

Interim Report to the Lord Justice General

by

Sheriff Principal D C W Pyle

on the

Summary Criminal Virtual Trial Pilot**The Way Ahead – A Strategic Plan****Introduction**

[1] For many years the Scottish Courts and Tribunals Service (SCTS) has had as one of its strategic aims the maximising of the use of technology.¹ As ever, progress is dependent upon the resources to achieve it, as well as the changes in culture required of justice partners to ensure that reforms work in practice. The Covid -19 pandemic has brought huge challenges for the justice system, but it has also offered opportunities for fast and effective long term reform. Embracing the latter, SCTS set up a pilot project for the delivery of summary criminal virtual trials with judicial input from Sheriff Principal Pyle and Sheriff Duff as the Director of the Judicial Institute, together with contributions by two serving sheriffs.

[2] The pilot began with the preparation of and submission to the Lord Justice General of a draft practice note on 20 May 2020.² The first virtual trial took place on 9 June in Inverness – just 17 working days later. It was the first virtual trial conducted in the four jurisdictions of the British Isles.³

[3] This paper sets out in broad terms the lessons learnt from the pilot and the next steps to be taken in the future development of the concept.

The Current Emergency

[4] The deployment of technology to create virtual criminal trials is an inevitable part of the long term future for court hearings, whether civil or criminal. Thus the pursuit of that as a strategic aim is sound.

¹ Eg, SCTS Corporate Plan 2017-2020

² See Appendix 1 for its final form.

³ Only mock trials have been conducted elsewhere – in England and Eire.

However, the pandemic has created the urgent need to consider its immediate practical consequences – certainly for the next 12 months and with knock-on effects lasting for several years.

[5] There have been no jury trials since the lockdown began in March and indictments in the High Court are continuing at similar levels to last year (approx. an additional 90 per month) which is an increase of 15% compared to the previous year. Normally there are approx. 390 cases at any given time awaiting trial following a preliminary hearing. This is anticipated to rise to 750 by the end of August. In the sheriff courts there were 500 sheriff and jury cases awaiting trial; it is anticipated that this will increase to around 1000 by August. The Lord Justice-Clerk chairs a group which is considering what steps can be taken and, in particular, is looking at the options of a three or two courtroom model or perhaps a one courtroom model with the jury being housed elsewhere. There is, at least at present, little political appetite for judge only solemn trials. No matter which model is chosen, it is inevitable that the sheriff court estate, probably from mid-September, will largely be required for solemn trials, whether High Court or sheriff and jury. Even if there were no social distancing rules, it would probably be a number of years before solemn business would return to normal levels – and that on the basis of the additional use of sheriff court buildings. Taking into account the need for civil business to be conducted (even with the use of technology), it is obvious that for any meaningful progression of summary criminal business the likely default option is the virtual trial model.

[6] More detailed work is required on the statistics of business levels in summary crime. But there are at present 17,000 trials fixed which is only 3,000 short of half of the average number of trials fixed in a whole year. At the end of March, the provisional figures disclosed 14000 outstanding summary complaints, against 11000 at the same date in the previous year. Approx. 7000 trials proceed to evidence in a year.

The Virtual Trials Pilot

[7] Three trials have taken place: the first on 9 June in the Inverness Justice Centre; the other two on 10 June in Aberdeen Sheriff Court. The first was in respect of a charge of the possession of cannabis. There were two police witnesses. No evidence was led by the defence. The accused was acquitted (Sheriff Aitken) when the Crown intimated that it no longer was moving for a conviction after the police witnesses had completed their evidence. The second case contained a charge of theft and a charge of a breach of bail conditions. It was in the context of a domestic argument. Evidence was led by the female complainer (aged

26) and two police officers. No evidence was led by the defence. The sheriff (Summary Sheriff Wallace) acquitted the accused on the theft charge and found him guilty of the breach of bail. He was admonished and dismissed. The accused's home was in Cumbria. He appeared remotely from Dumfries Sheriff Court – only an hour's drive from his home. The third trial was in respect of an assault charge. Evidence was led by two police officers. The accused was acquitted.

