

Scottish Committee of the Administrative Justice & Tribunals Council

ANNUAL REPORT 2007/2008

Laid before the Scottish Parliament by Scottish Ministers
in accordance with paragraph 21 of Schedule 7 to
The Tribunals, Courts and Enforcement Act 2007

October 2008

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 since 2004.



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 specialising in civil litigation, and within the public sector as a procurator fiscal depute and as a senior solicitor at the Scottish Environment Protection Agency with responsibility for enforcement, including working with Crown office in the prosecution of environmental offences. Director of the Vine Trust from 2003 until 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 since 2001.



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 since 2001.



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.



Ann Abraham: UK Parliamentary Ombudsman and Health Service Ombudsman for England. *Ex-officio* member of the Committee and the Council since 2002.



Alice Brown: Scottish Public Services Ombudsman. *Ex-officio* member of the Committee since 2004.

This reporting year has seen a period of change within the membership of the Scottish Committee and its Secretariat. Both Douglas Graham and Mary Wood's appointments ended in 2007 and we are grateful to both for all their contributions and efforts over the past seven years.

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Foreword

The Scottish Committee of the Administrative Justice and Tribunals Council is proud to be submitting its first report under the terms of the Tribunals, Courts and Enforcement Act 2007 whereby we have taken on responsibility for keeping the whole of the administrative justice system in Scotland under review and providing advice on its improvement.

Our new role commenced in November 2007 and since then we have continued to keep under review and report on the constitution and working of tribunals in both reserved and devolved jurisdictions. We will continue to do so. We have been monitoring closely the introduction of the new Tribunals Service in Scotland, with the expectation that it will deliver an improved service to users, and have been actively involved in discussions with interested parties to ensure that the introduction of First and Upper Tier Tribunals will adequately reflect law and practice in Scotland while ensuring an equitable delivery of a United Kingdom wide service.

At the same time we have been considering the potential impact of the advent of the Tribunals Service on tribunals in devolved jurisdictions. To that end, together with the Scottish Public Service Ombudsman, we sponsored research into the landscape of the administrative justice system in Scotland. We have contributed to the first resulting report “Options for the Future Administration and Supervision of Tribunals in Scotland” which we expect to inform debate about the future of these important components of this system. We look forward to the publication of further work from this research, which will examine the role of administrative justice in Scotland as a whole.

In February we held a conference in Edinburgh that sought to determine the nature of administrative justice in Scotland and to identify where improvements might be made. We were very pleased at the quality of presentation and discussion. These deliberations together with the forthcoming research report should assist all of those concerned with administrative justice in Scotland in appreciating the characteristics of the system and in recognising its strengths and weaknesses.

As a consequence we expect there to be increasing collaboration among those involved in the delivery of administrative justice in Scotland. For our own part we have been continuing to build on our alliances with agencies such as the Scottish Public Services Ombudsman, the Tribunals Service, the Scottish Tribunals Forum and tribunal user groups.

Also we are actively engaged with the Scottish Government in identifying relevant issues of concern in the field of administrative justice seeking to ensure that the relationships between the courts, tribunals, ombudsmen and alternative dispute resolution providers satisfactorily reflect the needs of users. We will continue to encourage and to advise the Scottish Government in its attempts to streamline and improve the operation of tribunals in Scotland as announced recently by the First Minister, the Rt. Honourable Alex Salmond MSP.

Marjorie MacRae who was Secretary to the Scottish Committee for the last thirteen years retired in March 2008. We are indebted to Marjorie for her dedication, enthusiasm and professionalism, from which the Committee greatly benefited.

Alistair MacLeary, Chair

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Summary

The topics covered in this report include:

- The position after the enactment of the Tribunals, Courts and Enforcement Act 2007
- Tribunal Reform
- Our continuing involvement with stakeholder steering groups
- Observations from some of our routine visits to tribunal hearings
- Information concerning our responses to consultations
- Information regarding our involvement with current reviews

Our New Remit

On the 1st November 2007 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 replace 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, tribunals and their interaction with the courts.

The stated purpose of the AJTC through the Act 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 powers 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 administrative justice in Scotland. In addition we also fulfil a supervisory role in relation to all tribunals in Scotland.

Tribunal Reform

Within the wider administrative justice landscape the most significant event over the last year has been the implementation of reform, at UK level, of the tribunal system and this is of significance to the work of the Scottish Committee.

The new system introduces First-tier and Upper Tribunals. The First-tier Tribunal will be the first instance tribunal for most cases and will be divided into five proposed 'chambers' dealing with particular subject areas, such as social entitlement and health, education and social care. The Upper Tribunal is intended to rationalise the current variety of tribunal appeal routes. Its main function will be to hear appeals from tribunals within the Tribunals Service.

