

# **Criminal Justice Committee**

**6th Meeting, 2023 (Session 6), Wednesday 22  
February 2023**

## **Virtual trials**

### **Note by the clerk**

#### **Background**

1. In recent months, the Criminal Justice Committee has been reviewing the current role out of fully virtual trials, with a view to gauging whether they may be able to assist in tackling the backlog of cases brought on in part due to the pandemic.
2. As a result of this work, the Committee wrote recently to the Scottish Government and the Lord Justice General to seek further information. Responses to this letter have now been received from her, the Scottish Courts and Tribunals Service and the Cabinet Secretary for Justice and Veterans (**see Annex**).

#### **Action/Decision**

3. Members are asked to discuss the responses received and decide what, if any, further action is required.

**Clerks to the Committee  
February 2023**

**ANNEX**

**Response from the Lord Justice General**

Re: Fully Virtual Trials

First of all, let me apologise for the delay in replying to your letter of 16 January 2023 - I was on holiday when it arrived.

Turning to the issue of the virtual trial pilot, this is of course a pilot regarding summary trials. A Practice Note was indeed issued by the Lord Justice General in July 2020 (PN No 3 of 2020, copy attached for information). Subject to that PN, the day to day management of the pilot is being managed at Sheriff Court level and by the relevant Sheriffs Principal. It is anticipated that a report will be made to the Lord Justice General in due course.

I have spoken to the CEO of SCTS and he will provide you with a much fuller response as soon as possible from the figures and other material available to date.

Meanwhile, the committee will be aware that in respect of solemn business, from July 2020 until very recently jury trials were also effectively virtual trials, since the jurors only saw the witnesses, and indeed all participants, via a live link. It may interest the committee to know that such figures as are currently to hand suggest that there was during that period no appreciable difference in the figures for conviction, acquittal or plea rates from those which had been gather prior to July 2020 in respect of in-person hearings. No issues have

arisen in respect of assessing the credibility and reliability of witnesses. Perhaps associated with this, we have seen an encouraging and significant increase in applications for Evidence by Commission and live-link, during the course of the last year. We continue to run 2 remote jury centres to utilise courtrooms which are less suitable for accommodating jurors, and to assist the recovery programme. We have retained virtual custody bail appeals, and virtual preliminary hearings in the High Court of Justiciary, the latter at the request of the Faculty of Advocates.

I hope this information is of some assistance to the committee. Please do not hesitate to contact me if I can be of further help.

*yours sincerely*

Lady Dorrian

[Practice note \(PN No3\) - Remote Conduct of Summary Trials Pilots](#)

**Response from the Scottish Courts and Tribunals Service**

Dear Convener,

**Re. Statistics on the use of fully virtual summary trials**

Thank you for your letter of 16 January 2023 relating to data on virtual trials.

Since June 2020 when the concept of virtual summary trials was first piloted, 24 summary cases have proceeded to evidence led trials: 21 in Aberdeen sheriff court, 2 in Inverness sheriff court and 1 in Hamilton sheriff court. Details of the charges and outcomes of the 24 trials are produced at Annex 1.

Following commencement of the current domestic abuse focused pilot in Aberdeen in June 2021, 53 motions for a virtual trial have been granted of which: 16 proceeded to an evidence-led trial, 2 were not called by the Crown, 1 was deserted by the Crown and 23 were converted to an in-person trial. Of the remaining cases, in 6 of these the accused pled guilty at the Intermediate Diet and 5 others had miscellaneous disposals, mostly warrants granted for the accused. Other than those converted to in-person trials, these outcomes mirror mainstream trials.

Despite the increasing numbers of domestic abuse cases across our courts (they currently make up 23% of all Aberdeen sheriff court's summary complaints registered this financial year), there are currently no further virtual summary trials scheduled at this point.

Solicitor participation throughout the pilot has been particularly challenging, despite efforts through local engagement and discussion by the Sheriff Principal and SCTS staff. Whilst at commencement of the first pilot, in June 2020, there was an urgent need to adapt and use technology to allow the essential recommencement of court business in compliance with public safety measures, as people return to more day to day physical interaction as we recover from the pandemic, momentum is waning.

For clarity Practice Notes are intended to inform practitioners of a practice the court is minded to take, or inform practitioners of a practice the court expects them to take. However, Practice Notes cannot disapply nor seek to make mandatory practice which is contrary to primary legislation.

