

Witness Name: Eric McQueen

Statement No.: 1

Exhibits: EM1 – EM70

Dated: 07 September 2023

UK COVID-19 INQUIRY

WITNESS STATEMENT OF ERIC MCQUEEN – CHIEF EXECUTIVE, SCOTTISH COURTS AND TRIBUNALS SERVICE (SCTS)

I, Eric McQueen, Chief Executive, Scottish Courts and Tribunals Service, will say as follows: -

1. Role, Function and Responsibilities of SCTS

- 1.1 The Scottish Courts and Tribunals Service (SCTS) was established by section 60(1) of the Judiciary and Courts (Scotland) Act 2008 (the 2008 Act¹). It is a non-ministerial corporate body. It is part of the Scottish Administration but not part of the Scottish Government.
- 1.2 The functions of SCTS are set out in sections 61 to 64 of the 2008 Act, which require it to provide, or ensure the provision of, the resources to support the Scottish courts, devolved tribunals and their judiciary; the Lord President or his delegates in respect of his functions as Head of the Judiciary; the sheriffs principal in respect of their functions under the relevant provisions of the Courts Reform (Scotland) Act 2014; the Office of the Public Guardian and Accountant of Court; and the Scottish Sentencing Council, Scottish Civil Justice Council and the Criminal Courts Rules Council.

¹ Judiciary and Courts (Scotland) Act 2008 [EM-1 – INQ000262632]

- 1.3 SCTS is a judicially-led public body, with the composition of its Board set in statute. Chaired by the Lord President, Scotland's most senior judge, its membership is drawn from those holding judicial office, those with a legal background and independent members from outwith the justice system.
- 1.4 The SCTS Board sets the strategic direction of the organisation, makes the key decisions and monitors progress to ensure the delivery of strategic priorities. The Board is supported by four committees covering audit and risk; people; remuneration; and, estates, health and safety, fire and security. Each of the committees oversees major projects and programmes relevant to its area, providing specialist direction and guidance to ensure effective project and programme management at a strategic level.
- 1.5 Day to day management is delegated by the Board, to myself as Chief Executive. I am supported by six Executive Directors. Together we make up the SCTS Executive Team, which is responsible for corporate and operational delivery. A more detailed description of the operation of SCTS and the key priorities it addressed during the pandemic can be found in the annual report and accounts of the organisation for 2020-21 and 2021-22 (EM-2 – INQ000226364 and EM-3 – INQ000226377).

2. Scottish Government Administrative Decision Making

- 2.1 As an independent non-ministerial body, SCTS was not connected with the core political and administrative decision-making functions or responsibilities of the Scottish Government in response to the pandemic. As a judicially-led body, whose purpose is to support the judiciary in the administration of courts and tribunals, it would not be appropriate for SCTS to be so involved.
- 2.2 In noting the above, legislation confers a general power on SCTS to do anything it considers necessary or expedient for the purposes of or in connection with its functions. Section 65 of the 2008 Act, details that SCTS has the power to give information or advice, or make proposals, to Scottish Ministers on matters relating to the functions of the SCTS, or the administration of justice in Scotland.

Where SCTS gives information or advice in this regard, Scottish Ministers must have regard to such information, advice or proposals.

- 2.3 During the Covid-19 pandemic, SCTS provided practical suggestions as to temporary changes to legislation that might be required in order to support the ongoing delivery of the business of Scotland's Courts and Tribunals, whilst operating within the public health rules in force at the time. The organisation also sought funding and support for several key initiatives intended to address some of the consequences of the pandemic in relation to court business. The detail of interaction with the Scottish Government in this regard is provided in the following sections of my statement.

3. Key Officials and Decision Makers within SCTS

- 3.1 Throughout the pandemic the SCTS Board continued to meet on its standard schedule of six meetings per year – providing oversight of key issues, including the operational response to the pandemic. Operational responsibility for response to the pandemic was delegated to myself as the Chief Executive. In line with our Business Continuity Strategy [EM-4 – INQ000226392] and Business Continuity Guidance [EM-5 – INQ000226403] I took the decision to activate the SCTS Strategic Incident Management (SIM) Team arrangements.
- 3.2 The SIM team consists of the Executive Team plus key operational senior managers – and is established to ensure an effective response to all significant business continuity issues. The SIM team held its first Covid related meeting on 27 February to direct the organisation's response and met on 192 occasions up to the end of April 2022. The SIM Team set clear strategic priorities for the organisation at its first meeting, which remained constant throughout. These were to:
- Support the public health response to the outbreak – protecting the life and safety of all staff, court and tribunal users;
 - Maintain all essential business so far as possible – ensuring cases are not lost;

- Minimise accumulation of case backlogs so far as possible – to facilitate the most effective recovery.

3.3 Membership of the SIM Team consisted of:

- Myself (Chief Executive), as chair
- The Deputy Chief Executive
- The Chief Finance Officer
- The Executive Director, Court Operations
- The Executive Director, Tribunals and OPG Operations
- The Executive Director, Change and Digital Innovation
- The Executive Director, Judicial Office for Scotland
- The Director Communications
- The Director, Sheriff and Justice of the Peace Court Operations
- The Principal Clerk of Session and Justiciary (Director responsible for the High Court and the Court of Session)
- The Director Human Resources
- The Director Property and Services
- The Corporate Secretary

3.4 The task of the SIM team was to oversee the operational response of the organisation throughout the pandemic. It did not have any involvement in the enactment or enforcement of COVID-19 regulations – other than ensuring that SCTS itself observed the public health regulations in force during the pandemic, in order to provide the safest possible operating environment for those using Scotland's courts and tribunals and for those staff who were required to work in our buildings during that period. Short action points and key decisions were recorded from each SIM Team meeting – in view of their frequency and the fast moving environment at the time detailed minutes were not recorded.

