



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Justice Committee

**Tuesday 2 June 2020**

**Session 5**



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**JUSTICE COMMITTEE**

**14<sup>th</sup> Meeting 2020, Session 5**

**CONVENER**

\*Margaret Mitchell (Central Scotland) (Con)

**DEPUTY CONVENER**

\*Rona Mackay (Strathkelvin and Bearsden) (SNP)

**COMMITTEE MEMBERS**

\*Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP)

\*John Finnie (Highlands and Islands) (Green)

\*James Kelly (Glasgow) (Lab)

\*Liam Kerr (North East Scotland) (Con)

\*Fulton MacGregor (Coatbridge and Chryston) (SNP)

\*Liam McArthur (Orkney Islands) (LD)

\*Shona Robison (Dundee City East) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Ronnie Renucci QC (Scottish Criminal Bar Association)

Kate Wallace (Victim Support Scotland)

Humza Yousaf (Cabinet Secretary for Justice)

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

Virtual Meeting



## Scottish Parliament

### Justice Committee

*Tuesday 2 June 2020*

*[The Convener opened the meeting at 10:00]*

### Domestic Abuse Bill

### Private International Law (Implementation of Agreements) Bill

**The Convener (Margaret Mitchell):** Good morning, and welcome to the 14th meeting of the Justice Committee in 2020. We have received no apologies.

Item 1 is consideration of legislative consent memorandums on two United Kingdom Government bills. I refer members to paper 1, which is a note by the clerk. If members have no comments to make on either bill, does the committee agree that the Scottish Parliament should give its consent to the relevant provisions in the bills and that I, as convener, should arrange for publication of a short factual report on the committee's deliberations?

**Members indicated agreement.**

### Work Programme

10.00

**The Convener:** Item 2 is for the committee to agree formally the work programme decisions that we took at our informal meeting on 12 May. I refer members to paper 2, which provides a summary of the decisions. Are members content with them?

**Members indicated agreement.**

## Jury Trials

10:01

**The Convener:** Item 3 is to continue our evidence taking on the challenges of restarting jury trials in Scotland's courts. I welcome our first panel of witnesses: Ronnie Renucci QC is president of the Scottish Criminal Bar Association, and Kate Wallace is the chief executive of Victim Support Scotland.

I refer members to paper 3, which is a note by the clerk, and paper 4, which is a private paper, and invite Mr Renucci to make a short opening statement.

**Ronnie Renucci QC (Scottish Criminal Bar Association):** Good morning, convener and committee members, and thank you for inviting me to give evidence today.

There is no doubt that the Scottish Criminal Bar Association and the Faculty of Advocates as a whole recognise very well the scale of the challenge that the criminal justice system faces, particularly in relation to restarting jury trials. However, as we have said previously, those challenges cannot and will not be solved without keeping justice at the centre of the solution.

It is fair to say that, at the start of the crisis, the association did not think that we would be expending energy on resisting the abolition of jury trials. We have viewed our role in the process as being twofold. First, we see the association as a defender of an integral and indispensable part of our criminal justice system that also plays a key role in our democratic process—namely, trial by jury. Secondly, our role is to do what we can, as a body, to utilise our expertise and practical experience to assist in getting our criminal justice system back up and running as effectively as possible, in order to get us through this temporary crisis and the extraordinary challenges that it brings.

We remain vehemently opposed to non-jury trials. It is important that I emphasise that again— notwithstanding that there is widespread opposition to non-jury trials and the fact that the Cabinet Secretary for Justice has said that their use is no longer the Scottish Government's preferred option. Indeed, as far back as 21 April, he said that the options that were being considered were those that had the most support, namely options 1, 3, 6 and 8 in the Government discussion document.

The spectre of non-jury trials was raised again as recently as 19 May by Eric McQueen, who is the chief executive of the Scottish Courts and Tribunals Service, when he addressed the

committee about their potential. The SCTS, of course, has the key role in implementing the solutions that will be chosen by Parliament.

The Scottish Criminal Bar Association recognises that there will be a backlog, as there will be in all public sectors including dentistry, medicine and teaching. We are not alone in that respect. To some people, non-jury trials might seem to be the cheapest and most convenient way of addressing the backlog, but cheap and easy are not sound bases for a criminal justice system. Convenience should not outrank or take precedence over justice. If we face extraordinary challenges, we must employ the maximum extraordinary efforts to meet them.

The Scottish Criminal Bar Association is prepared and willing to meet the challenges. We are pleased and delighted that after only two meetings of her working group, Lady Dorrian has announced that two initial jury trials will proceed in July, with more trials no doubt being rolled out after that.

We also welcome and acknowledge the amount of hard work and continuing efforts of the Scottish Courts and Tribunals Service that have culminated in the recent announcement of the resumption of preliminary hearings and various other procedural hearings—including, as we understand it, taking of evidence on commission—that will begin to call again at the High Court as of 8 June.

We believe that the options that are currently being pursued by the Government and that feature in Lady Dorrian's pilot trials are workable, proportionate and the best way forward in addressing the current issue. The Scottish Criminal Bar Association is committed to them. Once we are back to some form of normality, we can get down to addressing the remaining backlog, and we see that being done through what is envisaged in option 6 of the discussion document.

**The Convener:** Thank you. I invite Kate Wallace to make a short opening statement.

**Kate Wallace (Victim Support Scotland):** Good morning, convener and members. Thank you for inviting me. In the letter that I submitted—Victim Support Scotland wrote an open letter with a number of other victim organisations—we express our deep concern about the impact on victims and witnesses of lengthy and prolonged delays to court proceedings. We have seen a 400 per cent increase in the numbers of safeguarding reports that have been escalated, in which victims and witnesses have reported having suicidal thoughts. That increase was from March into April.

The delays and uncertainty around courts are having a devastating impact on victims and witnesses across the country, and we are deeply

concerned that the options that are being explored at the moment still focus on the involvement of juries. No options are currently being pursued around the feasibility of not involving juries and we are concerned about the risks around that.

As we have said before, mistrial has a devastating impact on witnesses. In many cases, it is worse than not starting a trial at all. From Eric McQueen's evidence to the committee, we are aware of the size of the backlog. For solemn cases it will be 1,200 in March 2021, rising to 1,700 in 2022 and then to 2,000 outstanding trials in March 2023. We are aware that there would normally be 16 solemn courts running per day; options that are being looked at do not even scratch the surface, in terms of that number. We are also aware that we were already facing a backlog—in particular, in the solemn courts.

We urge, as a temporary measure related to the current emergency, which is now becoming an emergency in our courts as well, that work be started to explore the possibility of juryless trials, as an emergency and temporary last resort.

We are interested to hear why some of our colleagues in the legal profession are so resistant to that approach, when it has been used elsewhere, including in summary proceedings. Rape Crisis Scotland has called for exploration of a three-judges option that would be similar to what was used in the Lockerbie case.

**The Convener:** Thank you for that opening statement.

Before we move on to questions, I thank both witnesses for their written submissions. It is always helpful for the committee to have submissions before we hear evidence in a formal meeting.

I remind everybody to allow broadcasting staff a few seconds to operate microphones before asking a question or providing an answer. Our first question is from James Kelly.

**James Kelly (Glasgow) (Lab):** Lady Dorrian has set out initial arrangements with the objective of restarting High Court trials in July. Are our witnesses supportive of those measures? What steps need to be taken to build on that work in order to get more trials up and running?

**Kate Wallace:** We are very supportive of the measures. We should do as much as we can. We are interested in how it goes and how it works. Obviously, we have concerns about what would happen should anything go wrong, especially if one or more jurors were to become unwell.

As I have said, we are worried about mistrials. We are aware that the approach will be to limit the number of people in a court and to use a number of rooms, which means that a vastly reduced

number of trials will be held compared to what would normally be the case. As I said, there would normally be 16 trials a day under the solemn procedure, but we will be absolutely nowhere near that. However, anything that we can do to restart trials is a step in the right direction, although we would like that to encompass all the available options, rather than a selection of them.

**Ronnie Renucci:** We support Lady Dorrian's proposals. As the committee will know, there are two options. One, which will run in Glasgow, involves jurors being socially distanced within the courtroom. The other option involves jurors being together, but socially distanced while watching proceedings remotely. The benefit of the second option is that it would reduce the number of rooms—rather than courtrooms—that would be required, because the jury could remain, for their deliberations, in the room in which they watched the trial.

