

# Scottish Committee of the Administrative Justice & Tribunals Council

ANNUAL REPORT 2008/2009





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The Tribunals, Courts and Enforcement Act 2007

June 2009

## Our Members



**Alistair MacLeary (Chairman):** Honorary Professor, University of Heriot-Watt and formerly MacRobert Professor of Land Economy at the University of Aberdeen. A member of the Lands Tribunal for Scotland (1989-2005). Chairman of the Committee and member of the Council since September 2005.



**Lyndy Boyd:** Solicitor, formerly a Children's Reporter, Welfare Rights Officer, solicitor with Aberdeen City Council and Professional Adviser (Legal) for the Care Commission. Former Associate lecturer, Monitor and Consultant with the Open University. Legal member of the Parole Board for Scotland since 2005. Member of the Committee from 2004 until 30 November 2008.



**Elizabeth Cameron:** Formerly worked for the Citizens Advice Bureau, latterly in Edinburgh Sheriff Court as manager of the In-Court Advice Services and co-ordinator of the Mediation Service. Member of the Scottish Mediation Network. Lay member of the Scottish Solicitors Discipline Tribunal. Member of the Committee and the Council since 2002.



**Eileen C MacDonald:** Solicitor who has worked both within the private sector, latterly as an associate partner, within the public sector as a procurator fiscal depute and as a senior solicitor at the Scottish Environment Protection Agency. Director of the Vine Trust from 2003 until 2007. Currently an associate lecturer with the Open University. Member of the Committee since 2007.



**Stephen Mannion QPM:** Former Assistant Chief Constable with Strathclyde Police and former Scottish Area Commander of the British Transport Police. Lay member of the Employment Tribunal Service until 2001. Lead signatory/collator in matters of child protection for a national voluntary organisation. Member of the Committee and the Council from 2001 until 9 August 2008.



**Audrey Watson:** Solicitor with West Lothian Council, responsible for licensing and for the training of JPs. Depute Clerk of Court and of the Peace. Former project co-ordinator for the District Courts Association. Consultant providing training in relation to the practice and procedure of District Courts. Legal Assessor and former panel member for the Health Professions Council. Depute Clerk to the Scottish Solicitors Discipline Tribunal. Member of the Committee from 2001 until 9 August 2008.



**Michael Menlowe:** A philosopher who was Head of the School of Philosophy, Psychology and Language Science in the University of Edinburgh until his retirement. An Associate of the General Medical Council (GMC) where he chairs Fitness to Practice panels. A board member of the Scottish Refugee Council since 2006, a member of the Home Office's DNA Database Ethics Group and a lay member of the Royal College of Pathologists. Member of the Committee since 2007.



**Richard Henderson:** Until 2007 was the Solicitor to the Scottish Executive. President of the Law Society of Scotland until 31 May 2009. Board member of Signet Accreditation. Member of the Committee since January 2009.



**Michael Scanlan:** A practising solicitor who is currently Vice President of the Scottish Law Agents Society. Previously has held a number of public appointments, including President of the Law Society of Scotland and a member of the Judicial Appointments Board for Scotland. Member of the Committee since January 2009.



**Ann Abraham:** Parliamentary Commissioner for Administration. *Ex-officio* member of the Committee and the Council since 2002.



**Alice Brown:** Scottish Public Services Ombudsman until 31<sup>st</sup> March 2009. *Ex-officio* member of the Committee from 2004.

Please note that the period of membership shown includes time spent as a member of the Council on Tribunals or its Scottish Committee.

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# Foreword

In this document the Scottish Committee reports on its first full year of operation under the terms of the Tribunals, Courts and Enforcement Act 2007. The Committee had been anticipating for some time the demands that its new terms of reference would place on its activities, and it has been active in promoting and contributing to analyses of the landscape of administrative justice in Scotland and of the impact of the inauguration of the Tribunals Service on tribunals in devolved jurisdictions. These efforts have borne fruit in the completion of the reports of the Administrative Justice Steering Group *Administrative Justice in Scotland* and *Options for the Future Administration and Supervision of Tribunals in Scotland*. During the year we have monitored the inauguration of the functional parts of the Tribunals Service bringing with it the promise of better delivery of redress for citizens in reserved jurisdictions.

The Committee is now in a better position to evaluate problems within the total spectrum of administrative justice, and the pressing question of tribunal reform in Scotland against a more rigorous background. We have submitted a response to the Scottish Government which evaluates the options available for tribunal reform against accepted principles and modern standards. That advice should now form the basis of progress towards a strategy for reform of the tribunal system in Scotland.

This reporting year has seen a period of change within the membership of the Scottish Committee. We have sadly lost the expertise and experience of three long serving members, Steve Mannion, Audrey Watson and Lyndy Boyd, when their appointments ended in 2008. Alice Brown retired, as the Scottish Public Services Ombudsman *ex-officio* member in 2009 after a period of distinguished service. We are extremely grateful for all their contributions and efforts on behalf of the Scottish Committee.

It is with some pleasure and satisfaction that I submit this report in circumstances where the Committee is demonstrably providing leadership and a sense of direction in pursuit of modern administrative justice in Scotland.

**Alistair MacLeary, Chair**

## Our Remit

On 1 November 2007 key provisions of the Tribunals, Courts and Enforcement Act 2007 came into effect. The Act provides for the establishment of the Administrative Justice and Tribunals Council (AJTC), which replaces the Council on Tribunals. It also gives a significant broadening of the AJTC's remit as through it we are charged with keeping under review the administrative justice system as a whole, including ombudsmen, first-tier decision making, tribunals and their interaction with the courts.

The stated purpose of the AJTC is to help make administrative justice and tribunals increasingly accessible, effective and fair to users by:

- ensuring that the needs of users are always central
- playing a major role in the development of principles and good practice
- promoting understanding, learning and continuous improvement of tribunals
- providing advice to the Lord Chancellor, the Scottish Ministers, the Welsh Ministers and the Senior President of Tribunals

The Scottish Committee of the AJTC similarly replaces the Scottish Committee of the Council on Tribunals. With this change comes the Scottish Committee's assumption of the functions of the AJTC:

- to keep the overall administrative justice system in Scotland under review;
- to keep under review the constitution and working of those tribunals, under Scottish jurisdiction, which are designated as being under the AJTC's oversight;
- to keep under review the constitution and working of statutory inquiries relating to Scotland.

Our remit also empowers us to scrutinise and comment on legislation, existing and proposed, relating to all aspects of administrative justice in Scotland.

## BROADER AND DEVELOPING ISSUES

By its nature an annual report will and should ordinarily be a retrospective document reporting on and reviewing activity. In our report for 2007/08 we appended a work-plan for 2008/09 which again by and large set out intended activity against stated objectives. That work-plan covered a number of topics and strands of activity which continued throughout the past year but in some of which we have not been directly involved. Those areas will affect our perspective and our activities for year 2009/10 and beyond.

Under Objective 3 in last year's work-plan we noted that we anticipated involvement in the review of the Children's Hearings system in Scotland, the Gill Review of the Scottish civil court system and the Crerar Review of Regulation, Audit, Inspection and Complaint Handling.

In the event we have not been directly involved with those reviews beyond responding to consultation, and that is a matter of regret to us.

**Crerar Review** – We have noted that the Crerar Review was published in September 2007 and that the Scottish Government responded in January 2008 making a Parliamentary statement in June 2008<sup>1</sup> on the implementation of the Review. The Committee has noted the work over the past year and in particular the work of the Fit for Purpose Complaints System Action Group<sup>2</sup> and recommendations for standardised complaints handling across the public service. Complaints handling is an aspect of administrative justice.

The Committee is aware that restructuring in relation to Scottish Public Services Ombudsman and the post of Standards Commissioner are to an extent contingent on further work stemming originally from the Crerar Review. The Committee would hope to be involved in decisions in relation to such matters to the extent that they clearly touch on the issue of administrative justice.

