

Note of the COVID Criminal Endurance Recovery Group**Date: 14 January 2021- 3pm Meeting One**

Attending:

Amanda Millar, President, Chair (AM)

Lorna Jack, Chief Executive, Law Society (LJ)

Stuart Munro, Criminal Law Committee (SM)

Elizabeth Dougan, Criminal Law Committee (ED)

Peter Lockhart, Criminal Law Committee (PLo)

David Fiskin, Glasgow Bar Association (DF)

Ian Moir, Co-Convener Legal Aid Committee (IM)

Debbie Wilson, Convener Criminal Law Committee (DW)

Lisa Potter, Law Society communications team (LP)

John Mulholland, Past President (JM)

Andrew Ormiston, Criminal Law Committee (AO)

Ken Dalling, Vice President (KD)

Antony McFadyen, Professional Practice, Law Society (AMcF)

Laura Sharp, Criminal Law Committee (LS)

Faith Millar, Criminal Law Committee (FM)

Mark O'Hanlon, criminal practitioner (MOH)

Kris Gilmartin, Criminal Law Committee (KG)

Philip Lafferty, Legal Aid Committee (PLa)

Julia McPartlin, Edinburgh Bar Association (JMCP)

Gillian Mawdsley, Secretary to Criminal Law Committee, Law Society (GM)

Purpose: It has been agreed to establish a weekly meeting of the Group. In view of the continuing and challenging criminal justice situation and in light of the Lord President's announcement today on the prioritization of business, we would like to arrange a regular weekly meeting of the Group. This is to allow the Society to hear what is happening on the ground and also to feedback information from the discussions and ongoing meetings with the senior

management are having with their criminal justice partners while the COVID-19 pandemic continues. This is held under the auspices of the Criminal Law Committee.

Last week saw a large range of matters being covered in virtual correspondence including the important aspect of safety in the courts for the profession, the wearing of face masks, the transfer of sheriff & jury business from Dumfries to Ayr and also the need for personal appearances in the courts.

Not everyone will not be able to attend all meetings but as many as can attend to provide an update will be appreciated. Meetings have been arranged to end February when the continuing need for these meetings may be examined again in the light of the circumstances.

1. Overview of where criminal justice is:

The President (AM) welcomed all to the meeting, appreciating the time being given to provide this update. She explained that the plan was for the Society to have weekly meetings on a Monday morning with SCTS/COPFS/Faculty to monitor the ongoing situation. LJ recognised this as a positive step to provide a review of court business and was an improvement to take account of the profession's views in responding to the various announcements regarding the necessary reduction in the court business due to the pandemic.

This would allow those attending to feeding into the meeting with meaningful information being provided from across the country.

2. Updates from each jurisdiction/area:

What follows is a brief list of the comment's made under each jurisdiction.

AM and LJ asked for feedback on three points from each area. The observations are summarised under conclusion (identification/assessment of priorities/risks) below.

1. Is there an appetite for trials to continue to run?
2. If there are any breaches of COVID-19 relates rules?
3. Are there other matters which can be put in place to allow criminal business to continue?

LJ highlighted that a letter from SCTS had been received indicating that where there are local concerns with regard to court safety these should be shared locally first before there was any escalation.

Ayr (PLo):

Initial- The announcement on Monday (LP) caused confusion initially. This meant it was unclear what was to happen to part-head trials on Tuesday etc. Tuesday was confused too in that clients were told not to attend – and the Sheriff Clerks had still called cases.

PiTMS – There were issues over those already scheduled – as awaited call but none came from PFD. Now aware that PiTMS are not going to call in this period as summary trials have been adjourned. The trials being adjourned which are to progress are scheduled straight to new trial diets (TDs). There needs to be clarification when there are going to be PiTMS, IDs and TDs.

SCTS processes: SP Anwar has now provided the rescheduling of the court programme which is helpful.

The proactive legal adviser has advised that nothing is to call in the JP courts including proofs but has offered advice and help.

There has been good communication with the Sheriff Clerk at Ayr. There are some differences between Ayr and Kilmarnock. For instance at Ayr, the use of remote custodies have been working well.

There has been some friction at Kilmarnock between agents and staff with the outbreak of COVID.

Breaches of social distancing etc: We raised concerns last week and met with the Dean.

There was a concern at the lack of court interview rooms and the lack of hand sanitiser. SCTS are aware of the problems and doing their best.