[8] The trials had been selected by the Crown and the defence as being straightforward trials suitable for the pilot. Productions were agreed and spoken to, but there was no CCTV video evidence or labels. Legal authorities were anticipated and lodged electronically in advance of the trials. There were no vulnerable witnesses or interpreters. The parties strictly followed the requirements of the Lord Justice General's Practice Note. It had been intended to have two trials in Inverness but in one trial the accused had to self-isolate. The Aberdeen trials were programmed for 10am and 2pm respectively. Police officers gave their evidence from police stations. The accused, the other witnesses and the sheriff clerks sat in rooms in the respective courts. The sheriffs were in their chambers.

[9] The technology was controlled by Nick Reilly, Project Manager, Digital Services Unit, SCTS, both before and during the trials themselves. He prepared a detailed plan setting out the timings of each trial.

[10] Sheriff Duff and the presiding sheriffs agreed draft guidance which was deployed.

[11] A number of people were invited to watch the trials, including sheriffs principal, office bearers of the Sheriffs and Summary Sheriffs Associations, senior Crown Office officials, members of the Law Society of Scotland Criminal Law Committee and authorised members of the media. Members of the public had only audio access.⁴

Feedback

[12] Apart from minor issues (described as such by the participants), the reaction of all the participants was positive. The sheriffs found the technology easy to use with little training being required – “pretty intuitive”; “straightforward”; “felt just like a normal trial”. The same view was repeated by the procurator fiscal

⁴ It is anticipated that in due course the public would have both audio and video access, subject to contempt of court rules.

deputes and the defence agents – one depute confessed to being “not techy” but found it all “worked fine”. The trials themselves seemed to take longer than a traditional one, but opinion varied by how much. One agent thought it was “only 20 minutes” which he described as “impressive”. The arrangements for the agent to take instructions from the client during the course of the trial worked well. The female complainer in the second trial spoke positively about the experience despite having intermittent problems with the video signal during her giving evidence. The Law Society also commented positively on the proceedings.⁵ The clerks of court found the technology straightforward to operate and had no negative comments.

[13] Sheriff Wallace commented: *“The accused actually becomes more of the centre of the trial in the virtual model... There was a positive move towards him being positioned on an equal footing to all participants as another image on the screen as opposed to being kept separate in the dock.”*

[14] Nick Reilly considered that a video signal problem (which was resolved) in the second trial was something which could be dealt with by closer checking of Wi-Fi capabilities from each remote site. He thought that the deployment of video evidence is certainly possible, although in order to focus on the overall technology it makes more sense to leave that to be considered after more trials have been successfully conducted.

Advantages and Disadvantages of the Virtual Trial

[15] Virtual trials can be conducted with minimum attendance of participants in a sheriff court building. But the accused and some witnesses need to be under the control and supervision of court officers – and in some cases perhaps of police officers where there is a risk of misbehaviour. One possibility remains of the accused being in the agent’s office, but much will depend upon the willingness of agents for that, particularly in the context of present social distancing rules. The court buildings are not easily adapted for the accommodation of accused and witnesses to allow evidence to be led. There is no need to use courtrooms but small rooms are unsuitable because of social distancing guidelines. There remains the possibility of accused and witnesses being located elsewhere than a court, but there would still require to

⁵ <https://www.lawscot.org.uk/news-and-events/blogs-opinions/watching-scotlands-first-virtual-summary-trial/?zs=Xp1TW1&zl=pO0r>

be supervision by court officers and, in some cases, a police officer.⁶ An obvious issue would be the arrangements for an accused where a custodial sentence is to be imposed. The more accused in a trial and the more the witnesses, the more the need for several court officers and, in some cases, police officers to be deployed.⁷

[16] The key to a successful virtual trial is preparation by the Crown and the defence, as is borne out by the checklist in the Practice Note. A poorly prepared trial, where for example productions such as police statements are not lodged electronically in advance, will inevitably run into problems and may result in an adjournment. One of the agents commented: “It was like preparing for a first diet”.

[17] The requirement for parties to prepare properly and timeously in any court proceedings, whether criminal or civil, is obvious – indeed it is encompassed in their duty to the court. But that is particularly so in the context of summary crime and, in the present crisis, virtual trials. Sheriffs and summary sheriffs will be alive to this critical issue and both the Crown and the defence need to be under no illusions: the virtual trial concept will fail unless parties embrace the principle that from the point of prosecution (indeed before prosecution for the Crown and other agencies of the State, including Police Scotland) the parties must fully prepare their respective cases. In particular, all the preparations must be completed by the time of the intermediate diet, such preparations being comprehensively set out in the check list contained in the Practice Note, which will apply mutatis mutandis for future cases post the pilot where minutes of acceleration will no longer be required.

