

# **Criminal Justice Committee**

## **3rd Meeting, 2021 (Session 6), Wednesday 8 September 2021**

### **COVID and the justice sector**

#### **Written submissions**

1. The Criminal Justice Committee is holding a roundtable meeting about the impact of COVID on the justice sector and plans for the recovery from COVID.
2. Written submissions have been provided by the following organisations—
  - Faculty of Advocates
  - Law Society of Scotland
  - Police Scotland
  - Scottish Fire and Rescue Service
3. In addition, the following organisations, representing staff in the justice sector, have provided written submissions—
  - Association of Scottish Police Superintendents
  - PCS
  - Scottish Police Federation
4. These submissions are attached.

**Clerks to the Committee  
September 2021**

## Written submission from the Faculty of Advocates

### 1. Introduction

- a. From the earliest stages of COVID's terrible impact on our criminal justice system the Faculty of Advocates worked in partnership with Lady Dorrian's working group, SCTS, Crown Office and the other Justice Partners to help invent, deliver, test and refine a robust solution to the need for continuing High Court jury trials in time of COVID.
- b. Particular praise is due to the SCTS remote jury trial delivery group, including but not limited to Steven D'Arcy and the team of which he was part. The speed with which a ground breaking and reliable electronic solution was implemented stands in stark contrast to what one often reads of large scale public sector electronic infrastructure project delivery.

### 2. Existing modifications to jury trials in Scotland

- a. As things stand, all jury trials in Scotland operate with the jurors seated in cinemas, socially distanced, and with the lawyers, court staff, accused and most witnesses present in the court room as normal.
- b. The experience from the perspective of conducting the prosecution or defence in such a trial is that it feels relatively normal during the evidence taking stage. We need to think ahead when documents or physical items need to be shown to the jury, since they're not in the same building as the trial, but otherwise the 'evidence' stage of the trial soon comes to feel like normal.
- c. There is undoubtedly a difference when it comes to addressing the jury. The lawyer stands at a lectern and addresses a bank of television screens, which carry collected and arranged video of each juror. The lawyer is filmed from a camera nearby and this is beamed to the cinema, along with their speech. Eye contact is not possible, since the lawyer camera is filmed off eye line. There is a diminution of engagement with the audience in this, and of the audience with the speaker, such that one is left with the sense that the interest of the audience is not so easily held. This affects each party in the same way though, so no one side accrues special disadvantage.
- d. Taken together, the system pioneered in Scotland to answer the challenge of COVID in jury trials works well, if not quite perfectly, but we know that it hasn't come cheaply. Returning juries to courtrooms will be a relief all round.

### 3. Modifications which should be kept and why

#### a. Balloting of jurors

- i. Pre-COVID, when a trial was due to start a pool of potential jurors would be summoned to court to watch the fifteen names be drawn from the bowl. For a long trial that pool of potential jurors could number a hundred. 85% percent of them will have

been wrenched from their usual existence for that day for what seems to them little obvious point.

- ii. What happens now is that at 2pm on the day before the evidence begins, fifteen names are drawn from the bowl, along with five or more spares. The jurors exist in court only in the form of names on paper, and they go about their business that day as normal. They don't have to queue through security and check in at court, nor take up space on the roads or trains or in surrounding car parks.
- iii. The fifteen chosen, and the small number of spares, are told the news by telephone and only those twenty or so assemble the next day for the trial.
- iv. This seems to us to be a better system than bringing them all in. Bear in mind that Glasgow High Court has eight trial courts, so if several trials are due to start on the same day, hundreds of potential jurors need to be processed and accommodated.

**b. Acceptance of electronic documents**

- i. Most if not all written submissions, notices and applications are now tolerated in electronic form without the need for hand signed hard copies. The electronic versions can be printed of course, if need be, and vouched by the email submitting them. Pre-COVID it was the reverse.
- ii. There seems to us to be no downside to this move. Most other areas of business life have probably made that step some time ago.

**4. Modifications which should end when COVID allows**

**a. Virtual hearings generally**

- i. Most non-trial criminal hearings are conducted virtually during COVID. In the High Court these are mainly Preliminary Hearings and appeal hearings.
- ii. The parties to any criminal dispute assist a decision maker by effective communication of that party's evidence, viewpoint or legal argument. The quality of this assistance improves the resultant decisions and has done for centuries..
- iii. Virtual court hearings blunt communication. They serve us well from a social distancing point, and there is no doubt convenience to be found in sitting at home, but the criminal justice system in the High Court particularly is tasked with taking life changing decisions every single day. Mere convenience should weigh little in the balance
- iv. Virtual hearings diminish the value of personal interaction. This would be apparent to all who have seen both systems in practice. With witnesses or jurors this tends to decrease the attention paid to the evidence or arguments. It seems likely that this applies to decision makers generally. It is harder to jolt

someone out of an erroneous but deeply held viewpoint when the means of communication has lost at least one dimension. Ironically, given the use of digital communications, you lose 'bandwidth' when communicating virtually.

- v. It follows that we consider virtual hearings should end when the public health situation allows it. By then they will offer only some added convenience to the professionals involved. The matters at stake in the High Court are of too great an importance to complainers, their families, and those who are accused of serious crimes for the mere convenience to those working in the courts to carry the day. The High Court of Justiciary is a grand and solemn arena, humbling to those who are thought to have sinned, and appropriately daunting to those who would try and bring their lies there. There is no virtual system which can recreate this essential gravity.
- vi. Calling virtual hearings 'digital justice' is only justified if we continue to prioritise justice ahead of convenience. Sometimes novelty of the new blinds adopters to the value of the old being lost.

**b. Remote attendance of prisoners in substantial hearings, and the non attendance of accused generally**

- i. At the moment Preliminary Hearings, often including important legal arguments, are likely to proceed without the accused prisoner being present at all. If he or she is attending virtually from prison, the chances are that they hear at most some of what is said, and often none.
- ii. In bail cases, accused people are generally instructed not to attend unless a plea of guilty is being accepted.
- iii. Without repeating what is said above, it is important for accused persons to appreciate the seriousness of a High Court prosecution. It is important for them to see the effort made to ensure fairness in events. That bolsters general confidence in the justice process. By their being absent or muted the appreciation of what is being done, and why, is denied to them.
- iv. We advocate the return of accused people, in person, into the courts as soon as practicable. As is said elsewhere in this submission, convenience is worth nothing when it undermines justice.

**5. Unavoidable issues during COVID**

**a. Misuse of COVID**

- i. The use of large spaces to house juries means that one juror with possible COVID does not impact on the other fourteen, and so very few trials have been collapsed because of it.
- ii. COVID has, however, proved a boon to those witnesses and accused persons intent on avoiding court. There is a suspicion

that fake 'official' text messages are available and are being used to postpone or avoid hearings.

**b. Limiting of prisoner contact**

- i. For obvious reasons, there have at times been complete exclusion of professional visitors for prisons, or sectors within prisons. This inevitably delays progress in criminal trials, but the experience of our Membership is that prison staff and management have done their best to minimise the impact of such events on the court system.

**6. The backlog of trials**

- a. For many months now the High Court has exceeded the pre-COVID rate of trials. This has begun to reduce the backlog, and is set to accelerate with the expansion of the High Court realm towards twenty daily trial courts. Realistically, the pre-COVID norm was about 12 trials a day, we think.
- b. This is a step change in Scotland's criminal justice system, and is to be applauded for its boldness and scale.
- c. Almost doubling the throughput of trial, however, will be a test for each area of professional involvement, whether prosecuting, judging, defending or the administration. For more than a decade there has been a chronic lack of appreciation of the vital role of the defence lawyer in a mature system of justice. This has been acute at solicitor level for many years and is having a substantial impact, with able lawyers fleeing the underfunded defence in favour of the Crown or other opportunities in the private sector.
- d. Even at the level of Advocates, most often at a later stage of their careers than many solicitors, this long term depletion of talent is increasingly being felt.
- e. Expanding the flow of trials as substantially as is hoped, coupled with decreasing numbers of talented lawyers prepared to thole the underfunding and lassitude of the current regime, will inevitably hinder the recovery by the creation of pinch points.
- f. The extended funding understood to be in place for the Crown is welcome, since it has been sorely needed. But care also needs to be taken of those who provide the defence balance to every trial in our adversarial system.

**7. Conclusion**

- a. The Faculty of Advocates, a body from which the majority of those who prosecute and defend allegations of serious crime in the High Court are drawn, salutes the energy and skill of Parliament and of Government which allowed Scotland to lead the way in solving trial by jury in time of COVID.
- b. The Faculty itself is very nearly half a millennium old. The changes which have come and gone during that time can hardly be imagined. Public health catastrophes that would, in their context, humble this

COVID emergency. Throughout all of this justice has remained the goal of criminal courts, and it must remain so.

- c.** This time of hardship will pass, and soon, we hope. The highest standards of justice are the crowning glory of any democracy. No doubt many branches of the Public Sector have shone amid the pressure but SCTS have distinguished themselves in delivering a COVID safe remote jury system before most others and the equal of any.
- d.** Looking to the future, to the recovery from COVID in our criminal justice system, we ask that Parliament and Government clearly see the value of direct, in-person communication and of able and motivated defence lawyers in our adversarial system. The boldness of the plan almost to double High Court trial frequency is likely to expose further the depleted defence resources. Let us hope it does not founder.