**Gill Review** – In relation to the Gill Review the Committee responded on 25 March 2008 to the consultation paper and in particular drew attention to matters which might in future be dealt with by tribunals<sup>3</sup>. The Committee noted of course that the remit of the Gill review was confined to civil courts and in particular did not permit review of the civil justice system as such.

We also observed, but did not comment in its response on the observation at 1.16 of the Gill Review Consultation paper, that the Review considered that it would be most important for it to take account of current policy and any proposed changes that may have an impact on the work of the civil courts in certain areas. This included the field of administrative justice, including the roles of complaints procedures, ombudsmen, and administrative tribunals, and their respective relationships with the civil court system. The Committee however welcomes the recognition that there is a close relationship between civil courts issues and those relating to administrative justice.

The Committee welcomes progress on all the above areas. It continues to believe that a process possibly in the nature of a review of the civil justice system in Scotland to cover both civil courts and administrative justice issues is however still likely to be required. However the Gill, Philip and Crerar exercises are important contributions to the debate.

1 23 June – John Swinney

2 <http://www.scotland.gov.uk/Resource/Doc/923/0063564.doc>

3 The response along with other consultation responses is available on the Scottish Courts website

# Tribunal Reform

## THE TRIBUNALS SERVICE

At GB level the tribunal unification programme continued this year. On 3 November the Tribunals, Courts and Enforcement Act 2007 came into effect to provide a new judicial and legal framework, bringing together individual tribunals into a new, unified tribunals structure. The Act creates a new two-tier tribunal system: a First-tier Tribunal and an Upper Tribunal, both of which are split into Chambers. Each Chamber comprises similar jurisdictions or jurisdictions which bring together similar types of experts to hear appeals, operating under rules and procedures tailored to the needs of individual jurisdictions with an overriding objective and provisions for ADR and case management. The Social Entitlement Chamber, the Health, Education and Social Care Chamber and the War Pensions and Armed Forces Compensation Chamber were the first to be established.

At the same time the Upper Tribunal Administrative Appeals Chamber took over the work of the Social Security, Child Support and Pensions Appeal Commissioners. The Commissioners formerly handled appeals from tribunals that are now covered by the Social Entitlement Chamber, and the War Pensions and Armed Forces Compensation Chamber of the First-tier Tribunal. The Upper Tribunal also deals with appeals from the Health, Education and Social Care Chamber of the First-tier Tribunal.

The second phase of implementation began on the 1<sup>st</sup> April 2009 when a new Tax Chamber was added to the First-tier Tribunal replacing four tax tribunals, the General Commissioners of Income Tax, the VAT and Duties Tribunals, the Special Commissioners of Income Tax and the Section 704/706 Tribunal, with a right of appeal to the new Finance and Tax Chamber of the Upper Tribunal.

This is an ongoing process. More tribunals are scheduled to join the Tribunals Service in 2009/10 along with the addition of new Chambers.

As part of the Tribunals Service's Transforming Tribunals Programme the Administrative Support Centre Pathfinder in Birmingham was opened for business on 29 September 2008. At the same time processing work has been reallocated to other centres. Further changes are scheduled.

## A SCOTTISH TRIBUNALS SERVICE

In October 2008 the report of the Administrative Justice Steering Group chaired by Lord Philip *Options for the Future Administration of Tribunals in Scotland* was published. It highlighted concerns about the current system in Scotland including the lack of independence of many tribunals, of a consistent system of appointment of tribunal chairs and members and of a single body to oversee training. The report states that Scotland's tribunals "work in isolation. This can lead to narrowness of outlook and a duplication of effort, and almost certainly leads to a variation of standards and performance across the system."<sup>4</sup>

The Report proposed five possible future options:

- to retain the status quo;
- to put mechanisms in place to ensure better integration and co-operation between the Tribunals Service and wholly Scottish tribunals;
- to bring all Scottish tribunals within the remit of the existing Tribunals Service;
- to establish a new Scottish Tribunals Service to support all Scottish Tribunals; or
- to establish a new Scottish Tribunals Service to support both GB tribunals within Scotland and all Scottish Tribunals.

Cabinet Secretary for Justice Kenny MacAskill stated that three of the options, including the Government's preferred option of an integrated Tribunals Service for Scotland, would be evaluated further. Neither the status quo nor the option of a UK-wide service would be included in this further work.

On the 12<sup>th</sup> January 2009 we held a seminar to bring together a wide range of parties interested in tribunal reform to discuss the content and implications of the Philip Report. It was generally acknowledged that there was a need for reform. While there were reservations about adopting a model too closely based on the Tribunals Service it was agreed that it cost too much to run unconnected tribunals and that it was desirable to have standardised training and shared information technology. It was felt that a sense of direction should be generated and that incremental changes should be made over time.

Scottish Ministers requested the Committee to give its views on the merits of the options including their advantages and disadvantages, any obstacles in taking them forward and any other point we would like to make. Our response has been prepared and has been sent to Ministers.

4 Page 5, *Options for the Future Administration of Tribunals in Scotland*, Administrative Justice Steering Group, Oct 2008.

## Our Activities

### RECEPTION FOR THE LAUNCH OF OUR 2007/08 ANNUAL REPORT

On 9 October 2008 we held a reception to launch our first Annual Report since our new role and remit as a Committee of the AJTC came into effect.

We were delighted to be able to provide Lord Philip, Chair of the Administrative Justice Steering Group, with the opportunity to introduce the Group's report *Options for the Administration and Supervision of Tribunals in Scotland*. This was the starting point for a process of detailed thought and discussion about the future of tribunals in Scotland.

### PHILIP SEMINAR

In January 2009 we organised a seminar to provide an opportunity for as wide a range of stakeholders as possible to learn more about the possible future options for reform of the tribunal system in Scotland and to express their views on any particular advantages or problems arising out of their implementation. (see "A Scottish Tribunals Service", page 5 for details)

### WORKSHOP FOR EDUCATION APPEAL CLERKS

On 3 April 2009 we organised an event in Edinburgh, which was well attended by lawyers and clerks of Education Appeals Committees across Scotland. The aim of the workshop was to facilitate the sharing of experiences with other EAC clerks, to hear about procedures and fairness issues and to promote the establishment of meetings of EAC clerks on an ongoing basis.

Iain Nisbett of the Govan Law Centre presented two sessions on procedure and on fairness, while Sheila Sturgeon, an Education Appeal clerk with Oxfordshire County Council, who has been involved since 1999 with organising and running Education Appeals Support Initiative (EASI) groups, explained the benefits of such groups and offered advice in establishing them.

We look forward in the coming year to feedback from the participants as to their progress in setting up groups along the lines of the EASI model.

### TRAINING REGISTER

We continued to produce an update to our Training Register given that the lack of consistent provision of tribunal training has yet to be addressed. This has proved to be a useful resource and we are grateful for the co-operation of the tribunals in Scotland in supporting this exercise.

## Related Activities

### THE ADMINISTRATIVE JUSTICE STEERING GROUP

Over the past year the Committee has had the opportunity to be involved in the work of Administrative Justice Steering Group (AJSG) which was established in 2006 by the Scottish Public Services Ombudsman in conjunction with the Committee. The AJSG is fortunate to have as its Chair Lord Philip and to comprise within its membership representatives of key stakeholder organisations including Scottish Government. A list of the membership of the AJSG is attached at **Annex A**. The Committee considers that the Group has been able to provide valuable input into the debate on the future of administrative justice in Scotland.

A further element in the background to its deliberations has been the announcement in January 2008 by the First Minister that the Government was resolved to reduce the number of public sector organisations and, as part of that programme, to consider the need for reform of the system of tribunals in Scotland.

In September 2008 the AJSG produced its first report *Options for the Administration and Supervision of Tribunals in Scotland* that was presented to Ministers.

The AJSG will publish its second report *Administrative Justice in Scotland* in the summer of 2009. That Report is a comprehensive view of the landscape of administrative justice in Scotland seen in the context of recent changes and evaluated against accepted principles. This enables it to make recommendations for improvements in administrative justice in Scotland and includes further justification for radical reform of the tribunal system.

