



Briefing Paper

Amalgamated Briefing Paper on Restarting Solemn Trials

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Contents

Foreword	5
1. COVID-19 considerations	7
Background.....	7
The broad approach.....	7
The Remote Jury Centre Model	8
Recruitment and training of staff, provision of equipment	8
Technical support.....	9
Police presence at Jury Centres.....	9
Cleaning of Jury Centres.....	9
Jury Citation and Balloting.....	9
Confidence.....	9
Procedures.....	10
Numbers to be cited	10
Responses/Excusals	10
Advising Jurors of the need to attend	12
Issues specific to the restart of Sheriff and Jury trials.....	12
Non-vulnerable witnesses and remote attendance	12
Maintaining physical distancing	12
2. The new jury directions	14
Background.....	14
Recapping of written directions	15
Written Directions in the Sheriff Court	16
3. The trial, including the new jury directions etc	17
Route map for commencement of jury trial.....	17
Day One.....	17
Day Two.....	18
4. Detailed description of the new process.....	20
Court room requirements	20
The Ballot.....	20
Day One.....	21
Day Two.....	22
How do solicitors and counsel communicate?	25
How do jurors communicate with court?.....	25
Productions and documents.....	26
Witnesses	27
Deliberating.....	27
Further considerations for Jurors.....	29
Travel Expenses	29
Refreshments and lunches for juries	29
Breaks.....	29

5. Lessons Learned from Mock Trials and from the First Trial	30
The jury’s perspective	30
Decorum	32
Introducing the parties.....	32
Audio to jury room.....	32
Audio from jury room.....	32
Judge’s ability to engage with jury.....	33
Defence counsel or solicitor taking instructions	34
Counsel addressing the jury.....	34
Appendix A: Juror documents	35
JURY CITATION.....	35
JURY SERVICE - INFORMATION SHEET	38
JURY SAFETY - INFORMATION SHEET	41
Appendix B: Act of Adjournal	42
Appendix C: Juror responsibilities	44
Appendix D: Impartiality – a suggested form of words.....	48
Appendix E: COVID Jury information	52
On the jury returning after the adjournment.....	52
Appendix F: Introducing the case and procedure to the jury.....	53
Introduction	53
Judge’s function	53
Jury’s function	53
Procedure	55
The court day.....	56
Following the trial	57
Privacy of the jury	58
Avoiding outside influence.....	58
** Suggested direction for cases which have attracted significant publicity	59
Appendix G: Written Directions for Jurors in the Scottish Courts.....	61
Part A: Introduction	61
Separate functions of Judge and Jury	61
Agreed facts.....	62
Evidence	62
Assessing witnesses and their evidence	63
Inferences	65
You decide the case only on the evidence	65
Direct and circumstantial evidence	65
Part B: Certain fundamental principles	67
1. The presumption of innocence	67
2. The burden of proof is only on the Crown.....	67
3. The standard of proof – proof beyond reasonable doubt	67

4. Corroboration	67
What is the position of the defence in relation to the four rules?	68
Part C: Other directions to be used as appropriate.....	70
Where there is a docket	71
Where there is a notice of special-defence.....	72
Where there is more than one charge	73
Where there is more than one accused.....	74
Concert	75
Mutual corroboration	76
Appendix H: SCTS Guidance for Clerks if Juror displays COVID:19 symptoms etc	77
Purpose	77
Prior to a trial commencing.....	77
Juror Displays Symptoms.....	78
Juror Tests Positive for COVID-19	78
COVID “incidents” during a trial.....	79
Memorandum to all judges and temporary judges	81
COVID-19 – Incident Response Guidance	82
SCTS COVID-19 Flowchart 1: Person on SCTS Premises displays or reports symptoms.....	96
Appendix I: Police Scotland Memorandum: Jury Facilitation	97
Appendix J: Appearance by electronic means.....	106
Representations.....	106
Suspension of requirements for physical attendance.....	106
Attendance by electronic means	107
The decision.....	108
Appendix K: Full COVID Jury Information	110
General	110
Cleaning.....	110
Reducing the number of people in the court.....	110
Face coverings and hand sanitisers	110
Physical distancing.....	111
Productions.....	111
Training.....	111
Illness.....	111
Conclusion	112
Appendix L: Memorandum to Sheriffs Principal.....	113

Amalgamated Briefing Paper on Restarting Solemn Trials

Foreword

The original JI Briefing Paper on Restarting Solemn Trials in the High Court (dated 17 July and updated on 27 and 29 July and 3 September) was drawn up to support those judges who were due to conduct the first tranche of solemn High Court trials commencing on 20 and 21 July. That paper was revised to reflect lessons learned from those trials and also because of related developments.

There was then published by the JI a subsequent, supplementary Briefing Paper on Remote Jury Centres (“RJC”) once that model had been selected as the national model for such trials and preparations had been made for the launch of the RJC’s in Edinburgh and Glasgow.

This paper represents an amalgamation of both of the original papers with historical and unnecessary material stripped out. Sheriffs may be particularly interested in the [route map for commencement of a jury trial](#) which provides a broad picture of how a COVID affected trial will proceed with the new jury procedures in place. Please note that both the original “Restarting Solemn Trials in the High Court” Briefing Paper and supplementary “Remote Jury Centres” Briefing Paper have been removed from the Judicial Hub and replaced by this one Briefing Paper.

In December 2020 sheriff and jury trials restarted in some sheriffdoms using the RJC model. Other courts will follow in 2021. The intention is that this new paper will be a useful resource for sheriffs as they embark on conducting trials with the new procedures in place.

The original paper was seen as necessary because it was clear that, for the foreseeable future, solemn trials would be innovative in two entirely unconnected respects:-

- (1) They will take place against the background of the challenges posed by the COVID-19 health pandemic and will require to take account of physical distancing restrictions, not least in terms of the location of the jury;

(2) In solemn trials in the future new procedures will be in place (a) to provide the jury at the outset with a written document advising them of their duties and responsibilities; (b) to give the jury, before any evidence is led, oral directions on the general principles applying to all solemn trials and, in some cases, directions on matters relevant to the particular trial; and (c) then to give the jury those directions in written form, once more before any evidence is led.

As procedures and practice develop and as experience is gained it is likely that this paper will be revised.

1. COVID-19 considerations

Background

On 12 May 2020 the Lord Justice General established a short-term working group, led by the Lord Justice Clerk, to consider the practicalities of recommencing trials by jury as and when public health guidelines permitted such a move. On 27 May 2020 the Lord Justice Clerk announced that the intention was to conduct two High Court Trials, one in Glasgow and one in Edinburgh during the week commencing 20 July.

The way jury trials were to be conducted posed a significant challenge. There was a need to ensure that jurors were safe and confident that physical distancing was adhered to in terms of government guidance. The principles of a fair trial and open justice had to be preserved.

The broad approach

Through the short-term working group the future of jury trials was being considered in three phases:

- Phase 1, which has now concluded, addressed the immediate short term, starting with two High Court trials in July 2020 and then moving into an ongoing but limited programme. The trials to be run were carefully chosen – single accused, limited number of witnesses, preferably witnesses not requiring additional special measures. Mock trials were run in Edinburgh and Glasgow. The learning from the mock trials was considered and procedures were adjusted for the trials going live later in July;
- Phase 2 of the project was aimed at how the capacity of the High Court could be best utilised to increase the number of cases per week that could be run with physical distancing measures in place, while taking account of the additional complexities that come with many trials. For example, multiple accused, vulnerable witnesses, interpreters etc. It was recognised that the continued use of technology would undoubtedly be a key element in this work. Phase 2 planning was set for after

the mock trials. This was to ensure that any early learning from these trials could be accounted for in the planning and preparations; and

- Phase 3 would draw on the learning from both Phases 1 and 2 in order to plan a robust process which would in the medium to long term become the “business as usual model” for the conduct of solemn criminal trials.

This paper will not dwell on the progress of Phases 1 and 2 of the project, now that Phase 3 is well established as the norm for the future, but will draw on the experience to date of conducting trials using RJC's.

The Remote Jury Centre Model

In September 2020 SCTS revealed plans for the opening of the first SCTS Jury Centres for High Court trials in Edinburgh from 28 September at the Odeon Fort Kinnaird cinema complex, and in Glasgow from 12 October at the Odeon Braehead.

In this model the jury views proceedings remotely from a Jury Centre rather than from the court room or a room in the same building as the court.

The aim was eventually to re-establish pre COVID-19 pandemic levels of business with 16 trial courts capable of running simultaneously, spread across Edinburgh Lawnmarket and Sheriff Court, Livingston, Glasgow Saltmarket and Sheriff Court and Paisley Sheriff Court. The juries for these trials are located in one of the two Jury Centres where there is capacity for 5 juries at Fort Kinnaird and 11 at Braehead.

Recruitment and training of staff, provision of equipment

- Each Jury Centre has a Jury Centre Manager and three or four reception staff.
- Each jury room within each Jury Centre has a Jury Attendant.
- SCTS is using existing staff to undertake these duties, and is also using temporary / contracted staff to increase the complement of Jury Attendants at the SCTS Jury Centre at Braehead.
- All Jury Centre staff undertake the appropriate training before conducting any trials.

- At each Jury Centre, SCTS has a dedicated office space for the Jury Centre Manager and support staff. The office has SCTS issued equipment such as laptops, phones and a printer.

Technical support

“Sparq” is a technical event production company and as part of the contract agreed with Odeon Cinemas will be managing and supporting the in-house projection screen and audio equipment at the Jury Centres. Sparq will provide the cameras which show the jurors on screen in the court and will also provide point to point communication with the Court.

A Sparq technician will be present in each jury room who will ensure that all the equipment is working and highlight any problems to the Jury Attendant.

Police presence at Jury Centres

Police Scotland have undertaken a risk assessment, and have made 27 recommendations which SCTS have considered and acted upon, a copy of the recommendations is attached at [Appendix I](#). One of the recommendations made by the police is that the Jury Centres be given a marker at the respective Police Scotland Area Control rooms and if any calls are received in respect of the centre the response rate will be heightened.

Cleaning of Jury Centres

- Jury Centres will be cleaned to the same standard as courtrooms.
- Jury Centres will not be open to the public from Monday to Friday evening. Odeon Cinema will take back control of the cinema on a Friday evening until Sunday night.

Jury Citation and Balloting

Confidence

The safety of jurors is paramount. It is crucial to communicate to jurors the steps SCTS has taken to ensure their safety and that social distancing can be observed. This will increase the likelihood of jurors attending. This needs to be the principle that is at the forefront of all considerations. For jurors, SCTS will provide new details of each step in their journey from citation through to the ballot and arriving at court until the oath is administered.

Procedures

- Section 85 of the Criminal Procedure (Scotland) Act 1995 governs the citation of Jurors.
- The balloting procedure introduced by [SSI 2020/200](#) still remains in force.
- An example of a citation can be found at [Appendix A](#), along with a copy of the updated information sheet shared with jurors. SCTS has drafted a leaflet entitled: “Jury Trials – Your Safety is our Priority”. This SCTS leaflet may be amended and added to in the light of feedback from the first round of citation. This leaflet is also in Appendix A.
- Updates have also been made to the [jury information section](#) of the SCTS website
- Walk-through videos for jurors, witnesses and practitioners explaining the set-up at the Jury Centre and the court room have been developed. These can be found on the SCTS website by clicking on the following link and scrolling down to view the videos: [“Participating in jury trials in Scotland: advice during coronavirus”](#).
- The citations have been sent out by the usual practice of first class post. The current citation gives jurors an option to apply for excusal using postal service, but this option has been removed as it adds time to the process and requires greater staff involvement. In the new process applications for excusals should be done via email or telephone, which allows for staff to administer them from home therefore reducing the footfall in SCTS buildings.

Numbers to be cited

The statutory requirement for numbers of jurors attending for ballot is not to be reduced. To mitigate possible requests for excusals the number of jurors to be cited has been increased meantime, but will be kept under review.

Responses/Excusals

Jurors will be asked to respond to their citations by telephone or by email. SCTS will require to obtain a mobile telephone number for the juror at this stage. The telephone number is essential as it will allow SCTS to have direct conversations with and/or text message these jurors later in the process.

Jurors are directed to the [Guide to Eligibility and Excusal](#) on the SCTS website, which details those who are eligible for excusal. Given the current circumstances with COVID 19 it is suggested that it may also be appropriate to excuse:

- Those with COVID 19 symptoms
- Those who are shielding or self-isolating
- Those with underlying health conditions or other vulnerabilities
- Those who have caring responsibilities and/or are co-habiting with others who are shielding, or who have caring responsibilities for other vulnerable individuals
- Those who have childcare difficulties
- Key workers

SCTS would have to be strict with the excusals and ensure that only those who fall within the guidelines are excused. SCTS may have to look sympathetically on those who are self-employed or those returning to work after lockdown. The excusal of those with caring responsibilities in particular may require careful scrutiny.

SCTS would aim to limit the number of excusals to 70 of those cited. Experience suggests that the number of those who do not respond in non-COVID circumstances is in the region of 40. From those left SCTS ought to be able to secure the attendance of 30 for the ballot.

The responses will be recorded on a spreadsheet, this would allow SCTS to use filters to obtain lists of those excused and those who are expected to attend.

A Question and Answer document has been produced for staff dealing with the responses and excusals detailing information about expenses, travel arrangements and safety arrangements.

If jurors have not responded by a given deadline a reminder letter will be sent, which stresses the importance of responding to the citation, and the vital role that jury service plays in maintaining law and order in a functioning democracy.

Advising Jurors of the need to attend

At least 2 weeks in advance of the trial, the list of responses will be checked again, and further follow-up measures taken if needed. If the number of responses saying they will participate is greater than 30 the trial will be able to run.

SCTS is in the course of updating the website to include videos for jurors, witnesses and practitioners illustrating how physical distancing will be achieved. Jurors will be directed to the relevant video in order to help build their confidence further in the event that they are selected to attend.

If the list of responses is less than 30, there is a high risk that the trial will not be able to run as the court would have to rely on those who have not responded turning up on the day. To mitigate this risk the number of responses will be closely monitored and reminder letters issued if necessary.

Issues specific to the restart of Sheriff and Jury trials

Non-vulnerable witnesses and remote attendance

The Remote Jury Centre model will be the same for both High Court and Sheriff Court jury trials. Only a limited number of sheriff courts will be used for such trials so that, for example, a trial notionally from Stranraer will be heard in Ayr and trials from Jedburgh or Selkirk will be heard in Edinburgh. It may be that there will be a desire on the part of witnesses, who are not vulnerable witnesses, to give evidence from a remote location near home and thus avoid having to travel to the location of the trial court. This might be seen as justified either from a simple convenience point of view or from the perspective of COVID safety and travel restrictions. Courts now have power in terms of paragraph 2(3) of schedule 4 of the Coronavirus (Scotland) Act 2020 to direct that any witness does not require physically to attend court but must also give direction as to how the witness is to appear by electronic means. See [Appendix J](#) for more details.

Maintaining physical distancing

It is understood that all courts to be used for jury trials, whether in the High Court or the sheriff court, have been risk assessed, seating has been arranged appropriately and, for some purposes (e.g. examination of witnesses) the floor of the court has been marked and

a lectern provided. In the latter case the purpose is not only to signify a safe distance but also to mark where the questioner should stand to ensure that they are visible to the jury on camera.

Some of the sheriff court rooms being used for remote jury trials were not designed as jury courts and are smaller than the optimum for maintaining physical distancing. Also, such courts may not be appropriate for trials involving accused assessed as posing a particular risk. The situation is being reviewed by SCTS.

However maintaining physical distance is not only about the architecture of the court. Parties must also look at their own behaviour. Practitioners must show responsibility and discipline in maintaining the two metre safe distance not only by occupying their designated seat but also when entering and leaving the court room and when moving within the courtroom. In particular, whatever their examination technique might have been pre-COVID, they must use the designated location for examining witnesses **and not move from it** until their questioning has wholly concluded. It may be that sheriffs will require to remind practitioners of this during the trial.

2. The new jury directions

Background

In discussion between the Lord Justice General, the Lord Justice Clerk and the Jury Manual committee it has been agreed that from July 2020 jurors should be provided with certain materials in writing at the start of the trial.

These are (1) a written note of their duties and responsibilities and (2) a document setting out the general directions which apply in every case, as well as, if appropriate, specific directions which should also be provided in writing and read to the jury at the same time, depending on the circumstances.

Specimen introductory remarks in [Appendix F](#) to this Briefing Paper set out what might be termed housekeeping arrangements and an overview of how the trial works.

Please note: the remarks at Appendix F are suggested and are not mandatory. Judges should feel free to impart this information in their own way and in their own words, reinforcing what is in [Appendix C](#), the note of responsibilities, which the jury will have already in their packs.

The introductory remarks should be followed by the reading of the written directions which are at [Appendix G](#).

Parts A and B of the written directions contain the directions which were formerly given in the charge before turning to the indictment itself.

Part C of the written directions are additional documents containing specific directions which, *where appropriate*, should also be provided in writing and read to the jury at the same time.

Whether it will be advisable in a particular case to provide any further material to the jury in advance of the evidence, such as a definition of the crime(s) charged, will depend on the circumstances. This has not yet been the practice in the High Court. It may not be appropriate in cases with multiple or evidential charges when many of the charges will be

withdrawn long before the jury deliberates. In charges under sections 1-9 of the Sexual Offences (Scotland) Act 2009, it may be misleading to give the full statutory definition which includes reference to the absence of reasonable belief at the start of the trial given that, in most cases, it will not be a live issue on which direction is required at the end of the trial.

In [Lyttle v HMA 2003 SCCR 713](#) it was held that nothing said in the opening introductory remarks can be prayed in aid to make good a deficiency in the charge but in that case the court was not dealing with information clearly encapsulated in writing and approved by the Jury Manual committee; the information given to the jury was only labelled as introductory remarks and was not highlighted as legal directions which the jury had to follow; **the directions now to be provided in writing should be incorporated into the eventual charge by reference (and in some cases recap) in due course** so that the issue of possible discrepancy raised in *Lyttle* will not arise: and the context can be fully identified.

