



## Code of Practice

### MESSENGERS-AT-ARMS AND SHERIFF OFFICERS (Officers of Court)

#### Covid 19

We know that this is a very challenging time for everyone, and we are issuing the following guidance to assist members. The UK and Scottish Governments have put in place stringent restrictions to our normal day to day lives, to slow the spread of the virus and prevent the NHS from being overwhelmed – restrictions essential to save life.

The only permissible reasons to leave home are as follows:

- To shop for necessities and that should be limited to once a day
- To take exercise once a day - but alone or with your own household, not in groups
- For medical reasons or to care for a vulnerable person
- To travel to essential work if that cannot be done at home.

Messengers-at-Arms and Sheriff Officers provide an essential public service. During this period, it is critical that we maintain public trust and confidence by maintaining the essential services that support justice.

In responding to an enquiry from one of our members the Scottish Government's Directorate for Justice, following the most recent measures taken by government in response to the Covid-19 crisis, confirms that the work of officers can be regarded as "essential" and justifiable, notwithstanding the current public health advice, but only in the very limited circumstances of the courts' operating model for emergency civil business.

The Society has also contacted the Lord President and Sheriff Principals from whom all Officers hold their commissions and asked them to issue guidance to remove any uncertainty as to what is and isn't appropriate or allowed. We will issue any guidance as soon as it becomes available.

Until then then the Society urge members to follow the following guidance.

Since Wednesday 25 March 2020 all court business has been adjourned or continued administratively except for (i) cases where the accused is in custody (ii) appearances from undertakings and (iii) emergency civil applications. Urgent business includes new applications for child protection orders, interim interdicts, child referral appeals, urgent adoptions or urgent interim residence or contact applications, caveats and urgent applications in relation to Adults with Incapacity. Other urgent matters on cause shown.



There are several instances and circumstances which may constitute urgent business and we recommend that members carefully assess this on a case by case basis. Whilst the Society cannot tell members what to do it is the view of the Executive Council that all normal day to day debt recovery, diligence and citation would not be considered urgent. We would recommend that during this lockdown period members for their own safety and that of others refrain as much as possible from face to face contact with members of the public. The activities which we consider as non-urgent include; serving Charges for Payment, Charges for Removal, Notices of Removal, Attachments and Auctions, Ejections, service of Initial Writs, Summonses and Simple Procedure Claims unless there is an imminent time-bar, Statutory Demands, Demand Letters and any other notices not linked to safety or welfare that require served under statute. Careful consideration should also be given as to whether an Arrestment or Earnings Arrestment is urgent.

While our members have a duty to accept lawful instructions there are also several instances where they can refuse to do so as mentioned in the A.S Messengers-at-Arms & Sheriff Officer Rules 1991 Rule 14:

- (4) An officer of court may refuse to execute a citation, serve any document required under any legal process or execute diligence where—
- (a) the prescribed, or reasonable, expenses have not been tendered to him or secured by or on behalf of the person instructing him; or
  - (b) it is not reasonably practicable for him to carry out his instructions and this has been intimated forthwith on receipt of the instructions to the person instructing him.

We would recommend that all members assess carefully what is reasonably practicable in respect of instructions taking into consideration the most up to date Official Government advice.

Note;

Since the issuing by the Society of this Guidance note to every officer of court on 30th March, the Lord President and Sheriff Principal Stephen, having seen this Guidance, have written to the Society that they do not consider it necessary, at present, to add any further guidance to that which has already been given.

1. A Messenger-at-Arms or Sheriff Officer must at all times be aware that, above all else, his authority and duties are those of an officer of the court, and he must not act in any way which subordinates him to the instructing party or otherwise conflicts with the independent performance of his office. Officers of Court serve the courts and the public. They must uphold the legal principle that their duty is not to refuse to serve any document required under any legal process or to execute diligence, except where it is not reasonably practicable to do so (as more fully detailed in the Messengers-at-Arms and Sheriff Officer Rules 1991). To fulfil these duties, Officers of Court are granted extraordinary powers by judicial warrants or under statutes. The public and their colleagues therefore have the right to expect the highest standards of conduct from them.