We are pleased to have been involved in instigating the AJSG, and believe that it has made an outstanding contribution towards the improvement of administrative justice in Scotland. We are proud to have been associated with its output.

### THE SCOTTISH TRIBUNALS FORUM

We gave details in last years Annual Report of our involvement in the Scottish Tribunals Forum. We have continued to find it invaluable to attend these meetings. The Forum has provided very helpful input into the preparation and subsequent enactment of the Tribunals, Courts and Enforcement Act 2007, including the arrangements for the Upper Tribunal dealing with Scottish cases. It continues to monitor the Act's implementation from a Scottish perspective.

It also received a presentation on the work of the AJSG and has debated the findings contained in the report *Options for the Administration and Supervision of Tribunals in Scotland*. In addition, following the Forum's encouragement to Scottish Government to undertake research into the need for training, and the consistency in application, across tribunals in Scotland it received and debated a research report prepared by Aberdeen University on behalf of Scottish Government.

We are appreciative of the work of the Scottish Tribunals Forum during this period of change and innovation and are glad to make a contribution to its deliberations.

## **THE STRATEGIC PROJECT BOARD FOR THE CHILDREN'S HEARING SYSTEM**

The Scottish Government established a Strategic Project Board, chaired by the Minister for Children and Early Years, to provide strategic guidance and advice on moving ahead with the reform of the Children's Hearing System and on supporting the implementation of the new roles and responsibilities of the key partners involved. A member of the Scottish Committee has been invited to join the Project Board which includes representatives from the Convention of Scottish Local Authorities (CoSLA), the Scottish Children's Reporter Administration (SCRA), a Children's Panel Chairs representative and other key stakeholders.

The first meeting was held in February 2009 and we look forward to participating in a new and, we are confident, productive undertaking.

## **MODERNISATION OF PLANNING APPEALS IN SCOTLAND**

Since the Planning etc (Scotland) Act 2006 we have been following closely the changes to the planning appeal system for which we have a statutory oversight as part of the administrative justice system.

Our Chairman attended the Planning Summits held in Edinburgh in October 2008 and April 2009. He has also attended workshops where the secondary legislation necessary to implement the new planning system has been debated. The Committee have responded to consultation on the matter and we have had meetings with Scottish Government officials. We have consistently expressed our concern that the principles of natural justice should be paramount in establishing Local Review Bodies (for more details see "Modernising Planning" page 18).

## RESEARCH ACTIVITIES

In Autumn 2008 a member of the SCAJTC met with two groups of Scottish academic researchers to share knowledge of the strategic picture of administrative justice in Scotland.

The groups we met with made a number of suggestions for future research both in Scotland and in different UK jurisdictions, which were passed to the AJTC Research Committee for further consideration.

We regret that the Scottish Committee do not have the funding to commission research directly but encourage and support the Scottish Government's research into administrative justice.

## Visits and Events Attended during 2008/2009

During the reporting year the Committee continued its programme of visiting tribunals and maintaining links with tribunal users, stakeholders and initial decision makers. We are firmly of the view that it is most important that we have first hand experience of the operation of tribunals through our visits programme.

From 1 April 2008 to 31 March 2009 members attended 17 hearings, 7 tribunal training sessions and 5 meetings involving tribunal user groups. Members also attended 15 seminars or conferences focusing on administrative justice in Scotland. We also held meetings with tribunal stakeholders and government officials. A complete breakdown of our visits and meetings can be found at **Annex B**.

### TRIBUNAL VISITS AND EVENTS

**Annex C** contains a detailed list of all tribunals with jurisdiction in Scotland.

We visited one hearing of the **Additional Support Needs Tribunals for Scotland (ASNT)**. We have previously commented that as a relatively new Tribunal we found it to be well organised and meeting all of our standards. Upon this occasion the attending member observed that the Convener chaired in a most effective manner explaining the process clearly and as informally as was appropriate. All members participated fully and effectively. This is a Tribunal that displays good practice in action and all of our standards were fully met.

We attended a meeting of the **Asylum and Immigration Tribunal User Group** which discussed various topics including bail applications using video links, recovery of documentation from overseas and the new administrative centre which is now open. The Senior Immigration Judge chaired the meeting and many delegates attended. There was a general acceptance that the use of technology in bail applications is working well. Statistics disclose that there has been improvement in the recovery of overseas paperwork.

We attended one **Children's Hearing**. We have previously commented on how impressed we are at the manner in which these hearings are conducted. This visit proved to be no exception. The hearing was well chaired with all members contributing equally to the decision making process and delivering their decisions in a reasoned, relaxed and confident manner. We have previously highlighted the inadequacy of certain premises. On this occasion the premises were of a high standard, purpose built and fully accessible.

We attended one meeting of the **Criminal Injuries Compensation Appeals Panel (CICAP)**. We have previously commented on our satisfaction at the way that this Panel deals with matters before it. This was no exception. All of our standards were met in full without qualification. The attending member considered that this was a well-

prepared and skilled Panel. The hearing was held in the north east of Scotland and one of the appellants had to travel some distance. Suitable arrangements were made to accommodate this by arranging the start time to suit the appellant.

Our Chairman visited a hearing of the **Crofters' Commission** in Skye. The process adopted by the Commission is somewhat unusual in that hearings are conducted by the Area Commissioner to establish the facts. This is done in an informal and inquisitorial way with a view to ensuring that all relevant facts are disclosed and all issues aired. The Commissioner then reports his findings to the full Committee of Commissioners, who make the final decision. On this occasion, our Chairman was impressed particularly in that the system is responsive to the local crofting community, some of whom attended, and the hearing was effectively and sensitively chaired by an experienced Commissioner.

Two **Education Appeal Committee (EAC)** hearings were visited at venues in the east of Scotland. Both hearings demonstrated a perceived lack of independence in the organisation of the events. Appeals are lodged with the Education Department whose decision is being appealed against and, in both the hearings visited, local Councillors were appointed as members of the Panel, while legal advice provided to members was from employees of the local authority. At one hearing although the premises were separate from the Education Department they were still local authority premises. We continue to be greatly concerned at this lack, or perceived lack, of independence. Subject to these reservations the hearings met our other standards.

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We are pleased to report that there continues to be progress in relation to training and many local authorities now provide training for panel members of Education Appeal Committees. We visited in the course of the year two training seminars. At one of the seminars, it was interesting to observe that the local Councillors present were prepared to question how independent the processes could be, when they themselves formed the majority of membership. There was also awareness that the premises used for the conduct of hearings were not always ideal, particularly again from the perspective of independence.

It is however disappointing that there is no requirement that Committee Members undertake mandatory training and there is no system of centralised training which would provide the necessary practical skills.

The Committee produced a Special Report on the operation of Education Appeal Committees some years ago. We continue to be

concerned that the current system does not meet the standards of fairness and impartiality, which are essential in any judicial process and are disappointed that there has been no direct response from Scottish Government to our concerns. We continue to be firmly of the view that defects in the system that we have identified over many years cannot be remedied without legislative change.

The Committee recommended last year that Scottish Government should consider transferring responsibility for Education Appeal Committee work from local government to an independent tribunal and that remains our view.

A member visited the **Employment Tribunal**. Several of the cases were “fast tracked” cases heard by a Judge sitting alone. The member found that the hearings were conducted with an appropriate degree of formality. The issues were clearly identified with focused discussion on legal points. The whole process was most efficient and the Judge was courteous to parties and representatives. All of our standards were met in full. Another member attended at an **Employment Tribunal User Group** meeting which dealt with the implications of legislative change which came into force during this year including changes to the claim forms, transitional provisions, additional powers and the effects of these changes on ACAS.

