



Briefing Paper

Amalgamated Briefing Paper on Restarting Solemn Trials

Judicial Institute for Scotland

13 November 2020

Updated 10 December 2020,
19 and 21 January, 9 February, 9 March, 23 September 2021,
11 January, 28 February and 3 May 2022

Changes to this Briefing Paper

Date	Changes made
4 May 2022	<p>The Judicial Institute has made a number of changes made to the Amalgamated Briefing Paper on Restarting Solemn Trials and its Appendices. Various changes to the content of the Briefing Paper have been made to bring the content up to date and to excise outdated material or that which is no longer relevant.</p> <p>N.B. The written directions have been updated (more details below) and we ask that judges and sheriffs please use the latest versions of Appendices D, E, F and G as well as the updated Briefing Paper in trials which ballot from Monday 9 May onwards.</p> <p>The public version of the Briefing Paper hosted on the Judiciary of Scotland website for member of the profession and the version for judges hosted on the Judicial Hub have been synchronised into one version.</p> <p>The further changes fall into two categories:</p> <p>1. Changes to the body of the Briefing Paper</p> <p>In Chapter 1, under the heading “Issues specific to the restart of sheriff and jury trials” an update has been added to reflect the arrangement that all professional witnesses would by default appear remotely in the High Court having been extended until the end of June 2022.</p> <p>Having reviewed the Amalgamated Briefing Paper in light of experience, the Jury Manual Committee has made recommendations on the sequence of steps to be taken on connecting to the remote jury at the start of day 2 of a remote trial. Accordingly, the "Route map for commencement of jury trial" in</p>

Chapter 3 has been updated under “Day Two” to clarify their recommended sequence of steps to be taken after the case calls and before the indictment and special defences are to be read.

In Chapter 4, under the heading “Day Two” the following changes are made:

- paragraph 4 now includes wording to confirm that the clerk will call the case after the judge asks for jurors to be connected by audio/video link;
- paragraph 5 has been simplified and now explains that everyone present (i.e. including substitute jurors) should listen to what is being said;
- paragraphs 6-9 now clarify that:
 - not guilty pleas and appearances will be confirmed by parties in the presence of the jury;
 - before the indictment and any special defence is read, the judge will invite the jury to retrieve those documents from their jury pack; and
 - the judge will hand over to the clerk who will read the indictment [and any notices of special defence.]

Reference to COVID-19 safety measures and processes has been updated throughout the Briefing Paper. See in particular Chapter 1 under “SCTS COVID-19 safety measures from 19 April 2022” and Appendix H as amended.

2. Changes to Appendices

Appendices D and F have been amended to provide alternative options for what to say to both remote and in-court juries.

Appendix D “Impartiality – a suggested form of words” has been significantly updated to reflect the updated sequencing as detailed

above, to remove extraneous wording and to encourage all potential jurors, including substitutes, to listen to what is being said.

Appendix E “COVID-19 Jury Information” has been slightly adapted to remove the reference to Appendix K. Appendix K, which provided a much longer version of COVID Jury information, has been removed.

Appendix F “Introducing the case and procedure to the jury” has been adjusted in recognition of local variations in staffing by reflecting that jurors can speak to the clerk via the macer / bar officer / jury attendant as appropriate. New text also clarifies that in the event of objections to the evidence, or legal points which crop up during the trial, the judge will ask that the connection is switched off or that jurors leave the court room [as necessary] to allow the judge to hear legal argument and decide the issue in the jury’s absence.

Appendix G “Written Directions” has been updated to make it clear that credibility and reliability are assessments to be made of evidence and not personal characteristics of witnesses. One paragraph has been re-located within the document and some typographical errors embedded in the original version have been corrected. This Appendix has also been reviewed and wording simplified to ensure the directions are in plain language. This Appendix is shared with members of the public i.e. jurors, so judges may be reassured to know that it has been reviewed and revised by the Judicial Institute Digital Team to ensure accessibility..

As above, Appendix H has been significantly revised.

The witness behaviour protocol agreed by the Remote Professional Witnesses Working Group which previously appeared at Appendix

	L has been “re-lettered” to take account of appendices which have been removed in this edition.
28 February 2022	Appendix F has been updated to encourage jury notetaking.
11 January 2022	<p>The Briefing Paper has been updated to reflect:</p> <ul style="list-style-type: none"> • The emergency presumption of remote evidence by professional witnesses which takes effect from 17 January 2022 and • The new witness behaviour protocol agreed by the Remote Professional Witnesses Working Group, chaired to be provided to witnesses who are giving evidence remotely. <p>See Chapter 1, under the heading “ Issues specific to the restart of Sheriff and Jury trials” and Appendices M and N.</p>
23 September 2021	<p>The Amalgamated Briefing Paper on Restarting Solemn Trials has been updated at Appendix H under the heading “COVID “incidents” during a trial – judicial considerations”. A section entitled “SCTS staff member reports COVID symptoms mid trial” has been added. This section provides guidance should a member of SCTS staff involved in a trial, such as the jury attendant, be replaced after reporting COVID symptoms during the trial. Transparency on such matters is recommended, but it is of course a matter for the individual judge in any particular trial to decide what to say and the Judicial Institute cannot be prescriptive.</p>
23 September 2021	<p>The procedure for the affirmation of jurors has been updated in conjunction with the SCTS guidance issued for clerks, to streamline the process and ensure consistency between the two. The Briefing</p>

	<p>Paper has been updated in Chapter 4, under the heading “Day Two” to reflect the new streamlined process for affirming jurors.</p>
<p>9 March 2021</p>	<p>There have recently been discussions about what a judge should say to the remaining jurors if, mid-trial, one juror reports COVID symptoms and requires to self-isolate so that the judge discharges the juror and the trial proceeds with 14 jurors. The Amalgamated Briefing Paper on Restarting Solemn Trials has been updated to incorporate the following wording at Appendix H under the new heading “COVID “incidents” during a trial – judicial considerations”:</p> <p><i>“It is understood that when the juror reports his/her symptoms he/she will be asked by the clerk whether he/she has complied with social distancing requirements while serving as a juror. If the juror with symptoms says that social distancing has been complied with then the Public Health/SCTS advice is that there is no need to inform anyone else, i.e. the remaining jurors. Thus from a health and protection perspective no action is required.</i></p> <p><i>If the response is that social distancing has not been complied with then the clerk will need to obtain more information and it might be necessary for the clerk to carry out further enquiries with the other jurors.</i></p> <p><i>However the judge will want or need to say something to the remaining jurors about the missing juror, as the judge would do in any trial when a juror is discharged. Usually the judge will say no more than something like:-</i></p> <p><i>“You will see, members of the jury, that one of your number is no longer with us. I have discharged that juror and the trial will now proceed with 14 of you.”</i></p> <p><i>More often than not the judge will also say something like:-</i></p>

"I cannot go into the reasons for that juror being discharged and you should not speculate"

In the case of the juror with COVID symptoms, the situation is different and unique and it is suggested that transparency must be the policy for the judge. This may in any event be the inclination of many judges, so that, without going into any detail, the remaining jurors should be told of the reason for the discharge of the juror.

This does create a risk that other jurors may feel anxious and unsettled about taking part in the trial and the smooth further progress of the trial might be disrupted. Reassurance from the bench might go some way to allay concerns and minimise such a risk. The judge might also take the opportunity to underline for the remaining jurors the importance of observing social distancing requirements."

We have made clear in the updated Briefing Papers that it is a matter for the individual judge in any particular trial to decide what to say on such occasions. The Judicial Institute cannot be prescriptive.

Both Briefing Papers can be accessed from the "[Digital Courts Toolkit](#)" and are also available in "[Briefing Papers](#)".

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Amalgamated Briefing Paper on Restarting Solemn Trials

Foreword

The original JI Briefing Paper on Restarting Solemn Trials in the High Court (dated 17 July and updated on 27 and 29 July and 3 September 2020) was drawn up to support those judges due to conduct the first tranche of solemn High Court trials commencing in July 2020. That paper was revised to reflect lessons learned from those trials and related developments. A supplementary Briefing Paper on Remote Jury Centres (“RJC”) was then published once that model was selected as the national model for such trials and preparations made for the launch of the RJs in Edinburgh and Glasgow. This paper represents an amalgamation of both original papers with historical and unnecessary material removed. Sheriffs may be particularly interested in the [route map for commencement of a jury trial](#) which provides a broad picture of how a COVID affected trial proceeds with the new jury procedures in place. Please note that both the original “Restarting Solemn Trials in the High Court” Briefing Paper and supplementary “Remote Jury Centres” Briefing Paper have been removed from the Judicial Hub and replaced by this Briefing Paper.