NOTE:-

Recapping of written directions

The Jury Manual is presently being revised to take account of the new procedure for giving the jury pre-evidence and written directions. The new section of the Manual will say the following:-

“It is anticipated, pending any decision of the Appeal Court to the contrary, that there will be no requirement to repeat at length all of the written directions during the course of the Charge. However,

- 1. The jury should be reminded that they have copies of what was delivered earlier and it should be stressed that they must follow both those directions and what is said in the Charge itself.*
- 2. Judges and Sheriffs should be alive to the fact that the conduct of the trial, the exact nature of the issues raised and perhaps even the length of the trial will mean that some repetition, refinement or elaboration is needed of what was*

said at the start, both in relation to the more general directions and any further matters such as, for example, concert, prior statements, special defences or dockets, as the case may be. It should always be borne in mind that the directions as a whole must be tailored to the circumstances of each case.

3. *The evidence and submissions of the parties will doubtless inform the extent to which anything more need be said in relation to matters touched upon in the introductory directions. In a Moorov case, for example, directions on corroboration would have to be very specific. In some cases, such as an assault where the only issue is self-defence, the introductory directions on corroboration may suffice. Where corroboration is an issue, such as in a wholly circumstantial case or one where corroboration of a witness was to be found in circumstantial evidence, more will be required. Juries will still have to be told, for example, that corroboration is something which confirms or supports the principal source of evidence, assuming there can be said to be one.*
4. *Whatever requires to be repeated or elaborated upon, reference should still be had to the suggested general directions which still appear at the end of this part.*

In summary, at all times it should be remembered that the introductory directions are just that. While they cover much of what is to be found in the opening part of a Charge they will not be sufficient of themselves in every case.”

Written Directions in the Sheriff Court

On 26 November the Lord Justice General sent a memo to all Sheriffs Principal which concluded:-

“I would therefore be grateful if you could forward this note to the sheriffs in your sheriffdom and advise them that both I and the Lord Justice Clerk are of the view that the interests of justice require that solemn trials in the sheriff court should be conducted following the same procedure. The adoption of the new process of providing written directions should not be regarded as optional.”

The full memo can be found at [Appendix L](#).

3. The trial, including the new jury directions etc

The following provides a broad picture of how a COVID affected trial will proceed with the new jury procedures also in place:-

Route map for commencement of jury trial

Day One

- Clerk calls all cited jurors to confirm they have no difficulty in attending.
- Case calls with no jurors present but everyone in court and judge on bench
- Plea tendered
- Judge deals with any preliminary matters
- Jury balloted remotely
- Judge considers making an order under (Section 4(2) of the Contempt of Court Act 1981 to restrict reporting until the commencement of the trial because balloted jurors have not yet been warned by the court not to make internet inquiries etc.
- Judge makes an order under paragraph 2(3) of schedule 4 of the Coronavirus (Scotland) Act 2020 directing that the jurors need not physically attend the trial courtroom but will attend by electronic means , namely by a television link between the RJC and the trial courtroom. See [style direction – appearance by electronic means.](#)
- Balloted jurors plus 5 (or 10 if directed by the Judge) are called by clerk telling them to turn up next day

Day Two

- Balloted jurors attend RJC
- When a juror attends at the Jury Centre, they will be met by SCTS staff.
- The juror will be searched by a security officer, who will conduct a hands off search.
- The juror will check in at reception and told their screen number.
- The juror will make their way to the screen and be met by the Jury Attendant.
- The Jury Attendant will escort the juror to their seat.
- The same process will be repeated every day.

- Clerk addresses jurors, deals with excusals and provides necessary logistical information including re COVID safety
- Each juror given a copy of the Duties and Responsibilities leaflet by Jury Attendant
- Judge comes on the bench, parties all in court
- Link to court activated
- Case calls, not guilty plea confirmed
- Indictment and special defences read
- Jury sworn
- Questions to jurors re impartiality [Specimen at [Appendix D](#)]
- Adjournment – “coats and hats”
- Deal with any jury excusal issues which arise
- Reconvene with jury and substitute any juror(s) as required, with suitable questions and further adjournment if necessary
- Excuse the unempanelled jurors with details of any further commitment as the case may be

- The text of [Appendix G](#) Parts A and B, the general directions which apply in every case, are in the pack given to each juror. This may also include any of the extra directions in Part C of Appendix G specific to the case, eg concert, more than one accused
- Judge introduces the case and procedure to the jury including giving COVID-19 reassurance as required/thought necessary
- Judge gives general directions which apply in every case plus any relevant extra directions specific to the case
- Evidence commences

4. Detailed description of the new process

Court room requirements

Court – will be the trial court and will contain the judge, clerk of court, accused, prosecutor and defence counsel and/or solicitor, witness, and public, including families. Social distancing requirements limit the number of media and others, including family representatives who can view from the public gallery and will be available on a first come first served basis or as managed by the clerk.

RJC – will host the jury in an auditorium which will be the same room used as the Jury Room for deliberations.

The technology requirements would be:

A live two way visual and audio link will be established from the court to the RJC. A large video wall will be in place in the court permitting all in court to see all of the jurors' faces. The jury will see the court room, in particular the witness giving evidence, the accused and productions that are shown in court, on a large 4 quadrant screen (the normal cinema screen) in the RJC. Two way audio will be in place to allow communication between the court and the RJC.

All live links will be able to be disconnected instantly by the clerk of court.

The Ballot

A new process for balloting jurors remotely has been developed. This new process will reduce the number of jurors having to come to court by approximately 50%.

The new process is supported [by Act of Adjournal \(Criminal Procedure Rules 1996 Amendment\) \(Jury Ballot\) 2020/200](#) which came into force on 19 July 2020 – see [Appendix B](#).

To allow the jury to be balloted in their absence the following procedure will take place:

Day One

- I. On the morning of day one, between 9.30 and 12 noon, the clerk of court will phone potential jurors to ensure that they are available to attend for jury service; those available will be placed in the ballot bowl.
- II. The case will then usually call in open court at about 2pm.
- III. Judge deals with any preliminary matters, such as tendering of pleas, late notices or lists of witnesses, S 67 notices etc.
- IV. The balloting stage of the trial will be an opportunity for the judge to identify with parties the topics which will require to be the subject of written direction in addition to those which apply in all cases (see below Day two XVII).
- V. Parties will be asked by the judge whether this case is one of high profile that may require extra substitute jurors, more than five. If so, the court may, of its own accord or on the application of parties, direct that the reserve list be increased to a maximum of 10 jurors.
- VI. Fifteen names (“the first list” plus five or more substitutes (“the reserve list”) are drawn by the clerk.
- VII. Judge considers making an order under [Section 4\(2\) of the Contempt of Court Act 1981](#) to restrict reporting until the commencement of the trial: otherwise the media could report that a jury in the case has been balloted. This could alert the jurors to the case that they are presiding over and they could carry out research as they have not yet been directed by the court not to.
- VIII. Judge makes an order under [paragraph 2\(3\) of schedule 4 of the Coronavirus \(Scotland\) Act 2020](#) directing that the jurors need not physically attend the trial courtroom but will attend by electronic means, namely by a television link between the RJC and the trial courtroom. The following wording is suggested:-

Style direction – appearance by electronic means

“By virtue of paragraph 2(3) of schedule 4 of the Coronavirus (Scotland) Act 2020, having given all parties an opportunity to make representations, the court considers that a direction under paragraph 2(3) will not prejudice the fairness of proceedings or otherwise be contrary to the interests of justice, and therefore directs that the jurors need not physically attend the trial courtroom but will attend by electronic means , namely by a television link between [Courtroom X] and the said trial courtroom”.

- IX. The clerk of court will then telephone the balloted jurors telling them to attend the next day. It will therefore be necessary for the trial judge, during the ballot procedure, to ascertain the time at which those selected will require to attend.

Day Two

1. The clerk would require to speak to all 20 or 25 balloted jurors as normal in the allocated accommodation area. The clerk will cover all COVID related and logistical issues. On arrival each juror will have been given a pack containing the indictment, special defences and a copy of the written directions which the judge will later deliver. The jurors are advised not to look at their pack until told by the clerk that they may.
2. Jurors will each be given by the Jury Attendant a copy of the document “Your Responsibilities as Jurors” – see [Appendix C](#).
3. The judge will come onto the bench. Parties will confirm case is proceeding. Judge will ask for jurors to be connected by audio/video link. The judge may want to ask the jurors if they can see and hear proceedings effectively.
4. At this stage the judge may want to thank the jurors and substitutes for attending, explain what is about to happen and suggest that the jurors have the indictment available as it is about to be read to them. The judge should encourage the substitute jurors to listen to everything that is said.

5. The case will be called and indictment plus special defence (if any) read, and the jury oath administered.
6. The judge will then pose the impartiality questions. A suggested form of words is at [Appendix D](#).
7. “Coats and hats” adjournment
8. Deal with any jury excusal issues which arise.
9. Reconvene with jury and substitute any juror(s) as required, with suitable questions and further adjournment if necessary.
10. If a substitute is required, the juror will be excused and the substitute chosen from the reserve list (in the order in which their names were drawn) and sworn as usual. It may be that under the circumstances, the substitute should be asked, before the charges are read, if there is any good reason which would require excusal. All these people will have been in the same room and heard all that was said to the 15 original jurors.
11. Excuse the unused substitute jurors with details of any further requirement as the case may be.
12. At this stage, a new procedure will be followed which has been devised on the instructions of the LJG and LJC.
13. The judge will make introductory remarks, a suggested version of which is set out in [Appendix F](#), but judges are free to use their own words. This may include the judge giving COVID-19 reassurance as required. However it may be that the judge would think it appropriate to say nothing. If the judge thinks it necessary to say something, a suggested form of words is contained in [Appendix E](#).
14. Thereafter, the judge will give the written directions which are set out in Parts A and B of the document at [Appendix G](#).

15. In some cases it may be appropriate to give written directions at this stage on additional topics such as dockets, special defences, concert etc. These are set out in Part C of [Appendix G](#). Since all these directions are contained on pre-printed sheets and each member of the jury will be given a copy prior to the judge referring to them, it will be necessary prior to the start of the trial to have selected the appropriate collection of sheets for distribution.
16. In addition the judge will make reference to the document “Your Responsibilities as Jurors” ([Appendix C](#)) a copy of which the jury will also have been given on arrival.
17. The Crown will call their first witness.
18. The trial will then proceed as normal.
19. Note: - if during the trial a “new” event occurs, eg the first time a production is shown on the document camera, the judge may want to check with the jurors that they can see the image. It is thought that it should be the judge who does this, rather than asking (eg) the prosecutor to do so.
20. In accordance with current public health guidance, documents which are to be given to the jury will require to be printed/copied by a member of SCTS staff who is wearing a face covering and disposable gloves. Any copy productions will then be placed in a folder for transporting to the jury. Any member of staff distributing paper productions will be wearing a face covering and disposable gloves. This will allow for the printing and provision of documents to the jury where such documents are generated just before the trial starts or even during the trial. In the Jury Information sheet which is sent with the citations it is said:-

“All documents that are given to you during the trial will be passed to you by a member of staff who will be wearing gloves. Where jurors are provided with a document, we ask that they do not share them.”

The expectation is that the clerk will also mention this precaution to the jurors in the welcoming remarks.

How do solicitors and counsel communicate?

The requirement for physical distancing in court will mean that it will most likely not be possible for counsel [possibly senior and junior] and their instructing solicitor to sit within whispering distance of one another in the well of the court. This issue will also affect the sheriff court if counsel is instructed.

For the purposes of the High Court, on 20 November Lord Matthews sent the following email to all senators and temporary judges:-

“At a meeting of the High Court Users Group on Wednesday I was asked by the Faculty representative to consider the question of counsel and agents texting each other in relation to proceedings while they were in court.

As you know, we have always been quite happy for representatives quietly to discuss matters as they sit at the table but Covid-19 means that that may not be safe to do. I have approached the Lord Justice General about this and he agrees that representatives may discreetly text each other about the case which they are then conducting while they are in the well of the court.”

The content of this email has now been communicated to Judiciary Clerks. It may be that sheriffs will wish to consider offering the same dispensation, when appropriate, in the sheriff court. If so, clerks will need to be informed, to avoid misunderstanding.

How do jurors communicate with court?

- There will be a microphone available for the jury to communicate with the court via the Jury Attendant.
- The microphone will be controlled by the Jury Attendant, who will activate the microphone and inform the court of any issues, such as sound, image or a juror requiring the attention of the court.
- In particular, if a juror, for example, realises before the evidence starts that he/she knows the accused, the juror will inform the Jury Attendant.

The Jury Attendant will inform the court that there is an issue using the microphone in the Jury Centre that is linked to the courtroom.

The juror will be isolated away from other jurors.

The Jury Attendant will contact the clerk of court – an SCTS mobile phone will be available for the Jury Attendant to do this and can also be used by the juror in the presence of the Jury Attendant.

- This method will apply for any forms of communication the jury needs to have with the clerk.
- The impartiality questions: at the moment when a judge asks the impartiality questions, the jury is told not to answer out loud, but to speak privately to the clerk of court if there is an issue.

It is suggested that the following could/should be said by the judge to the jury about how they communicate:-

“If in answer to any of the questions your answer is yes, or if there is a difficulty or doubt, please do not mention it to the other members of the jury but do please speak privately to the Jury Attendant who will arrange for you to speak confidentially with the clerk of court.”

Productions and documents

Each juror will have a folder to allow them to store a copy of the indictment and other documents, such as notes, joint minutes and copies of productions etc.

- At the end of each day the folder will be placed in a lockable storage box by the Jury Attendant. The storage box will be taken to the storage screen and that screen will be locked by the Jury Centre Manager.
- If further documentation needs to be given to the jury, the Clerk of Court will email this to the Jury Centre Manager. The Jury Centre Manager will print the documentation. Any member of SCTS staff handling the documentation will wear gloves and a face covering.

Witnesses

It is possible, if perhaps unlikely, that, once a witness has concluded giving evidence, they might ask the judge whether they can sit in court to watch the trial.

There will be physically distanced seating available in the court rooms for the media and family members, whether of witnesses or accused, or, where space permits members of the wider public.

There will be about 15 spaces in the Saltmarket court rooms but only about 7 in the Lawnmarket. Livingston Sheriff Court has 4 spare seats and Paisley has 9.

It is suggested that, if the judge is asked such a question directly, a possible reply might be:-

“Yes, of course, in principle, you can, but that will depend on whether there are sufficient spaces within the public gallery, because spaces are limited due to the need to observe physical distancing requirements. A court official will advise you.”

Deliberating

- Once the jury has been charged by the judge and is ready to commence deliberations they will, where the particular facility allows, move down to a deliberation area which is immediately below the screen and is equipped with 15 physically distanced chairs and side tables. The chairs are set out in a large oval. On each table there is a microphone to aid communication amongst the jurors, some of whom are quite a distance from others. The Jury Attendant and technician from Sparq will leave the room.
- In 7 of the jury rooms within Braehead Jury Centre and 3 of the jury rooms within Fort Kinnaird Jury Centre there is insufficient floor space for a deliberation area. In these rooms, when deliberating, the jurors will remain in their allocated seats. Each will have a microphone and the image on the screen will be changed to show a live view of the 15 jurors. This will allow the jurors to see and communicate with one another

without having to turn back and forth in their seats, which are obviously fixed facing forwards.

- If a member of the jury needs to use the toilet facilities during deliberations they will be escorted by the Jury Attendant to a disabled toilet (single use). The Jury Attendant will ensure that the juror does not interact with any other person.
- The Jury Attendant will remain outside the screen and ensure that no one enters the room.
- If the jury has a question for the Judge, the clerk will clear the court room and speak to the jury privately. The clerk will write down the question or request and confirm it with the jury before proceeding in the normal way by bringing it to the attention of the judge and then the parties. At one point it was thought that the jury's question could be committed to writing, scanned and emailed to the clerk. It transpires that there are no scanning facilities in the RJs. Anecdotally it seems that in some instances the question may have been photographed and sent by email or text to the clerk. The main thing is that the clerk accurately understands what the question is and can check that with the jury.
- Once the jury has reached their verdict they will inform the Jury Attendant.
- The Jury Attendant will then message the Clerk of Court to inform them that the jury has reached a verdict. The jurors will be asked to return to their allocated seats.
- Once the jury has intimated that the verdict is ready the clerk should be facilitated to have a private discussion from a closed court room with the whole jury to ensure that they are clear that they do indeed have a verdict. Otherwise there is substantial room for error and confusion of a kind which clerks are very good at nipping in the bud.
- On another but related point, it is known that juries sometimes ask clerks at this point to remind them of the procedure for delivering the verdict, which is entirely proper and saves the embarrassment of the spokesperson getting it wrong. This should also be facilitated via a closed court communication between the clerk and the jury.

Further considerations for Jurors

Travel Expenses

Pre-pandemic jurors were advised that public transport was the preferred option to get to court. In the current situation, people may not be confident in using public transport. The clerk will advise the jurors who are required to attend that they can bring their cars and that parking charges will be reimbursed as well as mileage. For non-drivers taxi fares will be reimbursed. This may be costly as the pool area for jurors for Glasgow stretches from Cumbernauld to Greenock and for Edinburgh it includes East Lothian and Midlothian.

Refreshments and lunches for juries

- Jurors will be able to select from a number of options – such as: a meat box, fish box, vegan box, gluten free and a salad box. They will also receive a bento box, which contains – juice, biscuit, fresh fruit and a packet of crisps.
- SCTS will provide jurors with bottled water.
- Odeon will provide two servings of teas and coffees at 11:15am to 11:45am and again at lunchtime.

Breaks

Jurors will need the opportunity to have a fresh air break during any court breaks, as the proposal would mean that they jury would not be seeing any natural daylight for the duration of the day they are in court. Essentially the procedure in respect of breaks will not be changed, it will remain as it was pre-COVID, but with physical distancing measures in place. Smokers will be permitted to go for fresh air or a smoke during the court breaks. They will be accompanied by a Jury Attendant.

5. Lessons Learned from Mock Trials and from the First Trial

The mock trial held in Edinburgh in July and the first proper trial which proceeded in Edinburgh used a model similar to the RJC model, but the jurors were not in an RJC. They were in a court room within the same building as the court room where all of the other participants were situated. The following therefore has to be read with that difference in mind.

The jury's perspective

The Director of the Judicial Institute took part in one of the mock Edinburgh trials as a juror. These are his comments on the screen view available to the jury.