We visited two hearings of the **Mental Health Tribunal for Scotland (MHTS)**. We are conscious of the complex issues arising at this Tribunal. We found on one visit that all standards were met in full except for the lack of separate waiting rooms for the parties, which is unfortunate. The hearing however was efficiently conducted at a community venue rather than requiring the patient to return to a hospital. The Panel displayed considerable competence and sensitivity in their handling of the case before them.

At the second hearing that we attended we again found that it was well conducted focusing on the patient at all times and striking the appropriate balance between formality and informality. On this occasion, standards were met but not in full. Particularly the waiting room facilities resulted in a lack of privacy in respect of conversations within the consultation room.

Our Chairman also attended a consultation event to review the Mental Health (Care & Treatment) (Scotland) Act 2003. This was one of a series of events held by an independent group set up by the Scottish Government. Many delegates attended and identified issues that should be addressed. In particular we believe that greater flexibility within MHTS is required to secure efficient and effective case management and procedures. We will of course consider any proposed changes in procedural rules.

A member visited a hearing of the **NHS Discipline Committee** dealing with various breaches by a dentist under the National Health Service (General Dental Services) (Scotland) Regulations 1996. The breaches were admitted and the hearing focused on submissions. Again all of our standards were met in full. We are pleased to note that more formal training for Committee Members is now anticipated following the formation of a single Secretariat.

We attended a **National Health Service Tribunal** training seminar that was the first ever training event for this system, set up due to the initiative of the Chair. Delegates were happy with the level of training provided and considered that it addressed important issues. Presentations were of a high quality. Delegates welcomed the opportunity to meet and speak with other tribunal members and were of the view that this should be an annual event. We would support this view.

One of our members visited a training seminar for **Health Board Discipline Leads**. This was a major training event to ensure that administrators and decision makers clarify their understanding and interpretation of the new regulatory framework which we welcomed in last year's Annual Report. The event also gave Board Discipline Leads the opportunity to discuss among themselves questions they might have in relation to the disciplinary process. The event was very much appreciated by those attending, was well constructed and focused and was all in all a success. We also attended a training seminar for **NHS Discipline Committee Members** organised by the New Scottish Health Service Central Discipline Unit, which again was viewed as a success by all attending. The purpose of the seminar was to keep Discipline Committee Members up to date with legislation and imminent changes. Future Discipline Committee Members will not be allowed to serve on Committees until they have had appropriate training.

A member visited a hearing of the **NHS National Appeal Panel** dealing with an appeal against the approval of an application for a pharmacy. We found the Chair and Panel to be well experienced. They all worked well together. All of our standards were met to a high degree.

A member visited the **Pensions Appeal Tribunal for Scotland**. Our standards were met in full. We found that this was a Panel that worked well together. Although no parties were present, cases were dealt with in a thorough and methodical manner with due regard to the rules and relevant legislation. Members of this Tribunal benefit from regular training and appraisal.

Members visited two **Social Security and Child Support Appeal Tribunal (SSCSAT)** hearings in two locations. As we have said in previous years, the system is well organised, has the benefit of experienced panel membership, is properly resourced and meets all of our standards. We were impressed by the efficient way in which hearings were conducted and the courtesy shown to those appearing before the Tribunal.

Regular mandatory training is provided for tribunal members across a wide range of skills. One of our committee members attended a refresher training session which was well presented and relevant to the issues members might face. The session was well attended and course material was considered very useful.

A member attended a hearing of the **Social Security Commissioners** and was impressed by the handling of the hearing by the Commissioner and again all of our standards were met in full.

The Chairman and one of our members attended a meeting of the **Unified User Group for Scotland** organised by the Tribunals Service. Many issues were discussed, including performance statistics where there had been a drop in the number of receipts and disposals over the period January 07 to April 08. Waiting times however were well within targets. The new procedural rules and the arrangements for the commencement of the Tax Chamber were also discussed. A member also attended the User Workshop on **First-tier (Social Entitlement Chamber) Rules**, again organised by the Tribunals Service. The purpose of this event was to clarify the new Rules and assist consultees in responding to the consultation.

A member attended a hearing of the **Traffic Commissioners**. The hearing was well conducted by the Commissioner and all standards were met in full.

Two of our members met with the Royal Institute of Chartered Surveyors and had a broad ranging discussion about the **Valuation Appeal Committees**. The Institute raised various issues and we are considering these. Over a number of years we have gained an insight into the workings of the appeals system. In addition we have conducted further enquiries and a Special Report by the Committee will be published in the near future.

One member visited a **VAT & Duties Tribunal** dealing with an appeal against a discretionary decision to return a vehicle seized by Excise Officers. Again all standards were fully met without qualification.

## SEMINARS AND CONFERENCES

Our Chairman attended an **Administrative Justice Seminar** organised by the Scottish Government which was the first of what is to be a series of three with attendees comprising a mix of academics, practitioners and civil servants. Professor Simon Halliday, University of Strathclyde Law School presented a paper on *A Conceptual Analysis of Administrative Justice and Feedback Mechanisms*. This was followed by a talk delivered by Professor Tom Mullen, University of Glasgow Law School, on *The Impact of Ombudsmen (and other Redress Mechanisms) on First Instance Administrative Decision Making*. Professor Mike Adler, School of Science & Political Science University of Edinburgh, presented a paper *Can Tribunals Deliver Justice in the Absence of Representation?* After the presentations there was a broad ranging panel discussion.

A member attended a conference on **Human Rights** the purpose of which was to assist in an understanding of the remits of the Equality and Human Rights Commission (covering discrimination in relation to age, disability, gender, race, religion and belief and sexual orientation) and the Scottish Human Rights Commission. Morag Alexander the Scotland Commissioner of EHRC gave a presentation, as did Alan Miller on the Scottish Human Rights Commission, each explaining their respective functions and powers. It is the intention of SHRC to conduct a mapping exercise to measure the extent to which human rights are recognised in Scotland and thereafter to promote appropriate action.

We attended a conference on the **State of the Union** where the principal speakers were Baron Falconer of Thoroton and Professor James Mitchell of the Department of Government at Glasgow University. This event was attended by a diverse range of delegates including academics, civil servants, lawyers and politicians, and the aim of which was to assess and appraise the current state of the union particularly in light of the establishment of the Scottish Constitutional Commission. We have now appeared before the Commission to give evidence following the publication of the First Report of the Administrative Justice Steering Group. We will of course consider findings of the Scottish Constitutional Commission as and when they are released and any impact which they may have upon our Committee.

We attended the annual conference of the **Scottish Association of Law Centres** organised by Legal Services Agency Ltd. The theme of the conference was *The Future of Civil Justice, Legal Aid and Social Welfare Law Remedies*. The conference aimed to provide delegates with the opportunity to consider possible changes to the Civil Justice System and assist in formulating the responses to the Gill Review. The topics covered were wide ranging from the cost of resolving disputes to what can be learned from the reform of legal aid and the court system in England. We found this to be a timely and interesting conference. A significant number of speakers with expertise in their fields were able to present their views and this was of assistance in raising issues for further thought and discussion.

## OTHER EVENTS

Our members attended several meetings of the **Scottish Mediation Network Workplace & Employment Initiative Group** and the **Additional Support Needs Initiative Group**. These visits were valuable in providing an insight into developments in alternative dispute resolution in the Employment Tribunal and Additional Support Needs Tribunals for Scotland.

We were represented at the launch of a report by the **University of Glasgow** entitled *Challenging Asylum and Immigration Tribunal Decisions in Scotland*. The report was prepared jointly by the Universities of Glasgow and Stirling and funded by the Nuffield Foundation. The report focused on a narrow but important function of the Asylum and Immigration Tribunal namely Final Appeal Procedure set up as an alternative to Judicial Review. The report identified various concerns and concluded with several recommendations one of which is that when designing an onwards appeal system from a UK wide tribunal clear account should be taken of the distinctive Scottish system.

A member visited a training event organised by the **Justice Analytical Services Division** of the Scottish Government. This Division provides analytical information to policy colleagues in the Scottish Government. The aim of the event was to update delegates concerning areas of work being undertaken within the Justice Analytical Services programme for 2008.

