Dear Professor Tomkins

I was grateful to have the opportunity to provide evidence to the Justice Committee on the re-opening of Scotland’s courts and tribunals system and welcome the Committee’s subsequent report.

As the Committee acknowledges, the COVID-19 pandemic has impacted significantly on the justice system. While we have re-opened all our court and tribunal buildings, adhering to physical distancing restrictions, we recognise the challenges that lie ahead in dealing with the backlog.

I fully agree with the Committee’s view that there is no single solution and that “a basket of measures” will be needed. Some of these measures are now in place with High Court jury trials and summary trials having re-started, and Sheriff Court jury trials re-starting over the coming months. Similarly, significant progress has been made with the re-start of both civil and tribunal business.

The use of digital technology has transformed much of our business with the Court of Session, All Scotland Sheriff Personal Injury Court, the Sheriff Appeal Court and the Bail Appeal Court now operating largely as virtual courts. Many criminal procedural hearings are now also taking place remotely and this is the primary means of operation in civil and tribunal cases, while providing “in-person” hearings where appropriate.

The Committee has made a number of recommendations, some directly to SCTS, and I thought it would be helpful to offer some initial thoughts:

160. The Committee asks the Cabinet Secretary to comment on the option of altering the sentencing power of the sheriff courts. This is a policy matter for the Scottish Government. However, we would welcome further consideration of this option in reducing the level of solemn cases, enabling a quicker progression of those dealt with at summary level, if appropriate resources are put in place. In conjunction with COPFS we are supporting the Scottish Government Justice Analytical Service to model the implications of potential changes.

161 &162. The Committee recommends that the Cabinet Secretary holds roundtable discussions in relation to both criminal and civil proceedings. We have
worked increasing closely with justice organisations, the legal profession and the 3rd sector throughout the pandemic. The Lord Justice Clerk’s working Group on solemn trials is an exemplar of what can be achieved through collaboration and shared problem solving. There will always be a balance of what can be achieved through broader roundtable discussions as opposed to specific focused working groups. We will of course fully participate in any roundtable discussions held by the Cabinet Secretary.

163. In order to have a fully functioning justice system we agree it is essential that appropriate investment is made to fund the progress of summary criminal trials, particularly if changes to sheriff sentencing powers materialise.

164. We agree that the use of digital and remote solutions cannot impact on the ability of people to participate in court or tribunal hearings.

In developing virtual summary trials, for example, there are a number of positive impacts; for those who find it difficult to travel to court, such as the elderly, those with physical disabilities or those with children or caring responsibilities. For children and vulnerable witnesses the potential for a remote appearance to reduce the trauma involved, compared to physical attendance at court, has already been recognised.

However, we recognise that for those who have particular communication needs, attention deficit disorders or mental health issues, the use of virtual trials may be unsuitable for that individual. It cannot be one size fits all.

We will ensure that the interests of users lie at the heart of digital design and that appropriate assessments are undertaken to ensure that all of our services remain accessible to all.

As I explained to the Committee on 18 August 2020 the increased use of digital and remote justice solutions will not result in court closures. Local courts will always play their part, irrespective of what model we have.

165. From October 2020, we intend to publish monthly information on criminal business to augment the well-established quarterly release of the ‘Quarterly Criminal Court Statistics’. This will provide a frequent update on business volumes including trial backlogs which will be of interest to the Committee, court users, the media and the wider public. We will also consider the feasibility of providing similar information for civil and tribunal cases.

166. When the lockdown measures began to ease in June 2020, the Glasgow Tribunal Centre reopened. Postponed Housing and Property Chambers case management discussions and hearings were rescheduled to commence from July 2020 via teleconference, enabling the parties, their representatives and the tribunal judge and clerk to participate remotely. 800 such hearings have taken place.

This has helped to reduce the backlog within the Housing and Property Chamber significantly. Cases where a physical inspection of a property is required remain postponed due to COVID-19 health and safety guidelines. These guidelines are currently under review and inspections will be carried out when it is safe to do so for all parties involved.
167. The Coronavirus (Scotland) Act 2020 enables the use of electronic signatures and electronic submission of documents, subject to the Direction made by the Lord President dated 9 April 2020.

The Court of Session and Sheriffs Principal have issued guidance on the acceptance of electronic signatures and the electronic submission of documents in civil proceedings under the provisions of the 2020 Act.

The submission made by the Society of Solicitor Advocates was dated 16 April 2020, which was only a few weeks after the provisions of the Act came into force. Given this and the guidance that has been subsequently issued by the Court of Session and the Sheriffs Principal, this issue has already been addressed.

168. We are currently working closely with the Scottish Government as a member of their Dispute Resolution Delivery Group, the main purpose of which is to develop an evidence based package for the reform of dispute resolution in Scotland. In particular, the Group is looking at how to take forward the Scottish Mediation Expert Group proposals on the current and future infrastructure support for dispute resolution.

The Simple Procedure Rules currently enable a sheriff to refer parties to alternative dispute resolution including mediation. However, in order to make such a referral successful, an appropriately funded mediation service will need to be in place, with sufficient mediators available to take up what could be a significant number of cases.

Our Civil Online system enables parties in simple procedure claims to submit cases and supporting documents, pay court fees and respond to a claim online. It also fully supports digital hearings with all case documentation available and presented digitally either in the courtroom or at a virtual hearing.

We have also developed a digital interface to our case management system for simple procedure claims which was launched on 17 September 2020. This enables legal firms dealing with high volumes of simple procedure cases to register them in bulk, rather than manually register each case individually.

From 1 December 2020 it will become mandatory for claimants to use Civil Online or our digital interface for simple procedure claims. However, should a claimant be unable to use either of these systems, they can submit their claim in paper form along with a note explaining the reason why they cannot submit the claim digitally. This will be considered by the sheriff before a decision is made on registering the claim.

The mandatory use of the systems is temporary at this stage to enable its use to be monitored and evaluated. It will then be for the Scottish Civil Justice Council to decide whether this should be a permanent feature in the Simple Procedure Rules.

Our aim is to move all civil business onto Civil Online to create a fully digital system, with safeguards for those where digital is not appropriate. As a first step we will shortly pilot new functionality which will enable all sheriff court civil proceedings documents, other than initial writs, to be submitted through Civil Online.
It may also be helpful to the Committee for me to comment on some other issues covered in the Report.

**Paragraph 154** of the Report refers to discounting of sentencing. I would draw the Committee’s attention to the Opinion delivered in the Crown appeal against sentence **HMA v Iain Lindsay** (June 2020), in particular paragraph 23:

“The current discounting regime is a relatively generous one. Its operation is relatively clear and is based on broad general principles. We do not consider that the likelihood of an increased backlog within the court system is a convincing reason to award a discount any greater than would follow from the operation of those general principles”.

**Paragraph 155** of the Report suggests that consideration be given to the feasibility of extended court sittings. Increasing capacity is an option suggested in our publication **COVID-19 Respond, Recover and Renew – Supporting Justice through the pandemic and beyond**. We fully appreciate the wider concerns raised regarding increased capacity and we intend working with the legal profession and 3rd sector to assess options, as capacity will be required to help reduce backlogs. However, as the Committee notes, such measures will require investment, in terms of the judiciary, SCTS, COPFS, the legal profession, legal aid and the 3rd sector. We agree that any options will require full consultation.

I hope that this is of assistance to the Committee in its consideration of the measures we continue to take in the re-opening of Scotland’s courts and tribunals.

If you require additional information please do not hesitate to contact me.

Yours sincerely

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