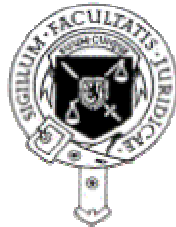


The  
*DEVIL'S*  
HANDBOOK

Second Edition  
**2004 / 2005**



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# The Devil's Handbook 2004 / 2005

## SECTION 1: THE FRAMEWORK

- 1.1 THE STRUCTURE OF DEVILLING
  - 1.1.1 *Working with Devilmasters*
  - 1.1.2 *Course Work and Training*
  - 1.1.3 *Assessment*
- 1.2 THE DUTIES OF DEVILS
  - 1.2.1 *Registration of devils*
  - 1.2.2 *Attendance at Training Courses*
  - 1.2.3 *Devil's Check List*
  - 1.2.4 *Devilmasters' Report*
  - 1.2.5 *Conduct*
- 1.3 THE DUTIES OF DEVILMASTERS
- 1.4 DUTIES OF THE CLERK OF FACULTY
- 1.5 THE ROLES OF OTHERS
  - 1.5.1 *The Director of Training and Education*
  - 1.5.2 *The Training and Admissions Committee*
  - 1.5.3 *The Faculty Officers*
  - 1.5.4 *The Dean of Faculty*

## SECTION 2: DEVILLING

- 2.1 INTRODUCTION TO DEVILLING
  - 2.1.1 *Administrative Matters*
- 2.2 THE WORKING ENVIRONMENT
  - 2.2.1 *Parliament House*
  - 2.2.2 *Advocates' Clerks*
- 2.3 CONDUCT WHILE DEVILLING
  - 2.3.1 *Conduct and Etiquette*
  - 2.3.2 *Paperwork*
  - 2.3.3 *Consultations*
  - 2.3.4 *Court Work*
  - 2.3.5 *Training and Education*
  - 2.3.6 *Continuing Education*
  - 2.3.7 *Other Activities*

## 2.4 MONITORING PROGRESS DURING DEVILLING

- 2.4.1 *Obtaining Feedback*
- 2.4.2 *Devilling Check Lists*
- 2.4.3 *Using the Check Lists*

## 2.5 KEEPING RECORDS OF YOUR WORK

- 2.5.1 *Work Diary*
- 2.5.2 *Work Portfolio*

## 2.6 FINANCIAL MATTERS

- 2.6.1 *Funding of Devilling*
- 2.6.2 *Income*
- 2.6.3 *Insurance*
- 2.6.4 *Income Tax, VAT and National Insurance*
- 2.6.5 *Council Tax*
- 2.6.6 *Travel Expenses*
- 2.6.7 *Data Protection*

## SECTION 3: HANDLING PROBLEMS IN DEVILLING

### 3.1 GENERAL ADVICE

### 3.2 OTHER SOURCES OF ADVICE

- 3.2.1 *Devilmasters*
- 3.2.2 *The Clerk of Faculty*
- 3.2.3 *The Faculty*

## APPENDIX 1: USEFUL CONTACTS

## APPENDIX 2: SCHEME FOR THE ASSESSMENT OF DEVILS

## APPENDIX 3: WORK TEMPLATES

## APPENDIX 4: DEVILMASTERS' REPORT

## INTRODUCTION

Devilling is the final stage of qualifying to become a practising Advocate during which you will undertake practical training supervised by an experienced member of the Scottish Bar. On satisfactory completion of devilling, the compulsory continuing education courses and an assessment by the Faculty of Advocates you will be entitled to seek admission to the public office of Advocate.

The Faculty of Advocates is committed to making sure that intrants (“devils”) are of the highest quality, in terms of education, training and experience. All devilmasters are assessed as suitable before being able to take on a devil. From time to time a sample of devils have the opportunity to give feedback about their devilling through questionnaires and meetings with members of the Training and Admissions Committee.

The purpose of this handbook, following the example of the General Council of the Bar of England and Wales (“the Bar Council”) , is to provide guidance, promote good practice and to achieve greater consistency between devilling experiences by providing a central source of information and advice for all those becoming devils in 2004.

Section 1 sets out the rules and procedures governing devilling and the duties and responsibilities of devils, devilmasters and others.

Section 2 is concerned with the practicalities of devilling, including administration, the nature of the work that you will be expected to do, and what you should expect from your devilmaster.

Section 3 contains advice on handling problems in devilling and complaints procedures.

Appendices contain details of useful contacts, the scheme for the assessment of devils, some templates and the Devilmasters’ Report.

We gratefully acknowledge the help which we derived from the Bar Council materials on pupillage – which we have modified and customised to suit our own particularly Scottish requirements.

We would welcome any comments or suggestions you have regarding content or layout. Please address any correspondence to the Clerk of Faculty.

Further copies of The Devils’ Handbook are available from the Clerk of Faculty and will be available for download from the Faculty web-site at [www.advocates.org.uk](http://www.advocates.org.uk) in due course.

The intention is to update the Handbook annually.

Devils wishing further details of the Faculty exams should contact the Clerk to the Examiners or the Membership Records Assistant whose details are provided in **Appendix 1**.

The Faculty Office should be able to provide devils, on request, with copies of up-to-date information relating to:-

1. Guide to the Professional Conduct of Advocates;
2. Direct Access to the Faculty of Advocates;
3. Disciplinary Rules of the Faculty of Advocates; and
4. Scheme for Accounting For and Recovery Of Counsel’s Fees.

Materials for courses will be distributed separately to devils as and when required.

The Faculty of Advocates,  
Edinburgh  
July 2004

## SECTION 1: THE FRAMEWORK

### 1.1 THE STRUCTURE OF DEVILLING

The Regulations as to Intrans require that a person who intends to become an advocate must satisfy the Dean of Faculty that he/she has duly completed (subject to any exemption) full time devilling to a Junior member of Faculty practising before the Court of Session.

Copies of the Regulations as to Intrans and the Guide to the Professional Conduct of Advocates are available from the Clerk of Faculty and will be available for download from the Faculty web-site at [www.advocates.org.uk](http://www.advocates.org.uk) in due course.

Some useful contacts are in **Appendix 1**.