3.5 During the pandemic I was the principal point of contact with the Scottish Government for SCTS. There were several other SCTS officials who had some contact with the Scottish Government in relation to 3 key areas of interface

between the Scottish Government and SCTS during the pandemic. Their details are provided in the relevant exhibits that accompany this statement. Given our statutory purpose there were no areas relating to the Scottish Government's core political and administrative decision-making in response to the pandemic for which the SCTS had responsibility and no formal advisory functions that SCTS had towards other significant organisations in that regard – our efforts were focused on delivering the strategic priorities agreed by the SIM Team (paragraph 3.2).

3.6 In relation to the decisions taken by the Scottish Government to adopt criminal sanctions and other means of enforcement for COVID-19 legislation and regulations, SCTS were advised of policy proposals in respect of these issues and were given sight of some draft provisions in order to ensure that these would be workable in practice and to consider their potential operational impact on SCTS. SCTS provided no view or advice on the merits or otherwise of introducing sanctions or enforcement provisions. As a judicially-led organisation it would be inappropriate for SCTS to offer a view on the merits or otherwise of such provisions, given that the judiciary could be directly involved in their imposition.

3.7 In order to keep the SCTS Board updated as to the progress of relevant issues during the pandemic and key developments specific to SCTS, a timeline-based report was supplied to each meeting of the SCTS Board throughout the pandemic as part of the Board update paper provided at each scheduled Board meeting. At the end of the pandemic these updates were combined into a single chronology. This document may be of assistance to the inquiry and has therefore been exhibited with this response [EM-6 – INQ000226414].

4. SCTS Involvement in Key Meetings

4.1 As mentioned above, SCTS had its own internal response arrangements to manage its operations during the pandemic, which were overseen by the SCTS Strategic Incident Management Team. In relation to meetings that involved SCTS and the Scottish Government I represented SCTS at meetings of both the

Justice Board for Scotland and the Criminal Justice Board – a sub-group of the Justice Board, established in May 2020 to support system recovery from the pandemic. These two multi-agency groups, facilitated by the Scottish Government, provided a forum for the key justice agencies to come together and discuss issues of mutual interest and concern. All significant justice system decisions were routed through the Justice Board or via the Criminal Justice Board. Managing the response to the pandemic and recovery from it were key priorities during this period.

- 4.2 In relation to the work of the Justice Board and Criminal Justice Board, SCTS were not involved in any side meetings or informal meetings at which significant decisions relating to the Scottish Government's core political and administrative decision-making in response to the pandemic were discussed. SCTS did not use any informal or private communication channels in its pandemic response.
- 4.3 As per your request I can confirm that SCTS was neither invited to, nor involved in, the work of COBR, the COVID-O Committee, the COVID-S Committee, the Four Nations Groups nor the Scottish Government COVID-19 Advisory Group and its sub-committees.
- 4.4 In view of our statutory role (as set out in section 65 of the 2008 Act) our links with decisions made by the Scottish Government all related to our work to maintain essential court and tribunal business to the greatest extent possible within the prevailing public health legislation. There were three main areas where the work of SCTS required collaboration, support and funding from the Scottish Government in order to respond to the pandemic – these were:
- supporting the development of emergency legislation to assist the continued operation of courts and tribunals during the pandemic;
 - the programme of work required to resume solemn trials (trials involving a jury) which included the development of remote jury centres; and

- the development of the Criminal Court recovery programme, which increased criminal court capacity in order to address the case backlogs that accumulated as a consequence of the pandemic.

4.5 I will provide an overview of each of these three areas in turn.

5. Development of Emergency Legislation

5.1 The role of SCTS, in respect of the development of emergency legislation, was to provide practical suggestions as to temporary changes that might be required in order to support the ongoing delivery of the business of Scotland's Courts and Tribunals during the pandemic, whilst operating within the public health rules in force at the time. Consideration as to the types of measures that may be required had been under discussion since late February 2020, in view of the growing threat posed by Covid.

5.2 The first substantive request from SCTS to the Scottish Government, outlining the key areas in which emergency Bill provisions could enable the continued operation of the courts, was issued on 19 March 2020 [EM-7 – INQ000226425; EM-8 – INQ000226426]. This request was sent with the authorisation of the Lord President, as chair of the SCTS Board and as head of the judiciary in Scotland (the Lord President has a statutory responsibility for making and maintaining arrangements for securing the efficient disposal of business in the Scottish courts). That initial engagement outlined, among other matters, the rationale of proposals for trials without a jury; the suspension of statutory time limits for up to three months in all solemn and summary cases; providing for a national jurisdiction for custody cases in the event a court had to close and cases had to be transferred to another jurisdiction in Scotland; sheriffs to be given jurisdiction to deal with cases in the Justice of the Peace courts and summary sheriffs to be able to exercise the function of a sheriff; electronic lodging of motions in civil cases and the electronic authentication of documents.

5.3 Beyond the initial correspondence to set out the key areas in which emergency Bill provisions could enable the continued operation of the courts, the role SCTS

played in the development of emergency legislation was restricted to providing feedback to Scottish Government on draft policy instructions and subsequent provisions to ensure that they achieved the policy intent and could be implemented effectively by SCTS [EM-9 – INQ000226429]. For example, providing input to the development of legislation to put into effect a national custody jurisdiction, including how to deal with custody cases that require to be continued to another date or changes to legislation to enable those appearing in custody on an apprehension warrant to appear before a national custody court.

