



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

1 April 2014 to 31 March 2015

June 2015

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Foreword by the Chairman of the Council

I am pleased to present this fourth 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. Lord Uist
(Chairman)

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. From that date until April 2008 it met once a year. Since April 2008 it has met, usually, twice a year. The Advisory Council has had three Chairmen, Lord Prosser (1987-2001); Lord McEwan (2001-2009); and Lord Uist (2009-present). 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 The provisions concerning the Scottish Civil Enforcement Commission were repealed, with the majority of its proposed functions being placed instead on the Advisory Council or on the Lord President and the sheriffs principal or on the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 fourth annual report and is for the period 1 April 2014 to 31 March 2015.
- 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 2014 the membership of the Council was as follows:

The Hon. Lord Uist (Chairman)

The Lord Lyon King of Arms

Sheriff Principal Kerr, QC

Sheriff Principal Scott QC

Mr Frank McConnell - Solicitor

Ms Angela McCracken - 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

Ms Shelagh MacKay - Chartered Accountant

The Secretary was Mr Roddy Flinn – Legal Secretary to the Lord President, who is assisted by Mrs Elise McIntyre – Deputy Legal Secretary to the Lord President.

2.4 As at 27 October 2014 the membership of the Council was as follows:

The Hon. Lord Uist (Chairman)

The Lord Lyon King of Arms

Sheriff Principal Scott QC

Sheriff Principal Murray

Mr Frank McConnell - Solicitor

Ms Angela McCracken - 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

Ms Shelagh MacKay - Chartered Accountant

The Secretary was 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

27 October 2014

3.1 The Advisory Council met only once during the year 2014-2015, on 27 October 2014. A copy of the minutes of that meeting can be found in the 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 discussed a number of matters and received updates from SMASO and the Scottish Government. The detail of these discussions can be found in the attached Minutes.

3.3 In relation to advising the Court of Session on the making of Acts of Sederunt under section 75 of the 1987 Act, the Advisory Council suggested a review of Rule 8 (3) (b) of the Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991 (“the 1991 Rules”) with a view to considering whether the advertising requirements set out therein remain appropriate. The Lord President has agreed that a consultation exercise be carried out on whether to replace the current requirements.

Future meetings

3.4 The Advisory Council is due to meet again in autumn 2015.

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 2013- 2014 (which is the most up-to-date available) can be accessed here:

<http://www.aib.gov.uk/scottish-diligence-statistics-report-2013-14>

The 2014-2015 report is expected to be available in October 2015.

Appendix

ADVISORY COUNCIL ON MESSENGERS-AT-ARMS AND SHERIFF OFFICERS

Meeting – 27 October 2014, 2.15pm at Edinburgh Sheriff Court, Edinburgh

Present

The Hon. Lord Uist (Chairman)
The Lord Lyon
Sheriff Principal Scott QC
Ms Angela McCracken, Solicitor
Mr Roderick Macpherson – Officer of Court
Mr Stuart Hamilton – Officer of Court
Ms Kay McCorquodale, Scottish Government

Secretariat

Mr Edward McHugh – Deputy Legal Secretary to the Lord President

Apologies

Sheriff Principal Murray
Mr Frank McConnell, Solicitor
Ms Yvonne MacDermid – Money Advice Scotland
Ms Pauline Allan, Citizens Advice Scotland
Ms Shelagh MacKay – Chartered Accountant

Item 1: Welcome and apologies

1. Lord Uist opened the meeting and noted apologies. Lord Uist welcomed the new Lord Lyon who was in attendance for the first time.
2. Lord Uist informed the council that he had been sitting in the High Court that day and was awaiting the return of the jury to deliver its verdict. It was possible that might occur during the meeting in which event he would suspend the meeting.