There will be five First-tier Chambers:

- Social Entitlement,
- Health, Education and Social Care
- General Regulatory
- Taxation
- Land, Property and Housing

And three Upper Tribunal Chambers (chambers of appeal)

- Administrative Appeals
- Finance and Tax
- Lands

While the First-tier and Upper Tribunal chambers are both concerned with disputes between individuals and the State, the Employment Tribunal and the Employment Appeal Tribunal, which deal with disputes between parties, will form a separate pillar in the new tribunal structure. Similarly the Asylum and Immigration Tribunal will continue as a third pillar under the new structure. However, it is proposed that there will be close links between them.

Phase 1 will bring the Health, Education and Social Care, and Social Entitlement First-tier Tribunal Chambers into being, alongside the Administrative Appeals Upper Tribunal Chamber from 3 November 2008. Phase 2 is being planned for April 2009 and will see the creation of the remaining chambers.

Work is ongoing to create a single set of rules that can apply to all jurisdictions within a particular chamber, replacing the existing diverse sets of tribunal rules. It is intended that the new rules should be simple, flexible and easy to understand but will not represent a radical overhaul. Instead the rules will draw heavily upon existing processes and have been designed to allow best current practices to be maintained. Inevitably, given the different jurisdictions, there may be the need for some jurisdiction specific provisions but the aim is to keep that to a minimum.

The forthcoming introduction of a two tier tribunal at UK level has implications for Scotland. The Scottish Committee has been actively involved in discussion with all relevant parties regarding the operation of Upper Tribunals for Scottish cases. It is anticipated that no formal protocols between the Tribunals Service and the Lord President will need to be introduced and that arrangements suitable for local purposes can be made satisfactorily.

THE TRIBUNALS SERVICE

In April 2006 the Tribunals Service was established as an executive agency of the then Department for Constitutional Affairs (now Ministry of Justice) by bringing the administration of central government tribunals together within the one organisation. This is the mechanism whereby the Lord Chancellor fulfils his statutory duty to ensure that there is an efficient and effective system to support tribunal business.

The Tribunals Service provides assistance and information necessary for the AJTC to carry out its statutory functions of keeping under review, and reporting on, the constitution and working of those tribunals under its guidance, most of which are under the AJTC's oversight. An alphabetical list of tribunals served by the Tribunals Service is attached at Annex A.

The scope of the new Service is limited to non-devolved, central government tribunals, although some of these will have a Great Britain or UK wide presence. The Tribunals Service therefore looks to work closely with the devolved Scottish and Welsh administrations to make the best use of facilities available to both.

The AJTC is actively involved with the Tribunals Service both at UK level and in Scotland to ensure a smooth transfer during the introduction of the new two tier tribunals structure for the jurisdictions involved.

DEVOLVED TRIBUNALS

While the Tribunals, Courts and Enforcement Act 2007 does not directly affect tribunals in devolved jurisdictions the landscape of administrative justice in Scotland will change with potential implications for the operation of these tribunals. The Scottish Committee is concerned that the impact of any change is for the better and we consider it to be an important part of our remit to ensure that is the case. In the next section of this report we provide further detail of our activity in this regard.

Our Activities during 2007/08

The Scottish Committee is heavily engaged in giving advice to those involved in forward looking discussions regarding the administrative justice landscape in Scotland and we are represented on a number of advisory and ad-hoc groups such as:

SCOTTISH TRIBUNALS FORUM

The Scottish Tribunals Forum, which was established in 2005, and is currently chaired by Lord Philip, is the primary means of co-operation between UK and Scottish tribunals. This informal, non-statutory body allows the heads of all tribunal systems in Scotland, devolved or non-devolved, to meet and discuss matters of mutual interest, and also includes representation from the Scottish Committee of the AJTC. The forum meets on a quarterly basis. The Scottish Committee has assisted the Forum with their detailed discussions on the implementation of the Tribunals, Courts and Enforcement Act 2007; training provision for tribunal staff and members and the impact the proposed changes to the administrative justice system will have on devolved tribunals.

One of the outcomes of this forum was progress on the question of tribunal training in Scotland, an issue which the Scottish Committee had raised on many previous occasions. This has resulted in research being carried out by Aberdeen University on behalf of Scottish Government, into the provision of training for tribunal members in Scotland. We look forward to seeing the outcome of this research in due course.

In addition the Scottish Committee produced a 4th version of its Tribunal Training Register covering the 2007/08 period. This can be viewed at www.ajtc.gov.uk/scottish/publications-scottish.htm It is our intention to produce an update of the Register in 2008 and the Scottish Committee is grateful for the continued support and co-operation of the tribunals in Scotland in performing this task.

ADMINISTRATIVE JUSTICE STEERING GROUP

The Scottish Committee maintains a presence on the Administrative Justice Steering Group (AJSG). The AJSG was established in 2006 by the Scottish Public Services Ombudsman (SPSO), in conjunction with the then Scottish Committee of the Council on Tribunals and with the support of the then Scottish Executive. The group's remit is to commission research and act in an advisory capacity regarding the administrative justice framework in Scotland taking account, among other things, of the likely impact of the Tribunals, Courts and Enforcement Act 2007.