I emphasised that I am talking about rooms and not courtrooms because I am aware of the three-courtroom model that Eric McQueen referred to, for which there are plans. That model involves use of three courtrooms for each trial, which we do not think is necessary, at all; in fact, it would be entirely a waste of court resources.

The increase in the number of trials can be achieved easily by use of court estate other than courtrooms. In the model in which the participants and jury sit together in the courtroom but are all socially distanced, there has also to be a courtroom for the jury to retire to and another courtroom for the press and public. We do not need those to be courtrooms; if they were not courtrooms, that would free up other courts to run other trials.

Eric McQueen told the committee that normally 16 trials run every day, but of course 16 trials do not run every single day, although there is capacity in the High Court for that. Eric McQueen mentioned that five trials could run, but that was using the three-courtroom model. In fairness to him, I am aware of the response that he gave to the committee in which he confirmed that each room does not have to be a courtroom, which would free up other courts. Also, if we were to take the approach that has been taken for the second pilot, which involves a remote jury, that would free up more courts.

We expect that we might be able to run 10 or 11 trials each day. That would take us somewhat closer to the 16 trials that Eric McQueen mentioned and would decrease the long-term backlog. We could address the backlog after that.

10:15

**James Kelly:** I can see that the association has reservations about courts using three venues, and that you would prefer an alternative option. How do you see social distancing being observed in a one-venue solution?

**Ronnie Renucci:** I am not talking about a one-venue solution: I am still talking about there being three separate rooms, but they need not be courtrooms.

For example, at the High Court in the Saltmarket in Glasgow, there are nine courts. They would not all be suitable for social distancing, but there are six very large courts. There would be no need to use three of those courtrooms for one trial. Eric McQueen was thinking about a three-courtroom model using three courts for each trial, but there is other estate within the Saltmarket; there are other large rooms, use of which would remove the need to use a courtroom. There are, for example, large juror muster rooms that will not be needed because we will not be bringing unempanelled jurors to the court. A muster room was used in the last completed jury trial in Scotland: it was where the jury went to deliberate. Smaller courts could also be used, and there are other rooms in that building—there is a large cafeteria, for example.

We are saying that, if three rooms are to be used—one is the courtroom, another is for the jury to deliberate in and one is for the press—they do not all have to be courtrooms. If they are not all courtrooms, that will free up the courts and allow more trials to run.

**John Finnie (Highlands and Islands) (Green):** My question is for both panel members and has already been touched on in part.

Eric McQueen, the chief executive of the Scottish Courts and Tribunals Service, has commented on the backlog of solemn trials, saying that it is likely to exceed 1,800 by August this year and that it could exceed 3,000 by March next year. You have touched on that in part. Mr McQueen explained that, with social distancing in place, court capacity could be cut to a third. Will the panel comment on those estimates? If they are accurate, what are the implications for the accused and for victims?

**Kate Wallace:** Eric McQueen is better placed to assess the figures as he has been tracking the backlog for some time. I understand that the figures that he produced took into account the different post-lockdown phases.

Victim Support Scotland is deeply worried about the size and scale of the backlog, and about the length of time that will be required for that to work through the system. It could stretch into years, and

it is unacceptably cruel to leave victims and witnesses waiting for so long to see justice done.

My organisation has two interests in the solemn cases. We run a national service supporting families who have been bereaved by murder or by culpable homicide. Those families are struggling with the lack of certainty about when those cases will come to court and when they will see justice done for their loved ones. They are very distressed.

Alongside Rape Crisis Scotland and others, we also support and work with victims of serious sexual assault and of rape. Waiting to give evidence in a trial leaves a huge weight hanging over those victims and survivors. The longer that wait goes on, the more they feel that they cannot move on with their lives and put the crime behind them. Dragging that out for years is unacceptably cruel to those people too.

**Ronnie Renucci:** We entirely understand the difficulties that the backlog will cause witnesses and complainants in cases where they will have to wait. That will inevitably happen in some situations and some trials, but that is going to be happening throughout society. Because of hospital backlogs, there will be people waiting for operations and cancer treatment has been delayed. Unfortunately, that is an inevitable consequence of Covid-19.

We are conscious of that, so in each stage we have proposed solutions that we see as a means of getting through this situation. Once we are out at the other end and back to normality, we can get through the backlog. The figure of 30 per cent is based on the three-courtroom model—that is, where each room has to be used as a courtroom. If that requirement is stripped away—as we have already explained and as Mr McQueen accepted in his response to the committee—so that not each of the rooms has to be a courtroom, capacity will be increased, and that means that the backlog will be smaller.

So far as the numbers in the backlog are concerned, I cannot dispute what Eric McQueen says—I have not seen the workings. I understand that those are the figures, but they are considerably less than the 38,000 that there will be down south.

However, at some point we will get out the other side and back to normality. That is when we will begin to get through the backlog; that is when we will make large inroads into it. Perhaps the easiest answer that I can give as to how we will do that was provided by Eric McQueen, when he gave evidence to the committee on 19 May. I believe that, at about 6 minutes past 11, he said:

“In normal circumstances, where there was a backlog we would simply introduce more courts or staff or bring back

retired judges, and we would do things more quickly.” — [Official Report, Justice Committee, 19 May 2020; c 18.]

There is your answer to the backlog—it was provided by Eric McQueen and was suggested by us in our first paper, back on 30 March.

You can also get through the backlog by doing what used to be done: putting the High Court back out in circuit, which takes it to the communities that it serves. The High Court used to sit in various places, and not only Glasgow, Edinburgh, Aberdeen and Livingston, as it primarily does now. Inverness, Dundee, Forfar, Perth, Stirling, Dumbarton, Hamilton, Paisley and Kilmarnock could all be utilised once we are out of the Covid-19 crisis.

In one of Mr McQueen’s responses to the committee about the court estate, when he was asked whether the court had to be in a major city, such as Glasgow or Edinburgh, he said that the difficulty in using facilities outwith the major cities for High Court cases relates to the travel involved for those who are some distance from the sheriff court building in question. That does not take account of the fact that witnesses from Inverness and throughout Scotland would have to travel to Glasgow and Edinburgh. It is for those very reasons that we say that the High Court should go out in circuit. Take the High Court to the community, and do not make the community travel all the way to Glasgow and Edinburgh to go to the High Court. In that way it would decrease travel, if that were possible.

**The Convener:** John Finnie, do you have a follow-up?

**John Finnie:** Rather than the other question that I was going to ask, I ask Mr Renucci what the implications of the delay are for accused individuals. Clearly, no matter how we seek to resolve it, that delay is going to continue for some time.

**Ronnie Renucci:** That is an excellent point. In many ways, the accused have been—I will not say “forgotten”—moved down the order of consideration. There has already been a suspension of time limits across the board; undoubtedly, there will be an impact on accused, who will have to wait longer.

However, we have heard comments to the effect that people will now have to be in custody for one or two months; people were in custody for considerably longer than that before Covid-19. Of course, the reality is that the accused will have to wait. That is unfortunate, just as it is for the witnesses and complainants who will have to wait. However, we have solutions before us and are considering them, so rather than saying, “This can’t be done,” or, “We can’t do it that way,” let us get on with it and see what inroads we can make

into the backlog. At the end of the crisis, we can then get through the backlog faster, as option 6 sets out.

**The Convener:** I have a question for both panellists. The chief executive of the Scottish Courts and Tribunals Service said at our previous committee meeting that judge-only trials should, in some cases, remain an option on the table; he indicated that that might be just for the short term or as an emergency measure. What are your views on jury trials, and why do you hold those views?

**Ronnie Renucci:** We remain vehemently opposed to non-jury trials for solemn matters. If there is no jury in a solemn procedure trial, it simply becomes a summary trial by any other name.

Trial by jury is utilised by almost all advanced democracies in the developed world. It involves citizens in the democratic process and brings together people of all ages and of every sex, creed and colour to sit in judgment on a fellow citizen. It allows that citizen to be tried by their peers, not by a single professional judge. This is not a criticism of our judges, but they tend to be drawn from a very narrow and privileged pool. The 15 jurors provide an accumulation of life experience, which marginalises extreme or unrepresentative views, and they represent a microcosm of our society. They deliver balanced and rounded decisions on behalf of us, the society from which the jury's members are drawn.