- 5.4 SCTS also did so in the development of provisions relating to attendance at court by electronic means, electronic signature and transmission of documents. These were key provisions ensuring that SCTS could continue to progress court and tribunal business during the course of the pandemic. The comments SCTS provided focused on ensuring that all aspects of court and tribunal business were covered by the provisions (EM-10 – INQ000226430). The provisions mentioned above were included in the Coronavirus (Scotland) Act 2020.
- 5.5 SCTS was contacted by Scottish Government officials on 15 and 20 April 2020 who advised that the Scottish Government was contemplating introducing further emergency legislation to deal with the implications of the pandemic. They asked SCTS to consider whether there were any other legislative asks we had to assist in the operation of the court system and for views on necessary time limit extensions. We indicated that in the context of civil proceedings we were requesting inclusion of provisions to replace intimation/service on the walls of court with website publication (EM-11 – INQ000226431). We also requested extensions to the time limits within the Criminal Procedure (Scotland) Act 1995 which covered adjournments at first callings of summary cases (for those not in custody), the period of remand for inquiry into physical or mental condition and adjournment of hearings in relation to breaches of certain orders (EM-12 – INQ000226365). These provisions were included in the Coronavirus (Scotland) (No.2) Act 2020.
- 5.6 On 3 September 2020, SCTS responded to a call for views, issued by the Covid-19 Committee of the Scottish Parliament, on the Coronavirus (Scotland) Acts

(Amendment of Expiry Dates) Regulations 2020 [EM-13 – INQ000226366; EM-14 – INQ000226367]. SCTS indicated its support for the extension of the justice related provisions, citing how the measures contained within both the Coronavirus (Scotland) Acts ensured that we could conduct as much business as possible through the lockdown, and subsequently, while adhering to physical distancing measures. We also provided the Committee with practical examples of how the emergency provisions were being used. A similar approach was taken when responding to the Committee's "Call for views – Covid-19 legislation: next steps" which the SCTS issued on 16 February 2021 [EM-15 – INQ000226368; EM-16 – INQ000226369].

5.7 The Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 regulations introduced the ability for local authorities to issue Fixed Penalty notices which would operate under the same fixed penalty regime as those issued by Police Scotland. This meant SCTS would be responsible for enforcing any penalties issued. During the process of these regulations being developed, SCTS officials indicated to the Scottish Government, on 30 October 2020, that enabling local authorities to issue Fixed Penalty notices would create significant difficulties for the organisation [EM-17 – INQ000226370]. This is because SCTS had no existing enforcement infrastructure with local authorities (e.g. no process had been developed to ensure local authorities could share information with SCTS electronically that met defined data standards [EM-18 – INQ000226371]). Despite the concerns raised, the Regulations contained these provisions.

5.8 The Scottish Government indicated that they did not expect local authorities to immediately seek to make use of their new powers. They indicated that they intended to prioritise inclusion of new enforcement provisions in the next set of revisions which would likely require local authorities to enforce their own fixed penalty notices. On that basis they suggested that SCTS take no action to seek to develop the necessary enforcement infrastructure between local authorities and SCTS. This is the approach that SCTS took. Whilst SCTS is not aware of revisions ever being made to the Regulations in relation to this point (the regulations referred to in paragraph 5.7 are now revoked), the SCTS did not

receive any local authority fixed penalty notices during the pandemic. Further detail on the role of SCTS in relation to fines enforcement is provided within section 8 of this statement.

- 5.9 The Scottish Government approached the SCTS in April 2021 seeking views on the continued need of some of the provisions in the 2020 Acts beyond September 2021. At the time we requested that all provisions should be retained, on a temporary basis [EM-19 – INQ000226372 and EM-20 - INQ000226373]. The rationale for retaining the emergency provisions was broadly, twofold: the flexibility the provisions provided were key as SCTS and justice partners continued to tackle a backlog of criminal cases that had accrued during the early stages of the pandemic; and, to enable SCTS to develop a number of new and innovative ways of working which would be beneficial going forward, e.g. the ability for Police and expert witnesses to give evidence remotely, saving them valuable time in travelling to a court hearing.
- 5.10 On 17 August 2021, SG published the consultation “Coronavirus recovery – justice system, health and public services reform”. SCTS responded to the consultation on 9 November 2021, outlining our views on whether the various provisions in the two Coronavirus (Scotland) Acts of 2020² should be extended beyond March 2022 and whether or not they should be made permanent [EM-21 – INQ000226374].
- 5.11 SCTS was given sight of some of the draft provisions for the Coronavirus Recovery and Reform (Scotland) Bill which followed on from the consultation in August 2021. For example comments were sought in December 2021 on the draft provisions relating to national custody jurisdiction [EM-22 – INQ000226375]. On 25 February 2022 the SCTS responded to the Covid-19 Recovery Committee of the Scottish Parliament’s Call for Views on the Coronavirus (Recovery and Reform) (Scotland) Bill [EM-23 – INQ000226376]. Here we reiterated points we had made to the Scottish Government on the necessity for retaining provisions to ensure the backlog of court cases could be addressed (we still require the ability

² These were extended by the Coronavirus (Extension and Expiry) (Scotland) Act 2021.

for jurors to attend court by remote means in some cases) and to allow SCTS to continue to develop new and innovative approaches to how we conduct our business.

- 5.12 On 9 March 2022, David Fraser, Executive Director of Court Operations, gave evidence to the Criminal Justice Committee of the Scottish Parliament on the justice provisions within the Coronavirus (Recovery and Reform) (Scotland) Bill. A copy of the transcript from that session is provided [EM-24 – INQ000226378]

6. Re-Starting Jury Trials

- 6.1 In view of the public health rules in place at the time SCTS announced that, from 16 March 2020, no new jury trials would commence. While it was possible to reconfigure courtrooms to allow for the highest priority summary trials to continue, jury business, covering the most serious alleged crimes, was effectively on hold, with backlogs growing. Following detailed discussions with SCTS and other partners, the Scottish Government published, on 21 April 2020, a discussion paper on potential options for progressing solemn criminal cases during the Covid-19 outbreak and its aftermath [EM-25 – INQ000226379]. A series of “virtual round table” events followed with a range of organisations, including the legal profession, MSPs and 3rd sector [EM-26 – INQ000226380; EM-27 – INQ000226381; EM-28 – INQ000226382; EM-29 – INQ000226383; EM-30 – INQ000226384; EM-31 – INQ000226385].
- 6.2 On 12 May 2020 the Lord Justice General, Lord Carloway, established a short-term working group, led by the Lord Justice Clerk, Lady Dorrian, to consider the practicalities of recommencing jury trials as and when public health guidelines permitted such a move [EM-32 – INQ000226386]. The group included representatives of the judiciary, Crown Office and Procurator Fiscal Service, Faculty of Advocates, Law Society of Scotland, Scottish Courts and Tribunals Service, Rape Crisis Scotland and the Scottish Government. Where necessary, the group liaised closely with and sought the input of others with relevant expertise, such as Police Scotland, the Scottish Prison Service, Victim Support Scotland, and Scottish Women’s Aid.