#### 1.1.1 WORKING WITH DEVILOMSTERS

Each devil will have a principal devilmaster. The principal devilmaster must be approved by the Dean of Faculty. The Clerk of Faculty maintains a list of approved principal devilmasters which is available for consultation.

During the devilling period you shall spend no less than 4-6 weeks with an Advocate who specialises in criminal law. In addition to that period spent devilling in criminal law your principal devilmaster may arrange that you spend a period with another Advocate (a subsidiary devilmaster) to gain experience in a particular area not covered in the devilling period spent with the principal devilmaster. Notwithstanding the period spent devilling in criminal law or gaining experience in some other area your principal devilmaster remains principal devilmaster.

#### 1.1.2 COURSE WORK AND TRAINING

Each devil will undertake the following course work and training in addition to the working time spent with principal and other devilmasters:- (i) The Foundation Course; (ii) Supplementary Course; and (iii) such further courses, workshops and seminars as may be organised by the Training & Education Department. The Foundation Course (which runs in October-November) generally lasts 5-6 weeks, and the Supplementary Course (which runs in May) lasts 2 weeks. Additional courses and workshops total around 10-20 further contact days spread throughout

the devilling period. A provisional training calendar will be issued at the start of devilling. Devils are also required to attend all Faculty continuing professional education events, unless they are engaged in work with their devilmaster.

#### 1.1.3 ASSESSMENT

Each devil will be assessed in accordance with the Scheme for the Assessment of Devils, which can be found at **Appendix 2**. In terms of regulation 4(b) of the Regulations as to Intrans, each devil must satisfy the Dean of Faculty that he or she has duly completed a period of such training and education of as the Faculty may from time to time provide. Devils assessed as being Not Competent following the assessment diet in May will be deemed not to have duly completed the training and education programme, and will therefore be required to discontinue devilling.

### 1.2 THE DUTIES OF DEVILS

#### 1.2.1 REGISTRATION OF DEVILS

When you have arranged a period of devilling, you must register it with the Clerk of Faculty on the prescribed form *before* your devilling commences. Any period of time when what you are doing is not in accordance with your registered details will not count towards your devilling period. You must also notify the Clerk of Faculty of any material changes in devilling arrangements (e.g. a change in devilmaster) on the prescribed notification form. Forms can be obtained from the Clerk of Faculty or from the Faculty Office. They will be available for download from the Faculty web-site at [www.advocates.org.uk](http://www.advocates.org.uk) in due course.

#### 1.2.2 ATTENDANCE AT TRAINING COURSES

All devils must attend the Faculty training courses. Devils who have not prepared appropriately for such courses or who do not commit themselves to participating in the exercises will be regarded as not having attended. Where a devil's performance is particularly weak in any aspect the principal devilmaster may be

informed of the problems with the devil's performance. The devilmaster should encourage the devil where possible and should identify where extra support is needed. A devil's improvement in those areas identified as being weak on any course should be taken into account when considering the devilmaster's report.

### 1.2.3 DEVIL'S DIARY, STYLE BOOK, AND CHECK LIST

You are required to keep (1) a devil's diary, (2) a book of styles and (3) a check list of the topics to be covered during your devilling period.

It is your responsibility to make sure that you cover all of the relevant topics and have a record of what you did, where, when and with whom.

The Devil's Diary is a record of your work and will help you to complete your devilling check list conscientiously and accurately and will assist your principal devilmaster in certifying the satisfactory completion of your devilling.

Some templates for maintaining records of your work are also included in **Appendix 3**.

Your book of styles or database is something that you should develop during the course of your devilling so that you can deal with a variety of different types of work (both civil and criminal) if called upon to do so at short notice.

It is suggested that you maintain your own Devil's Check List based on the style of the Devilmasters' Report which is in **Appendix 4** - so that both you and your principal devilmaster cover all the important topics.

### 1.2.4 DEVILMASTERS' REPORT

On completion of your devilling your principal devilmaster must complete a Devilmasters' Report . The style of Devilmasters' Report is in **Appendix 4**.

If your principal devilmaster refuses to sign the certificate, then you can appeal against the refusal to the Dean of Faculty whose decision shall be final.

### 1.2.5 CONDUCT

You are required to be conscientious and to apply yourself full time to your devilling.

You must also comply with any rules or guidelines relating to devilling issued by the Faculty.

You are required to preserve the confidentiality of every client's affairs, including the clients of any advocate with whom you work.

You must also comply with any direction from the Dean and other Faculty office bearers.

On completion of your devilling period, you must keep the Faculty Office notified of your status (e.g. in practice, employed or non-practising) and contact details.

### 1.3 THE DUTIES OF DEVILMASTERS

Advocates may not take on a devil and act as a principal devilmaster unless:

- (a) they have the consent of the Dean and are entered on the register of approved devilmasters maintained by the Clerk of Faculty, and
- (b) practice is and has been their primary occupation for the last seven years.

Devilmasters may only supervise one devil at a time. They are automatically removed from the register if they become QCs or full time Advocate Deputes. Devilmasters may be removed from the register on cause shown.

It is the principal devilmaster's responsibility to report fully and accurately upon the devil's performance and to take reasonable steps to provide the completed Devilmasters' Report at the end of the devilling period.

The Clerk of Faculty will issue guidance for devilmasters from time to time.

Current guidance as to devilmasters' general obligations and functions is as follows:-