In December 2020 sheriff and jury trials restarted in some sheriffdoms using the RJC model. Other courts followed in 2021. The intention was that this paper will be a useful resource for sheriffs conducting trials with the new procedures in place. The original paper recognised that, for some time at least, solemn trials would be innovative in two entirely unconnected respects:-

1. They would take place against the background of the challenges posed by the COVID-19 health pandemic and require to take account of physical distancing restrictions, not least in terms of the location of the jury;
2. In solemn trials procedures will be in place (a) to provide the jury at the outset with a written document advising them of their duties and responsibilities; (b) to give the jury, before any evidence is led, oral directions on the general

principles applying to all solemn trials and, in some cases, directions on matters relevant to the particular trial; and (c) then to give the jury those directions in written form, once more before any evidence is led.

As procedures and practice developed and experience gained the paper was revised.

1. Remote jury centres

Background

Following the impact of the pandemic the remote jury centre model was announced in September 2020 with plans to open Jury Centres for High Court trials in Edinburgh from September at the Odeon Fort Kinnaird cinema complex, and in Glasgow from October at the Odeon Braehead. In this model the jury views proceedings remotely from a Jury Centre rather than from the court room or a room in the same building as the court. The aim was eventually to re-establish pre COVID-19 pandemic levels of business with 16 trial courts capable of running simultaneously, spread across Edinburgh Lawnmarket and Sheriff Court, Livingston, Glasgow Saltmarket and Sheriff Court and Paisley Sheriff Court. The juries for these trials are located in one of the two Jury Centres where there is capacity for 5 juries at Fort Kinnaird and 11 at Braehead.

Recruitment and training of staff, provision of equipment

- Each Jury Centre has a Jury Centre Manager and a sufficient number of reception staff.
- Each jury room within each Jury Centre has a Jury Attendant.
- SCTS is using existing and supplementary staff to undertake these duties.
- All Jury Centre staff undertake the appropriate training before conducting any trials.
- At each Jury Centre, SCTS has a dedicated office space for the Jury Centre Manager and support staff. The office has SCTS issued equipment such as laptops, phones and a printer.

Technical support

“Sparq” is a technical event production company and as part of the contract agreed with Odeon Cinemas will be managing and supporting the in-house projection screen and audio equipment at the Jury Centres. Sparq will provide the cameras which show the jurors on screen in the court and will also provide point to point communication with the Court.

A Sparq technician will be present in each jury room who will ensure that all the equipment is working and highlight any problems to the Jury Attendant.

Police presence at Jury Centres

Police Scotland undertook a risk assessment, and made 27 recommendations which SCTS acted upon. One of the recommendations was that the Jury Centres be given a marker at the respective Police Scotland Area Control rooms and so that any calls would be given a heightened response rate.

Cleaning of Jury Centres and opening hours

Jury Centres are maintained to the same, high baselines measures as all SCTS buildings as set out in the [Organisational Risk Assessment](#).

Most remote jury centres trade as cinemas on weekday evenings and at weekends. In some locations, SCTS only occupies a limited number of screens and the cinemas will trade during the day in “their” screens.

It is strongly suggested that judges check with the clerk both:

- (a) the opening and closing times for remote jury centres; and
- (b) whether there is a time at which a particular screen in which a jury is sitting will require to be made available by the company which owns the building.

Jury Citation and Balloting

Confidence

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

Procedures

- Section 85 of the Criminal Procedure (Scotland) Act 1995 governs the citation of Jurors.
- The balloting procedure introduced by [SSI 2020/200](#) still remains in force.
- An example of a citation can be found at [Appendix A](#), along with a copy of the updated information sheet shared with jurors.
- Updates have also been made to the [jury information section](#) of the SCTS website
- Walk-through videos for jurors, witnesses and practitioners explaining the set-up at the Jury Centre and the court room have been developed. These are on the SCTS website; click the link and scroll down to view the videos: [“Participating in jury trials in Scotland: advice during coronavirus”](#).
- The citations are sent out by the usual practice of first class post. Applications for excusals should be made via email or telephone.

Numbers to be cited

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

Responses/Excusals

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

Jurors are directed to the [Guide to Eligibility and Excusal](#) on the SCTS website, which details those who are eligible for excusal.

SCTS intend to be strict with the excusals to ensure only those who fall within the guidelines are excused. The excusal of those with caring responsibilities in particular may require careful scrutiny.

The number of jurors cited has been increased to allow for an increased number of non-responses and excusal requests.

A Question and Answer document has been produced for staff dealing with the responses and excusals detailing information about expenses, travel arrangements and safety arrangements.

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

Issues specific to the restart of Sheriff and Jury trials

Non-vulnerable witnesses and remote attendance

The Remote Jury Centre model will be the same for both High Court and Sheriff Court jury trials. Only a limited number of sheriff courts will be used for such trials so that, for example, a trial notionally from Stranraer will be heard in Ayr and trials from Jedburgh or Selkirk will be heard in Edinburgh. It may be that there will be a desire on the part of witnesses, who are not vulnerable witnesses, to give evidence from a remote location near home and thus avoid having to travel to the location of the trial court. Courts now have power in terms of paragraph 2(3) of schedule 4 of the Coronavirus (Scotland) Act 2020 to direct that any witness does not require physically to attend court but must also give direction as to how the witness is to appear by electronic means. See [Appendix J](#) for more details.

As at 6 January 2022, agreement has been reached with representatives of the Faculty of Advocates, the Society of Solicitor Advocates, the Law Society of Scotland and COPFS to increase use of these provisions for professional witnesses including doctors, scientists and police officers, with effect from 17 January 2022. Originally the agreement that all professional witnesses would by default appear remotely in the High Court was to operate from January until the end of March 2022. As at 23 March 2022, the Lord Justice General has agreed to extend this for a further three months and so the court will therefore continue to operate in this way until the end of June 2022.

The Lord Justice General's memo of 23 December 2021 provides as follows:

“The remote ballot day of a trial presents an opportunity for the court to make any necessary directions for the ensuing trial. If a practice operates whereby all police witnesses and medical professionals in the High Court give evidence remotely, this can be planned and arrangements made. This would avoid entering into complex arrangements around countermanding witnesses with an increased likelihood of confusion. If the court determines that a police or medical witness must attend in person with at least a minimum of one day's notice, there is much less disruption and it should not cause undue difficulty most of the time. It is better still if the judge and parties can work together to identify whether evidence can be presented in the form of a joint minute.

A practical solution has been agreed between the members of Lord Matthews' group. In effect, for professional and police witnesses, there is an understanding that parties will agree to operate on a default assumption that all professional witnesses will attend remotely, but that a judge can still determine that this does not apply where a party or parties persuade the court that there is sufficiently good reason for the witness to attend to give evidence.

Representatives of the prosecution and profession have agreed that, during the Omicron emergency, these measures will generally be consistent with the interests of justice. I therefore encourage all judges to use the opportunity of the remote ballot day to:

- (a) encourage further agreement of facts by joint minute in order to minimise witnesses giving evidence anywhere; and*
- (b) to use the powers of the 2020 Act to allow professional and police witnesses to give evidence remotely.”*

The Remote Professional Witnesses Working Group, chaired by Lord Matthews, has agreed a witness behaviour protocol (see Appendix L). This is to be provided to witnesses who are giving evidence remotely.

According to the memo from the Lord Justice General:

“That protocol, which has been prepared by the judicial members of the group having consulted the other members, has been approved by the Faculty and the COPFS, but is still under consideration by the Law Society [they have since confirmed approval]. It should provide reassurance that witnesses, and police officers in particular, will be subject to the same discipline which would apply if they attended at court. It prohibits access to the productions, which are to be provided for the purpose of giving evidence, until authorised by the court.”

SCTS COVID-19 safety measures from 19 April 2022

From Monday 19 April 2022, it will no longer be a legal requirement for persons attending court buildings (including remote jury centres) to wear face coverings and formal physical distancing will be removed. At this stage, all legal requirements to manage COVID-19 will be removed and replaced by guidance supporting the [Scottish Government’s Strategic Framework](#). However see the [guidance on face coverings in court proceedings](#) where courtroom participants are required to wear a face-covering (unless exempt) as part of our continuing organisational safety responsibility measures to mitigate the risk of transmission of COVID. The SCTS news items of [1 April 2022](#) and [19 April 2022](#) highlight upcoming changes to the court and tribunals safety measures.

Prior to a trial commencing

Please see the latest guidance on coming to court which applies from 19 April 2022: [Coming to Scottish Courts and Tribunals Service buildings during COVID-19: What you need to know and what you need to do](#) and the [Jurors page of the scotcourts website](#) under “Face coverings and physical distancing .

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

- that it is their responsibility to respect each other’s personal space when on SCTS premises;

- jurors observing proceedings from remote jury centres are not obliged to wear a face covering whilst seated, but may choose to do so if they wish, however, we will ask that they wear a face covering when they are moving around the building; and
- that they should maintain good hand and cough hygiene.

Repurposing jurors

[Section 88 of the 1995 Act](#) provides as follows:

“(1) Where the accused pleads not guilty, the clerk of court shall record that fact and proceed to ballot the jury.

...

*(4) Notwithstanding subsection (1) above, the jurors chosen for any particular trial may, **when that trial is disposed of**, without a new ballot serve on the trials of other accused, provided that—*

(a) the accused and the prosecutor consent;

(b) the names of the jurors are contained in the list of jurors; and

(c) the jurors are duly sworn to serve on each successive trial.”