The current applicable primary legislation (chapter 2 of the schedule to the Coronavirus (Recovery and Reform) (Scotland) Act 2022 "2022 Act") stipulates a default position that all trials are to be in person. While paragraph 7 of Chapter 2 of the Schedule of the 2022 Act has given the Lord Justice General authority to issue a Determination allowing the disapplication of certain requirements within the 2022 Act for physical attendance in criminal proceedings, it expressly excludes the ability to do so for hearings involving the leading of evidence e.g. at trial.

Currently the default position of an 'in person evidential hearing' can only be changed by the court making an order in each and every case. The decision whether to grant such authority is a matter of judicial discretion. A number of factors will be considered by the sheriff when doing this, including parties' submissions and any opposition, and

the fairness of proceedings and the interests of justice. The decision is open to appeal. It is also subject to review following a change in circumstances. For example, since June 2021, 23 of the 53 motions for a virtual trial summary granted converted to a physical trial.

Introducing a presumption that certain cases, and in this instance domestic abuse cases, should proceed to a virtual trial, can only reasonably be achieved by changes to primary legislation.

### **The work of the National Project Board for Virtual Summary Domestic abuse trials – update**

In the intervening period the SCTS, alongside other members of the National Project Board have continued to review and make proposals to innovate upon the model, in so far as possible in the absence of a statutory presumption.

The proposal is to test and evaluate a specialist virtual domestic abuse court model, operating initially in Aberdeen before being expanded across Grampian, Highland and Islands. The model will place an increased focus on the needs of complainers and witnesses who are particularly susceptible to trauma caused by having to attend court and give live evidence in close proximity to the accused and their supporters.

Coercive control is a common factor in domestic abuse cases, and there is a risk that the court process itself may be used as a coercive control tactic by accused by failing to attend court or citing witnesses not required or who do not attend and by seeking discharge or continuation of hearings at the last minute, which in turn increase feelings of vulnerability.

The model proposes the use of increased judicial case management by designated specially trained sheriffs, specialist prosecutors, and support for solicitors to undertake trauma informed training. Innovations and lessons learned from other pilots, including the current summary case management pilot would be adopted in so far as possible.

It aims to enable support services to be effectively focused, and for the development of bespoke community remedies, such as the Caledonian programme, and a problem-solving approach to bail, remand and sentencing.

It will also importantly enable evidence from police and medical professionals to be given remotely from different locations; ensuring that high quality evidence continues to be provided by such witnesses, whilst freeing up considerable amounts of time to allow them to continue with their essential duties as opposed to travelling to, and waiting in, court and the costs associated with that. Further details are enclosed at Annex 2.

The approach proposed in the new model has been agreed in principle by the Criminal Justice Board and by 3rd sector victims and witness organisations. Discussions are currently being arranged with the Law Society Criminal Law Committee and afterward all feedback will inform the final design and evaluation criteria. This is an incredibly ambitious and challenging model, but one that has the opportunity to transform the management and experience of domestic abuse cases in our courts.

I trust the above is of assistance and would be very happy to discuss the final shape of the proposal with the Committee.

Yours sincerely,

**Eric McQueen**  
**Chief Executive**

## ANNEX 1

### **Inverness Sheriff Court**

Two cases proceeded to trial.

One case involved a charge of possession of cannabis. The accused was acquitted after the COPFS intimated that it was no longer moving for conviction.

The second case involved 2 charges, a contravention of the Wildlife and Countryside Act 1981 section 9(1), and a contravention of the Wildlife and Countryside Act 1981, section 9(2). The accused was found not guilty on Charge 1 and Charge 2 was found not proven.

### **Hamilton Sheriff Court**

One case proceeded to trial. It involved two charges under the Road Traffic Act, to which the accused was found guilty.

### **Aberdeen Sheriff Court**

During the first pilot, between June and September 2020, 5 trials were completed. One concerned a charge of theft and of breach of bail (in the context of a domestic argument). The accused was found not guilty on the theft charge and guilty on the breach of bail and thereafter admonished and dismissed on this charge. Another concerned 1 charge of assault where the accused was found not guilty. Another concerned one charge of assault to injury and one section 38 threatening abusive behaviour charge. Ultimately the accused pled guilty under certain deletions to the charge of assault to injury. A plea of not guilty was accepted by the prosecutor in respect of the section 38 charge. Of the final two trials during this period one concerned a charge of dangerous driving which the accused was found not guilty of. The final trial concerned a section 38 breach of the peace charge which the accused was found not guilty of.

