



Scottish Courts and Tribunals Service



COVID-19

Respond, Recover, Renew

Supporting Justice through the pandemic and beyond

August 2020

Contents

3 Introduction & background – “Supporting Justice during COVID-19”

4 Respond – our initial response

5 Recover – what we've done and are doing to manage business

7 Renew – building on learning to improve services and resilience

8 Links and Further Information

The Scottish Courts and Tribunals

Service (SCTS) is a non-ministerial department established by the Judiciary and Courts (Scotland) Act 2008. Our statutory function is providing administrative support to the Scottish courts, devolved Tribunals and the Office of the Public Guardian. We conduct business across the country in over 40 locations and, in the case of tribunal business, some 70 further remote locations.

**Scottish Courts
and Tribunals Service**



Introduction & background – “Supporting Justice during COVID-19”

COVID-19 has had a significant impact across all aspects of life – in Scotland and beyond. Exceptional measures have been required to maintain public health. An unprecedented response has been necessary across Scotland’s justice system, both to support the public health effort and to maintain the most essential services that support justice.

COVID-19 has required a speed and scale of response unprecedented in living memory. Its impact on the justice system, which has traditionally relied on a wide range of face-to-face interactions and paper based processes, has been significant. All the players involved in the system – the police, Crown, court and tribunal staff, the legal profession and a range of voluntary agencies have worked together both to manage the initial response and to help develop approaches for the recovery period that we are now entering.

We set some key priorities which have guided our response – these were to:

- Maintain public trust & confidence in the justice system throughout the outbreak, prioritising action to preserve safety and order;
- Support the public health response – protecting the life and safety of all justice system users and staff;
- Maintain the operation of those parts of the system regarded as essential;
- Maintain core operations so far as possible – to support the most effective recovery.

During the “lockdown” period, public safety was maintained and the most essential business continued throughout – across criminal, civil, tribunal and OPG jurisdictions.

This wasn’t easy - and was only possible due to the dedication, creativity and resilience of the judiciary, staff, justice organisations, legal profession and all the 3rd sector organisations involved in the work of the justice system at this unique time.

The legacy of lockdown is a combination of significant challenge on the one hand and genuine opportunity on the other. Whilst the most essential business was maintained throughout, significant case backlogs have arisen across a broad range of business types, as the need to minimise physical hearings, protect staff, partners and service users took priority over routine business for several months.

Addressing these backlogs will require concerted effort, innovation and resourcing. The system was running at capacity pre-lockdown and is currently unable to return to its “normal” operating level, via traditional means, due to the restrictions necessary to maintain physical distancing and provide a safe operating environment.

Whilst the challenge is significant our experience of the flexibility and innovation displayed during lockdown gives us real optimism that the recovery will be successfully managed. The whole system pulled together in the face of the pandemic. We didn’t get everything right and we need to learn from that, both to prepare for future outbreaks and to improve the way in which court and tribunal business is delivered in the longer-term, as we deal with the backlogs.

This document summarises the SCTS response to COVID-19, the steps being taken to manage recovery and how we will draw on the lessons learned to build a more just, resilient and efficient system in collaboration with others across the justice system.

Respond – Maintaining the most essential business during lockdown

Physical distancing requirements and the imposition of “lockdown” in March required us to work at speed in order to maintain the most essential business across Scotland's courts and tribunals. We acted quickly and in collaboration with others.

