

## *Respondent Information Form*

### **Providing your response**

If you have chosen to provide a separate written response, then please complete the first page of this Respondent Information Form and attach it to your response.

If you wish to include your responses within this Respondent Information Form, please insert your responses to each consultation question in the (expandable) boxes below:

#### *Proposal 1 - Consolidation*

#### **Question 1 – Do you agree that the 2 existing sets of regulations from 2002 should be replaced with 1 new consolidated instrument? If not why not?**

I am a Messenger-at-Arms and Sheriff Officer and have been involved in the profession for over 30 years. During that time, I have been employed by a large firm and am currently self-employed. As a past president of the Society of Messengers-at-Arms & Sheriff Officers I have considerable experience in the challenges of the current fee structure. I am broadly in support of the proposals suggested in the consultation.

I strongly agree that the two sets of regulations from 2002 should be consolidated. This will provide greater clarity and prevent inconsistencies particularly if there are amendments in future to any of the specific regulations.

#### *Proposal 2 – Adopting unit based charging:*

#### **Question 2 – Do you agree that a change to “unit based charging” can provide improved transparency on the level of fee being charged? If not why not?**

Yes I agree.

**Question 3 – Do you agree that the baseline “monetary value” should start at £5.40 and that 1 unit of time should be fixed at 6 minutes? If not why not?**

I strongly agree that this should be the baseline starting point. This I believe will help provide a clear and straightforward transition from the existing system.

**Question 4 – Do you agree that the proposed changes to the general regulations will support the adoption of unit based charging?**

Yes I agree.

**Question 5 – With regard to annex 4, do you have a view on whether any of the current 60 line items shown are no longer required, or whether any of the baseline unit of work should be amended? If so why?**

Please see annex attached

**Question 6 – Do you have a view on any unintended consequences that might arise from implementing a change to unit based charging?**

I do not believe that there will be any unintended consequences from changing to unit based charging.

*Proposal 3 - Adjusting for inflation in advance:*

**Question 7 – Do you have a view on the proposed change to the Council progressing inflation adjustments in advance?**

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I welcome this proposal which will provide greater certainty and allow for planning, budgeting and investment for Sheriff Officer businesses. At present under the current process there is very little stability and with no clear methodology being used it is very difficult to make long term investment into the profession.

The other benefit will be more gradual increases with increased transparency. At present with increases being applied several years apart it can result in significant increases to take into account the intervening period. The proposed changes will mean that service users will not experience “price shocks” such as have occurred several times in the past.

### **Question 8 – Do you have a view on which indices (*CPI, CPIH or a combination of both*) should be use when forecasting inflation?**

I would recommend a blended combination of CPI and CPIH indices should be used when forecasting inflation. This has been the approach in recent years in calculating previous fee increases and has worked well and provided a fair reflection of changes.

### **Other**

### **Question 9 – Are you aware of any other opportunities to modernise how these regulated fees are set by the courts and charged to end users?**

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Following the successful implementation of these reforms I would recommend that there is established an ongoing working group on fee reform comprised of members of The Scottish Civil Justice Council's Cost and Funding Committee, the Secretariat and members of The Society of Messengers-at-Arms & Sheriff Officers. This group could continue the work of modernisation and investigating opportunities and innovations in other jurisdictions.

At present the Society have several committees working on these issues. A consolidated approach between the designated professional association for officers of court and the official body responsible for fees will be of great advantage in the future.

Meeting perhaps several times a year a working group would allow for more proactive reforms in the future.

**Question 5 – With regard to annex 4, do you have a view on whether any of the current 60 line items shown are no longer required, or whether any of the baseline unit of work should be amended? If so why?**

There is an opportunity to remove, add and amend several items. There are several line items which no longer reflect the complexity and time required to carry them out. In addition, there has been significant changes both to the volumes and type of work carried out by Sheriff Officers. The current table of fees while relying upon the 2002 act of sederunt were actually introduced with the enactment of the Debtors (Scotland) Act 1987 nearly 40 years ago. Since then the number of Sheriff Officers have decreased significantly which reflects a similar decrease in the volumes of traditional instructions. Statistical data published by Scottish Court Service have shown in the last decade debt recovery actions being initiated falling significantly to almost half of previous levels. In the past the higher volume of cases allowed for the effective subsidy of lower value cases currently charged under Column A. With the reduction in overall volumes this means that Sheriff Officers are effectively operating at a loss when engaging in this type of work. The past 40 years have also seen significant changes in how business is conducted. Compared to when the fees were first introduced Sheriff Officers businesses have increased costs like other professions. There are now significant costs incurred for compliance, technology and human resources. While the vast majority of these changes are welcome, they do have an impact on the profitability and therefore the viability of Sheriff Officers.

Below are a number of specific suggestions and observations.