The split screen showed in the four quadrants:-

Quadrant 1	Quadrant 2
<p>Accused and, when examining, the AD and defence counsel. The dock escorts could also be seen, plus a large part of the public benches. The accused was a very indistinct blocky figure. It was impossible to form an impression of her. This could be a real issue in some trials.</p> <p>As a result of recent Appeal Court decisions, if there is CCTV footage which allegedly shows the culprit doing things, the jury is entitled to look at the footage, look at the accused and make a comparison for themselves to determine if the accused is the person shown. Such an exercise would be absolutely impossible with the poor quality of the camera image here.</p> <p>In addition, the accused seemed a rather irrelevant adjunct to the proceedings. The AD and defence counsel were reasonably visible and in better focus.</p> <p>However the whole image, viewed holistically, was quite "busy" and, as mentioned above, the accused seemed marginalised, which is a pity because the trial is all about the accused.</p>	<p>The witness box. This was a triumph. The image of the witness was very clear. I could see every facial impression or tic, plus his body language. The audio was crystal clear.</p> <p>During speeches the lawyers need to be told where to stand and not to move. The AD was fine but defence counsel was totally off screen until I raised the issue. I believe there were markings on the floor. Counsel need to be told to use them.</p>

Quadrant 3	Quadrant 4
<p>Initially a sign saying “Quiet Please. Court in Session” with the Scottish Courts logo. It transpired that this was the feed from the document camera. That could perhaps have been explained at the start. The shiny ever present sign was a bit distracting. Could it not be switched off when not in use?</p>	<p>Overview of the courtroom which seemed to be able to be switched between a very wide angle showing the entire court and a tighter zoom showing less of the court. The only point at which this screen performed a specific, useful function was when the witness was asked to identify the attacker and pointed to the accused. On the top right screen I could see that he was pointing. On the top left screen I could see the accused but the only way I could tell he was pointing at the accused was by looking at this overview image.</p> <p>Otherwise this image gave the jury an overall impression of the court which I think is important because it contextualises all the other images. But, could this screen, or the witness box screen not be used for a camera showing a close up high quality image of the judge when the judge is addressing the jury, for whatever reason? If the judge’s camera was located in front of, above or even within the jury video wall then the jury would get the sense of the judge looking at them when speaking. At the moment the judge just talks into the ether, not apparently looking at the jury, which is very unengaging.</p>

The image below provides an impression of what the jurors see in the four quadrants:



Decorum

Everyone has to realise that, if the video link is live, the jurors can see the court and those in court can see the jurors on individual screens in high definition colour and quite close up. Those in court should not be lounging around, drinking coffees or whatever. Meanwhile the jurors must behave as they would if present in the court. This means no eating snacks or drinking juice etc.

Introducing the parties

If the judge, as part of the introduction, introduces to the jury the various “actors” in court – Advocate Depute (“AD”), defence counsel, clerk, macer, accused – it has to be borne in mind that the only view of these people that the jury will have at that stage, other than of the accused who has his/her/their own screen (in the top left of the jurors’ screens), is the court overview screen. All of the court personnel will only be visible to the jury as small, relatively indistinct figures. The usual practice of the AD and defence counsel turning to the jury or nodding when introduced will be of no value, probably barely visible. It may be that at least the AD and the defence counsel could be asked to stand up when introduced. Perhaps the macer could stand in front of the witness box which also has its own screen.

Audio to jury room

Everyone has to realise that if the video link to the jury room is live then it is likely that the audio is live. The microphones in the court are very sensitive. Sotto voce remarks will run the risk of being heard in the jury room. All need to be aware of that.

Generally there might be an argument for deciding that the link to the jury will only go live when the judge has already come on the bench.

Audio from jury room

During the first Edinburgh trial (with the jury in a different room) the jurors could not initially be heard responding “I do” to the administration of the oath. This continues to be a problem and judges/clerks are asking jurors to nod when they say “I do.”

More generally on audio, if jurors are to be able to communicate with the court direct from their seat (as if sitting in the jury box) the only means of communication available in the first Edinburgh trial was a single portable microphone in the jury room. That worked well when the spokesperson came to deliver a verdict. It is somewhat cumbersome otherwise, and requires a jury attendant to deliver the microphone physically (and, one is to assume, only after it has been wiped with a cleaning agent) whenever a juror raises a problem, and only when the juror has made known to the jury attendant the existence of a difficulty. A satisfactory solution requires to be found. The current set up seems to be that there is a fixed microphone to which the spokesperson needs to come in order to deliver the verdict and that any other difficulty would need to be communicated by the juror to the jury attendant.

Judge's ability to engage with jury

Following the experience of the mock trial a way was found for the clerk to zoom the court overview camera in on the judge's position, but only to a certain degree. However, from the jury perspective, the judge remained a relatively distant figure. Moreover, the images of the individual jurors are shown very clearly on the screens to the left of the bench. When addressing the jury the most natural thing to do is to look at them. Under the current arrangements that cannot be done if the judge wishes to speak direct to the camera. The judge's ability to engage with the jury is compromised by the need to address them while speaking straight ahead. The level of intimacy one might expect in a "normal" trial will never, using this method, be achievable. It is hoped that a solution can be found whereby (i) the judge can look at the jury while speaking to them, and (ii) the jury's view of the judge when he/she does so is less remote.

Also, because the judge appears to be so far away from the jury, when he speaks it was not obvious that his remarks were being directed at the jury. There is no discernible body language as there would be in a normal pre-COVID trial so without verbal cues it will be tricky for a juror to know what is happening.

If the judge uses the expression "Ladies and Gentlemen" it may not be obvious that he means the jury especially if there are female and male lawyers, macer etc. The expression "Members of the Jury" has the benefit of clarity and, incidentally, avoids any criticism based on gender stereotyping. Some judges may not like this term and may choose to adhere to

“Ladies and Gentlemen” but for these remote trials it may be that using the term “Members of the Jury” is advisable.

As at the time of writing in November 2020 the position in the RJC’s used for High Court trials is that it is possible for the clerk to adjust the view so that, for the jury, only the judge is on screen which is optimum for when the charge is being delivered.

In some courts, the positioning of a camera above the jury screen allows a judge to speak almost directly to the jury whilst also looking at them which is important both for engagement and monitoring attentiveness.

Defence counsel or solicitor taking instructions

In the first Edinburgh trial counsel were, it seems, scrupulous in their efforts both to adhere to social distancing and physically to wipe the lectern between witness examinations. At one point the accused wished to give his counsel instructions. There was no alternative but to adjourn for that to be done. Brief dock conversations will simply not be possible under current conditions.

On the other hand it is reported that in the Glasgow trial the accused’s solicitor approached the accused to take instructions from the dock and very obviously breached the distancing requirements.

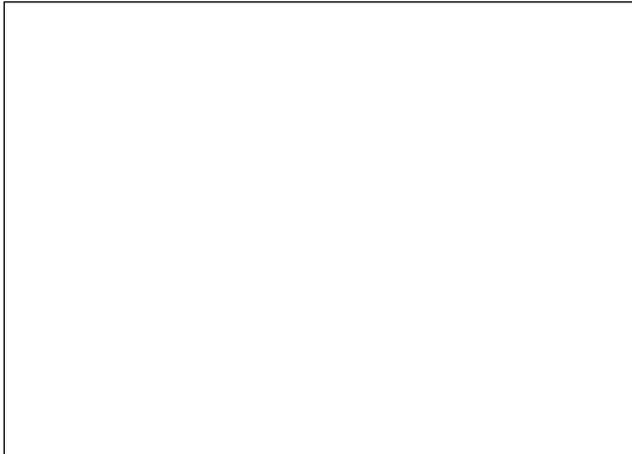
In any event, as mentioned above, there is a real risk that even whispered comments from the dock might be heard by the jury.

Counsel addressing the jury

This is best done by counsel standing in front of the witness box so that the relevant camera can show them in reasonable close up. However there is the same difficulty that if counsel looks at the jury screen he/she is not, from the jury perspective, looking at them. Counsel should be encouraged to remain relatively still so that they are within range of the microphone without which the jury will not hear them well.

Appendix A: Juror documents

JURY CITATION



Scottish Courts
and Tribunals Service



Citation Number:
Court 1

- You have been selected for Jury Service
- Your name was randomly selected from the electoral register
- You may be required to attend over several days
- If you are over 71, you have a right to be excused from Jury Service. If you wish to do so please see the excusal section overleaf
- If you have any special access or support requirements you should contact us as soon as possible. Please consult the Guide to Jury Service (See overleaf)
- If you fail to attend you may be liable to a fine of up to £1,000.

You have been cited for jury service at:

Edinburgh High Court	On: XX
SCTS Jury Centre	At: 09:30am
Odeon Cinema Complex	Enquiries: 0131 240 6946
Fort Kinnaird Retail Park	Excusals: edinburghjurors@scotcourts.gov.uk
Edinburgh	

PLEASE TURN OVER FOR IMPORTANT INFORMATION ABOUT JURY SERVICE

PLEASE BRING THIS CITATION WITH YOU WHEN YOU ATTEND

Sheriff Clerk

WHAT I SHOULD DO NOW

Due to changes in our jury citation and selection process due to COVID-19, please read and carefully follow the instructions below:

RESPOND to the jury citation within 7 days. Please respond as soon as possible, even if seeking excusal. **If you fail to respond you may receive a reminder letter.** You can respond by:

- Emailing edinburghjurors@scotcourts.gov.uk or telephoning 0131 240 6946.
- Please provide your full name, citation number and the date you are cited to attend court, all of this information is found on the front page of your jury citation (for example Citation No. 35 Edinburgh High Court, 22nd September 2020, Mr John Smith)
- Providing at least **one contact telephone number and an email address (if possible).**

Information about measures to ensure your safety during COVID-19 pandemic

Enclosed is a leaflet “*Your Safety Is Our Priority*” outlining the measures SCTS has put in place that ensures the safety of those attending for jury trials, and what is expected of you. **Please read this carefully.**

Also enclosed is a *Jury Information Sheet*. This sets out what you should expect when you attend for jury service. It describes **the new processes we have adopted when selecting a jury**, the action we have taken to **accommodate physical distancing** requirements set down by public health guidance. **Please also read this carefully.**

When do I attend?

After 5pm the day before you have been cited for jury service (even if it is a weekend), you should telephone the jurors attendance update line. It is important that you do this, you will hear a recorded message which will give you up to date information regarding your attendance.

JURORS ATTENDANCE UPDATE LINE: 0800 468 6563

If you are unable to contact the update line, you must contact 0131 240 6946 at 09:00am the next working day.

Excusal from jury service

If you wish to apply for exemption or excusal from jury service, please read both the 'Guide to Eligibility and Excusal' at www.scotcourts.gov.uk/coming-to-court/jurors and the juror section in the enclosed leaflet "*Your Safety Is Our Priority*". If you fall within one of the categories noted in the guide or excusal section of the leaflet, please email us at edinburghcjurors@scotcourts.gov.uk. Please provide a supporting document as to why you are seeking excusal, some examples are: a doctor's letter, holiday booking confirmation or a letter from your work. Please also include your full name, citation number and the date you are cited to attend court, all of this information is found on the front page of your jury citation. **Please note at this time we are not able to accept postal applications for excusal.** Photographs from your phone or scanned documents will be accepted as evidence for excusal through our email.

READ the guidance leaflets carefully before attending court:

- Guide to Jury Service
- Guide to Jury Service Eligibility & Applying for Excusal
- Guide to applying for Expenses for Jury Service
- Jury Expenses Claim Form
- Jury Service Certificate of Loss of Earnings

These can be found at www.scotcourts.gov.uk/coming-to-court/jurors. If you do not have access to the internet, **please let us know by calling 0131 240 6946** and we will arrange for the documents to be sent to you.

Thank you for contribution to jury service in Scotland



JURY SERVICE - INFORMATION SHEET

This is an information sheet for Jurors who have been cited for jury service. It sets out what additional steps the Scottish Courts and Tribunals Service (SCTS) have taken to ensure your safety.

1. Jury Service

You have been cited to attend at a SCTS Jury Centre. A jury centre is a facility that allows SCTS to provide accommodation for jurors, which is both comfortable and at which we can ensure physical distancing. Using state of the art secure audio-visual technology, the jury centre will link directly to the courtroom, allowing jurors to see and hear proceedings.

In the courtroom a live image of the jurors will be shown. There will be the ability for the jury to communicate with the courtroom. SCTS staff will be on site to support jurors at the jury centre throughout their service.

2. Jury Attendance Update line

After 5pm the day before you have been cited to attend, you should call the jury attendance update line number. It is important that you call this number as it will provide you with up to date information about your jury service. You may be asked to call the jury attendance update number several times throughout the week, so you should listen carefully to the message.

3. The Ballot Procedure

The ballot is the approach the Court must take to choose a jury for trial. We have developed a new procedure which means **jurors do not have to attend for the ballot.**

On the day of the ballot, you will be contacted by SCTS staff who will confirm that your name will be entered into the ballot. The ballot will either take place on the day that you have been cited for, or a day after that day, and SCTS staff will contact you on the day that the ballot is taking place and keep you updated with progress.

If for any reason you think your name should not be entered into the ballot, please let the member of staff know during this call. The member of staff will carefully consider the reason you give. For further information on applying for excusal or exemption from jury service, please read the Guide to Jury Service – Eligibility and Apply for Excusal document and the Jury Trials – Your Safety is our priority leaflet.

The ballot will be conducted by the clerk of court before the judge, crown, defence and the accused. The clerk will select 15 names from the ballot bowl to be the jury and a further number of names to be substitute jurors, should they be required.

Once the ballot is completed you will be contacted by a member of SCTS staff who will confirm if you have been selected for jury service or not. If you have been selected you will be asked to attend the jury centre the following day, and you will be given a time to attend. It is important that you arrive at the time given to you by the member of SCTS staff.

4. SCTS Jury Centre

In line with Government guidance and following detailed risk assessments, we have implemented a number of safety controls at the Jury Centre.

We have introduced measures in all areas, putting in place arrangements to maintain physical distancing. These will vary for the different locations, as buildings have various lay outs, but will include:

- Sanitising stations placed at entry/exit points.
- Systems to manage the flow of people, such as floor and wall markings, public seating marked for use or sealed off/ removed.
- Advising those entering or leaving the jury room to avoid cross-traffic.

In addition to floor markings, we have introduced a series of posters throughout the jury centre reminding all jurors and SCTS staff of the need to observe physical distancing, and to wash hands thoroughly and regularly. We have also introduced additional cleaning measures to ensure the jury centre is clean throughout the day.

The jury centre ventilation systems use air handling units to extract stale air and replace with a supply of clean, fresh and filtered air.

5. On Arrival

Upon arrival at the jury centre you will be asked to observe the following:

- To keep physically distanced, in line with current government guidelines, between yourself and others while queuing and on entering the building.
- A security officer or a member of SCTS staff will invite you to enter the building when appropriate to ensure physical distancing is adhered to. You will be asked to confirm that you do not have any symptoms of coronavirus - such as a high temperature, fever, continuous cough or a loss of taste or smell. You will be given a face covering, should you wish to wear one. You can also wear your own.
- Our security officers will carry out a "hands off" bag search, maintaining a safe distance. You will need to open your bag and place items in a tray, so that security officers can check you are not carrying any items that are not allowed in the building. You may be asked to empty the items in a tray and step back.

Once you have passed through security you will be directed to the main reception where a member of staff will direct or escort you to the appropriate room. You will be asked to turn off your mobile phone prior to entering the room.

6. The Trial

As a member of the jury you will view the trial from a location separate to the courtroom. When you enter the room you will be directed to your allocated seat, you must stay in this seat for court purposes.

If you develop symptoms of the coronavirus during a trial, you must alert a member of SCTS staff immediately. You will then be excused. With physical distancing in place, other jurors will not need to self-isolate and the trial will continue.

All documents that are given to you during the trial will be passed to you by a member of staff who will be wearing gloves. Where jurors are provided with a document, we ask that they do not share them.

7. Personal Protective Equipment

We will provide you with suitable face covering for you to use whilst travelling around the building. You can bring your own covering should you wish. You will be asked to remove this during the trial.

Hand sanitiser will be available for you to use. You can bring your own if you wish.

8. Lunches

We will provide you with a lunch each day that you attend. This will be in the form of a packed lunch, which will have been freshly prepared and delivered to the room in which you will have your lunch. If you have any dietary requirements please inform the member of staff when he/she calls to advise that you have been selected for jury service.

9. Travel Expenses

If you are concerned about the mode of transport that you will use to attend for jury service you should raise this with the member of SCTS staff when he/she calls to advise that you have been selected for jury service.

JURY SAFETY - INFORMATION SHEET

Please click on the following link to access the [Jury Safety Information Sheet](#) on the SCTS website.

Appendix B: Act of Adjournal

2020 No. 200
HIGH COURT OF JUSTICIARY
SHERIFF COURT

Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Jury Ballot) 2020

<i>Made</i>	<i>2nd July 2020</i>
<i>Laid before the Scottish Parliament</i>	<i>3rd July 2020</i>
<i>Coming into force</i>	<i>19th July 2020</i>

The High Court of Justiciary makes this Act of Adjournal under the powers conferred on it by section 305 of the Criminal Procedure (Scotland) Act 1995(1) and all other powers enabling it to do so.

Citation and commencement, etc.

- 1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Jury Ballot) 2020.
- (2) It comes into force on 19th July 2020.
- (3) A certified copy is to be inserted in the Books of Adjournal.

Amendment of the Criminal Procedure Rules 1996

- 2.—(1) The Criminal Procedure Rules 1996(1) are amended in accordance with this paragraph.
- (2) In Chapter 14 (procedure at trial in solemn proceedings)(2)—
 - (a) in rule 14.1A(1) (minimum number of jurors for balloting jury)(3) for “present, whether in the courtroom in which the trial is to proceed or assembled elsewhere within the court building” substitute “available for balloting”;
 - (b) for rule 14.2(2) (balloting of jurors) substitute—

“(2) After 15 such names have been drawn (“the first list”), the clerk of court must draw a further 5 names (“the reserve list”) and where any person on the first list—

- (a) does not appear;
- (b) is challenged and is set aside; or
- (c) before any evidence is led, is excused,

the persons on the reserve list will, in the order in which their names were drawn, replace on the first list each such absent, challenged or excused juror until the number required for the trial is attained.

(3) Paragraph (4) applies where the court considers that a reserve list of 5 jurors may be insufficient to ensure the number required for the trial will be attained.

