

THE OFFICE OF SHERIFF

This paper was provided by the Judicial Office for Scotland.

A NOTE ON THE ROLE AND RESPONSIBILITIES OF A SHERIFF

Introduction

The office of sheriff is one of great antiquity dating back to the 12th Century, when the sheriff represented the King in the locality in military, financial administrative and judicial matters. In the modern context, the role is primarily judicial but an administrative jurisdiction also survives.

The sheriff courts are located in 39 cities and towns. They deal with the great majority of civil and criminal cases, and a range of other matters.

A sheriff is expected to deal with substantial civil business, especially in cases with a value of up to and above £100,000. He or she will also preside over summary and solemn criminal cases, where the maximum sentences are respectively 12 months and five years.

The essential requirement for the office is to possess the ability and legal standing to perform the judicial and administrative functions of the office. This paper describes the range of responsibilities and functions which a sheriff will undertake.

Appointment

Sheriffs are appointed by Her Majesty The Queen on the recommendation of the First Minister. The First Minister must consult the Lord President of the Court of Session, Scotland's most senior Judge, before putting her recommendations forward.

Once appointed, a sheriff may remain in office until the compulsory retirement age of 70. As with sheriff's principal and summary sheriffs, sheriffs are prohibited from engaging in any business activity which might compromise their impartiality.

Qualifications and Experience

To be eligible for appointment, a person must be, and have been for at least 10 years, an advocate or a solicitor. A person is also eligible for appointment if he or she holds judicial office as: sheriff principal; summary sheriff; part-time sheriff; or part-time summary sheriff. Those seeking appointment should be judicial office holders or practitioners of standing, whether Queen's Counsel, advocates or solicitors, with considerable court experience. There is a strong expectation that summary sheriffs should spend at least three years in that role before applying for appointment as a sheriff.

A sheriff will need to have a sound grasp of both solemn and summary criminal procedure and the criminal law. He or she should have a reasonable knowledge of the civil law especially in contract, delict and family. He or she should have a good awareness of civil procedure in the sheriff court ordinary, family law and simple procedures. He or she should also be aware of the areas of the civil law, including the recovery of heritable property, commonly encountered in the simple procedure process.

A sheriff should be versatile and able to deal with cases put before him or her at short notice.

Primary Functions

The primary function of the sheriff is to act as judge at first instance. However, sheriffs

A NOTE ON THE ROLE AND RESPONSIBILITIES OF A SHERIFF

also exercise some appellate, and a large number of administrative and *quasi-judicial* functions, including the conduct of Fatal Accident Inquiries. Some sheriffs, with five or more years' service, are appointed as appeal sheriffs to sit in the Sheriff Appeal Court. They may be asked to act as temporary judges in the High Court.

A sheriff may be asked to sit in the All Scotland Personal Injury Court. Sheriffs may be delegated tasks in specialist courts within their sheriffdom, including commercial, family or solemn criminal procedure.

Each sheriff has the same powers and responsibilities throughout Scotland. In the cities and larger towns, a number of sheriffs and summary sheriffs may work in the same sheriff court building. In some courts there may be only one sheriff. In the more rural areas, particularly those in the islands, the sheriff may sit in more than one court building during the course of a week.

Attendance at Court

Sheriffs normally commence the formal court sitting at, or before, 10.00 am. A sheriff should be at the court well before he or she is due to sit. Very often business will be scheduled at earlier times to ensure that ongoing business, especially solemn criminal trials, are not interrupted. The sheriff will sit until at least 4.00 pm. Judicial business can extend beyond that time in order to accommodate witnesses or to complete a trial, proof or debate.

There may be occasions when the business at a particular court is completed early in the day. In order to maximise efficiency, a sheriff may be required to travel to another court building to deal with business there.

Before sitting, a sheriff will generally be required to read and consider reports and other papers in connection with that day's business. Many of them, including criminal justice social work and psychiatric reports, require to be given particularly careful consideration, but at short notice, often on the day that the case calls.