1. On the first day of devilling after the Foundation Course:
  - (a) Time should be taken to talk about practice and devilling generally.
  - (b) Devils should be introduced to Clerks, and other members of Faculty and Faculty Service staff, with whom they might be expected to have contact whilst devilling. There should be an opportunity to discuss what is expected of the devil during devilling, as outlined in section 1.2.5.
2. All devils must attend the Faculty training courses. Devils who have not prepared appropriately for such courses or who do not commit themselves to participating in the exercises will be regarded as not having attended. Where a devil's performance is particularly weak in any aspect the principal devilmaster may be informed of the problems with the devil's performance. The devilmaster should encourage the devil where possible and should identify where extra support is needed. A devil's improvement in those areas identified as being weak on any course should be taken into account when considering the devilmaster's report.
3. The principal devilmaster should make sure that the devil is provided with, and retains, an appropriate check list, and completes it conscientiously and accurately.
4. The devil should be required to read the devilmaster's papers and draft pleadings and other documents, including opinions where applicable. The devil should also be required to accompany the devilmaster to court on sufficient occasions so that the devil has the opportunity to see such work and to gain such experience as is appropriate for a person commencing practice in the type of work done by the devilmaster and to enable the devil to complete the check list.
5. Specific and detailed instruction in pleading should be given, in particular, in relation to those pleadings and other documents which form part of the check list. The devil should keep a book (or database) of styles for use in practice.
6. The devil should take every available opportunity to attend court (including the daily motion roll) and observe other cases when not accompanying the devilmaster to court. The devilmaster will encourage the devil to do so and will endeavour to lookout for cases of interest. Attendance in court is important. It enables the devil to build on the experience gained from the principal devilmaster.
7. In consultations:
  - (a) The devil should read the papers before the consultation so that the most can be gained from the experience.
  - (b) The devil should be informed in advance what is expected from a devil in consultation. In particular, if, as is normally the case, the devilmaster does not wish the devil to speak at all in the consultation, the devil should be told so.
8. The devil should attend enough consultations to enable the devil to conduct a consultation proficiently.
9. The devil should be well grounded in the rules of conduct and etiquette at the Bar.
10. The devil should have contact with other members of the Bar – to see how they conduct themselves in public and in court.
11. All work done by the devil should be discussed and reviewed. All consultations and court work should be discussed with the devil. The devilmaster should monitor all work done by the devil so as to be able to give such guidance and feedback as necessary.
12. The devil should be encouraged to discuss problems and questions relating to practice with the devilmaster as they arise.
13. Every devilmaster should be aware of the obligation, at the end of each period of devilling, to provide the devil with a certificate relating to the completion of that particular period.

14. It should be noted that it is a principal devilmaster's responsibility to certify whether the devil has completed his or her devilling satisfactorily. Guidance can be sought from the Clerk of Faculty or from the Training and Admissions Committee.
15. The routes open to devils who have been unable to obtain a relevant report from their principal devilmasters should be made clear i.e. a devil has a right of appeal to the Dean of Faculty whose decision shall be final.
16. If it becomes clear that a devilmaster is unlikely to report favourably upon a devil's performance, the devil should be informed of this as soon as possible so that they can begin to make alternative arrangements.
17. Devilmasters should familiarise themselves with the Devil's Handbook and with the Faculty position in relation to equal treatment.
18. No devilmaster will discriminate against any devil on the grounds of age, race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, religion or political persuasion.

## **1.4 THE ROLE OF THE CLERK OF FACULTY**

The Clerk of Faculty shall take reasonable steps to make sure that proper arrangements are made for dealing with devils and devilling and that matters are conducted in a manner which is fair and equitable for all advocates and devils.

## **1.5 THE ROLES OF OTHERS**

### **1.5.1 THE DIRECTOR OF TRAINING AND EDUCATION**

The Director of Training & Education of the Faculty of Advocates shall make arrangements for the running of the Foundation Course, Supplementary Course, and such further courses, workshops and seminars as may be appropriate. He shall also make arrangements for continuing professional education events for Members of Faculty, which devils are also required to attend.

### **1.5.2 THE TRAINING AND ADMISSIONS COMMITTEE**

The Training and Admissions Committee shall oversee the provision of training and education by the Training & Education Department and by devilmasters, provide guidance to devilmasters and assist in the development of Faculty policy on matters of training and education generally.

### **1.5.3 THE FACULTY OFFICERS**

In addition to the Dean and the Clerk, the Vice Dean, the Treasurer, the Keeper of the Library and the Chairman of the Company all have specific responsibilities in the management of the Faculty's affairs. They are also available to give advice to devils as well as to Members of Faculty when faced with a professional difficulty.

### **1.5.4 THE DEAN OF FACULTY**

The decision of the Dean of Faculty on matters relating to devilling shall be final.

## SECTION 2: DEVILLING

### 2.1 INTRODUCTION TO DEVILLING

Your period of devilling will begin with your participation in the Foundation Course. Generally this starts in October of each year and runs for 5-6 weeks. After the Foundation Course, you will begin working with your devilmaster.

In the first few days your devilmaster should also talk to you about practice and devilling generally. It would be useful for you to know about the nature of work dealt with by your devilmaster, the type of work that you will be involved in, the monitoring of and feedback about your work and the role of other individuals in your devilling training.

Other matters that you should be aware of include:

*Hours of Work:* Devilling must be undertaken full-time. Your devilmaster will usually specify the minimum periods of time in which you are expected to be in Parliament House or otherwise engaged with your devilmaster, and you may also be expected to work additional hours as required.

*Working Areas:* There are working areas set aside for the use of devils in the Laigh Hall. Devils may work in the Library in the evenings and at weekends.

*Dress Code:* You will be expected to wear dark clothing appropriate for attendance at court, even if you will not be attending court that day.

It is also important that at an early stage in your devilling you obtain as much information as you can about what is expected of you.

#### 2.1.1 ADMINISTRATIVE MATTERS

*Telephone, Fax, Photocopying and Post*

Telephone, fax, photocopying and post facilities are provided in the Advocates Library and Advocates' Clerks area by Faculty Services Limited. You will be provided with a PIN to operate these. Your devilmaster may allow you to use his or her code for this purpose when you are using these facilities on his or her instructions as the cost of services will be charged by FSL.

#### *Library and Research Facilities*

You will be entitled to use the Advocates Library and its excellent research facilities to assist you with all activities of devilling. You should familiarise yourself with the location of the various parts of the collection and the extensive electronic research resources available. Use of the Library is subject to the Library Rules - a copy may be consulted on application to the Senior Librarian.

### 2.2 THE WORKING ENVIRONMENT

#### 2.2.1 PARLIAMENT HOUSE

It is expected that you will attend at Parliament House from 09.30-17.00 hours each week-day – unless (a) you are with your devilmaster away from Parliament House (b) you are engaged in work for the Free Representation Unit; or (c) you have the permission of the Clerk of Faculty.

Check to see if there are any cases of particular interest in Court. You are strongly encouraged to sit in court to listen to cases of interest or importance, whether or not your devilmaster is appearing in the case.

