

‘I’m not a cat’

Dealing with Remote Courts

Sheriff Principal Anwar



Managing Telephone Hearings

- Be punctual
- Prepare early
- Identify yourself
- Ensure papers are lodged timeously and within court hours
- Ensure you flag up urgent documents
- Be wary of talking over others
- Be concise and clear
- Maintain professionalism

Managing Video Procedural Hearings

- Ensure a quiet space
- Be aware of your background/lighting
- Dress the part
- Consider a test
- Mute when not speaking
- Ensure your device is charged
- Be aware of how you enter your name
- Turn off video until your case calls

Managing a Virtual Proof

- Engage with the clerk, the sheriff and your opponent early
- Identify disputed facts and agree a timetable for joint minute
- Explore use of affidavits/agree a timetable for exchanging and lodging of affidavits; pay close attention to the drafting
- Consider location of witnesses and ability to join remotely
- Consider whether witnesses will swear or affirm – is there a need for religious books?
- Will witnesses wish to remain to view proceedings?
- Are there vulnerable witnesses?

Managing a Virtual Proof

- How will productions be accessed? Consider joint bundle
- Pay attention to references to productions
- Make arrangements for bench papers
- How will parties and agent's communicate?
- How will evidence be recorded?
- Consider the need for breaks and adjournments
- Ensure you understand how objections will be managed
- Be aware of your own surroundings and your presence

Managing a Virtual Proof

A cautionary tale – CA Child [EWCA] Civ 987

“27. What happened is undoubtedly a consequence of the tremendous pressure under which family judges at all levels find themselves at present. All over the country judges are trying, against powerful odds, to 'keep the show on the road' during the pandemic for the sake of the children involved. They are faced daily, as are the court staff and practitioners, with all the difficulties, technological and otherwise, presented by remote hearings generally and hybrid hearings in particular.

28. The judge's judgment shows how greatly she regrets what happened and it is clear that this hardworking judge genuinely believed that the process of a fair trial had not been undermined and, as had been reflected in her exemplary conduct over the previous three weeks, that she could conclude the trial with her expressed views of the Appellant forming only a limited part of what was inevitably an evolving picture.

29. We find that a particularly troubling aspect is whether the fair-minded observer might consider that the judge had formed an unfair view of the Appellant on the basis of something that could have been but which was never put to her; namely, that she was inventing a cough in order to avoid having to answer difficult questions.

30. We have considerable sympathy with the judge. We have, however, no hesitation in concluding that her comments did indeed fall on the wrong side of the line. “

Managing a Virtual Proof

YI v AAW 2020 CSOH 76

“[44] It was submitted on behalf of the defender that it would be particularly difficult to assess credibility of the parties and their witnesses in this case because the proof had been conducted remotely on video screens. While there were some technical difficulties from time to time with witnesses' wireless connectivity and/or sound quality, I have no hesitation in rejecting that submission. My vision and ability to hear the witnesses was clear and unimpeded. The pursuer came across as emotional and a little fraught, speaking as she was in her second language. She sometimes used hyperbole to make a point . . . That type of linguistic nuance was as easy to pick up on screen as it would have been in the courtroom. So far as the defender is concerned, I have assessed his lack of credibility on the inconsistencies in his different accounts and the documentation and concluded that these illustrate his willingness to make false statements to secure a desired result. However, insofar as relevant, my conclusion on that is fortified by the way in which he gave his evidence as video recorded. On one occasion in cross examination when it was asserted to him that he had used foul and derogatory terms to his wife he leant forward towards the camera to state his denial in what I noted at the time was an aggressive manner. He rolled his eyes more than once when he was asked questions about the sexual allegations and he folded and unfolded his arms. He became noticeably red in the face when he denied calling his wife her "friendly rapist" . . . He laughed when it was suggested that he would sulk and become difficult if his wife refused to have sex with him . . . My observations of his behaviour were noted just as I would have done had he been appearing in a physical court. “

Assessing Credibility

Lord Bingham “The Business of Judging”

“The main tests needed to determine whether a witness is lying or not are, I think, the following, although their relative importance will vary from case to case:

- (1) the consistency of a witness’s evidence with what is agreed, or clearly shown by the evidence, to have occurred;
- (2) the internal consistency of the witness’s evidence;
- (3) consistency with what the witness has said or deposed on other occasions;
- (4) the credit of the witness in relation to matters not germane to the litigation;
- (5) the demeanour of the witness.”

See also *Watson v PF(Kirkcaldy)* 2009 HCJAC 36

What does the future hold?

“what will emerge in time will, hopefully, be a progressive, desirable and reformed justice system, in which we will all have a role to play”.

“virtual courts and online services should, and now will, be viewed as core components of the justice system, rather than short-term, stopgap alternatives to appearances in the courtroom”.

Further suggested reading

- Nuffield Family Justice Observatory “Remote hearings in the family justice system: a rapid consultation” and “Remote hearings in the family justice system: reflections and experiences”
- Richard Susskind “The Future of Courts” and “Online Courts and the Future of Justice”
- Lord Bingham “The Business of Judging”
- Brian Barry “How Judges Judge”