



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

1 April 2021 to 31 March 2022

May 2022

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Foreword by the Chair of the Council

I am pleased to present this eleventh 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 again been an unusual one, due to the continuing 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 The provisions concerning the Scottish Civil Enforcement Commission were repealed, with the majority of its proposed functions being placed instead on the Advisory Council or on the Lord President and the sheriffs principal or on the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 eleventh annual report and is for the period 1 April 2021 to 31 March 2022.

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 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

2.4 As at 31 March 2022 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

Fergus Thomson– solicitor member

3. Meetings and work of the Advisory Council

- 3.1 SMASO submitted its annual memorandum to the Advisory Council. It is attached as an appendix to this report. SMASO also drew to the Advisory Council's attention an emerging issue with regard to the availability to officers of court. Having regard to the restrictions imposed as a result of the COVID-19 pandemic, the Advisory Council did not physically meet during the year 2021-2022.
- 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 is scheduled to meet in June 2022.

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 2020- 2021 (published in September 2021) can be accessed here:

<https://www.aib.gov.uk/scottish-diligence-statistics-2020-21>

APPENDIX

MEMORANDUM ON THE YEAR 2021

FROM THE SOCIETY OF MESSENGERS-AT-ARMS AND SHERIFF OFFICERS

TO THE ADVISORY COUNCIL

The Executive Council continued to hold video conferences over Zoom for its meetings in January, March, May, and August. Its first in-person meeting was in September, which was a hybrid meeting, also allowing attendance by Zoom. The AGM in December, held at Dunblane, was a hybrid event. Our attendance levels throughout the year, at every meeting, have been high.

This year of continuing Covid-19 concern started with the First Minister's stay at home announcement on 4 January. The Society's guidance for such a situation, being published on the website, came into effect. The Executive Council held an extraordinary meeting on 8 January, at which time the decision was made to review the guidance at the scheduled meeting on 21 January. The guidance was reviewed at that meeting and an updated version issued to members on 22 January. The Society's guidance has been kept constantly under review.

The Society was often contacted on matters relating to the recovery of property during the pandemic. The Head of Civil Courts and Reserved Tribunals, Justice Directorate, intimated that it was the Scottish Government's intention to bring forward further regulations to extend the ban on the enforcement of eviction orders. We were afforded the opportunity to comment on the draft legislation. Office bearers reviewed the draft and recommended some amendments which were duly accepted. Correspondence was received from a member of the public, who was enquiring about recovery of a property from a tenant, against whom he had an order from the 1st Tier Tribunal. As legislation had been enacted preventing evictions from being completed, he was advised of this. This was the start of protracted email exchanges with the member of the public, who was completely frustrated at being unable to recover his property. SMASO received email correspondence from both an MP and MSP in relation to a constituent, who was to be evicted following transition to protection level 2. Whilst SMASO were unable to become involved in the matter raised, this required an urgent response as the eviction was scheduled for the morning after the email was received.

We corresponded with the Chief Executive of the Scottish Courts and Tribunal Service in connection with variations throughout Scottish courts when dealing with the lodging of executions of service and serving of charges at court, when the debtors' whereabouts were unknown. We were advised by our members of different procedures being in place, from court to court.

SMASO was in correspondence with the First Tier Housing and Property Chamber requesting a note of the outcome of the appeal in the case Uddin -V- Henderson in which we had lodged a response. The judgment was reviewed, and an overview issued to members along with details of the publication of the judgment. This case confirms our understanding that officers of court are, in virtue of their commissions, and the 1991 Rules, officers also for the service of documents from the tribunals.

A long-awaited fee increase for messengers-at-arms and sheriff officers was approved and was effective from 30 June. The shortage of work coming to officers is a matter of concern. It was reported to the Executive Council by members in August that there is a belief that Royal Mail may regularly be delivering recorded delivery letters without interviewing occupants at addresses, the signatures obtained being those sometimes of postal workers, not of addressees or other persons at the address. The work for officers in citation is believed to have dropped considerably, compared with pre-pandemic levels.

The decision of Scottish Courts and Tribunals Service to stop using various officers throughout Scotland for the service of Housing & Property Chamber papers, and to contract with one “national firm” only, was protested by several members who contacted the Society in October.

In March, the 2020/2021 CPD requirements were reviewed, because of the continuing impact of the pandemic. It was decided that the requirement for completion in full of the hours of private study would be reinstated for all members. However, the group study requirement, in being reinstated, was reduced from 8 hours to 4. In fact, however, the participation at group study SMASO CPD events was particularly high, thanks to the use of Zoom. Moreover, participation in international training sessions has been possible, thanks to the UIHJ’s webinars.

Examinations for prospective messengers-at-arms and sheriff officers were held in March and September, therefore in accordance with SMASO’s usual policy for the diets. A suggestion that the March diet might be postponed was carefully considered by the Executive Council in January. It was decided not to postpone, but to be aware of any particular difficulties candidates might have, because of travel or health issues. In the event, there was one successful candidate (out of three who were presented) in March, and two successful ones in September.

The President sent congratulations to the Lord Lyon on his election to the office of President of the Heraldry Society of Scotland. The centenary of the founding of SMASO in Glasgow on 12 June 1922 caused regular discussion at the 2021 meetings. The Lord Provost of Glasgow’s gracious invitation to the Society to a civic dinner in the City Chambers on Friday, 20 May 2022 was received with great pleasure. So too was the news that the Lyon Court’s year-long celebrations of the 350th anniversary of the statute of 1672 would include a lecture to mark SMASO’s centenary, on 14 June 2022, at a civic event in Perth.

The professional highlight of the year was in November, with the 24th International Congress of UIHJ (International Union of Judicial Officers), in Dubai. More than five hundred participants attended. The theme was “Cyber Justice: New Opportunities for

the Judicial Officer”, and Scotland records with pride that the Reporter General of the Congress was David Walker, Lyon Macer.

One of the highlights of this conference, was the official launch of the UIHJ’s Global Code on Digital Enforcement. The purpose of this text is to define key principles, which states should use to govern the use of digital technology in the enforcement of court decisions and contracts, with specific reference to crypto assets.

SMASO greatly looks forward to hosting in Glasgow the Spring Meeting of the UIHJ in May. The equivalent 2021 meeting was held online on 25 June, with 72 countries represented – but it is hoped that, subject to travel and health conditions, some one hundred delegates from abroad may gather in Scotland.

Within the context of Cyber Justice in Scotland, SMASO has established a sub-committee to consider various aspects of how technology might support the work of our members. This group had met on several occasion before the commencement of lockdown in March 2021 and has since been reactivated.

The group had previously reached out to Scottish Courts and Tribunal Service, to note our members’ interest in the Civil Online platform. We did have an initial, positive meeting and we now fully intend to revisit this project.

This sub-committee is also looking at other initiatives, including the potential use of e-signatures in place of the traditional wet signature. It is also worth mentioning that an unforeseen consequence of the pandemic, has been a dramatic shift from instructions being received in paper format, to electronic files contained in emails or other such medium. Ironically, early indications are that this shift, is in fact causing more work and associated cost, to the detriment of our members.

At the Society’s AGM on 4 December, the Lord Lyon, our Honorary President, gave an uplifting address to the members. The membership number was 146. The following office bearers were elected:

<i>President:</i>	William Dolier
<i>Deputy President:</i>	Andrew Fraser
<i>Vice President:</i>	Joy McLaughlin
<i>Treasurer:</i>	Kevin Mackay
<i>Secretary:</i>	Roderick Macpherson