The Group is chaired by Lord Philip, and includes representatives from a number of key stakeholder organisations as detailed at Annex B.

In January 2008 the First Minister announced the Government's intention to simplify the public sector in Scotland by reducing the number of national public sector organisations in operation. Included within their proposals are plans that may effect the operation of tribunals and the role of administrative justice in Scotland.

To inform Ministers' future decisions the AJSG has been undertaking a review into the role of administrative justice as a whole within Scotland. The Review is being conducted in two parts, the first paper "Options for the Future Administration and Supervision of Tribunals in Scotland" will be delivered to Scottish Ministers in September 2008. The second paper, a detailed look at administrative justice in Scotland, is in preparation and will be reported to Ministers in Spring 2009.

The Scottish Committee looks forward with interest to the Government's response to the proposal and will take an active role in maintaining the momentum generated by the Review.

ADDITIONAL ACTIVITIES

In addition throughout the year the Scottish Committee has also been involved in the following activities:

SCAJTC Conference

The Scottish Committee, seeking to enhance our role as a catalyst for sharing of good practice, and looking to explore opportunities for collaborative working with those involved in the delivery of administrative justice in Scotland, held a conference on 12th February 2008 in Edinburgh.

The format of the day consisted of speakers for the first session and opened out into workshop sessions for the rest of the day. During these sessions attendees considered the topics of:

- Getting it Right First Time
- Effective Redress
- A New Approach to Complaints Handling
- Advice and Representation in the New Era
- Structure and Relationships between Tribunals in Scotland.
- Practical Application of Alternative Dispute Resolution

The speakers included Lord Hamilton - Lord President and Lord Justice General; Bill Aitken MSP and Convener of the Justice Committee of the Scottish Parliament; Professor Tom Mullen of the University of Glasgow, Norman Egan the Regional Director (North) of the Tribunals Service and Lord Newton, Chairman of the AJTC

Decriminalised Parking Seminar

In October 2007 the Scottish Committee held a decriminalised parking seminar in Edinburgh to which all local authorities were invited. The event, which was well attended, aimed to bring together those charged with administering parking schemes for an informal discussion about the sharing of best practice.

At the conclusion of the event the delegates agreed that it would be beneficial to establish a user group to allow for better communication avenues between the stakeholders. This was a suggestion supported by the Scottish Committee but which, it is understood, has still to be implemented.

Mental Welfare Commission for Scotland

The Mental Welfare Commission for Scotland is an independent organisation working to safeguard the rights and welfare of everyone with a mental illness, learning disability or other mental disorder. Its duties are set out in mental health law. During the reporting period a fruitful meeting was held with the Commission to discuss the Committee's views of their proposals to carry out a service user's survey. The Committee's comments were taken on board and an (anonymous) survey of service users and patients who have attended a Mental Health Tribunal is being undertaken to establish user satisfaction and whether improvements are needed.

The Scottish Committee looks forward to considering the results of this survey in due course.

Our Consultation Responses during 2007/08

The Scottish Committee has replied to a number of consultation documents and commented on many draft documents throughout the last year. Those of significant importance are summarised below.

CHILDREN'S HEARINGS

In January 2008 the Scottish Government announced its intention to create a single national body to bring together the different organisations that make up the Children's Hearing system.

It is intended that this national body will co-ordinate and streamline the different functions carried out such as the work of the Children's Reporter Service, the delivery and administration of Children's Hearings, and the recruitment, training, monitoring and support provided to the panel members. The Scottish Committee supported the emphasis on the local dimension that underpins the current system and the fact that panel members will continue to be recruited from local communities.

Legislation is required to effect such structural change and amendments to the existing arrangements. This will be brought about by a Children's Hearings bill that will be introduced in the Scottish Parliament. If enacted a national body could be set up with the aim of becoming fully operational by May 2010.

During the reporting period one of our Committee members held a meeting with an official within the Scottish Government's Educational Directorate to discuss the details and timetable of their proposals.

MODERNISING PLANNING

The White Paper "Modernising the Planning System" published in 2005, followed by the Planning (Scotland) Act 2006, set out the framework for a number of important reforms to the system of planning appeals.

In February 2008 the Scottish Government launched a consultation paper and sought comments on changes to the planning appeals system in Scotland. Their proposals were intended to make the process for challenging planning decisions more efficient without reducing the quality of determination provided under the present arrangements.

In our response we advised that while we were content with the majority of the proposals there were a number of areas that raised our concerns. The Committee is particularly concerned that local reviews might not be sufficiently independent and impartial and the appellants will not be able to elect for a hearing either there or at an appeal.

