



Information for Practitioners

Restarting Solemn Trials in the High Court

Sheriff Alistair JM Duff, Director of the Judicial Institute

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Foreword

This paper has been drawn up for the information of practitioners appearing or instructing in solemn trials in the High Court from July 2020.

It is based in large part on a Briefing Paper which was initially drawn up to support those judges who were due to conduct the first tranche of solemn High Court trials commencing on 20 and 21 July. It has now been revised to reflect lessons learned from those trials, mock trials which preceded the actual trials and also because of related developments.

The paper is seen as necessary because, for the foreseeable future, solemn trials will be innovative in two entirely unconnected respects:-

- (1) They will take place against the background of the challenges posed by the COVID-19 health pandemic and will require to take account of physical distancing restrictions, not least in terms of the location of the jury;
- (2) In solemn trials in the future new procedures will be in place (a) to provide the jury at the outset with a written document advising them of their duties and responsibilities; (b) to give the jury, before any evidence is led, oral directions on the general principles applying to all solemn trials and, in some cases, directions on matters relevant to the particular trial; and (c) then to give the jury those directions in written form, once more before any evidence is led.

There is every likelihood that the circumstances in which solemn trials take place will develop over the next few months, in which case this paper can be seen as a bespoke, unique paper intended to address only this moment in time. It will require amendment.

1. COVID-19 considerations

Background

On 12 May 2020 the Lord Justice General established a short-term working group, led by the Lord Justice Clerk, to consider the practicalities of recommencing trials by jury as and when public health guidelines permit such a move. On 27 May 2020 the Lord Justice Clerk announced that the intention was to conduct two High Court Trials, one in Glasgow and one in Edinburgh during the week commencing 20 July.

The way jury trials are conducted is going to be a significant challenge. There will be a need to ensure that jurors are safe and confident that physical distancing is adhered to in terms of government guidance. The principles of a fair trial and open justice must be preserved.

The model

The Lord Justice Clerk announced on the 27 May 2020 that the anticipated model for running the two initial trials would be as follows:

“We will use a three-court solution in the High Court in Glasgow, with the jury using the public gallery in the trial courtroom. In Edinburgh, we hope to use a 2-court solution, allowing the jury to view the trial remotely from a separate courtroom.”

To meet this model courtrooms in Edinburgh and Glasgow were identified as further explained below.

Jurors

The normal period of notice for citing jurors is 6 weeks. For the trials that are due to commence on 20 July in Edinburgh and 21 July in Glasgow, due to a new bespoke process for citing jurors that had to be developed, citations were issued on 12 June 2020 to allow 5 weeks’ notice. Jurors continue to be cited each week for trials commencing in the weeks following 20 July.

To cite jurors there are a number of considerations.

Confidence

The safety of jurors is paramount. It is crucial to communicate to jurors the steps SCTS has taken to ensure their safety and that social distancing can be observed. This will increase the likelihood of jurors attending. This needs to be the principle that is at the forefront of all considerations. For jurors, SCTS will provide new details of each step in their journey from citation through to the ballot and arriving at court until the oath is administered.

Legislation

[Section 85 of the Criminal Procedure \(Scotland\) Act 1995](#) governs the citation of jurors.

Court Jury System

Citations and associated lists are produced by the jury system which is maintained by CS consultants. The system produces a 2 page citation.

Citations for the new jury

A new bespoke citation has been issued to jurors. A jury information sheet has been developed which has been sent to jurors which sets out what to expect when they attend and details the ballot procedure

The current citation gives jurors an option to apply for excusal using postal service, but this option has been removed as it adds time to the process and requires greater staff involvement. In the new process applications for excusals should be done via email or telephone, which allows for staff to administer them from home therefore reducing the footfall in SCTS buildings. The new bespoke citations, including the jury information sheet, are attached in [Appendix A](#).

It is proposed that a leaflet be sent with the citations to set out what SCTS has done in terms of safety and what we would ask potential jurors to do. SCTS has drafted a leaflet entitled: “Jury Trials – Your Safety is our Priority”. This SCTS leaflet may be amended and added to in the light of feedback from the first round of citation. This leaflet is also in [Appendix A](#).

Citing of the Jury

The citations have been sent out by the usual practice of first class post.

Numbers to be cited

The statutory requirement for numbers of jurors attending for ballot is not to be reduced. To mitigate possible requests for excusals the number of jurors to be cited has been increased meantime, but will be kept under review.

Responses/Excusals

Jurors will be asked to respond to their citations by telephone or by email. SCTS will require to obtain a mobile telephone number for the juror at this stage. The telephone number is essential as it will allow SCTS to have direct conversations with and/or text message these jurors later in the process.

Jurors are directed to the [Guide to Eligibility and Excusal](#) on the SCTS website, which details those who are eligible for excusal. Given the current circumstances with COVID 19 it is suggested that it may also be appropriate to excuse:

- Those with COVID 19 symptoms
- Those who are shielding or self-isolating
- Those with underlying health conditions or other vulnerabilities

- Those who have caring responsibilities and/or are co-habiting with others who are shielding, or who have caring responsibilities for other vulnerable individuals
- Those who have childcare difficulties
- Key workers

SCTS would have to be strict with the excusals and ensure that only those who fall within the guidelines are excused. SCTS may have to look sympathetically on those who are self-employed or those returning to work after lockdown. The excusal of those with caring responsibilities in particular may require careful scrutiny.

SCTS would aim to limit the number of excusals to 70 of those cited. Experience suggests that the number of those who do not respond in non-COVID circumstances is in the region of 40. From those left, SCTS ought to be able to secure the attendance of 30 for the ballot.

The responses would be recorded on a spreadsheet, this would allow SCTS to use filters to obtain lists of those excused and those who are expected to attend.

A Question and Answer document would need to be produced for staff dealing with the responses and excusals detailing information about expenses, travel arrangements and safety arrangements.

If jurors have not responded by a given deadline a reminder letter will be sent, which stresses the importance of responding to the citation, and the vital role that jury service plays in maintaining law and order in a functioning democracy.

Advising Jurors of the need to attend

At least 2 weeks in advance of the trial, the list of responses will be checked again, and further follow-up measures taken if needed. If the number of responses saying they will participate is greater than 30 the trial will be able to run.

Consideration will be given by SCTS to updating the website to include a sketch or video of how physical distancing will be achieved, and those jurors who are going to participate could be directed to this video. This would maybe build their confidence further in the event that they are selected to attend.

If the list of responses is less than 30, there is a high risk that the trial will not be able to run as the court would have to rely on those who have not responded turning up on the day. To mitigate this risk the number of responses will be closely monitored and reminder letters issued if necessary

Further considerations for Jurors

Travel Expenses

Currently jurors are advised that public transport is the preferred option to get to court. In the current situation, however people may not be confident in using public transport. The clerk will advise jurors, who are required to attend that they can bring their cars and that parking charges will be reimbursed as well as mileage. For non-drivers taxi fares will be reimbursed. This may be costly as the pool area for jurors for Glasgow stretches from Cumbernauld to Greenock and for Edinburgh it includes East Lothian and Midlothian.

Food and Drink

Lunches will be provided to jurors through onsite catering, and this will be a sandwich lunch.

2. The new jury directions

Background

In discussion between the Lord Justice General, the Lord Justice Clerk and the Jury Manual committee it has been agreed that from July 2020 jurors should be provided with certain materials in writing at the start of the trial.

These are (1) a written note of their duties and responsibilities and (2) a document setting out the general directions which apply in every case, as well as, if appropriate, specific directions which should also be provided in writing and read to the jury at the same time, depending on the circumstances.

The introductory remarks in [Appendix F](#) to this Briefing Paper setting out what might be termed housekeeping arrangements and explaining the procedure should have reinforced what is in the note of duties and responsibilities ([Appendix C](#)) and should be followed by the reading of the written directions.

The written directions are at [Appendix G](#).

Parts A and B of the written directions contain the directions which were formerly given in the charge before turning to the indictment itself.

Part C of the written directions are additional documents containing specific directions which should also be provided in writing and read to the jury at the same time, depending on the circumstances. They can also be printed off and handed to the jury in each case.

Whether it will be possible in a particular case to provide any further material to the jury in advance of the evidence, such as a definition of the crime(s) charged, will depend on the circumstances.

In [Lyttle v HMA 2003 SCCR 713](#) it was held that nothing said in the opening introductory remarks can be prayed in aid to make good a deficiency in the charge but in that case the court was not dealing with information clearly encapsulated in writing and approved by the Jury Manual committee; the information given to the jury was only labelled as introductory remarks and was not highlighted as legal directions which the jury had to follow; the directions now to be provided in writing should be incorporated into the eventual charge by reference (and in some cases recap) in due course so that the issue of possible discrepancy raised in *Lyttle* will not arise: and the context can be fully identified.

NOTE:-

Recapping of written directions

The Jury Manual is presently being revised to take account of the new procedure for giving the jury pre-evidence and written directions. The new section of the Manual will say the following:-

“It is anticipated, pending any decision of the Appeal Court to the contrary, that there will be no requirement to repeat at length all of the written directions during the course of the Charge. However,

1. *The jury should be reminded that they have copies of what was delivered earlier and it should be stressed that they must follow both those directions and what is said in the Charge itself.*
2. *Judges and Sheriffs should be alive to the fact that the conduct of the trial, the exact nature of the issues raised and perhaps even the length of the trial will mean that some repetition, refinement or elaboration is needed of what was said at the start, both in relation to the more general directions and any further matters such as, for example, concert, prior statements, special defences or dockets, as the case may be. It should always be*

borne in mind that the directions as a whole must be tailored to the circumstances of each case.

3. *The evidence and submissions of the parties will doubtless inform the extent to which anything more need be said in relation to matters touched upon in the introductory directions. In a Moorov case, for example, directions on corroboration would have to be very specific. In some cases, such as an assault where the only issue is self-defence, the introductory directions on corroboration may suffice. Where corroboration is an issue, such as in a wholly circumstantial case or one where corroboration of a witness was to be found in circumstantial evidence, more will be required. Juries will still have to be told, for example, that corroboration is something which confirms or supports the principle source of evidence, assuming there can be said to be one.*
4. *Whatever requires to be repeated or elaborated upon, reference should still be had to the suggested general directions which still appear at the end of this part.*

In summary, at all times it should be remembered that the introductory directions are just that. While they cover much of what is to be found in the opening part of a Charge they will not be sufficient of themselves in every case.”