Judges often tell juries that they have been brought together to make decisions that are too important for a single judge to make. Such decisions require collective common sense and life experiences. The importance of trial by jury is perhaps best summed up by a quote from Lord Devlin, which judges have often repeated to juries. He said:

"Trial by jury is more than an instrument of justice and more than one wheel of the constitution: it is the lamp that shows that freedom lives."

That very much echoes the words of John Adams, the second President of the United States, 200 years earlier, back in 1774. He said:

"Representative government and trial by jury are the heart and lungs of liberty."

That is as relevant now as it was then. The jury, through its collective decision making, makes an excellent fact finder. It is therefore not surprising, and it is important, that the public—the very people whom juries represent—trust juries. That is why juries are so important.

It is to be remembered that, as Kate Wallace said, non-jury trials are a last resort. However, before we move to a last resort, we have to have

tried something else. We have tried nothing yet, and people are nonetheless talking about moving to non-jury trials. That is why we are so concerned.

**Kate Wallace:** We agree with everything that Ronnie Renucci said about jury trials. The issue for us is that the size of the backlog, and the length of time that it will take to get through it, is now unacceptable from the perspective of victims and witnesses, especially as we can see that it is having an impact on their mental health.

We would like the potential for juryless trials to be introduced into the mix along with the other options, so that we can keep an open mind about what the solutions to the crisis might be. It is not about replacing jury trials but simply about introducing another option. Our concerns about jury trials relate to the particular risk that the coronavirus situation poses, given the number of people who are involved in serving on juries and the length of time for which, as public health experts tell us, the coronavirus may be with us. We ask that the option of juryless trials be explored with other options.

10:30

**The Convener:** My follow-up question is about what other options should be considered. What are your views on enhanced plea discounts, in which an early guilty plea means that no trial is necessary?

**Kate Wallace:** As you know, Scotland already has one of the most generous systems in the world for early pleas—the definition of "early" can include a plea made on the day of the trial. The victims whom we support struggle already with the process of sentence discounting. Further discounts would be even less well understood, and would cause more confusion and upset. In addition, as Ronnie Renucci will no doubt tell you, there have been concerns, from research across the world, about vulnerable accused, and about potential bias in early pleas for sentence discounts.

From the perspective of victims, sentence discounting for an early plea is a hugely contentious and difficult area. In particular, for families who have been bereaved by murder or culpable homicide, a trial is often where they find out the answers to their questions about what happened to their loved one. For some of the early pleas that are happening already, and in some of the processes that are escalating that work, my request is that we give thought to the families of victims and give them the information that they would have had if they had gone through a trial.

**Ronnie Renucci:** I take on board everything that Kate Wallace has said. However, it has been

recognised that the point of discounted pleas is in recognising the utilitarian value of such a plea. It means that witnesses do not have to go to court and go through the anguish of waiting and then having to give evidence. It saves the court time and money. That is why there are discounts.

To clarify what Kate Wallace has said, certainly some pleas are given on the day of the trial, but the discount for that is incredibly small—if it is given at all. It is often the case that the judge will properly find that there has been no utilitarian value to that late plea and, in the High Court, will apply either a discount of a matter of months, or no discount at all.

The purpose was to reflect utilitarian value. In this present crisis, and given the backlog, the utilitarian value of an early plea would undoubtedly be greater than in normal times. There is therefore a valid argument for an increase, albeit slight, in the discount. We are not suggesting that it goes far up the scale. We are simply saying that the increased utilitarian value should be recognised, and that, as a result, there should be an increase in the discount. That may mean that there will be more guilty pleas throughout this period.

I also take on board what Kate Wallace has said about research on vulnerable accused, but I can assure committee members that people in Scotland are not forced to plead guilty. People plead guilty only—and counsel and solicitors will plead guilty for someone only—if they accept that they are responsible for what they plead guilty to. We are not in America; we do not do plea bargains, in which people plead guilty even though their position is that they did not do it. If someone says to me, “I want to plead, but I didn’t do it,” there is no plea; it goes to trial.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** I will try to roll all my questions into one contribution, for the sake of time. There seems to be a bit of an impasse between Ronnie Renucci and Kate Wallace on judge-only trials.

Does Ronnie Renucci think that the right of appeal could mitigate the risk of someone not receiving a fair trial? You said that the Scottish Criminal Bar Association was ready to step up to the plate and do what it can. What thought has been given to workload? Basically, do you have enough lawyers to tackle the proposed approach? What would doing so mean to you?

Kate Wallace gave figures in her opening statement on the number of victims who had contacted her. Will you put on record that victims are content to have a judge-only trial and they do not have a fear of not getting a fair trial? Do you think that the risk of judge-only trials is overstated or outweighed by the consequences of not keeping that as an option for the victims?

**Ronnie Renucci:** Our position remains the same on judge-only trials. We do not think that having a right of appeal would be an adequate compensation for the loss of a trial by jury. We see no reason why we cannot have jury trials in this period. They are happening down south, so we know that they work. Indeed, in England, they have just completed their first murder trial under social distanced conditions.

There are other means. If it was not working under the present system of 15 jurors, there is the option of reducing the jury to seven jurors, as has been done in the past.

Interestingly, in the Diplock courts in Northern Ireland, for example, there is an absolute right of appeal. An absolute right of appeal is different from leave to appeal, which we have in Scotland. In effect, we have to ask the permission of the court. In Scotland, a case goes through a sifting process, and a judge looks at it and decides whether there are grounds for an appeal or the prospects are stateable. If it does not get through the first sift, it goes to a second sift of two judges

In the Diplock courts, in which there is a single judge, a person has an absolute right to appeal against the law and the facts. In Scotland, a person cannot appeal against the facts—they are appealing against the law as a result of a miscarriage of justice. It is usually to do with the appliance of the legal framework of the law where errors occur, and that allows appeals to be taken. If appeals against the facts were to be introduced, there might well be a backlog in the appeal courts, so there would be a knock-on effect.

**Kate Wallace:** I can remember two parts of Rona Mackay’s question, so she might need to remind me about the last part. As I said at the beginning of the meeting—[*Temporary loss of sound.*]*—we have experienced a 400 per cent increase in the number of safeguarding incidents that have been escalated to management. Those incidents focus on victims and witnesses who are contemplating suicide. We have weekly calls with other victim organisations and officials from the Scottish Government. We are aware that the trend that we have seen is shared by those organisations across Scotland.*

The vast majority of victims and the families of victims that we, and the other three organisations that signed up to the open letter, have spoken to are, on balance, in favour of juryless trials. They recognise the issues around that. One or two families have not expressed that preference, but the vast majority have said that they would much prefer a juryless or judge-only trial in order to ensure that the trial happens in the next couple of years. That is what people have been saying to us.

What was the last part of your question?

**Rona Mackay:** Thank you—you have already rolled it all into one answer. I want to go back to Ronnie Renucci to answer the other part of my question, which was about the workload for lawyers.

**Ronnie Renucci:** I realise that I had forgotten to answer that. There will be no issue for the defence bar in having an adequate pool of counsel and, within the whole legal profession, solicitors operating at sheriff court level to deal with on-going cases and the backlog.

Something that has perhaps been lost is that the members of the Scottish Criminal Bar Association are not just defence counsel—we also have members who are prosecutors, including advocate deutes who prosecute in the High Court. Many of us, including me, are ad hoc prosecutors—advocate deutes. We can change sides, as it were, and occasionally prosecute. If there were a shortage on the prosecution side, more advocate deutes could simply be appointed. Advocate deutes can be appointed for very short periods—six months, a year or whatever is required in order to get through the backlog. I do not foresee any difficulty in that area at all.

**Rona Mackay:** Thank you. That covers my follow-up questions.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** I want to ask about trials and social distancing, as we move to the new normal. What assurances have you had that adequate measures to avoid the transmission of Covid-19 will be in place in criminal trials? I am talking about things such as the provision of PPE and the social distancing measures that you mentioned. Is there more that you would like to see done?

**Kate Wallace:** I am sorry, but the connection is not very good. I will try to summarise what I think your question was. Are you asking what assurances we have been given that the appropriate safety measures to ensure Covid security are being taken?