Resources

[18] There are four distinct issues on the resources required for virtual trials, although each are interlinked with the others.

[19] Technical Resources and Training: The supply of the technical kit required is not an issue. While there is no blank cheque book, Scottish Government will probably support the capital spend. In any event, subject

⁶ Consideration might be given to Victim Scotland or Assist offering a room in their buildings, from which the complainer and perhaps child witnesses would give their evidence in domestic abuse cases.

⁷ One of the defence agents thought that, “No more than 10 of my caseload would be suitable”.

to the likely need for two pieces of kit or, perhaps, one piece with two screens, most sheriffs have the necessary equipment in their chambers. Provision of kit for home working is possible if required and may prove to be an important ingredient of long term use of virtual trials. The Judicial Institute is well placed to provide training to sheriffs to support them in the use of the technology and the actual conduct of virtual trials. Training materials are in an advanced stage of development and the necessary support will be unlikely to be expensive and will be ready for remote delivery in short order. The training of sheriff court staff would be necessary (“digital clerks”), but the experience of the pilot is that it would be straightforward and could be delivered within a short time scale.⁸

[20] Buildings and Personnel: The availability of physical spaces for accused and non-professional witnesses (and the consequential deployment of personnel) is perhaps the greatest challenge. Most, if not all, sheriff court buildings are not easily configured to provide spaces which are neither too large nor too small. If remote sites are deployed, supervision by court officers and, in some cases, police officers would still be required. The clerk of court would require to sit through each trial with no opportunity to perform other duties. The typical work pattern of sheriff court staff would have to be varied to reflect the changes in practice.

Recommendations

[21] The use of virtual summary trial courts is a necessity, not an option. The speed in which the pilot was conducted is impressive. But the momentum could easily be lost.

[22] Public relations are not as important as the effective administration of justice. Nevertheless, the reputation of the courts and the judiciary – indeed of the wider justice system – has been enhanced by Scotland being the first jurisdiction to run virtual trials - and would be further enhanced by a roll-out of the virtual trial model.

[23] It is recommended that the aim should be that virtual trials become the default method of judicial determination in summary crime.⁹

⁸ During the pandemic, the “digital clerks” could be those who are self-isolating at home.

⁹ The role of the JP courts should be ignored for present purposes. There are other factors, such as the introduction of amendments to the Road Traffic Acts, which are in play and which might affect the extent to which JP courts are

[24] But in order to keep the present momentum, steps are being taken in the same manner as the pilot to recruit local defence agents to co-operate with the Crown to identify suitable straightforward cases where virtual trials can take place.

[25] That will continue in Inverness and Aberdeen. But other courts elsewhere in the country will be identified, particularly those where the court buildings more easily lend themselves to the accommodation of accused and witnesses. Possibilities might include Dundee and Falkirk – and to ensure that more than Aberdeen of the seven largest courts is used, Hamilton and Paisley.¹⁰

[26] Each court will require to be assessed in detail for the necessary accommodation to conduct one virtual trial court per day, for two, perhaps three, trials. In addition, steps will be taken to test the accommodation throughout the whole sheriff court estate for a permanent roll-out of virtual trials. That would be no more than a provisional estimate given that it is too early to say what will be the extent of the use of buildings for solemn trials.

[27] Sheriff Aitken has made the following point: *“I had a summary trial in Portree that lasted two days. I travelled from Inverness, the agent and accused were from Edinburgh, and half the witnesses were from South Uist. I’m sure that would have been cheaper and less inconvenience if we did not all have to be in the same physical place. To get to Lochmaddy I have to fly from Inverness to Stornoway, then to Benbecula, then drive a hire car for 45 minutes to get to Court. And the same in reverse, assuming the flights are on time. So I leave the house at 7 and get to Court at 11, for a Court day that sometimes only lasts an hour (or sometimes two days.) It would certainly be cheaper, more convenient and more environmentally friendly for me to do the Court by video link.”*

Consideration will be given to the deployment of the virtual trial model in some or all of the remote courts in GHI. The same could be considered for the remote courts in NS and SSDG.