[Emphasis added]

Thus, if jurors have been balloted for trial A and attend the Remote Jury Centre the following day, but trial A does not proceed for some reason [e.g. the accused pleads guilty or fails to appear, an essential witness is absent] AND the Crown has a back-up trial, B, which can proceed, the court can, if all parties consent, use the jurors balloted for trial A as the jury in trial B, which can thus immediately commence in the normal way.

The basic requirements to invoke the use of section 88(4) are:

- (a) that jurors have properly been balloted for “a particular trial”; and
- (b) “that” trial has been “disposed of”.

This does not require that the “case” be disposed of. The focus is on the “particular trial” for which the jury have been balloted, not the case.

It is suggested that if the section 88(4) procedure is in play regarding trial B then the court might wish to consider the following:

- The trial which is not proceeding, and for which the jurors have been balloted, should call and should be “disposed of” for the day, whether by postponing/adjourning, deserting, granting a warrant for the accused etc.
- The clerk should check with the jurors in attendance, as would be normal, that they do not know the accused or a witness in trial B and that there is no other reason for them not to serve.
- The back-up trial should call, **with the accused present** [see Renton & Brown quote below], and the matter of utilising the section 88(4) process should be aired.
- It can be confirmed with parties that the names of the jurors to be used are contained on the list of jurors for that trial. No doubt the clerk can confirm this but it might be worth getting parties to concur. It might also be worth minuting that this condition is satisfied.
- When accused and prosecutor consent that should be minuted.
- It might be worth getting the jurors to be displayed on screen at this point so that the accused and procurator fiscal depute have the chance to see them and object to anyone so that a substitute can be inserted.
- The Crown and accused could be asked to confirm that they still consent - per [Renton and Brown at para 18-39](#):

“The consent of the accused need not be his personal consent but may be given on his behalf by the counsel or agent appearing for him even although he is not present at the time. It would appear that, at any rate in the latter case, the consent can be withdrawn at any time before the jury is sworn.”

Jurors are then sworn etc. in the normal way.

A further matter to note:-

In order to prepare for giving the jury directions, orally and in writing, before the evidence starts the sheriff needs to consider what these directions will be. Most will be the standard form but he/she has to decide whether there needs to be any additional directions because of the circumstances of the particular case

So, if there is a chance that the back-up trial might go ahead the sheriff will need to have prepared the written directions for that trial just in case, so that they can be printed and put into folders

It may of course turn out that these are not needed or at least not needed there and then, if the priority trial goes ahead.

2. The new jury directions

Background

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

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

Specimen introductory remarks in [Appendix F](#) to this Briefing Paper set out the housekeeping arrangements and an overview of how the trial works.

Please note: the remarks at Appendix F are suggested and are not mandatory. Judges should feel free to impart this information in their own way and in their own words, reinforcing what is in [Appendix C](#), the note of responsibilities, which the jury will have already in their packs.

The introductory remarks should be followed by the reading of the written directions which are at [Appendix G](#).

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

Part C of the written directions are additional documents containing specific directions which, *where appropriate*, should also be provided in writing and read to the jury at the same time.

Whether it will be advisable in a particular case to provide any further material to the jury in advance of the evidence, such as a definition of the crime(s) charged, will depend on the circumstances. This has not yet been the practice in the High Court. It may not be appropriate in cases with multiple or evidential charges when many of the charges will be withdrawn long before the jury deliberates. In charges under

sections 1-9 of the Sexual Offences (Scotland) Act 2009, it may be misleading to give the full statutory definition which includes reference to the absence of reasonable belief at the start of the trial given that, in most cases, it will not be a live issue on which direction is required at the end of the trial.

In [Lyttle v HMA 2003 SCCR 713](#) it was held that nothing said in the opening introductory remarks can be prayed in aid to make good a deficiency in the charge. However in that case the court was not dealing with information clearly encapsulated in writing and approved by the Jury Manual committee; instead the information given to the jury was only labelled as introductory remarks and was not highlighted as legal directions which the jury had to follow. *Lyttle* has now been reconsidered in the case of [SB v HMA \[2021\] HCJAC 11](#) where Lord Turnbull, delivering the Opinion of the Court, said:-

“It is therefore clear that the import of the decision in the case of Lyttle is confined to the practice with which it was concerned. It was concerned with the then practice of making what were truly introductory remarks, in the sense of introducing the personnel and the general procedure. The case was not concerned with information which was encapsulated in writing and was introduced as legal directions which the jury had to follow.

[53] In conducting a trial in accordance with the recently introduced procedures a judge will no doubt think carefully about the issues and areas of law which he or she wishes to include in the charge. The content of the charge will vary according to the length of the trial and the issues raised. In many cases it may be sufficient to draw the attention of the jury to their copies of what was delivered earlier and to remind them that they must follow both those directions and what is said in the charge itself. In other cases the judge may feel it necessary, or appropriate, to recap some of what was said or to revisit some aspects of the earlier directions in more detail. The evidence led and the speeches of the crown and defence will doubtless inform the extent to which anything more need be said in relation to the written directions. In any charge, the directions as a whole must be tailored to the circumstances of each case.”

It is therefore clear that the directions now to be provided in writing should be incorporated into the eventual charge by reference (and in some cases recap) in due course so that the issue of possible discrepancy raised in *Lyttle* will not arise and the context can be fully identified. The appeal court endorsed the new approach in [SB v HM Advocate \[2021\] HCJAC 11](#) and [Hattie v HM Advocate \[2022\] HCJAC 13](#).

NOTE:-

Recapping of written directions

The Jury Manual has been revised to take account of the new procedure for giving the jury pre-evidence and written directions. The revised section of the Manual explained:

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

- 1. The jury should be reminded that they have copies of what was delivered earlier and it should be stressed that they must follow both those directions and what is said in the Charge itself. One possible formulation might be to say at the start of the Charge:-*

“I gave you directions in law at the start of the trial and you have a copy of them. You will apply those directions in your deliberations. I will not repeat all of them but I will expand on or revisit some of them in light of the evidence in this case.”

- 2. Judges and Sheriffs should be alive to the fact that the conduct of the trial, the exact nature of the issues raised and perhaps even the length of the trial will mean that some repetition, refinement or elaboration is needed of what was said at the start, both in relation to the more general directions and any further matters such as, for example, concert, prior statements, special defences or*

dockets, as the case may be. It should always be borne in mind that the directions as a whole must be tailored to the circumstances of each case.

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

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

Written Directions in the Sheriff Court

Solemn trials in the sheriff court will be conducted following the same procedure, with the adoption of the new process of providing written directions.

3. The trial, including the new jury directions

The following provides a broad picture of how jury trials proceed operating from remote jury centres:-

Route map for commencement of jury trial

Day One

- Clerk telephones all cited jurors to confirm they have no difficulty in attending.
- Case calls with no jurors present but everyone in court and judge on bench
- Plea tendered
- Judge deals with any preliminary matters
- Jury balloted remotely
- Judge considers making an order under (Section 4(2) of the Contempt of Court Act 1981 to restrict reporting until the commencement of the trial because balloted jurors have not yet been warned by the court not to make internet inquiries etc.
- Judge makes an order under paragraph 2(3) of schedule 4 of the Coronavirus (Scotland) Act 2020 directing that the jurors need not physically attend the trial courtroom but will attend by electronic means, namely by a television link between the RJC and the trial courtroom. See style direction – appearance by electronic means.
- Balloted jurors plus 5 (or 10 if directed by the judge) are telephoned by clerk telling them to turn up next day.

Day Two

- Balloted jurors attend RJC where they will be met by SCTS staff.
- The juror will be searched by a security officer, who will conduct a hands off search.
- The juror will check in at reception and told their screen number.
- The juror will make their way to the screen and be met by the Jury Attendant.
- The Jury Attendant will escort the juror to their seat.
- The same process will be repeated every day.
- Clerk addresses jurors, deals with excusals and provides necessary logistical information including re safety
- Each juror given a copy of the Duties and Responsibilities leaflet by Jury Attendant
- Judge comes on the bench, parties all in court
- Link to court activated
- Case calls
- Judge welcomes jurors and substitutes and encourages them to listen to all that is said
- Not guilty plea confirmed
- Judge explains that the clerk will read the indictment and notices and invites jurors to take them out of the pack
- Judge hands over to clerk
- Indictment and special defences read
- Jury sworn

- Questions to jurors re impartiality [Specimen at Appendix D]
- Adjournment – “coats and hats”
- Deal with any jury excusal issues which arise
- Reconvene with jury and substitute any juror(s) as required, with suitable questions and further adjournment if necessary
- Excuse the unempanelled jurors with details of any further commitment as the case may be
- The text of Appendix G Parts A and B, the general directions which apply in every case, are in the pack given to each juror. This may also include any of the extra directions in Part C of Appendix G specific to the case, e.g. concert, more than one accused
- Judge introduces the case and procedure to the jury including giving COVID-19 reassurance as required/thought necessary
- Judge gives general directions which apply in every case plus any relevant extra directions specific to the case
- Evidence commences.