- 6.3 The first meeting of the short-term working group was held on 14 May 2020 [EM-33 – INQ000226387]. The focus of the group was how to re-start trials with 15 member juries (legislation requires a jury size of 15 in Scotland). The group could consider whether a smaller jury size might increase the possibility of more throughput of cases, but it was not within the group's remit to consider the legal and policy issues around a smaller jury or to debate judge-only trials.
- 6.4 On 19 May 2020, I gave evidence to the Scottish Parliament Justice Committee who had convened to obtain evidence on the challenges of restarting jury trials in Scotland's courts [EM-34 – INQ000226388]. During that evidence session, I set out some of the key challenges facing SCTS in re-starting jury trials. I made clear that it was estimated that jury trials would be unlikely to start in significant numbers until August or September 2020. I explained that the initial aim was to get a small number of pilot jury trials up and running in the early part of the summer. The decision on when and how to start trials was ultimately for the Lord Justice General. That decision would be based on any recommendations made by the Lord Justice Clerk's working group.
- 6.5 The Lord Justice Clerk's working group held its second meeting on 21 May 2020 [EM-35 – INQ000226389]. At that meeting the group explored proposals, for an initial restart of jury trials in two locations, Glasgow and Edinburgh. It was proposed, in Glasgow, to use a socially distanced three-court model. This is where the jury would be based in the public gallery and would use a separate court room for jury deliberations. A third room would be used to enable the trial to be viewed remotely by family members. In Edinburgh, the proposed model was to test out remote viewing of the trial proceedings for the jury who would be based in a second courtroom. The working group was clear that the first trials to be run would need to be carefully chosen, initially limited to single accused, limited number of witnesses and preferably witnesses not requiring additional special measures.
- 6.6 The third meeting of the working group took place on 8 June 2020 [EM-36 – INQ000226390]. The group considered a paper that provided a detailed overview

of the plans to ensure jury trials could recommence in mid-July 2020 [EM-37 – INQ000226391]. A particular challenge, which the group discussed, was in respect of balloting jurors (a process whereby the court selects 15 jurors for a trial). There is a requirement in Scotland to have a minimum of 30 jurors attend at court to carry out a ballot. The issue was how 30 people, all requiring to be physically distanced, could safely be accommodated in an SCTS building. It was concluded that SCTS should consider whether changes to rules could be introduced to enable jury balloting to be conducted without jurors being physically present in court.

- 6.7 The fourth meeting of the working group was held on 29 June 2020 [EM-38 – INQ000226393]. The working group were updated on, and agreed, a new approach to jury balloting, which would mean jurors not having to attend court until they were selected for a trial³. [EM-39 – INQ000226394 and EM-40 – INQ000226395]; progress on implementing the two new court models for running jury trials in Edinburgh and Glasgow (scheduled to take place on 20 and 21 July 2020 respectively), and preparations for increasing capacity beyond the initial two trials courts [EM-41 – INQ000226396 and EM-42 – INQ000226397]. One of the options being explored was the use of cinema complexes for hosting jurors. This was on the basis that if jurors did not require to be present in a court building, full use could be made of SCTS' estate with the potential to have jury trials running at the same levels as pre-Covid.
- 6.8 The first high court trials took place on 20 and 21 July 2020 in Edinburgh and Glasgow respectively. Feedback received following the running of these trials was extremely positive, specifically in relation to all the health and safety measures in place, which had provided reassurance to jurors, and also the technology used to facilitate remote links.
- 6.9 The working group met for the fifth time on 31 July 2020 [EM-43 – INQ000226398]. The working group received a progress report on how the first trials had run and proposals for an expansion of business [EM-44 –

³ Changes to court rules, enabling a jury to be balloted in their absence, were subsequently progressed by the Court – through the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Jury Ballot) 2020 [EM-45– INQ000226393].

INQ000226399]. The group were provided with an assessment of the practical implications of introducing smaller juries, solely on the basis to determine whether a smaller jury size had the potential to increase capacity to process solemn trials [EM-46 – INQ000226400] – the remit of the group did not include consideration of legal or policy implications of smaller juries, as this is primarily a matter for the Scottish Government. The group agreed that, in the absence of a compelling case on practical grounds for smaller juries, and the likely potential for much greater and earlier gains in capacity with remote juries of 15 persons, this option did not require to be explored further, for the time being.

- 6.10 The meeting of the working group that was held on 31 July 2020 took place at a cinema complex in Edinburgh. Prior to the official meeting taking place, members of the working group received a demonstration of how a trial could be run with jurors situated in a cinema complex. The proposal put forward to the working group was to use cinema complexes to create a number of “remote jury centres”, across Scotland. It was highlighted that pre-Covid the High Court would typically run 16 trial courts simultaneously. As a result of physical distancing requirements a maximum of 5-7 trials could be run if jurors had to be accommodated in the SCTS court estate. Should the option for jury centres be approved, it would not only be possible to return to pre-Covid levels of trial court capacity but it would also provide an opportunity to increase capacity beyond 16 trial courts.
- 6.11 At the meeting on 31 July 2020, the Lord Justice Clerk and I sought agreement and assurance from members of the Working Group that the option of hosting juries in cinemas for all solemn trials was the most effective solution, in order to increase trial capacity. Further, the Crown and Defence were asked if they could commit enough resources as trial capacity was scaled up. Members representing the Court, Crown and Defence agreed with the proposal for remote jury centres. All members provided their absolute support, agreement and commitment to the use of remote jury centres.
- 6.12 Following approval from the working group to move forward with the creation of remote jury centres, the Lord Justice General was consulted. He accepted the