Tell your devilmaster where you are and what you are doing.

#### 2.2.2 ADVOCATES' CLERKS

At the start of your devilling, make sure you are introduced to your devilmaster's Clerk and Assistant Clerks.



Find out how the Advocates' Clerks operate. Clerks and Assistant Clerks have a variety of qualifications and experience – and have significant responsibilities. The role and function of the Clerks can vary slightly from stable to stable and include:

- (a) keeping counsel's diaries
- (b) liaising with courts
- (c) liaising with solicitors
- (d) fixing and helping to recover fees
- (e) promoting and developing the profession
- (f) liaising with other stables in relation to returned work and cases where counsel from more than one stable are involved.

Check with your devilmaster and Clerk that you have permission to look at your devilmaster's diary from time to time – to see what is meant to be happening, where and when.

The Clerks should be kept informed of your movements in case your devilmaster needs to get in touch with you. Provide the Clerk with your home telephone number and any other contact numbers in case they need to get in touch with you outside office hours.

Find out how the Faculty Services Fee Rendering System works.

Discuss with your devilmaster or the Chairman of the Company the current practices and policies in relation to finding a Clerk of your own when you are called.

### **2.3 CONDUCT WHILE DEVILLING**

The work that you will see and do during devilling will vary according to the individual practice of your devilmasters.

However, your devilmasters should make sure that you obtain:

- (a) An understanding and appreciation of the operation in practice of the rules of conduct and etiquette at the Bar;
- (b) Sufficient practical experience to be able to prepare and present civil and criminal cases competently;
- (c) Sufficient practical experience of consultations and negotiations to be able to undertake them competently; and
- (d) Sufficient practical experience in the undertaking of legal research and the preparation of civil and criminal pleadings and opinions to be able to undertake them competently.

#### **2.3.1 CONDUCT AND ETIQUETTE**

Devilling must involve training in professional conduct and etiquette.

You should familiarise yourself with the current Guide to the Professional Conduct of Advocates. Copies can be obtained from the Clerk of Faculty and will be available for download from the Faculty web-site at [www.advocates.org.uk](http://www.advocates.org.uk) in due course.

If you do experience problems with any of these issues in practice you should, wherever possible, consult with your devilmaster – whom failing a Faculty Officer or a Senior member of Faculty.

#### **2.3.2 PAPERWORK**

You should expect to read your devilmaster's opinions and draft pleadings and to have the opportunity of discussing these with him or her. Where possible, it is a good idea to keep copies of your/their work in order to build up a set of styles. Practice in drafting pleadings and writing opinions is an important part of your devilling. Ask your devilmaster to discuss your drafts with you and to give you regular feedback on your progress. The accuracy and speed of your work are important factors to concentrate on.

### 2.3.3 CONSULTATIONS

Discuss in advance what your devilmaster expects from you in a consultation. It is usually the case that you should not speak at all during the consultation unless you are specifically invited to contribute.

You will gain most benefit from the consultation if you make sure that you have read the case papers in advance and if you have the opportunity to discuss them before or afterwards. You should take a full note of the consultation, particularly the advice given by Counsel and any instructions given by the client.

### 2.3.4 COURT WORK

You should expect to see as much of your devilmaster's court work as possible. If his or her practice involves extensive travelling try to establish early on whether or not you are expected to attend such cases and, if so, whether your devilmaster will meet your travelling expenses. It may well be that, on days when your devilmaster is working some distance away, he or she will arrange for you to work in Parliament House.

It is particularly important that you see court work done by junior members of Faculty in order to prepare you for your own court appearances after calling.

You will gain most benefit from observing court work if you are able to read the papers and discuss them before or after the court appearance, and you may find it useful to prepare a skeleton submission or draft questions that should be asked.

If you attend court with your devilmaster you must not offer your opinion regarding the case to the client. Any views should be discussed with your devilmaster when you are alone.

It is very important to keep a clear and detailed note of proceedings in court. If your devilmaster becomes involved in negotiations with his or her opponents it is usual to accompany him or her and watch without interruption or intrusion.

Check that you know which court you are meant to be attending – and that you know where it is. Arrive in good time.

You will have opportunities to practice your own advocacy skills during the training courses. You are not permitted to supply legal services as an advocate or exercise any rights of audience while devilling.

### 2.3.5 TRAINING AND EDUCATION

You will not be entitled to become a member of Faculty and commence practice until you have completed the compulsory training courses organised by the Training & Education Department. These include the Foundation Course, the Supplementary Course and such other courses, workshops and seminars as may be arranged. The Director of Training and Education will notify you about the programme of exercises and the dates on which you are expected to attend. You must attend those training courses. In exceptional circumstances, the Clerk of Faculty may give permission for you to be absent from a compulsory training course.

The Clerk of Faculty after consulting the Director of Training and Education may in exceptional circumstances and on cause shown grant you a short leave of absence from training on such terms and conditions as will allow your training to be completed at a later date.

The Director of Training and Education requires to be satisfied that you have attended the training courses satisfactorily.

If you disagree with the Director of Training's view, the Dean of Faculty will decide.

From time to time the Faculty hopes to arrange other events relating to practice management, personal taxation and financial arrangements, with the opportunity to discuss a number of different aspects of professional life and practice.

Please also check on the current policies and practices in relation to continuing professional development throughout your career.

### 2.3.6 CONTINUING EDUCATION

All practising members of Faculty are required to undertake 10 hours of Continuing Professional Development. Accredited courses are offered by the Training & Education Departments, the Faculty's specialist groups, and a range of external providers. As a devil you are expected to attend the events organised by the special interest groups unless otherwise stated. There will shortly be an on-line courses database on the Faculty of Advocates website which will list the opportunities available. An information pack containing full details will be issued to you by the Training & Education Department when you are admitted to Faculty

### 2.3.7 OTHER ACTIVITIES

Although you are required to apply yourself full time to your devilling, you may take on part time work, that, in the opinion of the Clerk of Faculty and your Principal Devilmaster does not materially interfere with your training. However, you must obtain permission from the Clerk of Faculty before carrying out any paid or voluntary work.