3. The trial, including the new jury directions etc

Introduction

The following provides a broad picture of how a COVID affected trial will proceed with the new jury procedures also in place:-

Route map for commencement of jury trial

Day One

- Clerk calls all cited jurors to confirm they have no difficulty in attending.
- Case calls with no jurors present but everyone in court and judge on bench
- Plea tendered
- Judge deals with any preliminary matters
- Jury balloted remotely
- Judge considers making an order under (Section 4(2) of the Contempt of Court Act 1981 to restrict reporting
- **Edinburgh Trials only meantime:-** Judge considers making an order under paragraph 2(3) of schedule 4 of the Coronavirus (Scotland) Act 2020 directing that the jurors need not physically attend the trial courtroom but will attend by electronic means , namely by a television link between [Courtroom X] and the trial courtroom.
- Balloted jurors plus 5 (10) are called by clerk telling them to turn up next day

Day Two

- Balloted jurors attend court
- Glasgow – jurors are directed to Court 5, the jury deliberations room, where they wait
- Edinburgh - jurors are directed to Court 3, where they wait.
- Clerk addresses jurors, deals with excusals and provides necessary logistical information including re COVID safety
- Each juror given a copy of the Duties and Responsibilities leaflet by clerk
- Judge comes on the bench, parties all in court
- Edinburgh - link to court 3 activated
- Glasgow – jury comes into court 4
- Case calls, not guilty plea confirmed
- Indictment and special defences read
- Jury sworn Questions to jurors re impartiality
- Adjournment – for jury to get comfortable and for any problems to emerge
- Deal with any jury excusal issues which arise
- Reconvene with jury and substitute any juror(s) as required, with suitable questions and further adjournment if necessary
- Excuse the unempanelled jurors with details of any further commitment as the case may be
- General directions which apply in every case are distributed by clerk or by jury attendant. This may also include extra directions specific to the case, eg concert, more than one accused

- Judge introduces the case and procedure to the jury including giving COVID-19 reassurance as required
- Judge gives general directions which apply in every case plus any relevant extra directions specific to the case
- Evidence commences.

4. Detailed description of the new process

Court room requirements

A. Edinburgh: Two Court Model

As previously stated, the courtrooms to be used are as follows:

Court 1 – will be the trial court and will contain the Judge, Clerk of Court, Accused, Counsel and Advocate depute, Witness, and families.

Court 3 – The jury (same area used as the Jury Room for deliberations)

Currently in Edinburgh the family will be able to view from within the courtroom (restricted number) and the media from another viewing room. Options are being considered in respect of remote viewing but these are not ready for the trials on 20 July

The technology requirements would be:

A live two way visual and audio link would be required from Court 3 to Court 1. Court 1 would require to see all of jurors' faces. The jury would require to see the court room, in particular the witness giving evidence, the accused and productions that are shown in court. The two way audio is needed to allow communication between courts.

A live two way visual and audio link would be required from Court 3 to the further accommodation selected to allow for the ballot to take place.

B. Glasgow Saltmarket: Three Court Model

As previously stated the courtrooms to be used are as follows:

Court 4 - will be the trial court and will contain the Judge, Clerk of Court, Accused, Counsel and Advocate depute, Witness and Jury (the Jury will be in the public Gallery)

Court 5 - will be the Jury Room for deliberations

Families/Media – Specific room with live link to the trial court is set aside for families. Media will access the trial remotely (WebEx).

The technology requirements would be:-

A live two way visual and audio link would be required from Court 4 to the further accommodation selected to allow for the ballot to take place

A one way visual and audio link would be required from court 4 to court 6 to allow the media and the public to view.

All live links will be able to be disconnected instantly by the clerk of court.

The Ballot

A new process for balloting jurors remotely has been developed. This new process will reduce the number of jurors having to come to court by approximately 50%.

The new process is supported [by Act of Adjournal \(Criminal Procedure Rules 1996 Amendment\) \(Jury Ballot\) 2020/200](#) which comes into force on 19 July 2020 – see [Appendix B](#).

To allow the jury to be balloted in their absence the following procedure will take place:

Day One

- I. On the morning of day one, between 9.30 and 12 noon, the clerk of court will phone potential jurors to ensure that they are available to attend for jury service; those available will be placed in the ballot bowl.
- II. The case will then call in open court at about 12.30 hours.
- III. Judge deals with any preliminary matters, such as tendering of pleas, late notices or lists of witnesses, S67 notices etc.
- IV. The balloting stage of the trial will be an opportunity for the judge to identify with parties the topics which will require to be the subject of written direction in addition to those which apply in all cases (see below Day two XVII).
- V. Parties will be asked by the judge whether this case is one of high profile that may require extra substitute jurors, more than five. If so, the court may, of its own accord or on the application of parties, direct that the reserve list be increased to a maximum of 10 jurors.
- VI. Fifteen names ("the first list" plus five or more substitutes ("the reserve list") are drawn by the clerk.
- VII. Judge considers making an order under [Section 4\(2\) of the Contempt of Court Act 1981](#) to restrict reporting otherwise the media could report that a jury in the case has been balloted. This could alert the jurors to the case that they are presiding over and they could carry out research as they have not yet been directed by the court not to.
- VIII. **Edinburgh trials only meantime:-** Judge considers making an order under [paragraph 2\(3\) of schedule 4 of the Coronavirus \(Scotland\) Act 2020](#) directing that the jurors need not physically attend the trial courtroom but will attend by

electronic means, namely by a television link between [Courtroom X] and the trial courtroom. The following wording is suggested:-

“By virtue of paragraph 2(3) of schedule 4 of the Coronavirus (Scotland) Act 2020, having given all parties an opportunity to make representations, the court considers that a direction under paragraph 2(3) will not prejudice the fairness of proceedings or otherwise be contrary to the interests of justice, and therefore directs that the jurors need not physically attend the trial courtroom but will attend by electronic means , namely by a television link between [Courtroom X] and the said trial courtroom”.

- IX. The clerk of court will then telephone the balloted jurors telling them to attend the next day. It will therefore be necessary for the trial judge, during the ballot procedure, to ascertain the time at which those selected will require to attend.

Day Two

- I. The clerk would require to speak to all 20 or 25 balloted jurors as normal in the allocated accommodation area, which will vary between the Glasgow and Edinburgh models. The clerk will cover all COVID related and logistical issues.
- II. Jurors will each be given by the clerk a copy of the document “Your Responsibilities as Jurors” – see [Appendix C](#).
- III. The judge will come onto the bench. Parties will confirm case is proceeding. Judge will ask for jurors to be brought into court (Glasgow) or to be connected by audio/video link (Edinburgh). For Edinburgh the judge may want to ask the jurors if they can see and hear proceedings effectively.

- IV. At this stage the judge may want to thank the jurors and substitutes for attending and explain what is about to happen.
- V. The case will be called and indictment plus special defence (if any) read, and the jury oath administered.
- VI. The judge will then pose the impartiality questions. A suggested form of words is at [Appendix D](#).
- VII. Adjournment during which jurors are given copies of indictment and special defence (if any).
- VIII. Deal with any jury excusal issues which arise.
- IX. Reconvene with jury and substitute any juror(s) as required, with suitable questions and further adjournment if necessary.
- X. If a substitute is required, the juror will be excused and the substitute chosen from the reserve list (in the order in which their names were drawn) and sworn as usual. It may be that under the circumstances, the substitute should be asked, before the charges are read, if there is any good reason which would require excusal. All these people will have been in the same room and heard all that was said to the 15 original jurors.
- XI. Excuse the unused substitute jurors with details of any further requirement as the case may be.
- XII. General directions which apply in every case are distributed by clerk or by jury attendant. This may also include extra directions specific to the case, eg concert, more than one accused.
- XIII. At this stage, a new procedure will be followed which has been devised on the instructions of the LJG and LJC.

- XIV. The judge will give his introductory remarks a suggested version of which is set out in [Appendix F](#). This will include the judge giving COVID-19 reassurance as required. Appendix E contains the original suggested form of words. However it may be that the judge would think it appropriate to say nothing or at least much less in which case a suggested form of words is contained in Appendix F.
- XV. Thereafter, the judge will give the written directions which are set out in Parts A and B of the document at [Appendix G](#).
- XVI. In some cases it may be appropriate to give written directions at this stage on additional topics such as dockets, special defences, consent etc. These are set out in Part C of the document at Appendix G. Since all these directions are contained on pre-printed sheets and each member of the jury will be given a copy prior to the judge referring to them, it will be necessary prior to the start of the trial to have selected the appropriate collection of sheets for distribution.
- XVII. In addition the judge will make reference to the document “Your Responsibilities as Jurors” ([Appendix C](#)) a copy of which the jury will also have been given on arrival.
- XVIII. The Crown will call their first witness.
- XIX. The trial will then proceed as normal.
- XX. Note:- if during the trial a “new” event occurs, eg the first time a production is shown on the document camera, the judge may want to check with the jurors that they can see the image. It is thought that it should be the judge who does this, rather than asking (eg) the Advocate Depute to do so.

Jury breaks and lunches

Jurors will need the opportunity to have a fresh air break during any court breaks, as the proposal would mean that they jury would not be seeing any natural daylight for the duration of the day they are in court. Essentially the procedure in respect of breaks will not be changed, it will remain as it was pre-COVID, but with physical distancing measures in place. Smokers will be permitted to go for fresh air or a smoke during the court breaks. They will be accompanied by a jury minder.

Lunches will be left in the “Court jury room” or nearby so that they can be accessed by the Jury. The “Court Jury room” will need to have ready access to toilets. This can be achieved by using the toilets in the current jury retirement rooms which are next to the courtrooms to be used, there will need to be some form of security in this area. This may be SCTS employee(s) or contracted security officer(s).

Deliberations

Deliberations would happen as normal with the jury minder being stationed outside the “Court Jury Room”. If the jury had a question or were ready to return a verdict, the jury would knock on the door rather than ring any buzzer.

All legal text books would need to be removed from the “Court Jury Rooms”. In Edinburgh, the two way live link to the court jury room would need to be switched off when the court is not sitting.

5. The Glasgow Model: Lessons Learned from the Mock Trial

The jury

The jury were located in the public benches appropriately socially distanced in marked and numbered seats.

Visibility and Sound

The jurors sitting in the far right of the public seating (i.e. on the left-hand side of the court looking from the bench) had a large TV monitor in front of them which prevented them having a clear line of sight to the witness giving evidence though they could see the witness on this screen.

On enquiry at the end of the trial, these jurors did not think that this had any effect on assessing the witnesses.

The monitor may be re-positioned further into the public benches for the real trials. It is not clear if this will improve the capacity of the jurors to see the witness directly.

The jurors raised no issues with visibility or acoustics. The jurors were able to see the witnesses and accused in the same screen view.

Jury entering and leaving the court

Bringing the jurors in and out of court took longer than normal. They had to be taken in and out in three batches (6, 6 and 3) and in the correct order (furthest away in the court first in and so forth and so on).

Remote sound

Counsel moving around when questioning witnesses (rather than remaining at the lectern and microphone) affects the sound quality of those following the trial on Webex. Such movement should be discouraged.

When the verdict was delivered those following the trial remotely had difficulty hearing the voice of the spokesperson. The clerk's microphone was distorted and remote listeners could not hear the verdict being read over and confirmed. This should all be readily sorted prior to the real trials.

Some of the microphones used in the court are apparently very sensitive and may pick up private conversations not intended to be heard by remote observers. This should be checked and if necessary rectified or parties should be warned.

