



The Scottish Parliament
Pàrlamaid na h-Alba

Justice Committee

Eric McQueen
Chief Executive
Scottish Courts and Tribunals Service

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Dear Eric,

Letter from the Edinburgh Bar Association

The Committee has received the attached letter (see Annex) from the President of the Edinburgh Bar Association raising concerns about the functioning of Edinburgh Sheriff Court during the public health emergency.

I should be grateful if you would provide a response to the points raised as soon as possible.

Best wishes,

Margaret Mitchell MSP
Convener, Justice Committee

ANNEX

FOR THE ATTENTION OF THE JUSTICE COMMITTEE

The Edinburgh Bar Association (EBA) represents the interests of criminal defence lawyers. Our work includes campaigning on behalf of our members, responding to government consultations on changes in the law and liaising with colleagues from the Crown Office and Prosecution Service (COPFS) and Scottish Courts and Tribunal Service (SCTS) at Edinburgh Sheriff Court. All criminal court defence lawyers in private practice in Edinburgh are members of the EBA.

The EBA has taken on a much greater role in facilitating communication between COPFS, SCTS and our members. Our aim is to assist in the smooth running of the court during lockdown and to ensure that the health and safety of our members is protected where they are required to attend at court for essential business. We appreciate that the COVID 19 crisis has thrown up difficulties that are new to everyone. However, we have been in lockdown for over two months and some very serious concerns around the operation of the court persist.

RISK ASSESSMENT OF COURTS

We understand that the SCTS has carried out a risk assessment of court buildings. This does not appear to be the case at Edinburgh Sheriff Court.

Hand sanitiser is provided at the entrance to the building and tape has been placed on the floor to indicate a two metre distance. Court users have been encouraged by SCTS to observe social distancing but there are no real practical measures in place to assist with this. There is no provision of Personal Protective Equipment (PPE) for court users.

Defence agents have access to their common room. This is a large room and has plenty of space for social distancing but there are no windows and no fresh air. The room does not appear to be cleaned regularly and there is no provision of anti bacterial wipes etc to allow agents to clean door handles or other surfaces when cleaning staff are not present.

Agents attending court for new custody cases will consult with their clients at the cells complex (with the exception of clients displaying symptoms of corona virus). There is no hand sanitiser or cleaning products on the route to the cells complex. Geoamey cell staff are required to be in close contact with clients. Although they have PPE, this is not always in use. The cell area is small and keeping a two metre distance is impossible. The interview booths in which agents meet clients are used repeatedly throughout the day without being cleaned. Accused persons in custody are not given any PPE.

DELAYS AT COURT

Despite the fact that business at court is greatly reduced, we are experiencing increased delays in the processing of new custodies. Agents attend court at 10am but are often left waiting until well into the afternoon before papers for new custodies are available to them and to the court. We are not clear why this is happening. Agents regularly report that they are required to chase this up with COPFS and SCTS and, unfortunately, those responsible for administration at court do not seem to take on responsibility for this problem.

In terms of health and safety, it is unacceptable for agents to be waiting at court in the conditions described above for long periods of time. The fact that agents have no option but to attend at the Sheriff Clerks Office to investigate these delays leads to unnecessary contact with court staff that would be avoided if cases were processed efficiently.

Delays are not restricted to new custody cases. Video links to prisons are used in cases where the accused is remanded or serving a prison sentence. The SCTS provides the EBA with a daily list of those cases and an allocated time slot for each. In theory, this is sensible and should limit the time agents are required to be in the court building. However, these times slots are not adhered to and agents are often left waiting for hours.

ADMINISTRATION

Members of the EBA are extremely concerned that the administration of business by the SCTS is simply not happening. We have been liaising with COPFS regarding the progress of cases administratively e.g. for pleas of guilty and for bail reviews. In order for these protocols to operate, the Sheriff Clerk's Office must be contactable either by email or telephone. We have been repeatedly advised by the Sheriff Clerk's Office that they do not have the capacity to answer emails and they do not answer the phone. It is practically impossible to contact them. We appreciate that the number of staff attending the building is reduced but it appears that no provision has been made for staff to work remotely (this is in contrast to COPFS staff who are successfully working from home).

The EBA agreed to assist the Sheriff Clerk's Office by distributing lists of cases that have been adjourned administratively with the new dates fixed to our members. The last correspondence we have had regarding new dates was mid May. It is not clear how the SCTS will intimate new dates to those that are not legally represented.

Agents have lodged letters intimating pleas of not guilty for many new cited cases. We have been advised by SCTS that they are unable to process these letters so those cases are being adjourned without plea. This creates unnecessary churn and will undoubtedly increase the backlog of business post lockdown.

We would like to be in a position, when restrictions are eased, to accelerate cases that have been adjourned because of lockdown but this will not be possible without effective means to communicate with the Sheriff Clerk's Office.

CONCLUDING REMARKS

As an association, we are very keen to progress as much business as is possible and will assist as best we can to facilitate safe working conditions. It is important that the committee are made aware of what is actually happening at ground level in order to resolve these problems. We are more than happy to provide further details or answer any questions committee members may have.

Julia McPartlin
President
Edinburgh Bar Association