## Written submission from the Law Society of Scotland

### Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to contribute and respond to the Scottish Parliament's Criminal Justice Committee Roundtable event on Covid Recovery on Wednesday 8 September. The purpose of the roundtable is for the Criminal Justice Committee to hear from key stakeholders about the impact of COVID on the main components of the justice sector, and how the justice sector can recover from the impact of COVID.

We have sought to focus therefore on the priorities including the role of the profession, access to justice and legal aid.

- **The current issues facing the main bodies in the criminal justice system because of COVID-19 and future challenges (courts, prisons, policing etc.)**

We recognise the enormous scale of the challenges now facing the justice system following the impact of COVID. Even now, while there may be a return to maintaining increased social distancing measures, respecting versatility and flexibility in adopting or creating solutions to the criminal justice system is vital. The priority remains that people (and that means all involved in the justice) must be kept safe.

That flexibility is paramount as the virus and new variants have not gone away. We must continue to recognise that new or different restrictions may be necessary in the future and to protect the vulnerable, while the criminal justice system continues to function.

All within the justice system are currently working within the framework of the Scottish Government's Recover, Renew, Transform (RRT) programme<sup>1</sup> that was set up to focus on:

- Recover – returning to pre-pandemic capacity and addressing backlogs across the whole system
- Renew – prioritising the resolution of cases at the earliest opportunity and embedding new ways of working
- Transform – changing outcomes for those affected by the criminal justice system.

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<sup>1</sup> <https://www.scotcourts.gov.uk/about-the-scottish-court-service/scs-news/2021/03/19/reducing-the-criminal-trials-backlog>

The RRT programme predicted, using Scottish Courts and Tribunal Service's (SCTS) modelling, that the backlog of High Court and Sheriff solemn cases would be cleared by 2025, with summary trial backlogs being cleared by 2024<sup>2</sup>. Looking at the most recent figures published by SCTS in July 2021<sup>3</sup> though the numbers are improving, they are still lower than the pre-Covid position. They paint a mixed picture with the throughput of solemn cases improving due to the earlier restart of solemn High Court business in August 2020 with what has been a significant success with the introduction of virtual juries. However, the summary figures stand at 408 sheriff summary evidence led trials commenced, which is 70% of the average pre-COVID levels<sup>4</sup>. Though priority needs to be assigned to the most serious cases, summary cases cannot be ignored as they still carry up to one-year custodial sentencing powers and deal with a significant range of serious crimes. They also have an impact on the witnesses involved.

What these statistics mean for the accused complainers and those affected by crime, the judiciary and their representatives and court staff is continuing delay, frustration and uncertainty. It affects those accused facing trials as well as having long periods on remand (a consideration to be reflected in ensuring the return to summary and solemn case timebars to ensure timeous justice). There is the effect on witnesses still to give evidence and who seek to achieve justice by their cases being heard. It is important that monitoring and measuring of the court backlog continues to provide an accurate picture of the justice system. There is a need too to acknowledge that there were already pre-pandemic backlogs in existence that have now been exacerbated.

The effect too of the COP26 conference in 2021 from 31 October – 12 November cannot be disregarded - and will have a significant impact on the courts and addressing the current backlog too. The impact of COP26 is greater than just these two weeks – as the planned cessation of much court business Scotland wide extends beyond that two-week period to allow police to handle the precursor of events prior to the conference and possible activist actions.

In August 2021, the Scottish Government announced<sup>5</sup> an independent public inquiry into the handling of the coronavirus (COVID-19) pandemic. Though its remit is under consultation, this is intended to include examination of the circumstances of deaths in care homes. The need for resourcing this inquiry is unknown at present but will inevitably draw on resources from various parts of the justice sectors. That will include staff from SCTS, the profession and the Crown as well as any judicial impact. That is at a time too where additional courts are being held.

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<sup>2</sup> <https://www.scotcourts.gov.uk/about-the-scottish-court-service/scs-news/2021/03/19/reducing-the-criminal-trials-backlog>

<sup>3</sup> <https://scotcourts.gov.uk/about-the-scottish-court-service/scs-news/2021/08/17/monthly-information-on-criminal-case-throughput-for-july-2021>

<sup>4</sup> <https://www.scotcourts.gov.uk/about-the-scottish-court-service/scs-news/2021/03/19/reducing-the-criminal-trials-backlog>

<sup>5</sup> The Scottish Government is inviting views on the draft aims and principles of an independent public inquiry into the handling of the coronavirus (COVID-19) pandemic. <https://www.gov.scot/news/a-covid-19-inquiry-for-scotland/>

Building confidence in the system and managing the backlog is vital to avoid, what may be inevitable, which are cases which collapse due to the passage of time since the incident occurred.”<sup>6</sup>

But the justice system requires the resourcing of all who require to be court, including the judiciary, Crown and defence along with the SCTS staff, the police, and prison staff etc. That involves and is the purpose of the RRT which is underway with the allocation of cross justice funding of £50 million<sup>7</sup> to provide resources for the additional courts. Adding on these extra courts provides a means of more cases being handled but has implications for all other parts of the system. Strengthening resources in one place affects others. There is not a simple “one size fits all solution.”

The handling of more cases also puts a demand on the community justice systems and the prisons which have been significantly impacted over the pandemic. Prisons have suffered from the need to lock down to manage the pandemic – as well as in effect prisoners being denied their family visits and problems with securing their access to solicitors.

Exactly how the courts are going to be staffed and indeed adequately funded while ensuring effective access to justice needs to be carefully managed. There have already been the introduction of holiday courts and suggestions made of the introduction or use of Saturday or weekend courts. The effect on the staff involved in these court requires very careful consideration and the resultant effect on their work/life balance. Maintaining a system on a 24 hour and 7-day basis is not practical. To run courts outside the normal operational hours would similarly impact on witnesses and jurors too.

Focusing on our membership and roles in the criminal justice systems, solicitors need to be able to be in court, to represent their clients, having taken instructions and met with their clients. Concerns have been expressed over the numbers of the profession available to man the courts to support additional courts. The need for increased recruitment elsewhere such as the Crown for solicitors is impacting on the numbers of the profession available as criminal practitioners.

As part of the RRT, there must be adequate resourcing through an effectively funded legal aid system and this will be crucial going forward. We recognise that a Resilience Fund was put in place and a scheme to support trainees from the Scottish Government, but more will be required to support the profession. Firms of solicitors as others within the criminal justice system have maintained their services throughout these hugely challenging conditions of the pandemic. Their work and co-operation along with the Crown and other court staff has been vital in keeping the justice system ticking over even at the height of the pandemic in 2020.

Tackling the court backlog is essential. In identifying solutions, across the criminal justice sector, collaboration, flexibility, early engagement and ongoing discussions

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<sup>6</sup> <https://scottishlegal.com/article/crown-blame-covid-and-backlog-as-case-deserted>

<sup>7</sup> <https://www.scotcourts.gov.uk/about-the-scottish-court-service/scs-news/2021/03/19/reducing-the-criminal-trials-backlog>

are required to produce positive solution-based approaches. Factoring in local elements and local justice issues are also required.

In looking at the RRT, there is a need to recognise the inter-dependencies. All involved as highlighted above have crucial, supportive and important roles to play personally and professionally, while requiring to respect all developing and ongoing requirements from public health perspective.

**The current backlog of cases in the criminal justice system and what further steps can be taken to reduce this**

In considering further steps that can be taken, there is a need to consider solutions that focus on respecting the rule of law, the interests of justice and human rights and what that means for the Scottish justice system while the pandemic continues. That requires:

- Each procedural and evidential requirement from the preliminary processes (including at detention at police stations) to the trial complies with the rule of law and human rights.
- All rights must be respected from the complainer testifying to the remanded accused.
- Equality of arms ensuring that a fair trial takes place (Article 6 of the European Charter of Human Rights). That right must balance in relation to the rights of the accused to present their case during the trial. Everyone charged with an offence must also have an equal opportunity to defend themselves.

Where we do stress the need for action lies in areas which have been in our view the worst affected and impacted by the pandemic. These include:

**Multiple accused:** Those involved in multiple accused trials at both solemn and summary level as even with the systems in these courts adapting to Covid requirements has meant that they have not been able to have these cases heard in court. Though that situation may be improving, this requires attention to prioritise these cases. That may mean additional facilities require to be put in place.

**Vulnerable:** The pandemic has been recognised too to have had an adversely effect on the most vulnerable in society, both accused and witnesses. Their participation in remote or virtual courts has presented challenges, restricting their ability to access justice and obtain legal advice during the pandemic. Groups such as those in prisons, immigration detention or care settings, disabled people, children and those impacted by domestic abuse have been disproportionately impacted. These groups should be prioritised.

**Civil:** In considering the criminal justice system, regard need must be had to the civil justice system which has not been impacted to such an extent as the criminal system. Any prioritisation of criminal cases may have an impact on civil. As return to pre pandemic levels continues, this needs to be factored in.

**Mental health:** Time bar extensions and the resulting delays may have a significant impact on mentally disordered accused persons and offenders, particularly where treatment or conditional discharge is dependent on the outcome of criminal proceedings or there is an interface with the provisions of the Mental Health (Care

and Treatment) (Scotland) Act 2003. Bail conditions remaining in place over an extended time frame may also present a particular issue for mentally disordered accused persons, or where there is a family member with a mental disorder or incapacity.