Speeches

Counsel delivered their speeches at the left-hand (viewed from the bench) corner of the dock, near to the barrier where the public are separated from the court users. There was no microphone (or lectern) at this part of the court which could make it more difficult to hear speeches, particularly so for those following the trial remotely. It is recommended that a microphone and lectern be placed there, or somewhere suitable, for future cases.

Health and Safety

None of the jurors chose to wear a mask. They were advised at the start of the trial that the wearing of a mask or gloves was discretionary. Masks, gloves and hand sanitiser were made available to the jury.

Cleaning the court

The judge advised the jury that the court had been industrially cleaned and would be cleaned every night and that the witness box would be cleaned after each witness had

concluded their evidence. The macer had volunteered to do this and did this in view of the jury. The cleaning regime is a confidence builder for the health and wellbeing of jurors as well as being a preventative measure for coronavirus.

Arguably the lectern/microphone should have been cleaned between examination in chief and cross examination and re-examination and before the next witness. This was not done during the mock trial. SCTS are aware.

The Advocate Depute and defence counsel presented speeches from the same corner of the dock, leaning on it and placing papers there. Arguably this should be cleaned between speeches. SCTS are aware.

Note:- The above has been superseded. SCTS advises that witness boxes and docks will be cleaned early morning and providing no body spillage occurs this provides 15 hour protection. Day cleaners will undertake an additional wipe down of touch points during the court lunch break. However wipes will be available if any witness or legal representative wishes to wipe down surfaces near them.

Label productions

The jury was told as part of the judge's preliminary remarks that witnesses and the jury would not be required to handle or inspect labels at close quarters. The macer who was gloved and masked would handle and show any label productions to the witnesses. This was done for the one label referred to in evidence. The judge asked the jury whether they could see the label and, following a number of indications that there were some difficulties, the macer at the Crown's invitation placed it on the imaging device which resolved the problem, although the label had to be shown sideways due to its size.

Documentary productions

The mock trial had no documentary productions so that this aspect of trials has not been road tested. There may be a problem when documentary productions have to be read by jurors by being displayed on a large screen. It is desirable that the

distribution of paper copies, with associated handling, should be avoided, particularly where there are a lot of documentary productions. Consideration should be given to this issue. One possible solution might be the provision of court iPads to view documents (if this is technically possible).

Consideration should be given to how the jury should be provided with joint minutes and other hard copy documents. Joint minutes should not be distributed by being passed from one person to the other (as now). Nor should the macer go into the public space to hand them individually to the jury. This needs to be carefully thought through.

Toilet breaks

Advice on toilet breaks is best given by the clerk and not the trial judge. Such advice would include breaking off deliberations when a juror requires to use the toilet facilities, where the toilets are located and any information on the COVID toilet cleaning regime (if that is necessary). This is best done by the clerk as part of the informalities prior to the ballot (so as not to draw undue attention to it).

Accused's exit from the court in the event of an acquittal

The accused should be directed and required to leave the dock through the side door (witness door) to avoid the accused making his way to the door of the court through the public benches.

Social distancing

There were no apparent markings for observing social distancing on counsel and instructing solicitor's bench. On occasions it looked though the noter/instructing agent were too close to the Advocate Depute and defence counsel respectively. Markers could be affixed to the court table to help participants there to observe social distancing. This would engender juror confidence.

Consideration should be given to what should be done when counsel and instructing solicitor require to consult with the accused. This is normally done in close proximity

with lowered voices. Social distancing appears not to be observed but of course requires to be observed. Possibly the solution is to adjourn the court for this to be done rather than risk an obvious breach of social distancing.

Juror confidence building

The judge took some time in advance of the trial to draft some health and safety remarks to the jury. These remarks made before the preliminaries (presumption of innocence, standard of proof, no internet searches and social media posts on the case etc.) were intended to build the confidence of the jury that their health and safety is a priority. These preliminary remarks should be refined and issued for delivery to all judges conducting solemn trials.

5. The Edinburgh Model: Lessons Learned from Mock Trials and from the First Trial

The jury's perspective

The Director of the Judicial Institute took part in one of the mock Edinburgh trials as a juror. These are his comments on the screen view available to the jury.

The split screen showed in the four quadrants:-

Quadrant 1	Quadrant 2
<p>Accused and, when examining, the AD and defence counsel. The dock escorts could also be seen, plus a large part of the public benches. The accused was a very indistinct blocky figure. It was impossible to form an impression of her. This could be a real issue in some trials.</p> <p>As a result of recent Appeal Court decisions, if there is CCTV footage which allegedly shows the culprit doing things, the jury is entitled to look at the footage, look at the accused and make a comparison for themselves to determine if the accused is the person shown. Such an exercise would be absolutely impossible with the poor quality of the camera image here.</p> <p>In addition, the accused seemed a rather irrelevant adjunct to the proceedings. The AD and defence counsel were reasonably visible and in better focus.</p> <p>However the whole image, viewed holistically, was quite “busy” and, as mentioned above, the accused seemed marginalised, which is a pity because the trial is all about the accused.</p>	<p>The witness box. This was a triumph. The image of the witness was very clear. I could see every facial impression or tic, plus his body language. The audio was crystal clear.</p> <p>During speeches the lawyers need to be told where to stand and not to move. The AD was fine but defence counsel was totally off screen until I raised the issue. I believe there were markings on the floor. Counsel need to be told to use them.</p>

Quadrant 3	Quadrant 4
Initially a sign saying “Quiet Please. Court in Session” with the Scottish Courts logo. It transpired that this was the feed from the document camera. That could perhaps have been explained at the start. The shiny ever present sign was a bit distracting. Could it not be switched off when not in use?	<p>Overview of the courtroom which seemed to be able to be switched between a very wide angle showing the entire court and a tighter zoom showing less of the court. The only point at which this screen performed a specific, useful function was when the witness was asked to identify the attacker and pointed to the accused. On the top right screen I could see that he was pointing. On the top left screen I could see the accused but the only way I could tell he was pointing at the accused was by looking at this overview image.</p> <p>Otherwise this image gave the jury an overall impression of the court which I think is important because it contextualises all the other images. But, could this screen, or the witness box screen not be used for a camera showing a close up high quality image of the judge when the judge is addressing the jury, for whatever reason? If the judge’s camera was located in front of, above or even within the jury video wall then the jury would get the sense of the judge looking at them when speaking. At the moment the judge just talks into the ether, not apparently looking at the jury, which is very unengaging.</p>

The image below provides an impression of what the jurors see in the four quadrants:



Decorum

Everyone has to realise that, if the video link is live, the jurors can see the court and those in court can see the jurors on individual screens in high definition colour and quite close up. Those in court should not be lounging around, drinking coffees or whatever. Meanwhile the jurors must behave as they would if present in the court. This means no eating snacks or drinking juice etc.

Introducing the parties

If the judge, as part of the introduction, introduces to the jury the various “actors” in court – Advocate Depute (“AD”), defence counsel, clerk, macer, accused – it has to be borne in mind that the only view of these people that the jury will have at that stage, other than of the accused who has his/her/their own screen (in the top left of the jurors’ screens), is the court overview screen. All of the court personnel will only be visible to the jury as small, relatively indistinct figures. The usual practice of the AD and defence counsel turning to the jury or nodding when introduced will be of no value, probably barely visible. It may be that at least the AD and the defence counsel could be asked to stand up when introduced. Perhaps the macer could stand in front of the witness box which also has its own screen.

Audio to jury room

Everyone has to realise that if the video link to the jury room is live then it is likely that the audio is live. The microphones in the court are very sensitive. Sotto voce remarks will run the risk of being heard in the jury room. All need to be aware of that.

Generally there might be an argument for deciding that the link to the jury will only go live when the judge has already come on the bench.

Audio from jury room

During the first Edinburgh trial (with the jury in a different room) the jurors could not initially be heard responding “I do” to the administration of the oath. This was eventually resolved but better audio links should be in place in future.

More generally on audio, if jurors are to be able to communicate with the court direct from their seat (as if sitting in the jury box) the only means of communication available in the first Edinburgh trial was a single portable microphone in the jury room. That worked well when the spokesperson came to deliver a verdict. It is somewhat cumbersome otherwise, and requires a jury attendant to deliver the microphone physically (and, one is to assume, only after it has been wiped with a cleaning agent) whenever a juror raises a problem, and only when the juror has made known to the jury attendant the existence of a difficulty. A satisfactory solution requires to be found.

Copy documents and productions

In accordance with current public health guidance, documents which are to be given to the jury require to be provided for storage in court 3 at least 72 hours in advance of the trial. By calling the case for a preliminary hearing on the Friday before the trial it was possible to ascertain from parties which documents, including joint minutes, might be required for that purpose. The documents were submitted timeously and (subject to a reminder that face coverings must be used by them when doing so) the two jury attendants on duty had access to them for distribution. As the new arrangements become more familiar it will no doubt be possible to identify documents for treatment in this way when a case first calls for a preliminary hearing, or any continuation thereof. But, at this early stage, the court and parties require to be alert to the potential difficulties which would arise from non-observance of this particular guidance.

The arrangements for the trial involved witnesses being given the choice of whether to accept and wear rubber gloves when handling productions. The view of the trial judge was that there should be no option. If witnesses are to view productions they

should wear gloves, and it is therefore hoped that the SCTS Macers' Guidance will be amended accordingly.

Judge's ability to engage with jury

Following the experience of the mock trial a way was found for the clerk to zoom the court overview camera in on the judge's position, but only to a certain degree. However, from the jury perspective, the judge remained a relatively distant figure. Moreover, the images of the individual jurors are shown very clearly on the screens to the left of the bench. When addressing the jury the most natural thing to do is to look at them. Under the current arrangements that cannot be done if the judge wishes to speak direct to the camera. The judge's ability to engage with the jury is compromised by the need to address them while speaking straight ahead. The level of intimacy one might expect in a "normal" trial will never, using this method, be achievable. It is hoped that a solution can be found whereby (i) the judge can look at the jury while speaking to them, and (ii) the jury's view of the judge when he/she does so is less remote.

Also, because the judge appears to be so far away from the jury, when he speaks it was not obvious that his remarks were being directed at the jury. There is no discernible body language as there would be in a normal pre-COVID trial so without verbal cues it will be tricky for a juror to know what is happening.

If the judge uses the expression "Ladies and Gentlemen" it may not be obvious that he means the jury especially if there are female and male lawyers, macer etc. The expression "Members of the Jury" has the benefit of clarity and, incidentally, avoids any criticism based on gender stereotyping. Some judges may not like this term and may choose to adhere to "Ladies and Gentlemen" but for these remote trials it may be that using the term "Members of the Jury" is advisable.

Defence counsel or solicitor taking instructions

In the first Edinburgh trial counsel were, it seems, scrupulous in their efforts both to adhere to social distancing and physically to wipe the lectern between witness

examinations. At one point the accused wished to give his counsel instructions. There was no alternative but to adjourn for that to be done. Brief dock conversations will simply not be possible under current conditions.