You will, during devilling, be required to participate in the Faculty's Free Representation Scheme. The Scheme is an agreement between the Faculty and Citizens Advice Scotland, whereby devils and newly called advocates (for a period of 5-6 months following admission) perform legal services for Citizens Advice Bureaux. The services include advice and representation before Tribunals where Legal Aid is not available. The scheme does not extend to hearings before any court.

Instructions are accepted on the same basis as instructions from solicitors to counsel. The representative form the Citizens Advice Bureau takes on the role normally played by the instructing solicitor. You do not, in connection with the supply of such services, hold yourself out as an advocate. For example, you could not describe yourself as an advocate on any printed material, advertising, publicity or noticeboard; describe yourself as an advocate to any client or prospective client or wear a gown and wig.

Instructions are sent in the first instance to the Clerk of Faculty. The Clerk arranges for a devil/newly called advocate to take the instructions. Once the instructions are

accepted by the devil/newly called advocate, the Dean of Faculty regards it as a binding professional commitment equivalent to acceptance of instructions by a practising member of Faculty.

The provision of such services is free. Reasonable expenses in the carrying out of such services will be met by the Faculty. Devils/newly called advocates who accept instructions are covered by the insurance policy that Citizens Advice Scotland have in place.

## 2.4 MONITORING PROGRESS DURING DEVILLING

### 2.4.1 OBTAINING FEEDBACK

Although you will have had experience of feedback on your drafting and advocacy exercises during the Faculty training courses, it is important to ask your devilmaster for feedback in relation to the real cases and the real circumstances you have been working on. Individual devilmasters will vary in the nature and extent of the feedback that they give on paperwork, but you should always feel able to ask for more detailed comments on your work if you are not sure where you have gone wrong. Points to watch include being too verbose and lacking a sufficiently practical bent. It is equally important for devilmasters to identify what you are doing well, so that you can build on and develop your strengths.

It is probably a good idea to ask your devilmaster for a review or appraisal at the midpoint of your period of devilling with him or her. If there are any difficulties that you are experiencing, or areas in which you need to improve, this will give you the opportunity to address them during the remaining period. The review can also be used to monitor your progress, help you complete your check list and to identify any gaps in your training.

### 2.4.2 DEVILLING CHECK LISTS

It is suggested that you maintain your own devil's check List based on the style of the Devilmasters' Report which is in **Appendix 4** - so that both you and your devilmasters cover all the important topics.

It is essential that you consult with your devilmaster about how the check list / style of devilmaster's report can be used most effectively to plan and monitor your progress during devilling.

When spending a period of your devilling with another Advocate take a copy of your check list with you so that he or she can review your progress having regard to the points covered in the check list to date.

### **2.4.3 USING THE CHECK LISTS**

The Devilmaster's Report is the crucial document – but a devil's check list can be used to help plan the training that you will receive during devilling, to check that you are experiencing an adequate range of work and to review your progress.

Read through the list carefully and make sure that you are familiar with all the items.

It is not expected that you will be able to cover all the items of a specialist nature but you are expected to cover a good range of topics from both civil and criminal practice.

You and your devilmaster should discuss how best to use the check list. It is important that you refer to it regularly throughout your devilling.

The list should be reviewed with devilmasters and plans made to address any gaps.

The Clerk of Faculty can give guidance - to devils and devilmasters - as to how best to approach the devil's check list and the Devilmasters' Report.

## **2.5 KEEPING RECORDS OF YOUR WORK**

### **2.5.1 WORK DIARY**

You are required to keep a work diary during devilling to record the work that you have done and the amount of time that you have spent on it. This will help you to

complete your devil's check list conscientiously and accurately and will assist your devilmaster in certifying the satisfactory completion of your devilling.

**Appendix 3** contains some templates that you can use if you wish – but you may prefer to design or buy your own diary

### **2.5.2 WORK PORTFOLIO**

Keeping and filing copies of all documents produced in the course of devilling is a good working habit to get into from the start of your professional life. This need not be complicated. A simple system is to keep an index of the names of the cases and the date when the work was done and file all the documents in chronological order. Some counsel simply use the pursuer's surname or the accused's surname and add documents numbered sequentially – "Brown1, Brown 2 ... and so on". If you are able to look back at work which you have done before in similar cases you will be able to re-use legal research. You will also be able to develop your own styles.

If you can obtain a copy of the work that your devilmaster sent out in relation to a set of instructions that you have also attempted, it is helpful to be able to file both for the purposes of comparison. The ability to review your own work side by side with your devilmasters' is sometimes the best way to become self-critical and develop good paperwork skills.

## **2.6 FINANCIAL MATTERS**

### **2.6.1 FUNDING OF DEVILLING**

#### *Costs*

It is up to you to make sure that you can fund your devilling.

You will be expected to have or purchase a laptop computer and you should budget for that. You should obtain advice on how that may best be accounted for as a business set-up expense.

### *Grant, Scholarships and Awards*

The Faculty offers a number of annual scholarships the purpose of which is to provide assistance to devils. Applications are invited by advertisement published in the Scots Law Times, the Journal of the Law Society of Scotland, and further details may be obtained from the Clerk of Faculty. Details may also be obtained from the Faculty website ([www.advocates.org.uk](http://www.advocates.org.uk)).

### *Career Development Loans*

Some banks run schemes for career development loans. Barclays, Co-operative and the Royal Bank of Scotland offer a package aimed at individuals undertaking *inter alia* vocational training. The Faculty is registered as a learning provider for the purposes of the scheme. The Faculty's registration number is 1631. This number should be provided to the bank with whom you apply for a career development loan.

## **2.6.2 INCOME**

### *During devilling*

You are not entitled to any payment from your devilmaster.

### *Expenses*

Most devilmasters respect the tradition that the senior person pays for shared meals and incidental expenses.

## **2.6.3 INSURANCE**

Once you have been called you must have professional indemnity insurance. The Faculty will arrange professional indemnity insurance cover for you. Details will be provided to you by the Membership Records Assistant (see **Appendix 1**) prior to your admission.

## **2.6.4 INCOME TAX, VAT AND NATIONAL INSURANCE**

While devilling it would be worthwhile seeking advice from an accountant in relation to how you will be affected by Income Tax, VAT and National Insurance. Further details can be obtained from the Inland Revenue or Customs and Excise.

