



**Annual Report of the Advisory Council on  
Messengers-at-Arms and Sheriff Officers**

**1 April 2017 to 31 March 2018**

**October 2018**

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## **Foreword by the Chair of the Council**

I am pleased to present this seventh Annual Report of the Advisory Council on Messengers-at-Arms and Sheriff Officers.

Officers of court are the executive arm of the courts in Scotland and as such they make a vital contribution to the delivery of justice by ensuring that obligations are met and rights can be enforced. The public must have confidence in them as a profession and it is right that they are properly regulated both by the courts they serve and by their professional association.

I am confident that the Advisory Council continues to make a meaningful contribution to this regulation.

The Hon. Lady Wolffe  
(Chair)

## **1. Introduction**

### *Establishment*

- 1.1 Section 76(1) of the Debtors (Scotland) Act 1987 (“the 1987 Act”) established the Advisory Council on Messengers-at-Arms and Sheriff Officers (“the Advisory Council”) whose functions are to advise the Court of Session on the making of Acts of Sederunt under section 75 of the 1987 Act and generally to keep under review all matters relating to officers of court.

### *History*

- 1.2 The Advisory Council first met on 2 November 1987. The Advisory Council has had four Chairs, Lord Prosser (1987-2001); Lord McEwan (2001-2009); Lord Uist (2009-2015) and Lady Wolffe (2015 to date). The Advisory Council meets at Parliament House, Edinburgh.

### *Increased role*

- 1.3 Part 3 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 sought to effect a fundamental reform of the regulation of messengers-at-arms and sheriff officers. It sought to unify those two offices and establish a Scottish Civil Enforcement Commission with regulatory functions in respect of them.
- 1.4 These reforms were never brought into force. Instead, by way of the Public Services Reform (Scotland) Act 2010, significant modification of the reforms was effected. The unification of the two offices was reversed. The provisions concerning the Scottish Civil Enforcement Commission were repealed, with the majority of its proposed functions being placed instead on the Advisory Council or on the Lord President and the sheriffs principal or on the professional association for officers of court. The Society of Messengers-at-Arms and Sheriff Officers (“SMASO”) was designated as the professional association for officers of court by the Scottish Ministers on 1 April 2011.

### *Annual report*

1.5 Section 51 of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (as amended) provides that the Advisory Council must prepare a report on its activities during the whole of each financial year as soon as practicable after the end of the period to which the report relates. This is the Advisory Council's sixth annual report and is for the period 1 April 2015 to 31 March 2016.

1.6 The Advisory Council must send a copy of the report to the Scottish Ministers and publish the report.

## **2. Membership**

2.1 Section 76(2) of the 1987 Act provides that the Advisory Council shall consist of –

(a) the following persons appointed by the Lord President of the Court of Session –

(i) a judge of the Court of Session (who shall act as chairman);

(ii) two sheriffs principal;

(iii) two officers of court;

(iv) two solicitors; and

(v) such other persons (not falling within sub-paragraphs (i) to

(iv) above) as the Lord President considers appropriate;

(b) one person appointed by the Lord Advocate; and

(c) the Lord Lyon King of Arms.

2.2 Section 76(3) provides that the Secretary of the Advisory Council shall be appointed by the Scottish Ministers.

2.3 As at 1 April 2017 the membership of the Council was as follows:

The Hon. Lady Wolffe (Chair)  
The Lord Lyon King of Arms  
Sheriff Principal Scott QC  
Sheriff Principal Murray  
Mr Frank McConnell - Solicitor  
Mr Roderick Macpherson - Officer of Court  
Mr Stuart Hamilton - Officer of Court  
Ms Kay McCorquodale - Scottish Government  
Ms Pauline Allan - Citizens Advice Scotland  
Ms Yvonne MacDermid - Money Advice Scotland

2.4 As at 31 March 2018 the membership of the Council was as follows:

The Hon. Lady Wolffe (Chair)  
The Lord Lyon King of Arms  
Sheriff Principal Murray  
Sheriff Principal Turnbull  
Mr Roderick Macpherson - Officer of Court  
Mr Stuart Hamilton - Officer of Court  
Walter Drummond-Murray- Scottish Government  
Ms Pauline Allan - Citizens Advice Scotland  
Ms Yvonne MacDermid - Money Advice Scotland  
Eileen Blackburn – CA member  
Rachel Grant – solicitor member

Rachel Grant was appointed as a solicitor member on 4 October 2017. Frank McConnell resigned as a solicitor member on 11 December 2017. The Council expressed its thanks to Mr McConnell for his contribution during his time on

the Council. He has been replaced by Alison Gow who was appointed on 17 April 2018.

The Secretary is Roddy Flinn, Legal Secretary to the Lord President, who is assisted by Edward McHugh, Deputy Legal Secretary to the Lord President.

### **3. Meetings and work of the Advisory Council**

3.1 The Advisory Council met once during the year 2017-2018, on 11 December 2017. The draft minutes of the meeting are attached as an appendix to this report.

3.2 In so far as keeping under review all matters relating to officers of court was concerned, the Advisory Council received updates from SMASO and the Scottish Government.

3.3 In relation to advising the Court of Session on the making of Acts of Sederunt under section 75 of the 1987 Act, there were no instruments that came to the Council's attention this year.

