

**Scottish Courts and Tribunals Service**

 **Research Access Guidance for Researchers**

Read this guidance in conjunction with the Research Access Request.

**The formal access procedure**

Scotland’s courts and tribunals are public buildings and the public can observe most proceedings, but all research involving access to the courts, tribunals, Office of the Public Guardian (OPG), judicial office holders, tribunal members and SCTS staff has to be approved by the Lord President of the Court of Session, Scotland’s most senior judge.

All research access requests should be made using the Research Access Request and should be addressed to the Lord President, except those where the research involves criminal courts. In those circumstances access requests should be addressed to the Lord Justice General, the Lord President’s title when dealing with criminal matters.

If the Lord President/Lord Justice General approves a request which seeks access to judicial office holders and/or Scottish Courts and Tribunals Service (SCTS) staff in Sheriff and Justice of the Peace Courts, a further request must be sent to Sheriffs Principal. There are six sheriffs principal in Scotland. Each sits as the administrative head of a different court area called a sheriffdom. The six sheriffdoms in Scotland are:

* Glasgow & Strathkelvin
* Grampian, Highland & Islands
* Lothian & Borders
* North Strathclyde
* South Strathclyde, Dumfries & Galloway
* Tayside, Central & Fife.

For a list of courts in each of the six Sheriffdoms in Scotland, please see the [map](https://www.scotcourts.gov.uk/courts-and-tribunals/sheriff-and-justice-of-the-peace-courts/sheriff-courts/) available on the SCTS website.

If the Lord President approves a request which seeks access to tribunal members and/or SCTS staff in tribunals, a further request must be sent to the Chamber President.

For more information about the Tribunals, please see the SCTS website at [About Scottish Tribunals (scotcourts.gov.uk)](https://www.scotcourts.gov.uk/the-courts/the-tribunals/about-scottish-tribunals)

For more information about the Office of the Public Guardian, please see the website at [Office of the Public Guardian (Scotland) (publicguardian-scotland.gov.uk)](https://www.publicguardian-scotland.gov.uk/)

The Research Access Request along with any additional documents should be submitted to sctsresearch@scotcourts.gov.uk if you have any questions whilst completing the template or you would like to discuss your research request prior to submitting the template please contact the Head of Library and Archive Services at the email address above.

**What happens when a research access request is submitted?**

On submission of your Research Access Request your request will be assigned a reference number. You will receive an acknowledgement email along with a note of the reference number assigned and this should be used for any future correspondence in relation to the request.

Your request will be checked and a substantive reply will be sent back to you within 5 working days. Where it is not possible to meet this deadline you will be advised when you will receive a substantive reply.

Researchers should not approach any courts, tribunals, OPG, judicial office holders, tribunal members or SCTS staff until access has been approved by the Lord President and the relevant Sheriff Principal and Chamber President.

Where appropriate once all of the steps in the approval process have been completed you will be provided with contact details of a member of SCTS staff to make arrangements to conduct your research.

The Lord President and/or Sheriff Principal/Chambers President may refuse access requests, approve only part of the access requested, seek clarification on issues pertaining to the research, ask you to reconsider aspects of your research design or impose conditions relating to the conduct of the research before granting approval.

Research funded by the Scottish Government involving access to courts, tribunals, OPG, judicial office holders, tribunal members and SCTS staff is subject to a similar procedure. If the Scottish Government funds you, access requests will be made by government officials with the assistance of the relevant Analytical Services Team and should not be made independently by the lead researcher. If in doubt, the lead researcher should consult the Scottish Government’s research project manager.

**Completion of the research access request**

Below is a guide to completing the research access request. If the request has not been completed with sufficient information, it will be returned to you.

The request should be addressed to either the Lord President/ Lord Justice General / Sheriff Principal or Chambers President as appropriate. All research requests in the first instance are addressed to the Lord President or the Lord Justice General. All access request should be address to the Lord President except when the research relates to criminal courts in those circumstances the access request should be addressed to the Lord Justice General (the Lord President’s title when dealing with Criminal matters).

*General Information*: The date the application is submitted, title of the research project, name of the lead researcher and if applicable research institution the researcher is associated with should be entered. If there is no research institution associated with the researcher then “not applicable” should be entered against this section.