We are not aware of any mechanism to allow exceptions to time bar extensions in any circumstances, or of consistent efforts to prioritise cases involving mentally disordered accused persons or witnesses. We also note that concerns about the treatment of accused persons and offenders with mental disorders, particularly female prisoners, existed prior to the pandemic.<sup>8</sup> Experience during the pandemic has not only exacerbated known shortcomings but has revealed serious shortcomings that have often in fact long predated the pandemic without hitherto being adequately recognised and addressed.

Appropriate monitoring and measuring of steps taken to reduce the backlog must also reflect the impact in the above areas and the steps taken to prioritise and fully accommodate the needs of these groups.

### **The impact of a permanent move to a much greater use of digital justice, opportunities and threats of such a move**

Greater use of digital justice in courts and tribunals may present issues in a range of cases. These involve mentally disordered accused persons or offenders, and in taking decisions about the use of digital solutions in such hearings should be made on a case-by-case basis. That needs to take full account of the needs of the accused/patient and their right to a fair trial. As identified above, mentally disordered accused are only one group of the vulnerable that have been adversely impacted by the pandemic.

In providing and considering digital solutions, consideration must be given to what steps are necessary to protect the interests of vulnerable groups within the justice system. This applies to accused persons, witnesses (the alleged victims of any crimes) and applies at all stages of the criminal justice process from the initial reporting of any criminal activity to any sentences imposed.

The impact of a permanent move to a much greater use of digital justice may have on vulnerable groups and what steps are necessary to ensure people can participate effectively. For disabled people, the use of digital options may enhance their ability to participate, but for others it may limit their ability to participate. It is also necessary to consider those who due to age or financial reasons lack the ability or confidence to access digital options.

Where new ways of working are developed, the legal aid impact must be recognised, for instance, in ensuring fair remuneration for the profession. There may be greater

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<sup>8</sup> See for example: Mental Welfare Commission for Scotland Report "Concerns about the care of women with mental ill health in prison in Scotland" (July 2021) available at [https://www.mwscot.org.uk/sites/default/files/2021-07/ConcernsAboutTheCareOfWomenWithMentalIllHealthInPrisonInScotland\\_July2021.pdf](https://www.mwscot.org.uk/sites/default/files/2021-07/ConcernsAboutTheCareOfWomenWithMentalIllHealthInPrisonInScotland_July2021.pdf) and National Preventative Mechanism Scottish Sub-Group Report "Scotland's progress in the prevention of ill-treatment in places of detention" (August 2021) available at [https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2021/08/NPM\\_report\\_FINAL.pdf](https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2021/08/NPM_report_FINAL.pdf)

need for written representations, the increase in procedural hearings and the need to run remote or hybrid hearings.

New systems of working have inevitably evolved over the pandemic with the use of virtual custody courts rendered possible with the investment in the use of technology in the courts which has included systems such as WebEx. A few remote summary trials have taken place in addition to the solemn business in the remote jury centres. How much these are used in the future depends on the continuing reduction in social distance requirements. What they have done is to provide a source of information which can be assessed and evaluated while moving forward to adapt the criminal justice system to the continuing needs of the pandemic. Virtual summary trials cannot and should not become the default as was suggested early in the pandemic by Sheriff Principal Pyle.<sup>9</sup> Where possible in-person hearings should be the preferred route.

Such courts have played their part in allowing courts to reopen and to start to process criminal business again. These measures remain in place and need to continue to respond to the scientific and medical advice as the pandemic develops. We agree that there should be greater utilisation of obtaining evidence on commission, the public being able to hear trials where they are conducted remotely, section 259 of the Criminal Procedure (Scotland) Act 1995), pre-recorded evidence and remote links at police stations for witnesses to give evidence. Some of these schemes are currently in use – and all these means may well render the running of trials easier, reduce the need for attendance and ensure that the necessary social distancing is respected.

### **What emergency powers are still required and should any or all of these be retained for the longer-term?**

We recognise that the pandemic brought in new ways of working which should be evaluated and where there are benefits, these changes should be maintained or considered in what may be developing a hybrid court system. The Scottish Government consultation<sup>10</sup> is specifically focused on the Covid recovery where there will be that chance to view all the responses - and take a measured approach.

This is not the time to fundamentally change the Scottish criminal justice system without robust consultation and research as there is not a simple solution and all changes have significant consequences, require resourcing and can give rise to legal challenges.

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<sup>9</sup> <https://www.lawscot.org.uk/news-and-events/legal-news/virtual-summary-trials-should-be-the-norm-pyle/>

<sup>10</sup> Covid recovery: public health, services and justice system reforms <https://consult.gov.scot/constitution-and-cabinet/covid-recovery/>.

## **Written submission from Police Scotland**

### **1. INTRODUCTION**

1.1 The COVID Pandemic has had and is continuing to have a significant impact on policing across a large number of areas however this submission is restricted to the specific impacts on the Criminal Justice System and the work undertaken with our partners to recover in this area.

### **2. COVID IMPACT - RECOVER, RENEW AND TRANSFORM (RRT)**

2.1 The RRT Programme has provided the platform for hugely effective cross-sector collaboration in response to the COVID pandemic and enabled critical criminal business to continue during the pandemic whilst also providing the vehicle for the criminal justice recovery programme which will see the introduction of increased criminal trial court capacity from September 2021.

2.2 Notwithstanding, the pandemic has resulted in significant backlogs and delays in the criminal justice system and there are acute pressures on the prison system due to increased population levels and associated public health challenges. The number of people subject to live bail conditions has increased and persons subject to such conditions are now likely to be on bail for longer periods of time due to trial backlogs and delays. We continue to work with our partners to monitor and manage the risks associated with these delays.

2.3 Even prior to the COVID pandemic, it was clear that the Criminal Justice System needed to be more effective and efficient and now more than ever is in need of significant modernisation. Increasing capacity in the court system in isolation will not effectively address the challenges faced across the system and there are a number of transformative change programmes in progress already which must be progressed as a priority if we are to overcome the challenges COVID have introduced or compounded.

2.4 Police Scotland are encouraged to see court capacity returning to pre-COVID levels and welcome the allocation of £50 million from Scottish Government in additional cross-justice funding. This is providing necessary targeted resources towards courts, COPFS, Police and Community Justice, to support the recovery programme however it is clear that additional funding will be required over a multi-year basis if we are to effectively address the backlogs in the system and deliver on the objectives of the Recover, Renew and Transform agenda.

2.5 From a demand perspective, the initial reduction in the court programme provided increased capacity back into Policing to help address the additional demand introduced as a result of the COVID legislative and regulatory framework. It also provided resilience to mitigate increased absence rates experienced at various stages of the pandemic

2.6 This demand will significantly increase however as the court programme is re-established and then increased from September 2021 and with significantly more police officers and staff being cited to these trials each day. In addition, Police Scotland will require to provide additional court officers to support the operation of the courts themselves and manage the increased service of legal documents and other

logistics associated with the increased trial capacity such as production management and forensic/CCTV submissions.

- 2.7 We are working closely with COPFS, SCTS and other stakeholders to improve the efficiency and effectiveness of the Justice System as we collectively recognise that the number of police witnesses cited for court is disproportionate to the number ultimately required to give evidence. We recognise of course that attending court to provide evidence is a core function of policing but officers are routinely not required to give evidence or countermanded at short notice and each court citation prevents our officers and staff from discharging other policing functions. This will be exacerbated by the additional court programme as demand in this area increases. We believe the Summary Justice Reform Programme can bring about significant improvements in this area and are clear that this must be a key priority within the justice recovery programme having been suspended during the pandemic period.
- 2.8 We recognise that we are still very much in the midst of recovery from the pandemic however we must not seek to return back to the pre-COVID position. We must build back better and Police Scotland will work with our partners to develop and deliver upon a new Justice Strategy for Scotland which defines our collective priorities for the next stages of our recovery and renewal programme.
- 2.9 Police Scotland welcomes the Scottish Government consultation on Covid recovery which seeks views on measures, including justice provisions, which could provide longer-term benefit. We will provide a written response to the consultation in due course but are wholly supportive of measures which support the provision of key digital enablers including provisions for virtual custody cases, virtual procedural hearings, pre-intermediate diet meetings (PIDMs) between defence and prosecutors, remote jury balloting, enhanced use of evidence by commission, virtual summary trials for specific case types, e.g. domestic abuse and the provision of remote evidence by police and other expert witnesses.

### **3. COVID Recovery – Next Steps**

- 3.1 Our collective vision for Justice must prioritise prevention and maximise opportunities to divert away from or out of the system at the earliest opportunity, exploiting evidence based public health approaches to better support vulnerable people and tackle the underlying causes of offending. Equally, we must ensure those offenders who do need to be prosecuted in court are dealt with in a fair, effective and efficient manner.
- 3.2 There is a need to provide greater focus on prevention, early intervention and support in the community and we need to ensure that community based support is available on an equitable basis across Scotland. There should be focussed work undertaken to look at the impact of inequalities in the Justice System and links made to wider health and social care based work and policy to ensure we are providing the right support holistically to vulnerable people rather than simply through a justice lens.
- 3.3 Clearly, there will continue to be people who commit serious offences and pose a significant risk to communities. We must ensure an appropriate provision of suitable prison spaces, and that prison is only used for the highest risk offenders for punishment, risk management and rehabilitation. Work should be undertaken to ensure that community based services are well placed to support transitions and re-integration including where evidence based alternatives to prison are considered.