recommendation of the working group for an innovative new approach for High Court jury trials in Scotland that would see the creation of remote jury centres. Funding to rollout the solution was obtained from Scottish Government. A total of £5.5m was awarded, for the financial year 2020-2021, to run High Court trials with jurors based in two cinema complexes, one in Edinburgh and one in Glasgow, following submission of an options paper to the Scottish Government [EM-47 – INQ000226401]. No legislative changes were required to support the creation of remote jury centres, as the ability to have a party attend proceedings by remote means had already been accounted for in the emergency Covid legislation (Coronavirus (Scotland) Act 2020)).

- 6.13 The first remote jury centre, in Edinburgh, was operational the week commencing 28 September 2020 [EM-48 – INQ000226402]. The jury centre in Glasgow was operational from the week commencing 12 October 2020 [EM-49 – INQ000226404]. Following the introduction of both jury centres in Edinburgh and Glasgow, in collaboration with other justice agencies, the High Court trial capacity had returned to pre-Covid levels by the week commencing 4 November 2020. [EM-50 – INQ000226405].
- 6.14 In parallel with the launch of the remote jury centre model for High Court trials, work had commenced to re-start sheriff and jury trials (these differentiate from the High Court jury trials in the sentence that can be passed – a sheriff, sitting with a jury, can impose a maximum prison sentence of five years). A working group, chaired by Sheriff Principal Turnbull, was established to oversee the re-start of jury trials in the Sheriff Courts. A total of £6.5m in funding was provided by the Scottish Government for the re-start of sheriff and jury trials. The first jury centres to deal with sheriff solemn cases were established in Glasgow and Edinburgh. Both were operational from the week commencing 2 December 2020. A further six jury centres were established throughout Scotland and sheriff court trial capacity was back operating at pre-Covid levels the week commencing 15 February 2021 [EM-51 – INQ000226406].

7. Recovery of Criminal Court Business

- 7.1 The third significant area where SCTS worked with both the Scottish Government and a range of justice agencies was in securing additional funding to develop and deliver the criminal court recovery programme. By making use of remote hearing options and the management of business electronically we were able to avoid the accumulation of case backlogs in relation to both civil court and tribunal business. The position in relation to criminal business was more challenging however – as many aspects of it require an in-person presence.
- 7.2 Whilst SCTS took all steps possible to maintain criminal court business during the pandemic, the public health restrictions in place made it challenging to maintain full operating capacity. The combination of national lockdowns and the need to reduce footfall in order to observe physical distancing rules led to the development of criminal case backlogs. This was particularly the case in relation to solemn cases requiring the involvement of a jury (the steps taken to address this were outlined in the preceding section of my statement). However, summary criminal business (those cases where a jury is not involved) was also significantly impacted.
- 7.3 During the early stages of the pandemic we closed a number of our facilities, consolidating business into 10 hub courts, to minimise risk to court users and staff whilst continuing to maintain the most essential business. Even when it was possible to re-open all facilities (from June 2020) operating capacities were significantly reduced, with two-metre physical distancing remaining in place until August 2021.
- 7.4 As mentioned earlier in my statement, legislative provisions such as those allowing criminal court business to be conducted by electronic means, suspending the rules requiring a person to physically attend court, extending statutory time limits and allowing the electronic transfer of documents all served to improve the resilience and capacity of the system – but these were not sufficient to restore criminal court capacity to normal operating levels.

- 7.5 As noted a paragraph 4.1, the Criminal Justice Board was established to support the pandemic response across the justice system. Membership of the Criminal Justice Board included SCTS, the Crown Office and Procurator Fiscal Service, Police Scotland, the Scottish Prison Service, the Scottish Legal Aid Board and Community Justice Scotland. The Criminal Justice Board met fortnightly during the pandemic and played a key role in developing a sector wide programme in response to the pandemic, named the 'Recover, Renew, Transform' Programme.
- 7.6 Prior to the pandemic the level of criminal court cases "in the system" at any given point at time tended to number around 20,000. This level of cases was not considered problematic as it reflected cases at various stages of preparation and progress. Having cases in progress at all stages of the system is necessary to ensure that the resources dedicated to the system are fully and effectively used. With the reduction in operating capacity caused by the pandemic outstanding case levels quickly began to grow– reaching a peak of over 43,000 in January 2022. As a result of this the projected period of time between a plea being entered and the commencement of a trial also increased – leading to greater inconvenience for all those involved in a case.
- 7.7 In order to properly inform planning to support recovery from the backlogs and to provide an evidence base for the effectiveness of any intervention, SCTS identified the need for data to underpin any programme of work. A quarterly Criminal Courts statistical bulletin was already published by SCTS – meeting the Official Statistics standard. The first such bulletin covering the initial phase of the pandemic was published on 3 September 2020 [EM-52 – INQ000226407] indicating that outstanding case volumes had grown significantly during quarter 1 of 2020-21.
- 7.8 Whilst these quarterly bulletins continued to be published throughout the pandemic the fast moving nature of events called for more current intelligence. We therefore decided to produce a monthly workbook summarising the current position in relation to criminal court backlogs and processing levels. The workbook reported on the volume of criminal cases being progressed each

month in the High Court, Sheriff Courts and Justice of the Peace Courts from April 2020, compared against pre-COVID registration and processing levels in 2019-20. The first issue of this workbook is provided [EM-53 – INQ000226408]. The full series of quarterly reports and monthly workbooks published during the pandemic can be exhibited if desired.