(4) The court may, of its own accord or on the application of a party, after hearing parties, direct that the reserve list be increased to a maximum of 10 jurors.”.

CJM SUTHERLAND

Lord President

I.P.D.

Edinburgh

2nd July 2020

Appendix C: Juror responsibilities

YOUR RESPONSIBILITIES AS A JUROR

Thank you for serving on this jury. It is much appreciated by the court. By serving on this jury you are fulfilling **an important public role**. That role brings with it **serious responsibilities**.

As a juror you have taken an **oath** or **affirmation** to try the accused and to return a true verdict based **only** on the evidence you hear in court.

This means that the **fairness** of the trial depends on you following a few **important rules**. These rules are explained to you in this notice.



You need to **read, understand and follow** these rules.

For that reason, you may wish to keep this notice with you at all times while you are on the jury, even when you go home in the evening.



WHY DO I NEED TO FOLLOW THESE RULES?



These rules are necessary to ensure that the trial is **fair**.

If every juror does not follow these rules the **trial may be stopped**, the jury discharged and the trial may have to start again with a new jury.



This will cause **problems, and possibly distress**, for those involved in the case and will waste everyone's time and a lot of public expense.

WHAT HAPPENS IF A JUROR DOES NOT FOLLOW THESE RULES?

If a juror does not follow the rules in this notice, he or she may be in **contempt of court**. The rules are **orders of the court** and part of the **criminal law**.

THE RULES YOU MUST OBSERVE

LOOKING FOR INFORMATION ABOUT THIS CASE

You must not **search** for any information at all about your case on the **internet** or **anywhere else** during the trial.

This means you **must not look** for any information about:

- any **person** involved in the case. This means any **accused, witness** or anyone associated with the case.
- the **crime** or the **crime scene**.
- the **law** and **legal terms** used in the case.
- **the court procedures**.

You must **not ask** anyone else to **look up these matters for you**.



NEWS STORIES ABOUT THE CASE

This also means that if you see or hear any stories about your case in the **news** or **on social media** you should **not pay any attention** to them.



All the information you will need to decide the case will be in the **evidence** presented **in court** and the instructions on the **law** that the **judge** will give.

DISCUSSING THE CASE

There are **2 further rules** every juror must follow about discussing their case. One rule tells you what you can discuss about the case **while the trial is going on**. The other rule tells you what you can discuss about the case **after the trial is over**.

Rule 1: During the Trial

During the trial you can **only discuss** the case with the **other jurors** on your jury and only when you are **all together** and there is **no risk of you being overheard**. This applies from the moment you take the juror oath or affirmation until the judge finally discharges you from serving on the jury at the end of the trial.

This means that during the trial you **must not discuss** the case with **family, friends or anyone else**. Discussing the case means writing or speaking about the case in person or on any **social networking sites** such as Facebook, or Twitter, or on blogs and chat rooms.



Rule 2: When the Trial is Over

Once the trial is over and you are no longer serving on the jury, you can discuss the case with anyone. But there is one **exception**.

Even after the trial is over, you **must not discuss** what was said or done by you or any other member of the jury while the jury was in the **jury room** trying to reach a verdict.



WHAT IF SOMEONE TRIES TO SPEAK TO ME ABOUT THE CASE DURING THE TRIAL?



It is **illegal** for anyone who is not on your jury to **try to speak with you** during the trial about the case or try to influence you in any way about your decision in the case. If this should ever happen it is very important that you **tell the court immediately**. If it happens when you are not at court, you should **call the police**. **Whenever it happens, if it does, you must on no account tell your fellow jurors about it.**

THE COLLECTIVE RESPONSIBILITY OF THE JURY

All members of the jury must follow these rules.

The jury **must act as a group** to make sure that everyone on the jury follows the oath or affirmation you have each made to follow these rules.



What Do I Do if I Think One of These Rules Has Been Broken

It is your duty to report any breaches of these rules by anyone, including any juror.

If you think that any of these rules has **not** been followed during the trial it is extremely important that you **tell the court** about this **immediately**, but do not discuss it with your fellow jurors or anyone else.

To tell the court, you can ask to speak with the **clerk of court**.



HELP AND GUIDANCE FOR YOU AT ANY TIME

If you have any concerns about what to do as a juror at any time you can always **speak with the clerk of court**.

The clerk of court, court staff and the judge are there to help you carry out your important role as a juror properly.



What if I Feel Upset About My Experience as a Juror After the Trial?

When the trial is over, if you feel upset about anything to do with your case or if you just want to talk about how you felt being a juror, help is available.

Please speak to the clerk of court for information on counselling and support services if you feel that you need it.

Appendix D: Impartiality – a suggested form of words

“To empanelled and unempanelled jurors

Good morning/afternoon. Thank you for coming in in answer to your citation to serve as jurors. (Apologies for any delay) Even those of you who have not been picked have already performed a valuable service by forming part of the pool from which the jury has been drawn. Your services may not be at an end, though, as will be obvious from what I am going to say.

To the empanelled jurors

Fifteen of you have been picked to serve on this jury, you have just heard the indictment (and notices) read out. The indictment sets out the charges the accused faces.

It is very important that you are completely impartial in this trial. You have heard the charges read and so you now know something about what is alleged in this case. You know that the accused is named as INSERT and that certain names [REFER TO THEM] appear in the charges [and in the notices of special defence – REFER TO THEM IF APPLICABLE]

So I am going to ask a series of questions. It would be helpful if everyone here for jury service listens to these questions, even those who have not been picked for the jury.

Please do not answer these questions out loud. If the answer is yes, or if you are in doubt or difficulty about it, please keep your thoughts to yourself. Do not discuss any such issue with the other members of the jury. I will be adjourning the court shortly to let you make yourselves comfortable before we start the trial and the clerk of court will be available to speak to you. If you have any issues arising from my questions, please alert the jury attendant who will arrange for you to speak confidentially with the clerk of court. Please do not discuss any such issue with the other members of the jury or substitutes.

So the questions which I would like you to consider, but not please to answer out loud, are these:

- 1. Do any of you know [any of] the accused either directly or indirectly?*

2. *Do any of you recognise the person/people in the dock, between the officers?*
3. *Do any of you know any other person mentioned in the indictment, or the person named in the special defence?*
4. *Do you know anyone who may be a witness in this case?*
5. *Is there any reason why you could not serve impartially on this jury?*

*[It ought to have been possible at the time of the ballot the previous day to ascertain the length of the trial and so this final question may be unnecessary. If not:
I have one more question for you once I have some information from the Crown and defence lawyers. [Ask parties how long the trial will take]*

Now it is impossible to make an accurate prediction of how long the trial will actually last at this stage. Unexpected problems can arise in trials which can make them take longer than expected. These days, it is quite common for trials to be shorter than estimated.

*However, the experienced lawyers who know most about the case think that it will last:
[INSERT]*

That seems a reasonable estimate. However, in case there are problems let us work on the basis that the trial could last until [INSERT OUTSIDE END DATE IN YOUR JUDGMENT]

My last question is this:

6. *Does the possible length of the trial cause anyone a really serious difficulty?*

[In a high profile case something more elaborate may be required - see [HMA v Sheridan](#). Judges may also wish to refer to a [suggested direction](#) for cases which have attracted publicity.]

Now I am not talking about inconvenience. I am sure it is inconvenient for every one of you to serve on this jury. I am talking about a difficulty which would make your life almost impossible. If anyone is in that situation, once again please do not discuss it with your

colleagues, but do please alert the jury attendant that you need to speak to the clerk. You should not describe the issue in the presence of the other jurors and substitutes. The jury attendant will arrange for you to speak privately to the clerk about it when I adjourn the court.

Now if you think that there may be a reason why you should not serve as a juror it is important that you let the clerk know during the adjournment by speaking to the jury attendant. Even if you think it is a trivial reason it may not be, you should not think that you are causing us any difficulty if you tell us about something which is on your mind. On the contrary it will cause a great deal of difficulty if you do not tell us something now and it turns out to be important. We can deal with a problem now by picking another juror to take the place of anyone who cannot serve but it might be that the trial would have to stop and be started again if you only told us about it later.

Before I adjourn the court I must give you an instruction which applies from this moment until the end of the trial.

I will explain the reasons for this when you return to court. My instruction is that from this moment until the end of the trial, you must not make any outside investigation or enquiry of your own about this case, the people involved in it or any issue it raises.

I am telling you this now because everyone knows that people carry smart phones and other devices which allow instant access to the internet. In so far as any researches on the internet, or otherwise, would involve you trying to find out about this case, the people involved in it or any issue it raises, that is something you are not allowed to do from now until the end of the trial.

I remind you that if there is any issue you need to raise with the clerk following the questions I asked, please do not discuss it with the other members of the jury or the substitutes. The jury attendant will arrange for you to speak privately with the clerk of court with whom you can raise any problem, confidentially.

In a moment I will adjourn the court and we will disconnect. When we resume in a few minutes I will give you an explanation of how the trial will work and some further guidance to help you follow the trial.

To unempanelled jurors

Before we adjourn, can I speak to those of you who have not been selected for this jury? Whilst it is unlikely that your services will now be required, I cannot release you quite yet in case any of you are required to take the place of a juror who has been picked. So, please be patient with us for a little longer. When we resume after the adjournment I will be able to tell you what the position is.

The court will now adjourn for a short period”.

[On resuming, the judge will thank the balloted substitutes for attending and either excuse them, which is currently the norm, or give them further direction as to what is required of them.]

Appendix E: COVID Jury information

What follows is a short suggested set of wording which judges may wish to use when speaking to the jurors about COVID-19. Alternatively judges may wish to develop their own set of wording. The original full script which was suggested for use when the original Briefing Paper was published can now be found in [Appendix K](#) for interest or in the event that a sheriff or judge wishes to elaborate on the shorter form of words found below.

On the jury returning after the adjournment.

First of all, can I assure you that I recognise that there may be a level of anxiety in having to perform jury service while the coronavirus remains at large in the community. I acknowledge that and very much appreciate your coming to perform your public duty as a jury in these circumstances.

Please be assured that your health and wellbeing are a priority. You have already been made aware of the arrangements in place to protect your safety during this trial. If you have any concerns at any stage please speak to the jury attendant or, if necessary, the clerk.

I will now move on to give you some information on the trial, your role and the role of others in the trial and the fundamental legal principles which apply.

Appendix F: Introducing the case and procedure to the jury

[Please note that these remarks are suggested and are not mandatory. Judges should feel free to impart this information in their own way and in their own words].

Introduction

Members of the jury, you now have copies of the indictment, which sets out the charge[s] the accused face[s]

Where appropriate

[and the notice of defence which was read to you]

[and the notice at the end of the indictment which was read to you which is known as a docket.]

You have also been given a document which summarises the duties which every juror has. You should study it carefully in due course. I will now tell you a bit more about that and indeed will be repeating much of what is contained in it. I will also explain how the trial will work. Then I will give you general directions on the rules of law which govern criminal trials so that you understand them from the start.

Judge's function

You and I have different functions in the trial. My job is to ensure that the trial is conducted fairly and in accordance with the law. You, the jury, will decide whether or not the charges are proved on the evidence presented in the trial and you reach your verdicts *only* on the basis of the evidence in court. The words of the oath (or affirmation) which you took were "to return a true verdict *according to the evidence*".

Jury's function

You, the jury, are the judges of the facts of the case and you are not detectives. It follows, and I must stress this very strongly, that you must not make investigations or enquiries of your own about anything or anyone connected to this case, or any issue it raises. Everyone

knows that a search on the internet can produce information within seconds. It is vitally important to the administration of justice in this case, and in general, that you do not carry out any outside researches or enquiries about this case, the people involved in it or any issue it raises through the internet, or otherwise, for any reason. This instruction applies [from this moment] until the trial has finished. I do not know whether there is any information about the events of this case, or anyone connected with it, out there. But you must appreciate that, even if there is any such information available, there is no guarantee that it is accurate and, more fundamentally, *it is not evidence in the case*.

The circumstances of some cases attract media attention. If you have seen, heard or read or do see, hear or read anything like that about this case you must ignore it. Throughout the course of this trial, you should seek to avoid such material which relates to this trial or any issue it raises.

[In an appropriate case reference can be made to the examples of what has been said in high profile cases using the hyperlinks below. These can be adapted to suit the circumstances. See for example Lord Bracadale's judgment in [HMA v Sheridan](#) in which his Lordship explains how he resolved a plea in bar of trial and sets out some of what he said about publicity during the trial: at the start; during the trial and in his charge. Judges may also wish to refer to a [suggested direction](#) for cases which have attracted publicity].

As I say, this case has to be decided solely on the evidence presented in court and that is why you must not access external sources of information. Such is the importance of this rule that I have to require you to police it collectively, so that if you become aware of any fellow juror who has conducted independent investigations, please inform the jury attendant at once that you need to speak to the clerk of court. The jury attendant will arrange for you to speak to the Clerk of Court privately, but do *not* discuss it with the other members of the jury.

I do have to tell you that, having given you this instruction, if I become aware of any juror carrying out such investigations I would have to take a very serious view of it. It could well result in the trial collapsing with all the costs and problems that would involve. It could constitute a contempt of court on the part of the person concerned and, if it did, that could be serious for that person.

Now can I apologise to you if all of this sounds very severe and threatening. I do not wish to threaten you; I do not wish to make you uncomfortable; and I do not wish to get off to a bad start with you. I just have to make it absolutely clear to you that you must not carry out any independent investigations.

That is because you must decide this case only on the basis of the evidence presented in court, and you must not be influenced or even distracted by any outside source of information.

[A judge may seek to provide some reassurance after this stern admonition.]

Eg Now I can see that you are responsible people who have understood what I have said to you and I am entirely confident that you will follow this instruction. So you can relax. You need not sit there in a state of terror over the next few days. There will be no problem if you follow this simple instruction as I am sure that you will.]

Procedure

Let me explain a bit more now about how the trial works.

The prosecution is brought by the Crown, the name given to the public prosecutor in Scotland. The Crown has to prove the charges, and it seeks to do so by presenting evidence. The case for the Crown is presented by the Advocate Depute/Procurator Fiscal, who is sitting at the table to my right. The [first] accused is represented by (X) [the second accused is represented by (Y)] sitting at the opposite side of the table.

In Scotland there are no opening speeches and, after I have stopped speaking to you, we go straight into the evidence.

Sometimes evidence is agreed or is unchallenged and, if so, it is recorded in a statement of facts known as a joint minute [or it may comprise a statement of uncontroversial evidence]. If that features in this case, it will be read to you and you will be given a copy of it.

All witnesses will swear or affirm to tell the truth.

First, you will hear evidence from witnesses for the Crown. The prosecutor will question first and this is known as examination in chief. The witness may then be cross-examined on behalf of each/the accused [in order] and may then be re-examined by the AD/PFD.

After the Crown has led all its evidence, each/the accused, may lead evidence if they wish to do so. The defence do not have to lead evidence but if any witness is called for the defence the order of questioning is changed.

During the trial there may be objections to the evidence, or legal points may crop up. If that happens, I may have to switch off the connection to allow me to hear legal argument and decide the issue in your absence. If that does happen it should not trouble you because, as I have explained, I have to decide all issues of law in the case. On the other hand, the facts are for you. I can reassure you that if this situation arises any witness will leave the court at the same time as we disconnect and so you will not miss any of the evidence. You will hear all of the evidence in the case.

After all of the evidence has been presented, you will hear closing speeches, first for the Crown, and then on behalf of the/each accused. After that, I will give you additional directions on the law applicable to the specific circumstances of this case.

After that you will retire to consider your verdict(s). You must then use all of the directions which I have given you in deciding whether the charges have been proved or not. The directions I gave at the start and those at the end of the trial, taken together, provide you with the complete legal framework for reaching that decision.

It is very important that you keep an open mind about this case, and all of the issues in the case, until you have heard all of the evidence, speeches and my closing legal directions. Only then do you start to reach your conclusions and decisions in the case.

The court day

On a normal court day we sit from 10am to 1pm and then, after lunch, from 2pm until about 4pm or so. These times may have to be varied to take account of the availability of witnesses or the stage the evidence has reached. If we can get started promptly at 10, then about half way through the morning session we will break for no more than 20 minutes to allow you to

stretch your legs, have a tea or coffee and make sure that you are comfortable and able to concentrate.

[For trials during the COVID restrictions it will be necessary to inform the jury that, while they are in a separate room, they are all participants in the trial process and can be seen by all in the court room. It is therefore important that they do not speak among themselves during the evidence and that, if they have any difficulties, they should raise the matter with the jury attendant so that the judge can address it.]

The jurors will have received with their citations the document “Your Safety is our Priority” (which can be found in Appendix A). The clerk will also have given the jurors a description of the cleaning etc arrangements in place for the trial.

Judges will also have to ascertain what arrangements are in place to deal with any juror who may develop symptoms of COVID 19 during the trial.

There is now (27 July) SCTS guidance for clerks which has been approved by Scottish Government. It can be found at [Appendix H.](#)]

Following the trial

Given that you will be deciding this case on the evidence, it is important that you listen carefully to what witnesses say and pay close attention to all of the evidence. If you have any difficulty hearing, if someone is speaking too quickly or if there is any other problem, please signal that to me or to the Clerk of Court or to the Jury attendant immediately and I will try to do something about it.

You will not be given a recording or transcript of the evidence, so you have to rely on your own memory of it. You have been provided with pencils and paper and you can take notes of the evidence if you wish, or you may prefer to listen carefully and watch the witnesses as they give their evidence. You may find it helpful if at least some of your number take some notes. Any notes which you make will be destroyed after the trial.

Whichever way you choose to go about it, can I encourage you to pay close attention to the evidence throughout the trial. It quite often happens that a witness will say something which

may not seem important at the time, but by the end of the trial it may turn out to be highly significant. So you should follow the evidence as closely as you can throughout the trial.

Privacy of the jury

During the trial, when you are leaving the Jury Centre and whilst travelling to and from it, you must not discuss anything to do with the trial with anyone, including the other members of the jury. Your discussions about the case must only take place in the privacy of the jury room.

[The following instruction will only be necessary in socially distanced trials and can be adapted to local circumstances if required at all:]

So, if when you are deliberating at the end of the trial, you need to access facilities elsewhere in the building, you must avoid talking to anyone at all. In that situation, the jury's deliberations must stop and resume only on your return.]

