

Edinburgh Bar Association

c/o Edinburgh Sheriff Court
27 Chambers Street
Edinburgh EH1 1LB
edinburghbarassociation@gmail.com

8 January 2021

BY EMAIL ONLY

Lord Carloway, Lord President
Parliament House
Parliament Square
Edinburgh
EH1 1RQ

Dear Lord Carloway,

The Edinburgh Bar Association feel compelled to write in response to your release of 5 January 2021 and the associated video providing instruction for court practitioners.

While we welcome the basis upon which your statement was made, mindful of all of our efforts to minimise the spread of Covid-19, we are disheartened and disappointed at both the content and the tone thereof, culminating in a threat of consideration of contempt to practitioners who may be forced to conduct their work in a certain manner due to circumstances outwith their control.

Our Association has sought to be involved in any and all modifications to the Court process since the advent of restrictions in March 2020. Unfortunately the fundamental inadequacy of the Court estate has and continues to hamper us in our efforts.

Your statement indicates a requirement for practitioners to consult with clients prior to attendance at court. Unfortunately, in a majority of the cases which are presently calling in the Sheriff Court this is impossible to allow our members to be sufficiently prepared to address the court.

Aside from Summary Intermediate Diets (most of which should not be calling given the terms of Criminal Courts Practice Note No 4 of 2020), and Solemn First Diets, all other callings of cases at present will invariably require some short notice consultation on the day. For instance, those accused answering bail undertakings will not receive their papers until they attend the Court building. Similarly, those appearing for diets of deferred sentence will likely be the subject of Criminal Justice Social Work Reports. Again, these are not made available until shortly prior to the calling of the diet.

In addition, in those summary trials which are proceeding, there is an unavoidable necessity to consult with accused persons about developments in their cases which materialise on the day thereof, let alone issues which may arise during the leading of evidence. Again, short notice discussion and consultation with accused persons has to take place in such instances.

In Edinburgh Sheriff Court there are four consultation rooms in which practitioners can consult with clients. None of them benefit from any external ventilation or air supply. None of them can adequately accommodate social distancing. There are no facilities for these rooms to be cleaned or sterilised between consultations. Sadly this represents an inherent deficiency in the Court estate which only serves to be exacerbated by the pandemic. Quite how our members can be expected to conduct business without consulting while within the Court building, let alone doing so ensuring confidentiality is beyond us.

We echo the concerns expressed by the Glasgow Bar Association regarding any possible suggestion of instruction being taken, or consultations taking place outside, or in the vicinity of the Court building in light of the judgement in *Gallagher v HM Advocate*. We do not believe that Chambers Street, a busy thoroughfare in Edinburgh City Centre represents an appropriate location for such important and confidential discussions. This leaves us with no alternative but to use whatever space we can find while striving to maintain appropriate distancing, within Edinburgh Sheriff Court.

In order to highlight these deficiencies that we must work with we would like to extend an invitation to you to attend Edinburgh Sheriff Court to see our facilities. Should you be willing and able to attend we look forward to hearing from you to arrange a convenient date and time.

As our colleagues in Glasgow have noted, the goodwill of the defence Bar has been a critical factor in the tentative steps to reintroduce business to the Court at all levels. The way in which we have been disregarded and dismissed has now all but eroded said goodwill. We hope to continue our meaningful engagement with all criminal justice stakeholders both to minimise our exposure to a deadly virus and to ensure the ongoing functioning of the system. To allow us to do so we must ensure the difficulties we experience are recognized and sought to be overcome.

As with our colleagues in other jurisdictions we would be delighted to be involved in discussions about how we can improve matters. Any such improvements will only serve to benefit all who have any involvement in the Courts. We look forward to hearing from you in respect of the concerns we have highlighted.

Yours faithfully,

The Edinburgh Bar Association