*Types of Research*: This section should indicate the types of research access being requested and all of the options that apply should be selected. If the options available do no cover the type of access being requested then the “Other” option should be selected and full details provided in the “Other research type sought” box. You will be given an opportunity further on in the template to detail the specific information/people you wish access to.

*Research Timescales*: You should indicate any timescales you are working towards as part of your research and also how long you anticipate any research will take. We appreciate that timescales may be subject to change but it will assist the Lord President/Lord Justice General in deciding whether this is something that can be facilitated. Please note it can sometimes take 2 -3 months for a request to be fully considered so applications should be submitted allowing sufficient time for consideration.

*Details of Research*: You should clearly set out the purpose and background to the research and include the aims and objectives of the research. This section should also be used to explain the proposed outcomes and any use for the research. If the outcomes of the research are to be published the location where these are to be published should be included.

*Research Methodology*: You should set out in this section how you intend to conduct the research, including when and where you would wish the research to take place for instance this may include the number and general location of the courts you wish to access.

*Expectations of SCTS/Judicial Office Holders*: In this section you should clearly express what access you would wish, for instance if you wish to conduct interviews, express how many you would wish to conduct. You should note that even if access is granted, interviews are voluntary. You should not nominate individual judicial office holders or SCTS staff for participation in research. This will be agreed by the Lord President and Sheriff Principal/Chambers President if access is granted. When requesting interviews copies of the proposed questions to be asked must be submitted along with the research access request, in a separate document. If you are requesting access to data or records please express clearly here what data and records you would wish to have access to, the time period to be covered and the number of records (for example, all records within the time specified or a sample). Please note that access to data/records may require a fee to be charged and you should check in advance if this is the case to ensure that the costs can be met. Please detail in this section if this is Scottish Government funded research.

*Compliance with Data Protection and GDPR*: If access to records is requested, a separate Records Access Form should be completed and submitted along with the research access request. If access to data is requested, a separate Data Access Form should be completed and submitted along with the research access request. You should note in this section, which forms have been completed and attach them with the research access request. If you are conducting research as part of an academic institution, you may wish to include reference to the institution’s policies in relation to data protection and GDPR. For any other instance, and in addition to the above, general information should be provided as to the steps taken to comply with data protection and GDPR.

You must confirm you have read this guidance prior to submitting the form.

**General principles**

There are a few general principles about research involving the courts, tribunals, OPG, judicial office holders, tribunal members, and SCTS staff that the SCTS would ask researchers to bear in mind.

* Judicial discretion and independence must not be impaired by participation, and research must not include any assessment of judicial performance, which is a statutory responsibility of the Lord President;
* Judicial office holders and tribunal members should not be drawn into areas of political controversy through research by being asked to comment on the merits or otherwise of Government policies. Researchers can, however, ask judicial office holders to comment on the effectiveness of policy implementation;
* The researchers should have the necessary qualifications and experience to conduct the research, although research assistants may be employed under proper supervision;
* Participation in research should not impose an undue burden on judicial office holders, tribunal members or SCTS staff;
* Judicial office holders, tribunal members and SCTS staff who take part in research should not be identified in any reports arising from research;
* Unless the research involves the evaluation of pilots in one or more court(s)/tribunal(s), individual courts/tribunals should not be identified in reports arising from the research, without prior consultation;
* Judicial office holders, tribunal members and SCTS staff who take part in research should be sent draft research reports (or relevant parts thereof) before publication so that any errors or misunderstandings on the part of the research teams can be identified and raised with the researchers;
* Any prior personal involvement in court/tribunal proceedings by any member of the research team should be disclosed in the research access request;
* The Lord President may request sight of and be afforded an opportunity to make comments or observations in relation to any research reports for which access has been granted prior to publication. Any comments will be around factual accuracy, readability and quality of research findings and interpretations.

**Preliminary questions for consideration**

The SCTS would ask researchers to think carefully about their research designs. Past experience suggests that it may be worthwhile discussing research plans informally with SCTS before making a formal request for access. The Head of Library and Archive Services in SCTS is happy to act as a first point of contact with researchers and can be contacted by email at sctsresearch@scotcourts.gov.uk

They will be able to provide advice in relation to whether information sought by researchers is available or held by SCTS and if it is releasable.

It is for researchers to consider when would be the best time to involve the SCTS in their thinking when developing research projects. Although formal access requests do not need to be submitted and approved before any research funding is approved, researchers are encouraged to think about the detail of their access requirements at an early stage. Highlighted below are a few matters for consideration.

