



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

**1 April 2024 to 31 March 2025**

**June 2025**

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## **Chair's Foreword**

I am pleased to present the fourteenth 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. It was a privilege to be invited to give the keynote address to the annual conference of the Society of Messengers-at-Arms and Sheriff Officers on 7 December 2024, where I spoke about the rule of law and had the opportunity to thank members for their continuing role in the justice system.

The public must have confidence in Messengers-at-Arms as a profession. It is right that they are properly regulated both by the courts they serve and by their professional association. Equally, it is appropriate that the system of regulation to which they are subject, and other matters affecting officers of court, are kept under review, so that appropriate recommendations may be made to the Lord President. I thank my colleagues on the Advisory Council for their assistance with this task.

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 thirteenth annual report and is for the period 1 April 2023 to 31 March 2024.
- 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. The current secretary is Katy Kelman, solicitor.

2.3 As at 1 April 2024 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 Murphy KC

Sheriff Principal Ross

Alex Irvine - officer of court

David Walker - officer of court

Walter Drummond-Murray- Scottish Government

Ged Mulvey - Money Advice Scotland

Tom Hempleman – solicitor member

Fergus Thomson– solicitor member

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

3.1 The Advisory Council met on 22 May 2024. The minutes of the meeting are attached as appendix A to this report.

3.2 SMASO submitted its annual memorandum to the Advisory Council. It is attached as appendix B to this report.

3.3 SMASO had proposed to the Council that changes be made to the *Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules) 1991* (i) to reduce the training period for a candidate for sheriff officer from 3 years to 2 years and (ii) to reduce from 2 years to 1 year the period during which a sheriff officer requires to practice before becoming a messenger-at-arms. SMASO indicated that reduction of the training period might have the effect of attracting more new entrants to a profession which had been retracting. SMASO advised that standards would be maintained because the examination requirements remained and there was still a considerable training period. The Advisory

Council agreed that it was appropriate to seek wider views and a consultation was published on the ACMASO website inviting consultation responses. The responses were unanimously in favour of the proposed change. The Lord President's Private Office provided briefing to the Lord President. The Lord President instructed his Private Office to prepare the necessary amending instrument. This led to the making of *Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules)(Amendment) 2024*.

3.4 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 Sheriffs Principal members on the matter of the Scottish Courts and Tribunals Service's tender for sheriff officer services.

3.5 The Advisory Council is scheduled to meet in May 2025.

#### **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 2023-2024 (published in September 2024) can be accessed here:

[Accountant in Bankruptcy - Scotland's Insolvency Service - Scottish Diligence Statistics 2023-24](#)

# **APPENDIX A: MINUTES OF ACMASO MEETING 22 MAY 2024**

## **ADVISORY COUNCIL ON MESSENGERS-AT-ARMS AND SHERIFF OFFICERS MEETING 22 May 2024 at 4.15pm by webex**

Present:

The Hon Lady Poole (Chair)  
Sheriff Principal Ross  
Sheriff Principal Murphy  
The Rt Hon the Lord Lyon (Dr Joseph Morrow)  
Tom Hempleman, Solicitor  
Mr Alex Irvine – Officer of Court  
Mr David Walker - Officer of Court  
Mr Fergus Thomson - Solicitor  
Mr Ged Mulvey - Money Advice Scotland  
Mr Walter Drummond-Murray - Scottish Government

Secretariat:

Mr Edward McHugh – Senior Deputy Legal Secretary to the Lord President  
Katy Kelman – Deputy Legal Secretary to the Lord President  
Jonathan Hodges – Deputy Legal Secretary to the Lord President

Item 1: Welcome

1. The Chair welcomed members to the meeting.

Item 2: Minutes of meeting on 16 May 2023 and matters arising

2. There were no matters arising or proposed amendments. The minutes were approved. The Advisory Council noted that the Chair wrote to the Scottish Law Commission on the issue of Challenger Banks and noted the response received. Mr Walker advised that in that regard, the option to serve a bank arrestment electronically is on the horizon, which will solve some of the issues faced by the profession. SMASO is instructing Emma Boffey, advocate, to assist with moving matters forward. SMASO has previously used the Scottish Civil Justice Council as a vehicle for change so are receptive to that as an option.