[28] In Aberdeen and Inverness, cases will be identified where the accused and/or the witnesses would not be expected easily to co-operate – in order to test the ability of the system to deal with that circumstance.

as significant a part of the summary justice system, although they will continue to have an important role and should be considered for virtual trials once the sheriff court model has been successfully introduced.

¹⁰ Hamilton, Paisley and Dundee were the courts being used in the Summary Crime Pilot.

Consideration should be given to liaising with Police Scotland (through sheriffs principal and local police, perhaps at Chief Superintendent level) with a view to the police undertaking to collect accused or witnesses who fail to attend the trial – as is frequently done for High Court trials. The incentive for the police is a long term substantial saving in resources in police officers attending courts.

[29] Each sheriff principal involved will be invited to select sheriffs and summary sheriffs whom they consider would be enthusiastic about the pilots and comfortable with the technology. It is anticipated that most, if not all, sheriffs and summary sheriffs would be keen to preside over virtual trials.

[30] A detailed timetable should be set for the virtual pilots in each of the new courts – and for Aberdeen and Inverness an agreed target within a set timetable of virtual trials in order that a bank of successful outcomes is created. The timetable will allow for the necessary provision of equipment and training.

[31] A target date for completion of all the pilots and the creation of the bank for Inverness and Aberdeen will be set, with a view to a roll-out across the country in the autumn.

[32] The ambition would be that the default position should be that trials be done by way of a virtual court. (Custody trials would require the accused to remain in prison and VC link to the court.) A detailed calculation will be made of the exact number of virtual trials which can be conducted in each sheriffdom. A provisional view will be reached on what trials would not be suitable for the virtual model (“physical trials”), to be further developed over time and with experience.

[33] Finally, I should acknowledge the efforts of those involved in the pilot thus far. All parties have embraced the concept of virtual trials with enthusiasm. It is an obvious point to make, but it still worth saying that without the willingness of the participants to become involved the pilot would not have proceeded.

25 June 2020

Appendix 1**CRIMINAL COURTS****PRACTICE NOTE NO 1 OF 2020****Remote Conduct of Summary Trials Pilot****Aberdeen and Inverness sheriff courts**

This Practice Note takes effect from 1 June 2020

All applications made under this Practice Note must be made by electronic means to either virtualtrialsaberdeen@scotcourts.gov.uk or virtualtrialsinverness@scotcourts.gov.uk

as relevant.

Introduction

1. The purpose of this Practice Note is to regulate the fixing and conduct of summary trials by way of remote attendance of parties, their representatives and witnesses during a pilot to be conducted in Aberdeen and Inverness Sheriff Courts.
2. **Before** any application under this Practice Note is made to the court for a trial to be fixed, the prosecutor and agent for the accused
 - (i) *must have reached agreement that the case is suitable for trial,*
 - (ii) *must liaise with the Sheriff Clerk to identify available dates ; and*
 - (iii) *must verify that the accused and all witnesses are available on those dates.*

Acceleration of proceedings

3. Once the parties have agreed that the case is suitable for trial by electronic means, they must provide the sheriff clerk with an accurate estimate of the length of the trial.
4. The trial will be given a fixed time slot, both for its commencement and length, based on the estimates provided by parties. Parties must be realistic in estimating time for the length of a trial. If the trial does not conclude within the allocated slot then it may require to be continued, part heard, to another slot on another day, so that the next trial can proceed.
5. In response to the information provided by parties, the sheriff clerk will inform parties of the date(s) and time available for the trial. That date and time must be checked with the accused and all witnesses (both Crown and defence).

6. Only after it has been established that the accused and all witnesses are available to attend the trial by electronic means at the fixed time on the available date (s) can an application for acceleration be made under this Practice Note. The prosecutor and agent for the accused will make, in terms of section 137 of the 1995 Act, a joint application to the court by electronic means to discharge the diet(s) fixed and to fix an earlier trial diet.
7. Parties will require in the application to address all matters normally considered at an intermediate diet, in terms of section 148 of the 1995 Act. In particular, the prosecutor and agent for the accused will, prior to submission of the section 137 application, agree in a joint minute any evidence which is not disputed (including any question of identification of the accused) and will submit electronically to the court in advance lists of witnesses and productions, including copies of the latter, a signed copy of any joint minute and will provide an estimate of the likely length of the trial. The application must be accompanied by a completed checklist in the form set out in the Appendix to this Practice Note.
8. Arrangements must be in place for confidential, communication between the accused and his agent both before and during the trial. The application must include information about those arrangements sufficient to satisfy the court of their adequacy.
9. The parties will require to make clear to the court how any productions will be shown to witnesses.