On the other hand it is reported that in the Glasgow trial the accused's solicitor approached the accused to take instructions from the dock and very obviously breached the distancing requirements.

In any event, as mentioned above, there is a real risk that even whispered comments from the dock might be heard by the jury.

Counsel addressing the jury

This is best done by counsel standing in front of the witness box so that the relevant camera can show them in reasonable close up. However there is the same difficulty that if counsel looks at the jury screen he/she is not, from the jury perspective, looking at them.

Appendix A: Juror documents

Appendix A consists of the following documents:

- Edinburgh Court Jury Citation Letter
- Jury Attendance Information Sheet
- Jury Trials – Your Safety is Our Priority

JURY CITATION

Scottish Courts
and Tribunals Service



Citation Number:
Court 1

- You have been selected for Jury Service
- Your name was randomly selected from the electoral register
- You may be required to attend over several days
- If you are over 71, you have a right to be excused from Jury Service. If you wish to do so please see Excusal section overleaf
- If you have any special access or support requirements you should contact us as soon as possible. Please consult the Guide to Jury Service (See overleaf)
- If you fail to attend you may be liable to a fine of up to £1,000.

You must attend personally for Jury Service at:

Edinburgh High Court On **10 August 2020**
Lawnmarket At **09:30am**
Edinburgh Enquiries: 0131 240 6946 or
EH1 1RQ Edinburghhcjurors@scotcourts.gov.uk

WHAT TO DO NOW
PLEASE TURN OVER FOR IMPORTANT INFORMATION

PLEASE BRING THIS CITATION WITH YOU TO COURT

Sheriff Clerk

WHAT TO DO NOW

RESPOND to the Jury Citation within 7 days.

Please call 0131 240 6946 or email edinburghhcjurors@scotcourts.gov.uk. We ask that you provide us with at least one contact telephone number and if possible an email address. You will need your citation number and the court that you have been cited for (Edinburgh High Court). **If you fail to respond you may receive a reminder letter.**

COVID-19 SAFETY MEASURES. Enclosed is a leaflet “*Your Safety Is Our Priority*” outlining the measures SCTS is taking to ensure the safety of those attending for jury trials and what is expected of you. Please read this carefully.

We will contact you to explain the new process for selecting the jury which has been introduced as a result of physical distancing requirements. This process will take place the day before you will be required to attend for jury service, if you are selected. It is very important that we can contact you in the weeks leading up to the trial, to ensure that you are fully informed on when and how your attendance will be required. This will also help us to contact you should the jury trial be cancelled at short notice and may save inconvenience.

EXCUSAL If you wish to apply for exemption or Excusal from Jury Service, please read both the ‘Guide to Eligibility and Excusal’ at www.scotcourts.gov.uk/coming-to-court/jurors and the juror section in the enclosed leaflet “*Your Safety Is Our Priority*”. If you come within one of the categories noted in the guide or excusal section of the leaflet, please either complete the ‘Application for Exemption or Excusal’ and return by email along with any documents e.g holiday confirmation or medical certificate, or contact us on 0131 240 6946. Please note at this time we are not able to accept postal applications for excusal. You should do this as soon as possible.

READ the guidance leaflets carefully before attending Court for Selection

- Guide to Jury Service
- Guide to Jury Service Eligibility & Applying for Excusal
- Application for Exemption or Excusal from Jury Service
- Guide to applying for Expenses for Jury Service
- Jury Expenses Claim Form
- Jury Service Certificate of Loss of Earnings

These can be found at www.scotcourts.gov.uk/coming-to-court/jurors If you do not have access to the internet, please let us know by calling 0131 240 6946 and we will arrange for the documents to be sent to you.

JURY SERVICE - INFORMATION SHEET

This is an information sheet for Jurors who have been cited for jury service that sets out what additional steps the Scottish Courts and Tribunals Service (SCTS) have taken to ensure your safety.

The Ballot Procedure

The ballot is the approach the Court must take to choose a jury for a particular trial.

We have developed a new procedure which allows the ballot to proceed in the absence of jurors who have been cited to attend court. This procedure reduces the number of people required to attend at our buildings.

On the day of the ballot, you will be contacted by a member of SCTS staff who will confirm that your name will be entered into the ballot.

If for any reason you think your name should not be entered into the ballot, please let the member of staff know during this call. The member of staff will carefully consider the reason you give. For further information on applying for excusal or exemption from jury service, please read the Guide to Jury Service – Eligibility and Apply for Excusal document and the Jury Trials – Your Safety is our priority leaflet.

The ballot will be conducted by the clerk of court before the judge, crown, defence and the accused. The clerk will select 15 names from the ballot bowl to be the jury and a further number of names to be substitute jurors. You will be contacted by a member of SCTS staff who will confirm if you have been selected for jury service or not. If you have been selected you will be asked to attend the following day and you will be given a time to attend. It is important that you arrive at the time given to you by the member of SCTS staff.

Our Buildings

In line with Government guidance and following detailed risk assessments, we have implemented a number of safety controls within our buildings

We have introduced measures in all public areas, putting in place arrangements to help people maintain a two-metre (2m) distance. These will vary for the different locations, as buildings have various lay outs, but may include:

- Sanitising stations placed at entry/exit points.
- Systems to manage the flow of people, such as floor and wall markings, public seating marked for use or sealed off/ removed.
- Advising those entering or leaving courtrooms to avoid cross-traffic and restricting the number of people in court and in the public galleries.
- In courtrooms seats marked “not for use”, full rows of seats to be out of use, and assistance for court users to ensure they take the right seat.
- Using “one-in, one-out” systems for lift entry and exit.
- Single occupancy of multiple cubicle toilet facilities.

In addition to floor markings, we have introduced a series of posters throughout our court buildings reminding all visitors of the need to maintain a 2m distance, and to wash hands thoroughly and regularly. We have also introduced additional cleaning measures to ensure our buildings are clean throughout the day.

Our building ventilation systems use air handling units to extract stale air and replace with a supply of clean, fresh, filtered air. Our air handling units are not currently recirculating any air. Some will also have temperature controls to cool or warm air to the desired temperature.

On Arrival

Upon arrival you will be asked to do the following:

- To keep a 2m distance between yourself and others while queuing and on entering the building.
- A security officer or a member of SCTS staff will invite you to enter the building when appropriate to ensure distancing is adhered to. You will be asked to confirm that you do not have any symptoms of coronavirus - such as a high temperature, fever, continuous cough or a loss of taste or smell. You will be given a face covering, should you wish to wear one. You can also wear your own.
- Our court security officers will carry out a “hands off” bag search, maintaining a safe distance. You will need to open your bag and place items in a tray, so that security officers can check you are not carrying any items that are not allowed in the court building. You may be asked to empty the items in a tray and step back.
- You will be able to collect your belongings after you walk through the security arch. If an alarm sounds, you will need to find the item(s) triggering the alarm and remove it.
- If the alarm sounds after three attempts, the security officer will use a hand-held detector to locate the item. This means they will need to come closer to you. The security officer will explain the process and ask if you are alright with that. They will follow a special process which avoids you facing them.

Once you have passed through security you will be directed to the main reception where a member of staff will direct or escort you to the appropriate room. You will be asked to turn off your mobile phone prior to entering the room.

The Trial

As a member of the jury you will either view the trial from a separate room or from within the main courtroom. When you enter the room you will be directed to your allocated seat, you must stay in this seat for court purposes.

If you develop symptoms of coronavirus during a trial, you must alert the clerk of court immediately. You will then be excused. With physical distancing in place, other jurors will not need to self-isolate and the trial will continue.

All documents that are given to you during the trial will be disinfected and passed to you by a member of staff who will be wearing gloves and a mask. Where jurors are provided with a document, we ask that they do not share them.

Personal Protective Equipment

We will provide you with suitable face covering for you to use whilst travelling around the building. You can bring your own covering should you wish. You will be asked to remove this whilst in the courtroom.

Hand sanitiser will be available for you to use. You can bring your own if you wish.

Lunches

We will provide you with a lunch each day that you attend. This will be in the form of a packed sandwich lunch, which will have been freshly prepared and delivered to the room in which you will have your lunch. If you have any dietary requirements please inform the member of staff when he/she calls to advise that you have been selected for jury service.

Travel Expenses

If you are concerned about the mode of transport that you will use to attend for jury service you should raise this with the member of SCTS staff when he/she calls to advise that you have been selected for jury service.

Jury Trials



Scottish Courts and Tribunals Service



Your Safety is our Priority

In whatever capacity you are coming to court to take part in a jury trial, your safety is our priority. This table sets out our commitment to you, and what we ask of you, to keep everyone involved safe. The measures we have and are taking are based on the latest guidance available from Public Health Scotland.

You can expect us to:	You will be asked to:
<p>1.</p> <p>Lay out the court room so:</p> <ul style="list-style-type: none">• there is enough space for physical distancing• everyone has a clear line of sight to the other people in the hearing <p>We might need to use more than one courtroom so people can spread out. We will link them up using CCTV.</p> <p>We will ensure physical distancing in all other rooms you may need to use during the course of the trial.</p>	<p>Enter and leave the courtroom as directed by staff. This will help us make sure there is always a safe space between you and other people.</p> <p>Minimise the number of times you move around our public gallery or media seats. If you do need to move around make sure you keep a safe distance.</p>

2.	<p>Make sure there is enough space for you to keep a safe distance in:</p> <ul style="list-style-type: none"> • waiting areas • deliberation rooms • consultation/private rooms • conference rooms • video link rooms • rooms for advocates <p>Chairs will be taped up or have a sign on them to stop you from sitting too close to someone else.</p>	<p>Make sure you keep a safe distance from other people in the building. Please do not remove tape from any chairs to sit down.</p>
3.	<p>Display clear floor markings and directional signage around the building to tell you where you should wait, sit, allow others to pass.</p>	<p>Follow the instructions on the signage – it is there to keep you safe.</p>
	You can expect us to:	You will be asked to:
4.	<p>Give clear directions around the building to limit the number of times you'll need to pass people. This might include a one-way system in corridors or asking you to enter lifts and toilets one at a time. A small number of staff will be there to guide you.</p>	<p>Follow directions to minimise the amount of people you will pass by. We know this might mean it takes longer to move around the building, so please be patient.</p>
5.	<p>Make sure there is a place for you to store any refreshments and personal belongings. We will not be supplying cups or glasses to drink from.</p>	<p>Bring your own refreshments as cafes and canteens will not be open in our court buildings. Please provide your own drinking vessel, but do not bring metal cutlery. Please note that separate arrangements will be in place for jurors only.</p>

6.	Ensure that there is appropriate and regulated access to regularly cleaned toilet facilities.	Follow any instructions about the numbers allowed in toilet facilities at any one time.
7.	Make sure items such as keypads for doors and any materials to be handled are all wiped clean between use.	Avoid touching anything you do not need to.
8.	Give you hand sanitiser to use where you may not be able to easily leave to wash your hands with soap and water e.g. in the courtroom.	<p>Wash your hands with soap and water when you can. This is the most effective way of cleaning your hands. You will also be allowed to bring your own hand sanitiser in to the court.</p> <p>You will be able to wear a face covering whilst in the building but will be asked to remove it during the court hearing.</p>
9.	Clean the building regularly, following public health guidance.	Let us know if you see something you think needs cleaning.
10.	Make sure witness support is available in person or by phone.	Carefully consider who you bring with you. We understand that you may want to bring someone with you to support you on the day and you will be able to do so. We ask that you think about this in advance and bring as few people as possible.