Miscellaneous: The next meeting of the Summary Pilot Board is on Friday (15th). the agenda includes discussion on progress to date and the next steps in implementation of the Practice Note and PiTMS – there had been a suggestion on restarting the pilots in four courts after they had suspended. This does not seem to be the time for this to go forward but need to see how the meeting goes.

Sheriff & Jury trials have started. These are Ayr cases now but will move on to Stranraer and Dumfries cases next week; concerns are being expressed with regard to those requiring to travel to Ayr. There are efforts being made to see if they can link some witnesses from there.

COVID-19 breaches: There was a feeling prior to the LP's announcement that agents had congregated without masks. They were approaching clerks without masks and not respecting social distancing. Within the public areas, they were not following to the degree of distance

between each other that should be observed. Since the LP's announcement last week the seriousness of the pandemic had increased awareness and had seen a difference.

Dumfries (ED):

General: Custodies are virtual at 2pm which is working very well. They have been using this process since the week before Xmas where you can use your phone or at the court room. If the client is remanded, it can be difficult to speak to take instructions for bail appeals as there is only one room. This also needs to be used for consultations too.

There is therefore a shortage of accommodation facilities.

PiTMs: None of us use the 15 minute booking system. This does not work for volume as we had 37 as a firm which meant we booked out ourselves a lengthy slot with COPFS and this worked.

With regard to PiTMs, the slot system did not work as if agents were in court they missed their time. Slots do not work for volume. It works where there were good prior relationships based on effective communication.

Current: With regard to the changes since Tuesday, we understand that part heard trials will continue. We finished one this morning where the accused was in custody.

We understand that the PFD will identify cases with children or domestic abuse as the priority and that has started. 8 trials have already been identified which are to be prioritized

Sheriff & Juries in Ayr: These remain a concern as these have been transferred to Ayr for the duration. This involved 10 agents with 80% of them having children under 5 travel and involves a 3 hour round trip to Ayr. It is easier to get to Glasgow than Ayr as the road is bad with no direct bus links. Originally it was thought that there was only to be the agent plus accused requiring to travel. It involves the sheriff as well as the witnesses – though the witnesses can link from Dumfries, there is only one set up which is also required for Full Committals.

Vulnerable witnesses also need to use that room too.

There are also consequences and the sheriff cannot be in two places at once. Summary trials required to adjourn to allow the sheriff to go to Ayr to do sheriff & jury trials.

The issue here is that it was only to cost 40K to have links set up and to do the trials in Ayr but SCTS chose not to go that route with tense consequences. In order to put the link in, the technology to do trials would exist in Dumfries.

Glasgow (DF/SM/IM)

General: The position in Glasgow is much as everywhere else. The SP communicated well with Glasgow with one trial per day per court going ahead.

The custody list was around 12 which is very low in numbers; it has been really quiet all week. In the longer term this shows a reduction in traffic which is perhaps unavoidable. This will impact on the profession. This time with the lockdown there should be efforts made by COPFS to work on this time to maintain a throughput of business. This will reflect on the profession where there may not be the same need to furlough staff.

The speed too of custodies going through the court is averaging 3 per hour. That is also delaying the start of the court.

Future: The COPFS anxiety and focus on High Court but keeping other forms of business going would be good too. Focusing on the High Court may not always be the best use of resources. There needs to be greater use of technology to promote safe systems of working. There was a suggestion for instance of using email to advise Sheriff Clerk that the agent is ready to do the hearing. That avoids the need for face to face contact. There could also be utilisation of Perspex screens. There can also be greater use of contact to check information for instance at an ID such as if disclosure had been made without agents attending court.

Have further risk assessments been carried by SCTS? These also need to be visible and shared. This would address the concerns of the profession and others.

Actions:

- Can the list of custodies be shared more widely than just with members of the Bar Associations?
- Where there are not going to be cases calling such as undertakings, can COPFS be more effective in communicating what is going to call or not?

Dumbarton (PLa)

General: There are no suitable meeting facilities in Dumbarton. Consultation was required in the disabled toilet which was not suitable place to do this. There needs to be an option for installing a court booth and allowing private consultations to take place in the corridor. This had also involved taking instructions in the car park and it being impossible to arrange a confidential conversation.

The court staff are quite insistent and will put people out of the building where there are breaches of social distancing. More creative thinking is require to allow effective facilitation.