Sheriffs undertake a variety of work in chambers, including:-

- a. Writing civil judgments;
- b. Dealing with interlocutory matters, such as unopposed motions and warrants for arrestment and inhibition;
- c. Dealing with warrants for arrestment or inhibition;
- d. Preparing stated cases and reports for criminal or civil appeals or children's referral cases;
- e. Considering applications for adoptions and permanence orders, and undefended divorces based on affidavit evidence; and
- f. Considering reports of breaches of community disposals and applications for initiating criminal warrants.

A NOTE ON THE ROLE AND RESPONSIBILITIES OF A SHERIFF

Due to the current COVID pandemic the way in which a variety of hearings are conducted has changed and many are now conducted remotely by either telephone or video conference.

A sheriff may be called on to consider urgent applications for various warrants, interdicts and child protection orders outwith court hours. There may be a rotation for this duty.

Nature of Work

Criminal Proceedings

The criminal jurisdiction of the sheriff is both summary and solemn.

In summary procedure, the maximum penalty, except where lower penalties are prescribed by statute, is 12 months' imprisonment and a fine of £10,000. There are other discretionary sentences, including Community Payback, drug treatment and testing, restriction of liberty, supervised attendance and compensation orders, in addition to football banning, non-harassment, anti-social behaviour, mental health and disqualification orders, and forfeiture of vehicles or other property.

In the cities and larger towns, the volume in a custody or intermediate diet court can be high. The situations, with which the sheriff will have to deal, are diverse and, to a degree, unpredictable. Unexpected pleas of guilty from the minor to the serious may be tendered. In the midst of a cited court, there may be a plea in a Health and Safety prosecution of a major company following a high profile accident.

Situations can arise which will demand that the sheriff exerts control over his or her court, including where there are disruptive accused or those with an overtly political agenda. Accused or witnesses might appear in court under the influence of drink or drugs. Other behaviour can challenge the court's authority.

A sheriff has concurrent jurisdiction with the High Court for proceedings on indictment, with the exception of murder, rape and treason. The maximum sentence is 5 years. A sheriff has power to remit a case to the High Court when a longer period is necessary. Discretionary non-custodial sentences are available. There is no limit to the amount of a fine.

Sheriffs are expected to adopt a proactive role in the management of solemn criminal cases, especially at first diets. In solemn cases, sheriffs should assist the Sheriffs Principal in the discharge of their statutory function to secure the efficient disposal of business generally and not just in relation to a case called before him or her.

A sheriff is required to preside over trials and to impose appropriate sentences. Some trials will result in appeals against sentence and/or conviction. In appeals against sentence in summary proceedings the sheriff is required to prepare a report for the Sheriff Appeal Court, providing a record of the relevant circumstances and the reasons for the sentence. In conviction appeals the sheriff has to draft a stated case for the SAC setting out relevant findings-in-fact, together with a note in their support and explanation.

A NOTE ON THE ROLE AND RESPONSIBILITIES OF A SHERIFF

In solemn sentence or conviction appeals the sheriff will prepare a report for the High Court giving his or her opinion on the case generally and on the grounds of appeal.

Civil Proceedings

The Sheriff Court has exclusive competence to deal with civil proceedings where the total value of the orders sought does not exceed £100,000. The Sheriff Court has concurrent jurisdiction with the Court of Session in almost all other civil cases, with the exception of judicial review.

The Sheriff Court deals with almost all family actions. This involves divorces, disputes over parental responsibilities and rights, maintenance of children, adoptions, permanence orders and permanence orders with authority to adopt. Family cases can involve anxious issues.

Sheriffs are expected to issue civil judgments promptly. These will normally require to be drafted outwith court hours.

Appeals against a sheriff's decision are heard by the Sheriff Appeal Court.

Simple Procedure

Non-family civil cases are divided into simple procedure and ordinary causes. A sheriff is expected to be able to deal with both processes, especially outwith the urban areas. Simple procedure cases often involve party litigants. It can be difficult to deal with party litigants because of a sheriff's duty to act impartially in what nevertheless remains an adversarial system.

