

# Scottish Committee of the Administrative Justice & Tribunals Council

**VALUATION APPEAL COMMITTEES IN SCOTLAND  
SPECIAL REPORT**

## **OVERVIEW**

This Special Report is submitted to Scottish Ministers under the terms of the Scottish Committee of the Administrative Justice and Tribunals Council's governing Act, namely the Tribunals, Courts and Enforcement Act 2007. The Committee's statutory function is inter alia to keep under review and report on the working of listed tribunals, and consider and report on any other matter that it considers of special importance. Valuation Appeal Panels and Valuation Appeal Committees are included within listed tribunals.

The Scottish Committee's aim in preparing this report is to identify the concerns over the operation of Valuation Appeal Committees in Scotland which have been observed by its members at various appeal committee hearings over the last four years.

In particular, the Report considers and makes recommendations in respect of:-

- The venues used for the hearings
- Training
- Membership
- Independence

The Scottish Committee asks that the Scottish Government and those responsible for legislating and operating this tribunal system consider carefully the recommendations contained in this Report.

## **The Scottish Committee of the Administrative Justice and Tribunals Council**

### **At the time of compiling this Report the Membership of the SCAJTC was**

Members        Alistair MacLeary, Chairman  
                  Elizabeth Cameron  
                  Richard Henderson  
                  Michael Menlowe  
                  Eileen MacDonald  
                  Michael Scanlan  
                  Jim Martin (*ex-officio* member of the Committee  
                  as Scottish Public Services Ombudsman)  
                  Ann Abraham (*ex-officio* member of the Committee as  
                  Parliamentary Commissioner for Administration)

Secretary        Debbie Davidson  
                  Scottish Committee of the Council on Tribunals  
                  George House  
                  126 George Street  
                  Edinburgh  
                  EH2 4HH  
  
                  Telephone 0131 271 4302  
                  Facsimilie 0131 271 4309  
                  E-mail [Debbie.Davidson@ajtc.gsi.gov.uk](mailto:Debbie.Davidson@ajtc.gsi.gov.uk)

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## **Part 1**

### **The Purpose of this Report**

The Scottish Committee has expressed concern publicly about the way in which aspects of the Valuation Appeal Committee system operating in Scotland has operated over the years. Whilst the Committee acknowledges that valuation appeal committees conduct their deliberations with care and consideration, we expressed concern in our Annual Report 2007/2008 that there were certain unsatisfactory elements in relation to this system, in particular, the selection of members, lack of formal training, and the venue for hearings.

### **Independence and Integrity**

The Administrative Justice and Tribunals Council's predecessor, namely The Council on Tribunals, published a Statement of General Principles<sup>1</sup> of the fundamental purpose of tribunals and concluded that the principal hallmark of any appeal tribunal was that it must be independent and equally important, it must be perceived as such. The preconditions of achieving these aims are:-

- (i) proper rules of procedure;
- (ii) high quality appointment of chairmen and members;
- (iii) proper training for chairmen and members;
- (iv) appropriate standards of judicial performance, with guidance and support for chairmen and members, (including the means for monitoring performance, particularly of newly appointed chairmen and members);
- (v) the freedom to take judicial decisions uninfluenced by resource or other external considerations;
- (vi) proper administrative support in terms of hearing clerks and support staff, legal and other text books;
- (vii) adequate and appropriate accommodation in premises which are not connected with one or other of the parties; and
- (viii) sufficient resources properly allocated to meet those needs.

## **Part 2**

### **Valuation Appeal Panels and Committees in Scotland**

#### **What are Valuation Appeal Panels and Valuation Appeal Committees?**

The Local Government etc (Scotland) Act 1994, Section 29 provides the foundation for the establishment of the valuation appeal panel and valuation appeal committee system in Scotland. Every valuation area has a statutory duty to establish a valuation appeal panel and valuation appeal committee.

Under Section 29 of the 1994 Act, valuation appeal panels and valuation appeal committees are constituted in each valuation area for the purpose of hearing and determining appeals and complaints under (i) Valuation Acts, and (ii) council tax appeals (section 81(1) and 87(6) of the Local Government Finance Act 1992).