From 21 June 2021, when the most recent pilot focusing on domestic abuse cases commenced, to 27 January 2023 16 trials commenced. In 8 cases, all of which had a domestic aggravator to the main charge of assault, the accused either pled or the Crown no longer sought a conviction after the commencement of evidence. Of the remaining 8 cases, 5 had a domestic aggravator to the other charges which included: assault, 1 road traffic offence, 1 case raised under the Communications Act and 1

concerned charges of culpable and reckless conduct. In 3 of those cases the accused was found guilty of all charges, in another 3 the accused was found not guilty of all charges and in 2 cases the accused was found guilty in one charge and not guilty of a second charge.

## **ANNEX 2- VIRTUAL SUMMARY TRIALS- PROPOSED MODEL**

This fully centralised virtual trial court model is targeted to create a more supportive environment for complainers and witnesses who are particularly susceptible to trauma caused by having to attend court and give live evidence in close proximity to the accused and their supporters, will not affecting the accused right to a fair trial.

- A dedicated summary domestic abuse court commencing initially in Aberdeen before extending across the Sheriffdom of Grampian Highlands and Islands.
- It will have jurisdiction to hear all domestic abuse cases from first appearance, particularly applications for warrant, bail and non-harassment orders; trial and sentence.
- The court would be presided over by designated specialist judiciary who have received trauma informed and domestic abuse awareness training and exercise improved case management; supported by a designated trauma informed virtual court staff team.
- The court would be supported by dedicated trauma informed procurators fiscal. Solicitors appearing before the court will be encouraged to, and supported to undertake trauma informed training.
- Practices and procedures of the court would adopt a trauma informed and domestic abuse aware approach and would be applied on a national basis following full roll out.
- Increased judicial case management, with earlier disclosure, developed from experience gained in the new summary cause model pilot in Hamilton, Dundee and Paisley sheriff courts. Where appropriate, compulsory PIDMs, with the topics and report completed, developed and adapted to reflect the specific nature of these cases.
- The use of virtual means for both substantive and procedural hearings, learning from experience to date.
- Virtual trials would be the default, in all but exceptional circumstances on cause shown. This would need to be supported by a statutory presumption.
- At trial each party (including witnesses) would join virtually from a variety of locations, as required. More specifically:
  - Complainers would give evidence by live link from designated locations, supported by Victim Support Scotland (VSS). A key aim is that complainers and vulnerable witnesses who are give evidence in comfort and safety, and preferably outwith the court environment. We will draw upon our current remote site work in partnership with VSS and others.
  - Police and expert medical witnesses would give evidence remotely from police stations or other designated locations, innovating on the current practice currently in the High Court and allowing them to return to their important roles as soon as possible.

- The accused and his agent would be located in the same location (within the sheriff court building if they wish) with an attending court officer/GeoAmey when on remand, and would join the hearing virtually.
  - Provision for interpreters to join the process virtually.
  - There would be the requirement for the lodging and capacity to use at trial electronic documents and videos where practicable.
  - In accordance with developing practice public access to proceedings by virtual means, but taking cognisance of the delicate and specific nature of the cases, many of which should be held in closed court conditions.
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- The model would be supported by community-based support services. The court would seek to ensure a risk-based alternative to custody and effective transitions between prison and community are considered when sentencing, innovating on the Caledonian programme.
  - Testing and evaluation will form an essential step in the development and roll out of the model. User feedback will be an essential KPI.

**Response from the Scottish Government**

Dear Convener

Thank you for your letter of 16 January about fully virtual trials.

You asked whether a governance group was tasked with looking at the obstacles currently preventing more fully virtual trials from being taken forward.

The pilot of virtual trials for summary domestic abuse cases is led by the judiciary. They are supported in this by SCTS, who co-ordinate a National Project Board to consider the design and rollout of the pilot.

The Board includes representatives from all those bodies involved in delivering and supporting the pilot – including Police Scotland, COPFS, third sector organisations, the Law Society for Scotland and the Scottish Legal Aid Board, as well as the Scottish Government. Senior leadership is provided by Sheriff Principal Pyle. Given the judicial ownership of the pilot, I believe that the Project Board is the appropriate primary forum to consider the obstacles it faces and how these might be addressed.

At the same time, the Scottish Government is putting in place new governance arrangements for programmes focussed on bringing together strands of work that, collectively, will help us deliver some of our key priorities for justice services in Scotland, as set out in the Vision of Justice.

Although coordinated by the Scottish Government, these programmes will be collaborations with our partners, aligning work across the sector to help us deliver our shared goals. As part of this approach, SCTS will act as ‘sponsors’ for a number of judicial-led projects, including the virtual summary trials pilot, providing an opportunity to consider how they are aligning with wider work.

I would be happy to provide the Committee with a further update in due course.

**Keith Brown**



PROPOSED NEW VIRTUAL SUMMARY DOMESTIC ABUSE COURT ACROSS GHI

