



Scottish
Civil Justice
Council

RESPONDENT INFORMATION FORM

For the PUBLIC CONSULTATION on a simplified Table of Fees (*for 'officers of court'*)

Please note **this form must be completed** and returned with your response.

Are you responding as an individual or an organisation?

☐ INDIVIDUAL

☒ ORGANISATION

Your details:

Your full name or your organisation's name:

The Society of Messengers-at-Arms & Sheriff Officers

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Your views on the publication of your response

Please indicate your preferences with regard to the publication of your response:

☒ Publish response with name

☐ Publish response only (without name)

☐ Do not publish response

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?

The Society of Messengers-at-Arms & Sheriff Officers is pleased to participate in the consultation on a simplified Table of Fees (for Officers of Court). As the designated professional association for Officers of Court we have since and prior to the Court Reform (Scotland) Act 2014 been responsible for applications on behalf of our members in relation to increases to the table of fees.

We 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, we agree with this proposal.

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?

We agree that this should be the baseline starting point. This will help provide a clear and straightforward transition from the existing system. However, for the avoidance of doubt, we also consider it essential It is essential that the stated baseline unit of £5.40 is recalculated, at the point of going live, using an agreed formula (our recommendation is a blended combination of CPI & CPHI indices) to take into account inflationary increases since the last review of fees.

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

Yes, we 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?

We 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?

We 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 Society in recent years had also incurred significant expense in engaging professional advisors to assist with fee reviews. This has been exacerbated with there not being a clear model or methodology for making and applying increases. The proposals will provide welcome certainty moving forward.

The other benefit will be more gradual increases with improved transparency. Historically, increases have been applied several years apart, resulting in apparent significant increases to account for the intervening period. The proposed changes will mean that service users will not experience “price shocks” such as those which 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?

We would recommend a blended combination of CPI and CPIH indices should be used when forecasting inflation. This has been the approach taken 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?

Respondent Information Form

Following the successful implementation of these reforms, we would recommend the establishment of an ongoing working group on fee reform, comprised of members of The Scottish Civil Justice Council's Cost and Funding Committee, The Lord President's 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, with a specific focus on digitisation of citation and diligence. A consolidated approach between the designated professional association for officers of court and the official bodies responsible for fees, will be of great advantage in the future. Meeting regularly (at least annually) 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 a number of 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, was actually introduced with the enactment of the Debtors (Scotland) Act 1987, nearly 40 years ago. The number of Sheriff Officers has since decreased significantly which reflects a similar decrease in the volumes of traditional instructions.

Since 2008/2009, statistical data from the Scottish Civil Justice Statistics have shown a 47% decrease in debt recovery actions being initiated. In the past the higher volume of cases allowed for the effective subsidy of lower value cases currently charged at the Column A band. With the reduction in overall volumes, this now means that Sheriff Officers are actually 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 Officer businesses have increased costs similar to other professions and business sectors. There are now significant added costs incurred for compliance, technology and human resources. While all of these changes have been successfully accommodated, they do have an impact on the profitability and overall viability of Sheriff Officer companies.

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. We also believe that it does not meet the overall policy aim of improving access to justice. It is also in our view unfair that our members should have to bear the cost and loss for what is essentially a Government policy.

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

- We strongly recommend the removal of any discount as this would allow for work to be charged at what it actually costs and prevent our members from operating at a loss. The benefit would be increased stability and better access to justice for party litigants.

General Regulation 15

We recommend that with the removal of columns A & B that this regulation is amended to read “ shall be calculated in accordance with the fees specified for an Ordinary action”. This both maintains the status quo and reverts to how the regulation was framed before the introduction of column A & B in 2011. In the event that the discount was completely removed then this would no longer be an issue of concern.

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. We would observe anecdotally that the tradesmen in attendance to change locks actually receive a higher remuneration than the Sheriff Officer.

- We would recommend that consideration be given to increasing the base line fee in line item 8b to 56 units.

Electronic file conversion fee

Post COVID, our profession has seen a significant shift away from paper-based instructions to digital. Previously, instructing agents would provide a set of paper copies of all relevant service documentation. This is no longer the case as most instructions are received by way of email with a PDF attachment. This has added a new stage in the service and production process, whereby SMASO members are required to convert the electronic file into paper. This can be very time consuming with additional costs in terms of consumables. In light of same we recommend the insertion of a new line item for converting an electronic instruction into hardcopy, possibly 1 unit for every 20 pages capped at 3 units.

- We would recommend a new fee item for managing the conversion of an electronic file into a paper file.

Surcharges for service by Messenger-at-Arms

Given that Court of Session actions are generally more complex and relatively higher values, there is certainly merit in having a provision for a higher "Court of Session" fee.

Since inhibition has become available in the Sheriff Court and other changes to jurisdiction rules, we are seeing significantly lower volumes of Court of Session instructions. We are also concerned that fewer Sheriff Officers are progressing in their career, by taking the Messenger at Arms examination. Perhaps if the financial reward was greater, then this might encourage more Sheriff Officers, to progress their qualification to Messenger at Arms status.

- We recommend a 50% surcharge to be a more realistic value.

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.

- We would recommend the introduction of a line item of 47 base units under the proposed changes.

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. Statistical information provided by the Accountant in Bankruptcy between 2011 – 2024 demonstrates this. With regards to Attachment the model of charging increased fees bases 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.

- We recommend a significant increase in the base value by at least 30% 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.

- We recommend a significant 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.

When time units are chargeable

The regulation should be amended to begin after the end of the first 30 minutes and not the first hour.