

COURT OF SESSION

PRACTICE NOTE

No.2 of 2021

Causes in the Inner House – hearings by video conference

1. This Practice Note has effect from 22nd May 2021.
2. The purpose of this Practice Note is to provide further guidance to court users in dealing with Inner House hearings which are to take place by video conference. This Practice Note is consistent with and complements Practice Note No.3 of 2011.

Procedural hearings

3. To ensure that substantive hearings are able to run efficiently and effectively, parties are encouraged to appear at procedural hearings prepared for a constructive discussion about the arrangements for the substantive hearing. Particular consideration should be given to: (i) the most effective way to organise and present written material for the substantive hearing; and (ii) the estimated amount of judicial reading-in time required before the substantive hearing. It may be possible for the Court to deal with the procedural hearing on the papers (i.e. without a hearing) if it appears that everything is in order and parties are agreed on further procedure.

Written material

4. To keep the pleadings to the minimum necessary, the Court reminds practitioners that grounds of appeal and a note of argument should be sufficient for the Court to hear a case. If those are provided then there should be no need for parties to exchange and submit written submissions as well. The note of argument must be based on the grounds of appeal. It should not be used to attempt to introduce new points.
5. The note of argument should normally not exceed 25 pages; leave of the Court is required if it is proposed to exceed the page limit. The note must be double-spaced and in font size 12; it must be single-sided. It must not contain footnotes. It is to refer to all the authorities to be relied upon. Only disputed propositions require the citation of authority. More than one authority should not be cited in support of a disputed proposition. No more than 10 authorities should be cited in total unless the scale of the reclaiming motion, application or appeal warrants more extensive citation. If it is

proposed to cite more extensively leave of the Court is required. Parties are therefore encouraged to consider carefully which authorities require to be cited and temper their note of argument accordingly.

6. The Court highlights the following important principles when lodging electronic documents for hearings by video conference. Parties should try to keep electronic documents in as small a bundle as possible. It may often be useful to have three separate electronic bundles comprising: a joint appendix; a joint bundle of authorities; and a joint bundle of pleadings. The pleadings bundle should contain: the reclaiming print (including the Opinion of the Lord Ordinary, see RCS 38.5(2)), stated case, or other form of appeal; the grounds of appeal; the answers to the grounds of appeal; the notes of argument; and the reading list if one has been ordered. The exact format of the electronic documents can, if necessary, be discussed at the Procedural Hearing.

7. All electronic documents lodged should utilise a pagination system that is consistent throughout all the electronic documents so as to assign a unique sequential page number to each page of every document lodged; they must be numbered in ascending order throughout. Pagination should begin with the first page of the first document and should be continued throughout. These requirements are to ensure that the Court and parties may locate quickly a given page in a document by reference to its unique page number. The use of hyperlinks and bookmarks is strongly encouraged wherever practicable as these allow the Court to navigate quickly to a particular page or document during a hearing.

Appendices

8. An appendix ought to contain only documents which were before the court or tribunal of first instance. An appendix should, however, comprise the minimum material necessary to conduct the appeal. Other than in exceptional circumstances, it should not be necessary to reproduce all of the material which was placed before the court or tribunal of first instance. Parties are accordingly encouraged to weed out extraneous material.

9. If a document has not been lodged in process, i.e. as a production, it should not be in an appendix (*Grierson v Mitchell* 1912 SC 173, Lord Salvesen at 173; *British Thomson-Houston Co v Charlesworth Peebles & Co* 1924 SC 175). The same rule applies to material that was not before the court or tribunal of first instance. If a party is seeking to introduce a new document, which was not before the Lord Ordinary or the court or tribunal of first instance, it must first be lodged as a production before it can

form part of an appendix (*Scotch Whisky Association v Lord Advocate* 2017 SC 465, Lord President (Carloway) at para [104] *et seq*).

10. An appendix is not a free-standing document, it is a print of material already properly lodged in process or that was before the court or tribunal of first instance. Permission to include new material in an appendix is needed. An appendix containing such material should therefore always be accompanied by a motion to allow the new material in. It is up to parties to decide when to lodge such a motion but, as a generality, the nearer to the date of the Summar Roll hearing, the less likely it is that a new document will be admitted.

11. If a party is uncertain about the Court's expectations in relation to written material then they are encouraged to make early contact with the Division Clerks.

Reading lists

12. Where the Court orders a reading list to be prepared, parties must ensure that this is restricted to material which it is essential for the Court to read before the substantive hearing over and above the pleadings, notes of argument and decision appealed against. If it is thought essential for the Court to read any of the evidence given in the court or tribunal below, the list must clearly identify the particular passages in the transcripts of evidence that the Court is invited to read.

Presentation of appeals

13. The video conferencing software used for hearings includes a screen sharing function. Experience shows that this is rarely used during hearings. Practitioners are encouraged to make use of this functionality in order to present their case in the most effective and efficient manner. [Guidance](#) on how to share electronic material can be found on the Scottish Courts and Tribunals website.

14. It can be assumed that at substantive hearings the Court has read the papers in depth and is familiar with the notes of argument and other material. It is unnecessary for those appearing to set out the background or basic facts of the case and parties can therefore proceed to focus on the issues in contention.

15. An in-person hearing before a Division which would have been assigned for one day will typically be scheduled as follows if the hearing is to be undertaken by video conference. The hearing will commence at 10:30 am. There will be a mid-morning break for 15 minutes at 11:45 am. The Court will rise for lunch at 1:00 pm and resume at 2:00 pm. There will be a mid-afternoon break for 15 minutes at 3:15 pm. The Court will sit until about 4:15 pm.

Revocation

16. Practice Note No.3 of 2015 is revoked.

CJM SUTHERLAND
Lord President
Edinburgh
5th May 2021