to a means of communication so that the solicitor or the clerk can advise them to re-join the hearing (for example by turning on a mobile phone solely for that purpose);
- (iii) if they leave the hearing, for any reason, they must not in the meantime discuss the evidence in the case with anyone else (including the solicitor calling them); and
- (iv) once they have concluded their evidence they will not retain the productions sent or any copies of the productions.

Productions

[8] As noted at para 7(5) parties are expected to agree a core bundle of productions and email them to the court 4 working days in advance of the proof (agents are also required to provide the court with a hard copy of the core bundle of productions). The core bundle of productions should be paginated like a book (rather than the first page of each production beginning at page 1). Although a hard copy of the core bundle of productions is to be sent to each witness that is to be referred to the productions, the preferred method for referring witnesses to the productions is by using the “presenter” function on WebEx. The “presenter” function will allow the core bundle to be displayed on the screen so that it can be seen by all the participants, including the witness (it also includes a zoom facility). Agents will be issued separate guidance on the use of the “presenter” function.

[9] If there are difficulties with the “presenter” function the hard copies can be utilised.

The proof diet

[10] The proof will proceed, in so far as possible, in the normal way, but the following points should be noted and followed:

- (1) Unless otherwise decided by the court, the priority proof (or the back-up proof if the priority proof is not proceeding) will be called at 10am and it is essential that all parties are ready to commence then. Therefore, all preparations,

discussions or negotiations must have taken place and concluded before the start time provided;

- (2) At 09.45am (or other time advised by the clerk), agents and counsel (if instructed) should join a practice session using the link provided in the invitation email. This practice session will be used to check the VC is working correctly and will enable any other matter to be raised with the clerk;
- (3) At 10am (or other time advised by the clerk) the sheriff will join the practice session, the clerk will move the practice session to a live hearing and the proof hearing will commence. The clerk will then call the case and the sheriff will deal with any preliminary matters. The agent / counsel for the pursuer (if the pursuer is leading) will then call the first witness by contacting the witness and telling them to join the proof using the link previously provided in the invitation email);
- (4) The witness will then be put on oath / affirm in line with the marked up witness list (see para 7(3)) and the matters set out in para 7(6)(e) will be confirmed with him or her;
- (5) When a witness is being examined all microphones (apart from those of the witness and the representative examining the witness) must be muted³;
- (6) If an agent / counsel wishes to object they will need to swiftly unmute their microphone and voice their objection. If necessary, the witness will be asked to temporarily leave the proof and the court will confirm with the clerk that the witness has disconnected before proceeding to deal with the objection;
- (7) If the witness has had to temporarily leave the proof (e.g. in order to allow the court to deal with an objection) it will, unless the court directs otherwise, be the responsibility of the agent calling the witness to make contact with the witness to advise when they should re-join the proof;
- (8) Where a witness requires to be referred to a production that will be done by the agent or counsel examining the witness using the “presenter” function on WebEx. This will require the agent or counsel to have, as minimum, an electronic pdf copy of the core bundle of productions on the device they are

³ It is essential that all panellists are familiar with how to mute and unmute whatever device is being used. Experience thus far has shown that there are often problems with microphones being on when they should be off and vice versa.

using for the proof (agents / counsel may also find it helpful to have a further hard copy of the core bundle of productions or further electronic copy available on another device);

- (9) If a witness (including the pursuer or defender) wishes to watch the proof after giving evidence, they are able to do so. The clerk will deal with this by demoting the witness from panellist status to attendee status;
- (10) It will be the responsibility of the agent calling the witness to liaise with each of their witnesses in order to ensure they are available to give evidence when the court requires;
- (11) When an adjournment or break is required the clerk will initiate a practice session. Once in a practice session panellists should mute their microphones and disable the video for the duration of the adjournment. Panellist should then re-enable those functions at the agreed time or when advised to do so by the clerk. The clerk will then move from a practice session to the live proof; and
- (12) Once all the witness evidence has been concluded submissions will take place by VC in the manner directed by the sheriff.

Court Dress at VC Hearings

[11] It is not expected that counsel or solicitors will wear wigs or gowns at a VC hearing (whether a procedural hearing or a proof). Practitioners are expected to dress in an appropriate manner and to maintain equivalent standards of behaviour as if they were attending the court physically.

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