THE SCOTTISH CIVIL COURTS REVIEW

The Lord Justice Clerk, the Rt. Hon Lord Gill is leading a review of the civil courts in Scotland. Its primary purpose is to improve access to justice for the people of Scotland and its remit is concerned with four main areas:

- the disproportionate cost of litigation, particularly in relation to cases of low monetary value;
- balancing the demands of civil and criminal business;
- specialisation; and
- case management

The remit also refers to the role of mediation and other forms of alternative dispute resolution and to the development of modern methods of communication. Committee members met with Lord Gill's researchers early in the consultation process and discussed with them aspects of Lord Gill's remit that might be relevant to administrative justice in Scotland.

Published in November 2007, the Review closed to consultation at the end of March 2008 and the Government's response can be viewed at www.scotcourts.gov.uk/civilcourtsreview. It is expected that the final report will be presented to Ministers around April 2009.

Visits and Events Attended during 2007/08

During the reporting year the Scottish Committee has been preparing for its new role and considering the best ways in which to utilise its resources. The Committee intends to continue visiting tribunal systems but also plans to look at how it can broaden its links with tribunal users, stakeholders and initial decision makers.

The Scottish Committee believes that it is vital that it retains its relationship with tribunals through its visits programme. In pursuit of this the Scottish Committee attended twenty-six tribunal hearings, four tribunal training sessions and three meetings involving tribunal user groups. To embrace our new role members widened the programme by attending twelve conferences influencing administrative justice in Scotland. We also held meetings with tribunal stakeholders and government officials. A complete breakdown of the Committees visits and meetings can be found at Annex C.

Committee members visited two hearings held by the ***Additional Support Needs Tribunal for Scotland (ASNTS)***. This is a relatively new tribunal system and the visits provided the Scottish Committee with an insight into the issues the tribunal has to consider and then make decisions on. From our observations we found this to be a well organised and resourced system, user friendly, independent, open, fair, enabling and flexible.

In particular one member, while attending a tribunal, became aware of the positive use of mediation prior to a hearing. While the attempt was not successful in resolving all the issues in the case observed, it did focus the parties' attention on the salient issues. This in turn enabled the Chair to manage the hearing effectively.

One of our members also attended a user group meeting of the ASNTS. The Scottish Committee welcomes the opportunity to be part of such meetings. They are extremely valuable, providing scope to meet and exchange views.

A member of the Committee also attended a training session organised for the membership of the ASNTS which we found to be professionally run, relevant and well received by the participants.

One member, on a visit to a hearing of the ***Asylum and Immigration Tribunal***, saw a good demonstration of this tribunal. In a system dealing with issues that affect individuals' civil liberties, the member was impressed with the manner in which the appellants were dealt with, in that, while procedures were rigorous, care was taken to ensure that the appellants understood these and that a fair hearing took place. In short all our standards were met.

We also attended a user group meeting of the ***Asylum and Immigration Tribunal***, which we found to be advantageous in developing our understanding of, and relationship with, the tribunal and the various stakeholders of this system. In a tribunal system dealing with regular amendments to the legislative framework we find these meetings are informative and beneficial in that they provide a forum in which users can raise issues of concern regarding the operation of the system.

Over the course of the reporting period we visited three ***Children's Hearings*** held in different locations throughout Scotland. The Committee continues to be impressed by the commitment, dedication and motivation of the Children's Panel members. There is no doubt that the initial training, assessment and support provided to panel members certainly aid this system in achieving its aims. However, we are aware that ongoing training carried out locally can be of varying standards.

On one of the visits the inadequacy of the particular premises used was highlighted for a second time. The premises are unsuitable for hearings and are not compliant with the regulations governing disabled access. The Scottish Committee urge that these premises are replaced at the earliest opportunity.

One visit was made to a hearing of the ***Criminal Injuries Compensation Appeals Panel (CICAP)***. Our member observed a well run hearing handled in a reassuring and professional manner.

However, the visit highlighted a difference in the calling of police witnesses to CICAP hearings in Scotland. It was learned that, unlike in England and Wales, there is no protocol in place in Scotland between the Criminal Injuries Compensation Agency and the Association of Chief Police Officers (Scotland) on the issue of the attendance of police witnesses at hearings. We understand that the existing protocol operating in England and Wales benefits the operation of the system there. Whilst the Committee fully appreciates that there are different legal requirements in Scotland concerning pre-trial information, evidence and freedom of information we would support any action that establishes such a protocol in Scotland, obviously taking account of Scottish legal issues.

Three ***Education Appeal Committee (EAC)*** hearings were visited as part of our routine visits programme at different venues in Scotland. It is now some eight years since the Scottish Committee produced a special report on the operation of the Education Appeal Committees in Scotland. These committees deal with appeals against decisions of education authorities in relation to placing requests for particular schools and with appeals against exclusions from school for conduct reasons. Our observations of this system since 2000 have demonstrated to us that the recommendations made in our report are still just as relevant today and it continues to be a source of dissatisfaction to the Committee that no action has been taken to implement these recommendations.