Avoiding outside influence

During the trial, you must not be at risk of outside influence or distraction.

If you see anybody connected with this case or who seems to be interested in the case, inside the Jury Centre or outside, please do not speak to them. In the past there have been conversations between persons with some interest in the case and jurors trying it. Most often these have been perfectly innocent, but sometimes they have not. Whenever something like that happens, it can cause problems for the juror concerned, and it does cause difficulties for the court. So it is simplest and best to avoid any such interaction.

If anyone approaches you and tries to discuss the case with you, you should not respond. If you are approached by anyone in this way, do not tell the other jurors but do please immediately alert the jury attendant that you require to speak with the Clerk of Court urgently. I have no reason to believe anyone would approach you, but if that happens, you must let the Clerk know and the first step in doing that is to alert the jury attendant.

Until the trial has finished, you must not discuss the case with anyone outside the jury; even family, people you live with at home, friends and work colleagues. All that you should tell someone who needs to know is that you are serving on a jury for the length of time suggested. Whilst the case is continuing you must not discuss the detail of the evidence, the events of the day during the trial or any issue relating to the case with anyone outside the jury. If necessary, to avoid embarrassment, you can simply say that the judge told you not to discuss the case with anyone at all.

So whilst the trial is continuing, you must not speak to other people about it or communicate electronically through Facebook, Twitter or anything else. You must keep your thoughts about the case private from anyone outside the jury, until the trial has finished. Even then you must not discuss what was said in the jury room during your deliberations. These are private and nobody is allowed to ask you about them.

This case must be decided by you, the jury, only on the basis of the evidence in court. You deliberate on your verdict only with fellow jury members and, even then, only once you have heard all of the evidence, speeches and my closing legal directions.

I will move on now to explain the general legal principles which apply in criminal trials.

**** Suggested direction for cases which have attracted significant publicity**

“When I addressed you before the adjournment I mentioned the publicity which this case has attracted [and the fact that the accused is (as appropriate)]. I want to say more about this in a different context. You have now taken your oath, which requires that you must reach your verdict only on the basis of the evidence which you hear in court. The words of the oath or affirmation which you took were 'to return a true verdict according to the evidence'. That means that you must put out of your minds anything that you have in the past read in the newspapers, or seen or heard on TV or radio about the accused or the circumstances giving rise to these charges. As the trial proceeds you should put out of your minds anything that you read, hear or see about the case. Anything you have seen, read or heard about the accused must be ignored and you must not access such material throughout the course of this trial.

I am not suggesting for a moment that reporting of the trial will be misleading, I am simply stressing the importance from your point of view of focusing solely on the evidence which you hear in court and proceeding on your own recollection of the evidence.

Anything you think you know about the accused from media sources or from your own impressions of him, whatever they may be, are irrelevant to your task. All such matters must be cast aside entirely. Jurors are expected to approach their task with open minds, untainted by preconceptions, prejudices or by any perceived public or private knowledge which they may have of the case or of the individuals involved in the charges. That is why I asked you a series of questions before taking the oath. So please remember, you cannot allow yourselves to be swayed by sympathy or prejudice or the contents of press articles. You must be impartial, since you are effectively acting as judges in this case.

Another aspect of this issue is this. It is quite likely that on the internet there will be websites where information about the accused or the background circumstances may be discussed. You must not access such material during the trial. If any such material exists, not only is it not evidence in the case, there is no guarantee that it would be accurate. Again, I repeat: you must decide the case only on the basis of the evidence you hear in court. These instructions are in your own interests as well as in the interests of justice. In order to ensure a fair trial for the accused and to maintain the integrity of our legal system it is essential that you follow them.

You must be disciplined about this, members of the jury, in keeping with the dignity and impartiality of the role you are now undertaking, and if you become aware of a fellow juror accessing any such information, you should immediately speak to the clerk of court. I may say that I would take a very serious view about any such conduct, in light of the warning which I have just given.”

Thereafter the written directions should be distributed to the jury, if this has not already been done and these should be read to them.

Appendix G: Written Directions for Jurors in the Scottish Courts

Part A: Introduction

Towards the end of the trial I will give you the legal directions you will need when you begin deliberating on your verdict(s), but in the meantime it will be helpful if, before we start hearing evidence, you are aware of certain fundamental rules and principles which apply in almost every case.

Separate functions of Judge and Jury

You and I have completely different functions. I am responsible for all matters of the law which arise in the case.

Judge

The law tells us what the ingredients of an offence are and what must be proved to establish that an offence has been committed. I will tell you about that at the end of the trial when I direct you on the law. The law also regulates how trials must be conducted and what evidence may or not may be allowed. I will deal with that as the trial goes on and, if necessary, I will tell you what you may and may not do with particular pieces of evidence.

Jury

You on the other hand are responsible for all questions of fact. You and you alone will decide:

- What the evidence was;
- What is to be made of it;
- What reasonable inferences or conclusions should be drawn from it; and
- What verdict should be reached in light of it.

In other words, you will decide:

- Which evidence you accept and which you reject;
- Which witnesses you believe and which you disbelieve;
- Which witnesses you find reliable and which unreliable; and

- What reasonable inferences or conclusions you can draw from evidence which you accept.

When the time comes for you to deliberate on your verdict, you will decide what has been proved and what has not been proved.

Agreed facts

Sometimes facts are agreed. If that happens they will be set out in a document called a Joint Minute, which will be read to you. The facts set out in such a document must be accepted by you as conclusively proved and taken into account when you come to deliberate on your verdict.

Evidence

What is evidence?

- Evidence may come in the form of photographs, recordings such as CCTV footage and objects which are produced or shown in court.
- Most commonly, evidence comes from witnesses. Evidence from a witness is what the witness is able to tell you based on their direct observation.

What is not evidence?

- What the lawyers will say in their speeches and what I will say to you when I direct you on the law is not evidence.
- Questions or suggestions put to witnesses by the lawyers are not evidence.
- Assertions of fact put to a witness who cannot remember them, or who does not know about them, or who does not agree with them are not evidence. The evidence consists in the witness' answer. If all a witness did was to agree with a suggestion you would need to take care in deciding what weight to give to that.
- Hearsay evidence, namely what a witness tells you was said by someone else, is generally not allowed.

Possible exceptions to the rule against hearsay

There are exceptions to that rule which I will tell you about in my directions at the end of the trial in more detail if they arise. They may include:

- Evidence of what a witness says they heard someone say may be allowed to explain the witness' state of knowledge or why they did something;
- Evidence of what was heard to be said or shouted whilst an alleged crime was actually being committed is usually allowed;
- Evidence of what an accused person was heard to say is evidence in the case. I will direct you about this if it arises;
- Witnesses may be asked about earlier statements made by them to other people.

There are three main reasons for this:

- i) To jog the memory of the witness, who may then be able to give evidence from recollection.
- ii) To enable the witness to adopt an earlier statement, which then becomes evidence. Statements are adopted if they are proved to have been made by a witness and the witness accepts that they were telling the truth at that time.
- iii) To undermine a witness's credibility or reliability. A statement may be used to contradict what the witness has said in court by demonstrating that the witness has said something different on an earlier occasion. The earlier statement, unless adopted, is not evidence of the truth of what is in it but it is available to help you in your assessment of the witness's evidence.

In certain other situations, where a witness is unavailable, hearsay evidence of a previous statement by that witness may be available as evidence of what is in the statement. You will be directed on that should it arise.

Assessing witnesses and their evidence

You will have to judge the quality of the evidence of witnesses. You should judge the evidence of all witnesses in the same way.

In doing so, you can look at their demeanour, or body language, as they gave evidence. You may want to be careful how much you can draw from the way a person presents. You do not know the witnesses and you do not know how they normally present. It can be hard to decide if a person is truthful or not just by their presentation.

What you can do is compare and contrast their evidence with other evidence in the case which you accept.

There are two aspects to the evidence of witnesses; credibility and reliability.

Credibility

You will find witnesses to be credible when you are satisfied that they are doing their best to tell the truth.

Reliability

Even the most honest witness doing their level best to tell the truth as they see it may simply get it wrong. Their evidence may not be reliable. There may be various reasons for that, such as:

- the passage of time,
- poor hearing or eyesight,
- the consumption of drink or drugs.

However even with such factors present you may still be prepared to accept the evidence as being reliable. It is very much a matter for your judgement as a jury, applying your collective experience and common sense.

You can only convict the accused on the basis of evidence which you find to be credible and reliable.

It is not all or nothing with the evidence of a witness

You are free to accept the evidence of a witness in whole or in part. You may accept bits of what a witness has had to say and reject other bits. You may pick and choose as you see fit in light of what you make of the evidence. If you reject what a witness has said, either in whole or in part, that does not establish that the opposite is true. If you reject evidence for whatever reason just put it out of your minds as if it had never been given.

It may be that some evidence will be inconsistent in itself or when compared with other evidence. Quite often witnesses give differing accounts of the same event, especially if things happened quickly or unexpectedly. If there are discrepancies or differences you will

have to decide whether you think they are important and undermine the evidence of a witness or witnesses. Can any discrepancies be explained?

For example:

- by the impact of traumatic events;
- by the passage of time;
- by differing powers of recall ;
- by different viewpoints which witnesses might have had.

Ultimately, it is for you to decide if there are any differences and if so, whether they undermine the evidence of a witness or witnesses in whole or in part.

Inferences

If you accept a piece of evidence or a body of evidence then you may be able to draw an inference or conclusion from it, but any inference must be a reasonable one and there must be evidence to support it. You cannot indulge in speculation or guesswork.

You decide the case only on the evidence

It is important that your verdict should be based only on the evidence. When you come to deliberate you must not be swayed by any emotional considerations or any prejudices or any revulsion which you might have for the type of conduct alleged. You will put aside any feelings of sympathy you might have for anyone involved in the case. Your verdict may have consequences, whatever it is, but these will be for others to deal with and you should put them out of your minds.

At the end of the day you will require, as the oath which you took said, to return a true verdict according to the evidence.

Direct and circumstantial evidence

The sorts of evidence which can be relied on will vary from case to case but in general terms there are two types of evidence – direct evidence and indirect or circumstantial evidence. A case may be proved:

- entirely on the basis of direct evidence;
- entirely on the basis of circumstantial evidence; or
- on the basis of a combination of direct and circumstantial evidence.

Direct evidence

The classic example of direct evidence is evidence from an eye witness describing an event they observed.

Circumstantial evidence

Circumstantial evidence is simply evidence about various facts and circumstances relating to the crime alleged or to the accused, which, when they are taken together, may connect the accused with its commission. On the other hand, it may point the other way.

In considering circumstantial evidence, please bear in mind that:

- Each piece of circumstantial evidence may be spoken to by a single witness.
- A piece of circumstantial evidence need not be obviously incriminating in itself and it may be open to more than one interpretation.
- You can choose an interpretation which supports the Crown case or one which undermines it, so long as it is a reasonable interpretation.

Where circumstantial evidence is based on accurate observation, it can be powerful in its effect. Individually each fact may establish very little but in combination they may justify the conclusion that the accused committed the crime charged. When you come to decide on your verdict, though, you should consider all of the evidence.

It is for you to decide what weight - what importance - should be given to a piece of evidence. Ultimately, you will have to consider what conclusions you can draw from the evidence and, in particular, whether you are satisfied beyond reasonable doubt that the crime you are considering was committed and that the accused committed it.

Part B: Certain fundamental principles

Some rules of law apply in every criminal trial in Scotland.

1. The presumption of innocence

The first rule is this. Every accused is presumed innocent until proved guilty. Accused persons are not required to prove their innocence.

2. The burden of proof is only on the Crown

Secondly, it is for the Crown, the prosecution, to prove the guilt of the accused on the charge or charges which the accused faces. If that is not done an acquittal must result. The Crown has the burden of proving guilt.

3. The standard of proof – proof beyond reasonable doubt

Thirdly, the Crown must establish guilt beyond reasonable doubt. A reasonable doubt is a doubt arising from the evidence and based on reason, not on sympathy or prejudice. It is not some fanciful doubt or theoretical speculation. A reasonable doubt is the sort of doubt that would make you pause or hesitate before taking an important decision in the practical conduct of your own lives. Proof beyond reasonable doubt is less than certainty but it is more than a suspicion of guilt and more than a probability of guilt. This does not mean that every fact has to be proved beyond reasonable doubt. What it means is that, looking at the evidence as a whole, you have to be satisfied of the guilt of the accused beyond reasonable doubt before you return a verdict of guilty on a charge.

4. Corroboration

Fourthly, the law is that nobody can be convicted on the evidence of one witness alone, no matter how credible or reliable their evidence may be. The law requires a cross-check, corroboration.

There must be evidence you accept as credible and reliable coming from at least two separate sources, which, when taken together, implicate the accused in the commission of the crime. Evidence from one witness is not enough.

Be clear about this:

Every incidental detail of a charge, such as the narrative of how the crime is alleged to have been committed, does not need evidence from two sources. But there are two essential matters that must be proved by corroborated evidence.

These are:

- that the crime charged was committed and
- that the accused committed it.

What is the position of the defence in relation to the four rules?

The burden of proof lies only on the Crown. The accused is presumed to be innocent. There is no burden of proof on accused persons.

The requirements of standard of proof and corroboration apply only to the Crown case. They do not apply to the defence.

Accused persons are not required to prove their innocence. They are presumed to be innocent. They are not required to give evidence or call witnesses and if they choose not to do so, nothing can be taken from that.

If evidence is led for the defence, any witnesses they choose to call, which may include the accused, should be treated like any other witnesses in the case. However, there is no particular standard of proof which defence evidence has to meet and defence evidence does not require corroboration. It follows that:

- If you accept any piece of evidence, from wherever it comes, that shows that the accused is not guilty then you will acquit.
- If you do not fully accept that evidence but it raises a reasonable doubt then again you will acquit.
- Even if you completely reject any defence evidence, that does not assist the Crown case. Just put that evidence out of your minds as if it had never been given and consider what, if anything, the Crown has proved beyond reasonable doubt.

In summary:

- **The law is for the Judge**
- **The facts are for the Jury**
- **The verdict must be based only on the evidence and in accordance with the law as explained by the Judge**
- **The accused is presumed to be innocent**
- **The burden of proving guilt is on the Crown**
- **The standard of proof which the Crown must reach is proof beyond reasonable doubt**
- **The benefit of any reasonable doubt, from wherever it comes, must be given to the accused**
- **The Crown must prove its case on corroborated evidence**
- **There is no burden of proof on the accused; accused persons have nothing to prove**

Part C: Other directions to be used as appropriate

These directions will not apply in all cases and therefore are formatted on separate pages which can be handed out if required.

Where there is a docket

Please note that you will only be returning a verdict on the charges. The clerk also read a notice which is attached to the indictment. The purpose of this notice is to inform the defence that evidence of the kind described in the notice may be led by the Crown during the trial. What is in the notice is not another charge or charges and you will not be asked to consider convicting the accused of those matters. If evidence of the sort mentioned in the notice is led, it may be of relevance to a charge which does appear on the indictment (charges which do appear on the indictment). I will tell you more about that at a later stage, if it should be necessary.

Where there is a notice of special-defence

You have had read to you a notice of special defence and you may hear more about that later. However, the only thing special about a special defence is that notice of it has to be given to the Crown before the trial starts so that they may investigate it if they wish and are not taken by surprise by any evidence which may be led in support of it.

A notice does not constitute evidence. A notice of special defence does not in any way alter the burden of proof. If it arises on the evidence it is not for the accused to prove it but for the Crown to disprove it.

Where there is more than one charge

You will see that there is more than one charge on the indictment. When you come to deliberate, each charge must be considered separately. A separate verdict must be returned on each charge. It may be that certain evidence will have a bearing on more than one charge. Nonetheless, when you come to deliberate, it will have to be considered separately in relation to each charge.

Where there is more than one accused

You will see that there is more than one accused. You must give separate consideration to the cases for and against each accused. It may be that some evidence will have a bearing on the position of more than one accused. Nonetheless, when you come to deliberate on your verdicts, that evidence must be considered separately in the context of the case against each of the accused. You must return a separate verdict in respect of each accused.

Concert

The issue of joint criminal responsibility may arise for consideration. If it does I will give you full directions at the end of the trial, but let me give you some understanding of this at the outset.

Normally a person is only responsible for his or her own actions, and not for what somebody else does.

However, if people act together in committing a crime, each participant can be responsible not only for what that participant does but also for what everyone else does while committing that crime. This happens where the crime is committed in furtherance of a common criminal purpose, regardless of the part which the individual played, provided that the crime is within the scope of that common criminal purpose.

The principle applies both where there is a crime committed in pursuit of a plan agreed beforehand and also where people spontaneously commit a crime as a group in circumstances where you can infer that they were all in it together.

Joint criminal responsibility is referred to as concert and someone who is acting in concert with another is said to be acting art and part with that person. These are merely different terms used to describe circumstances where joint criminal responsibility arises.

So if you have to consider this issue you will be deciding whether it has been established that:

- 1) people knowingly engaged together in committing a crime
- 2) what happened was done in furtherance of that purpose
- 3) what happened did not go beyond what was planned by, **or** reasonably to be anticipated by, those involved.

Mutual corroboration

In some cases, in certain circumstances, evidence of one complainer speaking to one charge can be corroborated by the evidence of another complainer speaking to another charge. This is known as mutual corroboration.

If this becomes an issue in this case, I will give you full directions at the end of the trial on how you deal with any question of mutual corroboration.

Appendix H: SCTS Guidance for Clerks if Juror displays COVID:19 symptoms etc

Purpose

This note sets out the steps to be taken should a juror display symptoms of COVID-19 during a jury trial; informs the clerk that a family member has tested positive and has to self-isolate or have been informed by NHS Test and Protect they must self-isolate; or has tested positive for COVID-19.

In such scenarios, the public health guidance that applies can be found here: <https://www.hps.scot.nhs.uk/web-resources-container/covid-19-guidance-for-non-healthcare-settings/>.

Prior to a trial commencing

The Clerk of Court and other SCTS Staff will reinforce the message to jurors to:

- maintain physical distancing at all times;
- wear a face covering at all times (unless the juror has a legitimate health reason not to wear one) and until seated in the jury room. Face coverings should also be worn if going to the toilet, and leaving the court at the end of the day; and
- maintain good hand and cough hygiene.
- login into the “SAFE2GO” portal when they arrive at the Jury Centre each day. The SAFE2GO app enables visitors to any venue to provide contact details quickly, easily, and securely for tracing purposes, if required. The system requires the user to scan a QR code to their smart phone. When the QR code is scanned it opens up the SAFE2GO portal where the user enters their contact details.