3.4 There is already significant work being undertaken to transform the Justice System and lessons from the COVID period must be captured and built into our future model. We need to define our objectives and prioritise delivery to the areas of greatest need and where we will see the greatest return for investment. Areas for consideration within the Criminal Justice Transformation area include:

- Prioritise Summary Justice Reform ensuring effective management of all summary cases and fairness to the accused whilst maximising all opportunities to resolve cases at the earliest possible opportunity.
- Delivery of the recommendations in Lady Dorian's review of sexual cases. Consideration to be given to whether Judge only trials should be evaluated as per the review.
- Virtual Custody Model to be fully developed and an impact assessment carried out of a 6/7 day custody model under this format.
- Delivery of an end to end model for remote provision of police and professional witness Evidence.
- Delivery of ACRA
- Maximise Digital Enablers including DESC, justice portal, Secure Defence Disclosure, electronic documents and productions

#### **4. CONCLUSION**

4.1 Police Scotland is committed to working collaboratively during 2021-22 and beyond in taking forward evidence led activity to support the recovery and on-going transformation of the Justice System.



**Chief Constable**

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By email: [justicecommittee@parliament.scot](mailto:justicecommittee@parliament.scot)

30 August 2021

**Coronavirus and the welfare of Police Officers and Staff**

In my reply of 29 June, I committed to providing a more detailed response to your letter of 24 June in which you requested information in relation to coronavirus and the safeguarding of the welfare of police officers and staff.

At an early stage of the pandemic, I identified three criteria against which Police Scotland's response to the pandemic would be assessed – could policing support the public health response and national effort to reduce the virus related deaths; in doing so, could we maintain and build the strong relationship of trust and consent with the public that underpins policing in this country; finally, that in pursuing these aims, we protect the welfare and safety of all of our officers, staff, and their families.

As I have consistently emphasised, I take my ethical and legal duty to protect the welfare and safety of officers and staff very seriously and throughout the course of the policing response to Covid we have taken appropriate action to safeguard them and their families.

From an early point, a 24 hour round-the-clock programme was established to supply and train over 16,000 officers and staff with full Covid PPE so that they could continue to serve the public. We also accelerated the roll-out of Microsoft Teams to 14,000 staff to support and enable new ways of working.

Throughout our response, we sought the advice and direction of Health Protection Scotland, the Health and Safety Executive and the National Police Chief's Council and applied a comprehensive operational policing risk assessment when developing guidance for officers and staff in discharging their duties.

We engaged with all these bodies and regularly and consistently with staff associations and trade unions to assist the production of and clarity of guidance with a focus on policing scenarios and kept all guidance and procedures under constant review. I am grateful to the health and safety agencies and the staff associations and trade unions for their support and challenge.

A process was developed to ensure surplus vaccines, which would otherwise be wasted, are able to be taken up by officers and staff working in local communities. This positive initiative has provided hundreds of officers and staff with vaccinations which would otherwise have been wasted.

I, and other senior officers, have also discussed the national vaccination programme with the Scottish Government, stressing the concerns of officers and staff about the exposure they encounter during their daily duties.

The organisation has 24,069 officers and staff and based on the age demographic, and looking specifically at age 30 and above, it is likely around 85% - 90% (c 21,500 people) of the organisation have had at least a first dose of a vaccine with many having received a second dose.

In reality, this number is likely to be higher when looking at the pace of the vaccination rollout across the country and with the introduction of vaccination drop-in centres.

As the First Minister underlined again this week, Covid cases in Scotland remain high. The absence rate within Police Scotland had been steadily reducing after experiencing the highest absence rate we had seen during the pandemic in late June and July however, over the last 2 weeks the rate is once again, increasing.

Covid absence currently makes up about 28% of our overall absence at present and we report publicly on absence figures, among other data, on a weekly basis.

To support our officers and staff who have been affected by Covid, either because they have or have had the virus, or because they are required to self-isolate, we continue to protect sickness absence pay for all Covid related absences.

It is also clear from our data that officers and staff who have contracted Covid in the last quarter are experiencing much less severe symptoms than reported in the same quarter last year and we are seeing fewer days lost per positive case. This is undoubtedly due to the positive impact of the Covid vaccine. That said, positive cases account for only 31% of our Covid absences with the majority being precautionary isolation after contact tracing.

Although the Scottish Government revised guidance for employers introduced on 19 July allow for a reduction to 1m distancing within the workplace, and removed the requirement for physical distancing completely on the 9<sup>th</sup> of August, to support our people and protect service delivery, we continued to adopt a 2m distancing policy until the 23<sup>rd</sup> August. All other mitigation measures including good ventilation, enhanced cleaning, hand hygiene and face coverings continue to be adhered to.

The organisation introduced lateral flow testing in March this year and twice weekly testing is undertaken within C3 Control Rooms, Criminal Justice Division, probationer training, VIP planning and extraditions.

We also have targeted testing programmes running for all Training courses and all major public order events. The targeted testing approach requires officers or staff to take two tests prior to attending an event or training course.

Officers and staff in operational roles continue to have access to PPE and we continue, for the time being, with the FFP3 standard of protection which provides the highest level of protection against contracting the virus if in contact with positive cases.

Additionally, the organisation continues to promote homeworking and reinforces the message that everyone who can work from home must do so. This arrangement has been in place throughout the pandemic and will continue until the end of the calendar year.

As I stated in my initial response, I am grateful to the officers and staff of Police Scotland who stepped-forward to discharge additional duties with compassion, discretion and good sense.

It is important to underline this significant contribution to public service and thank the officers and staff of Police Scotland for all they continue to do to help their fellow citizens.

Officers and staff have explained fast-changing guidelines and emergency legislation, encouraged people to do the right thing, and where necessary enforced the law. They continue to play a vital role while facing the same personal, family and professional challenges as everyone else.

Policing in Scotland has a strong bond with the public we serve and from whose consent we draw our legitimacy. Maintaining and enhancing that bond of trust is always a key consideration for Police Scotland, including during our response to the pandemic.

Our experience, since the beginning of the pandemic, is that overall our fellow citizens have responded to our approach with remarkable co-operation. Officers had over 140,000 interactions with members of the public, with only a relatively small proportion of those requiring enforcement action.

The largest public confidence survey to date, more than 36,500 responses from people across Scotland, reported that overall, across the year, confidence in policing was increased compared to pre-Covid levels. And though the strain and fatigue of a long and difficult year put that under pressure, our relationship of trust with the public remained and remains strong.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Iain Livingstone', written in a cursive style.

Iain Livingstone QPM  
Chief Constable

## **Written submission from the Scottish Fire and Rescue Service**

The Scottish Fire and Rescue Service (SFRS) welcomes the opportunity to engage with the Criminal Justice Committee of the Scottish Parliament on the impact of COVID and the subsequent recovery process on the Service. In the request for a written submission there were two issues highlighted by the Committee that are of direct relevance to SFRS:

1. The current issues facing the main bodies in the criminal justice system because of COVID-19 and future challenges
2. The impact of COVID on the fire and rescue service in Scotland, in areas such as staff absences, the availability of personal protective equipment, and how these roles are undertaken.

A further area the committee sought comment on was:

3. What emergency powers are still required and should any or all of these be retained for the longer-term?

The SFRS does not require further emergency powers.

### **The SFRS Response**

The COVID pandemic has had a major impact on the SFRS. While the Service had developed a wide range of Business Continuity Plans to manage Service disruptions, including for a major influenza outbreak, the COVID pandemic and its duration was not something we were able to fully plan for. Consequently, following the declarations by the Scottish and UK governments in early March 2020 regarding the health emergency, SFRS moved swiftly to a Gold Command structure within the organisation. The Strategic Leadership Team, (SLT) chaired by the Chief Officer met as a Gold Command Group, initially meeting twice weekly, from March 2020 onwards. We also established a COVID-19 Tactical Action Group (COTAG) comprising of all the Heads of Function within the Service, initially chaired by the Assistant Chief Officer for Service Delivery, this met daily during the first months of the pandemic. Gold Command was responsible for all strategic decision making and COTAG was charged with undertaking the necessary work to rapidly implement changes thereafter in organisational procedures and working arrangements.

The SLT also met with the Board of the SFRS in March 2020 and sought approval on the new decision-making arrangements and to ensure that the Board were fully sighted on all relevant developments. The Chief Officer was granted approval to move beyond his existing delegated powers of authority if necessary and to then subsequently report any decisions taken to the Board.

To ensure good communication with the Scottish Government the Chair of the COTAG linked directly to the Scottish Government Liaison Officer (SGLO) daily. Reporting was carried out using a Common Recognised Information Picture (CRIP) feeding into internal staff briefings culminating in a Scottish Government Submission at 14.30 hrs daily, giving a summary of the SFRS response readiness. In addition, the Chief Officer and Board Chair met frequently with the sponsor team to ensure full accountability to the Minister for Community Safety was maintained throughout the crisis.

