



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

**1 April 2020 to 31 March 2021**

**April 2021**

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

I am pleased to present this tenth 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.

The period covered by this Annual Report has been a highly unusual one, due to the Covid-19 pandemic. The activities of the Advisory Council have, as a result, been restricted. Nevertheless, despite the challenging times, the justice system has continued to function in Scotland. Messengers-at-Arms and Sheriff Officers are to be thanked for the part they have played in enabling this to happen.

The Hon. Lady Poole  
(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 five Chairs, Lord Prosser (1987-2001); Lord McEwan (2001-2009); Lord Uist (2009-2015), Lady Wolffe (2015- 2019) and Lady Poole (February 2020 to date).

### *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 The provisions concerning the Scottish Civil Enforcement Commission were repealed, with the majority of its proposed functions being placed instead on the Advisory Council or on the Lord President and the sheriffs principal or on the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 tenth annual report and is for the period 1 April 2020 to 31 March 2021.

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 chair);

(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 2020 the membership of the Advisory Council was as follows:

The Hon. Lady Poole (Chair)

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

Sheriff Principal Murray

Sheriff Principal Turnbull

Roderick Macpherson - Officer of Court

David Walker - Officer of Court

Pauline Allan - Citizens Advice Scotland

Yvonne MacDermid - Money Advice Scotland

Eileen Blackburn – CA member

Alison Gow – solicitor member

Fergus Thomson – solicitor member

2.4 As at 31 March 2021 the membership of the Advisory Council was as follows:

The Hon. Lady Poole (Chair)

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

Sheriff Principal Murray

Sheriff Principal Turnbull

Roderick Macpherson - officer of court

David Walker - officer of court

Walter Drummond-Murray- Scottish Government

Pauline Allan - Citizens Advice Scotland

Yvonne MacDermid - Money Advice Scotland

Eileen Blackburn – CA member

Alison Gow – solicitor member

Fergus Thomson– solicitor member

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

- 3.1 The Society of Messengers – at – Arms and Sheriff Officers submitted its annual memorandum to the Advisory Council. This is attached as an appendix to the annual report. Members of the Advisory Council considered the report by correspondence, but had no substantive comments to make. There were no further matters drawn to the Advisory Council’s attention by members which necessitated discussion at a meeting. Having regard to the restrictions imposed as a result of the COVID-19 pandemic, the Advisory Council did not physically meet during the year 2020-2021.
- 3.2 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 Advisory Council’s attention this year.

#### *Future meetings*

- 3.4 The Advisory Council hopes to meet later in 2021 should public health measures permit that.

### **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 2019- 2020 (published in December 2020) can be accessed here:

<https://www.aib.gov.uk/scottish-dilligence-statistics-2019-20>

## APPENDIX

### MEMORANDUM FROM THE SOCIETY OF MESSENGERS-AT-ARMS AND SHERIFF OFFICERS TO THE ADVISORY COUNCIL, FOR ITS INFORMATION IN OCTOBER 2020

#### *Covid-19*

The President wrote to members on 24<sup>th</sup> March, giving advice to all officers of court, immediately after the national lockdown. The issue of making public the guidance given to officers during the pandemic was discussed at the meeting of the Society's Executive Council, held on 26<sup>th</sup> March, by conference call. It was decided that guidelines should be published on our website. *Covid-19 Guidelines* were published there on 30<sup>th</sup> March, with *Covid-19 Guidance for Members Update June 2020* published on 5<sup>th</sup> June. The Lord President informed the Society that he did not require to issue guidance to supplement that already issued by the Society; and the Sheriff Principals' similar response to the same opportunity to require more guidance to be given than had already been by the Society was also received. The Executive Council's meeting on 21<sup>st</sup> May welcomed their lordships' replies, as indicating confidence in the appropriate functioning of the Society as the designated professional association for public officers, whose duty was to carry out the law's most urgent, essential civil business during a time of national emergency.

The Executive Council held four full meetings between 26<sup>th</sup> March and 24<sup>th</sup> September, with its meetings now being held by Zoom. A letter to members from the President on 12<sup>th</sup> October informed them of the decision to hold the forthcoming Annual General Meeting on Saturday, 5<sup>th</sup> December, as a virtual meeting on Zoom. At the Executive Council's meeting on 21<sup>st</sup> May, the decision was taken to suspend the year's CPD requirement, owing to the difficulties that were evident in trying to arrange group study sessions for a profession when many officers were on furlough leave. The Society has advised officers to amend their stocks of printed copies of the



AiB's Debt Advice and Information Package, at page 8, to change £3,000 to £10,000, as the minimum figure for a sequestration at a creditor's instance. However, the Society has thought it not appropriate to recommend the adjustment of any forms.

### *Membership of the Society*

The Society records, with sadness, the death on 20<sup>th</sup> September of its Honorary Vice-President, Sir Malcolm Innes of Edingight. As at 31<sup>st</sup> August 2020 there were 152 ordinary members; as at 31<sup>st</sup> August 2019 the figure was 157. There were four successful sheriff officer candidates, but no successful messenger candidate, from the September 2019 examination diet. There were no candidates at all for the March 2020 examinations. The current pandemic may well have an impact on the number of officers in practice, but it is too early to write more at present. The Lord President has sanctioned the amendment to the Society's rules about abatements to the annual fee payable by officers to the Society, as discussed at the last meeting of the Advisory Council. There are currently no issues about non-payment of the annual fee that require referral to the Sheriffs Principal.