#### *Future meetings*

3.4 The Advisory Council will next meet on 22 October 2018.

### **4. Statistical Information**

The Advisory Council previously indicated an intention to include in its report a statistical analysis of the performance by officers of court of their functions as envisaged by section 51 of the 2007 Act. This takes the form of a

report from the Accountant in Bankruptcy containing the statistics provided by officers of court under section 84 of the 1987 Act. The report for 2016- 2017 (which is the most up-to-date available) can be accessed here:

<https://www.aib.gov.uk/aib-scottish-diligence-statistics-2016-17>

The 2016-2017 report is expected to be available in December 2018.



## APPENDIX

### MINUTES

#### ADVISORY COUNCIL ON MESSENGERS-AT-ARMS AND SHERIFF OFFICERS

**Meeting – 11 December 2017, 2.15pm at Parliament House, Edinburgh**

##### **Present**

The Hon. Lady Wolffe (Chair)

The Right Hon. the Lord Lyon (Dr Joseph Morrow)

Sheriff Principal Murray

Sheriff Principal Turnbull

Mr Roderick Macpherson – Officer of Court

Mr Stuart Hamilton – Officer of Court

Mr Walter Drummond-Murray – Scottish Government

Ms Pauline Allan- Citizens Advice Scotland

Ms Yvonne McDiarmid- Money Advice Scotland

Mr Frank McConnell, solicitor

Ms Rachel Grant, solicitor

##### **Secretariat**

Mr Roddy Flinn - Legal Secretary to the Lord President

Mr Edward McHugh – Deputy Secretary to the Lord President

##### **Apologies**

Ms Eileen Blackburn, CA

##### **Item 1: Welcome**

1. The Chair welcomed members to the meeting.

##### **Item 2: Minutes of the meeting on 3 October 2016 and matters arising**

2. The 3<sup>rd</sup> October 2016 meeting minutes were approved. Mr Macpherson proposed that the draft minutes of the December 2017 meeting should be approved by correspondence. The Council agreed with that proposal.
3. Matters arising. The Council noted that:

- Scottish Civil Justice Council (“SCJC”) received a request from SMASO regarding an amendment to court rules about proof of delivery. The SCJC decided not to progress it at this stage as the issue of service of court documents is to be looked at as a whole under the ongoing work of the Rules Rewrite Project.
- the changes to advertising requirement when applying for commission as a sheriff officer have been made and the relevant instrument (SSI 2017/240) came into force on 2 October 2017
- Eileen Blackburn has been appointed as the CA member of the Council.

### **Item 3: SMASO Memorandum**

4. The Council considered paper 2 (SMASO memorandum) and paper 3 (LPPO comments on retirement age of messengers-at –arms).

5. So far as the SMASO memorandum was concerned Mr Macpherson informed the Council that he had been advised that the general review of Sheriff Officers fees by the Cost and Funding Committee of the SCJC was due to commence in 2018. Mr. Macpherson, in response to a question from Sheriff Principal Murray about the memorandum's paragraph about CPD, stated that there had, for the first time, been 100% compliance from the sheriff officers in returning satisfactory CPD records this year; however, he regretted that the Society's website was not yet issuing receipts of completed CPD returns. Mr Macpherson informed the Council that SMASO had commissioned a briefing from solicitors on the General Data Protection Regulation, for the benefit of their members.

6. The Council considered issues around commissions of messengers-at-arms which contain a condition that the office is to become vacant when the messenger reaches the age of 70. Members noted that a messenger who continued to practice after 70, without a valid commission, would be exposed to significant personal and professional liabilities. The Lord Lyon informed the Council that he would liaise with SMASO to work on a communication to SMASO's members alerting them to the fact that messengers whose commissions expired at age 70 and who wished to continue working would as matters stood require to apply for readmission as messengers. Members agreed that, given the high proportion of messengers who held such a commission, a long term solution should be sought. They agreed that this was an issue for the Lord Lyon to resolve. The Lord Lyon indicated he would take advice on the options. The Chair commented that finding a comprehensive solution may not be straightforward.

#### **Item 4: Scottish Government Update**

7. Mr Drummond-Murray informed the Council that the Civil Litigation Funding Bill and the Damages Bill are progressing through Parliament. He confirmed Simple Procedure commenced, for the first tranche of court actions, in November 2016. The Accountant in Bankruptcy plans to publish the consultation responses to the diligence review by the end of 2017. Diligence statistics are due to be published by the AiB on 20 December 2017.

#### **Item 5: AOCB**

8. The Council secretariat was contacted by the Public Records (Scotland) Act 2011 Assessment Team at the National Records of Scotland (NRS). That team is looking into whether any eligible public authorities not currently on the Schedule to the 2011 Act should be added. ACAMSO is a body which is being assessed for inclusion. This is for information at present as NRS have not confirmed that ACAMSO is to be added to the schedule.

9. Mr McConnell informed the Council that he was submitting his resignation as member. The Chair thanked Mr McConnell on behalf of the Council for his valuable contribution during the years of his membership.

10. Once they are identified, the secretariat will intimate dates for the proposed meetings in spring and autumn 2018.