## Our Consultations

We have been asked to consider a number of consultations throughout the reporting year details of which we itemise below. From the beginning of the 2009/10 reporting period we will be highlighting our responses to consultations by placing the relevant information on the AJTC website under the section on Scotland – consultations.

### **EDUCATION (ADDITIONAL SUPPORT FOR LEARNING) (SCOTLAND) ACT 2004 – AMENDMENT BILL 2008**

In May the Scottish Government issued a consultation seeking views on proposals to amend certain aspects of the Education (Additional Support for Learning) (Scotland) Act 2004. We were not included in the formal consultation process and as a result our comments were too late to be included among the published responses. However, we have been advised that these comments were carefully considered by the Scottish Government and have been further assured that we will be consulted on the secondary legislation surrounding the Bill later in 2009.

The Education (Additional Support for Learning) (Scotland) Bill 2008 was introduced to the Scottish Parliament on 6 October 2008, and *inter alia* clarified the powers of the ASNT in line with the original policy intention and practice experience. These changes

- permit parents of children with co-ordinated support plans, to make out of area placing requests and refer the decision to refuse such a request to the Tribunal;
- extend the circumstances in which parents and young persons can make references to the Tribunal consequent on certain local authority procedural failures; and
- provide the Tribunal with powers to review revoke or vary its decisions.

### **CHILDREN'S HEARINGS**

In January 2008, the Scottish Government announced its intention to modernise the Children's Hearing system, including the establishment of a new national body to bring together the different organisations that presently comprise the system. Subsequent to this announcement, the consultation document *Strengthening for the Future: A Consultation on the Reform of the Children's Hearing System* was published by the Scottish Government.

In our response, there were a number of areas which raised concerns, in particular the proposal for the creation of a single, national body to facilitate the functions of the Principal Reporter, the Children's Panel, Safeguarders and possibly legal representation of children appearing at hearings. In our response, we advised that we did not consider that the proposed separation of functions and responsibilities within a single

national body demonstrated and secured independence of the decision making functions, nor were we satisfied that this particular proposal was ECHR compliant. Instead, we proposed the creation of two separate Non Departmental Public Bodies, one in relation to the functions of Principal Reporter, Safeguarders, and legal representatives for children; the other in relation to the function of the Children's Panel. Each would have its own Board and Chief Executive. In our view, this would ensure complete independence of decision – making functions and be fully ECHR compliant.

We did, however, support the cessation of the Scottish Government being directly involved in the recruitment and appointment of panel members and welcomed instead the use of the Public Appointments process. We also supported the proposal to establish the post of President of the Children's Panel and the description of this role and responsibilities. The Committee fully endorse the proposals to provide for the withholding of information provided by the child, streamlining the establishment of the grounds for referral; procedural changes to the system itself and the right of access to reports by children by way of draft legislation.

With regard to the role of local government, we advised that we consider it important that local authorities retain a viable link with the system. However, we expressed concerns that issues of adequacy of resources require to be addressed in terms of local authorities giving effect to Panel decisions, and promoting the Children's Hearing system locally.

## **REVIEW OF FATAL ACCIDENT INQUIRY LEGISLATION LED BY LORD CULLEN**

Given our oversight of the administrative justice landscape in Scotland we considered it necessary to respond to the above consultation. With regard to whether these Inquiries should be moved from their current forum in the sheriff court and held within the forum of a specialist tribunal instead, we responded that our concern was that the overriding aim should be that the user be able to access the system easily, whether this was via a court or specialist tribunal. We also highlighted the need to ensure that the provision of legal aid is accessible to relatives.

We believe Lord Cullen intends to report later this year, making recommendations for possible amendments to primary and secondary legislation and other changes to ensure that Scotland has an effective, robust and proportionate system of public inquiry into deaths in the future.

## INTERPRETATION AND LEGISLATIVE REFORM

The consultation paper on the Interpretation and Legislative Reform (Scotland) Bill concerned matters closely associated with administrative justice. Our response was based on the general principles that statute law should be accessible and as readily understandable as possible to all users. We consider that there should be a focus on ensuring that statutory provisions should, as appropriate, carry the same meaning in different statutes, and that the interpretation of statutes should in general terms be as simple an exercise as possible.

## MODERNISING PLANNING

In our response to the Scottish Government's consultation paper relating to the modernisation of the planning system, we advised that whilst we were content with the majority of proposals, there were several we were concerned with, notably:

- the establishment of a Local Review procedure. This system of citizen redress for adverse or mistaken decisions by a public body goes against the grain of necessary reform for tribunals in Scotland where it is generally accepted that the principle of independence of the tribunal from the decision maker is essential, and where independent and impartial members who have been properly trained are required. Our experience with other appeal systems that are based on individual local authorities is that this absence allows inconsistent decision making across boundaries.
- no provision was made to place the training of panel members on a formal footing. Although we appreciate that the Scottish Government intends to issue guidelines, we do not consider that these are a substitute for the provision of training.
- no provision has been made for an automatic right to an oral hearing and that no statutory right of appeal exists, other than to the Court of Session.
- reasons for decisions should be attached to the conclusion when pronounced.

## Our Workplan

In his report *Tribunals for Users: One System, One Service* Sir Andrew Leggatt conceived a role for the then Council on Tribunals as the “hub of the wheel”. We are ambitious about fulfilling this role in Scotland in the field of administrative justice. Improved liaison with government officials, administrators, judiciary and users can only lead to a better understanding of administrative justice and improve our working relationships with those dealing with it in Scotland. In this period of change it is certainly an area that we will look to develop in the coming years.

Our workplan for the 2009/10 period, see **Annex D**, reflects our intention to engage proactively with the administrative justice landscape in Scotland.

# The Constitution and Functions of the Council and the Scottish Committee

The Administrative Justice and Tribunals Council (AJTC) and its Scottish and Welsh Committees were set up by the Tribunals, Courts and Enforcement Act 2007. A full list of members is shown at **Annex E**.

The AJTC consists of not more than 15 nor fewer than 10 appointed members. Of these, either two or three are appointed by the Scottish Ministers with the concurrence of the Lord Chancellor and the Welsh Ministers; and either one or two are appointed by the Welsh Ministers with the concurrence of the Lord Chancellor and the Scottish Ministers. The Lord Chancellor appoints the remainder with the concurrence of the Scottish Ministers and the Welsh Ministers.

The Lord Chancellor, after consultation with the Scottish Ministers and the Welsh Ministers, nominates one of the appointed members to be Chairman of the AJTC. The Parliamentary Commissioner for Administration (the Parliamentary Ombudsman) is a member of the AJTC by virtue of her office.

The Scottish Committee of the AJTC consists of the two or three members of the AJTC appointed by the Scottish Ministers (one being nominated by the Scottish Ministers as Chairman) and three or four other members, not being members of the AJTC, appointed by the Scottish Ministers. The Parliamentary Ombudsman and the Scottish Public Services Ombudsman are members of the Scottish Committee by virtue of their office.

The Welsh Committee of the AJTC consists of the one or two members of the AJTC appointed by the Welsh Ministers (one being nominated by the Welsh Ministers as Chairman) and two or three other members, not being members of the AJTC, appointed by the Welsh Ministers. The Parliamentary Ombudsman and the Public Services Ombudsman for Wales are members of the Welsh Committee by virtue of their office.

The principal functions of the AJTC as laid down in the Tribunals, Courts and Enforcement Act 2007 are to keep:

- a) the administrative justice system under review;
- b) under review and report on the constitution and working of listed tribunals; and
- c) under review and report on the constitution and working of statutory inquiries.

The AJTC's functions with respect to the administrative justice system include considering ways to make it accessible, fair and efficient, advising the Lord Chancellor, the Scottish Ministers, the Welsh Ministers and the Senior President of Tribunals on its development and referring to them proposals for change, and making proposals for research. The "administrative justice system" means the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including the procedures for making such

decisions, the law under which they are made, and the systems for resolving disputes and airing grievances in relation to them.

