

Citizens Advice Scotland

Response to the Scottish Civil Justice Council's Call for Evidence on Modes of Attendance Rules

December 2025

Background

The Citizens Advice network in Scotland plays a crucial role in supporting people across the country to realise their rights. We inform people of their rights and responsibilities and provide holistic, person-centred advice – including advice on social security, debt, energy, housing, employment, family and relationships, complaints processes and legal proceedings. We empower people to secure access to justice by supporting them to navigate systems and procedures to resolve their issues, prevent detriment, and pursue recourse when things go wrong.

The network provides advice via multiple channels: in person in over 300 locations across the country, as well as by phone, email, and other channels, and via our freely accessible online advice pages.

Our holistic advice and support changes lives. In 2024/25, we supported nearly 200,000 people, leading to £169.4 million back into the pockets of people who need it most. Many of the people we support are from the most marginalised and intersectionally disadvantaged communities and backgrounds in Scotland. Last year

- almost two thirds of people we supported reported having a disability or long-term health condition,
- more than half were women,
- one third resided in the most deprived areas in Scotland,
- and more than 1 in 10 identified as belonging to a minoritised ethnic group.

More people have been coming through our doors for help each year since the pandemic – and the cost-of-living crisis shows no sign of relenting. Just as the volume of need is increasing, so is the complexity. Across the last five years, we have seen one in seven people accessing our advice across multiple years. We see crises that are predicated by chronic injustice, often years in the making, which can take hours to understand and untangle – and achieving justice often requires multiple contacts and building up of trust.

In this context, the **CAB network continues to provide vital, life-changing support on legal issues:**

- The Law and Courts pages on our public advice site were viewed more than 970,000 times in 2024/25 and remain some of the most viewed among all our advice pages.
- On legal proceedings, bureaux provided more than 41,000 pieces of advice in 2024/25, which is, on average, more than 3,400 pieces of advice every month.
- Advisers throughout the Citizens Advice network in Scotland routinely support people in accessing and navigating court and tribunal hearings, whether they be virtual, by teleconference, hybrid or in person. In 2023/24, the network supported 1,427 clients at courts and tribunals. This includes CAB advisers acting as authorised lay representatives such as in debt and housing cases or in social security and employment tribunals.

Based on the experiences of the people we support and our advice data, as well as expertise from across the Citizens Advice network in Scotland, our **policy work on Human Rights and Access to Justice** aims to ensure that people's human rights are protected and realised, that people in Scotland have equal access to the justice system, to legal services and to effective remedies; can navigate and engage appropriately in legal proceedings; and that processes are transparent and fair.

Digital exclusion and the justice system

CAS has a number of **concerns about digitisation within the justice system**, an issue that lies at the intersection of our impact work on Human Rights & Access to Justice and on Digital Exclusion. CAS understands that the use of digital technologies - such as electronic submissions, email, e-signatures, virtual and hybrid hearings – can enable greater efficiency in court services and operations, which can also be beneficial for those involved in proceedings.

Yet our data shows that many people in Scotland experience digital exclusion – whether due to the cost of devices or tariffs, a lack of skills or confidence to navigate the digital realm, or a lack of robust digital infrastructure, particularly in Scotland's rural and island communities.

- For many people, their local Citizens Advice Bureau (CAB) is the only way they can access digital services. During 2021/22, the Citizens Advice Network in Scotland recorded 1932 people who were digitally excluded. In 2024/25, this figure rose to over 4100, representing an increase of over 110%. This highlights the continuing and increasing issue of digital exclusion within our network.
- Focussing on our latest data for 2024/25, digital exclusion is linked with a number of advice areas. Benefits advice was sought by around 80% of digitally excluded people who visited their local Citizens Advice Bureau. Tax was also a key advice area for digitally excluded people, as was housing, debt, energy, utilities, and communications. This

shows the breadth of advice sought by those that are digitally excluded across our network, and how often this advice relates to essential services.