- 7.9 On 17 August 2020, SCTS published the report 'COVID-19 Respond, Recover, Renew – Supporting Justice through the pandemic and beyond' [EM-54 – INQ000226409] – outlining SCTS' response to the pandemic to date and ongoing recovery plans. The need for effective modelling, in order to assess the impact that any recovery measures would have on outstanding case backlogs was recognised as part of this work. Modelling reports were produced to accompany publication of the "Respond, Recover, Renew" report – setting out the impact of the pandemic to date, the effect of physical distancing on the "business as usual" model and the potential impact that increased trial court capacity could have.
- 7.10 Modelling reports were produced for the High Court [EM-55 – INQ000226410] sheriff court solemn [EM-56 – INQ000226411] sheriff court summary [EM-57 – INQ000226412] and Justice of the Peace court [EM-58 – INQ000226413]. These proved invaluable in considering the future direction – even though their prediction of the relaxation of physical distancing from March 2021 proved premature. The modelling was refreshed in March 2021 [EM-59 – INQ000226415] to accompany the launch of the recovery programme and once more in September 2022 (this is beyond the period the inquiry is focusing on but can be exhibited if desired).
- 7.11 Taken together the statistics and modelling provided a clear understanding of the size and scale of the backlog faced – which allowed the development of options for recovery. It was clear that additional court capacity would be required – in its absence it would take many years for case levels and waiting periods to return to acceptable levels and, in relation to more serious cases, this would not be possible in view of a steady growth in case levels that pre-dated the pandemic, but persisted throughout it and beyond.

- 7.12 Working with our partners in the criminal justice board an initial options paper was developed proposing high level changes and associated financing which, taken together, would allow significant progress to be made on system recovery [EM-60 – INQ000226416]. At this point in time it was hoped that recovery efforts could commence more quickly than turned out to be the case, with the resurgence in case levels that took place from October 2020.
- 7.13 The proposals in the options paper considered options to address the solemn backlog (remote jury centres were eventually selected, as set out earlier in my statement). The need for additional trial courts to address summary criminal backlogs was also identified at this stage – with an additional 10 trial courts proposed, alongside a suggestion of running Saturday courts to further bolster capacity. Taken together (and as set out in the options paper) the proposed measures outlined to support justice system wide recovery were estimated to cost in the region of £95m per year.
- 7.14 I understand that these proposals were considered by Scottish Ministers during September and October 2020. In November 2020 the Criminal Justice Board was tasked with considering how progress to address backlogs might be achieved on a lower budget, available for a longer period of time. Outline proposals were developed and summarised in a Criminal Justice Board paper (EM-61 – INQ000226417) which made clear that progress could be made, albeit at a slower pace, with system-wide investment in the region of £50m per year from 2021-22. SCTS' share of these resources would be used to support the continuation of remote jury centres whilst physical distancing measures remained in place, coupled with investment in additional trial court capacity. The Saturday courts option was not progressed at this point, given the costs and the potential impacts it would have on the legal profession, which would already be managing increased capacity as a result of the programme.
- 7.15 On 23 February 2021 the Scottish Government published an update to Scotland's COVID-19 strategic Framework (EM-62 – INQ000226418) which announced (p91) that an additional £50 million would be made available to the justice system in 2021-22 to begin to address justice system backlogs. £28.7m

of this was earmarked for SCTS. This allowed operational planning to commence in detail to deliver additional court capacity. On 19 March 2021 the SCTS announced (EM-63 – INQ000226419) plans to commence a court recovery programme from September 2021, which would increase the daily operational trial court capacity by:

- four additional High Courts (increasing from 16 to 20)
- two additional Sheriff Solemn Courts (increasing from 18 to 20)
- Up to 10 Sheriff Summary Courts (increasing from 33 to 43)

7.14 Additional staff and judiciary were required to support the courts recovery programme. Scottish Ministers appointed 16 part-time sheriffs and 17 part-time summary sheriffs to support the programme – whilst SCTS employed additional staff to ensure that the courts would be well managed. Revised modelling was published to illustrate the effect of the pandemic on court backlogs and the projected impact of the recovery programme.

7.15 The recovery programme launched successfully in September 2021 and at the time of writing this statement (July 2023) remains in place. Both the monthly criminal case workbooks and quarterly criminal case statistics were produced throughout the pandemic (and continue to be produced) in order to provide regular updates on outstanding case levels and the progress of the programme. With the benefit of additional court capacity it has been possible to make real progress on system recovery, although full recovery will take sustained investment and effort over the coming years. From the peak of over 43,000 outstanding cases in January 2022, outstanding case levels stood at 27,400 at the end of March 2023, set against the nominal pre-Covid level of around 20,000 (see para 7.6).

7.16 Summary case backlogs are on track to return to pre-pandemic levels during 2024. In view of this progress, coupled with increasing levels of solemn case registrations (a trend that was apparent both before and during the pandemic) the SCTS decided to shift additional capacity from summary to solemn business. In April 2023 the resources dedicated to the 10 additional summary criminal courts