The AJTC's functions with respect to tribunals include considering and reporting on any matter relating to listed tribunals that the AJTC determines to be of special importance, considering and reporting on any particular matter relating to tribunals that is referred to the AJTC by the Lord Chancellor, the Scottish Ministers and the Welsh Ministers, and scrutinising and commenting on legislation, existing or proposed, relating to tribunals.

"Listed tribunals" are the First-tier Tribunal and Upper Tribunal established by the 2007 Act and tribunals listed by orders made by the Lord Chancellor, the Scottish Ministers and the Welsh Ministers. The AJTC must be consulted before procedural rules are made for any listed tribunal except the First-tier Tribunal and Upper Tribunal. The AJTC is represented on the Tribunal Procedure Committee that makes procedural rules for the First-tier Tribunal and Upper Tribunal.

The AJTC's functions with respect to statutory inquiries include considering and reporting on any matter relating to statutory inquiries that the AJTC determines to be of special importance, and considering and reporting on any particular matter relating to statutory inquiries that is referred to the AJTC by the Lord Chancellor, the Scottish Ministers and the Welsh Ministers.

"Statutory inquiry" means an inquiry or hearing held by or on behalf of a Minister of the Crown, the Scottish Ministers or the Welsh Ministers in pursuance of a statutory duty, or a discretionary inquiry or hearing held by or on behalf of those Ministers which has been designated by an order under the Tribunals and Inquiries Act 1992. The AJTC must be consulted on procedural rules made by the Lord Chancellor or the Scottish Ministers in connection with statutory inquiries.

Members of the AJTC and the Scottish and Welsh Committees have the right to attend (as observers) proceedings of a listed tribunal or a statutory inquiry, including hearings held in private and proceedings not taking the form of a hearing.

The AJTC has no authority to deal with matters within the legislative competence of the Northern Ireland Assembly.

The AJTC must formulate, in general terms, a programme of the work that it plans to undertake in carrying out its functions. It must keep the programme under review and revise it when appropriate. It must send a copy of the programme, and any significant revision to it, to the Lord Chancellor, the Scottish Ministers and the Welsh Ministers.

The AJTC must make an annual report to the Lord Chancellor, the Scottish Ministers and the Welsh Ministers, which the Lord Chancellor must lay before Parliament. The Scottish Committee must make an annual report to the Scottish Ministers, who must lay the report before the Scottish Parliament. The Welsh Committee must make an annual report to the Welsh Ministers, who must lay the report before the National Assembly for Wales.

# The Role of the Scottish Committee

## Oversight of Tribunals Sitting in Scotland

Each year members visit a wide variety of tribunals and public inquiries to see at first hand the operation of current procedures. Some tribunal systems hold infrequent hearings, others many hundreds a year and we aim to ensure each of the systems receives periodic visits to ensure we update the information already gathered. If there has been a change in the governing legislation we might increase the number of visits to see how the changes are affecting procedures. From time to time we also make extra visits to a chosen tribunal system in order to produce a more in-depth analysis. As reported earlier in this document our members attended ninety visits and meetings during the reporting period, the details of these are listed at **Annex B**.

Members of this Committee are not involved in the proceedings, or the decisions taken at hearings, nor the recommendations following inquiries. Our backgrounds cover a wide range of professions and experience but we are not expert in any one of the diverse subjects dealt with by tribunals. We are present only to observe the procedures. We take a close interest in the suitability of the premises; the working of the tribunal and its staffing; the conduct of the hearing; the panel membership and its training; and the quality of any guidance literature. Once proceedings are completed, we welcome the opportunity to discuss the operation of the tribunal with the members and clerk involved in the hearing. Our approach, which continues to be focused on the user's experience, is open and we discuss what we have observed – both the positives and the negatives – with the panel members after the hearing is over.

Our prime concern is to be satisfied that the hearing is seen to be conducted in an open, fair and completely impartial way. Our visiting member produces a report on each visit that we share with the relevant tribunal system or Government department. Any report or discussion is based on our Framework of Standards document. We again record our appreciation of the assistance and co-operation of the appeal systems we visit.

One of our statutory roles is to advise the Government and its departments on matters concerning the rules of procedure under which tribunals operate and to provide advice on proposals to change the jurisdiction, constitution or procedures of the tribunals we oversee.

We must stress that we are not a complaints body; we have no authority to investigate or adjudicate on complaints about the handling of individual cases by tribunals or inquiries under our oversight. Those who are unhappy about the handling of an individual case should seek advice either from the Citizens Advice Bureau, legal advice centre or solicitor. Such advice can often be obtained at a reduced fee or at no charge.

## THE COSTS OF THE SCOTTISH COMMITTEE

The Scottish Committee's funding is made available via the Administrative Justice and Tribunals Council and ultimately through the Ministry of Justice. Certain costs, in particular accommodation and IT, are funded centrally and do not feature in the account below. Other costs, principally staffing and travel and subsistence, are determined centrally but paid from the Administrative Justice and Tribunals Council and the Scottish Committee's budget respectively.

The breakdown of the expenditure for the financial years 2007-2008 and 2008-2009 is detailed below.

	<i>2007-2008</i>	<i>2008-2009</i>
Staff salaries *	68,306	<b>70,179</b>
Members' retainers **	39,884	<b>32,227</b>
Members' travel costs	6,139	<b>3,638</b>
Administrative costs including office supplies, postage etc	21,881	<b>23,624</b>
Total	136,210	<b>129,668</b>

\* Secretariat staff are permanent civil servants seconded from the Scottish Government. These costs include NI contributions and superannuation.

\*\* Excludes the salary of the chair and retainers for members of the Scottish Committee who also serve on the Council. These costs are shown in the Council's own report.

# Consulting with the Scottish Committee

## SUBJECT MATTER AND TIMING OF CONSULTATION

The White Paper *Transforming Public Services: Complaints, Redress and Tribunals* (2004) gave notice of the Government's intention to introduce a code of practice dealing with consultation with the AJTC. The present note provides interim guidance to departments on the obligation to consult the AJTC on proposals for certain subordinate legislation and suggests the desirability of consulting the AJTC on proposals for certain other primary and subordinate legislation. It also suggests the form and timing of such consultations. The note largely reflects advice given in the Code for Consultation with the then Council on Tribunals circulated in 2001.

Under **paragraph 24 of Schedule 7 to the 2007 Act** the power of a Minister of the Crown, the Welsh Ministers or the Scottish Ministers to make, approve, confirm or concur in procedural rules for certain listed tribunals is exercisable only after consultation with the AJTC or SCAJTC. Rules made after such consultation will usually state that consultation has taken place. The tribunals concerned are those listed by orders made by the Lord Chancellor, the Welsh Ministers and the Scottish Ministers. Further particulars are given below. Similarly, under **section 9 of the Tribunals and Inquiries Act 1992** the Lord Chancellor and the Scottish Ministers are under a statutory obligation to consult the AJTC or SCAJTC with regard to procedural rules for statutory inquiries. Where consultation is mandatory, it is necessary for instruments containing the proposed rules to be submitted to the AJTC or SCAJTC in draft form before they are made.

Before seeking the SCAJTC's advice on procedural rules we recommend those responsible for drafting them to consult and make use of, so far as may be appropriate, the Council on Tribunals' *Guide to Drafting Tribunal Rules* (November 2003) to be found at [www.council-on-tribunals.gov.uk/consultation/153.htm](http://www.council-on-tribunals.gov.uk/consultation/153.htm).

Under **paragraph 14(2) of Schedule 7 to the 2007 Act** the SCAJTC is empowered to scrutinise and comment on legislation, existing or proposed, relating to tribunals or to any particular tribunal. Consultation on proposals for primary legislation affecting listed tribunals or statutory inquiries, or on rules for statutory inquiries other than those referred to earlier, is not mandatory, but usually takes place and is welcomed by the SCAJTC. As is further explained below, the SCAJTC considers that such consultation is most effective and beneficial to departments if it takes place at an early stage in the formulation of proposals.