Fixing diets

10. The usual practice of listing of multiple trial diets for any given court day is not suitable for trials proceeding under this Practice Note. The number of diets listed each day will depend on the anticipated length of each trial and the nature of the electronic measures to be used.

Application to appear remotely

11. In the acceleration application the parties must make representations (or state that they do not wish to make such representations) about the court making an order in terms of the Coronavirus (Scotland) Act 2020 ("the 2020 Act"), Schedule 4, Part 1, Paragraphs 2(3) and 3(1).

12. On considering the application for acceleration under section 137, if the court is satisfied that to do so will not prejudice the fairness of proceedings, or otherwise be contrary to the interests of justice, it may direct that

- the prosecutor, agent for the accused, the accused and the witnesses are not required physically to attend the court for the trial **and**
- that the prosecutor, the agent for the accused, the accused and the witnesses are required to appear before the court for the trial by electronic means.

13. The direction must set out how the prosecutor, the agent for the accused, the accused and witnesses are to appear by electronic means before the court, and may include any other provision the court considers appropriate.

Orders in terms of the 2020 Act, Schedule 4, Part 1, Paragraph 3(1)

14. The prosecutor and agent for the accused will be directed to appear by live video and audio link from two different venues to be determined.

15. The accused will be directed to appear by live video and audio link from a venue to be determined.

16. Witnesses will be directed to appear by live video and audio link from a venue to be determined.

Practical arrangements for the trial

17. The trial diet will be allocated a fixed start time. It is essential that all parties are ready to commence the trial at the time fixed. All preparations, discussions or negotiations must have taken place and concluded before the start time provided

18. In advance of the trial diet the Sheriff Clerk will have provided all necessary instructions for remote attendance including details setting out the system to be used and the access code. Parties must have verified that they have the necessary equipment in working order for the conduct of the trial in advance of the start of the trial.

19. The sheriff and clerk of court respectively may be in a court building or may be in attendance from another place or places.

20. All other parties will be appearing by live video and audio link from other venues as specified in the directions made by the court.
21. During the trial a court officer will be present with the accused while respecting social distancing restrictions.
22. During the trial a court officer/witness support official will be present with each witness (other than those witnesses identified at Paragraph 24) as they give evidence while respecting social distancing restrictions.
23. The arrival of witnesses at the place for the giving of evidence and the arrangements for them while they wait to give evidence will also be managed to respect social distancing restrictions.
24. Police officers and witnesses such as doctors, nurses, ambulance workers or experts will give evidence from the most suitable venue for them to do so with minimal disruption to their normal duties, In respect of police officers the venue may be a police office.

CJM SUTHERLAND

Lord Justice General

28 May 2020

APPENDIX

WRITTEN RECORD OF STATE OF PREPARATION

SHERIFF COURT SUMMARY TRIALS

CROWN AND DEFENCE	
What is the proposed date and scheduled time for the trial?	
How long do you estimate that the trial will last?	
<p>Have any facts or documents been the subject of a minute of admission or agreement?</p> <p>If yes, attached a copy of each minute.</p> <p>If no, specify the reason.</p>	
<p>Has either party served a statement of uncontroversial evidence?</p> <p>If yes,</p> <ul style="list-style-type: none"> (i) attach a copy of each statement (ii) specify any matters which are deemed to have been conclusively proved:- (iii) attach a copy of any notice of challenge and (iv) attach a copy of any application for direction to disregard <p>If no, specify the reason.</p>	
<p>Are there any other matters which might be disposed of with advantage before the trial (eg compatibility minutes, or applications for recovery of documents).</p> <p>If yes, specify each matter:-</p>	