Children's Referrals

Children alleged to be in need of compulsory measures of supervision are referred by the Reporter to the Children's Panel and dealt with by a Children's Hearing. Where the facts are disputed, it may be for the sheriff to decide at a proof whether what is alleged is established. These cases require to be given priority. If the child is detained in a place of safety, strict time limits for hearing and disposing of the case apply. A sheriff has a substantial appellate jurisdiction in relation to decisions reached by Children's Hearings. Such appeals have to be dealt with as a priority.

Child Welfare Hearings

Child welfare hearings have become an important part of the sheriff's work. These involve residence, contact and related orders. The rules require the sheriff to secure the quick resolution of those disputes.

Summary Applications

Summary application procedure is used for a number of different types of action, including adults with incapacity and antisocial behaviour. It is also used when appealing against certain decisions made by licensing or other local authorities.

A NOTE ON THE ROLE AND RESPONSIBILITIES OF A SHERIFF

Fatal Accident Inquiries

Inquiries into sudden or suspicious deaths are conducted if: (a) the deceased dies in the course of his or her employment or in custody; or (b) the Lord Advocate determines that it is appropriate to hold an inquiry in the public interest. The sheriff is required to make findings and recommendations which might avoid a recurrence of death in similar situations.

Other Activities

Sheriffs are expected, and are frequently called upon, to serve, and in some instances are required by statute to be represented, on a wide variety of *quasi*-judicial, administrative and advisory or consultative bodies.

These include the Judicial Appointments Board, the Scottish Civil Justice Council, the Scottish Sentencing Council, the Parole Board, the Judicial Institute Advisory Committee, the Scottish Courts and Tribunals Service Board, sub-committees for the Judicial Council, the Scottish Legal Aid Board, Justice of the Peace Training Committee, court user groups, criminal justice bodies and research groups.

Judicial Training and Support

The following measures are intended to provide professional support and reassurance to any new appointees. The Judicial Institute (JI) is responsible for preparing and organising the delivery of all judicial training and continuing professional development for all judicial office holders.

The JI provides induction training on a 'blended learning' basis. This means that a substantial amount of online learning will be issued 4-5 weeks before a new sheriff's appointment date and the work undertaken and submitted to the JI is then built on during a training course taking place over a maximum of five days.

For sheriffs appointed following the current competition, unless physical distancing and other restrictions are relaxed substantially, this training will be conducted via the WebEx audio/video platform and will take place for the entire week commencing Monday 4 October 2021. This includes presentations, problem exercises and facilitated discussions on a range of topics relevant to the judicial role.

Induction is not, however, a crash course on the substantive law knowledge of which, it is assumed, new sheriffs will already have acquired or will be capable of acquiring. Induction is designed to provide support to the new sheriff in making the transition from practice to the new judicial role.

All new appointees must complete at least three sitting-in days with an experienced sheriff. This allows them to familiarise themselves with the judicial environment, observe the work undertaken and have the opportunity to discuss how best to approach and organise for the challenges ahead. Sitting in is organised through the relevant Sheriff Principal.

A newly appointed sheriff will have the opportunity of being supported by a mentor. The

A NOTE ON THE ROLE AND RESPONSIBILITIES OF A SHERIFF

scheme is voluntary, but it allows a new sheriff an opportunity to seek support from another experienced sheriff on a confidential basis.

The demands of shrieval life

A sheriff may have to deal with a variety of cases in one day. He or she may need to work through a busy criminal court. A sheriff needs to be able to concentrate and to switch from one task to another. There will be a requirement for quick, correct decision-making.

A sheriff may hear distressing evidence, and be required to deal with that evidence in an emotionally charged atmosphere. The sheriff will have to retain professional detachment, and deal with victims and witnesses sensitively.

A sheriff may have to produce a written judgment setting out the facts and law behind a decision, to write a note for a children's hearing, or approve the terms of an interlocutor. A sheriff must have the self-discipline necessary to keep his or her work up to date.

While the post of sheriff will have its challenges, no two days will be the same. The work provides intellectual satisfaction. It is an important service to society, ensuring that justice is being done.

Judicial Office for Scotland