Under **paragraph 13 of Schedule 7 to the 2007 Act**, the SCAJTC has the function of keeping the administrative justice system under review in Scotland. Consultation on proposals for primary legislation affecting the rights of the citizen which may require consideration of whether, and in what form, new adjudicative procedures are necessary or desirable is therefore welcomed by the SCAJTC. As explained below, the SCAJTC recommends consultation on such proposals at an early stage in their formulation.

## TIME ALLOWED FOR CONSULTATION

The SCAJTC expects that departments consulting it will always allow it as much time as possible to prepare and submit its comments. This is particularly important when consultation is mandatory and the instrument will state that such consultation has taken place. The SCAJTC meets bimonthly and departments will therefore understand that, if considered advice on any important matter is required, certain minimum periods of consultation are necessary. We suggest that the following should be regarded as the optimum periods for consultation:

- where proposals are of a routine kind and do not raise major questions of principle a period of **5 weeks** is suggested;
- where proposals involve major issues of principle a period of **8 weeks** is suggested

Where, for unavoidable reasons, consultation has to be completed in a shorter time, the minimum periods that will enable the SCAJTC to give proper consideration to proposals may be taken to be three weeks and four weeks respectively. If these suggested minimum periods cannot be adhered to and an explanation is given to the SCAJTC, it will endeavour to complete the consultation process in such time as may be available. In cases of real emergency, the SCAJTC does not preclude other means of consultation through its Secretariat, but any advice so given is subject to the endorsement of the SCAJTC with such further comments as it may wish to make.

The SCAJTC is very conscious of the constraints imposed on departments by, for example, the Parliamentary timetable. If difficulty is foreseen about meeting the recommended minimum periods, the SCAJTC suggests that consultation need not be delayed until a full draft of the new legislation has been produced but in suitable cases may be initiated at an earlier stage, perhaps with regard to specific provisions. Indeed, particularly with regard to non-mandatory consultations, the SCAJTC suggests that the best time for consultation will often be when proposals have taken reasonably firm shape but before Ministers are committed; the SCAJTC may be able to suggest means of solving an adjudication problem which may not have occurred to the Department, e.g. by amending the powers of an existing tribunal to enable it to undertake the work rather than by creating a new tribunal.

## LISTED TRIBUNALS

As stated above, the requirement to consult the SCAJTC on tribunal procedure rules arises in respect of tribunals that are listed by orders made by the Lord Chancellor, the Welsh Ministers and the Scottish Ministers. The current orders are:

- The Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007: S.I.2007/2951
- The Administrative Justice and Tribunals Council (Listed Tribunals) (Wales) Order 2007: S.I.2007/2876 (W.250)
- The Administrative Justice and Tribunals Council (Listed Tribunals) (Scotland) Order 2007: S.S.I. 2007/436

The SCAJTC will be able to give a view in any case of doubt as to whether consultation is mandatory. The requirement to consult the SCAJTC does not arise in respect of rules for the First-tier and Upper Tribunals made by the Tribunal Procedure Committee (TPC) established under the 2007 Act. The AJTC is represented on the TPC, which is only concerned with rules for non-devolved tribunals within the Tribunals Service and under the leadership of the Senior President of Tribunals.

## PROCESS OF CONSULTATION

In submitting draft instruments to the SCAJTC in cases of mandatory consultation, a copy of the draft should be sent to the SCAJTC with an explanatory statement and any necessary covering letter. Where proposals for primary legislation are concerned, a letter will usually suffice, although material such as draft clauses or instructions to Parliamentary Counsel is particularly helpful.

The SCAJTC's comments will be submitted in writing. This may be supplemented, if necessary, by further correspondence or by oral discussion with members of the SCAJTC or its secretariat.

## REPORTING THE RESULTS OF CONSULTATION

The outcome of consultations between departments and the SCAJTC may be reported in the SCAJTC's Annual Report, but in every case the accuracy of such a report would be cleared with the departments concerned before publication. Where consultation has taken place on a confidential basis, that confidence will be respected.

Where the SCAJTC has, when consulted, expressed views on an important question of principle, and it is intended to inform the Scottish Parliament or the public that it has been consulted, the SCAJTC trusts that the general tenor of its advice will be stated at that time.

It will be seen from the above that the SCAJTC attaches great importance to the following points:

- To being consulted, with such consultation taking place at the appropriate time;
- The allowance of adequate time to formulate advice in each case;
- The provision of information and background necessary for full consideration of the issues
- The discussion with the SCAJTC of points of difference in appropriate cases; and
- The disclosure of the SCAJTC's views on important questions of principle.

## Statistics Relating to Tribunals Under the Oversight of the Scottish Committee

We regret that although we have already obtained figures from most of the tribunals in Scotland we have been unable to follow our usual practice of providing statistics relating to them in this report. This is as a result of the timing of our report this year, which is incompatible with changes in the Tribunal Service's new procedures for the gathering of statistics. Therefore, it is the AJTC's intention this year to compile a separate document which will contain statistics for tribunals in England, Wales and Scotland. However, the collation of these figures will take some considerable time and the document will not be made available until Autumn 2009 when it will be published on the AJTC website.

As we regard these figures to be of great importance for anyone working in this area in future years we intend to widen the scope of our statistics to reflect the holistic picture of administrative justice in Scotland.



## Annex A: Membership of the Administrative Justice Steering Group

Lord Philip	Chair
Alice Brown	Scottish Public Services Ombudsman (SPSO)
Michael Clancy	Law Society of Scotland
Colin Moynihan QC	Faculty of Advocates
Martyn Evans	Consumer Focus Scotland
Jane Irvine	Scottish Legal Services Ombudsman
Colin McKay	Constitution, Law and Courts Directorate, Scottish Government
Professor Alistair MacLeary	Scottish Committee of the Administrative Justice and Tribunals Council
Ewan Malcolm	Scottish Mediation Network
Lindsay Montgomery	Scottish Legal Aid Board
Professor Tom Mullen	University of Glasgow
Sarah O'Neill	Consumer Focus Scotland
Annabelle Ridley	Citizens Advice Scotland
David Robb	SPSO Director of Policy and Development
Alistair Sim	Scottish Court Service
Lachlan Stewart	Constitution, Law and Courts Directorate, Scottish Government

## Annex B: Visits/Business Undertaken 1 April 2008 to 31 March 2009

<b>Tribunals</b>		
ASNTS	1	Edinburgh
Children's Hearing	1	Hamilton
CICAP	1	Aberdeen
Crofters Commission	1	Skye
EAC	2	Livingston, Nairn
Employment Tribunal	1	Glasgow
MHTS	2	Aberdeen, Stirling
PATs	1	Edinburgh
NHS DC	1	Edinburgh
NHS NAP	1	Glenrothes
Scottish Parking Appeals Serv	1	Edinburgh
Social Security & CSA	1	Stirling
Social Security Commissioners	1	Edinburgh
VAC	1	Edinburgh
VAT & Duties Tribunal	1	Edinburgh
<b>Total</b>	<b>17</b>	

<b>Training Seminars</b>		
EAC	1	Glenrothes
Local Authority	1	Perth
NHSDC's	3	Edinburgh (2), Glasgow
NHS Tribunal	1	Edinburgh
Tribunal Service	1	Edinburgh
<b>Total</b>	<b>7</b>	

<b>User Groups</b>		
ASNTS	1	Perth
Asylum & Immigration	1	Glasgow
Employment Tribunal	1	Glasgow
Tribunal Service	2	Edinburgh (2)
<b>Total</b>	<b>5</b>	

<b>Stakeholder events/receptions</b>		
AIT decision reception	1	Glasgow
Children's Hearing steering g'p	1	Edinburgh
Consumer Council reception	1	Edinburgh
Scottish Legal Complaints	1	Edinburgh
SCAJTC Annual Report	1	Edinburgh
SPSO	1	Edinburgh
<b>Total</b>	<b>6</b>	

<b>Workshops</b>		
Tribunal Service	1	Glasgow
<b>Total</b>	<b>1</b>	

<b>Conference/Seminars</b>		
AJTC Awayday	1	Durham
BIOA	1	Edinburgh
Human Rights	1	Edinburgh
Judicial	2	Birmingham, Edinburgh
Mental Health Review	1	Edinburgh
Planning	3	Edinburgh (2), Livingston
PLE	1	Edinburgh
Research	2	Edinburgh
State of the Union	1	Glasgow
Tribunals Options seminar	1	Edinburgh
Tribunal Training	1	Edinburgh
<b>Total</b>	<b>15</b>	



## Annex C: Tribunals with Jurisdiction in Scotland

The following list contains the bodies we consider to have “tribunal” status in Scotland, whether or not the Scottish Committee oversees them on a statutory basis. In compiling the list we have adopted a wide concept of “tribunal” to include any process by which an individual may challenge a decision in a specialised forum as opposed to a court. While extensive the list is not exhaustive and should be the subject of further work.