**Fulton MacGregor:** Yes.

**Kate Wallace:** Okay. Individual risk assessments have been undertaken at every court building, and some are still being carried out in some court facilities across Scotland. I have been assured that the information will be shared with me so that I can decide whether it is safe for our staff and volunteers to go into those buildings. Ultimately, responsibility for the health and safety of Victim Support Scotland staff and volunteers lies with me, and I have been assured that I will be given the information to enable me to take that decision.

**Ronnie Renucci:** Similarly, we have not yet been provided with the details. However we have confidence in the Scottish Courts and Tribunals Service that any measures that are required will be carried out. I was in the Saltmarket yesterday and I could clearly see that work has been started on the required measures: we have a one-way system and seats have been blocked off to ensure that people maintain proper social distancing, and the same is true in the courtroom. We are in no doubt that measures are being taken—we would not go into the process were we not confident about that.

I do not have any information about PPE, but I have the utmost confidence that the SCTS will be taking the appropriate advice so that, when the time comes and we are able to go back into the courtroom more regularly, it will be a safe arena.

10:45

**Fulton MacGregor:** I am not sure how good my signal is, but I certainly heard the answers, and I thank the panel members for them.

What more can be done to provide confidence to the public using the court that it is safe for them to attend, whether as witnesses or as members of a jury, or for any other business? Do you have anything to add to what you have already said?

**Kate Wallace:** In terms of—[*Temporary loss of sound.*—]—questions about what the public health guidance has been, particularly around having jury members in a room together, even if that is a large room where physical distancing is possible, for prolonged periods of time. There has been a request for that public health guidance to be shared. I do not think that it has been shared yet, but I assume that seeing that public health guidance would be beneficial for members of the public who may be witnesses or jury members.

We are concerned that there will be understandable nervousness about being in the court building, so the more information that can be provided, the better. As you know, we are deeply concerned about the potential for mistrials. We think that the impact of a mistrial will be worse for some victims. Anything that can be done to make sure that the assessment information is provided ahead of time would be helpful. Nothing would be worse than starting something that we then have to abandon.

**Ronnie Renucci:** The other steps to provide confidence include saying to the public that they can be satisfied that only people who are required to be in the court building will be there, and that the number of people who are required to be there will be greatly reduced. We are looking at the possibility of remote empanelling—in other words, rather than a whole host of unempanelled jurors

coming into the building to be picked, they will be picked beforehand. Therefore, only the people who are required to be in the court building will be there.

If members of the public are worried, I can say with some confidence, given that the SCTS is in charge of this and knowing what measures it is taking, that the court arena and the court building will probably be considerably safer than things are in other walks of life—for example, in shops and probably most workplaces. I think that there will be an added level of protection in the court building that is not present in society at large.

**The Convener:** The next question is from Shona Robison. Before I bring her in, I ask the panel members and committee members to try to be as succinct as possible. We are getting good information, but I am conscious of the clock. If your answer is really a repetition of something that you have already said, it would help if you could indicate that. However, this is a very worthwhile session and I do not want to curtail any new information.

**Shona Robison (Dundee City East) (SNP):** The witnesses have already touched on people's confidence in relation to safety and public health guidance. I just want to be clear that both witnesses are satisfied that the advice is based on the best health advice—for example, advice from Public Health Scotland.

Kate Wallace said that she wants that advice to be shared so that those she represents and the staff in her organisation can see it for themselves. Did I understand that correctly?

**Kate Wallace:** We have not seen any of that information yet. As I said, I want to see it so that I am able to make that decision about safety. We think that sharing some of the information publicly will also assist members of the public who may have to attend court, whether as a witness or as a juror. To be clear, we have not seen any of that public health information yet.

**Shona Robison:** That is helpful.

My second question is about the pace at which the restrictions are eased. Ronnie Renucci referred to court buildings being safer than other areas given the prevention measures that are being taken. Obviously, there is a risk that the pace at which the restrictions are eased is too slow or too fast. Does Ronnie Renucci believe that the right balance has been struck in resuming jury trials? Are the restrictions being eased at the correct pace?

**Ronnie Renucci:** It has been accepted that no jury trials could take place during the full lockdown phase. As we ease out of that phase, we can now resume jury trials. Although it would have been

nice if jury trials had resumed quicker, we are certainly now getting to that stage, and we are happy as we can be with the pace at the present time.

**Kate Wallace:** As I said, we would want other options to be added, because we are in hugely uncertain times.

**Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP):** Mr Renucci, there is a question about some of the options that have been considered. As you mentioned, there has been a great deal of public debate about juryless trials, but there has probably been less public debate about the option of smaller juries, which was discussed at one point. My question is open ended—I am keen to hear what you think of that option.

**Ronnie Renucci:** If the option of a full jury, which we are trying now, does not work, we have already said that, given the situation, we would have no difficulty with looking at reducing the number of jurors as a matter of principle. That has happened in the past; it is well documented that it happened during two world wars. Although the juries would be smaller, that approach retains the principle of trial by jury, which is important. We would have no difficulty with that option if the present option does not work.

**Dr Allan:** I want to pick up on that and on comments that Ms Wallace might have made—the line was not good, and I do not want to put words in her mouth. Some people—probably including Ms Wallace—have mentioned potential difficulties with the collapse of trials. I do not offer an opinion on that, but do you have an opinion on whether a jury of seven, for example, can be useful when it comes to avoiding the risk of collapse if two or three—or one or two—jurors became ill?

**Ronnie Renucci:** If we start off with a bigger jury that goes down to 12 members, the trial will be deserted. However, legislation could be introduced to provide that, even if we started off with a jury of 15 members, we could allow for illnesses and for the number of jury members to go down as low as seven before the trial collapsed. That would certainly assist in some way.

A lot of emphasis has been put on juries and jurors becoming ill. However, even if there were juryless trials, if any of those participating—whether that is the accused, someone from GEOAmev in the doc, the judge, the clerk, the defence or the prosecution—[*Temporary loss of sound.*] So the issue does not apply only if we have jury trials.

**Kate Wallace:** We have outlined our concern about reducing the number of jurors heightening the potential risk of mistrial. From our perspective,

the smaller the number of jurors, the more that risk is run.

We have also outlined that we are interested in the public health guidance on, for example, what happens if a number of jurors become unwell. Does that mean that the whole jury has to go home and self-isolate for a length of time? Where would that leave us?

**Liam McArthur (Orkney Islands) (LD):** Good morning. As Alasdair Allan did, I want to develop one aspect of the proposed changes.

Greater use of videoconferencing from remote locations has been suggested, which would allow a greater workload to be taken up over the coming months. I do not know whether you are aware that the organisation Justice has done work that has looked at virtual jury trials in which everybody—judge, jury, lawyers, accused—interacts remotely. I would welcome your views on the scope for use of videoconferencing, and on whether there are concerns about certain participants engaging remotely.

**Ronnie Renucci:** The association certainly sees benefits in that, although it would be apply more in the fora of sheriff court and summary trials. That would be an excellent way of freeing up courtrooms to allow solemn matters to be dealt with. We understand that that suggestion is being looked at. Of course, civil cases are currently being conducted remotely.

I am not sure whether we could have a full jury sit remotely. I have seen it done in England and I have seen Justice's study. Although I was initially sceptical, it was very impressive. I do not know, however, that we would need to do that, because we have options that would allow us to go on. However, that use of technology for summary trials should definitely be investigated.

**Kate Wallace:** Justice's report is on a test that has been done with one remote jury. There are a number of issues regarding confidentiality and the potential for jurors to access the internet to look up information on the case. A number of issues for juries would have to be overcome, as we have discussed before.

Elements of remote technology are already used, and some have been proposed by the SCTS to address backlogs. The SCTS is, for example, talking about using remote links between rooms in a court facility. I think that we will see such things coming through.

As Ronnie Renucci said, there is a question about the use of such technology for juries. It has not really been tested and it is very early days. From a victim's perspective, the concerns would be about confidentiality and who was standing at the jurors' screen—who could hear their evidence.

Victims of sexual offences have expressed concerns to me about that. You have read that study, so you can see for yourself the issues that have come up.

**The Convener:** Do you have another question?

**Liam McArthur:** I wrapped my questions together in one. Although there are issues flowing from the answers, I am happy to leave it there for the time being.

**The Convener:** Thank you. Liam Kerr, can we have your question, please?

**Liam Kerr (North East Scotland) (Con):** At the outset, I remind everyone that although I do not do criminal work, I am a practising solicitor with practising certificates from the Law Society of England and Wales and the Law Society of Scotland.