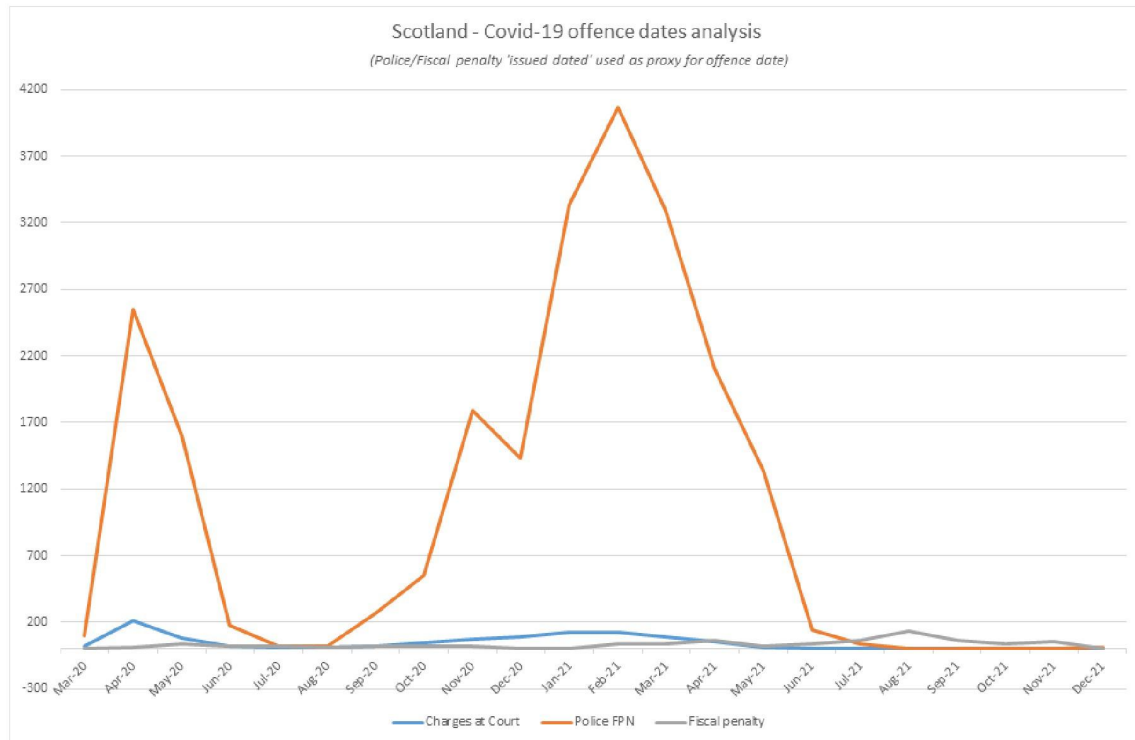
were transferred to create an additional two High Court trial courts and six sheriff solemn trial courts. Waiting periods for trials still remain above pre-COVID levels, but the effective use of additional resourcing provided by the Scottish Government has supported continued operation of the criminal courts system.

8 Enforcement of Covid-19 Regulations

- 8.1 SCTS had no formal role, function or responsibility in relation to the enforcement of COVID regulations. As an operational body whose function is to support the judiciary we administered court cases in which the regulations were enforced – but the decision to raise proceedings was taken by the Crown, acting in the public interest, having been supplied with reports from Police Scotland. Similarly, in circumstances where fixed penalties were issued by the Police or fixed penalty conditional offers made by the procurator fiscal, the decision to impose a penalty of this nature would be made by the agency in question.
- 8.2 Where an enforcement decision is made in relation to any criminal act and the penalty resulting from that decision takes the form of a fine issued by the court, the police or the procurator fiscal, payment of that fine will be made to SCTS. Where a Fines Enforcement Order is in place in relation to the penalty, Fines Enforcement Officers, who are staff of SCTS, will manage the collection and enforcement of the fine. Fines Enforcement Officers are individuals appointed by the SCTS on behalf of the Scottish Ministers under section 226A of the Criminal Procedure (Scotland) Act 1995. Their functions are to provide information and advice to offenders regarding payments and to secure compliance with enforcement orders. Their role in relation to fines imposed for offences under COVID-19 legislation and regulations was no different to that for fines issued for other offences. These fines were treated in the same way as all other fines with appropriate advisory and enforcement activity carried out.
- 8.3 There was a high level of interest in the use of Police Fixed Penalty Notices (FPNs) issued in relation to Coronavirus regulations. As a result of this, SCTS undertook development work to allow the reported national figures for FPNs to be split into those related to Covid and Non-Covid business in our Quarterly Fines

Report (QFR). This information was last published in QFR54. The relevant information from that report is provided [EM-64 – INQ000226420]. This sets out the position as at 17 October 2022.

- 8.4 Whilst the number of Covid-19 related fixed penalties issued by Police Scotland was significantly higher than non-Covid-19 penalties, this did not have a significant impact on the SCTS. SCTS did have to adapt its processes, including making IT system changes, to deal with Covid-19 related fixed penalties as they operated differently to standard fixed penalties (monetary value, consequence of early payment and incremental structure). This had to be done at pace due to the speed at which the Regulations were put in place. Whilst our IT system changes were not in place immediately on the Regulations coming into force, they were put in place a few days later and this did not create any significant difficulties.
- 8.5 The restrictions during lockdown meant that there were challenges in collecting and enforcing financial penalties and SCTS made the decision to suspend enforcement action from March 2020 to 24 August 2020. During this time all fines could still be paid. Fines Enforcement Officers focused on their statutory role to provide advice and assistance and other available resources were redistributed to meet business needs. In relation to Covid fixed penalties this did not have had any significant impact on payment, as any enforcement action of such penalties would only commence after the time to pay had expired.
- 8.6 I include below a high level overview of the offence dates for proceedings brought to court and issue dates for police and procurator fiscal issued fixed penalty notices.



8.7 Should it be of assistance to the inquiry further detail can be extracted from SCTS' operational case management systems to provide information on the following in relation to Covid fixed penalty notices:

- date penalty issued by police (this may not be the same as the offence date)
- charge details
- court which received the penalty
- amount of penalty
- current payment status of the penalty

8.8 The Inquiry may be interested to note that a paper entitled "Payment Outcomes of Police Fixed Penalty Notices registered by the Scottish Courts and Tribunals Service during the Coronavirus Pandemic" [EM-65 – INQ000226421] was produced by Professor Susan McVie, University of Edinburgh, and was published on 4 August 2022.

9. Breaches of Covid-19 Regulations

- 9.1 The inquiry sought information on the number of people prosecuted for offences in breach of Covid-19 regulations. The decision to prosecute rests with the procurator fiscal, however SCTS does capture information on its operational case management system of those cases that proceed in court. I detail below high level statistics relating to the number of cases registered in courts with at least one accused that had at least one Covid-19 charge.