- Additional Support Needs Tribunals for Scotland
- Asylum and Immigration Tribunal
- Asylum Support Tribunal
- Children’s Hearings
- Civil Aviation Authority
- Competition Appeal Tribunal
- Copyright Tribunal
- Criminal Injuries Compensation Appeals Panel
- Crofters Commission
- Education Appeal Committees
- Employment Tribunal for Scotland
- Financial Services and Markets Tribunal
- Forestry Committees
- Gender Recognition Panel
- General Dental Council
- General Medical Council
- General Teaching Council of Scotland
- The Commissioners Office (became part of the Upper Tier on 3<sup>rd</sup> November 2008)
- Health Professions Council
- Information Commissioner
- Information Tribunal

- Insolvency Practitioners Tribunal
- Lands Tribunal for Scotland
- Local Planning Review Bodies
- Mental Health Tribunal for Scotland
- Misuse of Drugs Tribunal for Scotland
- NHS Discipline Committees
- NHS National Appeal Panel for Entry to the Pharmaceutical Lists
- NHS Tribunal
- Nursing and Midwifery Council
- Panel of Agricultural Arbiters
- Parole Board for Scotland
- Patents, Designs, Trade Marks and Service Marks (Comptroller General)
- Pensions Appeal Tribunal for Scotland
- Police Appeal Tribunals
- Police Pensions Appeal Tribunal
- Private Rented Housing Panels
- Reserve Forces Appeal Tribunal
- Scottish Charities Appeal Panel
- Scottish Parking Appeals Service
- Scottish Solicitors Discipline Tribunal
- Social Security and Child Support Appeals
- Social Work Complaints Review Committees
- Special Commissioners of Income Tax (First Tier)
- Standards Commission
- Traffic Commissioners for Scotland
- Transport Tribunal
- Valuation Appeal Committees

# Annex D: Scottish Committee's Workplan for 2009/10

## OBJECTIVE 1

**The Scottish Committee of the AJTC will keep under review and influence the development of Administrative Justice and Tribunals in Scotland.**

The Scottish Committee will continue to develop the understanding of its role within the developing administrative justice framework in Scotland. That understanding will enable the Committee to continue to provide influential advice to the Scottish and UK Governments which will, in turn, improve the outcome for all tribunal users.

To this end, in 2009/10 the Scottish Committee will:

- continue to develop effective mutually beneficial relationships with Scottish Government officials, acting as the first port of call on issues relating to administrative justice in Scotland. In order to identify and prioritise key issues
- continue to build and maintain strong mutually beneficial relationships with Ombudsmen, and other relevant office holders, acting in Scotland, in order to clarify and strengthen their role in the administrative justice system
- promote better understanding of Administrative Justice in Scotland, and the role of the AJTC and its Scottish Committee, among the Scottish Government, public sector agencies, user groups and the media
- promote and encourage the use of proportionate dispute resolution among administrators and users
- identify priority areas of research in the administrative justice field which has particular relevance to Scotland
- actively contribute to the discussions surrounding the future of administrative justice in Scotland
- engage with, and keep under review, the reform agenda in Scotland including the First Minister's *Review of Tribunals*
- take a lead role in contributing to the work of the Administrative Justice Steering Group and support the publication of their report, *The Role of Administrative Justice in Scotland*

## OBJECTIVE 2

**The Scottish Committee of the AJTC will keep under review the work of the Tribunals Service, the tribunals within it and other tribunals as it effects Scotland.**

The Scottish Committee will maintain the lead role in overseeing the work of those tribunals operating in devolved and non-devolved areas in Scotland including those tribunals within the Tribunal Service.

To this end, in 2009/10 the Scottish Committee will:

### **Devolved and Non-devolved Tribunals**

- conduct visits to the hearings of both devolved and non-devolved tribunals, including those within the Tribunal Service
- provide feedback following the visits including information to be included in the periodic accounts to the Senior President of tribunals

### **The Tribunal Service**

- build and maintain strong mutually beneficial relationship with the Tribunals Service Judiciary and officials with responsibility for Scotland
- monitor the Tribunals Reform programme and identify issues of particular interest to users in Scotland

## OBJECTIVE 3

**The Scottish Committee of the AJTC will respond authoritatively to emerging issues and proposals that affect or involve administrative justice, tribunals and inquiries in Scotland.**

During 2009/10 the Scottish Committee will aspire to add value to Scottish consultations on Administrative Justice by providing authoritative and timely responses to consultation papers and other initiatives concerning Scotland. Of particular importance are the areas concerning the review of the Fatal Accident Inquiry Legislation, the Gill Review of the Scottish civil court system, the Education (Additional Support for Learning) (Scotland) Act 2004 – Amendment Bill 2008 and the Review of the SPCB Supported Bodies Committee.

The Committee will also continue to be instrumental in the ongoing discussions surrounding the review into the role of administrative justice as a whole within Scotland led by Lord Philip.

## Annex E: The Administrative Justice & Tribunals Council

The Tribunals, Courts and Enforcement Act 2007 set up the Administrative Justice and Tribunals Council and its Scottish and Welsh Committees. A full list of members for 2008/09 is shown below.

### THE COUNCIL 2008/09

The Rt Hon the Lord Newton of Braintree OBE, DL – Chair

Professor Alistair MacLeary – Chair of the Scottish Committee

Professor Sir Adrian Webb – Chair of the Welsh Committee

Ann Abraham *ex officio as Parliamentary Commissioner for Administration*

Elizabeth Cameron

Susan Davis

Penny Letts

Bronwyn McKenna

Stephen Mannion QPM

Bernard Quoroll

Professor Genevra Richardson CBE

Dr Jonathan Spencer CB

Dr Adrian Stokes OBE

Pat Thomas

Brian Thompson

## THE SCOTTISH COMMITTEE 2008/09

### ***Also members of The Council***

Professor Alistair MacLeary – Chair of the Scottish Committee

Elizabeth Cameron

Stephen Mannion QPM

### ***Other Members***

Eileen C MacDonald

Michael Menlowe

Audrey Watson

Lyndy Boyd

Professor Alice Brown *ex officio as Public Services Ombudsman for Scotland*

Ann Abraham *ex officio as Parliamentary Commissioner for Administration*

## THE WELSH COMMITTEE 2008/09

### ***Also a member of The Council***

Professor Sir Adrian Webb

### ***Other Members***

Bob Chapman

D. Gareth Lewis

Rhian Williams-Flew

Peter Tyndall *ex officio as Public Services Ombudsman for Wales*

Ann Abraham *ex officio as Parliamentary Commissioner for Administration*

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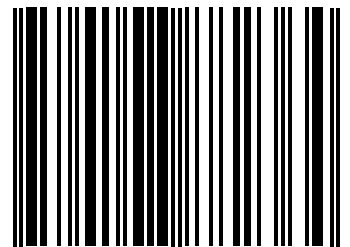
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