4. Detailed description of the new process

Court room requirements

Court – will be the trial court and will contain the judge, clerk of court, accused, prosecutor and defence counsel and/or solicitor, witness, and public, including families. Members of the public, family representatives and the media may also be in attendance.

RJC – will host the jury in an auditorium which will be the same room used as the Jury Room for deliberations.

The technology requirements would be:

A live two way visual and audio link will be established from the court to the RJC. A large video wall will be in place in the court permitting all in court to see all of the jurors’ faces. The jury will see the court room, in particular the witness giving evidence, the accused and productions that are shown in court, on a large 4 quadrant screen (the normal cinema screen) in the RJC. Two way audio will be in place to allow communication between the court and the RJC.

The split screen shows in the four quadrants:-

Quadrant 1	Quadrant 2
Accused and, when examining, the AD and defence counsel. The dock escorts could also be seen, plus a large part of the public benches.	The witness box.
Quadrant 3	Quadrant 4
Overview of the courtroom.	Evidence presentation equipment.

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

The Ballot

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

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

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

Day One

1. On the morning of day one, between 9.30 and 12 noon, the clerk of court will phone potential jurors to ensure that they are available to attend for jury service; those available will be placed in the ballot bowl.
2. The case will then usually call in open court at about 2pm.
3. Judge deals with any preliminary matters, such as tendering of pleas, late notices or lists of witnesses, S 67 notices etc.
4. The balloting stage of the trial will be an opportunity for the judge to identify with parties the topics which will require to be the subject of written direction in addition to those which apply in all cases (see below Day two XVII).
5. Parties will be asked by the judge whether this case is one of high profile that may require extra substitute jurors, more than five. If so, the court may, of its own accord or on the application of parties, direct that the reserve list be increased to a maximum of 10 jurors.
6. Fifteen names (“the first list” plus five or more substitutes (“the reserve list”) are drawn by the clerk.
7. Judge considers making an order under [Section 4\(2\) of the Contempt of Court Act 1981](#) to restrict reporting until the commencement of the trial: otherwise the media could report that a jury in the case has been balloted. This could

alert the jurors to the case that they are presiding over and they could carry out research as they have not yet been directed by the court not to.

8. Judge makes an order under [paragraph 2\(3\) of schedule 4 of the Coronavirus \(Scotland\) Act 2020](#) directing that the jurors need not physically attend the trial courtroom but will attend by electronic means, namely by a television link between the RJC and the trial courtroom. The following wording is suggested:-

Style direction – appearance by electronic means

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

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

Day Two

1. The clerk would require to speak by audio/video link to all 20 or 25 balloted jurors who will be located in the remote jury centre. The clerk will cover all safety and logistical issues. On arrival each juror will have been given a pack containing the indictment, special defences and a copy of the written directions which the judge will later deliver. The jurors are advised not to look at their pack until told by the clerk that they may.
2. Jurors will each be given by the Jury Attendant a copy of the document “Your Responsibilities as Jurors” – see [Appendix C](#).
3. If the priority trial cannot commence see [“Repurposing jurors”](#) above.

4. The judge will come onto the bench. Parties will confirm case is proceeding. Judge will ask for jurors to be connected by audio/video link. The clerk will call the case. The judge may want to ask the jurors if they can see and hear proceedings effectively.
5. At this stage the judge may want to thank the jurors and substitutes for attending and explain that everyone present should listen to what is said.
6. Not guilty pleas and appearances will be confirmed by parties in the presence of the jury.
7. Before the indictment and any special defence is read, the judge will invite the jury to retrieve those documents from their jury pack.
8. The judge will hand over to the clerk who will read the indictment [and any notices of special defence.]
9. The clerk will administer the jury oath or affirmation. The following procedure, has been approved by the Lord Justice Clerk and the Jury Centre Clerk of Court Guidance amended at page 6. The procedure aims to avoid affirming jurors having to move to the front of the jury and do so individually, and should be observed. :

“Swearing in the Jury

When administering the oath to jurors, they should raise their right hand, say I do and also nod when taking the oath.

Affirmation

If any juror wishes to affirm they will do so while remaining in their allocated seat and, if there is more than one, they will take the affirmation collectively. The clerk will not ask them to raise their hand. They will be asked as a group, if more than one, to repeat the following, stating their name as noted at the start:–

"I, (name), do solemnly, sincerely and truly declare and affirm that I will well and truly try the accused and give a true verdict according to the evidence"."

10. The judge will then pose the impartiality questions. A suggested form of words is at [Appendix D](#).
11. "Coats and hats" adjournment
12. Deal with any jury excusal issues which arise.
13. Reconvene with jury and substitute any juror(s) as required, with suitable questions and further adjournment if necessary.
14. If a substitute is required, the juror will be excused and the substitute chosen from the reserve list (in the order in which their names were drawn) and sworn as usual. It may be that under the circumstances, the substitute should be asked, before the charges are read, if there is any good reason which would require excusal. All these people will have been in the same room and heard all that was said to the 15 original jurors.
15. Excuse the unused substitute jurors with details of any further requirement as the case may be.
16. At this stage, a new procedure will be followed which has been devised on the instructions of the LJG and LJC.
17. The judge will make introductory remarks, a suggested version of which is set out in [Appendix F](#), but judges are free to use their own words. However it may be that the judge would think it appropriate to say nothing. If the judge thinks it necessary to say something, a suggested form of words is contained in [Appendix E](#).
18. Thereafter, the judge will give the written directions which are set out in Parts A and B of the document at [Appendix G](#). It has been reported that there have been instances of the written directions which the judge intends to deliver not

matching the version which the clerk has, perhaps because the clerk has an old version of Appendix G. Responsibility for giving directions to the jury remains on the presiding judge, as normal, throughout proceedings. The judge should therefore ensure that the clerk has a copy of the most recent updated version of the written directions, and any additional directions as mentioned in paragraph 19 below, well before the trial commences properly on day two. If necessary the judge may require him or herself to provide the written directions to the clerk but in any event will wish to check with the clerk that he/she has the correct set of documents. The clerk will need time to ensure that the directions are printed and inserted into the juror packs at the RJC.

19. In some cases it may be appropriate to give written directions at this stage on additional topics such as dockets, special defences, concert etc. These are set out in Part C of [Appendix G](#). Since all these directions are contained on pre-printed sheets and each member of the jury will be given a copy prior to the judge referring to them, it will be necessary prior to the start of the trial to have selected the appropriate collection of sheets for distribution.

20. In addition the judge will make reference to the document “Your Responsibilities as Jurors” ([Appendix C](#)) a copy of which the jury will also have been given on arrival.

21. The Crown will call their first witness.

22. The trial will then proceed as normal.

23. Note: - if during the trial a “new” event occurs, e.g. the first time a production is shown on the document camera, the judge may want to check with the jurors that they can see the image. It is thought that it should be the judge who does this, rather than asking (e.g.) the prosecutor to do so.

24. Documents which are to be given to the jury will require to be printed/copied by a member of SCTS staff who is wearing a face covering and disposable gloves. Any copy productions will then be placed in a folder for transporting to the jury. Any member of staff distributing paper productions will be wearing a

face covering and disposable gloves. This will allow for the printing and provision of documents to the jury where such documents are generated just before the trial starts or even during the trial. In the Jury Information sheet which is sent with the citations it is said:-

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

The expectation is that the clerk will also mention this precaution to the jurors in the welcoming remarks.

How do jurors communicate with court?

- There will be a microphone available for the jury to communicate with the court via the Jury Attendant.
- The microphone will be controlled by the Jury Attendant, who will activate the microphone and inform the court of any issues, such as sound, image or a juror requiring the attention of the court.
- In particular, if a juror, for example, realises before the evidence starts that he/she knows the accused, the juror will inform the Jury Attendant.

The Jury Attendant will inform the court that there is an issue using the microphone in the Jury Centre that is linked to the courtroom.

The juror will be isolated away from other jurors.

The Jury Attendant will contact the clerk of court – an SCTS mobile phone will be available for the Jury Attendant to do this and can also be used by the juror in the presence of the Jury Attendant.

- This method will apply for any forms of communication the jury needs to have with the clerk.

- The impartiality questions: at the moment when a judge asks the impartiality questions, the jury is told not to answer out loud, but to speak privately to the clerk of court if there is an issue.

It is suggested that the following could/should be said by the judge to the jury about how they communicate:-

“If in answer to any of the questions your answer is yes, or if there is a difficulty or doubt, please do not mention it to the other members of the jury but do please speak privately to the Jury Attendant who will arrange for you to speak confidentially with the clerk of court.”

Productions and documents

Each juror will have a folder to allow them to store a copy of the indictment and other documents, such as notes, joint minutes and copies of productions etc.