2. This Code sets out the principles which guide Officers of Court. It does not seek to restrict their discretion: rather, it aims to define the parameters of conduct within which that discretion should be exercised. Any breach of the principles in this Code may result in action being taken against them. In serious cases, this could involve deprivation of office.

3. Officers of Court, whether engaged in the performance of official or unofficial business, should do nothing to lessen public confidence in the profession. Any allegation of misconduct, brought to the attention of the Society of Messengers-at-Arms and Sheriff Officers, which could, if proved, bring discredit to the profession of Officer of Court, should be investigated by the Society, to establish if a breach of the Code could have occurred and whether a referral for formal disciplinary action is appropriate, in terms of the Debtors (Scotland) Act 1987 and the Messengers-at-Arms and Sheriff Officers Rules 1991.

4. Officers of Court are required to comply with all statutory provisions in operation at the material time. In particular, the Debtors (Scotland) Act 1987, the Messengers-at-Arms and Sheriff Officers Rules 1991, the Debt Arrangement and Attachment (Scotland) Act 2002, the Bankruptcy and Diligence etc. (Scotland) Act 2007 and the Acts of Sederunt Fees of Messengers-at-Arms and Sheriff Officers regulate their functions and conduct. Furthermore, all Officers of Court are required to execute their duties in accordance with the Constitution and Bye-Laws of the Society of Messengers-at-Arms and Sheriff Officers. (Copies of these are available on the Society's website, [www.smaso.org](http://www.smaso.org), or by contacting the Society's office at 8-12 Torphichen Street, Edinburgh EH3 8JQ (telephone 0131 228 2866).)

5. Officers of Court are, in all circumstances, to act as follows:

**a) Honesty and integrity**

Officers of Court must be open, honest and truthful in their dealings, to the full extent that their duties of confidentiality permit. They must not be improperly beholden to any person or institution, and should avoid giving any impression of being improperly influenced by any such party. They must always discharge their duties with integrity.

**b) Fairness and impartiality**

Officers of Court have a particular responsibility to act with fairness and impartiality in all their dealings with members of the public and their colleagues.

**c) Politeness and tolerance**

Officers of Court should treat their colleagues and members of the public with courtesy and respect. In particular, officers must avoid favouritism of an individual or group, all forms of harassment, victimisation or unreasonable discrimination, and overbearing conduct to a colleague, particularly to one junior in experience.

**d) Use of force and of authority**

Officers of Court must never knowingly use more force than is reasonable; nor should they ever abuse in any way the authority provided by their commissions or the terms of particular warrants.



**e) Performance of duties**

Officers of Court should be conscientious and diligent in the performance of their duties. They must execute lawful instructions as promptly as is reasonable, and with all necessary skill.

**f) Lawful instructions**

Unless there is good and sufficient cause to do otherwise, Officers of Court must comply with all lawful instructions and abide by the provisions of all relevant statutory provisions. Officers of Court should support their colleagues in the execution of their lawful duties. They should oppose any improper behaviour and report any manifest instances of it to the appropriate authorities.

**g) Confidentiality**

Private information which comes into the possession of Officers of Court in the course of their official duties must be treated as confidential. Such information should not be used for personal benefit; nor should it be divulged to other parties, except in the proper course of lawful instructions. Officers of Court should also treat all information about their own clients as being confidential, unless they are authorized to disclose such information.

**h) Criminal offences**

Officers of Court must report to the Secretary of the Society of Messengers-at-Arms and Sheriff Officers, within 21 days of the relevant date, the bringing of any proceedings against them for a criminal offence and any subsequent conviction.

**i) Property**

Officers of Court should exercise all reasonable care to prevent loss or damage to other people's property while in the execution of their duties.

**j) Sobriety**

Officers of Court should not be affected by, or consume, alcohol or drugs, when engaged in the performance of their duties.

**k) Appearance**

Officers of Court should be clean and tidy and present themselves in smart business attire whilst engaged in the execution of their duties.

**l) Marketing of businesses**

Officers of Court should not claim superiority for their services or practice over those of another officer; compare their fees with those of another officer; or identify their clients in any marketing communication, without the consent of any client so identified.