The Valuation Appeal Panel and Committee (Scotland) Regulations 1996 provide for thirteen valuation appeal panels to be constituted in each valuation area for the purpose of hearing and determining appeals and complaints under (i) Valuation Acts, and (ii) council tax appeals (section 81(1) and 87(6) of the Local Government Finance Act 1992). Some valuation appeal panels serve a single local government area and others for which joint boards are established under Valuation Joint Boards (Scotland) Order 1995.

#### **Constitution and Membership of a Valuation Appeal Panels**

The Valuation Appeal Panel and Committee (Scotland) Regulations 1996 provide that members are appointed by the appropriate Sheriff Principal, who also determines such number of panel members as he considers appropriate, provided that each panel has at least twelve members. Members are appointed for a term not exceeding five years and are eligible for re-appointment. The Sheriff Principal also appoints from the panel members a chairman and such number of deputy chairman he considers necessary. The Local Government etc (Scotland) Act 1994 also provides that members must reside in or be engaged in business or be employed in the valuation area for which the panel is responsible.

The secretary of the panel is also appointed by the Sheriff Principal, and if he considers it necessary, he can also appoint an assistant secretary or assistant secretaries. Remuneration and allowances are paid to the secretary and any assistant secretaries by the appropriate local authority.

If the Sheriff Principal is of the opinion that there is good reason for doing so, he may at any time, with the consent of the Lord President of the Court of Session, terminate the appointment of a panel member, including chairman or deputy chairman, or secretary or assistant secretary.

Members of the panel are entitled to receive payment of allowances for their duties as a member of the valuation appeal panel.

### **Constitution and Membership of a Valuation Appeal Committees**

The Valuation Appeal Panel and Committee (Scotland) Regulations 1996 provide that the chairman of each valuation appeal panel appoints panel members to be members of each valuation appeal committee, although the chairman can delegate this function to a deputy chairman. Each valuation committee must consist of a chairman and not less than three, nor more than six other members.

The valuation appeal committee must sit within the area served by the panel from which members of the committee are drawn. The chairman is obliged to consult with the appropriate authorities and to take account of the convenience of the panel members and parties who are to appear before the committee in arranging the time and place where the committee will sit.

Members of the valuation appeal committee are entitled to receive payment of allowances for their duties as a member.

The Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Regulations 1995 set out in detail the procedures which valuation appeal panels must operate under.

### **Funding of Valuation Appeal Panels and Valuation Appeal Committees**

Funding of valuation appeal panels and valuation appeal committees is provided by the local authority or joint board in whose jurisdiction the panel and committee sit. The 1996 Regulations provide that it is the responsibility of the local authority in whose jurisdiction the valuation appeal panel and valuation appeal committee sit to provide the necessary accommodation and services to allow the panel and committee to exercise their functions. However, it is important to establish that each valuation appeal panel and valuation appeal committee is an independent body from the local authority.

## **Part 3**

### **The Scottish Committee's Views**

#### **Our Procedure**

Through our visits programme, we have attended several valuation committees taking place in many of the valuation areas over the past four years. The evidence of the underlying trends in each of our visits is so clear that we believe that we are able to draw significant conclusions.

#### **Venues**

It is a basic requirement that in order for an individual to receive a fair, impartial and independent hearing, the venue for the hearing itself has to be located in a neutral setting. The then Scottish Executive issued a guide in 1997 "Good Practice in the Treatment of Unrepresented Appellants" which clearly stated "*Ideally, the hearing should not be held in council offices as this may give the impression that the Committee is in some way associated with the Council. As a minimum, it is essential that hearings should not take place in offices occupied by the Assessor.*"

Some valuation appeal committees have taken definite steps to ensure that hearings are held within venues separate from the local authority. However, our experiences have shown that this is not always the case, and varies from one valuation area to another. In one valuation area, one valuation appeal committee persists in holding hearings within the offices of the Assessor, which is clearly highly unsatisfactory. Other valuation committees are held within local authority premises where the Assessor is also housed, albeit not within his actual department. This practice compromises the perceived independence and fairness of valuation appeal committees. Since the premises for the hearing are so closely linked to the local authority, an objective bystander might easily arrive at the conclusion that the hearing will favour the local authority – the body the appellant is in dispute with. If a hearing is to be perceived as independent and impartial from the outset, it is important that a neutral venue be chosen, and one which is separate from the local authority. We would therefore urge valuation appeal panels and valuation appeal committees to consider this issue and organise hearings in a venue which can be perceived to be completely neutral and show no favour to either side.