- Working with the judiciary we quickly agreed and communicated priority changes to our business to **maintain the most essential cases** whilst supporting the public health response. Jury trials and hearings requiring witnesses “in person” were postponed from mid-March.
 - Following the national lockdown announcement on the evening of 23 March we worked with the judiciary and all court users to consolidate Sheriff and Justice of the Peace court business at **10 hub court locations**. Those locations were operational from 25 March, dealing with all custody business and other business deemed essential.
 - Supreme Court operations (covering the **High Court and Court of Session**) continued in Edinburgh and Glasgow throughout lockdown, ensuring the most essential business was maintained.
 - **Mental Health Tribunals** were supported throughout, with staff based in Hamilton managing hearings remotely. The **Office of the Public Guardian** moved to remote working to ensure that the most essential business relating to vulnerable adults continued to be processed.
 - The rapid changes needed to support business during lockdown required the production and publication of a range of **orders, guidance, directions and practice notes**, all of which have been maintained and published on the [SCTS website](#).
 - Where business has continued within our premises **safety and hygiene** have been our top priorities:
 - Operational SCTS staff were designated as **key workers**;
 - Enhanced **cleaning, hygiene and physical distancing** measures have been in place across our open buildings throughout;
 - A protocol on hygiene and social distancing was agreed with both the Law Society and the Crown Office and Procurator Fiscal Service to maintain safe operations.
- Working with the Scottish Government and other justice agencies we supported the development and implementation of **emergency legislation**, which preserved a range of business whilst creating the opportunity to **work in new ways** – allowing electronic transfer of a wider range of documents and enabling more business to be conducted digitally.
 - We have embraced the potential of these new ways of working:
 - creating a network of video conference links between **courts and police custody** facilities – initially to process those with suspected COVID, but with the aim to roll-out more widely;
 - establishing a system that allows solicitors to **represent clients remotely**, reducing the need to attend court;
 - moving the business in the Court of Session to a fully **virtual operating model** – with the first ever virtual hearings taking place in April and a full programme of appeal hearings and substantive business established by May, using video/tele conference and written submissions;
 - piloting the use of **virtual hearings across the work of the sheriff courts** – with the first online civil hearings taking place in May and the first online summary criminal trials in June;
 - transitioning to a model where staff were supported to **work from home** wherever possible. Over 500 additional **laptops** have been deployed and **remote networks** enhanced – allowing services such as commissary business to recommence from the beginning of May. Up to 500 staff and many members of the judiciary are now working from home daily.
- We have continued to **work with justice agencies**, the legal profession, third sector organisations and the Scottish Government, both locally and nationally – recognising that the system must work for all those who use it. The pace and complexity of change has presented challenges – and we continue to work together to address these.

Recover – Establishing a new business as usual model to improve services and address backlogs

Whilst our response to lockdown was successful the current situation does not allow a return to “business as usual”. As our traditional capacity remains constrained we must build on recent innovations to address backlogs and improve services.

The impact of lockdown and the physical distancing requirements that remain in place pose real challenges for the justice system, as well as real opportunities. In spite of the significant efforts made case backlogs have grown considerably during lockdown – particularly in relation to criminal cases. We run the risk that backlogs will continue to grow and delay periods become unacceptably long, whilst traditional court capacity remains restricted.

Concerted effort, innovation and resourcing will, therefore, be crucial – as our buildings return to their new capacity and focus on the work that must be conducted within a physical courtroom.

The legal and technical environments on which our business model pre-pandemic were predicated, continued to rely on the majority of court and tribunal business being carried out in person, with much of the process conducted on paper.

Rapid changes to law, procedure and practice have allowed us to move beyond that to the point where:

- the Court of Session is operating entirely as a virtual court.
- the Sheriff Appeal Court, All Scotland Personal Injury Court, Bail Appeals and the vast majority of civil business in the sheriff courts and our tribunals have similarly moved to digital ways of working.
- in criminal cases we are assessing new approaches to jury trials, while introducing virtual summary trials and virtual custody cases.

As we extend these approaches we must take the opportunity to do so in a way that makes the most of their potential benefits, whilst addressing any concerns they raise for partner agencies, the legal profession and the public.

“It is a misconception to regard the court as a building. It is not just a physical space. It is a public service. Virtual courts and online services should, and now will, be viewed as core components of the justice system, rather than short-term, stopgap alternatives.”

(Lord President’s Statement on the future of Courts & Tribunals, 18 June)

The challenges faced across our main areas of work – and the priorities we are focusing on to address them – are set out in the table on page 6. All of our business has been affected by the pandemic, so our recovery work covers a broad range of actions. Taken together these will help to resume business within our facilities, further develop digital services to increase the scope of remote working and involve our staff and partners in the development process – as it can only be successful if they are informed and engaged.