**Regulation 1A & 1B - Column A threshold and discount amount**

As noted above the level of discount applied by Column A no longer reflects the current business circumstances that Sheriff Officers operate within. It is not comparable with similar reductions applied by SCTS which only reduce court fees for actions under £300 in value. I also believe that it does not meet the overall policy aim of improving access to justice.

Quite simply when these measures were first introduced Sheriff Officers were able to add these types of cases into much larger existing caseloads therefore negating the loss incurred. With decreasing workloads it is natural that work which actually costs money will receive lower priority. This adversely affects party litigants who in general require more time, help and support with their case.

I would suggest the following changes

- Removing the reduction altogether however should a reduction remain it should be changed from 33% to 20% this would negate some of the losses incurred. The base value should also be changed to £1000 and under.
- The provisions in regulation 1B should be completely removed. These types of cases are generally for parties who have precarious possession with no right or title such as squatters. By nature they are more difficult to carry out and often have reduced periods of notice. This kind of work should not attract a reduction.

**Replacing Line Item 3 - Same Day/Urgent Service**

At present there are no provisions in the regulations for an additional surcharge where service is requested to be carried out on the same day of receipt. Our standard service fee is significantly lower than in other parts of the UK where Process Servers will charge as standard over £200 for service with a witness. Line item 3 captures some but not all of the circumstances.

- I recommend the removal of line item 3 and replacing with a regulation that allows for the surcharging of an additional 20 units in instances where service is required within 24 hours or orders for deliver, or interdicts (including non-harassment orders under the Protection from Harassment Act 1997 and anti-social behaviour orders under the Antisocial Behaviour etc (Scotland) Act 2004).

### **Line item 8**

An ejection can be one of the most difficult and contentious instructions that a Sheriff Officer carries out on a regular basis. The current fee does not reflect the complexity of carrying out such an instruction. I would observe anecdotally that the tradesmen in attendance to change locks actually receive a higher remuneration than the Sheriff Officer.

- I recommend increasing the base line fee in line item 8b to 56 units.

### **Introducing a line item for Hague Service - Transmitting fee**

Messengers-at-Arms & Sheriff Officers have recently been designated transmitting and receiving parties under the Hague Service Convention. At present there is not a fee for transmitting. This is a complicated and time-consuming process which includes preparing model forms, liaising with receiving parties in other jurisdictions, arranging foreign bank transfers and translations. A fee which reflects the amount of work required should be introduced.

- I recommend the introduction of a line item of 47 base units.

### **Increasing base fee for Line Item 4, 5, 6 & 7**

The base fee chargeable on these line items no longer reflects the amount of time and work involved. It is also worth noting that the number of these types of diligence have reduced significantly. The Diligence Statistics published by the Accountant in Bankruptcy reveal a consistent drop in volume of these diligences. With regards to Attachment the model of charging increased fees based on the appraised value of goods attached has been greatly impacted by the open market prices that goods now fetch when sold at auction. An attachment carried out today of multiple articles will be appraised at a much lower value than a comparable attachment 20 years ago. The amount of time it would take a Sheriff Officer to carry out the attachment would however remain the same. At present the base fee is in effect 24% higher than the fee for service of a document which in no way reflects the time required to carry out the diligence.

- I recommend a significant increase in the base units by at least 50% to allow these diligences to remain viable.

### **Line item 9, 10 & 11**

These items particularly apprehending people and uplifting children are incredibly complex cases. They involve planning, liaising with various parties, sensitivities and often protracted visits to achieve a positive outcome which fulfils the Court's order.

- I recommend an increase in the base line fee by 50% from 18 units to 36 units and 33 units to 66 units to reflect the complexity and amount of work involved.

### **Unsuccessful Diligence**

At present the fees for unsuccessful or abortive diligence is borne wholly by the creditor. While this follows the general principle that costs follow success it should not necessarily apply in this circumstance. Given that creditors have already succeeded by obtaining judgment in their favour and that the debtor has failed to comply with that decree by not making payment, the creditor has no other option other than to instruct diligence in order for the order of the court to be enforced. The success of diligences such as Arrestment and Earnings Arrestment can only be measured after they have been carried out. Similarly there is a disincentive here for creditors to negotiate with debtors, and withdraw an instruction to attach for example and enter into a repayment agreement, as they would be left bearing the cost of abortive diligence.

You can also only recover the costs of diligence from that particular diligence. So in instances where a creditor has had to attempt various diligences to secure payment of their decree they invariably bear costs.

This is a particularly acute issue for Party Litigants. These individuals have often utilised the Simple Procedure process who subsequently discover that despite going through the courts they then find an additional challenge to recover the sums they have been awarded. With no access to information on the party they are pursuing they are left with little option other than to attempt diligence. In the event that they prove unsuccessful they find themselves with additional costs. This has the cumulative effect of reducing confidence in our civil justice system.

- I recommend that any previous diligence or the costs of unsuccessful diligence should be chargeable to the debtor. This however would involve an amendment to primary legislation in the Debtors (Scotland) Act 1987.