## Training

The issue of training is one which has concerned us for some time, and has merited comment within our recent Annual Reports. We would impress that this is not an issue unique to valuation appeal committees: indeed, it is a common thread which runs through some other Scottish tribunal systems. By training, we mean, for example, basic skills training in communication (including dealing with appellants whose mother tongue may not be English), evidence, what constitutes impartiality and the impact of the European Convention of Human Rights.

In recent years, the Committee has witnessed an improvement with regards to training, with induction programmes being introduced by several valuation committees, and attempts being made to host training events. However, our experience shows that the approach to training is fragmented and varies from valuation area to valuation area. Furthermore, even in valuation areas where efforts are made to provide training, there is room for improvement, in particular, the need to raise the profile of training to ensure that it covers all aspects of members' experience and occurs on a regular basis. We therefore suggest that specific training programmes should be available for chairmen, members and clerks: each role has a number of individual requirements and the training they receive must take account of this, and these training programmes be updated and held on a regular basis. Our view is supported by some members who have stated in the course of our visits that they would welcome more training.

The issue of training cannot be separated from funding (or lack of it). In practice, the chair and secretary bear the onus of organising training, with limited resources. Funding for valuation committees is via the local authority. Although The Valuation Appeal Panels and Committees (Scotland) Regulations 1996 provide that the local authority shall reimburse the valuation appeal committee for expenses incurred, no specific provision is made within the legislation for a training budget to be provided. Financial constraints therefore make the development of any formal and regular training programme, including induction for new members, difficult. Valuation appeal committees who have therefore attempted to provide training are to be commended for their efforts, especially in light of the problem of funding. We find it totally unacceptable that each valuation appeal committee is left to organise training with such limited resources.

Given the fragmented approach to training from valuation area to valuation area, and lack of proper funding, we consider it necessary to consider the need for a central management initiative to provide a basis for uniformity and consistency in training. An appellant in Aberdeen should receive exactly the same standard of hearing as an appellant in Dumfries. Provision of proper funding and a central management initiative would enable the issue of training

to be elevated to that required of modern day tribunals. However, a central management initiative cannot be recommended in isolation of the potential options for reform of the whole tribunal system in Scotland raised by the Philip Report<sup>2</sup>, of which valuation appeal committees form part. Whilst we consider it is beyond the scope of the present report to discuss these options, we do recommend that the Scottish Government consider the need to consider reform of valuation appeal committees, including addressing the issue of training.

## **Membership**

It is left to the discretion of the chairman to decide who should be appointed as members of a valuation appeal committee. Members are entitled to an allowance paid for by the local authority in whose area the valuation appeal committee sits. In our experience, the process of recruiting new members varies from valuation area to valuation area. Some areas use public advertisements: others do not. Some areas contact professional bodies to ascertain if there is interest in becoming a member. However, from discussions with members of valuation appeal committees, it would appear that the most successful recruitment process to date has been personal contact by the chairman or secretary with individuals. From discussions with members of valuation appeal committees, it would appear that part of the reason for direct contact by panel members with individuals relates to recent difficulties in recruiting members. Historically, recruitment of new members was relatively easy, but there appears to be a decline in interest in recent years. Our concerns in respect of recruitment of members are as follows.

Firstly, we consider that any modern day tribunal must have an independent recruitment process, otherwise the very independence of that tribunal system is compromised. Sir Andrew Leggatt<sup>3</sup>, in his wide ranging report of the UK tribunal system published in March 2001, recommended that there should be a more independent and coherent system with an increased focus on the needs of tribunal users. In achieving independence, it was therefore imperative that there was separation between those responsible for tribunals policy and/or their administration and those whose policies and decisions were considered by those tribunals. The Philip Report<sup>2</sup> which explores the possible options for the future administration and supervision of the complex system of tribunals operating in Scotland endorses this, stating that *“Where tribunals are paid for by sponsoring departments, chairs and members cannot be seen to be wholly independent, however impartial they might be.”*

We have concerns in respect of the actual recruitment process itself. A modern day tribunal should have at its very core an open and transparent recruitment process.