- At the end of each day the folder will be placed in a lockable storage box by the Jury Attendant. The storage box will be taken to the storage screen and that screen will be locked by the Jury Centre Manager.
- If further documentation needs to be given to the jury, the Clerk of Court will email this to the Jury Centre Manager. The Jury Centre Manager will print the documentation. Any member of SCTS staff handling the documentation will wear gloves and a face covering.

Deliberating

- Once the jury has been charged by the judge and is ready to commence deliberations they will, where the particular facility allows, move down to a deliberation area which is immediately below the screen and is equipped with 15 physically distanced chairs and side tables. The chairs are set out in a large oval. On each table there is a microphone to aid communication amongst the jurors, some of whom are quite a distance from others. The Jury Attendant and technician from Sparq will leave the room.

- Where there is insufficient floor space for a deliberation area, the jurors will remain in their allocated seats when deliberating. Each will have a microphone and the image on the screen will be changed to show a live view of the 15 jurors. This will allow the jurors to see and communicate with one another without having to turn back and forth in their seats, which are obviously fixed facing forwards.
- If a member of the jury needs to use the toilet facilities during deliberations they will be escorted by the Jury Attendant to a disabled toilet (single use). The Jury Attendant will ensure that the juror does not interact with any other person.
- The Jury Attendant will remain outside the screen and ensure that no one enters the room.
- If the jury has a question for the Judge, the clerk will clear the court room and speak to the jury privately. The clerk will write down the question or request and confirm it with the jury before proceeding in the normal way by bringing it to the attention of the judge and then the parties. At one point it was thought that the jury's question could be committed to writing, scanned and emailed to the clerk. It transpires that there are no scanning facilities in the RJC's. Anecdotally it seems that in some instances the question may have been photographed and sent by email or text to the clerk. The main thing is that the clerk accurately understands what the question is and can check that with the jury.
- Once the jury has reached their verdict they will inform the Jury Attendant.
- The Jury Attendant will then message the Clerk of Court to inform them that the jury has reached a verdict. The jurors will be asked to return to their allocated seats.

In the High Court only:

- Once the jury has intimated that the verdict is ready the clerk should be facilitated to have a private discussion from a closed court room with the

whole jury to ensure that they are clear that they do indeed have a verdict. Otherwise there is substantial room for error and confusion of a kind which clerks are very good at nipping in the bud.

- On another but related point, it is known that juries sometimes ask clerks at this point to remind them of the procedure for delivering the verdict, which is entirely proper and saves the embarrassment of the spokesperson getting it wrong. This should also be facilitated via a closed court communication between the clerk and the jury.

Further considerations regarding jurors

Refreshments and lunches for juries

- Jurors will be able to select from a number of options – such as: a meat box, fish box, vegan box, gluten free and a salad box. They will also receive a bento box, which contains – juice, biscuit, fresh fruit and a packet of crisps.
- SCTS will provide jurors with bottled water.
- Odeon will provide two servings of teas and coffees at 11:15am to 11:45am and again at lunchtime.

Breaks

Jurors will need the opportunity to have a fresh air break during any court breaks, as the proposal would mean that they jury would not be seeing any natural daylight for the duration of the day they are in court. Essentially the procedure in respect of breaks will not be changed, it will remain as it was pre-COVID, but with jurors asking to respect each other's personal space. Smokers will be permitted to go for fresh air or a smoke during the court breaks. They will be accompanied by a Jury Attendant.

Decorum

Everyone has to realise that, if the video link is live, the jurors can see the court and those in court can see the jurors on individual screens in high definition colour and quite close up. Those in court should not be lounging around, drinking coffees or

whatever. Meanwhile the jurors must behave as they would if present in the court. This means no eating snacks or drinking juice etc.

Introducing the parties

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

Audio to jury room

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

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

Audio from jury room

During the first Edinburgh trial (with the jury in a different room) the jurors could not initially be heard responding “I do” to the administration of the oath. This continues to be a problem and judges/clerks are asking jurors to nod when they say “I do.”

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

cleaning agent) whenever a juror raises a problem, and only when the juror has made known to the jury attendant the existence of a difficulty. A satisfactory solution requires to be found. The current set up seems to be that there is a fixed microphone to which the spokesperson needs to come in order to deliver the verdict and that any other difficulty would need to be communicated by the juror to the jury attendant.

Judge's ability to engage with jury

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

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

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

The position in the RJC's used for High Court trials is that it is possible for the clerk to adjust the view so that, for the jury, only the judge is on screen which is optimum for when the charge is being delivered.

In some courts, the positioning of a camera above the jury screen allows a judge to speak almost directly to the jury whilst also looking at them which is important both for engagement and monitoring attentiveness.

Counsel addressing the jury

This is best done by counsel standing in front of the witness box so that the relevant camera can show them in reasonable close up. However there is the same difficulty that if counsel looks at the jury screen he/she is not, from the jury perspective, looking at them. Counsel should be encouraged to remain relatively still so that they are within range of the microphone without which the jury will not hear them well.

Appendix A: Juror documents

JURY CITATION

<JUROR NAME
ADDRESS
POSTCODE>

Citation Number : X

Court X

Scottish Courts
and Tribunals Service



Date: <DD/MM/YYYY>

Personal ID no.: XXXXXXXX

Online Ref no.: XXXXXX

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

You must attend personally for Jury Service at:

<COURT
COURT ADDRESS
POSTCODE>

On: <DD/MM/YYYY>
At: <hh:mm>

Enquires: <LOCAL COURT TEL>
Excusals: <LOCAL COURT EMAIL>

WHAT TO DO NOW

PLEASE TURN OVER FOR IMPORTANT INFORMATION

PLEASE BRING THIS CITATION WITH YOU TO COURT

<Sheriff Clerk's Signature>

Sheriff Clerk

What I should do now?

Respond to the jury citation within 7 days by visiting:

www.scotcourts.gov.uk/coming-to-court/jurors

and selecting “**Respond to citation**”. You will be asked to provide at least one contact telephone number in order that you can be contacted by the court in advance of your jury service. It is important that we can contact you in the weeks leading up to the trial, to ensure that you are fully informed on when and how your attendance will be required. This will also help us to contact you should the jury trial be cancelled at short notice and may save inconvenience.

Please respond as soon as possible, even if seeking excusal. If you fail to respond you may receive a reminder letter.

If you fail to attend for jury service you may be liable to a fine of up to £1,000.

What I should do next?

After 5pm the day before you have been cited for jury service (even if it is a weekend), you should telephone the jurors attendance update line.

<JURORS ATTENDANCE UPDATE LINE NO.>

A recorded message which will give you up to date information regarding your attendance.

If you are unable to contact the update line, you must contact **<LOCAL COURT TEL>** at 9:00AM the next working day.

Excusal from Jury Service

If you wish to apply for exemption or excusal from jury service, please read the ‘Guide to Eligibility and Excusal’ at:

www.scotcourts.gov.uk/coming-to-court/jurors

If you fall within one of the categories noted in the guide or excusal section of the leaflet, please email us at **<LOCAL COURT EMAIL>**.

Please provide a supporting document as to why you are seeking excusal, some examples are: a doctor’s letter, holiday booking confirmation or a letter from your place of work. Photographs from your phone or scanned documents will be accepted.

Please also include your full name, personal ID and the date you are cited to attend court, all of this information is found on the front page of your jury citation.

Further Information and guidance

Please visit **www.scotcourts.gov.uk/coming-to-court/jurors** for further information and guidance relating to aspects of jury service.

Please read the guidance leaflets published on our website before attending court:

If you do not have access to the internet or email, please phone **<LOCAL COURT TEL>**. We will respond to your citation and arrange for the documents to be sent to you.



JURY SERVICE – INFORMATION SHEET

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

We ask for your assistance in minimising the risk of infection to those attending our buildings. Scottish Government guidance now places a stronger emphasis on each of us taking responsibility for keeping ourselves and others safe. Please exercise that responsibility, respect others' personal space and follow both this guidance and any instructions given to you by SCTS staff.

You should only attend if you:

- do not have symptoms of COVID-19
- are not currently required to self-isolate:
 - due to a recent positive test result
 - or as a close contact where self-isolation is still required – e.g. if you are not fully vaccinated.

1. Jury Service

You have been cited to attend at an SCTS Jury Centre. A jury centre is a facility that allows SCTS to provide accommodation for jurors, which is both comfortable and enables jurors to respect each other's personal space. Using state of the art secure audio-visual technology, the jury centre will link directly to the courtroom, allowing jurors to see and hear proceedings.

In the courtroom a live image of the jurors will be shown. There will be the ability for the jury to communicate with the courtroom. SCTS staff will be on site to support jurors at the jury centre throughout their service.

2. Jury Attendance Update line

After 5pm the day before you have been cited to attend, you should call the jury attendance update line number. It is important that you call this number as it will provide you with up to date information about your jury service. You may be asked to call the jury attendance update number several times throughout the week, so you should listen carefully to the message.