It might also be worthwhile recording your expenses accurately, as you may be able to offset them against your taxable income at a later date.

## **2.6.5 COUNCIL TAX**

Devils are not exempt from paying Council Tax, but you may be eligible for Council Tax Benefit if you are on a low income and fall within the savings limit.

It might be worth contacting your local Department of Work and Pensions office for further information. The Faculty provides a standard letter which you can use in making an application for a Council Tax discount.

## **2.6.6 TRAVEL EXPENSES**

The Faculty provides a standard letter which you can use in making an application for a discounted rail pass.

## **2.6.7 DATA PROTECTION**

The Clerk of Faculty has processed the Faculty's application for registration in terms of the Data Protection Act 1998 which came into force on 1st March 2000.

That registration does *not* extend to members who use a computer for the processing of personal data. It is the responsibility of each individual who does to ensure that they are registered under the Data Protection Act.

If you have not yet registered you can do so on-line via the Office of the Information Commissioner at their website [www.dataprotection.gov.uk](http://www.dataprotection.gov.uk) – or by phoning the notification help line on 01625 545 740.

The cost of notification is currently £35.00 per year.

It is a criminal offence not to register if you are required to do so under the Act.

## **SECTION 3: HANDLING PROBLEMS IN DEVILLING**

### **3.1 GENERAL ADVICE**

The Faculty of Advocates is committed to making sure that devilling meets the highest standards.

You are of course free to raise any issues you may have - with your devilmaster or with the Clerk of Faculty or the Director of Training at any time.

From time to time, a sample of devils will be invited to complete questionnaires and to participate on a confidential basis in an interview about their experiences of devilling – with members of the Training and Admissions Committee.

The Faculty wishes to make sure that all devils are being treated properly and fairly.

In the event that problems arise, e.g., not getting proper supervision or sufficient feedback, or being asked to do excessive or inappropriate tasks, through to being the victim of discrimination, harassment or other serious misconduct, you should contact in the first instance the Clerk of Faculty.

There is a range of formal and informal procedures for dealing with other complaints that arise in relation to the quality of devilling.

It is important that you keep accurate notes of any particular incident or incidents that give you cause to think that you have been treated unfairly or in a discriminatory fashion - to assist in the resolution of any dispute.

### **3.2 OTHER SOURCES OF ADVICE**

#### **3.2.1 DEVILMASTERS**

It is a primary responsibility of your devilmaster to give you appropriate advice, support and guidance and, if possible, you should approach them with any concerns that you have.

The Clerk of Faculty or an Office Bearer may also be able to help you either informally or formally.

#### **3.2.2 THE CLERK OF FACULTY**

If you cannot or do not wish to approach your devilmaster, you should contact the Clerk of Faculty in the first instance for advice and assistance.

#### **3.2.3 MEMBERS OF FACULTY**

If your problem is urgent, and you cannot find the Clerk or a Faculty Officer ask a Senior member of Faculty for assistance.

## APPENDIX 1: USEFUL CONTACTS

### THE FACULTY OF ADVOCATES

#### Faculty of Advocates

Advocates Library  
Parliament House  
Edinburgh EH1 1RF

[www.advocates.org.uk](http://www.advocates.org.uk)

is a good source of information

#### Advocates Library

Tel: 0131-226-5071

#### Advocates Clerks

Tel: 0131-226-2881

#### Clerk of Faculty

Andrew Stewart  
[andrew.stewart@advocates.org.uk](mailto:andrew.stewart@advocates.org.uk)

#### Director of Training and Education

Kenneth Campbell  
[kenneth.campbell@advocates.org.uk](mailto:kenneth.campbell@advocates.org.uk)

#### Training & Education Manager

Rosie Saunders  
[rosie.saunders@advocates.org.uk](mailto:rosie.saunders@advocates.org.uk)

#### Clerk to the Examiners

Patricia Comiskey  
[clerktotheexaminers@advocates.org.uk](mailto:clerktotheexaminers@advocates.org.uk)

#### Intrants Programme Co-ordinator, Faculty Office

Scott Brownridge  
[scott.brownridge@advocates.org.uk](mailto:scott.brownridge@advocates.org.uk)

#### Membership Records Assistant

Veronica Phillips  
[veronica.phillips@advocates.org.uk](mailto:veronica.phillips@advocates.org.uk)

#### THE FACULTY OF ADVOCATES DIRECTORY

also contains useful information and copies are available through the Faculty Office.

## APPENDIX 2: SCHEME FOR THE ASSESSMENT OF DEVILS

You will be asked to conduct four tasks:

- ❑ Present the opening segment of submissions in a debate
- ❑ Examination in chief of a witness
- ❑ Draft an Opinion
- ❑ Draft a Summons

Each of these will be assessed by assessors, who will be senior members of Faculty with considerable experience of the training process. When assessing your performance in the assessment days, the assessors will have regard to certain criteria. The criteria which will be applied when assessing your performance are outlined in two categories:

- Analysis, Purpose and Structure and
- Presentation and Technique

For each task, these criteria are listed in more detail, as outlined below. You will not be able, of course, to demonstrate all of the elements which are outlined in your assessed performances. The criteria should be viewed as a guideline. The assessors are looking for an overall display of competence in purpose, analysis, structure, presentation and techniques in oral and written advocacy, having regard to the criteria. You should view your performances as being conducted in real-life professional conditions.

In each category, the assessors will mark according to the following standards, bearing in mind what would be expected of a newly admitted advocate:

- **competent (C)**
- **working towards competence (W)**

Assessment will be conducted over three days. The first day will be a preparation day. The second and third days will be performance days. You will be assessed on two occasions on each day. On one day, you will be assessed on the examination in chief of a witness and on submissions for one party in a debate. On the other

day, you will be assessed on the drafting of an opinion and of a summons, papers for which will be issued on the day. Your oral performance will be recorded on video as further independent material for checking the assessments if required.