Ronnie Renucci's written evidence says that

"it is a matter of regret that the English courts are ... ahead".

They seem to be, with jury trials resuming in multiple locations next week, as you said to Rona Mackay. The Scottish Criminal Bar Association proposed in April things that would mirror the system that England has put in place. Why are we lagging behind and what needs to change to address that?

11:00

**Ronnie Renucci:** I am not sure that I said that I regret that we are behind England. I think that I said that it is unfortunate that we are, perhaps, behind it. I do not know the reasons for that—I am not a politician—but knowing the reasons is perhaps less important than being able to catch up as quickly as possible.

In relation to the second part of the question on what is being done in England, we can see the genesis of what is being done now in our first proposal—our response to the first Coronavirus (Scotland) Bill—on 30 March, which was some considerable time ago. The solutions seemed to us to be obvious then. It seems to have been the case in England that they looked at the bill and thought of options or followed the recommendations and options that were proposed at that time. I cannot say precisely why England and Wales are ahead, but I hope that we catch up with them as quickly as possible.

**Liam Kerr:** I will ask a couple of supplementary questions, but I want to stick briefly with this point and follow on from Liam McArthur's questioning. In the SCBA's evidence, you talk about confusion about the

"availability of multi location video links"

in relation to prisons. Where has that confusion come from, and what would be the impact of sorting the issue?

**Ronnie Renucci:** We are not sure what the problem was in relation to prisons. Initially, the criminal appeal court seemed to have a problem, but our understanding is that it has now been resolved.

However, there is a problem with consultations with the accused. For some reason, the prisons cannot do three-way consultations: counsel and the solicitor have to be together if they are consulting by video link. They can do it with one person on the other end of a phone line but that is really not satisfactory. We do not know what the technical problem is, but we know that the Scottish Legal Aid Board looked into the issue with prisons and was told that the three-way consultation could not be done, at this stage.

**The Convener:** There will be an opportunity for other questions after I ask a final one on summary cases, which the committee was keen to ask.

What discussions have witnesses had about progress on summary criminal trials? Does the panel consider that enough is being done in that area, and, if not, what is the main concern?

**Kate Wallace:** VSS has been closely involved with an on-going pilot in the north region. Our main concern is to ensure that we can provide a location outwith the court building, if possible. We have suggested that our VSS offices might be useable if they can be made Covid-safe, which would give witnesses the choice of providing evidence from a different location. As we know, many witnesses find the whole process of going into a court building or courtroom extremely intimidating and distressing. We are keen to progress that if we can, and are working closely with the SCTS on the matter.

**Ronnie Renucci:** My colleagues in the Law Society of Scotland—the other branch of the profession—would perhaps be better placed to answer that question. I have some knowledge of the issue, because I have sat on a number of the society's committees. The Law Society is doing excellent work in trying to progress summary trials. I understand that an announcement has been made and that there is hope of a resumption of summary trials.

I know that ways to do summary trials remotely, including taking evidence remotely from witnesses, are being looked at. Police officers, for example, can simply go into a designated police office, to a room from which they can give evidence. I understand that that has also been considered for civilian witnesses.

The Law Society and the SCTS have been working tremendously hard to try to get cases up and running again. Part of the problem is that there has been reluctance to do anything during the lockdown period, but now that restrictions are being lifted, we are certainly seeing movement in the courts.

**The Convener:** Thank you. Liam Kerr—do you have a supplementary question, or has it been answered?

**Liam Kerr:** I would like to ask two supplementary questions, if I may. One is for a quick point of clarification and one is more substantive.

**The Convener:** I am conscious of the clock, but if you are concise, that should be fine.

**Liam Kerr:** I am very grateful, convener.

Ronnie—this question for clarification is directed at you. We have heard a lot in evidence about having 16 trials a day. I think that you suggested that the single court system that you proposed might get you to 10 a day. I might be wrong, so can you confirm that there are never more than 13 cases running at one time, and that often, in practice, there are far fewer?

**Ronnie Renucci:** The Scottish Courts and Tribunals Service would be able to give you an accurate answer. I am aware that, certainly this year, more trial courts have been running. It is probably impossible for 16 trial courts to run every single day in the High Court, simply because when one trial finishes, there might be another one ready to start, but a lack of judges. I doubt that 16 trials would be running every day, although I cannot say that for certain. I think that we would probably be closer to 13. That is not a criticism of the Scottish courts system; it is just the system in which we work. There is also the fact to consider that a lot goes into getting a High Court trial started and so on—which is also not a criticism. There could be 16 trials every day but, anecdotally, I understand that the number is probably 13 or 14. If we can get up to 10, we will be getting closer to normal capacity.

**The Convener:** Does that complete your supplementaries?

**Liam Kerr:** No. I have a question for both witnesses. One of the options that are listed in the discussion paper is an increase in the sentencing power of sheriffs in summary courts. Of course, that would have the effect of removing juries from cases that are currently prosecuted under solemn procedure in the sheriff courts. Would that lead to a risk of more serious or complex cases being prosecuted without a jury?

**The Convener:** I ask both witnesses to be as concise as possible.

**Kate Wallace:** We expressed the view that that option was worth pursuing if it was going to help to get the backlog down in a reasonable timeframe. We felt that that should have been looked at.

**Ronnie Renucci:** It would be regrettable if offences that are presently prosecuted at solemn level were to be reduced to summary level. If there was to be a change, it would have to be at the very low end of solemn cases. We recognise that some cases that are currently charged on indictment, certainly in my history both as counsel and as a solicitor, have been prosecuted at summary level; for example, possession of an offensive weapon, carrying of knives and so on. There would certainly be scope for removing cases at the very low end of solemn business.

**The Convener:** Thank you. That completes the committee's questions for our first panel. It has been an excellent session, and the committee will reflect carefully on your responses, which have been extremely helpful.

11:09

*Meeting suspended.*

11:15

*On resuming—*

**The Convener:** I welcome our next panel of witnesses, who are Humza Yousaf, the Cabinet Secretary for Justice, and Anna Donald, the acting deputy director for criminal justice with the Scottish Government. I invite the cabinet secretary to make a short opening statement.

**The Cabinet Secretary for Justice (Humza Yousaf):** Thank you, convener and committee members, for inviting me to give evidence on the issue of reopening the court system, with a particular focus on solemn trials. As everybody is now well accustomed to hearing, we live in the most unprecedented of times. Coronavirus has had huge impacts across our society and, frankly, will continue to do so. It is therefore no surprise that our court service has faced significant challenges in adapting how it works to maintain essential and urgent business while ensuring the protection of the public's health.

Difficult but necessary decisions have had to be taken in the management of criminal business. That includes the decision by the Lord President, in response to the public health advice, to suspend all jury trials. Although that was undeniably the right decision, we must not forget that behind every delayed trial are victims, witnesses and accused. The committee has just heard from a panel who stressed those very points. All those individuals will be anxious to have their cases dealt with and to begin moving on with their lives.

The committee heard powerful evidence from Kate Wallace about the deeply damaging impact that the situation can have on victims, in particular, and we cannot and should not underestimate the impact on those awaiting trial, either.

The backlog figures that we face for solemn and summary cases are stark and eye watering—and, of course, they grow higher with each week that passes. The risk of that was identified at the start of the lockdown. Because of those profound concerns, a huge amount of work has been carried out over the past two months across the justice sector by the Scottish Courts and Tribunals Service, the Crown Office and Procurator Fiscal Service, the judiciary, the Government and a range of key stakeholders, including from the legal profession and the third sector, in considering how to resume jury trials and other court business.

I am grateful to all those who have given up their time in this most difficult period to help to shape the justice system's response to the on-going public health crisis. It has been gratifying to see that the approach has been characterised by collaborative working and a real examination of the innovative approaches that we can take. In a short number of weeks, the courts have resumed many of their services, enabling virtual courts to be held in the Court of Session inner house and High Court criminal appeals and remote hearings to be held in the outer house.

Sheriff courts and mental health tribunals have continued some of their work. They have introduced new remote and digital approaches, allowing some cases to progress across the sheriff civil courts and the all-Scotland personal injury court. Also, commissary proceedings have been restarted through remote working. Protocols have been introduced in the courts to ensure physical distancing when attendance is required, with practice notes in place, allowing remote representation to minimise attendance in court by solicitors and COPFS staff.