The main purpose in these actions was to ensure that the SFRS was fully prepared and could continue to operate efficiently and effectively, whilst maintaining a high standard of Service Delivery during an unprecedented period of uncertainty and disruption. Key areas where the impact of the COVID pandemic on the SFRS are worth highlighting are:

### **Operational Control Resilience Strategy**

Operations Control are responsible for the deployment and co-ordination of resources to all incidents reported to the SFRS. Ensuring the ongoing functioning of Control was of critical importance. We decided at the outset of the pandemic that the three operational control rooms would be 'locked down' and staff teams would operate as bubbles with all other staff not permitted to enter any of the control rooms. Furthermore, deep cleaning of all control rooms was initiated and maintained throughout the pandemic to ensure a safe working environment and to protect control room staff.

### **Appliance Withdrawal Strategy**

The SFRS operates appliances from 357 Fire Stations across Scotland, some of which have multiple appliances. To plan for severe and prolonged staff absence caused by COVID we categorised our appliances into three priority bandings, to ensure a managed drop off from operational response on a controlled basis if required. To maintain appliance availability, we also introduced a minimum ridership factors from five to four Firefighters on a pump where practicable. This decision was continuously reviewed throughout the pandemic to ensure safe working arrangements for firefighters were maintained. Although we adopted a four-tier availability reduction strategy as follows: Tier 1 (100% - 96%), Tier 2 (95% - 80%), Tier 3 (80% - 60%) and Tier 4 (60% and below), the actions we took to safeguard service delivery meant we didn't have to drop below the second tier of this at any stage of the pandemic. Our average availability figures are set out below from April 2020 to the end of Quarter 1 in June 2021.

<b>Appliance Availability:</b>	<b>2020-2021</b>	<b>Q1 2021 - 2022</b>
Wholetime	98%	98%
Retained and Volunteer Duty System (RVDS)	86.5%	81%

### **Training**

To ensure the safety of our staff all non-essential training was suspended at the outset of the pandemic. Key areas where training continued included those related to the recruitment of new firefighters. We continued to recruit firefighters and with modifications ensured they could be fully inducted into the Service safely. RVDS training nights were also cancelled for a period to minimise the exposure of staff to the virus, albeit staff were still paid as if they had attended and were supported to access online learning from home. At the end of June 2020 Local Senior Officers LSO's were empowered to make local decisions based on risk assessments to enable RVDS training nights to recommence. Where this was not possible we continued to pay the training night attendance fee.

### **Home Fire Safety Visits**

To ensure the safety of staff and the public we decided early in the pandemic to pause Home Fire Safety Visits (HFSV) except for those who were most at risk from fire. We developed alternative means of delivering HFSV's whereby members of the public could use an online risk assessment tool to better understand and reduce their risks of a fire at home by generating a bespoke set of recommendations. We also contacted those households deemed to be at most risk from fire to advise them on safety steps they could take in their home. We launched an Online and Television campaign – Make the Call – to target relatives and carers for the most at-risk groups from fire to make contact with the Service to get support for home fire safety purposes. Initially working through

Community hubs, our staff distributed 109,000 safety information leaflets and 10,000 posters across Scotland. This was followed by TV, press and social media campaigns in October 2020. A radio advert reached almost 2 million adults in Scotland, being heard 16.5 million times; a social media campaign reached a combined Scottish audience of over 600,000, whilst the television advert reached 43% of Scottish adults (with 70% of those over 60). Make the Call newspaper adverts reached 32% of C2DE1 adults in Scotland and 40% of C2DE adults over 50.

### **Homeworking**

SFRS currently employ 836 (787 Full Time Equivalent) support staff. Support staff play a critical role in enabling the effective delivery of our services to the communities of Scotland. At the onset of the pandemic SFRS required all support staff to work from home unless their role could only be fulfilled when working from a SFRS premises or if there were health and wellbeing reasons why they could not work from home. This required the provisioning of new kit and equipment to support staff and the rapid development of new policies and procedures to enable this to be effectively managed. Each member of support staff had to complete a Display Screen Equipment (DSE) and Homeworking Assessment. This was designed to assist in maintaining good health and wellbeing while working from home and required their line manager to approve the assessment and to provide relevant ICT, desk, chairs etc to each member of staff where required. Support to staff also extended to enabling them to work flexible hours from home to take into consideration caring and home schooling responsibilities. As the pandemic situation has eased we have developed an Agile Working Framework, enabling the Service to be innovative, informal, and flexible in the way we work and how we organise ourselves.

### **Communications**

To ensure all staff who remained on operational duty throughout the pandemic and all support staff who were home working were kept fully aware of the rapidly developing situation facing the Service we initiated a series of COVID communications actions. Upon receipt of Scottish Government guidance, we issued communications so that all staff were aware of general restrictions that were to be applied across the country. Following receipt of each piece of guidance we also reviewed our internal processes and procedures and issued SFRS specific guidance as soon as it was approved by COTAG and where necessary Gold Command. Weekly general briefings were also initiated for managers and all staff with relevant information on key developments and information.

For operational staff a series of task cards were developed and issued outlining new operational methods to be deployed in a COVID secure manner. In total 27 task cards were developed and the content was regularly reviewed and updated in line with relevant Scottish Government or Health and Safety Executive guidance. Topics covered included "Staff Presenting with COVID-19 Symptoms in the Workplace"; "COVID-19 Treating an Unconscious Casualty" and "Lateral Flow Device Testing Procedures". Information relevant to all staff was put onto a dedicated page on our internal communication platform – lhub and this attracted weekly downloads averaging 40,000 across the pandemic period. Further detail was also shared through SharePoint which also achieved around 40,000 weekly downloads on average across the period. The weekly news briefings on average resulted in around 3000 unique openings many of which were subsequently shared across stations meaning many more staff were reading the briefing in hard copy in addition to online.

The Chief Officer initiated a series of direct broadcasts to all staff at the pandemic outset. The broadcasts were delivered online and accessible to all staff regardless of their work location. They were initially delivered every two weeks and then moved to monthly and now quarterly. Each broadcast comprised a mix of general information to staff and an opportunity for staff to ask questions directly of the Chief Officer who then responded live. On average across the period the broadcasts were viewed directly by 700 users with again many stations logging in as a crew. In addition, YouTube play backs of each broadcast were viewed on average 400 times each.

### **Health and Wellbeing**

At the onset of the pandemic a COVID Health and Wellbeing Group was established. The group produced a series of practical and advisory supports that have been made available to all staff. Guidance documents include meeting financial challenges; domestic abuse; general wellbeing guidance and information on homeworking. The group also made available a series of podcasts that discussed health and wellbeing throughout the pandemic and developed a series of online mindfulness and fitness sessions that were accessible to all staff.

### **Incidents Attended**

In the initial pandemic period there was a slight reduction in the number of incidents attended by SFRS but since then a gradual return to a more normal pattern of attendances has occurred. With respect to Unwanted Fire Alarm Signals (UFAS), which are caused by automatic fire alarms in the workplace, since the onset of the pandemic to protect both our staff and members of the public from exposure to the virus we altered our normal response. From May 2020 a single appliance has been dispatched to all UFAS calls when it applies to non-sleeping risk premises, that means buildings other than hospitals, hotels or student accommodation etc.

<b>Category</b>	<b>2020-2021</b>	<b>Q1 2021 - 2022</b>
Total Incidents attended (on average 30% of which are fires)	55,570	25,150
HFSV	20,176	15,653
Fire Casualties (total)	611	172
Fire Casualties (Accidental Dwelling Fires)	431	116
Fire Fatalities (All categories)	53	12
Fire Fatalities (Accidental Dwelling Fires)	37	10
UFAS attendances	23,733	5,688

### **Partnership supports**

Historically, SFRS has worked hard to build good relations with Regional (RRP) and Local Resilience Partnerships (LRP). As part of our COVID response we continued to strongly support these and other local partnership arrangements. Deputy Assistant Chief Officers (DACOs) attended RRP LSOs LRP along with civil contingencies officers to add expertise. We also continued to work in partnership with key national partners such as the Scottish Ambulance Service (SAS) and Police Scotland (PS) and we coordinated much of our partnership working through our Community Resilience Assistance Group. A small number of examples of our partnership working are:

- SAS made a formal request to provide volunteers to support them with driving ambulances. We jointly developed a concept of operations and when SAS make a local request LSOs arrange support from the local volunteers in their area.

- A pilot trialling COVID testing from two of our fire stations in Thurso and Lochgilphead was extended to 21 fire stations throughout the country.
- Staff in the Western Isles are working with the Coastguard to facilitate a smooth roll out of coronavirus vaccinations for the NHS. Crews help at local mass vaccination centres, greet the public, give reassurance, support and offer guidance, and assist traffic management.
- In addition to long standing sharing of facilities with SAS they are now also working out of our facilities in Glasgow, Edinburgh, West Lothian and Midlothian to extend their response capabilities.
- Gigha Community Fire Station are offering COVID test kits for the local community.
- Currently, 55 fire stations are supporting local communities and helping the Scottish Government understand the spread of coronavirus, track its prevalence in Scotland, interrupt its transmission and protect public health.

