

Witness Name: Noel Rehfisch

Statement No.: 1

Exhibits:

Dated:

## UK COVID-19 INQUIRY

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### WITNESS STATEMENT OF NOEL REHFISCH – DEPUTY CHIEF EXECUTIVE, SCOTTISH COURTS AND TRIBUNALS SERVICE (SCTS)

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I, Noel Rehfisch, Deputy Chief Executive, Scottish Courts and Tribunals Service, will say as follows: -

#### 1. Background

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 Act<sup>1</sup>). 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 the SCTS are set out in sections 61 to 63 of the 2008 Act (NR/01 – INQ000545713), 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; the Scottish Sentencing Council, Scottish Civil Justice Council and the Criminal Courts Rules Council.

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<sup>1</sup> Judiciary and Courts (Scotland) Act 2008 (legislation.gov.uk) [\[NR/1 - INQ000000000\]](#)

- 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 the Chief Executive (CEO). During the specified period the CEO was Eric McQueen. I supported the Chief Executive throughout the pandemic in my role as Corporate Secretary and (from January 2021) as Deputy Chief Executive. The CEO is supported by six Executive Directors, one of whom is myself. Together we make up the SCTS Executive Team, which is responsible for corporate and operational delivery. A more detailed description of the operation of the 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 [NR/02 - INQ000222364 and NR/03 – INQ000226377].
- 1.6 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 Eric McQueen as the then Chief Executive. In line with our Business Continuity Strategy [NR/04 - INQ000226392] and Business Continuity Guidance [NR/05 – INQ000226403] the then CEO took the decision to activate the SCTS Strategic Incident Management (SIM) Team arrangements.
- 1.7 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.

1.8 Membership of the SIM Team consisted of:

- Eric McQueen (then 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

1.9 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.

- 1.10 During the pandemic the then Chief Executive 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 1.7).
- 1.11 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.
- 1.12 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 [NR/06 – INQ0000226414].

## **2. Pandemic preparedness and planning**

- 2.1 The SCTS is not responsible for the prosecution of offences, this is a matter for the Crown Office and Procurator Fiscal Service (COPFS), therefore I cannot comment on that specific point. However, I set out below some information regarding our business continuity management pre-pandemic and its adequacy when responding to the challenges posed by the pandemic.
- 2.2 As referenced at paragraph 1.6, SCTS has a business continuity management strategy and guidance in place and did so prior to January 2020. These were supplemented by organisation-wide and business unit specific business continuity plans which could be utilised where there was a need to manage disruption to people, premises, systems and partners as a consequence of any incident or emergency which impacted our ability to maintain the services we provide. Example local plans are provided [NR/07 – INQ000545747 and NR/08 – INQ000545748].
- 2.3 These plans covered the generic approaches the SCTS would take in the event the plans would require to be activated. They were not developed in preparation for a pandemic, rather they focused on the consequences of an incident and how we will deal with these rather than focusing on a particular event or events. Plans focused on ensuring that essential court business could be progressed and that statutory requirements were met.
- 2.3 As part of this work an analysis of critical activities was undertaken in the sheriff courts and timescales within which there needed to be the ability to process them [NR/09 – INQ000545750]

2.4 In common with a number of organisations our business continuity arrangements helped us to a degree in planning for and reacting to the initial phases of the pandemic – but our planning assumptions underestimated the scale and length of disruption faced. The experience means we are now better prepared to manage future such events (and those assumptions have been revised) but we recognise that such events will always lead to disruption – particularly when competing priorities need to be balanced, such as those between ensuring safety and continuing to deliver essential business.

2.5 If anything positive can be learned it is that the circumstances presented by the pandemic compelled our organisation (and others) to consider different ways of carrying out business – including an increased use of digital and remote ways of working. Some of these challenged the orthodox approach and – as a result – had not significantly advanced before the pandemic. The experience of, for example, using remote hearings for procedural matters in cases is one that has led to a general and beneficial improvement in practice, with all parties agreeing that such business can be conducted remotely effectively, saving time, cost and carbon emissions for all involved.

### **3. Co-Working**

3.1 As noted above (paragraph 2.1) the SCTS is not involved in the prosecution of crimes, this is the responsibility of the COPFS, therefore we carried out no consultation with His Majesty's Courts and Tribunals for England and Wales or the Northern Ireland Courts and Tribunal Service in relation to the prosecution of Covid-19 offences. Similarly we had no role to play in decision making relating to Covid-19 offences and how these were prosecuted.