Furthermore, I am delighted that the restarting solemn trials working group, which is led by the Lord Justice Clerk, has made such swift progress. As you are aware, the group has identified the steps that are needed to enable a small number of trials to take place in Edinburgh and Glasgow in July, using a different approach in each court. Although that will involve small numbers at first, the aim is not really to get a handful of trials started as quickly as possible; it is to establish a sustainable approach that can allow as many trials as possible to progress in a way that is consistent with a fair justice system while protecting the health of all those involved.

The operation of the Scottish Courts and Tribunals Service is a matter for the Lord President. There may be questions today that are

more properly for him—or, indeed, for Lady Dorrian, as the chair of the working group—to comment on. However, I will aim to provide the committee with as much detail as I appropriately can at this time. As ever, I look forward to taking your questions.

**The Convener:** Thank you. We move to questions.

**James Kelly:** Good morning, cabinet secretary. You referenced the announcement by Lady Dorrian of the plans to restart a small number of High Court trials in July. What work needs to be done to build on that announcement in order to get more High Court trials up and running?

**Humza Yousaf:** James Kelly asks the most pertinent question on the entire issue. The operational aspects are exactly the focus of the Lord Justice Clerk’s working group. It is looking at that and examining the issues, such as what has to be put in place in relation to social distancing, what we can do in relation to empanelling jurors—can we do that remotely?—and how we can ensure that the two-court system in Edinburgh and the three-court system in Glasgow work effectively for the people involved in the trial process. We have to allow that work on the operational aspects to take place.

What is not being talked about as much, but which is really important, is people’s psychology in it all. I think that, after 10 weeks of lockdown and a fair degree of anxiety about going out even to the supermarket, let alone being called up for jury service, there will be a fair bit of anxiety if somebody gets a notice to serve on a jury—to come forward for empanelling—and we must be cognisant of that. As well as advice on the public health aspects, we are looking at how we can feed in some behavioural science and psychological input to the work of the group that Lady Dorrian is chairing.

The shorter answer to James Kelly’s question is that it is only when we start progressing jury trials and see what issues need to be addressed that we will know what more we need to do to get more trials up and running as swiftly as we can.

**James Kelly:** Thank you, cabinet secretary. I am interested in your view on the evidence that we heard earlier from Ronnie Renucci. He put forward the view that more use could be made of the existing court estate to get more trials up and running. He gave an example in Glasgow, where muster rooms for jury members could be used to facilitate more trials. What is your view on that?

**Humza Yousaf:** I have great respect for Ronnie Renucci, both as a professional and for the work that he does for the Scottish Criminal Bar Association. The work that he has done and the input that he has given the Government have been

very constructive. Ronnie is a member of Lady Dorrian’s group, and I do not doubt that he is feeding some of that thinking in. I am sure that the Scottish Courts and Tribunals Service will give it due consideration, coming from Ronnie.

In a call to the Lord President and Lady Dorrian last week, we spoke about that issue. They are leaving no stone unturned in order to facilitate the resumption of court business in both solemn courts and others. I am certain that every aspect of the physical court estate—and other venues outside the court estate—will be explored to see what is possible, as part of a potential solution.

In short, whatever constructive ideas Ronnie Renucci and others have, I am confident that Lady Dorrian and colleagues at the SCTS will give them due consideration.

**John Finnie:** My question is about the backlog of solemn trials. You referred to the figures as “stark” and “eye watering”. Eric McQueen, the chief executive of the Scottish Courts and Tribunals Service, advised us that the backlog is likely to exceed 1,800 by August of this year and could exceed 3,000 by March of next year. He explained that, with social distancing in place, the courts’ capacity to hold trials is cut to a third. Do you agree with those estimates and, if so, what are the implications for both victims and the accused?

**Humza Yousaf:** That is a really good question, and I thank Mr Finnie for asking it. There has been some back and forth and a fair bit of discussion about the numbers that the Scottish Courts and Tribunals Service has cited, and there has been some disagreement about whether those figures are a true estimate.

As the Cabinet Secretary for Justice, I want as much clarity and evidence about the true extent of the backlog as possible, so I am pleased that the Scottish Courts and Tribunals Service is working with the Scottish Government’s justice analytical services division—which you will know about, because its members have been in front of the committee on many occasions—and has agreed to work on the modelling of the backlog in some detail. When that modelling is finalised, I see no reason why I will not be able to ensure that it is made public and made available to the committee—and, indeed, to stakeholders in due course. That work is under way.

In relation to the impact on victims, I chair the victims task force and speak regularly to victims organisations. I am due to host a virtual victims task force meeting on 10 June, and I have read some of the papers relating to it. One of the papers that we will be examining and exploring—again, I am sure that we can make it public—is on the impact on victims thus far, and it makes for

pretty stark reading. As you will have heard from Kate Wallace in quite a lot of detail, there is already a level of anxiety among victims about a court appearance, and that has now been exacerbated by the fact that there could be—let us not beat about the bush—a fairly significant and lengthy delay to the trial.

Equally, there is an impact on the accused. The number of people who are held on remand in prison is beginning to increase again, and that and the amount of time for which they are being held on remand give me cause for concern. I am particularly concerned that, at a summary level, people might be being held for longer than their sentence, which does not seem right or in the interest of natural justice. For the accused, there is an anxiety about getting their case heard, and there are some genuine concerns in that regard.

We will move as swiftly—but, importantly, as safely—as we can, and we will look to use technology when we can to ensure that we make progress and that the anxieties of the accused, complainers and witnesses are mitigated.

**John Finnie:** On 21 April, you stated that work would focus on four options for dealing with the growing backlog, without resorting to judge-only trials. That was very clear. The chief executive of the Scottish Courts and Tribunals Service has warned that those options are unlikely to have

“a material impact on the backlog”.—[*Official Report, Justice Committee*, 19 May 2020; c 23.]

Do you agree with that statement?

**Humza Yousaf:** Generally speaking, the work that we will do to resume trials will make an impact on the backlog. However, it is clear that we will need to do—and we are doing—a separate piece of work alongside the restarting of solemn trials and, indeed, court business about how we address the backlog. A backlog already existed pre-Covid-19, but it has been exacerbated by the fact that court business has not been able to resume to any great degree.

As the committee knows, we are looking at other options, but they will not be in place by July. In your conversation with the previous panel, reference might have been made to smaller juries or adjusting sheriffs’ sentencing powers, which could also have an impact in addressing the backlog. However, we—along with the SCTS—are now going to focus on summary-level crime. Although solemn High Court trials involve more serious cases, they represent only a very small proportion of the overall backlog, so a fair bit of work is simultaneously going into addressing the backlog of summary business.

11:30

**The Convener:** Do you agree with the SCTS chief executive that judge-only trials should remain an option to clear the backlog? Why are you responding in the way that you have indicated?

**Humza Yousaf:** It is fair to say that Eric McQueen would reiterate my view, although he speaks for the Scottish Courts and Tribunals Service and I speak for the Scottish Government. I have made my position as clear as I possibly can, both in my most recent statement to Parliament and subsequently. We are not exploring the option of judge-only trials, no work is going into that option and I cannot feasibly see its being brought back for consideration at all. Even if there were a desire and a will to do so, which I do not think there is, Parliament has made its position on the matter pretty clear, and I respect Parliament’s voice in that regard.

As I mentioned, we are looking at other options such as having a smaller number of jurors or adjusting sheriff sentencing powers. Those changes would require primary legislation, but we are certainly not looking at the option of judge-only trials.

**The Convener:** Can you elaborate on the other options that could be considered? In particular, what are your views on enhanced plea discounts, in which an early guilty plea means that no trial is necessary? It has also been suggested that we should bring back recently retired senators of the College of Justice and part-time High Court judges to enable more solemn trials to be held. What is your view on that?

**Humza Yousaf:** On your latter point, that option is being actively explored by the Scottish Courts and Tribunals Service, and I am certain that it will look to speak to retired judges and see how it could potentially recruit more sheriffs. That is all under consideration, and it is appropriate for the SCTS to look at those matters.