Juror Displays Symptoms

If a juror develops symptoms whilst in court, the following action should be taken:

1. Juror informs an SCTS Official (jury Attendant) that they have become unwell and are displaying symptoms of COVID-19.
2. The jury Attendant informs the Clerk of Court. The Clerk will inform the judge.
3. The jury Attendant will take the juror to a designated room, ensuring physical distancing is maintained and the juror is wearing a face covering.
4. The juror will be asked to go home (in line with Public Health Scotland guidelines, where possible, they should minimise contact with others, e.g. use a private vehicle to go home. If it is not possible to use private transport, then they should be advised to return home quickly and directly, and if possible, wear a face covering), to make contact with NHS and arrange for a test.
5. If the juror is so unwell that they require an ambulance, the Clerk will phone 999 and let the call handler know the juror is displaying symptoms.
6. The juror is discharged, court adjourns to the following day and the room is cleaned.

If a juror develops symptoms when at home, or is contacted by an NHS Test and Protect contact tracer and told to self-isolate, the following action should be taken:

1. The juror should contact the court as soon as practically possible.
2. The juror should be told not to attend court and they will be discharged by the judge.

Juror Tests Positive for COVID-19

If a juror tests positive and there is a reason to believe that the juror may have breached physical distancing rules so that other jurors or staff may have been exposed.

- The local health protection team or NHS Scotland contact tracing service may contact the Court.
- The Court will provide the staff and jurors details.
- Any jurors required to self-isolate will be contacted directly by a contact tracer.
- If a juror is instructed to self-isolate, the juror must inform the court that they have been instructed to self-isolate.
- The trial judge is informed of how many jurors have been told to self-isolate.
- It should be noted that where in the course of a trial:
 - a) a juror dies; or

b) the court is satisfied that it is for any reason inappropriate for any juror to continue to serve as a juror, the court may in its discretion, on an application made by the prosecutor or an accused, direct the trial shall proceed before the remaining jurors (if they are not less than twelve in number) – see [section 90, Criminal Procedure \(Scotland\) Act 1995](#).

COVID “incidents” during a trial

There have been recent High Court trials where one of the participants has reported suffering COVID-like symptoms during the trial. In one case it was a juror. In the other it was the Advocate Depute, but this impacted on two other trials involving deutes who had been sharing a room with the one with symptoms. So a total of four trials have been affected. In one trial a new Advocate Depute was able to step in and take over, but in the other three trials the judge adjourned the trial for a period of time until the result of a COVID test was known. This led to a loss of days for the affected trials.

As a result the Lord Justice General issued a memo to all senators and temporary judges in the following terms:-

“ADJOURNMENT OF TRIALS DUE TO COVID CONCERNS

Some judges have expressed understandable concerns where one of the legal representatives appearing before them has reported symptoms of COVID 19 and has been awaiting the result of a test. In some instances, trials have been adjourned as a consequence.

It may assist judges to know that SCTS has produced a comprehensive guidance note (attached) setting out the steps to be taken in relation to a COVID “incident” at the workplace. These can usefully be applied to this type of situation. In most cases, an adjournment ought not to be either necessary or desirable, albeit that this must depend on the particular facts and circumstances.

An “incident” occurs when a person displays or reports COVID symptoms whilst on SCTS premises, or makes contact after attending SCTS premises and reports that they have developed symptoms or have received a positive COVID test result.

A combination of the increased hygiene measures, an enhanced cleaning regime, 2 metre physical distancing and the wearing of face-coverings in communal areas ensures that court buildings ought to be safe areas for all those working in and using the facilities, as long as everyone plays his or her part in complying with the measures. For example, although ADs may share a room within a court building, they only do so where they can adhere to social distancing.

Prior to adjourning trials on the basis of worries about potential contamination, it would assist the smooth running of business if judges would consider the guidance. If any uncertainty arises, or if further consideration is needed, judges may wish to consult the Keeper of the Rolls or the Depute in Charge of Justiciary (East or West) who would be happy to assist where they can.”

The full memo, the SCTS Guidance and related flowchart can also be found in this Appendix on the following pages.

Memorandum to all judges and temporary judges



The Rt Hon Lord Carloway
Lord President

Parliament House
Edinburgh, EH1 1RQ

To: **ALL JUDGES AND TEMPORARY JUDGES**

Date: 26 November 2020

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COVID-19 – Incident Response Guidance

(Version 2 – Last Updated – 22 October 2020)

Contents

1. Introduction
2. Supporting someone who is displaying or reporting COVID-19 symptoms
3. Procedure to follow – Person displaying or reporting COVID-19 symptoms on SCTS Premises
4. Procedure to follow – Person has developed symptoms or has received a positive COVID-19 test (after attending SCTS Premises)
5. Cleaning Arrangements – Summary

Annex A – Link to flowcharts, Dynamic Risk Assessment Template & contact points

Annex B – Example of a completed Dynamic Risk Assessment

Annex C – Checklist

Annex D – Suggested Text for Communications relating to an incident

Annex E – Local Health Protection Teams – Contact Points

1. Introduction

1.1 This Guidance has been produced to assist any member of SCTS staff responsible for managing the immediate response to a suspected or confirmed case of COVID-19 (*that individual is referred to as the “responsible manager” in this guidance*). The guidance covers:

- Cases where a person displays or reports COVID-19 symptoms *whilst on SCTS premises*;
- Cases where a person informs SCTS that, *after attending SCTS premises*, they have developed symptoms of COVID-19 or have received a positive COVID-19 test result.

1.2 By following this guidance the responsible manager can be reassured that they will have observed SCTS procedures, the relevant provisions of Health Protection Scotland’s “[COVID-19 – Guidance for Non-Healthcare Settings](#)”, the arrangements agreed between the PCS Union and SCTS directly, plus the PCS/Scottish Government agreements in “*Coronavirus (Covid-19) - Impact on terms and conditions of employment for the Scottish Government Sector*”.

2. Supporting someone who is displaying or reporting COVID-19 symptoms

2.1 If an individual on SCTS premises (*be that a member of staff, judiciary or other service user*) reports or displays COVID-19 symptoms the responsible manager should be informed. The individual displaying symptoms should be encouraged to go home quickly and directly (*wearing a face covering, which should be provided if required*) in order to self-isolate and arrange a test. Whilst travelling home they should be advised to minimise contact with others (i.e. use a private vehicle if possible). If using public transport, they should try to keep away from other people and catch coughs and sneezes in a tissue (or the crook of their elbow if no tissues are available).

2.2 If the individual is so unwell that they require an ambulance, the responsible manager should phone 999 and explain they are concerned about COVID-19. Find somewhere safe for the unwell person to rest – if possible a room or area where they can be isolated behind a closed door. If possible, open a window for ventilation. Someone should remain with the individual until the ambulance arrives, ensuring that the individual remains at least 2 metres away from other people. The individual should touch as few surfaces and objects as possible and be advised to cover their mouth and nose with a disposable tissue when they cough or sneeze. If they need to go to the bathroom, they should use a separate bathroom (if available) and any bathroom they use should

then be closed until it has been cleaned. The responsible manager should keep a record of areas the individual has been in to ensure effective cleaning following their departure.

3. Procedure to follow - Person displaying or reporting COVID-19 symptoms on SCTS Premises – *Flowchart 1 provides a summary of this procedure*

3.1 In the event of someone displaying or reporting symptoms of COVID-19 whilst on SCTS premises the responsible manager should ensure that any area in which the person has been based is closed as soon as possible until an *Enhanced Targeted Clean* is undertaken. This will include any workstation that the individual has been using that day (*i.e. desk, chair, pedestal, keyboard, mouse, phone, outside and keypad of laptop and monitor back/edges*). The area(s) that require cleaning will be informed by a *dynamic risk assessment* – a speedy process carried out by the responsible manager in collaboration with the PSU Area coordinator.

3.2 The Dynamic Risk Assessment (DRA) process has been designed to ensure that the right questions are asked and the right actions taken in response to COVID-related incidents. This will ensure that the health and safety of all staff and building users (including cleaning staff) is protected, whilst adopting the most effective and proportionate approach to managing any incident.

3.3 The process involves the completion of a short template (available on the [COVID-19 guidance page](#) - *an example*” of a completed DRA can be found at Annex B). Please note that the template must be completed in order to “close” any incident – but in the first instance it should be used to guide immediate decisions and actions. These should be taken *first* to maximise safety – with completion of the written template following *thereafter*.

3.4 The responsible manager should contact the PSU Area Co-ordinator as soon as possible (via the FM Helpdesk) in order that, collectively, they can agree on the actions required. In discussion they will carry out a rapid assessment, informed by several key factors – including:

- Where in the building the infected individual had been during their working day;
- Any areas in which they had spent time e.g. courtroom, workstation, toilets, tea points etc.
- This will clarify those areas that should remain closed until an *Enhanced Targeted Clean* has been undertaken. (Any public areas where the individual only passed through/spent minimal time in – e.g. corridors do not need to be further decontaminated beyond routine cleaning).
- Whilst the developing evidence indicates that the risk of transmission from paper is low, care should be exercised where any papers handled by the individual require to be handled by anyone else within 24 hours of their departure. Particular attention should be paid to hand hygiene and disposable gloves may be worn if preferred.

3.5 Having carried out this assessment the agreed actions should be put into place as soon as possible. The PSU Area Co-ordinator will be responsible for arranging the required cleaning ASAP. The responsible manager should ensure that agreed areas remain closed until cleaning has been completed. At this point appropriate local communications should take place to ensure that all relevant contacts (as set out in the bullet points below) understand what has happened and the steps that have been (or are being) taken. As soon as possible after the actions in the DRA have been agreed the responsible manager should:

- Ensure that the relevant Business Unit Head/SBM & local PCS Union rep (or, in their absence, the PCS Branch Chair/Secretary) are informed of the situation & the steps taken;
- Issue a message to local staff, judiciary and to the key contact point for other building occupants (*i.e. any organisation with a permanent presence in the building on whom the incident may have a direct impact – such as COPFS, Victim Support etc.*) to provide reassurance on the steps taken to mitigate risk. The person who has reported symptoms should not be named, in order to respect their privacy.
- Suggested “starter text” for these messages is provided at annex D.

3.6 In instances of this nature an Enhanced Targeted Clean of identified areas will be arranged as soon as possible and those areas identified will remain closed until that clean has been completed. The Enhanced Targeted Clean meets both the decontamination standards set in Health Protection Scotland's "[COVID-19 – Guidance for Non-Healthcare Settings](#)" guidance and the arrangements agreed between the PCS Union and the Scottish Government in "*Coronavirus (Covid-19) - Impact on terms and conditions of employment for the Scottish Government Sector*". (See section 5 for more information on cleaning).

3.7 Provided that the established rules on physical distancing and hygiene have been observed by the individual who reported/displayed symptoms on SCTS premises during the last 48 hours, there should be no need for anyone else to self-isolate. Self-isolation is only required when an individual has been advised they are a "close contact" of a confirmed COVID case by NHS Test and Protect. Whilst any advice to self-isolate by NHS Test and Protect must be followed a "close contact" is generally defined by NHS Test and Protect as someone who has been within:

- 1 metre (around 3 feet) of a confirmed case for any length of time (face-to-face contact); or
- Within 2 metres (around 6 feet) of a confirmed case for 15 minutes or more.

3.8 As soon as the responsible manager has completed the necessary actions outlined above s/he should complete the written DRA template in liaison with the PSU Area Co-ordinator, to record actions taken. The completed DRA should be emailed to allhealthandsafetyteam@scotcourts.gov.uk and copied to both the relevant local PCS representative, Branch Chair and Branch Secretary for information.

3.9 The only formal document that must be completed and submitted to record an incident is the DRA Template. However, a checklist has also been provided at annex C to this guidance, which the responsible manager may find of use when managing an incident. Completion of the checklist is not compulsory – managers are free to use it to record key points as the incident progresses, should be of assistance in completing the finalised DRA.

Multiple Incidents in one location within 14 days

3.10 The responsible manager for each facility should keep a note of all incidents and be aware that multiple incidents occurring within a short period of time may indicate an outbreak. Health Protection Scotland Guidance makes clear that an outbreak should be suspected if there are:

- Two or more confirmed cases of COVID-19 in the setting within 14 days or
- An increase in the rate of absence due to suspected or confirmed cases of COVID or increase rates of absence associated with respiratory illness generally.

3.11 A suspected outbreak should be reported to the local NHS Health Protection Team (HPT – *contact details provided at annex D*). The SCTS SIM Team should also be advised of any suspected outbreak as soon as possible via the responsible Director. The local HPT will undertake a public health risk assessment to determine whether there is an outbreak. They may request further information or direct SCTS to take certain steps – this will vary on a case by case basis.

4. Procedure to follow – Person has developed symptoms or has received a positive COVID-19 test after attending SCTS Premises

Flowchart 2 provides a summary of this procedure

4.1 As section 5 of this guidance makes clear, during the COVID-19 pandemic, SCTS has a significantly enhanced level of cleaning in place following the close of business each day. This “*Enhanced Nightly Cleaning*” standard meets both the decontamination standards set in Health Protection Scotland’s “*COVID-19 – Guidance for Non-Healthcare Settings*” guidance and the arrangements agreed between the PCS Union and the Scottish Government in “*Coronavirus (Covid-19) - Impact on terms and conditions of employment for the Scottish Government Sector.*”

4.2 That being the case, if an individual has been on SCTS premises on a previous day (and did not report symptoms) and then, on a subsequent day, contacts an SCTS facility to report that they have *since* developed symptoms or received a positive COVID-19 test, the building will have already been subject to at least one Enhanced Nightly Clean meeting the decontamination standards. This provides reassurance that the building will be safe to use.

4.3 However, in these circumstances the responsible manager, in liaison with the PSU Area Co-ordinator must still complete the **Dynamic Risk Assessment template**. This is required because completed DRA templates provide a record and audit trail of all instances where a potentially infected individual was on SCTS premises. This may be important if, for example, it provides an indication of multiple cases in a single location over a short period of time. It also allows the responsible manager and PSU Area Co-ordinator to properly review the incident; ensure all appropriate cleaning has been undertaken; reassure local service users and staff and consider whether any risks remain that may require further action.

4.4 As soon as they become aware, the Responsible Manager should initiate the Dynamic Risk Assessment process by contacting the PSU Area Co-ordinator via the FM Helpdesk. Together they will conduct an assessment process and complete the DRA template in the same fashion as set out under section 3 of this guidance – although the urgency will be somewhat reduced as all those using the facility can be reassured from the outset that an appropriate level of cleaning has already been carried out.

4.5 Once the DRA has been completed appropriate local communications should take place to ensure that all relevant contacts understand what has happened and the steps that have been taken. Upon completion the responsible manager should:

- Ensure that the relevant Unit Head/SBM and local PCS Union representatives are informed of the situation and made aware of the steps taken – by sharing a copy of the DRA with them;
- Issue a message to local staff, judiciary and to the key contact point for other building occupants (i.e. any organisation with a permanent presence in the building on whom the incident may have a direct impact – such as COPFS, Victim Support etc.) The message should explain what has happened and the steps already taken to provide reassurance.
- A copy of the completed DRA should be emailed to allhealthandsafetyteam@scotcourts.gov.uk and copied to both the relevant local PCS representative, Branch Chair and Branch Secretary for information.
- In all cases (under both sections 3 and 4 of this guidance) SBMs/Business Unit heads should provide an update on the incident and DRA in the next daily SCTS COVID situation report template return, so that the SCTS SIM Team are made aware of all COVID-related absences.

4.6 NHS Inform guidance makes clear that anyone who develops symptoms consistent with COVID should stay at home for 10 days and book a test. Managers should remind all staff that if they think they may be developing symptoms of COVID and are not currently on SCTS premises they should not come in.

5. Cleaning Arrangements – Summary

5.1 As mentioned in the preceding sections SCTS has a significantly enhanced cleaning regime in place at present. Whilst this costs more than standard arrangements the decision has been taken to maintain this level throughout the pandemic – both to maximise the safety of all court users and staff – and to minimise instances where business must be cancelled at short notice (*by conducting a decontamination-level clean each evening, any reported symptoms or positive tests relating to staff/users who have not been in the building since the previous day(s) will not necessitate the closure of large areas for further cleaning*).

The table below summarises the cleaning regime in place to maintain a safe workplace – including the enhanced targeted cleans that can be requested at short notice.

Type of Clean	Comments
<p>Enhanced Nightly Cleaning:</p> <p>This is the set of regular cleaning tasks carried out as per our enhanced contract specification. This maintains cleanliness around our buildings to British Institute of Cleaning Standards (BICS) levels and includes the cleaning of all workstations used the preceding day and all touch points identified in the Enhanced daily Cleaning regime undertaken during the working day (e.g. toilets, door handles, door plates, light switches, elevator buttons, handrails, open surfaces, keyboards, mice, printers and photocopiers)</p>	<p>Every part of an SCTS building used the preceding day will be cleaned at the end of every working day as per the contract specification - varied to include enhanced mandatory cleaning of used desks, keyboards, screens, mice and headsets.</p> <p>Regular night cleaning to contract specification complies with the Health Protection Scotland (HPS) requirements for combatting risk of transmission of COVID19 as set down in Health Protection Scotland's "COVID-19 – Guidance for Non-Healthcare Settings"</p> <p>All cleaning agents used on SCTS premises at this time contain both active detergent and disinfectant properties – in order to ensure that cleaning meets the levels required for “environmental decontamination” set out in the HPS guidance. This level of cleaning also meets the standards contained in the both protocol agreed between the Civil Service Unions and Scottish Government and the Agreement between SCTS and PCS on the Health and Safety of Staff and Service Users in SCTS workplaces– where the required cleaning standard is defined as a “deep clean”.</p>
<p>Enhanced Daily Cleaning:</p> <p>Additional day cleaning resources in place during normal office hours to increase frequency of cleaning of high use ‘touch point’ areas.</p>	<p>In order to provide increased reassurance and hygiene during the pandemic the level of cleaning that takes place across facilities during the working day has also been increased. Public and court areas, where business levels dictate are subject to enhanced cleaning throughout the day focussing on touch points. These include, toilets, door handles/plates, light switches, elevator buttons, handrails, open surfaces, keyboards, mice etc.</p>
<p>Enhanced Targeted Clean:</p> <p>This is similar to the enhanced nightly clean except that Cleaning Staff are directed towards specific risk areas requiring special care and attention at short notice.</p>	<p>In the event of someone reporting or displaying symptoms in an SCTS building, or having left the building and reporting symptoms during that working day, this is the level of clean that will be provided ASAP to provide reassurance and to allow the affected areas to be put back into use. The affected area will be closed until the clean, informed by a dynamic risk assessment, is undertaken. This will include cleaning of the individual’s workstation (i.e desk, chair, pedestal, keyboard, mouse, phone, outside and keypad of laptop and monitor back/edges).</p> <p>This clean also meets the levels required for “environmental decontamination” in HPS guidance and meets the standards contained in both the protocol agreed between the Civil Service Unions and Scottish Government and the Agreement between SCTS and PCS on the Health and Safety of Staff and Service Users in SCTS workplaces– where the required cleaning standard is defined as a “deep clean”.</p> <p>In the event of a more significant outbreak based in a facility, where Public Health Scotland or the local Health Protection Team have been engaged, consideration would be given to misting/fogging procedures to chemically disinfect larger areas if the Public Health experts engaged advised such an approach.</p>

Annex A – COVID-19 quick reference flowcharts

To access the 4 flowcharts right-click on the icon below and (under the “Presentation Object” option) select “Open”. They are also available on the [SCTS Coronavirus Advice](#) page.