Item 3: SCTS tender for sheriff officer services: update



3. The Chair referred to papers 5 – 7 and asked members whether there has been a change in the service level to the Court, with particular interest in the views of the Sheriffs Principal members. Sheriff Principal Ross advised that that matter has been discussed among the Sheriffs Principal and that no issues have been noted in relation to sheriff officers. Sheriff Principal Murphy endorsed that feedback and confirmed that there were no reported difficulties at present.
4. The Chair sought an update from SMASO members in relation to the most recent tender for sheriff officer services by Scottish Courts and Tribunal Service. Mr Irvine advised that Scotland Excel has circulated a memo but the tender itself has not yet been published. He noted that the challenge for some of SMASO's members is that even if they joined the framework, they would not have capacity to tender for the work. Mr Irvine noted, however, that is the reality of public procurement.
5. The Chair clarified that the purpose of the Advisory Council is to advise the Court of Session on the making of Acts of Sederunt and keep under review matters relating to Messengers-at-Arms and sheriff officers. In relation to the SCTS tender, the Sheriffs Principal members of ACMASO reported that they have not seen evidence of a change in service level to their courts. However, the longer term effects of tendering in this way, including in relation to ownership and control of successful tenderers, are not yet known. Meantime, SMASO is engaging with Scotland Excel to ensure that members know when the next tender opportunity becomes available, and more generally with the responsible Scottish Minister. The Chair has made the Lord President, the Chief Executive of SCTS and the Sheriffs Principal aware of the issue. The Council agreed that there is nothing further to be done for the time being, but the matter would be kept under review.

#### Item 4: Annual Report 2023-2024

6. Members considered the terms of the draft Annual Report which contains the SMASO annual memorandum. The Chair asked Mr Walker and Mr Irvine to speak to the memorandum. Mr Walker highlighted that CPD among members was working well and that the recent World Congress was very successful. Mr Irvine highlighted a number of areas of concern, including creditors being less willing to use the courts, the unwillingness to bring into force parts of the 2007 Act, and in particular the difficulty of enforcing a court decree. He noted two factors that affect this; the protected minimum balance (currently £1k) and difficulty with access to information. Being able to establish where an individual works/banks allows SMASO members to make diligences more effective. Mr Irvine reported that in other jurisdictions, officers have greater access to information. SMASO is collating information about the number of ineffective diligences that are served, such as arrestments, and the number of diligences which succeed. He also spoke to frustration experienced by SMASO in working with the SCJC due to the absence of clear methodology to seek an increase in fees, and the time taken to achieve that. Delays by SCJC also meant that expensive modelling undertaken by SMASO became out of date. The Chair noted SMASO's frustrations and also the pressures on SCJC from other workstreams. Mr Walker advised that SMASO's strategy is to engage with the Scottish Government. He acknowledged that there was nothing that the Advisory Council could do in this regard but noted that it was important that it is

aware of the difficulties faced by SMASO. Mr Mulvey queried with Mr Walker how SMASO records enforcements. The Chair noted that SMASO would continue to keep matters under review.

7. Members approved the draft Annual Report.

#### Item 5: Scottish Government Update

8. Mr Drummond-Murray provided a short oral update of relevant matters for the Council's attention. He advised that the Bankruptcy and Diligence (Scotland) Bill continues to work its way through parliament. Mr Drummond-Murray confirmed to the Chair that the officials to contact in relation to the Bill are the office of the Accountant in Bankruptcy. He further advised that Angela Lindsay (Scottish Government) would be in touch with SMASO in relation to the Bill.

9. The Chair asked Mr Drummond-Murray to feed back the issues raised at today's meeting, for example those raised in the SMASO annual memorandum.

#### Item 6: Draft Act of Sederunt (Messengers-at-Arms and Sheriff Officers Rules)(Amendment) 2024

10. The Chair drew members' attention to the policy issue raised in LPPO's paper 9. Mr Hodges spoke to the draft SSI which (inter alia) shortens the period of training required for qualification as a Messenger-at-Arms from two years to one year. The rules as they currently stand allow a prospective Messenger-at-Arms to seek to have the period of practice reduced from two years to a shorter period. The question arises whether this should remain competent once the rules are changed to reduce the period to one year, in order that the period can be reduced to less than that.

