

**From:** Greg Douglas

**Sent:** 07 January 2021 09:54

**To:** 'McPhee, Lorna' <[LMcPhee@scotcourts.gov.uk](mailto:LMcPhee@scotcourts.gov.uk)> Clerk of Court, Livingston Sheriff Court

**Subject:** Letter from Faculty of West Lothian Solicitors

Dear Lorna,

I am writing on behalf of members of the Faculty of West Lothian Solicitors to express our serious concern as to the health and safety of practitioners in the criminal courts, particularly in light of the new variant of COVID-19 and the increased risks associated with that variant.

In that regard, I understand that on Monday of this week, following the Scottish Government's announcement of a new national lockdown, and the reasons and urgency for that lockdown, one of our members emailed you advising of solicitors' concerns on matters such as lack of safe interview facilities and the dock in courts remaining unscreened.

Members of our criminal bar have now discussed matters further, and whilst grateful to you personally for all the efforts you have made throughout this pandemic to protect the health and safety of court users at Livingston, I wish to express continuing concerns on the part of our members as to the health and safety of criminal court practitioners given the increasing risks resulting from the worsening public health crisis.

In that connection, I note that on Monday of this week, against the backdrop of the new and immediate national lockdown being announced by the Scottish Government, Lord Carloway issued a statement "to re-inforce the rules which are in place" regarding the conduct of court business "as Scotland heads into a new period of tightened restrictions".

Notwithstanding the known increased public health risk – underlined by understandable measures such as closure of schools – Lord Carloway's statement did not contain any new measures or adjustments to address the changed and more dangerous circumstances of what we now know is a new, and more transmissible, variant of COVID19. In effect, the proposal seems to be that criminal court business should simply continue as before, with no further safeguards or mitigations.

Respectfully, our members strongly disagree with that position. Indeed, we understand that criminal court practitioners across Scotland strongly disagree with that position. In that regard, we note that the Glasgow Bar Association wrote to Lord Carloway by email yesterday, and we expect we are not alone as a Faculty in wishing to formally endorse the views expressed in that email, a copy of which is attached hereto.

In particular, the sad but inescapable reality is that accused persons and their witnesses are, indeed, invariably from lower socio-economic groups, with significant issues in terms of health, housing and addiction, all of which means that many of those whom our members take pride in representing are at higher risk of both contracting coronavirus and spreading coronavirus. Put simply, many of those accused persons and witnesses are

sadly unable to observe important COVID protections, such as social distancing, or are incapable of observing such protections.

Against this background, and noting Lord Carloway's commitment to keeping the administration of justice "safe for all", our members would raise the following points:

1. For Health and Safety purposes, given the increased risks resulting from the new variant of COVID-19, have the Scottish Courts Service undertaken a fresh Risk Assessment for the purposes of keeping the courts 'safe for all'? If so, for the reassurance of all concerned, we would ask that any such Risk Assessment or related review is made available to practitioners.
2. If the public health risk resulting from the new variant of COVID-19 is such that it is now deemed unsafe to keep schools open, how can it be safe to keep courts running without any further adjustments, such as the safeguard of all practitioners and other essential court staff being vaccinated as a matter of urgency, and the mitigation of adjourning all trials until the increasing risks of the more transmissible new variant are brought under control?
3. Whilst it has been suggested that practitioners should avoid having client consultations on court premises, there are numerous situations in which this simply cannot be done, such as:
  - New cases for clients appearing from custody
  - New cases for clients who are attending court for Bail Undertaking and who only see the terms of any charge faced when they attend court
  - New cases for clients who choose to attend court for a cited appearance
  - Deferred Sentence appearances, when it is responsible and regularly essential to take up-to-date instructions, for example, in regard to personal circumstances or a Criminal Justice Social Work Report
  - During the conduct of a case in court, as and when the need arises, for example, to take instructions on points raised by the bench or the Crown, on matters such as bail conditions, compliance with court orders, or further information which the accused wishes to volunteer from the dock
4. Whilst, as outlined in the foregoing paragraph, there are countless and repeated situations where a responsible practitioner would need to consult with a client at court, given the increased public health risks and the lack of necessary protective measures, our members question whether this is now possible. For example, it is not clear to us why the type of protections understandably provided to court staff (e.g. the installation of perspex screens at the court reception) have not been

extended to court practitioners, for example, by way of the provision of perspex screens in interview rooms and at the front of the court dock and witness box.

5. Our members are of the view that the above concerns are even greater when it comes to the conduct of criminal trials. Our view is that in such cases, it can no longer be considered safe for what may be as many as 8 people to be within an enclosed, unventilated room, for what will often be an extended period of several hours. In those circumstances, our members are of the view that for the health and safety of all concerned, they will have no option but to move to adjourn future trial diets until the various concerns arising from the worsening public health situation have been resolved.
  
6. Returning to Lord Carloway's suggestion that client consultations should occur "outwith the building" wherever possible, firstly, we cannot imagine that it is expected that practitioners should seek to discuss confidential matters in the public spaces directly outside a court building. Equally, if it is not deemed safe to conduct consultations at court, we cannot imagine that in the face of the current public health risks, practitioners would be expected to conduct consultations at their offices, particularly when, in line with Scottish Government guidance and, indeed, the working arrangements of other colleagues (for example, the Law Society of Scotland and the Scottish Legal Aid Board), practitioners are seeking to responsibly follow government advice by, wherever possible, working from home. As for the option of, for example, a video meeting to take a client's instructions, again, for many clients, their socio-economic background and related personal issues often mean that such individuals do not have the means or facilities to meet in this way.
  
7. In terms of other mitigations which might provide protection and reassurance to our members and other court users, we would submit that the following measures should be introduced as a matter of urgency:
  - Temperature testing of all persons entering court buildings
  
  - The use of antibacterial wipes or solutions to clean the court dock and witness box after each single use. If, as we understand, this is a measure which is already observed at Airdrie Sheriff Court and Dumfries Sheriff Court, we cannot understand why this example of what is clearly regarded as best practice is not followed in all courts.

We note Lord Carloway's statement that courts and tribunals must be regarded as safe places to attend for those working and for those attending as accused or witnesses. As always, our members remain committed to working with all colleagues within the

criminal justice system with a view to delivering that important objective. To that end, we would be grateful to receive a response to the various points raised in this email.

I should be grateful if you would acknowledge receipt of this email and confirm that the email will be brought to the attention of our local Sheriffs, the Sheriff Principal and Scottish Courts Service.

Yours sincerely,

***Greg Douglas,***

***Dean of Faculty of West Lothian Solicitors***