Flowchart 1 – Person on SCTS Premises displays or reports symptoms

Flowchart 2 – Person develops/reports symptoms (or tests positive) after attending SCTS premises

Flowchart 3 – Household Member displays symptoms

Flowchart 4 – Person is identified as a “Close Contact”



COVID Flowcharts
v1.0.pptx

COVID-19 – Dynamic Risk Assessment (DRA)

A completed “for example” version of the DRA is provided on the following pages. You can access a blank copy of the template by clicking on the icon below. A copy of the template is also available on the [SCTS Coronavirus Advice](#) page.



DRA Template v2 -
22.10.20.docx

KEY CONTACT NUMBERS/POINTS Referred to in this guidance

[Redacted by JI]



ANNEX B – COVID-19 Dynamic Risk Assessment

Introduction

Please refer to the latest version of the COVID-19 – Incident Response Guidance when completing this form – available at: <http://myscs/pages/Support/Wellbeing/coronavirus.aspx> This template is also available at the link. Please complete the form as fully and accurately as you can.

Assessment details

Location of Assessment	
Responsible Manager's Name & Job Title	
PSU Area Co-ordinator	
Date of assessment	

Incident

Describe the incident you had to manage (Individual, location and timing)

For Example - Permitting staff/building users access to [insert name(s) of area(s)] following a member of staff [receiving a positive covid-19 test/displaying or reporting symptoms].

SCTS became aware of this at [time]. The individual was located in [describe area(s)] or [The last time the individual was on the premises was – (time)]

The individual had been in [describe other area(s) they spent time in] or The employee had not been in the workplace since [date/time].

What steps were taken to manage the incident?

Summarise the following key points

- What the individual reported or displayed that led to this becoming an incident
- What steps were taken to care for the individual/escort them from the premises if appropriate
- The key points of the discussion with the PSU area co-ordinator – noting any areas closed off and any cleaning agreed
- Communications made with local staff, judiciary, other affected building users and the PCS – to explain the situation & any steps taken to provide reassurance as appropriate.
- Whether the individual was able to confirm that they had observed hygiene and distancing measures whilst on SCTS premises
- The time at which enhanced cleaning took place (*which may have been a previous date or dates if an individual called in to report that they had now developed symptoms*)
- When the area(s) were re-opened, if closure was necessary due to symptoms being displayed or reported on the premises.
- Any lessons learned from the incident that would be helpful to share across SCTS.

The potential hazards and the actions taken to control them should be detailed in the section below – examples of common responses are provided, although you do not need to limit your responses to these if other measures have been taken.



ANNEX B – COVID-19 Dynamic Risk Assessment

Potential Hazards

What is the hazard?	Who is at risk and how might they be injured or harmed?	What are you doing at the moment to control the risk?	With the control measures you have in place, do you believe <small>(delete as appropriate)</small>	What are you going to do to control the risk further if existing controls are not adequate?	Who is going to lead this change?	By when will this change be in place?
Touch points (office)	Other staff members using touch points may come in to contact with traces of COVID 19.	All touch points and workstations have been subject to [an enhanced targeted clean/ enhanced nightly cleaning since [date/time]	The risk is adequately controlled OR Steps are being taken to control the risk	If this is a current case in the building you may need to record the planned Enhanced Targeted Clean here if it is yet to take place	Provide relevant detail in these final two columns where required	
Communal Area – e.g. Tea Room	Other staff members using these facilities may come in to contact with traces of COVID 19.	Area has been subject to [an enhanced targeted clean/ enhanced nightly cleaning since [date/time]	The risk is adequately controlled OR Steps are being taken to control the risk			
Workstation	Staff members who may use the workstation and come in to contact with traces of COVID 19.	The workstation has not been used by any other staff member. The workstation was subject to enhanced	The risk is adequately controlled			

		cleaning after it was last used				
Contact with others	If physical distancing rules have not been observed there is a risk that other staff/court users may require to self-isolate, as identified close contacts	Physical distancing & appropriate wearing of face coverings was maintained throughout the member of staff's recent attendance.	The risk is adequately controlled			
Shared documents	Other staff members may be required to handle documents that potentially have traces of COVID-19 .	The employee had not handled any documents or folders for over XX hours. OR Relevant documents have been identified and [special care is being taken to observe hygiene rules in relation to them/they have been set aside]	The risk is adequately controlled OR Steps are being taken to control the risk			

ANNEX B – COVID-19 Dynamic Risk Assessment

APPENDIX - SUMMARY OF THE PROPERTIES OF THE CLEANING AGENTS CURRENTLY USED IN ALL SCTS PREMISES, TO MINIMISE THE RISK OF COVID-19

TASKI Sani 4 in 1 cleaning agent – detergent and disinfectant: This can be utilised as a surface disinfectant, as identified in the attached Safety Data sheet.

AISE-P314 - Surface disinfectant. Manual process

AISE-P315 - Surface disinfectant. Spray and rinse manual process

- For a full bactericidal, fungicidal and yeasticidal activity this product is required to be diluted correctly at 2.5% according to EN13697.
- For a bactericidal activity, according to EN1276, dilute at 15.

This can be applied via spray bottles, onto Mop or straight on to open surfaces, then wiped. Promoted as a washroom cleaner, however can be utilised in all areas if required. It does leave a small residue on certain surfaces, such as stainless steel / brass but enhances confidence with current COVID-19 climate.

Degragerm cleaning agent - detergent and disinfectant: This can be utilised as a surface disinfectant, as identified in the attached Safety Data sheet. Historically used as a floor cleaning agent / disinfectant in SCTS sites, however designed as a daily cleaner for all types of open surfaces, utilised in healthcare environments also.

Dosage depends on disinfection properties required:

1 shot in bottle or bucket applications for the following disinfection properties:

- ▶ Bactericidal EN1276 (under dirty conditions), 5 mins, 20°C.
- ▶ Yeasticidal / Fungicidal (on *Candida albicans*)
- ▶ EN1650 (under dirty conditions), 5 mins and 20°C or 15mins, 20°C.
- ▶ HIV1 (under clean conditions), 5mins, 20°C
- ▶ Hepatitis B (under clean conditions), 15mins, 20°C.

2 shots in bottle or bucket applications for the following disinfection properties:

- ▶ Hepatitis B (under dirty conditions), 15mins, 20°C.
- ▶ Hepatitis B (under clean conditions), 5mins, 20°C.

Microbiological data

- ▶ Bactericidal under dirty conditions according to EN1276 (5min, 20C) at 0.5% minimum dosage.
- ▶ Yeasticidal under dirty conditions according to EN 1650 (5min, 20C) at 0.5% minimum dosage.
- ▶ Fungicidal under dirty conditions according to EN1650 (5min, 20C) at 0.5% dosage minimum.
- ▶ Active against Hepatitis B at 1% (5 min, 20C) or 0.5% (15 min, 20C) under clean conditions.
- ▶ Active against Hepatitis B at 1% (15 min, 20C) under dirty conditions.
- ▶ Active against HIV at 0.25% (5 min, 20C) under clean conditions.

ANNEX C – COVID-19 – Incident Checklist

Completion of this checklist is not compulsory – however, you may find it a useful aid to capture key points relating to an incident as it unfolds, which can then be used to assist in the completion the Dynamic Risk Assessment (DRA) template after the incident has been resolved. A copy of the DRA must be completed and submitted as detailed in sections 3-4 of this guidance.

Date, time and location of Incident

-

Name of member of staff or judiciary/user displaying or reporting COVID symptoms

-

Name/role of responsible manager dealing with incident

-

Did the person require immediate medical help (e.g. First-Aid, Ambulance Called?)

-

What Symptoms did the person report/display?

-

Time contact made with PSU Area co-ordinator to discuss risks & steps to be taken

-

Identify locations where the individual has spent time while in the building (i.e. over 15 mins)

-

What actions need to be taken to close off these areas until enhanced clean has taken place

-

Date and Time at which the person left the premises

-

Date/time steps taken to communicate with/reassure those who should be quickly informed (this includes updating (i) any staff/judiciary/the key contact for other building occupants who may be directly impacted by the incident (ii) local senior management (iii) local PCS representative)

-

Are you aware of anyone the individual may have had “close contact” with while on the premises (i.e. was anyone within 2m of the individual for 15 mins or more, or within 1m for any period?)

-

Any key/shared documents handled by the individual, and were they handled by others?

-

Time at which enhanced cleaning completed and area safe to re-open.

-

DRA Completed and submitted (recording any key lessons learned)

-

ANNEX D – Text for Communications relating to an incident

Every incident will vary depending on the circumstances, so the responsible manager will need to ensure that the message issued to staff, judiciary (and any key contact points for other organisations who have a permanent presence in the building) provides an appropriate explanation of both the incident and any steps taken (or being taken) to manage it. The purpose of such a message is to inform and provide reassurance. Some suggested “starter text” is provided below. Sections in italics should be used/deleted as appropriate.

“We have been informed that a member of SCTS staff [displayed COVID symptoms/tested positive for COVID] on [date] and [has safely left the premises/is now self-isolating].

[Describe any immediate steps taken to maintain safety if someone displayed symptoms while on the premises]

[If the person reported symptoms but has not been on site since a previous date make clear that an enhanced nightly clean, meeting the hygiene and disinfection standards required to deal with a confirmed or suspected COVID case as set by Health Protection Scotland has already been carried out across the building]

As all users of SCTS facilities are advised to strictly observe 2m physical distancing at all times it is highly unlikely that anyone will be identified as a close contact as a consequence of attending the building. However, if you are contacted by NHS Test and Protect you must follow any instructions they provide.

This incident is a reminder that we must all follow the rules carefully, especially around physical distancing, face coverings and regular handwashing. These are the tools to prevent transmission.

[internal - If you have any questions please speak with your manager or consult the COVID guidance page on the SCTS Intranet]

[external – You may wish to share this message with the relevant staff from your organisation who accessed the building on this date. Feel free to contact me if you would like to discuss the matter further]

I am sure you will join me in sending best wishes to our colleague for a swift recovery.

ANNEX E – Local Health Protection Teams – Contact Points

[This Annex has been redacted for the purposes of confidentiality and brevity, however Sheriff Clerks will have access to these contact details.]

SCTS COVID-19 Flowchart 1: Person on SCTS Premises displays or reports symptoms

Judges may find it helpful to refer to an SCTS flowchart which shows the process to be followed when a person displays or reports COVID-19 symptoms. This flowchart can be accessed on the [Amalgamated Briefing Paper page](#) using the link provided.

Appendix I: Police Scotland Memorandum: Jury Facilitation



Memorandum

From: Alistair McIntyre
CTSA
Fettes
Edinburgh

To: Nicola Page
CT SecCo Inspector
Fettes
Edinburgh

Date: 10th September 2020

Ref:

Jury Facilitation, Odeon Cinemas, Scotland.

On 2nd September 2020, on behalf of the Scottish Court Service (SCS) and at the request of PI Nicola Page, CT SecCo, CTSA's Alistair McIntyre and Daniel Lansley, conducted a review of the security status at the Odeon Picture House, Fort Kinnaird, Edinburgh in respect of the venture.

Similarly on 8th September 2020, CTSA Robert Young conducted a review of the Odeon premises to be utilised in this venture at Braehead, Glasgow.

Due to current COVID 19 restrictions placed upon the number of people coming into close proximity, to reduce the back log of High Court cases in Scotland, it has been decided by Scottish Government and the judicial system to alleviate this problem by allowing jury services in high court cases to be conducted remotely at designated buildings / locations.

To facilitate this SCS have entered into an agreement with the Odeon Cinema group. The two multiplex venues that have currently been identified are, Braehead in Glasgow and Fort Kinnaird in Edinburgh.

It is believed that this venture is a world first and to prevent any reputational damage to the Scottish Government, the Scottish judicial system and Police Scotland, it is imperative the process of law and all court proceedings are not in any way interrupted or interfered with. Collectively we must work in collaboration to achieve the desired objective.

It should be noted that the following recommendations in this report have been made on the understanding that there are currently no specific known threats to the judiciary or the Scottish Courts and Tribunals Service.

The current UK threat level is set at “**SUBSTANTIAL**” – an attack is likely. Similarly from Northern Irish related terrorism within the UK it is also set at “**SUBSTANTIAL**”

[Note from Judicial Institute- with effect from 3 November 2020 the UK's terrorism threat level was upgraded from "**SUBSTANTIAL**" to "**SEVERE**"- an attack is highly likely but there is no specific intelligence of an imminent incident.]

Recommendation 1

SCS should ensure their response to the current threat is set at the appropriate level.

This pilot, which will last for between 6 and 12 months, the details which will be released into the public domain on 21st September 2020. Also as of that date staff at the Edinburgh venue will be engaged in familiarisation and induction procedures. On 28th September, again in Edinburgh, the process will then become fully operational.

In Glasgow staff familiarisation and induction will commence as of the 5th October 2020, with trials starting as of the 12th October.

Recommendation 2

The SCS should prepare a media holding statement in respect of any media questioning/ requests. This should be shared with Police Scotland Corporate Communications. Any media statements relating to the security or policing of the venues should be jointly prepared by SCS in conjunction with Police Scotland Corporate Communications.

At both locations the venue will become available, each week, between 0100 hours Monday until 1800 hours Friday. Thereafter, at the weekend they will revert to public cinemas.

Currently with the exclusion of Terrorist trials, all proceedings under the jurisdiction of the High Court, can be conducted in this new format.

SCS have deemed that the cinema complexes involved are not part of a public open court process, so no members of the public will be allowed to attend and view the proceedings at these venues.

Currently the SCS have not conducted any specific risk assessment for trials being held in this new format.

Recommendation 3

SCS conduct a risk assessment for each venue.

The Edinburgh cinema is a 7 screen facility. SCS will use, on a daily basis, 5 rooms for jury service. Of the remaining two rooms, one will be held in reserve for jury service and the seventh room will facilitate a staff rest area.

At the Glasgow location the venue is a 12 screen facility. Here SCS will use, on a daily basis, 10 rooms for jury service, one will be held in reserve and the twelfth, for the duration of the pilot will be handed over and retained by SCS as a rest room / storage facility.

The swearing in of jury members for their respective trials will take place remotely from the cinema complexes. The jury will thereafter parade, on a daily basis, at the respective venues in Glasgow or Edinburgh.

The process thereafter will, as far as possible, be the same as any other Scottish High Court proceedings. The Law Lord (Judge), Clerk of the Court, Maser, Prosecution, Defence, accused(s) and any other court officials being in the designated court, whilst the jury, for that trial is sitting, in one of the designated rooms, at the relevant cinema complex. All proceedings will be video linked electronically between the two venues with the proceedings for jury members displayed on the cinemas wide screen. Each jury member, socially distancing at their respective location viewing that trial will have a personal camera assigned to them allowing the court officials and accused(s) to view their responses / reactions.

At the jury facility, each trial will have an SCS "Jury Attendant" who will cater for the jury needs and requests. In addition, during court, SCS have appointed at each facility a "Jury Manager" who will manage the entire cinema facility along with staff from the Odeon group.

Whilst the court is in session the jury and jury Attendant(s) will be confined, including during meal breaks, to their respective rooms. As there are no individual toilet facilities in each of the rooms, toilet breaks will be escorted by jury Attendants as and when necessary / required.

Supporting the Jury Manager, SCS are intending to employ, at each of the venues, an independent guard force.

For hygiene and cleaning purposes the Odeon Group use the externally contracted cleaning company, "Exclusive Cleaning". Cleaners within this company are rotated on a regular basis and are not allocated directly to a specific venue.

It would be prudent during the period of this pilot scheme that both the guard force and also the cleaning company, dedicate specific staff at each of the locations, with resilience built in.

Recommendation 4

Designated guard force and cleaning staff should be vetted to BPSS (RICE) standard.

- R. Right to work in UK;
- I. Identity confirmed;
- C. Convictions relevant checked;
- E. Employment and academic history checked.

Recommendation 5

Dedicated staff from both guard force and cleaning staff be assigned to each of the venues by their respective companies.

It is essential that all staff, Jury Manager, Jury Attendants, Odeon staff, guard force, cleaning staff and any others involved in this venture take the opportunity to complete the 45 minutes ACT eLearning product.

Recommendation 6

All staff working at jury locations to complete **ACT eLearning** and print (produce) certificate of completion.

Link - <https://ct.highfieldelearning.com/>

High Courts in Scotland have Police Scotland police officers dedicated to duties within the court system. Where a SCS trial specific risk assessment highlights a threat or risk towards a venue and after discussions with Police Scotland Criminal Justice Services Division, consideration should be given to a dedicated Police Officer(s) being appointed to the remote location for the duration of that trial.

Recommendation 7

Where a SCS trial specific risk assessment highlights a threat or risk towards a venue and after discussions with Police Scotland Criminal Justice Services Division, consideration should be given to a dedicated Police Officer(s) being appointed to the remote location for the duration of that trial.