CROWN	
Is the Crown prepared for trial?	
Has full disclosure been made in accordance with the provisions of the Code of Practice: Disclosure of Evidence in Criminal Proceedings?	
How many necessary Crown witnesses are there in total? Attach a copy of the Crown list of witnesses	Civilian Child or vulnerable witnesses Police Others
Are the necessary Crown witnesses all available to attend on the date and time of the trial?	
From what location is it proposed that the witnesses give evidence?	Civilian Child or vulnerable witnesses Police Others
The court will require to consider making orders in terms of the Coronavirus (Scotland) Act 2020 ("the 2020 ACT"), Schedule 4, Part 1, Paragraphs 2(3) and 3(1) [excusing physical attendance at the trial and requiring attendance by electronic means]. Do you wish to make any representations about whether making such orders would (a) prejudice the fairness of proceedings, or (b) otherwise be contrary to the interests of justice? If so, set out your representations either in the box opposite or, if lengthy, in a document apart and clearly marked as such.	
Are there any Crown productions? If yes attach a list and provide copies of	

any which can be copied.	
How is it intended that any productions will be shown to witnesses, if that is required?	
Is it anticipated that it may be necessary to put a previous statement to a witness? If yes provide a copy of the statement(s)	
Do you wish to raise any objection to the admissibility of any evidence? If yes, specify each objection and attach a note of your submissions clearly marked as such.	
Has any of the following been lodged? <ul style="list-style-type: none"> • A child witness notice • A vulnerable witness application • An application to admit evidence relating to the character and conduct of complainer • An application for an order prohibiting the accused from conducting his defence in person • An application for a witness anonymity order If yes, attach a copy of each application or notice.	
Are any of the following required at the trial? <ul style="list-style-type: none"> • display of video-tape evidence • playback of police interview audio-tape • document camera • CD/DVD evidence in computer format (parties must supply laptop PC or other means of display) other equipment (specify)	
Will an interpreter be required for the trial? If yes, please provide details:-	
DEFENCE	

Is the accused available to attend on the date and time of the trial?	
Does the accused require any adjustments to be made or measures put in place to allow his effective participation in the trial proceedings if doing so by electronic means? If yes, specify	
Is the defence prepared for trial?	
As far as you know has full disclosure been made in accordance with the provisions of the Code of Practice: Disclosure of Evidence in Criminal Proceedings?	
Has any of the following been lodged. <ul style="list-style-type: none"> • a plea of special defence or notice of intention to incriminate a co-accused • notice of witnesses or productions If yes, attach a copy of each plea and notice.	
How many necessary defence witnesses are there in total, excluding the accused but including any witnesses listed by the Crown?	Civilian Child or vulnerable witnesses Police Others
Are the necessary defence witnesses all available to attend on the date and time of the trial?	
From what location is it proposed that the defence witnesses give evidence?	Civilian Child or vulnerable witnesses Police Others
The court will require to consider making orders in terms of the Coronavirus (Scotland) Act 2020 (“the 2020 ACT”), Schedule 4, Part 1, Paragraphs 2(3) and 3(1) [excusing physical attendance at the trial and requiring attendance by electronic means].	

<p>Do you wish to make any representations about whether making such orders would (a) prejudice the fairness of proceedings, or (b) otherwise be contrary to the interests of justice?</p> <p>If so, set out your representations either in the box opposite or, if lengthy, in a document apart and clearly marked as such.</p>	
<p>Are there any Crown productions? If yes attach a list and provide copies of any which can be copied.</p>	
<p>How is it intended that any productions will be shown to witnesses, if that is required?</p>	
<p>Is it anticipated that it may be necessary to put a previous statement to a witness? If yes provide a copy of the statement(s)</p>	
<p>Do you wish to raise any objection to the admissibility of any evidence? If yes, specify each objection and attach a note of your submissions clearly marked as such.</p>	

<p>Has any of the following been lodged?</p> <ul style="list-style-type: none"> • A child witness notice • A vulnerable witness application • An application to admit evidence relating to the character and conduct of complainer • An application for an order prohibiting the accused from conducting his defence in person • An application for a witness 	
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<p>anonymity order If yes, attach a copy of each application or notice.</p>	
<p>Are any of the following required at the trial?</p> <ul style="list-style-type: none"> • display of video-tape evidence • playback of police interview <p>audio-tape</p> <ul style="list-style-type: none"> • document camera • CD/DVD evidence in computer format (parties must supply laptop PC or other means of display) <p>other equipment (specify)</p>	
<p>Will an interpreter be required for the accused or any defence witness for the trial? If yes, please provide details:-</p>	