In particular the Scottish Committee is concerned that significant numbers of parents may be discouraged from exercising their right of appeal as a result of the perceived lack of independence in the organisation of these hearings. Appeals have to be made to the education authority whose decision is appealed against and letters are sent out on local authority headed notepaper inviting parents to hearings held within council premises where a councillor from the local authority concerned may well be a member of the panel. In addition, legal advice is provided to these panels by solicitors employed by the local authority. The Scottish Committee remains greatly concerned at this lack of independence.

The Committee is pleased to report that there has been some progress in relation to training in that many local authorities are now providing training for panel members. However, we remain concerned that there is little evaluation of the effectiveness of this training, which rather than being skills based, is almost entirely based on law and procedure. Panel members are offered little opportunity to undertake practical exercises to test their knowledge. In addition, there is no requirement that they undertake mandatory training and no system of centralised training exists that would provide consistency and uniformity across Scotland.

In our Annual Report last year we commented on the Scottish Executive's consultation paper outlining proposals for reform of EACs. We expressed our hope that appropriate weight would be given to our views that the current system did not meet the standards of fairness and impartiality, which were essential in any judicial process, and that urgent legislative change was required. The Scottish Committee has been disappointed that no direct response has been received regarding our concerns and remain firmly of the view that the defects in the system, which we have identified over a number of years, cannot be remedied without legislative change.

We understand from the Scottish Government that, following a report from the Scrutiny Improvements team, Ministers are looking at ways to reduce the complexity and perceived inconsistencies in approach, and in the structure of the complaints landscape across Scotland. In particular the Scottish Government should consider transferring responsibility for local authority Education Appeal Committee work and Independent Adjudication functions from local government to an independent tribunal. The report from the Scrutiny Improvements team also recommended that the Government may prefer to await the outcome of Lord Philip's Administrative Justice Review and consider the implications for all tribunal services before taking any decision on identifying an appropriate independent organisation to take on the Education Appeal Committee work. At the time of writing Ministers were still to comment on the report.

Prior to attending a hearing of the ***Employment Tribunals - Scotland*** one of our members took the opportunity to meet with the President of the system in order to obtain first hand knowledge of the tribunal's operation. We find this type of meeting to be particularly valuable to the Scottish Committee and we extend our thanks to the President for his co-operation with this request.

Members also attended the annual conference of the Employment Tribunals - Scotland. This proved to be an excellent opportunity for meeting those involved and obtaining information about the working of the system.

Visits were conducted to the ***Mental Health Tribunal for Scotland (MHTS)***, our members also attending a training day for the tribunal membership. We appreciate the complex nature of the cases and legislation that the tribunal is required to consider and have found the hearings to be well conducted, flexible and caring, striking an appropriate balance between formality and informality, giving due care to procedural aspects of the case.

However we continue to have some concerns in relation to some hospital venues used for hearings which was a criticism raised in last year's annual report. The Committee appreciates that the provision of accommodation for the hearings lies with the local Health Board and not the tribunal itself. Obviously careful consideration needs to be made when holding a hearing of the MHTS. Issues such as security and access need to be taken in to account but we would urge those charged with organising the hearing venues to select appropriate hearing accommodation that meets reasonable standards. We commend the initiative in holding several hearings, where appropriate, within the local community, where suitable accommodation has been located.

One of the hearings we attended was considered by participants to have been a waste of everyone's time due to a number of administrative failures. The Scottish Committee will keep this aspect under review given the recent organisational changes.

In another of the hearings we attended it was apparent that, although the Scottish Ministers had referred the case, they were not represented. It did not affect the case observed, but it is easy to envisage this might not be the case in other circumstances. It is to be hoped the decision not to send a representative is based on the requirements of each individual case and not a blanket policy decision by the relevant department. This is an aspect we will monitor on future visits.

In January 2008 the Scottish Government formed the Mental Health Act Review Group to undertake a limited review of the Mental Health (Care and Treatment) (Scotland) Act 2003. The aims of the group include:

- to review the processes in respect of the civil provisions of the Act and to advise on changes that should be made to improve the efficiency of the operation of the Act and experience of patients
- to advise on minor amendments to the Act
- to engage with those who operate the Act and report back to the Minister for Public Health with recommended changes.

It is anticipated that the review will be completed by November 2008 and that any changes may have an effect on the future workings of the Mental Health Tribunal for Scotland.

In previous reports the Scottish Committee has expressed concern regarding the operation of **NHS Discipline Committees** both in relation to the considerable delays inherent in a system devoid of meaningful statutory timescales for completion of appeals and also in relation to the lack of training and regular sitting patterns for panel members. Over the years we have observed and reported on a number of hearings adversely affected by these issues. During this reporting period we visited a hearing of an NHS Discipline Committee and our member's observations on this visit confirmed the criticisms the Scottish Committee has made in previously.