3. The Ballot Procedure

The ballot is the approach the Court must take to choose a jury for trial. We have developed a procedure which means **jurors do not have to attend personally at court for the ballot.**

On the day of the ballot, you will be contacted by SCTS staff who will confirm that your name will be entered into the ballot. The ballot will either take place on the day that you have been cited for, or a day after that day, and SCTS staff will contact you on the day that the ballot is taking place and keep you updated with progress.

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

The ballot will be conducted by the clerk of court before the Judge or Sheriff, Advocate depute or Procurator Fiscal, Defence representative and the accused. The clerk will select 15 names from the ballot bowl to be the jury and a further number of names to be substitute jurors, should they be required.

Once the ballot is completed if you have been selected you will be contacted by a member of SCTS staff who will confirm you have been selected for jury service. You will be asked to attend the jury centre the following day, and you will be given a time to attend. It is important that you arrive at the time given to you by the member of SCTS staff.

On the day of the ballot, if you are not contacted by an SCTS member of staff **you should telephone the jurors attendance update line after 5pm**. It is important that you do this, as you will hear a recorded message, which will give you up to date information regarding your attendance.

4. SCTS Jury Centre

Detailed risk assessments are carried out in all of our buildings including jury centres, and a range of additional health and safety measures remain in place. The risk assessments are based on a comprehensive risk assessment framework.

The measures in place across our premises are designed to reduce the risk of transmission and infection. We all need to take responsibility to support these measures – in particular respecting each other's personal space when moving around our buildings.

The safety arrangements you will find in our buildings include:

- Clear signage promoting respect for each other's personal space, a request to wear a face covering and reminders about the importance of good hand hygiene.
- Signage in particular areas to encourage safe distancing and the avoidance of overcrowding – in busy areas and in smaller rooms such as toilets/refreshment areas.

- Ensuring desks and other furniture are laid out to make best use of space and to minimise the potential for creation of pinch points or crowded areas.

The jury centre ventilation systems use air handling units to extract stale air and replace with a supply of clean, fresh and filtered air.

If you require further information please speak to a member of SCTS staff.

5. On Arrival

We ask that you observe the following arrangements on arrival:

- Where security officers are present, they may carry out a 'hands off' bag search. You will need to open your bag and place items in a tray, so that security officers can check you are not carrying any items you're not allowed to take in, such as sharp objects or work tools. You may be asked to empty the items into a tray and step back. Trays are cleaned between users.
- Please respect the personal space of others who are around you at all times, such as when queueing and upon entering and moving around the building. This may mean waiting outside until you are called to enter.
- Please follow any instructions given to you by SCTS staff.

6. The Trial

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

If you develop symptoms of the coronavirus during a trial, you must alert a member of SCTS staff immediately. You will then be excused, other jurors will not need to self-isolate and the trial will continue.

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

7. Personal Protective Equipment

We continue to request that you wear a face covering whilst attending for jury service. Please bring your own face covering with you. If necessary, disposable face coverings will be available.

Good hand hygiene remains a key protection. We have ensured that good hand-washing and sanitising facilities are available at all premises.

Hand sanitiser is available in other places where it may be difficult to wash your hands. If you prefer you are welcome to bring your own.

You may be asked to demonstrate that it is not harmful by applying some to your hands.

8. Lunches

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

9. Travel Expenses

The Jury centre is accessible by public transport and is on a variety of Bus routes within the city. Whilst it is preferable for jurors to travel by public transport to the jury centre it is understandable that if in the current pandemic and given the government guidelines that you may wish to travel by private car.

If you do please be aware that no car parking is provided at the city centre locations, however there are car parks that are within walking distance but spaces in them cannot be guaranteed by SCTS. If you do use a car park please ensure that you keep the receipt as you will need when claiming the expenses.

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

JURY SAFETY - INFORMATION SHEET

Please click on the following link to access the [Jury Safety Information Sheet on the SCTS website](#).

Appendix B: Act of Adjournal

Please click the following link to access the [Act of Adjournal \(Criminal Procedure Rules 1996 Amendment\) \(Jury Ballot\) 2020](#).

Appendix C: Juror responsibilities

YOUR RESPONSIBILITIES AS A JUROR

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

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

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



You need to **read, understand and follow** these rules.

For that reason, you may wish to keep this notice with you at all times while you are on the jury, even when you go home in the evening.



WHY DO I NEED TO FOLLOW THESE RULES?



These rules are necessary to ensure that the trial is **fair**.

If every juror does not follow these rules the **trial may be stopped**, the jury discharged and the trial may have to start again with a new jury.



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

WHAT HAPPENS IF A JUROR DOES NOT FOLLOW THESE RULES?

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

THE RULES YOU MUST OBSERVE

LOOKING FOR INFORMATION ABOUT THIS CASE

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

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

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

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



NEWS STORIES ABOUT THE CASE

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



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

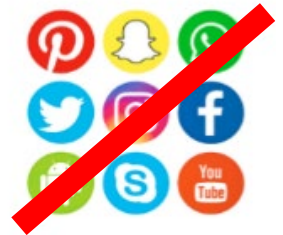
DISCUSSING THE CASE

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

Rule 1: During the Trial

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

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



Rule 2: When the Trial is Over

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

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



WHAT IF SOMEONE TRIES TO SPEAK TO ME ABOUT THE CASE



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

THE COLLECTIVE RESPONSIBILITY OF THE JURY

All members of the jury must follow these rules.

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



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

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

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

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



HELP AND GUIDANCE FOR YOU AT ANY TIME

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

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



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

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

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

Appendix D: Impartiality – a suggested form of words

To empanelled and unempanelled jurors – when the clerk has called the case and before anyone else says anything

“Good morning/afternoon. Thank you for coming in in answer to your citation to serve as jurors. (Apologies for any delay)

Can I ask everyone, those picked for the jury and potential substitutes / and those who have not yet been picked to listen carefully to all that is about to be said.

[Pleas and appearances taken]

In a moment I will hand over to the clerk who will read aloud the indictment, which contains the charge[s] against the accused in this case [and [an]other document[s] called a notice of special defence]. These documents are in the jury folders and you should take them out now.

[Clerk takes over and reads documents and oath affirmation administered]

To the empanelled jurors – after indictment read and jury sworn

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

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

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

Please do not answer these questions out loud. If the answer is yes, or if you are in doubt or difficulty about it, please keep your thoughts to yourself. Do not discuss any such issue with the other members of the jury. I will be adjourning the court shortly to let you make yourselves comfortable before we start the trial and the clerk of court will be available to speak to you. If you have any issues arising from my questions, please speak confidentially with the clerk of court [via your jury attendant (if remote jury)/ macer / bar officer]. Please do not discuss any such issue with the other members of the jury [or substitutes (if remote jury)].

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

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

[It ought to have been possible at the time of the ballot the previous day to ascertain the length of the trial and so this final question may be unnecessary. If not:

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

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

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

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

My last question is this:

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

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

Now I am not talking about inconvenience. I am sure it is inconvenient for every one of you to serve on this jury. I am talking about a difficulty which would make your life almost impossible. If anyone is in that situation, once again please do not discuss it with your colleagues, but do please speak to the clerk [via your jury attendant (if remote jury) / macer / bar officer]. You should not describe the issue in the presence of the other jurors [and substitutes (if remote jury)].]

[If you consider it appropriate:

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

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

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

I am telling you this now because everyone knows that people carry smart phones which allow instant access to the internet. In so far as any researches on the

internet, or otherwise, would involve you trying to find out about this case, the people involved in it or any issue it raises, that is something you are not allowed to do from now until the end of the trial.

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

In a moment I will adjourn the court. When we resume in a few minutes I will give you an explanation of how the trial will work and some further guidance to help you follow the trial

To unempanelled jurors/substitutes

Before we adjourn, can I speak to those of you who have not been selected for this jury? I cannot release you quite yet in case any of you are required to take the place of a juror who has been picked. So, please be patient with us for a little longer and also consider the questions I have just raised. When we resume after the adjournment I will be able to tell you what the position is.

The court will now adjourn for a short period”.

[On resuming, the judge will thank the balloted substitutes for attending and either excuse them, which is currently the norm, or give them further direction as to what is required of them.]

Appendix E: COVID Jury information

What follows is a short suggested set of wording which judges may wish to use when speaking to the jurors about COVID-19. Alternatively, judges may wish to develop their own set of wording.

On the jury returning after the adjournment.

“First of all, can I assure you that I recognise that there may be a level of anxiety in having to perform jury service while the pandemic continues. I acknowledge that and very much appreciate your coming to perform your public duty as a jury in these circumstances.

Please be assured that your health and wellbeing are a priority. You have already been made aware of the arrangements in place to protect your safety during this trial. If you have any concerns at any stage please speak to the jury attendant or, if necessary, the clerk.

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

Appendix F: Introducing the case and procedure to the jury

[Please note that these remarks are suggested and are not mandatory. Judges should feel free to impart this information in their own way and in their own words].