- Polling by YouGov on behalf of Citizens Advice Scotland¹ found that 1 in 5 people (19%) in Scotland had to go without internet access at home or without a mobile phone in the past year.²

For significant numbers of people in Scotland who face digital exclusion, the increasing use of these technologies can therefore create additional barriers to navigating court and tribunal processes and can impede their right of access to justice.

While the increase in digital by default approaches across essential services has been accompanied by a range of measures aimed at boosting digital inclusion, CAS nevertheless advocates that channel choice for those engaging with public services and systems is essential in order to mitigate the detriment faced by those less able to access the online world. CAS works to secure changes within public government policy to ensure that people in Scotland do not encounter barriers to digital exclusion and to improve public bodies' awareness, so that services are made more inclusive and accessible for all.

We therefore welcome this opportunity to contribute to the Scottish Civil Justice Council's Call for Evidence on Modes of Attendance Rules. Below we will focus on the questions where we can provide an informed response.

Our response

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?

Citizens Advice Scotland has had, overall, positive feedback from CAB advisers in our network who support people in a variety of court settings about the Rules of the Court of Session (RCS): Chapter 12C: Mode of Attendance at Court Hearings and Sheriff Court - Ordinary Cause Rules (OCR): Chapter 4A: Mode of Attendance at Court Hearings.

From their understanding, the rules make clear that, generally, substantive business will be heard in person while procedural business will be heard virtually, unless unrepresented parties or interpreters are involved in the hearing. Advisers welcomed the introduction of an element of channel choice by allowing courts to make and revoke orders changing these default modes of

¹ The 2025 CAS Tracker Survey was run by YouGov from 27 - 31 March 2025. A sample representative of the Scottish population, with 1,008 respondents, was used. Findings for specific demographic categories are included where the results showed noticeable differences between groups.

² Men were noticeably more likely to be affected by experiences of digital exclusion due to running out of money before payday than women, with 27% of men saying they had to go without internet access at home (compared to 13% of women), and 26% of men were left without access to a mobile phone (compared to 13% of women).

attendance and requiring the court to give parties the opportunity to make representations about the mode of attendance before making such order.

However, CAB advisers report concerns that the rules provide no guidance on what the criteria are for granting a party's request for a change to the mode of attendance and whose needs should be prioritised in the court's consideration if there is no agreement between parties and the court. This can, in practice, **impede the realisation of channel choice for individuals whose access to justice relies on a particular mode of attendance.**

Advisers also raised the issue that virtual procedural hearings can be difficult for individuals to navigate and can lead to misunderstandings when people they support have no idea what is happening in those discussions as they can be quite technical and inaccessible for laypersons. In addition, even decisions taken in procedural hearings can have substantive impacts on proceedings affecting CAB clients as James' experience³ illustrates:

James⁴ sought support from his North of Scotland CAB. He had attended a virtual procedural hearing where the Sheriff had determined that he had no jurisdiction and had dismissed the case. James was unrepresented, could not follow the legal arguments made around jurisdiction and had no understanding of the decision reached or the reasons for it. To compound things, no decision form was issued in the case (until CAS later intervened to raise the matter with the Scottish Courts and Tribunal Service), leaving him unaware of any arrangements or deadlines for appeal.

We would therefore like to reiterate that more support is needed to enable vulnerable and digitally excluded groups to equally access justice and that the best way to mitigate these potential detriments is through **full realisation of channel choice. This would allow rights-holders to choose the most appropriate method of participation in court or tribunal processes to best suit their needs**, rather than the default channel being determined by stage/type of proceeding or action. The latter risks running counter to a person-centred justice system that puts rights-holders at its heart.

CAS believes that until the court rules fully enable channel choice, more clarity and information is required for the public to understand how and on what grounds they can request a specific/change to the mode of attendance under the current rules.