### **4. SCTS involvement in the development of legislation**

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 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.

4.5 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.

4.6 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.

4.7 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.

4.8 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.

- 4.9 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 [NR/10 – INQ000226425; NR/11 – 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.
- 4.10 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 [NR/12 – INQ000226729]. 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.
- 4.11 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 [NR/13 – INQ000226430]. The provisions mentioned above were included in the Coronavirus (Scotland) Act 2020.

- 4.12 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 [NR/14 – 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 [NR/15 – INQ000226365]. These provisions were included in the Coronavirus (Scotland) (No.2) Act 2020.
- 4.13 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 [NR/16 – INQ000226366, NR/17 – 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 [NR/18 – INQ000226368; NR/19 – INQ000226369].

- 4.14 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 [NR/20 – 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 [NR/21 – INQ000226371]. Despite the concerns raised, the Regulations contained these provisions.
- 4.15 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 4.14 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.
- 4.16 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 [NR/22 – INQ000226372; NR/23 – 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.

- 4.17 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 2020<sup>2</sup> should be extended beyond March 2022 and whether or not they should be made permanent [NR/24 – INQ000226374].
- 4.18 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 [NR/25 – 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 [NR/26 – 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 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.
- 4.19 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 [NR/27 – INQ000226378].

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

## 5. Enforcement and adherence

- 5.1 The 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 COPFS, 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.
- 5.2 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 the SCTS. Where a Fines Enforcement Order is in place in relation to the penalty, Fines Enforcement Officers, who are staff of the 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 individuals on the payment of financial penalties and to secure compliance with enforcement orders (EO). 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.
- 5.3 I have provided some information relating to police fixed penalty offers for coronavirus offences and subsequent registered court fines for non-payment. The data covers fixed penalty offers issued between the period 26 March 2020 to 31 March 2022, this date range has been used as it is contained within the Police Covid Fixed Penalties tab in our latest official statistics publication – Courts Data Scotland Fines (NR/28 – INQ000545737).

- 5.4 I have also provided data on court imposed fines relating to Covid-19 offences. The data shows the number of accused people who had a case registered in the period shown where at least one COVID-19 related charge code was present and subsequently received a fine upon disposal (NR/29 – INQ000545729]. There are complexities in being able to ascertain whether any enforcement action has been taken due to the way in which fines collection and enforcement are recorded on our case management system. To provide this information would require some development work or manual interrogation of records, which will take some time to complete. Should the inquiry still require this information we can consider this request further.
- 5.5 The process involved for further enforcement action depends on the type of financial penalty. The process for COVID-19 related penalties did not differ from the standard processes outlined below, however for fixed penalties, the penalty imposed decreased on payment rather than increased. The penalty was £60 for the first offence, lowered to £30 if paid within 28 days and £120 for the second offence, then doubling for each further offence up to a maximum of £960.
- 5.6 Court imposed fines are either due for payment immediately or by agreed terms at the point of imposition. The majority of fines imposed include an EO which tells the offender how the fine should be paid and what will happen if it is not paid. The EO allows the Fines Enforcement Officer to implement a range of sanctions including deduction from benefit(s), arrestment of earnings and bank accounts and seizure of vehicles. Fiscal direct penalties are issued by the COPFS, in the form of a conditional offer. The alleged offender may refuse the offer within 28 days in recognition that prosecution will be the next likely stage. Alternatively, the alleged offender can accept the offer by making payment. If the conditional offer is ignored and payment not made, the responsibility for enforcement passes to the SCTS Fines Enforcement Officer, who will seek an EO from the court. FPNs are issued by each police force in Scotland and the money is due within 28 days and is collected by the SCTS. If the penalty is not paid within 28 days, the amount due is increased by 50 per cent and the penalty is converted to a registered fine with responsibility for enforcement passing to the SCTS Fines Enforcement Officers, who will seek an EO from the court.