Key areas of work on which we are now focusing include:

- Supporting the Lord Justice Clerk’s [working group](#) on the recommencement of trials by jury, which is developing new approaches to allow solemn criminal trials to run during this time.
- Extending the use of remote appearance and [representation](#) in criminal custody cases – in order to significantly reduce the number of people who need to physically attend court on a daily basis.
- Building on the pilot of [virtual summary criminal trials](#) – exploring how the summary criminal process can be improved and the steps that need to be taken to support a wider roll-out. Whilst summary trials can proceed in court at this time there is a need to increase capacity both to address backlogs and to free up space for solemn business within court buildings.
- Continuing to develop the significant progress that has been made in moving a broad range of civil and tribunal business out of the physical courtroom, using written submissions and virtual hearings.

Scotland was the first UK jurisdiction to re-open all its court buildings – during the first week in June. We did this carefully, conducting comprehensive [risk assessments](#) to provide assurance of a safe operating environment and agreeing these with the PCS Union before moving to re-open premises.

[Guidance](#) on hygiene, safety and physical distancing arrangements in our buildings is available for all those who need to attend.

COVID-19 Recovery – Challenges and Priorities across key business areas

Our Challenges

Solemn Criminal Business

It has not been possible to run jury trials since Mid-March, creating a backlog of around 750 High Court cases and 1800 Sheriff Court solemn cases by August. Whilst preliminary hearings, appeals and evidence on commission are all being managed remotely, ongoing physical distancing will constrain our capacity to run jury trials in court buildings for some time – potentially to around 30% of normal capacity.

Summary Criminal Business

Whilst hearings from custody and a limited level of summary business was maintained during lockdown, outstanding case levels have grown, with an anticipated backlog of around 26,000 by the end of August. Whilst normal programmes may resume, trials will need to be scheduled in reduced numbers to ensure physical distancing is maintained.

Civil Business

A phased approach to the resumption of business has meant that backlogs accumulated since March have largely been cleared. However, the need to use physical court capacity for criminal business and the reduced number of staff in our buildings means there is a continuing need for the majority of civil business to be conducted remotely.

Tribunals/OPG Business

Essential tribunal business has been maintained throughout lockdown. Recovery work is under way across all chambers – and will be addressed using both traditional and new approaches. Backlogs in OPG are now gradually reducing as capacity picks up.

Our Priorities

Solemn Criminal Business

Increase the number of High Court Jury trials, which re-started on 20 July, using a 2 and 3 court model per trial.

Introduce a model for remote jury centres which may enable jury trials in the High court and Sheriff Court to get back to normal levels

Introduce remote jury balloting, removing the need for large numbers of potential jurors to attend court.

Increase the pre-recording of evidence ahead trials, minimising trauma and reducing timescales where trials are delayed.

Continue with the use of video hearings for all criminal appeals.

Summary Criminal Business

Criminal court programmes are being restarted. By August/September summary trials courts will return to normal levels, with lower case loadings

Refine guilty plea process to resolve appropriate cases at the earliest opportunity, reducing the number of cases requiring a trial.

Work with the Crown, legal profession and 3rd sector to explore appropriate use of virtual summary trials across Sheriffsdoms during the autumn.

Creating capacity, within physical distancing restrictions, to increase the number of trial courts, potentially introducing weekend trial courts.

Introduce virtual custody courts to minimise the number of people in courts and improve safety.

Civil Business

Continue to focus on managing business remotely. Provide further technology to support virtual hearings and electronic transmission of papers.

Maximise the use of Civil Online for simple procedure cases and extend to other civil case types.

All civil actions administratively discharged, adjourned, continued, sisted or paused during lockdown will be judicially case managed.

Civil jury trials will be considered in light of experience with criminal jury trials

In cases where evidence is necessary and the hearing cannot be held remotely, witnesses will attend court adhering to strict physical distancing. Cases involving children will be prioritised.

Tribunals/OPG Business

Maintain statutory Mental Health Tribunal timescales, through remote hearings averaging around 400 per month.

500 remote Housing and Property hearings now scheduled, with workloads being brought up to date.

Extend video hearings across all Tribunals to replace and complement the established telephone hearings currently in place.