³ **Citizens Alerts** are based on a real-time case reporting system operated by the Citizens Advice network in Scotland. These qualitative cases are shared with us from individual Citizens Advice Bureaux (CAB), which provide CAS with unique and unparalleled insight into the lived experiences, situations, and detriment which individuals seeking our support are facing. While Citizens Alerts represent individual client experience, they can also highlight patterns and structural issues which need to be addressed. We anonymise this data and compile and analyse it to effect change in policy, law, and practice.

⁴ All names have been changed.

Question 2: Is the process for requesting a change to the mode of attendance straight forward or too complicated? If so, what would be helpful?

CAS reiterates our concerns that the rules provide no guidance on what the criteria are for granting a party's request for a change to the mode of attendance and how the court will reach a decision. As set out above, CAB advisers have raised that this can **impede the realisation of channel choice for individuals whose access to justice relies on a particular mode of attendance**. Full channel choice would enable rights-holders to choose the most appropriate method of participation in court or tribunal processes to best suit their needs, rather than the default channel being determined by stage/type of proceeding or action.

One adviser in Central Scotland, for example, raised the following concerns about the implementation of rules on modes of attendance:

"My opinion is that the current setup fails in the duties under the Equality Act and doesn't take into consideration health, commuting and digitally excluded people. Hearings are often set by the Sheriff Court via interlocutor, and there is no explanation or option provided to alter to a remote hearing etc. The heritable court is heard in person, I've known a rare few cases to be heard via telephone instead, but this option only tends to become available once people have sought advice or if the person we support has told the council solicitors they can't attend due to living in a rural setting.

The Sheriff Court can be intimidating for folk, especially for those who are vulnerable with mental health issues, so often people don't attend. Thankfully some instruct us, but in other cases decrees are made in people's absence. I think all hearings should follow the Tribunal process where participants are clearly asked to provide a preference. I still think, generally, the Sheriff should be court based with counsel/rep given the option to attend in person. This way the two sides can still communicate extra judicial, which is often very helpful in agreeing actions."

CAS is aware of cases where party litigants' request of a specific mode of attendance was not granted and would urge that all courts operate a channel choice model, ensuring that people can participate in court proceedings in a manner that is truly accessible and convenient to them.

Question 3: With procedural business defaulting to being virtual, has this approach worked or has it been problematic or caused confusion? And

Q4: Has there been or is there confusion about what a procedural hearing is and what is not?

Please see our responses to Q1 and 2.

Question 5: Have virtual hearings had a positive or negative impact on access to justice?

CAS believes that virtual hearings have had both positive and negative impacts on access to justice. We understand that the use of digital technologies such as virtual hearings can enable greater efficiency in court services and operations, which can be beneficial for those involved in proceedings. Advisers in our network report that virtual hearings can enable some rights-holders' participation in court proceedings where barriers such as a lack of transport connections, health and mobility or care issues would have prevented them from attending court in person. Virtual hearings can also make it easier for advice providers such as CAB to provide support during court proceedings, as one adviser from a rural area explained:

"I will say that we in Dumfries & Galloway find the Webex really useful due to living in a really rural area - for instance we cover both Dumfries and Stranraer Court and if we had to appear in person, it means an around 130mile round trip. Also, if the Sheriff advises that the person we support has to appear in person, in my experience, they can sit with the Sheriff Clerk who is very helpful. This helps when a client is not familiar with Webex or is afraid to go on it. But, generally, I would like to see more help given to the general public on how to access Webex."

CAS thus recognises that the option to access and participate in court and tribunal proceedings digitally improves accessibility for some in certain circumstances, while efficiencies which help court backlogs to reduce are in everybody's interests. **However, these benefits must not come at the expense of access to justice for the most vulnerable in society.**

Advisers in our network have significant concerns about people experiencing digital exclusion, and in many areas across Scotland our bureaux are the only source of support available for people to access virtual court hearings confidentially and safely, as Mark's experience shows.

Mark sought a West of Scotland CAB's support prior to proceedings at the local Sheriff Court in which he aimed to challenge a decree regarding the arrestment of his car for a debt he owed. Mark was unrepresented in the ordinary cause proceedings as he was unable to find a solicitor willing to take on his case.