### **Personal Protection Equipment (PPE) Provision**

The Service procured and distributed PPE to staff as protection against infection while on normal work duties. The key items were FFP3 masks, surgical masks, reusable face coverings, Nitrile protective gloves and hand sanitiser. The total spend on PPE from March 2020 to date was £410,832.46. Pre COVID SFRS did not use surgical masks, disposable aprons/sleeves, reusable face coverings, visor face shields etc as part of our normal duties. However, these items were procured early in the pandemic due to the proactive approach of the Service, and resilience planning now means a minimum six months stock is maintained.

### **Staff absence**

At the outset of the pandemic SFRS took steps to prepare for high levels of staff absence as the virus took hold within Scotland. As outlined above we altered our appliance availability strategies and furthermore we took clear steps in areas such as managing close proximity working, maintaining personal hygiene, the use of PPE and pausing the use of detached duties within stations to protect staff and keep working areas as COVID secure as possible. We also initiated a station checklist and audit process to support local management in carrying out key tasks in a consistent and high-quality manner with relevant support from corporate colleagues available to them.

Over the course of the pandemic our pattern of absence in comparison to some other public services has been relatively low. Across the different categories of staff we employ we also saw differential impacts of COVID with operational staff more likely to take time off for COVID related issues than support staff who were working from home. In support of all staff we followed SG Guidance and decided that any sickness absence generated because of COVID would not be logged against an individual's general sickness absence record. In recent weeks we have revisited this decision in light of updated SG guidance and after an initial 10-day absence period we record COVID absence as part of an individual's absence record.

Despite our best efforts at minimising our staff exposure to the virus we have averaged around a 4.2% COVID related absence pattern across our whole staff cadre each month since the beginning of the pandemic. This is over and above the normal staff absence rate which again across all staff categories averages around 3 to 4% each month.

### **Ongoing Recovery Work**

As we look forward to a period where COVID becomes a less critical issue for Scotland and for the SFRS we are taking steps now to plan for our organisational recovery to reset ourselves to deal with the future challenges that a post pandemic Scotland will face. Our SLT has delegated authority to our Senior Management Board (SMB) which comprises our Heads of Function and is chaired by the Deputy Chief Officer to undertake this work. SMB is now giving specific focus to the Service's Recovery, Reset and Renew work. To support this, specific work packages have been developed and are being progressed around:

- People;
- Operational Strategy;
- Workplace;
- Technology;
- Communications and Engagement;
- Governance and Compliance; and
- Prevention, Protection and Partnerships.

The outputs of this work will be reported through SMB to SLT and the Board of SFRS.

## **Written submission from the Association of Scottish Police Superintendents**

Thank you for the invitation to submit evidence to the Scottish Parliament's Justice Sub-Committee on the above matter.

I have consulted with members of the Executive Committee of ASPs who widely represent the senior operational leaders of the Police Service of Scotland (the Service) including members with a background in Criminal Justice Services Division. The following comments and observations have been collated from their responses. For ease of reference, I will lay this information out by answering each of the questions in the email seeking opinions.

### *General*

*The current issues facing the main bodies in the criminal justice system because of COVID-19 and future challenges (courts, prisons, policing etc.)*

As we move into a period of greater stability, one of the areas which reported significant challenges is the training environment. As all (but essential) training was suspended, the service faces a massive backlog in training. This obviously presents its own operational risk, if personnel are untrained (or qualification has lapsed).

The normal turnover of skilled officers and staff through retirement, coupled with the inability to adequately train their replacements has led to an increased burden on other officers. This is being addressed by the Strategic Training Group.

I have also had reported to me that the Service is having difficulty in recruiting new officers. It is unclear why this is, however Recruitment are experiencing a post-COVID shift in behaviours.

*What emergency powers are still required and should any or all of these be retained for the longer-term?*

It is the opinion of the Association that no further powers are required.

### *Sector specific*

*The current backlog of cases in the criminal justice system and what further steps can be taken to reduce this.*

Whilst Police Scotland has maintained a "business as usual" approach to the detection and prevention of crime, the longer-term criminal justice process has naturally had to slow down its pace. This has clearly led to a longer-term backlog of criminal cases to go through court, and it is a concern that victims and perpetrators may not receive the justice they are entitled to, certainly not in a timely manner.

Another concern I have is that when Courts reopen as usual, it may lead to an influx of citations for officers will lead to greater abstraction from operational duty and further disruption of officers' rest days and annual leave.

One significant step which could lessen the burden on all sections of the criminal justice system, which also mitigates the risk of cases “falling through the cracks” would be the introduction of weekend courts.

*The impact of a permanent move to a much greater use of digital justice, opportunities and threats of such a move*

COVID restrictions has led to Police Scotland adopting much greater use of technology, which we feel was long overdue. The members of ASPS report no downside to this transition, only benefits.

The “business as usual” model was only achievable by the use of technology, which allowed the Service to be agile, flexible and responsive to the changing COVID environment, whilst protecting our people as best we can.

I would like to comment on the recently successfully piloted ‘virtual trials’, and I welcome further development of this concept. Virtual trials, where officers can give evidence remotely, if extended, would reduce abstraction for court, including travel to and from court locations, particularly in High Court cases.

Joint work with Criminal Justice partners was undertaken to allow accused persons to appear virtually from custody (the ‘virtual court’ concept) and a Sheriff led review of this process is awaited by Police Scotland.

*The impact of COVID on policing and the fire and rescue service in Scotland, in areas such as staff absences, the availability of personal protective equipment, and how these roles are undertaken. This would also include issues of policing powers during the pandemic.*

As in every aspect of life, Police Service of Scotland has been changed forever by COVID-19. The widespread use of technological solutions we would hope will allow longer-term agile/smarter working and greater protection for our people, as COVID is not going away anytime soon.

Police Scotland’s national response to the pandemic, Operation Talla, had a number of operational, tactical and strategic objectives, with a particular focus on Health and Safety, Logistics and Outbreak Management. Operation Talla was mobilised very quickly and has reacted fantastically to the pandemic. Staff associations such as our own have been involved at every stage of Operation Talla, and this inclusion has led to the procurement of the highest quality PPE equipment which has been provided to our people, and we have been actively consulted in the development of comprehensive and extensive risk assessments, guidance, practice and policy.

The Association also notes that there was a lack of consistent provision of childcare throughout the country, with the decision to open schools and nurseries for essential workers resting with individual Local Authorities. This led to confusion and stress for staff, and a disparity within Departments with personnel living in different Local Authority areas.

I would also remark that it needs to be considered that frontline policing is still a “hands on” business, and officers do not have the option to always maintain a safe physical distance from the public. The decision not to vaccinate frontline officers or custody staff as a priority has undoubtedly left the service exposed to greater

absences over a longer time than may have been necessary. It should perhaps also be commented on that the profile of frontline officer, who is likely at a higher risk of contracting the virus through unavoidable contact, and those of lowest priority for vaccination overlap massively and this presents its own challenges.

*How COVID has impacted on prison regimes, in areas such as prison regimes, education / training / rehabilitation / progression programmes, in-person family contact, and staff absences*

The Association has no views on the impact of COVID on prison regimes.

To conclude, the Association will be pleased to participate in further consultations and discussions on COVID resilience and recovery. I have taken great confidence from the comments of John Scott QC this week, where he described Police Scotland's response to the public health crisis as "fair and proportionate" with regard our 4 E's strategy (Engage, Explain, Encourage and Enforce), and the Association is pleased that the Service has taken a mature and welfare centred approach to keeping our people and the public safe from what has been a life changing experience for us all.

## **Written submission from the Public and Commercial Services Union (PCS)**

### **Background**

PCS is one of the UK's largest unions and represents civil and public servants in central government and in parts of government transferred to the private sector. Mark Serwotka is the General Secretary and President is Fran Heathcote. The National Officer for Scotland is Cat Boyd. In the devolved sector of Government we are the only union representing staff in the Scottish Courts and Tribunal Service (SCTS)

### **The current issues facing the main bodies in the criminal justice system because of COVID-19 and future challenges (courts, prisons, policing etc.)**

The past 17 months has been one of significant change in the way we all work. PCS branch representatives recognise that each member's circumstances are different and this needs to be taken into account, when considering new ways of working, as well the impact new ways of working may have on expectation and accountability of different grades and therefore what impact that may have not only on grading but on reward and recognition as well. In SCTS, there has been a significant increase in the use of virtual and phone hearings across all types of business in SCTS. Mostly in civil and tribunal work but also to a certain extent in criminal work as well, although this has still been done predominantly in-person.

High Court Jury Trials led the way in taking jurors to Remote Jury Centres (Cinema Screens) with the balloting of Jurors being done remotely as well. There are 10 Remote Jury Centres in operation, keeping unempaneled and empaneled Jurors away from courts, reducing the footfall in courts.

All this posed challenges for PCS Members at all grades involved in delivering these services and they stepped up to the challenge in a remarkable and positive way, even though in doing so and being on the front line, they were at times putting their own health and well-being at risk, because no matter how well all these ways of working are organised, risk of transmission is still there. This is evidenced by the fact that PCS have received and assessed approximately **400** individual DRA's (Dynamic Risk Assessments) since September 2020, covering not only staff, but accused, witnesses, jurors, court police staff, GEOAmev staff, criminal justice social work staff and COPFS staff, who all displayed suspected symptoms in SCTS buildings, over this period of time with these cases having to be dealt with as if they were positive cases, to keep the health and well-being of staff as protected as possible. From February to May 2021, there was a decline in numbers, as lockdown from early January 2021 started to take effect, but then from June onward as restrictions eased, numbers steadily increased once again. Facing this risk on a daily basis, is something which our members in SCTS feel they have not been recognised for, through the public sector pay policy. Our members are looking for Government to say "Thank You" to them, in a meaningful way which recognises the effort they have made, over the last 18 months, by keeping the Justice system running on behalf of the Citizens of Scotland and indeed, running more High Court Trials now, as one example, than were being run pre-covid.