If you are a juror:

You can expect us to:	You will be asked to:
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1.	<p>Consider any application for excusal or exemption promptly. In addition to the standard excusal categories, we will excuse you from attendance if you:</p> <ul style="list-style-type: none"> • have COVID 19 symptoms • are shielding or self-isolating <p>and we may excuse you, depending on individual circumstances, if you:</p> <ul style="list-style-type: none"> • have underlying health conditions or other vulnerabilities • have caring responsibilities and/or are co-habiting with others who are shielding, or who have caring responsibilities for other vulnerable individuals • have difficulties accessing childcare • are a key worker 	Let us know as soon as you can if you are applying for excusal or exemption
2.	Provide you with a suitable face covering.	Bring your own face covering if you would prefer to wear your own. You can wear your face covering whilst travelling around the building but you must remove it when in court.
3.	Provide you with a sandwich lunch each day and a plentiful supply of water.	Let us know of any dietary requirements in advance.
4.	Provide access to regularly cleaned, dedicated toilet facilities.	Follow any instructions about the numbers allowed in toilet facilities at any one time.

Appendix B: Act of Adjournal

2020 No. 200
HIGH COURT OF JUSTICIARY
SHERIFF COURT

Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Jury Ballot) 2020

Made
Laid before the Scottish Parliament
Coming into force

2nd July 2020
3rd July 2020
19th July 2020

The High Court of Justiciary makes this Act of Adjournal under the powers conferred on it by section 305 of the Criminal Procedure (Scotland) Act 1995(1) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Jury Ballot) 2020.

(2) It comes into force on 19th July 2020.

(3) A certified copy is to be inserted in the Books of Adjournal.

Amendment of the Criminal Procedure Rules 1996

2.—(1) The Criminal Procedure Rules 1996(1) are amended in accordance with this paragraph.

(2) In Chapter 14 (procedure at trial in solemn proceedings)(2)—

(a) in rule 14.1A(1) (minimum number of jurors for balloting jury)(3) for “present, whether in the courtroom in which the trial is to proceed or assembled elsewhere within the court building” substitute “available for balloting”;

(b) for rule 14.2(2) (balloting of jurors) substitute—

“(2) After 15 such names have been drawn (“the first list”), the clerk of court must draw a further 5 names (“the reserve list”) and where any person on the first list—

(a) does not appear;

(b) is challenged and is set aside; or

(c)before any evidence is led, is excused,
the persons on the reserve list will, in the order in which their names were
drawn, replace on the first list each such absent, challenged or excused juror
until the number required for the trial is attained.

(3) Paragraph (4) applies where the court considers that a reserve list of 5 jurors
may be insufficient to ensure the number required for the trial will be attained.

(4) The court may, of its own accord or on the application of a party, after
hearing parties, direct that the reserve list be increased to a maximum of 10
jurors.”.

CJM SUTHERLAND

Lord President

I.P.D.

Edinburgh

2nd July 2020

Appendix C: Juror responsibilities

YOUR RESPONSIBILITIES AS A JUROR

Thank you for serving on this jury. It is much appreciated by the court. By serving on this jury you are fulfilling **an important public role**. That role brings with it **serious responsibilities**.

As a juror you have taken an **oath** or **affirmation** to try the accused and to return a true verdict based **only** on the evidence you hear in court.

This means that the **fairness** of the trial depends on you following a few **important rules**. These rules are explained to you in this notice.



You need to **read, understand and follow** these rules. For that reason, you may wish to keep this notice with you at all times while you are on the jury, even when you go home in the evening.



WHY DO I NEED TO FOLLOW THESE RULES?



These rules are necessary to ensure that the trial is **fair**. If every juror does not follow these rules the **trial may be stopped**, the jury discharged and the trial may have to start again with a new jury.

This will cause **problems, and possibly distress**, for those involved in the case and will waste everyone's time and a lot of public expense.

WHAT HAPPENS IF A JUROR DOES NOT FOLLOW THESE RULES?

If a juror does not follow the rules in this notice, he or she may be in **contempt of court**. The rules are **orders of the court** and part of the **criminal law**.

THE RULES YOU MUST OBSERVE

LOOKING FOR INFORMATION ABOUT THIS CASE

You must not **search** for any information at all about your case on the **internet** or **anywhere else** during the trial.

This means you **must not look** for any information about:

- any **person** involved in the case. This means any **accused, witness** or anyone associated with the case.
- the **crime** or the **crime scene**.
- the **law** and **legal terms** used in the case.
- the **court procedures**.

You must **not ask** anyone else to **look up these matters for you**.



NEWS STORIES ABOUT THE CASE

This also means that if you see or hear any stories about your case in the **news** or **on social media** you should **not pay any attention** to them.



All the information you will need to decide the case will be in the **evidence** presented **in court** and the instructions on the **law** that the **judge** will give.

DISCUSSING THE CASE

There are **2 further rules** every juror must follow about discussing their case. One rule tells you what you can discuss about the case **while the trial is going on**. The other rule tells you what you can discuss about the case **after the trial is over**.

Rule 1: During the Trial

During the trial you can **only discuss** the case with the **other jurors** on your jury and only when you are **all together** and there is **no risk of you being overheard**. This applies from the moment you take the juror oath or affirmation until the judge finally discharges you from serving on the jury at the end of the trial.

This means that during the trial you **must not discuss** the case with **family, friends or anyone else**. Discussing the case means writing or speaking about the case in person or on any **social networking sites** such as Facebook, or Twitter, or on blogs and chat rooms.



Rule 2: When the Trial is Over

Once the trial is over and you are no longer serving on the jury, you can discuss the case with anyone. But there is one **exception**.

Even after the trial is over, you **must not discuss** what was said or done by you or any other member of the jury while the jury was in the **jury room** trying to reach a verdict.



WHAT IF SOMEONE TRIES TO SPEAK TO ME ABOUT THE CASE DURING THE TRIAL?



It is **illegal** for anyone who is not on your jury to **try to speak with you** during the trial about the case or try to influence you in any way about your decision in the case. If this should ever happen it is very important that you **tell the court immediately**. If it happens when you are not at court, you should **call the police**. **Whenever it happens, if it does, you must on no account tell your fellow jurors about it.**

THE COLLECTIVE RESPONSIBILITY OF THE JURY

All members of the jury must follow these rules.

The jury **must act as a group** to make sure that everyone on the jury follows the oath or affirmation you have each made to follow these rules.



What Do I Do if I Think One of These Rules Has Been Broken

It is your duty to report any breaches of these rules by anyone, including any juror.

If you think that any of these rules has **not** been followed during the trial it is extremely important that you **tell the court** about this **immediately**, but do not discuss it with your fellow jurors or anyone else.

To tell the court, you can ask to speak with the **clerk of court**.



HELP AND GUIDANCE FOR YOU AT ANY TIME

If you have any concerns about what to do as a juror at any time you can always **speak with the clerk of court**.

The clerk of court, court staff and the judge are there to help you carry out your important role as a juror properly.



What if I Feel Upset About My Experience as a Juror After the Trial?

When the trial is over, if you feel upset about anything to do with your case or if you just want to talk about how you felt being a juror, help is available.

Please speak to the clerk of court for information on counselling and support services if you feel that you need it.

Appendix D: Impartiality – a suggested form of words

“To empanelled and unempanelled jurors

Good morning/afternoon. Thank you for coming in in answer to your citation to serve as jurors. (Apologies for any delay) Even those of you who have not been picked have already performed a valuable service by forming part of the pool from which the jury has been drawn. Your services may not be at an end, though, as will be obvious from what I am going to say.

To the empanelled jurors

You have been picked to serve on this jury, you have just heard the indictment (and notices) read out. The indictment sets out the charges the accused faces.

It is very important that you are completely impartial in this trial. You have heard the charges read and so you now know something about what is alleged in this case. You know that the accused is named as INSERT and that certain names [REFER TO THEM] appear in the charges [and in the notices of special defence – REFER TO THEM IF APPLICABLE]

So I am going to ask a series of questions. It would be helpful if everyone here for jury service listens to these questions, even those who have not been picked for the jury.

Please do not answer these questions out loud. If the answer is yes, or if you are in doubt or difficulty about it, please keep your thoughts to yourself. Do not discuss any such issue with the other members of the jury. I will be adjourning the court shortly to let you make yourselves comfortable before we start the trial, The clerk of court will come and see you during the adjournment and you should speak privately to the clerk if you have any issues arising from my questions.

So the questions which I would like you to consider, but not please to answer out loud, are these:

1. *Do any of you know [any of] the accused either directly or indirectly?*
2. *Do any of you recognise the person/people in the dock, between the officers?*
3. *Do any of you know any other person mentioned in the indictment, or the person named in the special defence?*
4. *Do you know anyone who may be a witness in this case?*
5. *Is there any reason why you could not serve impartially on this jury?*

I have one more question for you once I have some information from the Crown and defence lawyers.[Ask parties how long the trial will take]

Now it is impossible to make an accurate prediction of how long the trial will actually last at this stage. Unexpected problems can arise in trials which can make them take longer than expected. These days, it is quite common for trials to be shorter than estimated.

However, the experienced lawyers who know most about the case think that it will last [INSERT]

That seems a reasonable estimate. However, in case there are problems let us work on the basis that the trial could last until [INSERT OUTSIDE END DATE IN YOUR JUDGMENT]

My last question is this:

6. *Does the possible length of the trial cause anyone a really serious difficulty?*

[In a high profile case something more elaborate may be required-see [HMA v Sheridan](#). Judges may also wish to refer to a [suggested direction](#) (see p62) for cases which have attracted publicity.]

Now I am not talking about inconvenience. I am sure it is inconvenient for every one of you to serve on this jury. I am talking about a difficulty which would make your life almost impossible. If anyone is in that situation, once again please do not discuss it with your colleagues, but do speak privately to the clerk about it when I adjourn the court.

Now if you think that there may be a reason why you should not serve as a juror it is important that you let the clerk know during the adjournment. Even if you think it is a trivial reason it may not be, You should not think that you are causing us any difficulty if you tell us about something which is on your mind. On the contrary it will cause a great deal of difficulty if you do not tell us something now and it turns out to be important. We can deal with a problem now by picking another juror to take the place of anyone who cannot serve but it might be that the trial would have to stop and be started again if you only told us about it later.

Before I adjourn the court I must give you an instruction which applies from this moment until the end of the trial.

I will explain the reasons for this when you return to court, My instruction is that from this moment until the end of the trial, you must not make any outside investigation or enquiry of your own about this case, the people involved in it or any issue it raises.