On further discounting of sentences, we know that discounting already happens but I am wary of potentially increasing the discount further. That view comes largely from my conversations with two groups. The first is victims’ organisations—I will not go into detail, as members can imagine the concerns about further discounting from a victims’ perspective. Indeed, this committee has previously commented on the discounting scheme. The second group of stakeholders that has raised with me concerns about discounting includes human rights practitioners and academics, if I can put them into one group for a moment. They fear that an increased level of discounting could potentially put undue pressure on the accused to plead guilty to a crime because of the size of the discount, as opposed to going through a trial process whereby

they may well be found innocent. I have concerns about that option, but we will continue, in these unprecedented times, to keep the discussion going.

**Rona Mackay:** In your opening statement, you talked about anxieties for jurors and the possibility of providing psychological support for them, which is very encouraging. My question relates to the safety of restarting jury trials, with regard to social distancing and personal protection. Kate Wallace said that she was not aware of the measures that Public Health Scotland was introducing, and that she would like that information to be shared with Victim Support Scotland and the public.

Are you satisfied that the various bodies tasked with planning the resumption of trials—including the SCTS—are doing so based on the best current health advice from Public Health Scotland? Do you agree that that should be shared as soon as possible?

**Humza Yousaf:** The practical operation of the courts is a matter for the Lord President and the Scottish Courts and Tribunals Service so I should be careful about what I say. However, as a general point, I would expect our stakeholders to be getting public health input. I know from speaking to Lady Dorrian last week that she is getting Public Health Scotland input into the work that she is doing in the working group on restarting solemn trials. I know that Kate Wallace does not sit on that group, but Sandy Brindley from Rape Crisis Scotland does and I am certain that Sandy is feeding some of that information back to the other victims' organisations.

Where limited court business is currently taking place, it is happening in line with protocols on hygiene and social distancing in courts. That was agreed on 30 March between the Scottish Courts and Tribunals Service and the COPFS with input from the Law Society of Scotland. Before 30 March, there was a fair bit of discussion around PPE and social distancing. There were perhaps some teething issues at the beginning, but since then I have been satisfied with the progress that has been made.

As we begin more court business, there may well be a need for resources for things such as PPE and so on. I will continue dialogue with colleagues in the Scottish Courts and Tribunals Service about those issues.

**Rona Mackay:** Do you anticipate jurors being given plenty of information before the court date on what measures are in place, so that they know what to expect and can feel a little more reassured?

**Humza Yousaf:** Yes, I think that that will be important not just for jurors but for everyone involved in the case. That is why, in the first

instance, COPFS and the legal profession are working together proactively to identify cases where it might be more appropriate to prerecord evidence from vulnerable witnesses. They are considering whether the SCTS can begin to look at cases that have just one accused and one complainer and therefore will not need many witnesses or people to attend court. That is the right approach to take in the first instance.

Information will be very important. We are liaising with colleagues in England and Wales to see what they are doing in that regard. As members will know, jury trials have started to resume in England and Wales, so we can learn from that. To some extent, we will have to wait to see how it all pans out. We can do all the educational and informational bits and as much as we can around hygiene and social distancing, but there will still be a reticence and reluctance to get involved in jury trials that we will just have to tolerate and work through.

**The Convener:** The next question is from Fulton MacGregor.

**Fulton MacGregor:** Thank you, convener. I was just waiting to check that my microphone was not muted.

Cabinet secretary, I wanted to ask about the use of PPE in criminal trials, but as you have already covered that in your answer to my colleague, Rona Mackay, I will ask my second question.

What further steps can the Scottish Government take to reassure the Scottish public in general that it will be safe to attend court, whether as a witness, a member of the jury or on any other business? What more can we do to support the public?

**Humza Yousaf:** There probably is not too much for me to add to my previous answer. There is an element of making sure that we give as much detailed information as possible on why our court estate is safe, including on the social distancing and hygiene measures that are in place. It is also worth our doing work with the victims organisations that already play a key role, such as Victim Support Scotland and Rape Crisis Scotland, and with complainers and witnesses in trials. Of course, people were anxious about going to trials in pre-Covid days, but we should work with victims' organisations to see what additional support we can give them.

Above and beyond that, as I have said, initially, and in the early stages, we will need to understand and tolerate that, frankly, some people will be nervous when they are asked to sit on a jury trial as a juror, or, indeed, to attend as the accused, a witness or a complainer. Everyone has a heightened sense of anxiety about hygiene, so we must be tolerant of that.

**The Convener:** You mentioned that an option would be for the empanelling of juries to be done completely remotely. Would you welcome that?

**Humza Yousaf:** I certainly would. I mentioned that we are looking closely at what is happening in England and Wales and keeping in touch with colleagues and counterparts there. I am interested in seeing whether they do any remote empanelling of juries. My understanding is that, for any new trials, they are using court space that is big enough to physically empanel juries. Of course, their easing of the lockdown measures are on a slightly different trajectory.

I know that digitally empanelling juries is part of the consideration, and that is something that I would welcome. However, at the same time, and in the same way that I have caveated everything else, there may be reasons why, once we get the system up and running, we deem that not to be appropriate.

**Shona Robison:** Irrespective of whether we are talking about the justice system, the health system or any other system, everything is predicated on balancing the risks and whether we are moving too slowly or too quickly. Why do you consider that the approach to resume jury trials strikes the right balance and is happening at the right pace?

**Humza Yousaf:** What gives me confidence is that we and the Scottish Courts and Tribunals Service are getting public health input into what we are doing. The First Minister has often said that the resumption of non-Covid-related national health service procedures and activities should be done swiftly but safely. We have adopted the same mantra for all our public services. Their core business should be done swiftly because we understand the damage and the impact that delay can bring, but, ultimately, the primary consideration must be public health safety.

Also, any progress that we make has to be in line with the route map. For example, if jury trials were running in large numbers before schools were opened, there would be a particular impact on female jurors being able to attend court. Equally, if we have limited public transport and no other transport solutions—that is being looked at for the court service—that will impact on the ability of individuals who do not have a car to come to court.

I think that we are striking the right balance. We always reflect on these things and consider whether we could move more quickly but, having reflected on the issue quite carefully, I do not think that we could have done anything to move at a significantly quicker pace. I am confident that health considerations are our primary focus in getting the work up and running.

11:45

**Shona Robison:** Obviously, jurors come from a wide spectrum of society, which could include people who are more vulnerable, perhaps because of underlying health conditions. Will those issues be worked through to consider whether such people will be required to do jury service?

**Humza Yousaf:** Sheriffs and the courts already have quite a wide-ranging power to excuse people from jury service. I have asked whether that power needs to be widened to take into consideration Covid-19 impacts, and the answer that has come back thus far is no, because the power is broad enough for the courts to be able to take into account health reasons for excusal. We will keep that under consideration, but at the moment the powers of the courts allow them to take people's vulnerabilities into consideration.

**Dr Allan:** I want to ask briefly about "Scotland's route map through and out of the crisis". I do not want to ask you to predict too far into the future, but would it be right to say that social distancing will be a feature of life in Scotland's courts probably until phase 4 of the changes to the restrictions that we are all living under?

**Humza Yousaf:** The short answer is yes—based on the scientific advice, physical distancing will be the norm for all of us for quite a while, at least up until phase 4.

I will make some obvious points that I know everybody is aware of but which are worth reiterating. Although we would like to move through the phases sequentially, in the absence of a vaccine, we may have to go back before we go forward. That is the real danger—the First Minister was pretty robust on that issue in her daily briefing yesterday, after we saw disappointing behaviour over the weekend. We may have to tighten restrictions before we ease them, so we should not assume that we will progress from phase 1 to phase 2 to phase 3 and then to phase 4—we may have to go back. Therefore, it is prudent for the court service to assume that social distancing measures will be in place for quite a period to come and to plan for that.

**Dr Allan:** You have indicated that we cannot see too far into the future but, given what other witnesses have said about the backlog, and without taking away from the public health message that you have given, do you foresee any changes in phases 2 or 3 that would have an impact on the backlog? Alternatively, do you foresee very little changing in how the courts operate during phases 2 and 3?

**Humza Yousaf:** The Scottish Courts and Tribunals Service is considering each phase of the restrictions and how it might enable more court business to resume. To an extent, the route map

details what more we might be able to do as we progress through the phases. However, that raises the issue that the convener asked me about, which is that, even if all that work takes place, there will still be a considerable backlog. It is therefore important that we go into this with eyes wide open and an understanding that we will have to continue to work on the backlog, whatever it is. I mentioned that we are doing some work to examine that. John Finnie, I think, asked whether we will make that work public, and we will certainly do so. There is no easy answer or one magic solution or panacea that will resolve the issue. We can make progress through the phases, but we will have to continue to work simultaneously on the backlog.