Given transmission rates are being expected to increase as restrictions ease, then the notification of DRA's will continue and PCS predict the trend currently being experienced, will continue for some time to come, so this is an additional consequence of working through and with covid, thus resulting in staff and partner agency staff, self-isolating either from being a suspected case or a close contact of someone who has tested positive. This has the potential to have a significant impact on workplaces, with the number of staff able to attend work, being severely reduced, but the throughput of business being ramped up at the same time.

Another issue to contend with, to continue to reduce the risk of aerosol transmission of Covid 19, is that rooms that are occupied need to be sufficiently ventilated. Where rooms have no suitable mechanical ventilation installed, it is necessary to maintain a sufficient airflow by way of opening windows, using manual vents, and opening internal doors (excluding fire doors). PCS think it is often forgotten, that like SCTS, there are still a lot of organisations whose staff work from buildings, with no modern mechanical ventilation, which can be adjusted to ensure a safe through flow of air. In SCTS a number of our buildings are such that, especially during the autumn, winter and early spring months (and indeed during the summer as well) if windows are open (if not painted shut) then thermal comfort becomes a real issue for staff to contend with and finding the balance between good air flow and ventilation against providing and maintaining adequate heating and keeping warm, can be a real issue to try and resolve.

The roll out of home working where at all possible has brought both benefits and challenges. Not all staff employed by SCTS can carry out their roles from home. Those able to do so have, in some cases, been able to take advantage of more flexible working arrangements, a reduction in travel time and/or costs, and reduced anxieties over the potential to contract Covid. There were also benefits to the environment. However, at the same time many working from home have experienced social isolation and increased utility costs over the winter months especially. Conversely, many of those working from court buildings have benefited from exposure to a normal physical working environment and the day to day contact with colleagues that this brings. At the same time though they have often faced increased and unreasonable work pressures and expectations placed upon them. A longer term homeworking/hybrid working policy is in the very early stages of development and close scrutiny will be required to ensure that this is fair to all staff.

**The current backlog of cases in the criminal justice system and what further steps can be taken to reduce this**

With the increase in business being dealt with overall, comes the issue of dealing with multi-accused trials once again. High Court business will see:-

- Court 3 at Lawnmarket being reconfigured to accommodate 5 accused.
- 2 courtrooms at Saltmarket being reconfigured to deal with 4 and 9 accused.

The High Court "circuit" sites being identified for follow up are:

- Stirling SC court 1
- Dundee SC court 2
- IJC court 2

- Airdrie JP court
- Edinburgh SC court 12.
- Parliament House courts 3 and 9. This is after Parliament House becoming a Civil business only building. This will bring challenges for the business and front line staff to deal with.

Sheriff Courts are running 2 accused trials in a number of courts. This is based on no structural changes to the courtrooms to allow 2 accused trials (socially distanced). SCTS is also going to convert 1 courtroom per Sheriffdom to be able to hold 4 accused trials. This work is progressing to meet the recovery phase expected to commence in September 2021. The issue with increasing business, to deal with any backlogs across all types of business, is the fact that the buildings we use have a finite number of court rooms and staff resources available, to deal with the backlogs, so SCTS are utilizing what they have to the maximum, with additional staff being taken on now to increase through put, but it will be some time before these backlogs are dealt with, given there were already backlogs in the system, pre-covid. What also worries PCS and its members, is the fact that there could yet be a need to re-impose restrictions and this will not only have a devastating impact on business, but more importantly on staff, as there may be an expectation, especially from pressure being applied from outside parties, to have members working, “normally” through any future restrictions or lockdown, which would be unacceptable to PCS and its Members. This could expose staff to possible transmission of covid, which could very easily be avoided. Also on the basis as to how staff have responded so far, which is to undertake everything they have been asked to do, staff, if caught in a situation like this, would very likely be at the end of their tether, taking account of the expectations put upon them previously and currently, to deal with business, including backlogs of work.

There has also been, during the period dealing with covid, the introduction of public holiday custody courts and custody hub Courts, which have also brought its own challenges, the public holiday custody courts, being brought in with no consultation having taken place with PCS, being the collective bargaining entity for staff in SCTS. Discussion on this issue is ongoing, but PCS bring to the attention of those reading this submission that the Lord President in introducing these, was under the impression that SCTS staff would have no difficulty in facilitating these arrangements, which was not and is not the position of PCS or its Members. In addition to dealing with covid and all the issues and challenges that brought Members, this was an additional issue and challenge that Members did not need, during an already extremely challenging time for them and their families. This approach by the Lord President and decisions on the scheduling of these custody courts, being delegated to Sheriff Principles has already created inconsistencies on when these courts take place. When PCS concerns are raised we are advised that SCTS has no locus on discussing these decisions, taken by the judiciary. This leaves nowhere for issues to be addressed and not a sustainable environment for the future. PCS is the only recognised union in SCTS for collective bargaining purposes and considering that we work in Partnership with SCTS to secure the best outcomes for all, the position taken, undermines and puts at risk, that Partnership working relationship.

**What emergency powers are still required and should any or all of these be retained for the longer-term?**

In relation to emergency powers that might still be required and if any or all of them should be retained for the longer term, this must be done in a proportionate and considerate manner, depending on the overall situation at any given time. They should be relaxed as the situation improves but should be used to keep everyone safe, if required, if the situation becomes increasingly worse. The overall consideration

in all of this, is the risk to life and how do we keep our workforce and Members safe and well at work and at home, taking account of how the situation may affect the most vulnerable in society as well, given they are also part of the workforce too.

PCS SCTS Branch think there is no easy answer to this, as it is hard, without more fuller information on how Government sees the situation developing over various periods of time, to give a more full answer, than has been given.

PCS would comment though, that as a Branch, we have been involved in supporting staff returning to work, as a result of emergency powers being in place. In early June 2020, The Branch considered over **40** Risk Assessments, over a weekend, in relation to workplaces that were earmarked for a staged opening up of business, at that time. The committee can also note the number of DRA's considered by PCS and mentioned elsewhere in this response. PCS ensured, by undertaking this work, that workplaces were safe for those attending work, which in SCTS has consistently been around 70% of the staff, with around 30% working from home, mainly from HQ Depts, OPG and Tribunals. PCS have also had to have numerous discussions at various levels, with SCTS, on a regular basis regarding numerous ad hoc health and safety issues arising for Members, which we have, on the whole, been able to resolve through dialogue and discussion. PCS also supported the stance SCTS took in relation to the approach that was taken, now and in the past, around the increasing of business, after the initial lockdown, when various stakeholders were pressurising SCTS, into opening up further than what they were planning, with what appeared to be a total disregard in relation to Scottish Government guidance and emergency powers in place, at that time, thus also having no regard at all for the safety of Members or their families, if they did attend work, at that time, to deliver the services stakeholders were wanting to run at that time.

### **The impact of a permanent move to a much greater use of digital justice, opportunities and threats of such a move**

The PCS Branch of SCTS continues to be resolutely aligned with the Scottish Government position that all staff who can work from home, should be working from home. This position is not now enshrined in law, so in SCTS we predict moves to have as much staff back to workplaces as possible, notwithstanding the fact that PCS believe that a number of roles that have currently been done from home do have an opportunity to continue to be done from home. Hybrid working is going to be a challenge for SCTS and our Members from the point of view that, PCS do accept that there are roles, predominantly operational, which will not be able to be done from home and staff in these roles will see those in SCTS HQ, Tribunals and OPG for example, with greater opportunities to work from home than they will have. PCS believe this has the potential of being divisive, with operational staff seeing other staff working from home, when they cannot. The Branch, during the period of the pandemic, has been active at all levels to ensure that the potential for home working is maximised across SCTS, but we have faced our challenges in realising this, but will continue to have dialogue with SCTS on hybrid/homeworking, once we are presented with a DRAFT proposed policy to consider.

There is no doubt that there are a number of areas where digital and virtual working could continue and other areas where it's use could be explored, but although this way of working could prove more efficient in most areas of business, it could actually see business being dealt with more slowly as "slots" for business have to be utilised and failings of the network and equipment have to be overcome as well, when they arise. One aspect of more virtual working, is the impact that could have on what is termed the "support grades" in relation to expectations imposed on them, as well as the fact that if no actual court rooms are required, then the need for this Grade of employee, could be reduced, in both the Sheriff Court and High Court.

In relation to expectations, there is already a growing use of digital equipment in court rooms when it comes to presenting and giving evidence, where court officers require to be able to work and troubleshoot digital equipment, which was not their role previously. Also, if more and more presenting and giving of evidence is done virtually, along with the fact that accused persons and their representatives, in criminal cases, as well as pursuers and defenders and their representatives in civil cases, plus all witnesses, might be remote, then the need to have either court officers in the Sheriff Court and Macers in the High Court, is severely reduced.