I am telling you this now because everyone knows that people carry smart phones and other devices which allow instant access to the internet. In so far as any researches on the internet, or otherwise, would involve you trying to find out about this case, the people involved in it or any issue it raises, that is something you are not allowed to do from now until the end of the trial.

I remind you that if there is any issue you need to raise with the clerk following the questions I asked, please do not discuss it with the other members of the jury. The

clerk of court will come to speak to you shortly and you can raise any problem, privately, with the clerk.

Now will you please go to the jury room. You can leave any coats and bags there if you wish. When you return to court I will give you an explanation of how the trial will work and some further guidance to help you follow the trial.

To unempanelled jurors

Before we rise, can I speak to those of you who haven't been selected for this jury? It's unlikely that your services will now be required, but I can't release you quite yet in case any of you are required to take the place of a juror who has been picked. So, please be patient with us for a little longer. When we return after the adjournment I will be able to tell you what the position is.

The court will now adjourn for a short period".

Appendix E: COVID Jury information

Introduction

Ladies and gentlemen who have been balloted to serve on this jury, before I make some preliminary remarks on what you can expect in the trial, your role and the role of others and the fundamental legal principles which apply to the trial, I want to say a few words about the measures which have been taken and will be taken during the trial to promote your health and safety during the coronavirus emergency.

General

As you would expect the Scottish Courts and Tribunal service have taken expert medical and sanitary advice on how to protect the court users. This has involved a risk assessment of the measures necessary to reduce the risk of Coronavirus. Planning has been ongoing on how to conduct trials in the coronavirus emergency and what needs to be done has been identified and planned for. These measures are in now place and will be applied during this trial. Testing of these measures has taken place in a mock trial and the learning from the mock trial has been applied.

Cleaning

The court building, including the court you are in, was industrially cleaned yesterday and will be cleaned again every evening during the trial. Some areas will receive further cleaning, as appropriate, during the day as the trial proceeds.

Reducing the number of people in the court

In order to reduce the number of people in the court at any one time and to ensure that only the minimum number of persons necessary for the trial are in the court, certain measures have been put in place. These are that the court door will be locked during the trial to prevent the public from entering the court. Whilst these are public courts, alternative measures are in place to allow the public and media to view proceedings from a remote room. Witnesses who have given their evidence will not be allowed to remain in court.

Face coverings and hand sanitisers

Face coverings and hand sanitisers are available for your use when moving around the court building. The wearing of face coverings is not compulsory but is at your discretion. I would, however, ask that all face coverings are removed when the trial commences. You are all seated at least 2 meters apart and as such face coverings are not necessary.

Physical distancing

As you can see from the markings in the court, physical distancing is to be observed by all court users. That is why you are not sitting together in the jury box but are sitting in the public benches physically distanced from your fellow jurors. A number of large screens have been positioned for you to follow the evidence given that you are not sitting in the jury box.

Productions

From time to time witnesses handle productions shown to them. This will not happen and only the macer will handle productions. If productions are referred to in evidence, they will be shown on the screens.

Training

The clerk of court, macer, jury attendant and other court professionals have been trained in the new measures.

Illness

It is also appropriate that I cover what to do in the event of illness. As you will know by now the main symptoms of coronavirus are a high temperature, a new continuous cough (coughing a lot for more than an hour, or 3 or more coughing episodes in 24 hours or if you usually have a cough, it may be worse than usual) and a loss or change

to your sense of smell or taste. Most people with coronavirus have at least one of these symptoms.

Now if you or anyone in your household have developed any of these symptoms, whilst the court is not sitting, please do not attend court and take appropriate measures to self-isolate. Please let the clerk of court know first thing in the morning by telephoning the number you have been given. As you know coronavirus tests are available and arrangements for a test can be made through the NHS Scotland website. You should get tested as soon as possible. You should advise the clerk of the results of the test when known.

If you develop any of these symptoms whilst the court is sitting, you should immediately advise the jury minder or the clerk of court and you will receive advice. If you develop any of these symptoms during the trial but when you are at home, then, apart from taking any of the normal steps to protect your health, you should phone the court on the number you have been given and you will receive advice. I will also deal with the impact that this will have on the trial.

I should also add that the court professionals will follow the same procedures, if they develop any of the coronavirus symptoms.

Conclusion

I hope that this information will give you reassurance that your and other court users' health, safety and wellbeing is taken seriously and I will as the trial judge do my best to ensure that the measures I have outlined are strictly observed throughout the trial.

I will now move on to give you some information on the trial, your role and the role of others in the trial and the fundamental legal principles which apply.....

Appendix F: Introducing the case and procedure to the jury

Introduction

Members of the jury, you now have copies of the indictment, which sets out the charge[s] the accused face[s]

Where appropriate

[and the notice of defence which was read to you]

[and the notice at the end of the indictment which was read to you which is known as a docket.]

You have also been given a document which summarises the duties which every juror has. You should study it carefully. I will now tell you a bit more about that and indeed will be repeating much of what is contained in it. I will also explain how the trial will work. Then I will give you general directions on the rules of law which govern criminal trials so that you understand them from the start.

Judge's function

You and I have different functions in the trial. My job is to ensure that the trial is conducted fairly and in accordance with the law. You, the jury, will decide whether or not the charges are proved on the evidence presented in the trial and you reach your verdicts *only* on the basis of the evidence in court. The words of the oath (or affirmation) which you took were “to return a true verdict *according to the evidence*”.

Jury's function

You, the jury, are the judges of the facts of the case and you are not detectives. It follows, and I must stress this very strongly, that you must not make investigations or enquiries of your own about anything or anyone connected to this case, or any issue it raises. Everyone knows that a search on the internet can produce information within seconds. It is vitally important to the administration of justice in this case, and in

general, that you do not carry out any outside researches or enquiries about this case, the people involved in it or any issue it raises through the internet, or otherwise, for any reason. This instruction applies from this moment until the trial has finished. I do not know whether there is any information about the events of this case, or anyone connected with it, out there. But you must appreciate that, even if there is any such information available, there is no guarantee that it is accurate and, more fundamentally, *it is not evidence in the case*.

The circumstances of some cases attract media attention. If you have seen, heard or read or do see, hear or read anything like that about this case you must ignore it. Throughout the course of this trial, you should seek to avoid such material which relates to this trial or any issue it raises.

[In an appropriate case reference can be made to the examples of what has been said in high profile cases using the hyperlinks below. These can be adapted to suit the circumstances. See for example Lord Bracadale's judgment in [HMA v Sheridan](#) in which his Lordship explains how he resolved a plea in bar of trial and sets out some of what he said about publicity during the trial: at the start; during the trial and in his charge. Judges may also wish to refer to a [suggested direction](#) (see p62) for cases which have attracted publicity].

As I say, this case has to be decided solely on the evidence presented in court and that is why you must not access external sources of information. Such is the importance of this rule that I have to require you to police it collectively, so that if you become aware of any fellow juror who has conducted independent investigations, please inform the Clerk of Court at once, privately, but do *not* discuss it with the other members of the jury.

I do have to tell you that, having given you this instruction, if I become aware of any juror carrying out such investigations I would have to take a very serious view of it. It could well result in the trial collapsing with all the costs and problems that would involve. It could constitute a contempt of court on the part of the person concerned and, if it did, that could be serious for that person.

Now can I apologise to you if all of this sounds very severe and threatening. I do not wish to threaten you; I do not wish to make you uncomfortable; and I do not wish to get off to a bad start with you. I just have to make it absolutely clear to you that you must not carry out any independent investigations.

That is because you must decide this case only on the basis of the evidence presented in court, and you must not be influenced or even distracted by any outside source of information.

[A judge may seek to provide some reassurance after this stern admonition.]

Eg Now I can see that you are responsible people who have understood what I have said to you and I am entirely confident that you will follow this instruction. So you can relax. You need not sit there in a state of terror over the next few days. There will be no problem if you follow this simple instruction as I am sure that you will.]

Procedure

Let me explain a bit more now about how the trial works.

The prosecution is brought by the Crown, the name given to the public prosecutor in Scotland. The Crown has to prove the charges, and it seeks to do so by presenting evidence.

The case for the Crown is presented by the Advocate Depute/Procurator Fiscal, who is sitting at the table to my right. The [first] accused is represented by (X) [the second accused is represented by (Y)] sitting at the opposite side of the table.

In Scotland there are no opening speeches and, after I have stopped speaking to you, we go straight into the evidence.

Sometimes evidence is agreed or is unchallenged and, if so, it is recorded in a statement of facts known as a joint minute or it may comprise a statement of

uncontroversial evidence. If that features in this case, it will be read to you and you will be given a copy of it.

All witnesses will swear or affirm to tell the truth.

First, you will hear evidence from witnesses for the Crown. The prosecutor will question first and this is known as examination in chief. The witness may then be cross-examined on behalf of each/the accused [in order], if he/she/they wish, and then re-examined by the AD/PFD if he/she wishes.

After the Crown has led all its evidence, each/the accused, if he wishes/they wish, may lead evidence. The defence do not have to lead evidence but if any witness is called for the defence the order of questioning is changed.

During the trial there may be objections to the evidence, or legal points may crop up. If that happens, I may have to ask you to leave the court room to allow me to hear legal argument and decide the issue in your absence. If that does happen it should not trouble you because, as I have explained, I have to decide all issues of law in the case. On the other hand, the facts are for you. I can reassure you that if this situation arises any witness will leave the court at the same time as you and so you will not miss any of the evidence. You will hear all of the evidence in the case

After all of the evidence has been presented, you will hear closing speeches, first for the Crown, and then on behalf of the/each accused. After that, I will give you additional directions on the law applicable to the specific circumstances of this case.

After that you will retire to consider your verdict(s). You must then use all of the directions which I have given you in deciding whether the charges have been proved or not. The directions I gave at the start and those at the end of the trial, taken together, provide you with the complete legal framework for reaching that decision.

It is very important that you keep an open mind about this case, and all of the issues in the case, until you have heard all of the evidence, speeches and my closing legal directions. Only then do you start to reach your conclusions and decisions in the case.

The court day

On a normal court day we sit from 10am to 1pm and then, after lunch, from 2pm until about 4pm. These times may have to be varied to take account of the availability of witnesses or the stage the evidence has reached. If we can get started promptly at 10, then about half way through the morning session we will break for no more than 20 minutes to allow you to stretch your legs, have a tea or coffee and make sure that you are comfortable and able to concentrate.

[For trials during the COVID restrictions it will be necessary to inform the jury that, while they are in a separate room, they are all participants in the trial process and can be seen and heard by all in the court room. It is therefore important that they do not speak among themselves during the evidence and that, if they have any difficulties, they should raise the matter with the jury attendant so that the judge can address it.]

It will also be necessary to inform them of the arrangements which have been made for morning coffee (if any), for visits to the toilet and any jurors who want to smoke (if any).