Edinburgh (FM) –

General: This provided some perspective from COPFS. There was acknowledged to be a lot of anxiety on both sides. COPFS had put a lot of work into systems for their staff. However as they are in the same building as the court this presented challenges. It was difficult to ensure social distancing. There was a lot of anxiety where they were seeing lot of staff who have caught the virus but not necessarily in court. This was a staff issue where there was repeatedly a need self-isolate for track and trace and anxiety was greater than last year.

There were also concerns with risk assessment undertaken by SCTS.

There was an understanding that justice could not be cancelled for another year.

Sheriff & jury trials are running in in Edinburgh.

Falkirk (JM)

General: There was no reason why summary trials cannot run in Falkirk. There is a proposal that all custodies at Falkirk will be undertaken from 20 January remotely.

There are issues with WebX and its availability within the court building. Wi-Fi should support its use.

Hamilton (MOH)

General: It is very helpful for footfall for Criminal Justice Social Work Reports to be mailed across 2 days in advance to allow agents to see them.

Where there are cases deferred for GBR and the sheriff is going to admonish, this can be achieved administratively.

The priority is domestic abuse trials.

There are 5 interview rooms. There are issues where instructions are to be obtained and how to interview. There needs to be screen and interview rooms.

PiTMs: The booking app is not fit for purposes. People are not using it, they have gone back to the surgeries. Where firms only have 1 or 2 it can work but big numbers of cases cannot be resourced.

Aberdeen (AO)

General: We echo the comments made before PiTMs which was also affected as there was no capacity as there were more IDs than spaces.

There are the same issues with interview rooms – though there may be 2 metre space, it is unventilated space.

3 agents have got COVID and cannot prove where they caught this.

There are inconsistent sheriffs' practices. One sheriff asked for the screen to be removed which caused concern with practitioners.

Banff (DW)

General: She mentioned that ROLO has not been covered.

Where WebX is rolled out, there is a need for training to be done.

There had been general compliance from agents with the processes.

Dundee (KG)

There was an issue with a multiple accused part heard trial and these may be issues going forward.

PiTMs were not working.

Reflecting on the number of custodies there had been less than 30 for the whole week which showed a worrying down turn of business.

Sheriff & Juries were going to start next week.

There have been problems with the agents' room. There had been breaches as there was not really anywhere for client consultations. There are needs to take instructions on the day.

Perth prison is available for visits though consultations are restricted so it is difficult to get instructions going forward.

4. Conclusion - Identification/assessment of priorities/risks

Key issues:

1. Court business across the country have all adapted since the announcement made this week that only essential court business was to proceed.

There was in some courts confusion as to what was cancelled and how ongoing business such as part heard trials were to be dealt with. Some of this was inevitable but it flags the need for better communication among all parties to avoid frustration as to what is calling/not calling. This includes COPFS for instance with undertakings which are outstanding.

2. Good practice is identified as being where the courts have started to outline what business and how business is going to run. (Hamilton)

There is a need for early effective communication among all concerned – SCTS and COPFS.

3. Safety is an ongoing concern for all.

SCTS have carried out risk assessments. As a priority, there is a need for these to be reviewed and reassessed. These need to be communicated and visible locally. Input should be obtained from the profession as to their needs which has identified more interview rooms and safer facilities for consulting interviews are required. There is a query why certain areas such as corridors are utilised for these purposes and much greater use made of screens and available technology.

There needs to be confidence for all using the courts.

4. Technology exists. Creative use is required.

Use of technology such as emails to the sheriff clerk may reduce in some instances the need for face to face encounters. The criminal justice organisations have all the technology in place with WebX making sure that it works is important.

The issue of sheriff & juries in Ayr transferred from Dumfries is one which raises whether links can be put in to assist in this decision taken without local consultation.

5. Flexibility of approach

The priority is on the High Court and sheriff & jury trials running. However there should be an effort to run other business where possible and safely. We welcome the opportunity to be involved in assisting with that approach.

There needs to be monitoring on a regular basis and effective communication and discussion of plans in advance to best update the profession when noting the downturn in business and the impact on their work again.

6. PiTMs

There needs to be clarity over those plans going forward. The system for booking is not working. This has resulted in reverting to conventional means of utilising surgeries. No new pilots should be carried out meantime such as the summary business as the system is in flux and needs to deal with the issues being presented at this time by COVID-19.

The next meeting is Thursday 21 January 2021 at 3pm.