We therefore welcomed the changes, which are being made to this system. Since 2007 the Scottish Government Health Department and NHS National Services Scotland have been exploring the establishment of a central secretariat and a central prosecution service for NHS Discipline Committees to provide consistency and speed of processes to ensure practitioners called before a disciplinary hearing receive evenhanded and fair treatment.

A project manager from within the Scottish Health Services Centre (which already provides secretarial functions to the National Appeals Panel) was appointed in May 2007. Following his report into the operation of the Discipline Committees the NHS National Services Scotland have been given the funding required to employ a full-time administrator/secretary for the new central secretariat. Part of the post holder's duties involves organising training¹ for Committee members (also fully funded) and prompting the sending of reports timeously between the Health Boards and the appellants. The post has been granted an honorary contract with each Health Board, in effect making the appointee a de facto Board member in acting as Committee Clerk and processing documentation on an independent basis. Funding has also been provided to allow the Central Legal Office to prepare cases and represent Health Boards at hearings.

The Scottish Committee welcomes these developments and looks forward to attending training events in the coming year. It is hoped that the training provided will be mandatory, competence based, practical and carefully evaluated to ensure that it meets the needs of both panel members and the system as a whole. We will also observe future hearings to establish what effect the centralised administration has on the system.

The Scottish Government have assured us that regulation 8(5) of the NHS (Discipline Committees)(Scotland) Regulations 2006 safeguards against excessive delay and, in light of this, there are currently no plans to amend the Regulations further in relation to timescales. In addition the Scottish Government will be monitoring the revised administrative system once it begins in the latter part of 2009 and are confident that, with guidance, the problems the Scottish Committee identified during our reporting year will not be repeated. Our view remains that the procedural rules underpinning this system require to be changed to introduce a strict set of timescales in order to ensure that appellants can exercise their right to a fair hearing within a reasonable time period.

¹ Outwith the reporting period training has commenced and the Scottish Committee has had an input

During the reporting period one of the Committee members took the opportunity to attend a site visit and then attended the hearing of a **NHS National Appeal Panel for Entry to the Pharmaceutical Lists**. The system is operating well, in an organised manner and its willingness to hold local hearings is to be applauded.

The **Private Rented Housing Panel** was created from the Rent Assessment Panel for Scotland in 2007. It is independent of the Scottish Government, central and local Government and the Rent Registration Service. The Scottish Committee was impressed by the efficient and effective operation of the Panel.

A new website has been created for the Panel which should be of great benefit to all users of this system.

Members visited several **Social Security & Child Support Appeal Tribunal (SSCSAT)** hearings, which were held at tribunal venues across Scotland. As in previous years we have found this to be a system meeting all of our standards. It is well organised, utilises experienced panel membership and is well resourced. One of our visits provided an opportunity to visit Caledonian House, the new Tribunals Service hearing premises in Dundee. The premises are purpose built, well planned and provide a high standard of tribunal accommodation for all users in a central location with excellent transport links. .

It was noted from one of our visits that the version of the appeal enquiry form (TAS 1) that had been used had caused some confusion for an appellant. Our enquiries about the use of the form showed that it has now been up-dated.

The Committee also attended a training session for the SSCSAT members. It was very professional in every aspect, using experienced tribunal chairs as trainers and facilitators and we are sure it was of great benefit to the members attending.

Our one visit to an inquiry of the **Traffic Commissioners** showed a tribunal system working well, professionally handled and meeting all of our standards.

The Committee visited three **Valuation Appeal Committee (VAC)** hearings. The VACs conducted their deliberations with care and consideration, weighing up the various factors in each individual case before reaching their decision. That said, the selection of members of this system lacks openness and transparency and is not open to public competition. That coupled with the complete lack of formal training of chairs and members leads us to urge that a complete review of the VACs is overdue including the process for recruitment and the training provided to the VAC members.

Another unsatisfactory aspect of this system is that in certain cases VAC hearings are held in council offices. It must be difficult for appellants to perceive that the VAC is a tribunal system operating independently from the local authority. The Scottish Committee appreciates that there maybe other factors that dictate where to hold a hearing, but in our view it must be possible to arrange hearings at locations with no attachment to the local authority and in particular

not a venue occupied by, or associated with, the Assessor's department. If a hearing can only be held in a local authority building the Committee would urge those charged with the responsibility of booking venues to make arrangements for it to be held in a building with no link with the decision-making department. Guidance issued by the then Scottish Executive certainly emphasises this point and the Scottish Committee would welcome any actions that see this step implemented nationally.

We have been impressed by the information contained on the Scottish Government website at www.scotland.gov.uk/library3/localgov/ctha-00.asp. We appreciate that the internet is not a source of information readily available to everyone but these pages provide excellent information regarding how to appeal to the VAC. However, we would also welcome the introduction of a national information leaflet, which could be easily distributed to anyone wishing to obtain information on how to appeal against the Assessor's decision.