The jurors will have received with their citations the document “Your Safety is our Priority” (which can be found in Appendix A). The clerk will also have given the jurors a description of the cleaning etc arrangements in place for the trial. Judges may therefore consider that the suggested COVID reassurance introduction (found at Appendix E) is unnecessary or, at least, too long. An alternative comment to include in these “housekeeping” remarks might be:-

“Your health and wellbeing are a priority. You have already been told about the arrangements in place to protect your safety during this trial. If you have any concerns at any stage please speak to the jury attendant or clerk”.

Judges will also have to ascertain what arrangements are in place to deal with any juror who may develop symptoms of COVID 19 during the trial.

There is now (27 July) SCTS guidance for clerks which has been approved by Scottish Government. It can be found at [Appendix H.](#)

Following the trial

Given that you will be deciding this case on the evidence, it is important that you listen carefully to what witnesses say and pay close attention to all of the evidence. If you have any difficulty hearing, if someone is speaking too quickly or if there is any other problem, please signal that to me or to the Clerk of Court immediately and I will try to do something about it.

You will not be given a recording or transcript of the evidence, so you have to rely on your own memory of it. You have been provided with pencils and paper and you can take notes of the evidence if you wish, or you may prefer to listen carefully and watch the witnesses as they give their evidence. You may find it helpful if at least some of your number take some notes. Any notes which you make will be destroyed after the trial.

Whichever way you choose to go about it, can I encourage you to pay close attention to the evidence throughout the trial. It quite often happens that a witness will say something which may not seem important at the time, but by the end of the trial it may turn out to be highly significant. So you should follow the evidence as closely as you can throughout the trial.

Privacy of the jury

During the trial, when you are leaving the court and whilst travelling to and from court, you must not discuss anything to do with the trial with anyone, including the other members of the jury. Your discussions about the case must only take place in the privacy of the jury room.

[The following instruction will only be necessary in socially distanced trials and can be adapted to local circumstances if required at all:

So, if when you are deliberating at the end of the trial, you need to access facilities elsewhere in the building, you must avoid talking to anyone at all. In that situation, the jury's deliberations must stop and resume only on your return.]

Avoiding outside influence

During the trial, you must not be at risk of outside influence or distraction.

If you see anybody connected with this case, inside the court building or outside, be it lawyers, witnesses, the accused, or their relatives or associates, please do not speak to them. In the past there have been conversations between persons with some interest in the case and jurors trying it. Most often these have been perfectly innocent, but sometimes they have not. Whenever something like that happens, it can cause problems for the juror concerned, and it does cause difficulties for the court. So it is simplest and best to avoid any such interaction.

If anyone approaches you and tries to discuss the case with you, you should not respond. If you are approached by anyone in this way, do not tell the other jurors but do please tell the Clerk of Court immediately. I have no reason to believe anyone would approach you, but if that happens, you must let the Clerk know.

Until the trial has finished, you must not discuss the case with anyone outside the jury; even family, people you live with at home, friends and work colleagues. All that you should tell someone who needs to know is that you are serving on a jury for the length of time suggested. Whilst the case is continuing you must not discuss the detail of the evidence, the events of the day during the trial or any issue relating to the case with anyone outside the jury. If necessary, to avoid embarrassment, you can simply say that the judge told you not to discuss the case with anyone at all.

So whilst the trial is continuing, you must not speak to other people about it or communicate electronically through Facebook, Twitter or anything else. You must keep your thoughts about the case private from anyone outside the jury, until the trial has finished. Even then you must not discuss what was said in the jury room during your deliberations. These are private and nobody is allowed to ask you about them.

This case must be decided by you, the jury, only on the basis of the evidence in court. You deliberate on your verdict only with fellow jury members and, even then, only once you have heard all of the evidence, speeches and my closing legal directions.

I will move on now to explain the general legal principles which apply in criminal trials.

Suggested direction for cases which have attracted significant publicity

“When I addressed you before the adjournment I mentioned the publicity which this case has attracted [and the fact that the accused is (as appropriate)]. I want to say more about this in a different context. You have now taken your oath, which requires that you must reach your verdict only on the basis of the evidence which you hear in court. The words of the oath or affirmation which you took were 'to return a true verdict according to the evidence'. That means that you must put out of your minds anything that you have in the past read in the newspapers, or seen or heard on TV or radio about the accused or the circumstances giving rise to these charges. As the trial proceeds you should put out of your minds anything that you read, hear or see about the case. Anything you have seen, read or heard about the accused must be ignored and you must not access such material throughout the course of this trial.

I am not suggesting for a moment that reporting of the trial will be misleading, I am simply stressing the importance from your point of view of focusing solely on the evidence which you hear in court and proceeding on your own recollection of the evidence.

Anything you think you know about the accused from media sources or from your own impressions of him, whatever they may be, are irrelevant to your task. All such matters must be cast aside entirely. Jurors are expected to approach their task with open minds, untainted by preconceptions, prejudices or by any perceived public or private knowledge which they may have of the case or of the individuals involved in the charges. That is why I asked you a series of questions before taking the oath. So please remember, you cannot allow yourselves to be swayed by sympathy or prejudice or the contents of press articles. You must be impartial, since you are effectively acting as judges in this case.

Another aspect of this issue is this. It is quite likely that on the internet there will be websites where information about the accused or the background circumstances may be discussed. You must not access such material during the trial. If any such material exists, not only is it not evidence in the case, there is no guarantee that it would be accurate. Again, I repeat: you must decide the case only on the basis of the evidence you hear in court. These instructions are in your own interests as well as in the interests of justice. In order to ensure a fair trial for the accused and to maintain the integrity of our legal system it is essential that you follow them.

You must be disciplined about this, ladies and gentlemen, in keeping with the dignity and impartiality of the role you are now undertaking, and if you become aware of a fellow juror accessing any such information, you should immediately speak to the clerk of court. I may say that I would take a very serious view about any such conduct, in light of the warning which I have just given.”

Thereafter the written directions should be distributed to the jury, if this has not already been done and should be read to them.

Appendix G: Written Directions for Jurors in the Scottish Courts

Part A: Introduction

Towards the end of the trial I will give you the legal directions you will need when you begin deliberating on your verdict(s), but in the meantime it will be helpful if, before we start hearing evidence, you are aware of certain fundamental rules and principles which apply in almost every case.

Separate functions of Judge and Jury

You and I have completely different functions. I am responsible for all matters of the law which arise in the case.

Judge

The law tells us what the ingredients of an offence are and what must be proved to establish that an offence has been committed. I will tell you about that at the end of the trial when I direct you on the law. The law also regulates how trials must be conducted and what evidence may or not may be allowed. I will deal with that as the trial goes on and, if necessary, I will tell you what you may and may not do with particular pieces of evidence.

Jury

You on the other hand are responsible for all questions of fact. You and you alone will decide:

- What the evidence was;
- What is to be made of it;
- What reasonable inferences or conclusions should be drawn from it; and
- What verdict should be reached in light of it.

In other words, you will decide:

- Which evidence you accept and which you reject;

- Which witnesses you believe and which you disbelieve;
- Which witnesses you find reliable and which unreliable; and
- What reasonable inferences or conclusions you can draw from evidence which you accept.

When the time comes for you to deliberate on your verdict, you will decide what has been proved and what has not been proved.

Agreed facts

Sometimes facts are agreed. If that happens they will be set out in a document called a Joint Minute, which will be read to you. The facts set out in such a document must be accepted by you as conclusively proved and taken into account when you come to deliberate on your verdict.

Evidence

What is evidence?

- Evidence is what witnesses tell you in the witness box, based on their direct observation.

What is not evidence?

- What the lawyers will say in their speeches and what I will say to you when I direct you on the law is not evidence.
- Questions or suggestions put to witnesses by the lawyers are not evidence.
- Assertions of fact put to a witness who cannot remember them, or who does not know about them, or who does not agree with them are not evidence. The evidence consists in the witness' answer. If all a witness did was to agree with a suggestion you would need to take care in deciding what weight to give to that.
- Hearsay evidence, namely what a witness tells you was said by someone else, is generally not allowed.

Possible exceptions to the rule against hearsay

There are exceptions to that rule which I will tell you about in my directions at the end of the trial in more detail if they arise. They may include:

- Evidence of what a witness says they heard someone say may be allowed to explain that person's state of knowledge or why they did something;
- Evidence of what was heard to be said or shouted whilst an alleged crime was actually being committed is usually allowed;
- Evidence of what an accused person was heard to say is evidence in the case. I will direct you about this if it arises;
- Witnesses may be asked about earlier statements made by them to other people. There are three main reasons for this:
 - i) To jog the memory of the witness, who may then be able to give evidence from recollection.
 - ii) To enable the witness to adopt an earlier statement, which then becomes evidence. A statement is adopted if it is proved to have been made by the witness and the witness accepts that he or she was telling the truth at that time.
 - iii) To undermine a witness's credibility or reliability. A statement may be used to contradict what the witness has said in court by demonstrating that the witness has said something different on an earlier occasion. The earlier statement, unless adopted, is not evidence of the truth of what is in it but it is available to help you in your assessment of the witness's evidence.

In certain other situations, where a witness is unavailable, hearsay evidence of a previous statement by that witness may be available as evidence of what is in the statement. You will be directed on that should it arise.

Assessing witnesses and their evidence

You will have to judge the quality of the evidence of witnesses. You should judge the evidence of all witnesses in the same way.

In doing so, you can look at their demeanour, or body language, as they gave evidence. You may want to be careful how much you can draw from the way a person presents. You do not know the witnesses and you do not know how they normally present. It can be hard to decide if a person is truthful or not just by their presentation.

What you can do is compare and contrast their evidence with other evidence in the case which you accept.

There are two aspects to the evidence of witnesses; credibility and reliability.

Credibility

Evidence is credible when a witness is doing his or her best to tell the truth.

Reliability

Even the most honest witness doing his or her level best to tell the truth as he or she sees it may simply get it wrong. Their evidence may not be reliable. There may be various reasons for that, such as:

- the passage of time,
- poor hearing or eyesight,
- the consumption of drink or drugs.

However even with such factors present you may still be prepared to accept the evidence as being reliable. It is very much a matter for your judgement as a jury, applying your collective experience and common sense.

You can only convict the accused on the basis of evidence which you find to be credible and reliable.

It is not all or nothing with the evidence of a witness

You are free to accept the evidence of a witness in whole or in part. You may accept bits of what a witness has had to say and reject other bits. You may pick and choose as you see fit in light of what you make of the evidence. If you reject what a witness has said, either in whole or in part, that does not establish that the opposite is true. If

you reject evidence for whatever reason just put it out of your minds as if it had never been given.

It may be that some evidence will be inconsistent in itself or when compared with other evidence. Quite often witnesses give differing accounts of the same event, especially if things happened quickly or unexpectedly. If there are discrepancies or differences you will have to decide whether you think they are important and undermine the evidence of a witness or witnesses. Can any discrepancies be explained?

For example:

- by the impact of traumatic events;
- by the passage of time;
- by differing powers of recall ;
- by different viewpoints which witnesses might have had.