OFFICIAL: SENSITIVE

Court type (registrations for period 30.3.2020 to 30.6.2023)	Cases registered with at least one accused with at least one Covid-19 charge
High Court - Indictments	0
Sheriff Court - Petitions	85
Sheriff Court - Indictments	42
Sheriff Court - Complaints	554
JP Court - Complaints	72
Total - Solemn (does not include petitions)	42
Total - Summary	626
Total - All business (does not include petitions)	668

The Scottish Courts and Tribunals Service uses a live operational case management system for the processing of court business. The information held on the system is structured for these operational needs, rather than for statistical reporting or research purposes. The information provided is based on the best information available from the case management system as at 3/7/23.

- 9.2 Whilst I have included the figure for the number of petitions registered in the sheriff courts, these are not included in the overall totals. In criminal proceedings, the Crown may begin proceedings by petition before deciding whether to prosecute on indictment, by summary complaint or take no further action. Our case management system does not link petitions with complaints or indictments and we do not record instances where the Crown take no further action following a petition. This is due to the fact that it is set up for operational needs rather than statistical reporting. However any indictment or summary complaint that followed on from a petition is included in the data.

10. Reviews and Lessons Learned Exercises

- 10.1 Throughout the pandemic we have sought to learn lessons, build on experience and – where possible – make positive change. Faced with such a tragic and disruptive event there has been a real desire across the organisation to ensure a positive legacy, whilst recognising that case backlogs will take time to resolve and that many of our service users and staff have endured personal hardship over the past few years.
- 10.2 Recognising that the response to the pandemic would be subject to scrutiny we commissioned our internal auditors to conduct a review of our response to date in August 2020. SCTS uses the services of the Scottish Government Internal Audit and Assurance Directorate to ensure that internal audits are carried out independently of management and by fully qualified audit professionals. Fieldwork on the audit was conducted during October and November 2020, with the report issued in January 2021 (EM-66 – INQ000226422). The report provided substantial assurance and made no recommendations for change – noting that response arrangements had been effective, governance was sound and that SCTS had adapted and innovated in response to the unfolding circumstances of the pandemic.
- 10.3 In view of the long-running nature of the pandemic a decision was taken, with the support of SCTS' Audit and Risk Committee, to conduct a second internal audit of the ongoing response to the pandemic, assessing the measures taken by SCTS to prepare for and support recovery and renewal work to date. This audit (EM-67 – INQ000226423) reported in November 2021. The report provided substantial assurance, made no recommendations and notes that *“SCTS has in place an effective and solid framework in relation to Covid renewal arrangements, with a strong tone from the top and clear leadership, direction and engagement from a senior management level that cascades down to local business levels. This is underpinned by effective management information structures which feed into planning at both a strategic and operational level. There has been extensive and exemplary work completed in relation to planning for an increase of workloads”*.

- 10.4 The SCTS Strategic Incident Management Team (SIM) were keen to carry out an organisational “lessons learned” review – to supplement the independent views from our auditors. Selecting an optimal time to undertake such a review was challenging as the pandemic featured a number of distinct phases, meaning the period of emergency response was sustained for longer than anticipated. Initially we had intended to conduct a lessons-learned review in late 2021, but as new variants emerged and further response efforts were required, this was delayed. The exercise was conducted between June and September 2022 and the report of the exercise (EM-68 – INQ000226424) was presented to both the SIM Team and the SCTS Board in October 2022. The exercise consisted of a range of internal and external interviews, a survey involving over 300 SCTS staff and a formal retrospective session involving the SIM Team itself.
- 10.5 The findings of the review were wide ranging, as detailed in the report itself. Overall they confirmed that the approach taken by the organisation to manage the emergency response and develop/deliver recovery options had been effective but that there was scope to improve business continuity planning through the experience of the pandemic; to refine and improve internal communications channels and to make best use of available resources in an emergency situation. At the time of writing this statement a number of the recommendations have been implemented – including the refresh of SCTS’ Business Continuity Strategy and review of reasonable worst case scenarios. Implementation of other recommendations is ongoing.
- 10.6 Given the significant level of additional funding committed to SCTS in order to deliver the criminal court recovery programme, external scrutiny of that work was in the public interest. Audit Scotland conducted a detailed review of the key steps taken by SCTS to respond to and manage criminal court backlogs – including the work on remote jury centres and the criminal court recovery programme referred to in this statement. They also reviewed other initiatives developed by SCTS, including the developing use of virtual hearing types for criminal court cases. Audit Scotland conducted their fieldwork between August 2022 and May 2023.

- 10.7 Their report on the Criminal Courts Backlog (EM-69 – INQ000226427) was published on 23 May 2023. It found that SCTS and partners responded quickly and effectively to the Covid-19 pandemic, that significant progress has been made in reducing the trial backlog that accrued during the pandemic and that SCTS had used data effectively to support its response. It noted that waiting periods remained above pre-pandemic levels and that continued effort and funding would be required to maintain positive progress over the coming years. We have accepted the small number of recommendations directed to SCTS in the final report.
- 10.8 As an organisation the way in which SCTS conducts its business has developed significantly in response to the pandemic. The electronic submission and presentation of documents has substantially reduced the bundles of court papers that were commonplace in civil cases before the pandemic. The use of virtual and remote hearings, especially for dealing with procedural matters, avoids the need for parties to travel to court for short hearings, saving time and reducing carbon emissions. The potential to make greater use of virtual hearings to reduce the need for transfers from custody will be explored further. The facility to record evidence in criminal cases for presentation at trial affords the opportunity to capture that evidence more quickly and to provide a more trauma-informed service. Whilst it may be beyond the scope of this current submission we set these ambitions out in our Corporate Plan for 2023-26 (EM-70-INQ000226428) and would be happy to expand on them should that be of assistance.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

Signed:

Personal Data

Dated: 7 September 2023