Mark stated he required assistance from the court to lodge documents but was told by court staff that no assistance could be provided and if he made one more mistake on the forms, they would refuse to accept the documents altogether. He had no facilities to attend the WebEx court hearing. The CAB provided assistance in identifying suitable solicitors and, when Mark could not access one in time, explained the required documents to him and provided use of CAB facilities to secure his digital access to the hearing.

As a CAB adviser from the North of Scotland told us,

“clients do often need support from CAB to help them get set up. They come into CAB to access court hearings, as they don’t feel confident or don’t have digital access and so rely on CAB. Adviser can then be present with them during online proceedings.”

While the Citizens Advice network in Scotland regularly provides this support where possible, it should be noted that CAB are rarely funded to do so. Furthermore, specialist In-Court advice projects run by CAB in several Sheriffdoms, offering free and independent advice and support for people pursuing or responding to some civil actions are in a precarious funding situation and may not continue to be available/accessible in the future.

Advisers also raised concerns about the nature of virtual hearings which can negatively impact people’s ability to meaningfully participate and can lead to misunderstandings, especially for unrepresented parties. A person’s ability to participate and navigate a hearing may rely on physical co-presence and immediacy which tend to be significantly impaired in virtual and telephone hearings. The following comment by a CAB adviser in the North of Scotland illustrates this:

“The feedback we get from clients who have represented themselves without support is that, in hearings that are not in-person, quite often it comes to misunderstandings, for example, what was said by sheriff or pursuer. There’s issues with poor connectivity too, and it can be even more difficult [in virtual hearings] to meaningfully participate for people.”

In cases where interpreters are involved to assist a party’s participation in proceedings, it is often crucial that interpreter and client are in the same (quiet) room so that they can communicate clearly and confidentially with each other during the hearing. This will often disqualify public libraries or other (semi-) public spaces, which may enable digital access for those experiencing digital exclusion, for purposes of participating in virtual court or tribunal hearings. The same is true for communication between representatives/advisers and clients where virtual/remote hearings can impede their confidential communication and real-time advice.

CAS therefore remains concerned that the use of remote and virtual hearings can disproportionately disadvantage unrepresented party litigants, those who are assisted by CAB, or others with additional support needs. We believe that it is unrealistic to expect vulnerable groups or those with additional support needs to engage with remote and virtual proceedings without providing some one-to-one support. Without attending physical court room locations, party litigants may also not be signposted to advice and advocacy services (such as In-Court advice provided by CAB where these are available).

CAS would therefore urge that any shift towards digital by default in court proceedings must be matched with enhanced support for rights-holders who face barriers to navigating these processes digitally, and court rules as well as public-facing information should enable full

realisation of channel choice to prevent people's exclusion from court or tribunal processes and uphold everyone's right of access to justice.

We would also suggest that the Scottish Courts and Tribunal Service regularly conducts qualitative assessments of people's experiences of virtual hearings in order to fully understand barriers some rights-holders face as well successes in implementing measures to address these, so that they can be replicated in/adapted to other parts of the country where suitable.

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? And

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?

CAB advisers regularly report that even when users physically have digital access, limitations and failures of the technology both in virtual and telephone hearings can create significant problems and impact rights-holders' experience and pursuit of justice. While the below cases relate to tribunal proceedings, we believe they are instructive for court proceedings too.

An adviser in a North of Scotland CAB supported Brian in a tribunal hearing when the online hearing platform experienced technological problems which could not be resolved despite several attempts. This resulted in the adviser having to operate three different lines of communication – mobile phone in one hand, landline phone in the other, while he could see the court online, but the court could see neither Brian nor him. These issues resulted in the hearing overrunning by 2 hours and a very distressing experience for the vulnerable client.