Annex D contains a detailed list of all tribunals supervised by the Scottish Committee.

Our Meetings with Others during 2007/08

During a number of visits to **Criminal Injuries Compensation Appeal Panel** hearings members of the Committee learned of a drop in the number of appeals coming before the Panel. A number of explanations were offered for the drop in caseload and as a result a meeting was sought with the then recently relocated **Criminal Injuries Compensation Authority (CICA)** in Glasgow.

CICA has overall responsibility for administering the Criminal Compensation scheme throughout England, Scotland and Wales and it pays the compensation to eligible applicants who have been the victim of crime.

Three of our members had a very useful discussion with the CICA Operations Manager in October 2007. It helped us to understand CICA policies and for them to understand the new statutory role of the Scottish Committee. Arrangements are in hand for a follow up meeting.

The Scottish Committee was delighted to accept an invitation to join the **Scottish Public Services Ombudsman (SPSO) Stakeholders Group** that was established to contribute to the review of the strategic objectives for the SPSO. The Stakeholders Group, which works to improve the systems and culture of complaint handling throughout Scotland, has representation from a wide range of sectors and organisations whose work is linked to that of the SPSO.

In February 2008, a member of the Scottish Committee attended a Stakeholder Event held by the SPSO, which aimed to bring together all stakeholders and present the SPSO's strategic objectives for discussion and consideration. The event was well attended and allowed stakeholders and the SPSO to discuss areas of concern as well as areas of improvement and success. It enabled the Scottish Committee to have a greater understanding of the present challenges facing the public sector and the SPSO.

In the reporting period we have held meetings with government officials, tribunal heads and users. Our discussions have considered a wide range of topics impacting on the operation of tribunals in Scotland. The Committee is conscious of the fact that it needs to monitor how such changes will affect devolved and reserved tribunal systems.

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”. The Scottish Committee is 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 2008/09 period, see Annex E, reflects our intention to engage proactively with the administrative justice landscape in Scotland.

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 report our members attended 72 visits and meetings during the reporting period, the details of these are listed at Annex C.

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 now 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.

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 supervision. 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 supervise.

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 in accordance with Section 3(3) of the Tribunals and Inquiries Act 1992. 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 2006-2007 and 2007-2008 is detailed below.

	2006/07	2007/08
Staff salaries*	67,870	68,306
Members' retainers**	40,028	39,884
Members' travel costs	4,729	6,139
Administrative Costs including office supplies, postage etc.	16,066	21,881
Totals	128,694	136,210

* 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

The Administrative Justice and Tribunals Council (AJTC) and its Scottish Committee (SCAJTC) were set up by the Tribunals, Courts and Enforcement Act 2007 to replace the Council on Tribunals. The Scottish Committee takes the lead in exercising the legislative powers of the AJTC in relation to all matters appertaining to Scotland.

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 code is in the course of preparation. 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.

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 AJTC 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 in 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.

The Constitution and Functions of the Council and the Scottish Committee

The Administrative Justice and Tribunals Council (AJTC) and its Scottish Committee were set up by the Tribunals, Courts and Enforcement Act 2007.

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.

Statistics relating to Tribunals and Inquiries in Scotland

This Appendix contains information about tribunals and certain inquiries operating in Scotland.

Considerations

- More than half of all tribunals operating in Scotland are dealing with subjects which are reserved matters. Where it has not been possible for us to obtain specific Scottish statistics for these systems an asterix '*' is shown and we would direct you to the statistics table in the AJTC Annual Report to view the UK figure.
- The statistical information shown is supplied by the tribunal systems themselves or their sponsoring bodies and is intended to provide a broad overview of workloads and waiting times.
- The statistics are collected over varying periods and can be for either the 2007 calendar year; the 2007/08 financial year or the 2007/08 academic year depending on the subject of the system.
- Where a hyphen '-' is shown data is either inapplicable or unavailable.

Terminology

pool:	number of chairmen and members (full and part time) available to conduct the tribunal's work
days sat:	total number of days that judiciary sat to consider cases during the period.
c.fwd:	number of undecided appeals/applications on the Tribunal's books at the start of the period.
received:	new cases submitted during the period.
w/drawn:	cases settled or withdrawn before a final judgement was required.
decided:	final determinations made by judiciary within the period.
o/s:	undecided cases (including rescheduled and adjourned hearings) on the tribunal's books at the end of the period.
success:	percentage of 'decided' cases where decision went in favour of appellant/applicant in part or in whole.
oral:	percentage of 'decided' cases that were determined via an oral hearing (as opposed to a 'paper' or 'ex parte' hearing).
before:	average weeks from tribunal's receipt of appeal/application to hearing.
after:	average days from hearing to despatch of written decision.