During the court week, Monday to Friday, only court officials, jury members, guard force, cleaners and Odeon staff will be working from these venues. They must however make themselves clearly identifiable.

Recommendation 8

All staff whilst within the Odeon buildings to wear in a prominent position their identification / accreditation / badge.

(Wear it in – Not out)

Recommendation 9

If there is any doubt as to someone's identity at the venue, a polite but robust challenge should be invoked in order to identify them and reason for being there.

Any anomalies should be reported immediately to the Jury Manager.

There will be no productions other than paper documents at the complexes.

Paper documents that are required to be conveyed from the main court to the jury facilities should however be transported in a secure robust manner.

Any paper productions should be placed in a SCS sealable bag with the seal number details being electronically forwarded to the Jury Manager at the respective venue. A document manifest should also be contained within the sealed bag and again electronically forwarded to the respective Jury Manager.

SCS staff or an approved accredited company should conduct the transportation of these documents.

Recommendation 10

Transportation between venues of paper productions / documents should be done in a sealed SCS bag by either SCS staff or an accredited company.

SCS have stated that documents at the jury venues may require to be photocopied. To facilitate this a photocopier, under the control of the Jury Manager, will be located at each location.

Four issues of concern arise here and need to be managed.

- Firstly all copies of documents must be accounted for.
- Secondly, any tracking system on the photocopier, allowing someone to reprint previous copied document(s), should be deactivated.
- Thirdly, the photocopier should be securely stored at close of business each day.
- Fourthly, all documents should be disposed of correctly / appropriately after use.

Recommendation 11

Photocopying should be restricted to only essential requirements with an audit process in place as to copies made.

Recommendation 12

Previous document memory reprinting system should be deactivated.

Recommendation 13

Secure storage of photocopier at close of daily business.

Recommendation 14

All documents must be disposed of correctly / appropriately after use.

Jury Attendants will be responsible for distributing and recovering on a daily basis all documents including “jury folders”.

Recommendation 15

All official documents relating to the court proceedings should be stored at the end of daily business within a LPS 1175 SR 4, Issue 8, E10 metal cabinet attached to a solid wall or floor within an identified secure room

(For further assistance in this matter contact one of the allocated CTSA's.)

The control of the keys or combination PIN code of this cabinet being controlled by the venue Jury Manager.

Additionally it is recommended that the Jury Attendant at the start and close of business each day, inspect their dedicated jury room to ensure nothing untoward or suspicious has been deposited or left within. Any anomalies or concerns should be immediately reported to the resident Jury Manager.

Similarly the Jury Manager, Odeon staff and dedicated guard force should regularly conduct inspections of common areas within the venue for anything untoward or suspicious.

Any matters of concerns that require further investigation should be report to the police.

To assist all staff in this matter, a Police Scotland pocket sized “Z” card, containing various good practice guides in respect of suspicious items, cordons distances etc. Also worthy of reading is the following national document “**Protect Yourself. A guide to personal security**”. Both are available through the CTSA cadre of Police Scotland.

Recommendation 16

An inspection, at start and close of daily court business be conducted in jury rooms by the dedicated jury room Attendants. Any concerns must be reported immediately to the venue Jury Manager.

Recommendation 17

A cursory inspection, at start and close of daily court business and at other irregular times be conducted in common areas within the venue by the Jury Manager, Odeon and guard force staff to identify any anomalies. Anything untoward must be reported immediately to the police.

During court proceedings it has been stipulated by SCS that the venues involved must switched off internal CCTV cameras.

If the CCTV system however can still independently operate external cameras, this facility should remain functional. By doing so any external post crime scene investigation or the identification of any hostile reconnaissance may be enhanced.

Recommendation 18

Internal CCTV cameras must be switched off. External CCTV if possible to remain functional and in operation.

(SCS staff to periodically check that internal CCTV has been deactivated)

In support of this the dedicated guard force at each venue should regularly conduct checks of the exterior of the building in an effort to identify any suspicious object(s) or activity in the vicinity of the building. Anything untoward found being reported immediately to the Jury Manager.

Recommendation 19

Guard force to conduct regular exterior checks of the building to identify suspicious activity or material.

CTSA have limited knowledge on cybercrime / intrusion. It is therefore incumbent upon the SCS to ensure that appropriate cyber security measures are in place at each venue.

Recommendation 20

SCS to ensure all cyber security measures are in place and robustly adhered to.

For information - for facilitation purposes, receiving and transmitting of proceedings etc., within the respective courts and jury rooms, SCS have confirmed that an Odeon Group member of staff will work within the respective venues projection gallery. This individual will be able to hear what is being said within the court but will not be able to hear anything ongoing or said within the jury room.

On a daily basis the venue Jury Manager should brief all staff in respect of court business / proceedings, required standards and procedures, including fire and level of responses required in the event of any incident(s).

Recommendation 21

All staff to be briefed on a daily basis by Jury Manager in respect day's proceedings, levels of response etc.

It is required under legislation that the venues fire alarm is tested weekly. Currently this is conducted at both venues on a week day morning. As this could potentially

interfere with court proceedings, it is recommended that it be moved to a time slot outside of court hours.

Recommendation 22

Weekly fire alarm test to be conducted out with court business hours.

The venue intruder alarms, out with business hours, within both premises will be operated as normal.

Recommendation 23

In the event of an actual fire alarm activation SCS must have a procedure to ensure the security and integrity of the various jury's remains intact and that all paper productions can be account for

Deliveries to the venues may clash with court business and again could cause disruption to proceedings. It is recommended that the Odeon Group consult with their suppliers and identify windows of opportunity out with court hours.

Recommendation 24

In negotiation with suppliers, windows of opportunity, out with court proceedings, be identified with suppliers to make venue deliveries.

The intention of the SCS in this venture is to ensure the levels of justice are not in any way differently administered or adhered to. To assist in this matter the Odeon Group must ensure that any planned maintenance work is conducted out with court business hours. Furthermore they should also endeavour to have any emergency work reported and returned to normal service within 4 hours.

Recommendation 25

No planned general maintenance work to be conducted during court proceedings.

Recommendation 26

A service level agreement between the Odeon Group and contractors be established endeavouring to have emergency repairs returned to normal service within 4 hours of notification.

It would be prudent that various specialisms be allowed familiarisation visits to each of the venues at an earlier stage. The two emergency service specialisms recommended would be Police Scotland, Police Search Advisors (PoISA's) and the Scottish Fire and Rescue Service (SFRS)

Recommendation 27

Police Scotland, Police Search Advisors (PoISA's) and Scottish Fire and Rescue Service officers be accommodated with familiarisation visits at the respective venues.

To ensure consistency of Police Scotland response to any incident at either of the venues, it would be appropriate to add a **STORM** marker, with the appropriate wording, at the respective Police Scotland Area Control Rooms, (ACRs).

Recommendation 28

Venue STORM markers with appropriate response wording to be created at the respective Police Scotland Area Control Rooms (ACRs).

In conclusion, it would be appropriate that as this is an entirely new venture that after a period of three weeks that the respective CTSA's meet with SCS to discuss any security matter arising from the recommendations contained within this report.

Recommendations 27

CTSA's after 3 weeks meet with SCS to discuss any security matters arising from the recommendations contained within this report.

Included at the end of this report is a useful names contact list. (Appendix "A") [Please note that this list has been removed by the Judicial Institute].

This report is submitted for your consideration and actions deemed appropriate.

Alistair McIntyre
CTSA, Edinburgh

Note: Recommendation 2 and 7 amended by DC Daniel Lansley 15/09/2020 after consultation with CI Paul Douglas.

Incl:

Police Scotland "Z" Cards – 40 enclosed for both venues, more can be supplied via CTSA's if required.

"Protect Yourself. A guide to personal security" document.

For Policy Support use only:

Appendix J: Appearance by electronic means

Representations

At any first diet, where there is a desire to have any witness give evidence from a remote location, other than as a special measure for a vulnerable witness, the parties will require to make representations (or state that they do not wish to make such representations) about the court making an order in terms of the [Coronavirus \(Scotland\) Act 2020](#) (“the 2020 Act”), Schedule 4, Part 1, Paragraphs 2(3) and 3(1).

The relevant provisions of the 2020 Act are as follows:-

Schedule 4, Part 1, Paragraphs 2 and 3.

Suspension of requirements for physical attendance

2(1) Any requirement (however expressed) that a person physically attend a court or tribunal does not apply, unless the court or tribunal directs the person to attend physically.

(2) But sub-paragraph (1) does not apply in relation to a trial diet.

(3) In the case of such a diet, the court may disapply any requirement (however expressed) that a person physically attend the court by directing that the person need not do so.

(4) A court or tribunal may issue a direction under sub-paragraph (1) only if it considers that allowing the person to attend by electronic means in accordance with paragraph 3 would—

(a) prejudice the fairness of proceedings, or

(b) otherwise be contrary to the interests of justice.

(5) A court may issue a direction under sub-paragraph (3) only if it considers that allowing the person to attend by electronic means in accordance with paragraph 3 would not—

(a) prejudice the fairness of proceedings, or

(b) otherwise be contrary to the interests of justice.

(6) A court or tribunal may issue or revoke a direction under sub-paragraph (1) or (3) on the motion of a party or of its own accord.

(7) In considering whether to issue or revoke a direction under sub-paragraph (1) or (3), the court or tribunal must—

(a) give all parties an opportunity to make representations, and

(b) have regard to any guidance issued by—

(i) the Lord President of the Court of Session, or

(ii) the Lord Justice General.

(8) References in this paragraph to physically attending a court or tribunal are to—

(a) being in a particular place, or

(b) being in the same place as another person,

for the purpose of any proceedings before a court or tribunal or an office holder of a court or tribunal.

Attendance by electronic means

3(1) A person excused from a requirement to physically attend a court or tribunal by virtue of paragraph 2(1) or (3) must instead appear before the court, tribunal or office holder (as the case may be) by electronic means in accordance with a direction issued by the court or tribunal.

(2) A person who fails to do so is to be regarded as having failed to comply with the requirement to physically attend from which the person is excused.

(3) The power under sub-paragraph (1) to issue a direction includes the power to vary or revoke an earlier direction under that sub-paragraph.

(4) A direction under sub-paragraph (1)—

(a) is to set out how the person is to appear by electronic means before the court, tribunal or office holder, and

(b) may include any other provision the court or tribunal considers appropriate.

(5) A court or tribunal may issue a direction under sub-paragraph (1) on the motion of a party or of its own accord.

(6) Before issuing a direction under sub-paragraph (1), the court or tribunal must—

(a) give all parties an opportunity to make representations, and

(b) have regard to any guidance issued by—

(i) the Lord President of the Court of Session, or

(ii) the Lord Justice General.

(7) A direction under sub-paragraph (1) that—

(a) sets out how a party to proceedings is to attend, by electronic means, a trial diet must provide for the party to use means that enable the party to both see and hear all of the other parties, the judge and (where applicable) the jury and any witness who is giving evidence,

(b) sets out how a witness who is to give evidence at a trial diet is to attend by electronic means, must provide for the witness to use means that enable all of the parties, the judge and (where applicable) the jury to both see and hear the witness.

(8) Nothing in sub-paragraph (7) is to be taken to mean that a person is to be enabled to see or hear a witness in a way that measures taken in accordance with an order of the court or tribunal would otherwise prevent.

The decision

If satisfied that to do so will not prejudice the fairness of proceedings, or otherwise be contrary to the interests of justice, the court will make an order in terms of the 2020 Act, Schedule 4, Part 1, Paragraphs 2(3) and 3(1) directing that:-

- the witness or witnesses are not required physically to attend the court for the trial

and that

- they are required to appear before the court for the trial by electronic means.

The latter direction must set out how they are to appear by electronic means before the court, and may include any other provision the court considers appropriate.

The expectation is that in their representations the parties will have made it clear where they expect the witnesses to be when attending remotely, although the court will have oversight of this and will have the final say.

Appendix K: Full COVID Jury Information

Ladies and gentlemen who have been balloted to serve on this jury, before I make some preliminary remarks on what you can expect in the trial, your role and the role of others and the fundamental legal principles which apply to the trial, I want to say a few words about the measures which have been taken and will be taken during the trial to promote your health and safety during the coronavirus emergency.

General

As you would expect the Scottish Courts and Tribunal service have taken expert medical and sanitary advice on how to protect the court users. This has involved a risk assessment of the measures necessary to reduce the risk of Coronavirus. Planning has been ongoing on how to conduct trials in the coronavirus emergency and what needs to be done has been identified and planned for. These measures are in now place and will be applied during this trial. Testing of these measures has taken place in a mock trial and the learning from the mock trial has been applied.

Cleaning

The court building, including the court you are in, was industrially cleaned yesterday and will be cleaned again every evening during the trial. Some areas will receive further cleaning, as appropriate, during the day as the trial proceeds.

Reducing the number of people in the court

In order to reduce the number of people in the court at any one time and to ensure that only the minimum number of persons necessary for the trial are in the court, certain measures have been put in place. These are that the court door will be locked during the trial to prevent the public from entering the court. Whilst these are public courts, alternative measures are in place to allow the public and media to view proceedings from a remote room. Witnesses who have given their evidence will not be allowed to remain in court.

Face coverings and hand sanitisers

Face coverings and hand sanitisers are available for your use when moving around the court building. The wearing of face coverings is not compulsory but is at your

discretion. I would, however, ask that all face coverings are removed when the trial commences. You are all seated at least 2 meters apart and as such face coverings are not necessary.

Physical distancing

As you can see from the markings in the court, physical distancing is to be observed by all court users. That is why you are not sitting together in the jury box but are sitting in the public benches physically distanced from your fellow jurors. A number of large screens have been positioned for you to follow the evidence given that you are not sitting in the jury box.

Productions

From time to time witnesses handle productions shown to them. This will not happen and only the macer will handle productions. If productions are referred to in evidence, they will be shown on the screens.

Training

The clerk of court, macer, jury attendant and other court professionals have been trained in the new measures.

Illness

It is also appropriate that I cover what to do in the event of illness. As you will know by now the main symptoms of coronavirus are a high temperature, a new continuous cough (coughing a lot for more than an hour, or 3 or more coughing episodes in 24 hours or if you usually have a cough, it may be worse than usual) and a loss or change to your sense of smell or taste. Most people with coronavirus have at least one of these symptoms.

Now if you or anyone in your household have developed any of these symptoms, whilst the court is not sitting, please do not attend court and take appropriate measures to self-isolate. Please let the clerk of court know first thing in the morning by telephoning the number you have been given. As you know coronavirus tests are available and arrangements for a test can be made through the NHS Scotland website. You should get tested as soon as possible. You should advise the clerk of the results of the test when known.

If you develop any of these symptoms whilst the court is sitting, you should immediately advise the jury Attendant or the clerk of court and you will receive advice. If you develop any of these symptoms during the trial but when you are at home, then, apart from taking any of the normal steps to protect your health, you should phone the court on the number you have been given and you will receive advice. I will also deal with the impact that this will have on the trial.

I should also add that the court professionals will follow the same procedures, if they develop any of the coronavirus symptoms.

Conclusion

I hope that this information will give you reassurance that your and other court users' health, safety and wellbeing is taken seriously and I will as the trial judge do my best to ensure that the measures I have outlined are strictly observed throughout the trial.

I will now move on to give you some information on the trial, your role and the role of others in the trial and the fundamental legal principles which apply.

Appendix L: Memorandum to Sheriffs Principal



The Rt Hon Lord Carloway
Lord Justice General

Parliament House
Edinburgh, EH1 1RQ

To: **All Sheriffs Principal**

Date: 26 November 2020

Introduction

Solemn trials in the sheriff court will restart soon. They will take place against the background of the challenges posed by the COVID-19 health pandemic. They will require to take account of physical distancing restrictions; not least in terms of the location of the jury. They will need to be conducted using the remote jury centre model, with the jury located in a cinema from where the jurors will observe the trial taking place in a courtroom. This model has been used for High Court trials since September. It has proved to be effective in permitting jury trials to proceed in numbers equivalent to pre-pandemic levels.

These High Court trials have been innovative in several respects. New procedures have been put in place: (a) to provide the jury at the outset with a written document advising them of their duties and responsibilities; (b) to give the jury, before any evidence is led, oral directions on the general principles which apply to all solemn trials and, in some cases, directions on matters relevant to the particular trial; and (c) to give the jury those directions in written form, once more before any evidence is led.

In the sheriff court, as in the High Court, the clerk will provide the jurors with the new “duties and responsibilities” leaflet as part of their juror pack. This memorandum deals with the advance delivery of substantive directions, and the issue of written directions, to the jury.

Background

In their report to the Scottish Government, “*Methods of Conveying Information to Jurors: An Evidence Review*” (April 2018), Chalmers and Leverick set out their clear and unequivocal conclusion:-

“There is no real debate over the question of whether written directions improve juror memory – they clearly do, as jurors no longer have to rely on their own recall of what the trial judge has said. There is, however, a substantial body of evidence that written directions also improve juror comprehension of the law. The vast majority of studies have demonstrated improvements in comprehension from written directions and most of the studies that have not done so have suffered from methodological flaws. Studies of juror deliberations demonstrate that jurors who are given written directions frequently refer to them and use them to correct mistakes of law made by other jurors.”

The Criminal Court Compendium, published by the Judicial College for England and Wales (the equivalent of our Jury Manual) states:

“The argument in favour of providing juries with written directions is now overwhelming”.

It explains that the research of Professor Cheryl Thomas, who has conducted extensive assessments of jurors’ comprehension of oral and written judicial directions has demonstrated the value to jurors of having written directions of law.

Experience so far

The feedback from High Court jurors who have taken part in trials using the process of written directions has been very positive.

Conclusion

Some judges and sheriffs may think it burdensome to use this new procedure. Some may feel that it delays unnecessarily starting the trial with the leading of evidence. The answer to such thoughts and feelings is that our court system should not be designed for the convenience of judges and lawyers, but to provide effective and efficient justice. The evidence is clear. The provision of substantive written directions, and to do so in advance, enhances the capacity of jurors to recall and understand the evidence and the content and effect of the legal directions.

I would therefore be grateful if you could forward this note to the sheriffs in your sherriffdom and advise them that both I and the Lord Justice Clerk are of the view that the interests of justice require that solemn trials in the sheriff court should be conducted following the same

procedure. The adoption of the new process of providing written directions should not be regarded as optional.