11. Sheriff Principal Murphy queried whether every prospective Messenger-at-Arms would be starting from scratch or whether it was possible that an officer could come from a different jurisdiction seeking to qualify. Mr Irvine confirmed that everyone has to complete the same training, but if e.g. they are a former solicitor, they could apply for the period to be reduced. Mr Walker noted that it would be very difficult in practical terms to become a Messenger-at-Arms in less than one year (post qualification as a sheriff officer) but could see no harm in retaining the discretion.

12. The Advisory Council agreed that the discretion ought to be retained.

#### Item 7: AOCB

13. Mr Mulvey queried with the SMASO members whether they had anything to share in relation to the case of McKenzie v City of Edinburgh Council [2023] SLT (Sh Ct) 127, a case in which an arrestment was recalled because the only funds in the relevant bank account derived from social security benefits. Mr Walker indicated that there had been a subsequent CPD session on the implications of the case. In practice, it was extremely rare for cases of this nature to have to proceed to court for recall; matters might often be resolved by the debtor providing evidence to a sheriff officer of the source of arrested funds, but some cases went to court. The Chair suggested that on this point, it may be useful for Mr Mulvey to discuss directly with the SMASO members.

Item 8: Date of next meeting

14. The Chair will suggest a date for next year's meeting when the minutes are circulated.

15. The Chair thanked members for attending and closed the meeting.

## **APPENDIX B: SMASO Memorandum**

The most recent SMASO AGM, was held on 7th December 2024, within the Dunblane Hydro Hotel. The meeting was preceded by an excellent CPD session, presented by none other, than The Hon Lady Poole, Chair ACMASO. Lady Poole provided a fascinating insight on the work of ACMASO and the important role SMASO members play in the smooth operation of the Scottish judicial system. Mention was also made of ACMASO's proactive role in recent changes to Messenger at Arms and Sheriff Officers rules, relating to the abolition of Bonds of Caution and the period of required, supervised training for candidate Messengers and Sheriff Officers.

This was the third AGM chaired by Andrew Fraser President, which is rather unusual as typically SMASO Presidents stand down after two years. However, due to unforeseen circumstances around succession planning, Andrew Fraser agreed to stay on for a further year to ensure continuity of leadership.

### **Membership of the Society**

At the time of preparing this report, membership stands at: 134

### **Continuing Professional Development**

SMASO has continued to provide regular CPD seminars and been fortunate to engage relevant, high-quality speakers. We are delighted to report we have once again obtained 100% compliance with our CPD requirements.

### **Examination and Training**

The Executive Council is continuing to review all aspects of the current examination and training structure, with a view to modernising and encouraging new entrants to the profession. In recent examination diets, the use of secured tablet devices has been introduced as we transition away from the use of hard copy Parliament House Books to a digital version.

We very much appreciate ACMASO support regarding the shortening of the training period for candidates seeking to access our profession.

Although early days, thus far there has been no indication that this change has adversely impacted the quality or standards of new officers joining the profession.

### **Accountant in Bankruptcy**

We continue to have positive engagement with the office of The Accountant in Bankruptcy (AiB). SMASO members are well represented on the Ministerial Working Group on Statutory Debt Solutions, which is concerned with the continued implementation of the Bankruptcy and Diligence (Scotland) Act 2024.

Our President, together with other representatives from the Executive Council, had a constructive meeting with both the Minister for Public Finance, Ivan McKee and the Accountant in Bankruptcy, Richard Dennis, when we shared our concerns in respect of the efficacy of current diligence measures. We are also actively participating and contributing to the Stage 3 review of Scotland's statutory debt solutions "The McDermid Review".

### **Statutory Fee Review**

Following the most recent uplift in statutory table of fees, which came into effect on 22nd March 2024, we have continued to engage with SCJC Cost and Funding Committee. It was reported in our last memorandum, that our members were required to wait a whole year for the uplift agreed in March 2023, to come into force in March 2024. In the meantime, inflationary forces have continued to result in rising staff and operating costs.

Considering same, and supported by Johnston Carmichael, we submitted a further application in January 2025 for an 8.6% increase, using the same government published indicus, as previously accepted by the Cost and Funding Committee. Following this submission, we have been having a helpful dialogue with the Secretariat in an effort to find a more effective and efficient process going forward.