OPG priorities include processing power of attorney applications, new guardianship orders and safeguarding the estate of incapable adults

Renew – Learning, investing and working in partnership, to build a stronger system

The pandemic has not changed our vision for Scotland's courts and tribunals – it has accelerated us towards it. As we move beyond recovery we will work with everyone involved to build the most just, resilient & efficient system we can for the future

Shortly before the pandemic struck we set out our plans for the coming 3 years in our Corporate Plan. Whilst the pandemic has had a significant impact on everyone's work in the short term it has underlined the importance of achieving the outcomes set out in that plan, including "We will reduce the need for physical attendance at proceedings where it adds little or no value by exploiting the technology introduced across Scotland's courts & tribunals."

COVID-19 has stretched the resilience of systems and services across society. The justice system in Scotland has moved rapidly to accommodate increased remote and digital working. In common with jurisdictions across the globe, it is clear that virtual operations should not only be seen as a response to coronavirus, but as a core part of our future system. They increase **resilience** – by ensuring that we have more than one way in which business can be processed. They have the potential to increase **efficiency** – reducing the need for travel, hard copy documents and the challenge of ensuring that the many parties involved in a case all gather in the one place at the one time. They have the potential to improve **accessibility** – providing easier access to hearings for the media and public whilst making remote, round the clock services and information available for all those who need it. This is a level of service that the public increasingly expect, as a wide range of businesses and services are now available online. The justice system should be no exception.

All those involved in the justice system – including the legal profession and 3rd sector who support its operation on a daily basis – have moved at real pace to adapt to the significant changes required to maintain essential business. Flexibility has been crucial and will remain so during the recovery period, as case backlogs are managed. As we plan for the future it will be crucial for us to take stock, learn lessons and design longer-term changes in consultation and collaboration with all those who use the courts and tribunals – capturing and building on positive new change, whilst recognising and building upon the long-standing strengths of our system.



In a [statement](#) on the future of the Scottish Courts and Tribunals made in June the Lord President made clear that, whilst resilience, efficiency and accessibility are all desirable, he will not contemplate any measure that might compromise the basic principle of **fairness** in the justice system, *stating that: "We have to seize the momentum and opportunity to respond to the particular challenge. The reward of having a new vibrant, progressive, digitally enabled courts and tribunals service may be just within our grasp"*. Our [Digital Strategy](#), published in 2018, set out a 5-year ambition to move towards an increasingly digital service. Significant progress has been made on that front – out of necessity. This progress presents real opportunities and is in line with the direction of recent years in which the pre-recording of evidence in advance of criminal trials and the use of video links for vulnerable witnesses have grown. These are now commonplace – improving the experience for the most vulnerable court users.

We will need to maximise both our physical and digital services to address the challenges that COVID-19 has presented. Some of these new services and systems may not be perfect to begin with – but we will continually develop and improve them, in partnership with all those who use them. The importance of doing so is not only to manage the current pandemic. The Scottish Government has set the target that all public sector bodies should produce zero greenhouse gas emissions by or before 2045. If there is a positive lesson to learn from the past few months it is that we can change the system – to be more resilient, efficient, accessible and fair – and that we can do so in a way that will help us to make progress on the environmental challenges we all face.

Links and Further Information

Throughout the pandemic the SCTS has published and maintained on its website a comprehensive suite of advice and guidance documents for service users, setting out how the delivery of our business has changed, including new rules and Practice Notes and our policies on hygiene and attending at court – based on NHS Inform and Public Health Scotland advice.

These are listed below, in addition to other documents of interest and links to our published data and business statistics.

[SCTS and Coronavirus advice homepage](#)

[Guidance for Service Users during Coronavirus](#)

[COVID-19 - Arrangements to keep our buildings safe, secure and clean](#)

[NHS Inform Guidance](#)

[Coronavirus: Orders, Guidance and Practice Notes in the Sheriff and JP Courts](#)

[Extending Virtual Summary Trials in Scotland](#)

[Court of Session Guidance for Practitioners](#)

[Coronavirus Information for High Court Business](#)

[Personal Injury: Guidance on Conduct of Virtual Hearings](#)

[SCTS Corporate Plan 2020-23](#)

[SCTS Official Statistics](#)

Remember **FACTS** for a safer Scotland

- F** Face coverings 
- A** Avoid crowded places 
- C** Clean your hands regularly 
- T** Two metre distance 
- S** Self isolate and book a test if you have symptoms 

nhsinform.scot/coronavirus
#WeAreScotland