You will be expected to show competence (C) in each of the 2 (3 in the case of examination of witnesses) categories in at least one of your two performances on each day. Over the two days, you must have at least 7 assessments of “Competent” out of the total of 9 categories in which you will be assessed. You will be informed about those areas where you achieved Working towards Competence (W). We expect that most of you will achieve the standard of C. If you do not do so, you will be offered a further opportunity to be assessed in May on those exercises where you were assessed as W. In May the standards will be Competent (C) or Not Competent (NC). You will be expected to achieve the standard of C in all of the categories in all of the exercises in which you are assessed in May. If you do not reach that standard, you will be deemed not to have duly completed the training and education programme, and will therefore be required to discontinue devilling.

### Assessment Criteria for Drafting an Opinion

#### 1. Analysis, Purpose and Structure

(a) Identification of:

- Scope and completeness of instructions
- Issues in dispute
- Relevant law
- Relevant facts
- Assumptions made (if any)
- Whether and to what extent more information is required
- Reasoning and conclusions reached
- Practical solution (s)

(b) Use of appropriate structure

- Overall layout
- Prominence and accessibility of answer(s)
- Use of headings, chapters, numbering, summarising
- Ordering of material appropriately and logically



- Selection of relevant facts to support opinion
  - Selection of relevant law to support opinion
  - Appropriate analysis of the issues
  - Questions answered in a logical order
- (c) Observes rules of professional conduct

## 2. Presentation and Techniques

- Appropriate choice of words / phrases
- Concise sentences
- Precision of language
- Avoidance of ambiguity
- Avoidance of unnecessary repetition
- Appropriate reference to documents
- Observance of conventions without unnecessary formality
- Appropriate citation of cases and statutes

### Assessment Criteria for Drafting a Summons

#### 1. Analysis, Purpose and Structure

- (a) Identification of:
- Appropriate remedies
  - Issues in dispute
  - Necessary facts to establish remedy sought
  - Relevant law
- (b) Use of appropriate structure
- Overall layout: correct form for conclusions / condescendence / pleas in law
  - Orders material appropriately and logically
  - Articles of condescendence of appropriate length and content
  - Coherent pleading consistent with appropriate analysis of the issues
- (c) Use of appropriate content

- Appropriate selection of relevant facts and law to support case
- Averments of fact sufficiently specific
- Averments of law supported by averments of fact
- Avoidance of pleading evidence
- Pleas in law supported by averments of fact
- Pleas in law stated appropriate to conclusions and cases in law

(c) Observes rules of professional conduct

## 2. Presentation and Techniques

- Appropriate choice of words / phrases
- Concise sentences
- Precision of language
- Avoidance of ambiguity
- Avoidance of unnecessary repetition
- Appropriate reference to documents
- Observance of conventions without unnecessary formality

### Assessment Criteria for Examination in Chief

#### 1. Analysis, Purpose and Structure

- (a) Identification of:
- Relevant lines of argument
  - Issues in dispute
  - Outcome sought
- (b) Use of appropriate structure (layout of case)
- Orders material appropriately
  - Appropriate selection of witness
  - Use of productions / aids
- (c) Use of appropriate structure (presenting evidence)

- Elicits admissible evidence
- Elicits relevant facts to establish case
- Asks relevant questions to elicit facts required
- Introduces witness appropriately
- Accredits witnesses
- Sets scene
- Use of productions / aids

(c) Observes rules of professional conduct

## 2. Questioning skills

(a) Use of appropriate form of questions to direct and control witness:

- Open
- Closed
- Precise

(b) Clarity of questions:

- Appropriate language
- Choice of words / phrases
- One fact per question
- Concise sentences
- Contrasts facts and conclusions
- Avoids unnecessary repetition
- Appropriate use of notes

## 3. Presentation and Techniques

### Engaging others:

Witness:

- Establishes rapport with witness
- Shows interest
- Appropriate courtesy

- Appropriate eye contact
- Listens to answers
- Avoid unnecessary interruptions
- Explores detail
- Follows through answers
- Avoids comments and fillers
- Uses chapters, headings, transitions
- Appropriate use of productions/aids

Decision-maker:

- Is aware of and involves
- Maintains interest
- Answers questions
- Appropriate courtesy
- Appropriate eye contact
- Uses chapters, headings, transitions
- Observes conventions
- Responds appropriately to objections

### Delivery:

- Audibility
- Appropriate pace
- Appropriate tone and modulation
- Use of pausing
- Avoids distracting mannerisms

### Manner

- Facial expression
- Posture and stance
- Use of gesture
- Avoids distracting mannerisms

## **Assessment Criteria for Procedure Roll Debates**

### **1. Analysis, Purpose and Structure**

#### (a) Identification of:

- Relevant lines of argument
- Nature of, and issues in, dispute: fact and law
- Outcome sought

#### (b) Appropriate structure and content

- Orders material, including submissions, appropriately and logically
- Sets out framework for submissions at outset
- Relevance of submissions to issues in dispute
- Application of law to the facts
- Dealing with adverse material
- Use of Record
- Use of note of argument (if appropriate)
- Use of productions
- Use of authorities
- Identification of order (s) sought
- Effective Use of Time

#### (c) Observation of rules of professional conduct

- Draws court's attention to adverse authorities

### **2. Presentation and Techniques**

#### **Introduction:**

- Opening remarks
- Reference to procedure to date (if relevant)
- Use of Record
- Identification of issue(s)
- Summary of submissions and propositions
- Identification of order(s) sought
- Use of note of argument (if appropriate)

#### **Clarity of delivery:**

- Appropriate language
- Choice of words / phrases
- Concise sentences
- Avoids unnecessary repetition
- Appropriate use of notes

#### **Engaging decision maker:**

- Is aware of and involves
- Maintains interest
- Answers questions
- Appropriate courtesy
- Appropriate eye contact
- Use of chapters, headings, transitions, numbering
- Observes conventions
- Summarises effectively

#### **Use of authorities:**

- Appropriate citation
- Use of headnote / rubric
- Reference to arguments and reasoning of judge(s)
- Relevance of cases and passage(s) selected
- Articulation of purpose in citing passage(s)

#### **Delivery:**

- Audibility
- Appropriate pace
- Appropriate tone and modulation
- Use of pausing
- Avoids distracting mannerisms

#### **Manner:**

- Facial expression

- Posture and stance
- Use of gesture
- Avoids distracting mannerisms

## **APPENDIX 3: WORK TEMPLATES**

If you wish, the templates on the following pages can be used to keep records of the work that you undertake during devilling.

