

20 April 2020

## Emergency legislation and jury-less trials

Dear MSP,

***“I have prepared myself to go to court to get answers to questions I have about what really happened to my child. Now the wait is adding to my anxiety.”***

This quote from a father who lost his child due to a crime, explains the real-life impact of delays to court trials brought on by the current coronavirus pandemic. He would rather the trial went ahead and feels he would prefer a trial jury-less, rather than waiting for the pandemic to slow down.

Victim Support Scotland, Rape Crisis Scotland, Scottish Women's Aid and ASSIST are calling on MSPs to put victims of crime at the centre of our justice system during coronavirus. As the country's four leading victim focussed organisations, we are calling for robust support measures to be put in place that will prevent undue delays allowing serious cases to proceed.

Last week, as part of a roundtable discussions with the Cabinet Secretary for Justice, we discussed a variety of options for emergency legislation to be brought forward by the Scottish Government while courts are observing lockdown measures.

The opportunity to permit jury-less trials appear to have been prematurely dismissed when the first round of emergency legislation was introduced to the Scottish Parliament on 1 April.

Jury-less trials are already being used in domestic abuse cases that are mostly dealt with through summary proceedings. Far from eroding a 600-year-old 'cornerstone' of the Scottish legal system, this has allowed thousands of serious cases to be heard in Scotland without a jury present. Human rights organisations have agreed that proposals for jury-less trials do not breach human rights providing they are carefully considered.

Part of the rationale for retaining juries is the right to be judged by your peers, but this is unlikely to happen properly in the current circumstances with many people not being able to participate in jury services, particularly single parents and women with caring responsibilities and those who are 'shielding'.

According to statistics from the Scottish Courts & Tribunals Service, if the current lockdown measures remain in place over the summer months, the number of cases awaiting trial will likely exceed 1,600 cases.

Coronavirus will add to the length of time it takes for a trial to take place. At a conservative estimate this could add 18-months of delays, however in a recent letter the Lord Justice General has said it is more likely to be years and years. It is unacceptable to subject victims to extra delays causing further trauma, upset and distress and we must act now to minimise this.

This backlog is not a reason to abandon lockdown measures or to place the public and court officials at risk of infection from COVID-19. Our organisations feel that the other proposals circulated by the Scottish Government are unworkable and pose a serious risk of mistrial.

Any move that increases the potential for a mistrial to occur will have a devastating impact on the mental health and wellbeing on people affected by crime.

Victims of serious sexual assault and rape, for example, already face considerable re-traumatisation from having to give evidence, with one survivor saying this of their experience: ***"I was not prepared...., it was the most degrading and terrifying thing"***.

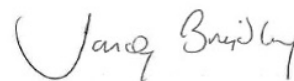
It is unacceptable to knowingly put survivors of sexual violence in the position where they may possibly have to give evidence more than once due to a mistrial, which for many is worse than no trial taking place at all.

Coronavirus will hopefully be temporary, but the extensive delays it is already causing to the criminal justice system will have a devastating and repeated impact to the lives of victims, witnesses and their families for years to come. If Scotland is serious about placing victims' interests at the centre, we need to act now to remedy an already difficult situation.

Yours sincerely,



Kate Wallace  
Victim Support Scotland



Sandy Brindley  
Rape Crisis Scotland



Dr Marsha Scott  
Scottish Women's Aid



Fiona McMullen  
ASSIST