Introduction

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

[Where appropriate:

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

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

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

Judge’s function

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

Jury's function

*“You, the jury, are the judges of the facts of the case and you are not detectives. It follows, and I must stress this very strongly, that you must not make investigations or enquiries of your own about anything or anyone connected to this case, or any issue it raises. Everyone knows that a search on the internet can produce information within seconds. It is vitally important to the administration of justice in this case, and in general, that you do not carry out any outside researches or enquiries about this case, the people involved in it or any issue it raises through the internet, or otherwise, for any reason. This instruction applies until the trial has finished. I do not know whether there is any information about the events of this case, or anyone connected with it, out there. But you must appreciate that, even if there is any such information available, there is no guarantee that it is accurate and, more fundamentally, **it is not evidence in the case.**”*

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

[In an appropriate case reference can be made to the examples of what has been said in high profile cases using the hyperlinks below. These can be adapted to suit the circumstances. See for example Lord Bracadale’s judgment in [HMA v Sheridan](#) in which his Lordship explains how he resolved a plea in bar of trial and sets out some of what he said about publicity during the trial: at the start; during the trial and in his charge. Judges may also wish to refer to a [suggested direction](#) (see page 8 of this standalone resource) for cases which have attracted publicity].

*“As I say, this case has to be decided only on the evidence presented in court and that is why you must not access external sources of information. Such is the importance of this rule that I have to require you to police it collectively, so that if you become aware of any fellow juror who has conducted independent investigations, please speak to the clerk of court – via the macer / bar officer / jury attendant (as necessary) - but do **not** discuss it with the other members of the jury.*

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

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

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

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

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

Procedure

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

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

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

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

Sometimes evidence is agreed or is unchallenged and, if so, it is recorded in a statement of facts known as a joint minute [or it may comprise a statement of uncontroversial evidence]. If that features in this case, it will be read to you and you will be given a copy of it.

All witnesses will swear or affirm to tell the truth.

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

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

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

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

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

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

The court day

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

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

The clerk will also have given the jurors a description of the cleaning etc arrangements in place for the trial.

Appendix H provides guidance on the situation where a juror is unwell or displays COVID:19 symptoms.]

Following the trial

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

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

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

Privacy of the jury

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

[The following instruction may only be necessary in remote jury trials and can be adapted to local circumstances, if required at all:

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

Avoiding outside influence

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

If you see anybody connected with this case or who seems to be interested in the case, inside the jury centre / court building [as necessary] or outside, please do not speak to them. In the past there have been conversations between persons with some interest in the case and jurors trying it. Most often these have been perfectly innocent, but sometimes they have not. Whenever something like that happens, it

can cause problems for the juror concerned, and it does cause difficulties for the court. So it is simplest and best to avoid any such interaction.

If anyone approaches you and tries to discuss the case with you, you should not respond. If you are approached by anyone in this way, do not tell the other jurors but do please speak with the Clerk of Court urgently - via the macer / bar officer / jury attendant (as necessary). I have no reason to believe anyone would approach you, but if that happens, you must let the Clerk know.

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

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

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

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

**** Suggested direction for cases which have attracted significant publicity**

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

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

[The following two sentences only apply if the accused is well known]

“Anything you think you know about the accused from media sources or from your own impressions of him, whatever they may be, are irrelevant to your task. All such matters must be cast aside entirely.]

Jurors are expected to approach their task with open minds, untainted by preconceptions, prejudices or by any perceived public or private knowledge which they may have of the case or of the individuals involved in the charges. That is why I asked you a series of questions before taking the oath. So please remember, you cannot allow yourselves to be swayed by sympathy or prejudice or the contents of press articles. You must be impartial, since you are effectively acting as judges in this case.

Another aspect of this issue is this. It is quite likely that on the internet there will be websites where information about the accused or the background circumstances

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

You must be disciplined about this, members of the jury, in keeping with the dignity and impartiality of the role you are now undertaking, and if you become aware of a fellow juror accessing any such information, you should immediately speak to the clerk of court - via the macer / jury attendant / bar officer (as necessary). I may say that I would take a very serious view about any such conduct, in light of the warning which I have just given.”

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

Appendix G: Written Directions for Jurors in the Scottish Courts

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Written Directions for Jurors in the Scottish Courts

General

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

Separate functions of Judge and Jury

You and I have completely different functions.

Judge

I am responsible for all matters of the law which arise in the case.

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

Jury

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

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

In other words, you will decide:

- Which evidence you accept and which you reject;

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

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

Part A: Evidence

Agreed facts

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

Evidence

What is evidence?

- Evidence may come in the form of photographs, recordings such as CCTV footage and objects which are produced or shown in court.
- Most commonly, evidence comes from witnesses. Evidence from a witness is what the witness is able to tell you based on their direct observation.

What is not evidence?

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

- Hearsay evidence, namely what a witness tells you was said by someone else, is generally not allowed.

Possible exceptions to the rule against hearsay

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

- Evidence of what a witness says they heard someone say may be allowed to explain the witness' state of knowledge or why they did something;
- Evidence of what was heard to be said or shouted whilst an alleged crime was actually being committed is usually allowed;
- Evidence of what an accused person was heard to say is evidence in the case. I will direct you about this if it arises;

Witnesses may also be asked about earlier statements made by them to other people. There are three main reasons for this:

1. To jog the memory of the witness, who may then be able to give evidence from recollection;
2. To enable the witness to adopt an earlier statement, which then becomes evidence. Statements are adopted if they are proved to have been made by a witness and the witness accepts that they were telling the truth at that time; and
3. To undermine a witness's evidence. A statement may be used to contradict what the witness has said in court by demonstrating that the witness has said something different on an earlier occasion. The earlier statement, unless adopted, is not evidence of the truth of what is in it but it is available to help you in your assessment of the witness's evidence.

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

Assessing evidence

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

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

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

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

Credibility

You will find the evidence of a witness on any particular matter to be credible when you are satisfied that the witness is doing their best to tell the truth about it.

Reliability

Even the most honest witness doing their best to tell the truth about a particular matter may simply get it wrong. Their evidence about it may not be reliable. There may be various reasons for that, such as:

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

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

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

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

You are free to accept the evidence of a witness in whole or in part. You may accept bits of what a witness has had to say and reject other bits. You may pick and choose as you see fit in light of what you make of the evidence. If you reject what a witness has said, either in whole or in part, that does not establish that the opposite is true. If you reject evidence for whatever reason just put it out of your minds as if it had never been given.

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

For example:

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

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

Inferences

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

Direct and circumstantial evidence

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

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

Direct evidence

The classic example of direct evidence is evidence from an eye witness describing an event they observed.

Circumstantial evidence

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

In considering circumstantial evidence, please bear in mind that:

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

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

It is for you to decide what weight - what importance - should be given to a piece of evidence. Ultimately, you will have to consider what conclusions you can draw from

the evidence and, in particular, whether you are satisfied beyond reasonable doubt that the crime you are considering was committed and that the accused committed it.

You decide the case only on the evidence

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

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

Part B: Certain fundamental principles

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

1. The presumption of innocence

The first rule is this. Every accused is presumed innocent until proved guilty. Accused persons do not have to prove their innocence.

2. The burden of proof is only on the Crown

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

3. The standard of proof – proof beyond reasonable doubt

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

4. Corroboration

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

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

Be clear about this:

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

These are:

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

Please note that in a case where there is a main source of evidence, such as a witness describing the event in which a crime was committed, corroborative evidence does **not** need to be more consistent with guilt than with innocence.

All that is required for corroboration is evidence which provides support for, or confirmation of, or fits with, the main source of evidence about an essential fact.

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

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

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

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

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

- If you accept any piece of evidence, from wherever it comes, that shows that the accused is not guilty then you will acquit;

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

In summary:

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

Part C: Other directions to be used as appropriate

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

Where there is a docket

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

Where there is a notice of special-defence

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

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

Where there is more than one charge

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

Where there is more than one accused

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

Concert

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

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

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

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

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

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

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

Mutual corroboration

In some cases, in certain circumstances, evidence of one complainer speaking to one charge can be corroborated by the evidence of another complainer speaking to another charge. This is known as mutual corroboration.

If this becomes an issue in this case, I will give you full directions at the end of the trial on how you deal with any question of mutual corroboration.

Appendix H: Juror is unwell or displays COVID:19 symptoms

From 1 May 2022 Scotland will move from population level symptomatic testing to targeted testing for clinical care. Groups eligible for testing to support clinical care will access tests through the home order channel. The general public will no longer be advised to seek a test if symptomatic – at this stage Scotland will move instead to general public health guidance to stay at home if unwell. PCR test sites will also close at the end of April. Population level contact tracing, isolation and support will end and we will stop using the Protect Scotland proximity contact tracing app (but retain it for future use if required). For more information, judges may wish to refer to the Scottish Government’s [Test and Protect Transition Plan](#) and the “[Coronavirus \(COVID-19\): staying at home” guidance](#) which takes effect on 1 May 2022.

Until 29 April 2022, clerks of court are required to initiate an incident response in line with the SCTS COVID 19 Incident Response guidance¹. However from 2 May 2022 the SCTS COVID 19 Incident Response guidance will be decommissioned. This means that there is **no SCTS protocol** around what is to be done where a juror displays symptoms of COVID-19 or tests positive.