### **SMASO Digital Strategy**

The sub-committee set up to delivery SMASO's digital transformation strategy, has continued to explore various improvement strategies to help SMASO members embrace all the potential benefits of digitisation.

Following the enactment of the Bankruptcy and Diligence (Scotland) Act 2024, which provides for electronic service of bank and earning's arrestments, we have continued to liaise with Ivan McKee, Minister of Public Finances and the AiB. This is to support the technical introduction of electronic service of such orders. This has also been a useful opportunity for SMASO to share its concerns in respect of the overall effectiveness of current diligence options, following the introduction of enhanced debtor protection measures, around the individual's protected sum on bank and earnings arrestments. In this regard, our members are continuing to provide relevant data and pressing for our long-standing request for controlled access to relevant banking and employment information.

In respect of the deployment of electronic signatures, we have continued to undertake research and consultation with other stakeholders.

We have also commissioned research by Counsel on the optimal technical solution, to replace wet signatures with a digital alternative. Once armed with this legal advice,

we will then consider which specific legislation, requires to be amended to accommodate such a change. At that point, we will share our findings with ACMASO.

Regarding access to the Civil-on-Line platform for SMASO members. We have continued to liaise with our nominated contact at Scottish Courts and Tribunal Service's Civil Lab - Change & Digital Innovation (CDI) team. We are aware of their ongoing digitisation programme and understand that we will be consulted with, at the appropriate stage in their project plan.

We have also commissioned research by Counsel focusing on jurisdiction on virtual challenger banks located out with Scotland. It appears that the younger generation favour such intuitions, over traditional high street banks, and it is essential that they are required to operate any bank arrestments, regardless of their physical location. We intend sharing our findings with the aforementioned Minister and AiB in due course.

### **International Business**

SMASO continues to be an active supporter of the International Union of Judicial Officers (UIHJ). There was strong representation from Scotland at the triannual World Congress which took place in Rio De Janeiro, 7th to 10th May 2024. The theme of the Congress being: -

#### ***The judicial officer - the trusted third party.***

There were numerous expert speakers and workshops, all focusing on the critical role that the judicial officer plays, in balancing the competing interests of the debtor and creditor. One of the highlights of this Congress was the official launch of UIHJ's most recent publication, being a new Code of Ethics and a re-issue of UIHJ's Global Code of Digital Enforcement and Global Code of Enforcement. We were very pleased to present Lady Poole with a copy of this text during her participation in our December CPD event. The next significant international gathering will be the Spring Permanent Council meeting in the Hague, 14th to 16th May 2025, where Scotland will be well represented.

Hague Service Convention Following discussions with the Scottish Government Legal Directorate, SMASO members have now been designated both Forwarding and Receiving Authorities in respect of requests under the Convention of 15 November 1965, on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. In effect, this re-enables direct transmission for European instructions post Brexit. We have identified areas of concern which will be raised with the Central Authority International Law Team at a forthcoming review meeting. We have also updated the SMASO website, with relevant information and a list of firms which are able to process such cross-border instructions.

### **Relationship with Money Advice Scotland**

Following the last ACMASO meeting, Lady Poole invited SMASO and Money Advice Scotland to initiate a bi-lateral discussion, on how our respective organisations can find common ground and offer mutual support. We are pleased to report that several meetings have already occurred, and direct points of contact have been established to

coordinate effective communication. We have also offered to provide speakers to assist in the training of our respective members. We very much look forward to further developing this relationship in the coming months.

### **Forward Strategy Working Group**

SMASO created this sub-committee in 2023, to support the work of our Executive Council and to provide an opportunity for our younger members to actively participate in the work of the Society and more importantly, the evolution of our profession. From an initial project of creating and delivering a Grand Survey of our membership, a number of additional works have been undertaken.

The Working Group is presently working on several projects to assist in delivering localised CPD events, incorporating: The Future of E-Service in Scotland, The Future of Training and Access to the Profession and Improving Access to Information for recipients of court and legal documents, via video and QR codes.

This is a summary of the various issues currently impacting Messengers at Arms and Sheriff Officers throughout Scotland. As stated, we are now in direct contact with the relevant Scottish Minister, responsible for the effectiveness of civil enforcement in Scotland. We will continue to share our concerns in respect of the ineffectiveness of current diligence measures. We have offered our recommendations for improvement and only time will tell if there is a will to effect positive change.