Ultimately, it is for you to decide if there are any differences and if so, whether they undermine the evidence of a witness or witnesses in whole or in part.

Inferences

If you accept a piece of evidence or a body of evidence then you may be able to draw an inference or conclusion from it, but any inference must be a reasonable one and there must be evidence to support it. You cannot indulge in speculation or guesswork.

You decide the case only on the evidence

It is important that your verdict should be based only on the evidence. When you come to deliberate you must not be swayed by any emotional considerations or any prejudices or any revulsion which you might have for the type of conduct alleged. You will put aside any feelings of sympathy you might have for anyone involved in the case. Your verdict may have consequences, whatever it is, but these will be for others to deal with and you should put them out of your minds.

At the end of the day you will require, as the oath with you took said, to return a true verdict according to the evidence.

Direct and circumstantial evidence

The sorts of evidence which can be relied on will vary from case to case but in general terms there are two types of evidence – direct evidence and indirect or circumstantial evidence. A case may be proved:

- entirely on the basis of direct evidence;
- entirely on the basis of circumstantial evidence; or
- on the basis of a combination of direct and circumstantial evidence.

Direct evidence

The classic example of direct evidence is evidence from an eye witness describing an event he or she observed.

Circumstantial evidence

Circumstantial evidence is simply evidence about various facts and circumstances relating to the crime alleged or to the accused, which, when they are taken together, may connect the accused with its commission. On the other hand, it may point the other way.

In considering circumstantial evidence, please bear in mind that:

- Each piece of circumstantial evidence may be spoken to by a single witness.
- A piece of circumstantial evidence need not be obviously incriminating in itself and it may be open to more than one interpretation.
- You can choose an interpretation which supports the Crown case or one which undermines it, so long as it is a reasonable interpretation.

Where circumstantial evidence is based on accurate observation, it can be powerful in its effect. Individually each fact may establish very little but in combination they may justify the conclusion that the accused committed the crime charged. When you come to decide on your verdict, though, you should consider all of the evidence.

It is for you to decide what weight - what importance - should be given to a piece of evidence. Ultimately, you will have to consider what conclusions you can draw from the evidence and, in particular, whether you are satisfied beyond reasonable doubt that the crime you are considering was committed and that the accused committed it.

Part B: Certain fundamental principles

Some rules of law apply in every criminal trial in Scotland.

1 The presumption of innocence

The first rule is this. Every accused is presumed innocent until proved guilty. He is not required to prove his innocence.

2 The burden of proof is only on the Crown

Secondly, it is for the Crown, the prosecution, to prove the guilt of the accused on the charge or charges which he faces. If that is not done an acquittal must result. The Crown has the burden of proving guilt.

3 The standard of proof – proof beyond reasonable doubt

Thirdly, the Crown must establish guilt beyond reasonable doubt. A reasonable doubt is a doubt arising from the evidence and based on reason, not on sympathy or prejudice. It is not some fanciful doubt or theoretical speculation. A reasonable doubt is the sort of doubt that would make you pause or hesitate before taking an important decision in the practical conduct of your own lives. Proof beyond reasonable doubt is less than certainty but it is more than a suspicion of guilt and more than a probability of guilt. This does not mean that every fact has to be proved beyond reasonable doubt. What it means is that, looking at the evidence as a whole, you have to be satisfied of the guilt of the accused beyond reasonable doubt before you return a verdict of guilty on a charge.

4 Corroboration

Fourthly, the law is that nobody can be convicted on the evidence of one witness alone, no matter how credible or reliable his or her evidence may be. The law requires a cross-check, corroboration.

There must be evidence you accept as credible and reliable coming from at least two separate sources, which, when taken together, implicate the accused in the commission of the crime. Evidence from one witness is not enough.

Be clear about this:

Every incidental detail of a charge, such as the narrative of how the crime is alleged to have been committed, does not need evidence from two sources. But there are two essential matters that must be proved by corroborated evidence.

These are:

- that the crime charged was committed and
- that the accused committed it.

What is the position of the defence in relation to the four rules?

The burden of proof lies only on the Crown. The accused is presumed to be innocent. There is no burden of proof on accused persons.

The requirements of standard of proof and corroboration apply only to the Crown case. They do not apply to the defence.

Accused persons are not required to prove their innocence. They are presumed to be innocent. They are not required to give evidence or call witnesses and if they choose not to do so, nothing can be taken from that.

If evidence is led for the defence, any witnesses they choose to call, which may include the accused, should be treated like any other witnesses in the case. However, there is no particular standard of proof which defence evidence has to meet and defence evidence does not require corroboration. It follows that:

- If you accept any piece of evidence, from wherever it comes, that shows that the accused is not guilty then you will acquit.
- If you do not fully accept that evidence but it raises a reasonable doubt then again you will acquit.
- Even if you completely reject any defence evidence, that does not assist the Crown case. Just put that evidence out of your minds as if it had never been given and consider what, if anything, the Crown has proved beyond reasonable doubt.

In summary:

- **The law is for the Judge**
- **The facts are for the Jury**
- **The verdict must be based only on the evidence and in accordance with the law as explained by the Judge**
- **The accused is presumed to be innocent**
- **The burden of proving guilt is on the Crown**
- **The standard of proof which the Crown must reach is proof beyond reasonable doubt**
- **The benefit of any reasonable doubt, from wherever it comes, must be given to the accused**
- **The Crown must prove its case on corroborated evidence**
- **There is no burden of proof on the accused; accused persons have nothing to prove**

Part C: Other directions to be used as appropriate

These directions will not apply in all cases and therefore are formatted on separate pages which can be handed out if required.

Where there is a docket

Please note that you will only be returning a verdict on the charges. The clerk also read a notice which is attached to the indictment. The purpose of this notice is to inform the defence that evidence of the kind described in the notice may be led by the Crown during the trial. What is in the notice is not another charge or charges and you will not be asked to consider convicting the accused of those matters. If evidence of the sort mentioned in the notice is led, it may be of relevance to a charge which does appear on the indictment (charges which do appear on the indictment). I will tell you more about that at a later stage, if it should be necessary.

Where there is a notice of special-defence

You have had read to you a notice of special defence and you may hear more about that later. However, the only thing special about a special defence is that notice of it has to be given to the Crown before the trial starts so that they may investigate it if they wish and are not taken by surprise by any evidence which may be led in support of it.

A notice does not constitute evidence. A notice of special defence does not in any way alter the burden of proof. If it arises on the evidence it is not for the accused to prove it but for the Crown to disprove it.

Where there is more than one charge

You will see that there is more than one charge on the indictment. When you come to deliberate, each charge must be considered separately. A separate verdict must be returned on each charge. It may be that certain evidence will have a bearing on more than one charge. Nonetheless, when you come to deliberate, it will have to be considered separately in relation to each charge.

Where there is more than one accused

You will see that there is more than one accused. You must give separate consideration to the cases for and against each accused. It may be that some evidence will have a bearing on the position of more than one accused. Nonetheless, when you come to deliberate on your verdicts, that evidence must be considered separately in the context of the case against each of the accused. You must return a separate verdict in respect of each accused.

Concert

The issue of joint criminal responsibility may arise for consideration. If it does I will give you full directions at the end of the trial, but let me give you some understanding of this at the outset.

Normally a person is only responsible for his or her own actions, and not for what somebody else does.

However, if people act together in committing a crime, each participant can be responsible not only for what he or she does but also for what everyone else does while committing that crime. This happens where the crime is committed in furtherance of a common criminal purpose, regardless of the part which the individual played, provided that the crime is within the scope of that common criminal purpose.

The principle applies both where there is a crime committed in pursuit of a plan agreed beforehand and also where people spontaneously commit a crime as a group in circumstances where you can infer that they were all in it together.

Joint criminal responsibility is referred to as concert and someone who is acting in concert with another is said to be acting art and part with him. These are merely different terms used to describe circumstances where joint criminal responsibility arises.

So if you have to consider this issue you will be deciding whether it has been established that:

- (1) people knowingly engaged together in committing a crime
- (2) what happened was done in furtherance of that purpose
- (3) what happened did not go beyond what was planned by, **or** reasonably to be anticipated by, those involved.

Appendix H: SCTS Guidance for Clerks if Juror displays COVID:19 symptoms etc

Purpose

This note sets out the steps to be taken should a juror display symptoms of COVID-19 during a jury trial; informs the clerk that a family member has tested positive and has to self-isolate or have been informed by NHS Test and Protect they must self-isolate; or has tested positive for COVID-19.

In such scenarios, the public health guidance that applies can be found here: <https://www.hps.scot.nhs.uk/web-resources-container/covid-19-guidance-for-non-healthcare-settings/>.

Prior to a trial commencing

The Clerk of Court and other SCTS Staff will reinforce the message to jurors to:

- maintain physical distancing at all times;
- wear a face covering at all times (unless the juror has a legitimate health reason not to wear one) and until seated in the jury room. Face coverings should also be worn if going to the toilet, and leaving the court at the end of the day; and
- maintain good hand and cough hygiene.

Juror Displays Symptoms

If a juror develops symptoms whilst in court, the following action should be taken:

1. Juror informs an SCTS Official (jury minder) that they have become unwell and are displaying symptoms of COVID-19.
2. The jury minder informs the Clerk of Court. The Clerk will inform the judge.
3. The jury minder will take the juror to a designated room, ensuring physical distancing is maintained and the juror is wearing a face covering.
4. The juror will be asked to go home (in line with Public Health Scotland guidelines, where possible, they should minimise contact with others, e.g. use a private

vehicle to go home. If it is not possible to use private transport, then they should be advised to return home quickly and directly, and if possible, wear a face covering), to make contact with NHS and arrange for a test.

5. If the juror is so unwell that they require an ambulance, the Clerk will phone 999 and let the call handler know the juror is displaying symptoms.
6. The juror is discharged, court adjourns to the following day and the room is cleaned.

If a juror develops symptoms when at home, or is contacted by an NHS Test and Protect contact tracer and told to self-isolate, the following action should be taken:

1. The juror should contact the court as soon as practically possible.
2. The juror should be told not to attend court and they will be discharged by the judge.

Juror Tests Positive for COVID-19

1. If a juror tests positive and there is a reason to believe that the juror may have breached physical distancing rules so that other jurors or staff may have been exposed.
 - The local health protection team or NHS Scotland contact tracing service may contact the Court.
 - The Court will provide the staff and jurors details.
 - Any jurors required to self-isolate will be contacted directly by a contact tracer.
 - If a juror is instructed to self-isolate, the juror must inform the court that they have been instructed to self-isolate.
 - The trial judge is informed of how many jurors have been told to self-isolate.
 - It should be noted that where in the course of a trial:
 - (a) a juror dies; or
 - (b) the court is satisfied that it is for any reason inappropriate for any juror to continue to serve as a juror,

- the court may in its discretion, on an application made by the prosecutor or an accused, direct the trial shall proceed before the remaining jurors (if they are not less than twelve in number) – see [section 90, Criminal Procedure \(Scotland\) Act 1995](#).