

Consultation Response

I currently work in the field of mental health law, which requires attending to clients who are patients under the mental health legislation. By definition vulnerable persons from the start. Advising and taking instructions at the best of times can be challenging, advising of what available to them as detained persons and, ascertaining whether they understand it, because of the mental illness or medication on at particular times.

While it has been challenging doing this under the Scottish Government restrictions, we did do it and managed to represent clients at Tribunals without ever meeting the client. This was done thanks to the moves taken by the Scottish Legal Aid Board which allowed no actual signing of forms and, all instructions taken on the telephone and representing at Mental Health Tribunals on the telephone, through the changes made by SCTS. It has to be said, all done very quickly and successfully, given the increasing pressure they were under to keep the wheels of justice turning.

I was also fortunate to participate in a Proof Diet for 3 day, sitting behind Counsel, on the Webex format. While this all proceedings with minor glitches in sound and vision, the actual hearing of evidence from professional and public and, submissions of Counsel was all seamless really and didn't delay the court to any great extent. Counsel submissions were held on a different day in this case and were on telephone only. Which wasn't so good as quality of sound far inferior on telephone.

I have also now taken part in video Webex Preliminary Hearings and Mental Health Tribunals and, telephone preliminary hearings again which I have found to be quite effective and time saving. The quality of sound is never as good on telephone alone. I always feel you missed something on telephone.

I have to say out of the two telephone or Webex, Webex is far greater and the quality of sound is far superior than the telephone. You also have the added benefit of seeing the others in court, which makes proceedings appear more court-like and professional.

The problem I have with these type hearings is the quality of justice is lost. In mental health tribunals, you expect a mental ill person to sit for 1 ½ hours listening to evidence from a loud speaker about them and not see anybody, isn't ideal way of delivering justice. Even the Webex hearings for MHT's are better, but no sufficient for delivery of justice to the most vulnerable people like mental health patient. Who by and large understand but these type of hearings, I consider done help with their mental health and knowing that a telephone conversation, (if they make it through it) just decided to keep them in hospital for 6 months. This is a poor and not effective manner for delivery of justice in this line of work. Let alone the audio problems.

Furthermore, over the pandemic I have dealt with a number of elderly patients whose hearing is unable to hear the evidence because the tribunal on the phone. While this may be brought up at the start of proceedings, the hearing continues and the client is left unable to follow proceedings nor understand what is going on and again, from who?

This cannot be a good way to delivery fair trials and administer justice if the person doesn't even know or hear what is happening to them. Albeit, they represented, part of the ethos of the mental health act is to allow the patient to participate as much as possible. Therefore just listening to a telephone (if they can hear it) is not a good demonstration of access to justice

and the delivery of justice. I therefore feel in-person as far superior for mental health tribunals in deliver of justice and allowing patient to participate.

In terms of actual court civil proceedings, while the case above worked well, there were mainly professional witnesses. I therefore feel these type of cases would work for professional witnesses, saving a lot of time for courts and the professional witnesses, but not so well in say a family matter. The latter would definitely benefit if it remained in person. I would consider a hybrid approach may be worth considering in certain type of cases. Regard preliminary hearings for civil matters, these I would say are better if done by Webex as well and would not think there is any prejudice to anybody client mainly if this was possible. Telephone preliminary calls, I have done often but for audio reasons don't particularly like. So hybrid may be appropriate but needs discussed along the way.

But it has to be said, the best is indeed in person where achievable.