- 5.7 An EO is an order which is made by the court which gives the Fines Enforcement Officer the authority to enforce fines administratively (Criminal Proceedings etc. (Reform) (Scotland) 2007 Act). This cuts the amount of court time spent dealing with fines enforcement.
- 5.8 The EO sets out the payment terms and explains whether the fine is to be paid by a set date or by instalments. The EO allows the Fines Enforcement Officer to meet and agree realistic payment plans with fine payers in order to keep them to the terms of the EO.
- 5.9 The SCTS plays no role in any decision to withdraw or review a decision to impose a financial penalty.
- 5.10 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 [NR/30 – INQ000226420]. This sets out the position as at 17 October 2022.
- 5.11 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.
- 5.12 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 any significant impact on payment, as any enforcement action of such penalties would only commence after the time to pay had expired.

- 5.13 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.
- 5.14 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
<b>Total - All business (does not include petitions)</b>	<b>668</b>

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.

- 5.15 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.
- 5.16 As noted earlier in my statement, the SCTS plays no role in prosecuting offences, therefore I cannot comment on the process for prosecuting Covid-19 offences which made their way to court. Similarly I cannot comment on the decision on which court forum to prosecute in – these are both matters for COPFS. All cases followed the standard criminal procedure. Any deviation from this would have required legislative change and would be a matter for the SG.
- 5.17 The SCTS cannot provide data on the breakdown of Covid-19 offences prosecuted. The SCTS only holds information relating to cases proceeding in the courts and our case management system does not hold the specific details of charges. Whilst we may be able to provide you with a breakdown of different charges we would not be able to identify which of these related to test, trace and isolate requirements.

## 6. **Equalities**

- 6.1 A number of decisions were made during the course of the pandemic which affected the way in which business was carried out. Whilst the SCTS took all steps possible to maintain criminal court business in particular 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. There were numerous different changes made during the course of the pandemic for both criminal and civil proceedings –

it was not simply a case of closing and re-opening court buildings. Even where buildings were closed, some business was being progressed. All decisions made were in line with restrictions announced by government in response to the spread of the virus and its variants and public health guidance.

- 6.2 Throughout the pandemic, the SCTS fully understood the human impact of the criminal case backlog, which is why at all times throughout the pandemic we sought to strike the balance between delivering safe operations whilst maintaining as much business as possible. We are aware that, as victims wait longer for their cases to be heard, their lives can be put on hold and trauma can be prolonged. We worked in partnership with organisations across the justice system, including the legal profession and a range of third sector partners, to communicate our approach.
- 6.3 The Coronavirus (Scotland) Act 2020, came into force on 7 April 2020 and made provisions for conducting court business by electronic means, including enabling electronic signature and transmission of documents; suspending some provisions requiring a person to physically attend court, allowing attendance by electronic means; extending a range of statutory time limits; providing sheriffs national jurisdiction for cases beginning with an appearance from custody and providing exceptions to the rule that hearsay evidence is inadmissible. The Coronavirus (Scotland) (No2) Act 2020, came into force on 27 May 2020, and made similar provisions. Whilst these provisions allowed measures to be put in place to improve the resilience and capacity of the system – these were not sufficient to restore criminal court capacity to normal operating levels.
- 6.4 The Scottish Government produced Equality Impact Assessments for these pieces of legislation which indicated that:

*“The Scottish Government has assessed the potential impact of the proposed Bill on equal opportunities and has determined it does not unlawfully directly discriminate with respect to any of the protected characteristics (including age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief, marriage or civil partnership). Where provision*

*might potentially indirectly impact on equality, the Scottish Government considers the impacts are justified and a proportionate means of achieving the legitimate aim of protecting the general public from a coronavirus pandemic by increasing the capacity of public service systems and mitigating the spread of infection”.*

- 6.5 The steps the SCTS took in response to the pandemic relied on these legislative provisions. There was no additional consideration given to the impact on protected characteristics as a consequence of the closure of some court buildings – the focus was on users as a whole and prioritisation of the most important business types. In relation to criminal matters custody business took priority, in view of the need to ensure that accused persons who had been apprehended by the police appeared before the court within statutory timescales.

## **7. Lessons learned**

- 7.1 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.
- 7.2 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 (NR/31 – 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.

7.3 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 (NR/32 – 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”.*

7.4 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 (NR/33 – 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.

7.5 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.

7.6 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.

7.7 Their report on the Criminal Courts Backlog (NR/34 – 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.

7.8 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 (NR/35-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.

**Personal Data**

**Signed:**

**Dated:** 09/06/2025