



glasgow bar association  
established 1959

Room 1.29  
Glasgow Sheriff Court  
1 Carlton Place,  
Glasgow  
G5 9DA

8<sup>th</sup> July 2020

By Email only,

Dear Sheriff Principal,

**Glasgow Bar Association**  
**Participation in Pilot for Remote Representation of Custody Cases**

Firstly, we welcome the opportunity to provide our input into plans for this pilot scheme. We are however concerned that as always, input from us seems to be an afterthought, rather than recognising that we are an essential part of the process to ensure the effectiveness of the Court Programme. We welcome the opportunity to engage with our justice partners, to provide our concerns and insights into the practicalities and to be able to undertake a fact finding process to be able to meaningfully engage with our members and others on the Defence side to ensure that any concerns are addressed prior to implementation.

In proceeding with the pilot on domestic cases, it should be noted that many accused are first offenders, the effect of special bail conditions can impact upon their place of residence, access to their families and they often present not comprehending the impact of a Court appearance on their daily lives.

Our primary concerns are twofold – to ensure effective participation in the Court process by the accused and to ensure effective representation of the accused by Defence agents.

We firstly require to be satisfied that the pilot will be ECHR compliant. There are a number of procedural requirements under Article 5 which will require to be followed which include, *inter alia*:

- Any procedure adopted must ensure equal treatment and be truly adversarial.
- Prosecution and defence must be given opportunity to have knowledge of and comment upon evidence led or submissions made by the other party.

- The detained person must be told of the reasons for detention and have adequate time to prepare an application for release.
- The provision of legal assistance, whenever this is necessary to enable the detained person to make an effective application for release.
- Legal representation must be effective and there is an obligation on the State not to hinder effective assistances from lawyers.

In practical terms, this means that solicitors shall require full access to our clients to take proper instructions prior to any hearing. Should something be raised by the PF during the course of submissions to the court which was not previously disclosed to the defence prior to the hearing (e.g. the complainer's views on special conditions of bail etc), the defence must have an opportunity to take instructions in a confidential consultation. Normally this would involve a brief discussion whilst the accused is in the dock but this will not be possible over videolink. The court would require to adjourn to allow discussions to take place, as confidentiality of information exchanged between solicitor and client is a key element of effective participation. It should be noted that affording an assigned lawyer inadequate time to confer with his client prior to any hearing will violate Article 5(4).

We would also raise the following practical difficulties we foresee with conducting custody hearings remotely:

- We will require video consultations with clients prior to their appearance. We are asked to identify concerns we have about our clients and cannot do that on a telephone call. When dealing with a client who is well known to the solicitor it is often the case that by seeing that client that any concerns whether they are behaving normally can be raised. The Duty Solicitor will not have the luxury of a prior relationship with the accused where they are appearing as a first offender.
- How do those accused released on bail receive their bail papers? On occasion the accused raises an issue when papers are received which then requires the case to be recalled. Will there be an ability/capacity to do this during the pilot?
- What additional facilities are to be used to process the numbers that are appearing at Glasgow? We appreciate the pilot will initially start with only approximately 10 cases per day, but even for those ten cases there will require to be ten consultations with clients after their papers are received. If there is only one videolink available at the police station then this would take a number of hours simply to have the consultations carried out. A site inspection and test link by the Executive Committee would be sought to ensure the conditions applicable ensure a private consultation and consistent link, unimpeded by technical difficulties.
- There would also require to be adequate staff at the police station to facilitate consultations. Over the past few weeks it has often proved difficult to have consultations by telephone, never mind videolink.
- There would require to be an ability to have multiple consultations with accused, particularly in relation to potential plea negotiation. This would also require access to a PF with knowledge of the case.

- To facilitate meaningful early discussions, we would require disclosure of complaints, summaries of evidence and schedules of previous convictions as early as possible, together with a copy of same and any acceptable plea letter from the Crown, all of which documents should also be made available to the accused prior to consultation. It is heartening to hear from Moira Orr that the Crown have deutes available to mark cases from 6am and we would hope that some priority is given to cases to be heard remotely as these are likely to be the ones with the highest potential for delay.
- Post-hearing we would require access for a further consultation with the accused to explain and clarify matters in relation to the hearing. Often at this point accused raise issues which were aired in court where he or she may have been too afraid to speak up, necessitating the matter being recalled and the issue remedied. Bail appeal instructions also have to be taken where appropriate.
- Consultation would be required with SLAB to ensure that they will not insist on signatures on legal aid applications for remote hearings.
- Given that the remote pilot scheme will not apply to vulnerable individuals, it would be appreciated if a definition could be provided as to whom the Court considers a vulnerable individual. Will there be a mechanism to have any individual brought to court should the solicitor deem this to be necessary given a client's vulnerability?

In finalising our concerns, we would expect that where a Defence agent expresses a concern about the accused's ability to effectively participate by video link and makes a submission to the Court that they should appear personally, this submission should never be refused. Similarly, where a Defence agent requires further time for consultation by videolink, we would expect that such a request for a recall should never be refused by the Court or pressure brought to bear to rush a consultation.

It is not acceptable that schemes are introduced without any form of consultation with us. We have valuable contributions to make and are an essential element to ensure the success of this and any future pilot. We look forward to working collaboratively to ensure justice is not only done, but is being seen to be done. We also require an opportunity once these issues have been addressed to consult further with our members, other interested parties and the Law Society of Scotland. We look forward to hearing from you.

Kind regards,

The Executive Committee of the Glasgow Bar Association