



The Rt Hon Lord Carloway
Lord President

Parliament House
Edinburgh, EH1 1RQ

by email

8 June 2020

For the attention of:

Margaret Mitchell MSP
c/o Justice Committee Clerks
Room T2.60
The Scottish Parliament
Edinburgh.
EH99 1SP

Dear Mrs Mitchell

RE-OPENING SCOTLAND'S COURTS – USE OF VIDEOLINKS

I thank you for your letter of 3 June, in which you seek my comments on Mr Renucci's evidence to the Committee that the High Court might go back on circuit to various Sheriff Courts around the country. I am afraid that Mr Renucci's reference to the halcyon days of the circuit courts fails to understand either the real difficulties which now exist or those which were perpetuated by that system and the reasons why we have tried, over several years, to concentrate High Court trials in major centres, notably Glasgow, Edinburgh and Aberdeen.

Instead of the High Court going a few times a year to some of the smaller towns, new courtrooms were created in the major centres in order to provide dedicated High Courts, with all the economies and efficiencies that that brings. Thus, the High Court annex now exists in Aberdeen. Edinburgh has several dedicated High Court courtrooms in the Lawnmarket. Glasgow High Court has been expanded from its original North and South courts to having, first, six additional new ones and secondly, and recently, a further two (East and West). This was all designed to meet the then predicted demand, and it did so.

If, for whatever reason, demand requires it or there are special circumstances, we still can and do requisition circuits in the sheriff courts. We had already planned using courtrooms in both Glasgow and Edinburgh Sheriff Courts in order to meet the increasing numbers of High Court prosecutions. Livingston is used on a permanent basis. We had already planned to bring the new Inverness Justice Centre into the

equation. Equally, our two new courts in Kirkcaldy will enable us to use either that town or Dunfermline as additional accommodation.

The idea that the use of multiple different sheriff courts facilitated local justice is a myth, in so far as it has applied to the High Court since the drugs explosion in the 1980s. Because of the time constraints which apply to criminal prosecutions, cases were seldom allocated to their local court. Forward planning required that, in the absence of the major centres which were later created, two week circuits were requisitioned in the various smaller sheriff courts, notably Dumfries, Kilmarnock, Paisley, Dumbarton, Stirling, Dundee and Perth, on an annual basis. This was designed to meet the then demand for High Court trials in Scotland as a whole. The circuits would be allocated before the crimes had even been committed for forward planning reasons. The short circuits were designed to enable these courts to conduct their normal sheriff court business in a programmed manner. Actual High Court cases might, by coincidence, end up in the relative local court, but the reality was that they would be sent to the court which could readily accommodate them within the time limits. Thus, for example, if a case from Inverness had to be accommodated by a particular date, it might be sent to Aberdeen or, as I experienced myself, to Dumfries.

The vast majority of High Court crimes have their origins in the central belt. Glasgow and Edinburgh usually have the best transport links to most of that area and therefore tend to be the most suitable for that cohort. It is very often easier to find public transport from a local area to these major centres than it is to travel to a sheriff court which may be closer in pure terms of distance. There were very good reasons, in terms of convenience to everyone, behind the original decision to move to dedicated High Court centres. These were set out in the consultation paper and report on Shaping Scotland's Court Services in 2012. In short, the use of individual circuit courts was extremely inefficient. It often resulted in court facilities lying unused when trials did not proceed or finished early. The sheriff courts did not meet the required high standards of security and amenity for those involved in major criminal cases. These considerations still apply.

I have, of course, considered scattering High Court business to the smaller sheriff courts, but I am afraid that it is neither a realistic nor even a desirable option. Most importantly, it must be recognised that our sheriff courts will, as a result of the COVID-19 related restrictions, have equally sizeable backlogs of jury trials, summary trials and civil business. These backlogs must also be addressed. The removal of the capacity of these courts to conduct their normal business for large periods at a time, which would be an inevitable consequence of the High Court going on circuit in the manner suggested, would simply exacerbate the problem.

Eric McQueen's recent letter to you highlighted that, by March 2021, there will be around 2000 sheriff and jury cases awaiting trial. If, as we are advised, social distancing measures are to remain in place for some months, the capacity of the courts will be cut to around 30% of the norm. Quite apart from the problems of

accommodating witnesses, jurors and the public, it is difficult to have more than, say, a half of the normal staff complement in a court building. The need to have 2 or 3 courtrooms to accommodate a single jury trial, cannot be met in smaller court buildings. It is simply unrealistic to suggest that there is any significant capacity to deal with the increasing High Court backlog in the sheriff courts. As I will repeat, this proposal is simply tinkering at the edges.

I appreciate that there is a keenness across the justice sector to find ways to address the serious backlog of solemn cases that we now face. Having the responsibility for the efficient disposal of business in the courts, it is my highest priority. I can only work within the limitations set by Government so far as social distancing and the requirement for certain categories of person to self-isolate are concerned. I wish to make it absolutely clear that I will not contemplate any measure to aid recovery which might compromise the basic principle of a fair trial. The fact remains, however, that the requirements, for physical distancing and self-isolation in order to protect public health, are extraordinary inhibitors on the conduct of all kinds of court business. Criminal court business, which currently requires large numbers of people gathering in the one place, is particularly badly affected.

The Lord Justice Clerk's working group is looking carefully at how trials might be restarted within the current legislation and legal framework. I am confident that this will achieve all that can be done within that framework. I have no doubt that there will be legislative measures which will be required to address some of the technical constraints that apply at present. None of the measures proposed so far, and in particular none that have emerged from the Scottish Criminal Bar Association, come close to offering practical answers to the difficulties. They are simply tinkering at the margins of a major problem which, as long as social distancing and self-isolation are in place, requires a political solution.

Yours sincerely

A handwritten signature in black ink, consisting of several fluid, connected strokes. The signature is positioned below the text 'Yours sincerely'.