Item 2: Minutes of the meeting on 13 January 2014 and matters arising

3. The minutes of the meeting on 13 January 2014 were approved.
4. There were four matters arising from the previous minutes:
5. The Act of Sederunt removing minimum and maximum age requirements came into force on 17 March 2014.
6. The Council was advised that the letter which the Secretariat had been authorised to send to Walker Love regarding the *McEntagart* judgement was sent on 27 January 2014. It was agreed that a copy of the letter would be circulated by the Lord President's Private Office to all members.
7. The Council reiterated its view that court rules might be usefully amended to make reference to proof of delivery as well as proof of posting. The rather outdated reference to Royal Mail was also highlighted as worthy of attention. The Council agreed that it would recommend to the Lord President that these matters be brought to the attention of the Scottish Civil Justice Council for its consideration.
8. The Council noted that Sheriff Principal Murray had been appointed to succeed Sheriff Principal Kerr QC.

Item 3: Review of Fees of Messengers at Arms and Sheriff Officers.

9. The Secretariat informed the Council that it was intended by the Lord President that the review of the fees of Messengers at Arms and Sheriff Officers be included as Phase 3 of the Scottish Court Service-led project to consider court fee structures in the light of civil court reform. Phase 1 was

due to commence shortly with the procurement of external consultants. It was anticipated that Phase 3 will take place next spring.

10. Mr McPherson welcomed the fact that the profession would not be required to fund this evidence-gathering exercise but expressed concern that the timetable was not in the control of the Society of Messengers at Arms and Sheriff Officers (“SMASO”).
11. At this point (2.35pm) Lord Uist required to return to the High Court and the meeting was suspended. It resumed at 3.05pm.
12. The Council was informed that the Lord President had agreed to a request from Mr Fergus Ewing MSP, Minister for Energy, Enterprise and Tourism to meet to discuss the concerns of SMASO, particularly regarding local authority summary warrant contracts. This meeting will take place on 20 November 2014.

Item 4: Scottish Government Update

13. Ms McCorquodale informed the Council that the Minister is very supportive of SMASO. However, any changes to the fee tables are a matter for the Lord President.
14. Ms McCorquodale informed the Council that the Scottish Government wished to involve SMASO in the development of its Justice Digital Strategy. SMASO would be invited to nominate individuals to be appointed to certain committees.

Item 5: Memorandum from the Society of Messengers-at-Arms and Sheriff Officers

15. The memorandum informed the Council about several areas of interest. Mr Hamilton highlighted these issues.
16. SMASO had had discussions with HMRC to express its concerns regarding its proposal that HMRC be permitted to take money directly from the bank accounts of debtors in respect of unpaid tax. The Council agreed to note SMASO's views on this topic.
17. Mr Hamilton highlighted SMASO's on-going concerns regarding the tendering process adopted by a number of local authorities for summary warrant executions. A recent tender process was won by a bidder which had offered to do the work for 0% commission. It is understood there may be a legal challenge from a firm of Sheriff Officers based on the argument that 0% is not a price. The concern was expressed that this might create commercial pressures which ran contrary to the government's social policy to avoid diligence if possible. The Council agreed to bring SMASO's concerns about this matter to the Lord President's attention.
18. Mr Hamilton spoke to SMASO's paper regarding the apparent outdated requirement to advertise applications for new commissions in such newspapers as the Sheriff Principal requires. This seemed out of step with other professions which had moved to a Disclosure based model. In addition it imposed a significant financial burden on Sheriff Officers. The Council agree to draw this matter to the attention of the Lord President and invite him to consider the repeal of Rule 8 (3) (b) of Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991. It was agreed that at the same time the Lord President would be invited to consider what checks should replace the advertisement requirement if it were repealed.
19. The Council agreed that it would recommend to the Lord President that he draw the attention of the Rules Rewrite Team SMASO's highlighting (on

pages 2-4 of its memorandum) of differences between the Sheriff Court and Court of Session citation procedures.

20. The Council considered the SMASO draft leaflet regarding debt enforcement procedure. It was concluded that distribution of this leaflet was a matter for SMASO rather than the Council.

Item 7: A. O. C. B.

21. None

Item 8: Date of next meeting

22. The date of the next meeting was to be fixed in due course to take place sometime in Spring 2015.