PCS is also conscious of the fact that the JP Court business is currently under review as well, with more lower level prosecutions to be dealt with by way of either Police Fixed Penalties or Fiscal Fines with Deemed Acceptance, possibly becoming the norm for these types of lower level offences. This could have a devastating impact on lay justice in the Sheriff and JP courts with the need for the JP courts, possibly coming into question and PCS are concerned that already because of the ongoing review, Legal Staff in SCTS are already being detrimentally affected by this ongoing consideration, due to the fact that when staff leave these legal posts (Sheriffdom Legal Adviser and Legal Adviser), they are being filled on Fixed Term contracts, contrary to the Scottish Government Fair Work Agreement.

**PCS Union**

**Scottish Courts and Tribunals Service Branch**

**30 August 2021**



## SCOTTISH POLICE FEDERATION

Established by Act of Parliament

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30 August 2021

Dear Mr Macfie

### **Impact of COVID on The Justice Sector**

I refer to the above and thank you for inviting the Scottish Police Federation (SPF) to make a written submission for the Committee's considerations.

I am sure members of the Committee will appreciate that whilst we have some generalised views on other areas of the justice system, we will largely confine our comments to the impact and considerations for the police service.

The SPF is strongly of the view that the administration of justice has largely been forgotten about during this pandemic. Prisoners were released, suspects for serious offences were rarely kept in custody, those who assaulted police officers were often home in their beds before the officers themselves finished work, and politicians played fast and loose with their language stoking up tensions on issues like mass gatherings, in the full knowledge this made the policing of such events more challenging. Victims of crime were considered of lesser importance than the perpetrators of crime in the policies that fell from the COVID response.

Parliamentarians failed to hold the legislature to account; opaque and often unenforceable legislation was enacted, and it appears as though the mere suggestion of what the written law amounted to was used to cow the public into believing its actual provisions went much further than they did in practice.

We are aware that the criminal case backlog is estimated at seven years. No one really expects that cases will be able to drag on for that length of time and that it is highly probable an exceptional number of cases will not be proceeded on. Although ultimately not directly a matter for the police, it is inevitable that if such a reality comes to pass, that it will be the police service left to pick up the pieces.

The SPF does not believe that in general justice has to be "tough" to be effective, but we do believe justice has to be seen to be done, and administered in a way that ensures the confidence of the public.

We consider that in an effort to try to address the backlog the Crown Office and Procurator Fiscal Service (COPFS) will look to exponentially increase the use of fixed penalty disposals. It is difficult to gauge

whether such a move would be successful in practice, or whether it would simply shift pressure from one part of the justice system to another (as fixed penalties would inevitably not be paid). We also consider that if such a policy is to be adopted in whole or part, that unless it carries public favour, it will significantly undermine overall confidence in the justice system.

The challenge of the backlog is substantial but unless more is to be done to stem the influx of cases, it will never be addressed. The SPF does not believe this should simply see the passing of fixed penalty responsibilities to police officers as ultimately police officers should not be both the evidence gatherer, and the “sentencer”. Furthermore, it risks direct erosion of public confidence, and does not deal with the realities of non-payment.

The SPF has long since advocated that procurator fiscals should be stationed within police stations and have the power to take immediate decisions on proceedings on the basis of initial available evidence from police and other witnesses. There is no logic in reporting cases needlessly as the time to compose and consider the reports could be better utilised in dealing with the cases upon which proceedings are to be instigated.

We will leave it to others to give detailed responses to the question of “digital justice” but we are concerned that this will continue to put a significant administrative burden on the police service, for benefit realisation in other parts of the justice system. During the pandemic, officers spent a significant amount of time scanning documents for cases. In some cases this task was exacerbated by Fiscals requiring documents to be individually scanned rather than submitted as part of a batch. This shows that no matter how efficient technologies are, the user demands and expectations need carefully controlled and agreed.

We would also observe that the best evidence is secured face to face. Video conferencing was a product of necessity but in dealing with incidents that can have profound lifelong effects on witnesses, victims, as well as consequences for the accused, the importance of absolute fairness cannot be dismissed in favour of convenience. We agree that video facilities can be used effectively for procedural processes but are far from convinced of the ultimate benefit in trial proceedings.

The recovery programme for Criminal Justice System does however present some opportunities to address court witness management. Prior to COVID19, only 3-5% of police officer time at court was spent giving evidence. It should be an aspiration to our judicial system to run efficiently and that the cases of the past should not have an undue impact on resources of the present.

In evidence to the COVID Committee during the last parliamentary term, we gave evidence that it was difficult to accept that events remained so exceptional as to support the continued use of emergency powers, and the effective bypassing of parliament. We maintain arguments in support of our position then have only got stronger and that continued use of emergency powers is completely unjustified.

The Police Service of Scotland (PSoS) was unprepared for the COVID pandemic. Despite a number of internal warnings before the pandemic was declared, the Service failed to respond timeously. The internal bureaucracy and turgid decision making meant the PSoS was on the back foot for the first number of months, and often painfully slow to react over subsequent months. At times, it was unclear who maintained overall command with two Deputy Chief Constables apparently unable to decide which of them held primacy for critical decision-making, as though the response to COVID, and issues of health and safety, were discrete considerations.

The PSoS command and control structure was often found out to have little or no control, and occasionally suffered from a distinct lack of command.

Assurances provided in the early months over safety actions being taken, were found to be untrue many months later, and the service often appeared to look for reasons not to mitigate risks, rather than put in place obvious safety measures. We have no doubt that the effect of this dither meant that police officers were unnecessarily exposed to enhanced risk of contracting the virus as a direct result of their duties.

The PSoS appeared to place exceptional weight on the PPE advice it received from Health Protection Scotland (HPS) and often sought to abdicate its own statutory health and safety obligations by using HPS as a firewall. By any objective measure, the realities of the often up close and personal nature of policing was not understood by HPS.

Police officers were (and continue to be) left exposed to virus risk during this pandemic. Surgical masks are not personal protective equipment no matter how much employers or politicians try to spin that they are. Their main purpose is not to protect the wearer.

The PSoS approach to mask wearing has been, and remains inconsistent. The primary driver for decision making was clearly cost and availability. For months, the service refused to put in place a mechanism that checked its own processes and expectations against the highest risk incidents it was sending officers to.

Police officers were attending incidents with members of the Scottish Ambulance Service (SAS) at which SAS personnel were clad in far superior PPE. The PSoS seemed incapable of recognising this irreconcilable inconsistency in response to an invisible (and deadly) virus. The issue of house parties was highly controversial and yet despite the heightened risk, there was no health monitoring of those who had attended, or checks as to the PPE available to the officers.

Whilst mercifully the number of police officers who suffered serious illness with COVID is relatively small, the longer-term effects will take longer to be realised. The PSoS however has very poor records to support any future evaluation of this.

The sheer weight of demand placed upon the police service during the pandemic has been phenomenal. There can be little doubt that officers have stepped up time and again and shown a commitment to public service that has gone above and beyond. An illustration of that demand can be found in the fact police officers have almost 100,000 rest days that they had disturbed allocated to their future rosters. However, a further 50,000 remain to be allocated.

The PSoS has made a virtue of the fact overall police sickness rates fell over the past 18 months. There was no real attempt to evaluate why, as the message seemed more important than the rationale. Independent research conducted over the spring/summer of 2020 has however identified that 71% of officers went to work when they were physically unwell, and 35% of officers went to work when they were mentally unwell. Whilst this clearly reinforcing a service ethos amongst officers, the consequences of these statistics cannot be overstated.

Beyond this, police officers are required to undertake regular and continued training, for example first aid, officer safety, driving, public order, and firearms to name but a few. All of these stopped during the past 18 months and the consequential impact on the service is acute. The effective loss of almost 18 months of essential training is a serious challenge for the service and threatens operational capabilities.

To compound these issues the PSoS did not minute its many meetings dedicated to its COVID response. We can find no logical or justifiable reason as to why this was the case. Whilst we cannot know when the next pandemic event will hit the world, we know that as a consequence of a dearth of record keeping within the PSoS, that future generations of police leaders will have no historical records to inform their decision making.

We consider there was a wholesale failure of police governance with the Scottish Police Authority (SPA) being posted missing. At the time of the greatest challenge to hit the police service in living memory, the SPA was nowhere to be seen. It did not engage with the staff associations and was entirely reliant on what the PSoS reported to it, as the basis for its determinations on how the police service was meeting the challenges.

Despite this police officers did the very best they could in exceptionally difficult circumstances. The frequency with which the law was changing, and the often exceptionally last-minute nature of some of these changes meant officers were relying on news reports or social media as a substitute for briefings on what the law meant in practice.

The ever-changing nature of the law, and indeed specific provisions that saw the criminalisation of what had previously been simple social intercourse could well have a profound impact on the relationship between the police and the community into the future.

Finally, police officers have throughout this pandemic felt neglected and unsupported by Government. Despite the critical frontline role that was legislated of them, police officers had to fight for keyworker childcare provision, fight to get adequate PPE and were refused priority vaccination and financial recognition. The impact on officer morale of that abandonment should not be underestimated.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Calum Steele', written in a cursive style.

CALUM STEELE  
General Secretary