* **Is the subject matter of the research specific to only a few courts/tribunals, judicial office holders, tribunal members and/or SCTS staff (for example, an evaluation of one or more pilots) or does it have a wider application?**

If it applies to all courts/tribunals, the SCTS will need to consider the location of other research in progress in courts/tribunals so that the burden of research participation in some courts/tribunals does not become unmanageable.

* **If the research involves interviews and/or focus groups, where, when and how could these take place?**

Court and tribunal premises may not always have suitable accommodation, and judicial office holders and SCTS staff may be occupied with their duties during the normal hours the courts and tribunals sit (usually 10:00 a.m. to 4.30 p.m. or later). At other times, judicial office holders may be dealing with urgent out of hours work or involved in preparation for the next day’s cases, and it is important that researchers when planning research in courts and tribunals recognise the need to be flexible to accommodate demands on the courts, tribunals, judicial office holders, tribunal members and SCTS staff.

* **What kinds of participation in research will judicial office holders, tribunal members and SCTS staff be likely to agree to?**

Participation may take the form of face to face, telephone or virtual interviews, questionnaires, and focus groups. For smaller projects or for those where the involvement of judicial office holders, tribunal members and/or SCTS staff is limited, it may be acceptable to take the views of participants by an exchange of correspondence. Please remember that there is no obligation upon judicial office holders and SCTS staff to discuss their personal backgrounds and participation in any research is voluntary.

* **Are there any restrictions on researchers’ activities when observing proceedings?**

Observation of proceedings in open court (at which the public is entitled to be present) is allowed and does not need formal prior approval but it is polite, and good practice, for researchers to notify the Sheriff Clerk, in advance, of their intention to attend proceedings in Sheriff Courts or Justice of the Peace Courts. The Sheriff Clerk will, in turn, inform the presiding judicial office holder. For observations in the High Court, Court of Session or Court of Appeal, researchers should notify the Deputy Principal Clerk of Session and/or Deputy Principal Clerk of Justiciary who will inform the presiding Judge(s). For observations in Tribunals, researchers should notify the Chamber Administrator. The Mental Health Tribunal for Scotland and Health and Education Chamber hearings are held in private so would not permit observers.

Judicial permission is required under Section 9 of the Contempt of Court Act 1981 if researchers wish to use mechanical recording equipment, but researchers are otherwise free to take notes during the course of proceedings. If researchers wish to use a laptop to take notes this should be mentioned in the access request. This may be approved or rejected on a case by case basis following consultation with parties involved in the proceedings due to the ability of some laptop devices to be used for video and audio recording.

* **Can researchers observe court proceedings that are conducted in chambers or in a closed court?**

Approval for observations of court proceedings conducted in chambers will be given by the judicial office holder concerned only in exceptional circumstances, and then only with the consent of the parties to the proceedings. It is unlikely that approval will be given to observe proceedings in a closed court.

* **Can researchers obtain access to court/tribunal records?**

Access to court records is carefully regulated because they usually contain sensitive or personal information. Court records are exempt from access to information under Section 37 of the Freedom of Information (Scotland) Act 2002. The SCTS has a duty not to disclose sensitive or personal information under the terms of the Data Protection Act 1998. However, researchers are able to access certain information.

It is unlikely that researchers will be able to look at and copy information from court/tribunal records. However it is possible that the SCTS may be able to provide some high level information that will assist researchers, so long as the effort to locate, extract and summarise the information is not excessive.

Researchers wishing to access court or tribunal records must draft and submit a Records Access Form, along with the research access request. This will be retained by SCTS. Thereafter we will complete a data sharing agreement which will be signed by SCTS and the lead researcher.

Researchers should also consider if they could obtain the information they seek from the originators of documents lodged in the courts such as the Crown Office and Procurator Fiscal Service.

**Responsibilities at the conclusion of research projects**

On the completion of a research project researchers are required to lodge a copy of any report/research output (in a format approved by your funding body e.g. a preprint copy of a journal article) with SCTS. Finalised research reports/research outputs should be submitted in the first instance to sctsresearch@scotcourts.gov.uk. This will be stored in the SCTS Library based at Parliament House, 11 Parliament Square, Edinburgh, EH1 1RQ.

**Contact details**

For assistance in relation to any research related matters please contact the Head of Library and Archive Services at sctsresearch@scotcourts.gov.uk