Instead, jurors should be told at the start of the trial that they should stay home if they are unwell; and should go home if they are unwell. The juror should advise the jury attendant if they become unwell and the jury attendant should then make the clerk aware who will then advise the judge. Essentially, the process for managing sickness will be the same as it was pre-pandemic. More detail is set out below.

¹ The COVID Incident Response Guide is available on the following page of the SCTS intranet under the heading “Incident Response Guidance”: <http://myscs/pages/Support/Wellbeing/coronavirus.aspx>

Juror displays symptoms of illness which could be COVID-19

If a juror develops symptoms of illness which could be COVID-19 whilst in a remote jury centre, the following action should be taken:

1. Juror informs an SCTS Official (jury attendant) that they have become unwell and explains what their symptoms are.
2. The jury attendant informs the clerk of court. The clerk will inform the judge.
3. The jury attendant will take the juror to a designated room, ensuring physical distancing is maintained, instructing the juror to wear a face covering. Supplies of disposable face coverings are held in all SCTS buildings.
4. The juror will be asked to go home where possible, they should minimise contact with others, e.g. use a private vehicle to go home. If it is not possible to use private transport, then they should be advised to return home quickly and directly, and if possible, to wear a face covering). They may then wish to consult their General Practitioner regarding their symptoms.
5. If the juror is so unwell that they require an ambulance, the clerk will phone 999 and let the call handler know the juror is displaying symptoms of a respiratory disease, if applicable.
6. The juror is discharged, court adjourns to the following day and the room is cleaned in the intervening period.

If a juror becomes ill when at home the following action should be taken:

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

Juror illness during a trial – judicial considerations

Juror reports illness mid trial

During the course of the pandemic there have been discussions about what a judge should say to the remaining jurors if, mid-trial, one juror reports that they have become ill and will no longer be available to take part in the trial so that the judge discharges the juror and the trial proceeds with 14 or less.

However the judge will want or need to say something to the remaining jurors about the missing juror, as the judge would do in any trial when a juror is discharged.

Usually the judge will say no more than something like:-

“You will see, members of the jury, that one of your number is no longer with us. I have discharged that juror and the trial will now proceed with 14 of you [or whatever number from 12 of you].”

More often than not the judge will also say something like:-

“I cannot go into the reasons for that juror being discharged and you should not speculate”

This does create a risk that other jurors may feel anxious and unsettled about taking part in the trial and the smooth further progress of the trial might be disrupted.

Reassurance from the bench might go some way to allay concerns and minimise such a risk. The judge might also take the opportunity to underline for the remaining jurors the importance of respecting others’ personal space and wearing face coverings when they are moving around the building.

Clearly it will be a matter for the individual judge in any particular trial to decide what to say and the JI of course cannot be prescriptive.

Appendix I: Appearance by electronic means

See the Preliminary Hearings Bench Book at para 1.3.4. Judges can access this on the [“Bench Books”](#) page of the Judicial Hub and practitioners can access this on the [“Judicial Institute Publications”](#) page of the Judiciary of Scotland website.

Representations

At any first diet, where there is a desire to have any witness give evidence from a remote location, other than as a special measure for a vulnerable witness, the parties will require to make representations (or state that they do not wish to make such representations) about the court making an order in terms of the [Coronavirus \(Scotland\) Act 2020](#) (“the 2020 Act”), Schedule 4, Part 1, Paragraphs 2(3) and 3(1).

The relevant provisions of the 2020 Act are as follows:-

Schedule 4, Part 1, Paragraphs 2 and 3.

Suspension of requirements for physical attendance

2(1) Any requirement (however expressed) that a person physically attend a court or tribunal does not apply, unless the court or tribunal directs the person to attend physically.

(2) But sub-paragraph (1) does not apply in relation to a trial diet.

(3) In the case of such a diet, the court may disapply any requirement (however expressed) that a person physically attend the court by directing that the person need not do so.

(4) A court or tribunal may issue a direction under sub-paragraph (1) only if it considers that allowing the person to attend by electronic means in accordance with paragraph 3 would—

(a) prejudice the fairness of proceedings, or

(b) otherwise be contrary to the interests of justice.

(5) A court may issue a direction under sub-paragraph (3) only if it considers that allowing the person to attend by electronic means in accordance with paragraph 3 would not—

(a) prejudice the fairness of proceedings, or

(b) otherwise be contrary to the interests of justice.

(6) A court or tribunal may issue or revoke a direction under sub-paragraph (1) or (3) on the motion of a party or of its own accord.

(7) In considering whether to issue or revoke a direction under sub-paragraph (1) or (3), the court or tribunal must—

(a) give all parties an opportunity to make representations, and

(b) have regard to any guidance issued by—

(i) the Lord President of the Court of Session, or

(ii) the Lord Justice General.

(8) References in this paragraph to physically attending a court or tribunal are to—

(a) being in a particular place, or

(b) being in the same place as another person,

for the purpose of any proceedings before a court or tribunal or an office holder of a court or tribunal.

Attendance by electronic means

3(1) A person excused from a requirement to physically attend a court or tribunal by virtue of paragraph 2(1) or (3) must instead appear before the court, tribunal or office holder (as the case may be) by electronic means in accordance with a direction issued by the court or tribunal.

(2) A person who fails to do so is to be regarded as having failed to comply with the requirement to physically attend from which the person is excused.

(3) The power under sub-paragraph (1) to issue a direction includes the power to vary or revoke an earlier direction under that sub-paragraph.

(4) A direction under sub-paragraph (1)—

(a) is to set out how the person is to appear by electronic means before the court, tribunal or office holder, and

(b) may include any other provision the court or tribunal considers appropriate.

(5) A court or tribunal may issue a direction under sub-paragraph (1) on the motion of a party or of its own accord.

(6) Before issuing a direction under sub-paragraph (1), the court or tribunal must—

(a) give all parties an opportunity to make representations, and

(b) have regard to any guidance issued by—

(i) the Lord President of the Court of Session, or

(ii) the Lord Justice General.

(7) A direction under sub-paragraph (1) that—

(a) sets out how a party to proceedings is to attend, by electronic means, a trial diet must provide for the party to use means that enable the party to both see and hear all of the other parties, the judge and (where applicable) the jury and any witness who is giving evidence,

(b) sets out how a witness who is to give evidence at a trial diet is to attend by electronic means, must provide for the witness to use means that enable all of the parties, the judge and (where applicable) the jury to both see and hear the witness.

(8) Nothing in sub-paragraph (7) is to be taken to mean that a person is to be enabled to see or hear a witness in a way that measures taken in accordance with an order of the court or tribunal would otherwise prevent.

The decision

If satisfied that to do so will not prejudice the fairness of proceedings, or otherwise be contrary to the interests of justice, the court will make an order in terms of the 2020 Act, Schedule 4, Part 1, Paragraphs 2(3) and 3(1) directing that:-

- the witness or witnesses are not required physically to attend the court for the trial

and that

- they are required to appear before the court for the trial by electronic means.

The latter direction must set out how they are to appear by electronic means before the court, and may include any other provision the court considers appropriate.

The expectation is that in their representations the parties will have made it clear where they expect the witnesses to be when attending remotely, although the court will have oversight of this and will have the final say.

Appendix J: Protocol: Witnesses giving evidence remotely in criminal trials

Generally witnesses attend physically at court and are subject to supervision and control by the court which is designed to ensure that the rules of evidence are complied with and that a witness is giving evidence untainted by outside influence.

The same principles apply when a witness gives evidence remotely by TV link as a witness may do on the direction of the court under Schedule 4 of the Coronavirus (Scotland) Act 2020.

The following rules are of particular importance and must be complied with by all witnesses when giving evidence remotely.

The term “production” means a formal court document which may be shown to a witness in the trial.

1. Before giving evidence, a witness must not observe another witness giving evidence in the same trial unless specifically authorised by the court.
2. Before giving evidence, a witness must not discuss the evidence that witness will give with any other witness.
3. Before giving evidence, a witness must not look at any productions made available for the purposes of taking evidence remotely except with the permission of the court.
4. While a witness is giving evidence, no one other than the witness may be in the same room or able to hear what is being said in the room without the permission of the court.
5. Unless directed by the court, or on the authority of the court, a witness must not discuss the evidence the witness is giving or will give before the witness has finished giving evidence.

6. A witness must not confer with anyone else or be subject to outside influence whilst answering questions.
7. Generally, the only document a witness may look at whilst answering questions is a production. A witness must not look at personal notes, records, statements or reports unless permitted by the judge.
8. Whilst answering questions a witness should only look at a document when directed to by court personnel; which may be a prosecution or defence lawyer, court officer, clerk of court or judge.
9. No recording is to be made of a witness giving evidence remotely other than by the court.
10. After giving evidence, a witness must not discuss the evidence that witness has given with any other witness in the trial until the whole trial has finished.