**Liam McArthur:** Good morning, cabinet secretary. In response to the convener, you touched on some of the Scottish Government's work, specifically in relation to discounting. Lady Dorrian's group has been looking at practical considerations in reopening the courts, and the SCTS has been doing its work as well, but what else has the Scottish Government been doing on policy options since the round-table meeting?

**Humza Yousaf:** I am aware that there has been some indication of this, but, as you know, Lady Dorrian is looking at the operational aspects of resuming jury trials. As a Government, we have been looking to support that work where we can, and Anna Donald sits on Lady Dorrian's group.

The Government has been doing a range of other things as well. We have been looking at other policy options. Liam McArthur will probably remember the round table that he participated in, where there was a coalescing around a few other issues that we should explore. Those included the possibilities of having a smaller number of jurors and of altering the sentencing power of the summary court, which at the moment is limited to one year in custody. We are considering the potential to increase that to two years, or even more.

We have done a fair bit of general policy work, and we have got to the position that, if those were options that we wanted to progress, to help us with the backlog by dealing with more court business, our determination would be to use primary legislation to do that, which might involve emergency legislation. We will continue to look at the impact of Lady Dorrian's work and bring that conversation back to the legal profession, victims' organisations and so on.

Furthermore, as I have already referenced, we have been doing some work on the backlog by modelling some of the figures from the Scottish Courts and Tribunals Service.

A fair bit of policy work is going on, largely centred on the other options that we agreed to in our round table.

**Liam McArthur:** Thank you, cabinet secretary. That leads on nicely to where I want to go.

Ronnie Renucci spoke earlier about the need for legislation, should certain options be taken forward. You have just confirmed that, in relation to reducing the size of juries or extending the sentencing powers that are available to sheriffs. You suggested that that would require primary legislation, which intuitively makes sense. Can you set out the likely timetable for that? Are we likely to see any legislation prior to or during summer recess? The concern about delays in getting things up and running and about the backlog, which others have touched on, is that if we do this sequentially, more time will be lost and greater delays will result, and therefore the backlog will be greater. It would be helpful if you could set out the timeframes that you are working to.

**Humza Yousaf:** I am not sure that I can give Liam McArthur any substantial detail on that, because one or two of the options might be quite incompatible with what is being explored and examined.

For example—*[Temporary loss of sound.]*—is being supported by the Scottish Government but it is not the basis for the work that Lady Dorrian is doing, which is looking to retain the 15-person jury that we have in Scotland.

If it came—*[Temporary loss of sound.]*—and the feedback was that we should give active consideration to legislating once we had monitored how the restarting of the jury trials was going, we would bring forward primary legislation in that regard. However, that would have to come with the agreement of stakeholders across the board.

We are actively considering sheriff court sentencing powers. I know that there are concerns about that. I caught the tail end of Ronnie Renucci's evidence, which typified where some of the concerns lie. From the Government's perspective, I give an assurance that we would only ever look at the lower end of solemn trials, to see whether we could eventually bring that business into summary court business. However, again, I cannot give any clarity on when or if we would do that. It depends, first of all, on how many trials we can restart, both at summary and solemn level, with the current work that is taking place.

If we think that we have to press the button on any of the options, I reassure you that policy work is being done at the moment and that it would be quite easy for us—speaking relatively—to get the parliamentary process started.

**The Convener:** Further to that, will you put it on record that nothing that required legislation would be unduly rushed, and that that would be given due consideration? On the same theme, there has been a feeling that judge-only trials would speed things up. Would that not also require legislation?

**Humza Yousaf:** The answer to both questions is yes. First, we will not look to rush anything, but if we need to go through an emergency timetable, we will discuss that with the Parliament. The committee will be key to those considerations. If the committee, the Parliament and the Government were content, we could bring measures forward on an emergency basis, if we thought that appropriate. That would only ever be done in conjunction with Parliament and having considered its views.

In answer to the convener's second question, we had planned to make provision in legislation on judge-only trials; we heard what stakeholders and Parliamentarians had to say about that; and, as you know, we withdrew that plan. There is no intention to bring it back.

**Liam Kerr:** What are your views on the progress that has been made in England and Wales on restarting jury trials? You said in response to Rona Mackay that there are learnings for us. Will you suggest what those might be?

**Humza Yousaf:** I have had good, constructive dialogue with counterparts in England and Wales, including with Robert Buckland QC, the Lord Chancellor, in particular. Our officials work well together. There has been good sharing of information between the courts service in England and Wales and our Government officials, as well as with the Scottish Courts and Tribunals Service. If memory serves me correctly—I will correct the record if I am wrong—Lady Dorrian sat as an observer on the working group that looked at resuming jury trials in England and Wales. That shows the cross-jurisdictional sharing of information.

In terms of our own progress, we must bear in mind first and foremost that we are on a different trajectory and journey with different lockdown restrictions. We have our own route map, and anything that we do in Scotland has to be done in line with that route map. Forgive me if I am stating the obvious, but it is always worth reiterating for the record that Scotland is a separate legal jurisdiction and therefore we should only ever move at the pace that is appropriate for us.

My third point is that, although England and Wales are resuming trials, a number of those—the bulk, I think—are part-heard trials. In Scotland, we have no part-heard trials; we had concluded all our court business in advance of the Lord President's

announcement that there would be no more jury trials.

Restarting jury trials comes with its own challenges, of which the most obvious is that of empanelling the jurors.

Justice analytical services produced a short paper that outlines the most up-to-date position on jury trials in several other common-law jurisdictions: England and Wales, Northern Ireland, the Republic of Ireland, Australia, New Zealand and Canada—specifically Ontario. Out of all those jurisdictions, England and Wales is the only one that has resumed courtroom-based jury trials—at least, at the time of the research. We are not out of step in that regard, but we can certainly look at and learn from any other jurisdiction and we should be prepared to do that.

12:00

**Liam Kerr:** Rona Mackay and Fulton MacGregor asked about safety measures in court and how we go about reassuring users. I believe that Public Health England and Public Health Wales were asked to certify and formally sign off a checklist of safety guidance on measures to reopen courts. Will you be exploring that approach?

**Humza Yousaf:** It would be for Lady Dorrian and the Lord President to make a decision on that. I am confident—indeed, I know—that Public Health Scotland input is being requested and that the organisation is contributing to the working group. The question whether that results in a formal sign-off or something else is a matter that I will leave to the Scottish Courts and Tribunals Service. However, that input will be vital to any decisions that are made.

As I have mentioned, I understand that Lady Dorrian was an observer on the working group on restarting jury trials in England and Wales, so if there is learning to be had I am sure that she will be best placed to explore that.

**The Convener:** What discussions has the Scottish Government been involved in on progressing more summary criminal business? Are you confident that summary trials are receiving sufficient priority?

**Humza Yousaf:** As you can imagine, the issue has been a topic of discussion between me and the Lord President. It is worth saying that we all understand—as I am sure the committee does—that summary business will make up the vast majority of the courts' business, so there has to be a focus on that.

On the steps have been taken in relation to summary business, the convener may have seen an announcement from the Scottish Courts and

Tribunals Service as we moved into phase 1 that its intention was to begin opening courts that had been closed. That gives me a fair degree of reassurance.

It is not the case that no summary business has been taking place—plenty of essential summary business has taken place in the 10 hub courts. The current plan is to begin to open further courts—five hub courts are due to open tomorrow. The SCTS has said that it will gradually reintroduce certain core staff first, and then, when the safety and wellbeing of that core staff have been established, the service will begin to work its way through the backlog. Summary cases do not get as much public attention, but they are getting a fair degree of focus from the Government and the SCTS.

**The Convener:** That completes our questions. I thank the cabinet secretary and his official for attending today's evidence session.

The next meeting of the committee will be scheduled for an appropriate date, which will be notified in the *Business Bulletin* and via the committee's social media. In the meantime, any follow-up scrutiny issues will be dealt with by correspondence, which will be published on our website.

As previously agreed, the meeting will now continue in private.

12:04

*Meeting continued in private until 12:34.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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