Indeed, the Code of Practice for Ministerial Appointment to Public Bodies in Scotland provides the general principle of openness and transparency in the recruitment process, namely that the practices employed at every stage in an appointment round must be transparent. Whilst we accept that most members of valuation appeal committees are more than qualified to be recruited as members in terms of their skills set and experience, we do not consider that personal contact by a chairman or other member directly to individuals is appropriate in the modern era of tribunals, and lacks the very openness and transparency required. We therefore recommend that consideration is given to establish a recruitment process which is open and transparent, and in particular having regard to the aforesaid Code of Practice.

Furthermore, by receiving payment from the relevant local authority, members of the valuation appeal committee are compromised in terms of their independence, regardless of how impartial they are, or how scrupulous the local authority is.

Our experience also shows that the composition of valuation appeal panels tends to be middle aged men, mainly from the local business community. Whilst we appreciate that it is imperative that members have the requisite skills and experience to sit on the committee, we have concerns that valuation appeal committees fail to reflect the diversity of today's society.

Finally, whilst the 1996 Regulations do provide for payment of an allowance to members, the practice adopted by members is to undertake duties voluntarily, and claim the allocated allowance in the form of travelling expenses only. This may go some way to explaining some of the difficulties in recruiting new members of valuation appeal committees. The inconsistencies between terms and conditions of tribunal members is commented on in the Philip Report<sup>2</sup>, and the recommendation made to ensure consistency of terms and conditions across tribunals. We therefore recommend that consideration be given to the provision of remuneration to members to reflect the average rate of remuneration provided to members of other tribunals.

## Independence

In light of the Philip Report, it would be impossible not to comment upon the issue of independence in relation to the relationship between valuation appeal committees and its “sponsoring” local authority. The issue of independence is one which concerns us greatly. The Phillip Report<sup>2</sup> states that *“there is evidence of a lack of independence in the operation of some existing tribunals. Systems of redress for the citizen should be independent of the machinery of government...Scotland may therefore be seen to have a system of administrative justice which is at risk of applying lower standards and appearing less coherent in respect of devolved matters than Great Britain as a whole.”* We consider that the relationship created by statute forcing valuation appeal committees to depend on local authorities for accommodation and services lends itself to valuation appeal committees not being sufficiently independent of the “machinery of government.”

Whilst we do not consider it appropriate in the present report to discuss the options raised in the context of the Philip Report in relation to this tribunal system, we do recommend that the Scottish Government consider review of this tribunal system, including the relationship between valuation appeal committees and local authorities.

## **Part 4**

### **Summary of Recommendations**

#### **The Scottish Committee recommends that:-**

- valuation appeal committees use a venue which is independent of the local authority.
- as a minimum, consideration be given to the allocation of a funding budget solely for the purpose of training.
- valuation appeal committees utilise a recruitment process which is open and transparent
- that membership of valuation appeal committees reflects the diversity of today's society.
- the Scottish Government give consideration to the issue of remuneration in relation to this and other unremunerated tribunals.
- the Scottish Government reviews the tribunal system of which valuation appeal committees form part, including the appointment of chairmen and members, provision of training and the relationship between valuation appeal committees and local authorities.

## APPENDIX

### The Scottish Committee

The Administrative Justice and Tribunals Council and its Scottish Committee are independent advisory bodies, originally established in 1958 following the publication of the Franks Report on Administrative Tribunals and Enquiries and now operating under the Tribunals, Courts and Enforcement Act 2007.

The principle functions<sup>5</sup> of the Council and its Scottish Committee with respect to tribunals are inter alia:

- (a) to keep under review and report on, the constitution and working:
  - (i) of listed tribunals in general, and
  - (ii) of each listed tribunal,
- (b) consider and report on, any other matter that relates to listed tribunals in general or to a particular listed tribunal, and that the Council determines to be of special importance, and
- (c) consider, and report on, any particular matter referred to the Council:
  - (i) that relates to tribunals in general or to any particular tribunal, and
  - (ii) whose referral to the Council falls within paragraph 16.

## **BIBLIOGRAPHY**

1. Statement of General Principles issued by the Council on Tribunals November 2002 and updated February 2006
2. Options for the Future Administration and Supervision of Tribunals in Scotland: A report by the administrative justice steering group
3. Tribunals for Users: One System, One Service 2001
4. Tribunals, Courts and Enforcement Act 2007 Schedule 7 Part 2