



FACULTY OF ADVOCATES

**To: Scottish Courts and Tribunals Service
Humza Yousaf, Cabinet Secretary for Justice, Scottish Government**

I have had a lengthy discussion with SCTS today. I am most grateful to learn of the planned introduction of remote Inner House hearings.

However, and as indicated to SCTS, I am dismayed at the suggestion that nothing else will happen during lockdown, so far as non-urgent civil business is concerned. I write formally to register my concerns, and to urge a rethink. The prevailing “mothballing” approach is putting the financial futures of firms of solicitors and Members of Faculty at real risk.

I do not underestimate the challenges faced by SCTS, for a moment. But what is happening here compares very unfavourably to what is happening south of the Border. In Scotland, the stated position of SCTS is that all non-urgent business is stalled. In England and Wales, the express position is quite to the contrary: namely that they are putting in place “arrangements to use telephone, video and other technology to continue as many hearings as possible remotely” – see the statement from the Lord Chief Justice reported at <https://www.judiciary.uk/announcements/review-of-court-arrangements-due-to-covid-19-message-from-the-lord-chief-justice/>

This being so, the stance adopted in Scotland will not only have ruinous effects on the finances of certain legal practitioners, it will have irreversible adverse reputational consequences for the Scottish justice system. Many parties to litigation have a choice of forum. SCTS, Faculty and others have spent a great deal of time and effort in promoting Scotland as a forum for the resolution of disputes, one where such resolution can happen swiftly, efficiently, and cheaply. If every Scots case is mothballed whilst the English act flexibly, future litigants are unlikely to look favourably north of the Border.

As I understand it, the answer to all of this is that the “stay at home” instruction makes it impossible to advance matters. May I indicate immediately that I do not suggest for a second that any member of the court staff should be put at risk. I am not asking that anyone be forced to come into work. Rather, I would point out that the Sheriff Court has conducted procedural hearings by way of telephone conferencing for years. Any difficulty caused by lack of access to the court process should be capable of being resolved by agents making electronic papers available. If there is any perceived need for a

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secure tele-conferencing facility that can be accessed remotely by judges and clerks, then Faculty will make this available. In short, there are readily available solutions for at least the resumption of procedural business, and you have my assurance that Faculty will do anything it can to facilitate this.

SCTS undertook to consider all of this. Can I urge other interested parties to do likewise? There are opportunities here to act now, to be seen to be acting now, in a decisive and effective manner. Doing so will preserve reputations, jobs and financial well-being. A resigned shrug of the shoulders on the basis that it is all too difficult will cause untold damage. I thus ask that we all work together to restart the wheels of civil justice before it is too late.

Regards

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Vice-Dean of Faculty

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