Jameel, for whom English is an additional language, was supported by a West of Scotland CAB in a virtual first-tier tribunal hearing contesting a Department for Work and Pensions decision. The online hearing started late, then problems arose due to the interpreter not speaking the client's native language. The hearing had to be recessed to give the adviser a chance to separately take instruction from the client in which he made clear that he wanted the hearing adjourned so that an interpreter speaking the correct language could assist him in the proceedings. Several attempts to resume the video hearing afterwards failed, as the adviser and client could not be added to the virtual hearing room due to technical problems, so the hearing had to proceed by telephone instead. When the client started to become more and more agitated, the hearing was brought to a stop by ending the call. The adviser called the client to advise on what will happen next.

As these experiences show, technical problems can negatively impact on rights-holders and their ability to meaningfully participate in proceedings when something goes wrong with

technology. Often they are left without any real-time support to bring this to the court's attention. CAB advisers have told us of clients who experienced technological issues which prevented them from joining virtual platforms at short notice. They were unable to find a way of alerting court staff to this, meaning the sheriff assumed they had simply opted not to participate and proceeded to grant orders, such as those for eviction or custody, with far-reaching negative impacts on them.

Question 8: How do you find the WebEx platform for conducting virtual hearings and are there any improvements you would like to see?

While some advisers in our network report that the use of virtual hearings and the WebEx platform has worked well for them, overall, they agree that like all Online Video Platforms, WebEx can be difficult to use for people who are digitally excluded. As an adviser in Central Scotland reported,

“Webex can be difficult to operate for those lacking digital knowledge, so isn't the best option for many.”

As set out above, CAS knows that many people will be unfamiliar with WebEx or afraid to go on it and require information and practical support to be able to use it. CAB often support people attending WebEx hearings, by providing people with a quiet space and a device with WebEx installed and assistance in connecting them to the hearing, without being funded to do so.

In addition, CAS is aware of cases in which people experience technical problems but have no way of alerting court staff to this and are unable to receive real-time support. This can be very distressing for party litigants. Advisers have reported cases where people suddenly found themselves unable to join the WebEx hearing, but the court assumed they had opted not to participate, making decrees in their absence with far-reaching impacts.

CAS would urge that alongside fully implementing channel choice and making enhanced support available for people whose access to justice relies on it, courts should ensure they are accessible and provide real-time points of contact for those experiencing technical issues with WebEx.

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, CAS believes that enabling a range of modes of attendance is positive where channel choice is fully enabled and implemented effectively. As detailed above, potential benefits of virtual attendance at court must not come at the expense of access to justice for those who rely on a specific mode of attendance, often the most vulnerable in society. For example, women

and children fleeing domestic abuse, people who are socio-economically marginalised and/or require additional support due to, for example, disability or language issues often experience digital exclusion.

We would recommend that to ensure that courts are inclusive and provide equal access to justice for everyone, we need effective mechanisms which support people impacted by digital exclusion, those disproportionately affected by civil justice issues such as disabled people, and those with additional support needs. It is essential that:

- effective channel choice is offered and fully resourced, to enable rights-holders to access digital and online services if they choose to do so or utilise another channel if that is more suitable and required.
- If a virtual hearing is the default for specific types/stages of proceedings or actions, the process and criteria for changing to an alternative channel should be made transparent and clear for the public. Any negative decisions on requests for alternative modes such as physical in-person hearings should provide clear explanations.
- Information on additional support and assistance available as well as people's right to request reasonable adjustments should be communicated early and in a clear way to the public.
- Person-centred, free support should be provided by or made available at courts for those requiring additional support.
- Rights-holders with lived experience of court proceedings and those who may experience barriers to engaging with courts, as well as organisations that represent and/or serve them, should ideally inform regular monitoring and reviews/development of policies and practices.

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Citizens Advice Scotland (CAS), Citizens Advice Bureaux (CAB) and the Extra Help Unit form Scotland's largest independent advice network. The Citizens Advice network in Scotland is an essential community service that empowers people in every corner of Scotland through our local citizens advice bureaux and national services by providing free, confidential, and independent advice. We use people's real-life experiences to influence policy and drive positive change. We are on the side of people in Scotland who need help, and we change lives for the better.