### *Continuing Professional Development*

This was our eighth year of compulsory CPD and we had, for the third year running, attained a 100% return. One CPD event was held for members in December 2019. The event scheduled for May 2020 was cancelled because of the Coronavirus situation. There will be no CPD event this December. As already mentioned, the Executive Council decided that given the continuance of the pandemic and the number of officers on furlough it would be impractical to continue with CPD this year and the usual CPD requirements for this year were cancelled. The position in relation to 2021 will be reviewed regularly.

### *Misconduct Report*

The Society received no complaints that required to be referred to the Sheriff Principals or to the Lord President.

### *Examinations Review*

The Executive Council was glad to know of the interest taken by the Advisory Council at its meeting last year in our examination procedure. A report produced by the Society's sub-committee on the format of the Society examinations was considered by the Committee of Examiners. The Examiners raised several issues and referred these back to the Executive Council. These are under consideration.

### *Society's Office Bearers*

At the Society's Annual General Meeting on 7th December 2019 the undernoted office bearers were re-elected:

*President:* Douglas Bruce

*Deputy President:* William Dolier

*Vice President:* Andrew Fraser

*Treasurer:* Dorothy Lowe

*Secretary:* Roderick Macpherson

### *Accountant in Bankruptcy*

The Society was represented on AiB's Debt & Insolvency Stakeholders Forum from its inception, until it was disbanded at the latter stages of last year. The Society also liaises with AiB on its ongoing Diligence Review and has two representatives on the AiB's Diligence Working Group, which is considering the introduction of Information Disclosure Orders. The group is working towards a final report of recommendations to ministers; however, this has been delayed because of the impact of Coronavirus.

#### *AiB Section 84 Returns*

At the start of the Coronavirus situation, AiB advised the Society that they would not be collecting these returns from firms. AiB have recently informed us that they are now ready to resume collection of this information.

#### *SMASO Website*

The Society's new site has taken a considerable time to develop and has just been launched. Advertisements for nineteen applications for commissions as sheriff officers were made on the website since October 2019.

#### *Access for Officers to Court Buildings*

Following the Coronavirus restrictions, a significant number of officers have experienced different outcomes when they were required to attend courts in person to deliver papers. Each court and sheriffdom appeared to have different interpretations of what was and was not allowed. Concerns about these inconsistencies have been raised by the Society with the Scottish Courts and Tribunal Service.

### *Civil Online Project*

Following a very positive meeting with technical experts from the Scottish Courts and Tribunal Service, responsible for the ongoing development of the Civil Online platform, it was suggested that the Society engage with the Law Society in connection with our members having access to the platform and working best with stakeholders. A letter was sent to the Law Society and this is being taken forward. The Society remains determined to be recognised as a key stakeholder, ensuring that our members are able to access and transmit citation and other relevant documents via the platform.

### *DVLA Audit*

The DVLA Data Sharing Strategy Compliance Team had carried out an audit of the Society records. The purpose of the audit was to confirm the reasons for each vehicle keeper request sent by the Society, to check what evidence was available to support these requests, and to see how the vehicle keeper data had been used. The overall audit was “green”. Members have indicated that this service provided by the Society, in allowing checks to be made on the registered keepers of vehicles, is greatly appreciated.

### *Fees of Messengers-at-Arms and Sheriff Officers*

The Scottish Civil Justice Council wrote to the Society early in the year to advise that they did not now require evidence to be produced, and that an increase in fees would be granted. Since then the Society has written a number of times to the SCJC about progress and still awaits details of the award and commencement date.

### *Identity Cards*

The Society has met with the Scottish Courts and Tribunal Service. A new form of card will be issued but no further progress has been made since the Coronavirus situation developed.

### *EU Service Regulation*

Access to Regulation (EC) No 1393/2007 ends after the Brexit transition period in December. No progress has been made in relation to seeking an officer's fee specifically for the service of foreign instructions, given that the European Regulation fee, as standing in the messengers' current table of fees, is set to disappear. The Society attended a meeting with the International Law Department at St Andrew's House to discuss these matters. Following the meeting the department said they would seek legal advice on this. The Society has also highlighted its concerns that, after Brexit, when we revert to the Hague Service Convention for service in Scotland of documents coming from European Union member states, the United Kingdom's opposition to Article 10(b) ("the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination") will mean that requests for service from other European countries will now have to be made through the central authority, instead of directly to messengers-at-arms. We are of the view that it is a retrograde step to restrict speedy access to our members' services. An increase in the amount of time taken for documents from EU states to be served, and an impact on resources for the central authority should be anticipated.

### *Committee of Scottish Bankers*

Further discussions have taken place with this committee about the service of large numbers of arrestments. The Society understands that they have also raised this matter at Government level.

### *Local Authority Collections*

Since the lockdown in March 2020 collections have been put on hold. This has caused a major downturn in some firms' workload since then.

### *International Business*

Since the Coronavirus outbreak throughout world there have been no meetings attended by representatives of the Society. The impact throughout Europe and further afield has been significant, with a total prohibition on enforcement in some jurisdictions. Also, of note, the tri-annual World Congress of UIHJ, due to take place in Dubai, has been rescheduled from March 2021 to November 2021, as a direct consequence of the pandemic. The theme of the conference is *Cyber Justice, New Opportunities for the Judicial Officer* - which is very relevant, given the ongoing operational impact of Covid-19. The annual Permanent Council meeting of UIHJ, which always takes in place in Paris, at the end of November, will likely be a fully digital event for the first time. In recognition of the importance of our association and role in the international community, the Society has agreed an increase in our annual financial contribution to UIHJ.