You might find them helpful in completing the devilling check list – or you can buy or design your own diary.

**COURT WORK**

DATE	
LOCATION	
NATURE OF CASE	
NAMES OF PARTIES	
PARTY REPRESENTED	
BRIEF SUMMARY	
TIME SPENT	

ADDITIONAL NOTES/COMMENTS:

**PAPERWORK**

DATE	
NATURE OF WORK	
NAME OF CLIENT	
NAME OF SOLICITOR	
BRIEF SUMMARY	
TIME SPENT	

ADDITIONAL NOTES/COMMENTS:

**CONSULTATION**

DATE	
NATURE OF WORK	
NAME OF CLIENT	
NAME OF SOLICITOR	
BRIEF SUMMARY	
TIME SPENT	

ADDITIONAL NOTES/COMMENTS:



**OTHER WORK**

DATE	
NATURE OF WORK	
NAME OF CLIENT	
NAME OF SOLICITOR	
BRIEF SUMMARY	
TIME SPENT	

ADDITIONAL NOTES/COMMENTS:

## APPENDIX 4:

## DEVILMASTERS' REPORT

Name of Intran:- \_\_\_\_\_

Please indicate by a tick in the appropriate boxes whether the Intran has had experience of the areas of work identified either with you as his Principal Devilmaster or, to your knowledge, with another Criminal or Subsidiary Devilmaster.

1. **Appearing in Court**

- (a) Instructions in how to prepare for and conduct a Proof, Criminal Trial and a Civil Jury Trial.
- (b) How to prepare for and conduct a Procedure Roll Debate or similar Hearing; Debates in criminal causes or similar hearings.
- (c) How to prepare for and conduct an Appeal/Reclaiming Motion/Criminal Appeal, Bail appeals.
- (d) The part played by Junior Counsel where Senior Counsel have also been instructed in any of the above.
- (e) The part played by Crown Juniors
- (f) Commissions: conduct of a commission as a commissioner and as an acting Counsel
- (g) Motion Rolls; By Order Adjustment Roll; Preliminary diet in a criminal case
- (h) The importance of going into Court and listening to a variety of cases.

2. **Preparation and Paper Work**

- (a) Summonses: to cover the principal kinds of actions likely to be encountered, for example, payment, breach of contract, divorce (including financial provision and orders relating to children), reparation (including road traffic accidents,  accidents in the course of employment, and the contracting of industrial diseases), declarators and reductions.
- (b) Defences
- (c) Adjustments

Name of Intransit:- \_\_\_\_\_

- (d) Minutes of Amendment and Answers
- (e) The various types of incidental documents which occur as incidental steps of process, e.g. Minutes of Tender (and Acceptances and Withdrawals thereof); Minutes for Decree; Minutes of Abandonment; Joint Minutes including those agreeing evidence or intimating settlement to the Court; Minutes of Sist, Notes of Argument, written submissions, applications for sanction of counsel or experts in legally aided cases.
- (f) Various types of incidental steps in criminal procedure including Notices of special defence; Devolution issues; Applications under s275 of the Criminal Procedure (Scotland) Act; Petitions for recovery of documents and Minutes of postponement.
- (g) Issues and Counter Issues
- (h) Petitions: to cover the principal circumstances where Petition procedure is appropriate, for example, Petitions for Judicial Review, Petitions for Interdict, Judicial Factory Petitions and Insolvency Petitions.
- (i) Notes on the Line of Evidence
- (j) Notes on Quantum
- (k) Notes on Liability/Prospects of Success (of action, Civil Appeal, Criminal Appeal).
- (l) Specification of Documents
- (m) Opinions
- (n) Grounds of Appeal, both Civil and Criminal
- (o) Sheriff Court Pleadings

Name of Intran:- \_\_\_\_\_

3. Consulting with Clients

4. Negotiation

5. The guide to Professional Conduct of Advocates

6. Awareness and knowledge of Parliament House and Supreme Courts

- (a) awareness of Faculty traditions,
- (b) familiarity with the Supreme Courts generally
- (c) knowledge of the workings of the IT Department
- (d) knowledge of the Library
- (e) knowledge of the workings of Faculty Services Limited including knowledge of the fee rendering system & practices and the Scottish Legal Aid Board requirements
- (f) knowledge of the work of the advocates' clerks

7. General awareness of other areas of practice

- (a) specialist family areas, acting as a *curator ad litem*, children's hearings
- (b) tribunals
- (c) court reports
- (d) arbitration, mediation, alternative dispute resolution
- (e) other, please specify

Name of Intranant:- \_\_\_\_\_

### CERTIFICATE OF CRIMINAL DEVILMASTER

Name of Intranant:- \_\_\_\_\_

This Intranant spent a period of ..... weeks devilling with me during which time the following undernoted areas of practice were covered:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### COMMENT

Signed: \_\_\_\_\_ (Criminal Devilmaster)

Printed: \_\_\_\_\_

Date: \_\_\_\_\_

### CERTIFICATE OF SUBSIDIARY DEVILMASTER

Name of Intranant:- \_\_\_\_\_

This Intranant spent a period of ..... weeks devilling with me during which time the following undernoted areas of practice were covered:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### COMMENT

Signed: \_\_\_\_\_ (Subsidiary Devilmaster)

Printed: \_\_\_\_\_

Date: \_\_\_\_\_

Name of Intranant:- \_\_\_\_\_

## CERTIFICATE OF PRINCIPAL DEVILMASTER

Name of Intranant:- \_\_\_\_\_

Having regard to the experience gained by this Intranant in the period of devilling (including periods spent with the criminal devilmaster and any subsidiary devilmasters), as disclosed above, he/she has displayed sufficient competence in the work given to him/her during the period of devilling to indicate that he/she is a fit person to be a member of the Faculty of Advocates.

Nothing came to light during the period of devilling which would indicate to me that the Intranant is not an appropriate person to be admitted to the Faculty.

## COMMENT

Signed: \_\_\_\_\_ (Principal Devilmaster)

Printed: \_\_\_\_\_

Date: \_\_\_\_\_