Tribunals and Inquiries in Scotland

Asylum and Immigration	Asylum and Immigration Tribunal	s.81 of the Nationality, Immigration and Asylum Act 2002
	Asylum Support Tribunal	s.102 of the Immigration and Asylum Act 1999
Education	Additional Support Needs Tribunal for Scotland	s.17(1) of, and Sch.1 to, the Education (Additional Support for Learning) (Scotland) Act 2004
	Education Appeal Committees	s.280 of the Education (Scotland) Act 1980
Employment	Employment Tribunal for Scotland ¹	s.1(1) of the Employment Tribunals Act 1996
	Police Appeal Tribunals for Scotland ²	s.30 of, and Sch.3 to, the Police (Scotland) Act 1997
	Reserve Forces Appeal Tribunals	s.88 of the Reserve Forces Act 1996
Finance / Revenue	Financial Services and Markets Tribunal	s.132 of the Financial Services and Markets Act 2000
	General Commissioners of Income Tax	s.2 of the Taxes Management Act 1970
	Insolvency Practitioners Tribunal	s.396(1) of the Insolvency Act 1986
	Special Commissioners of Income Tax	s.4 of the Taxes Management Act 1970
	Value Added Tax and Duties Tribunal	Sch.12 to the Value Added Tax Act 1994
Health and Care	Discipline Committees of Health Boards etc.	reg.3 of the National Health Service (Discipline Committees) (Scotland) Regulations 2006
	Mental Health Tribunal for Scotland ³	s.21 of the Mental Health (Care and Treatment) (Scotland) Act 2003
	National Appeal Panel for Entry to the Pharmaceutical Lists	Part 2 of Sch.4 to the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995
	NHS Tribunal Scotland ⁴	s.29 of the National Health Service (Scotland) Act 1978
Information / Data Protection	Information Commissioner	s.6(1) of the Data Protection Act 1998; the Freedom of Information Act 2000
	Information Tribunal	s.6(3) of the Data Protection Act 1998
Intellectual Property	Comptroller General of Patents, Designs and Trade Marks	s.62(2) of the Patents and Designs Act 1907
	Copyright Tribunal	s.145 of the Copyright, Designs and Patents Act 1988
Property / Land / Local Government	Agricultural Arbiters	s.63 of, and Sch.7 to, the Agricultural Holdings (Scotland) Act 1991
	Crofters Commission	s.1 of the Crofters (Scotland) Act 1955, and continued in s.1 of the Crofters (Scotland) Act 1993
	Forestry Committees	s.27 of the Forestry Act 1967

¹ 74% of cases heard within 26 weeks and 84% of decisions dispatched within 4 weeks.

² The figures shown are a cumulative figure for 6 separate police forces. Waiting times have not been specified but are within the stipulated periods in the regulations

³ Figures relate to 'open' cases in the tribunal's management system.

⁴ No full-time judiciary.

	Judiciary pool / days sat	Cases c.fwd	received	w/drawn	decided	o/s	success	oral	Waiting Times before	after
	*	*	*	*	*	*	*	*	*	*
	*	*	*	*	*	*	*	*	*	*
	33 / 47	10	76	49	27	10	77%	55%	16.7wks	7.4dys
	–	–	529	138	386	5	–	–	–	–
	*	–	33,000	–	*	59,000	–	–	see note	
	–	2	5	0	5	2	–	100%	see note	
	*	*	*	*	*	*	*	*	*	*
	*	*	*	*	*	*	*	*	*	*
	*	*	*	*	*	*	*	*	*	*
	*	*	*	*	*	*	*	*	*	*
	16 / 63	278	191	50	68	351	45%	99%	20wks	20dys
	–	1	2	1	1	1	–	–	–	–
	376 / 249	378	3,164	634	2,273	548	8%	100%	3wks	14dys
	45 / 32	10	48	1	49	8	31%	65%	14wks	5dys
	– / 10	3	3	1	3	2	100%	100%	–	–
	*	*	*	*	*	*	*	*	*	*
	*	*	*	*	*	*	*	*	*	*
	*	*	*	*	*	*	*	*	*	*
	*	*	*	*	*	*	*	*	*	*
	–	12	0	0	4	8	–	–	–	–
	8 / 19	4	24	1	19	8	58%	100%	10wks	40dys
	*	*	*	*	*	*	*	*	*	*

Tribunals and Inquiries in Scotland

	Lands Tribunal for Scotland ¹	s.1(1)(b) of the Lands Tribunal Act 1949
	Private Rented Housing Panels	Sch.4 to the Rent (Scotland) Act 1984
	Valuation Appeal Committees	s.29 of the Local Government (Scotland) Act 1994
Social Security / Pensions / Criminal Injuries Compensation	Criminal Injuries Compensation Appeals Panel	adjudicators appointed under s.5 of the Criminal Injuries Compensation Act 1995
	Pensions Appeal Tribunal for Scotland	s.8(2) of the War Pensions (administrative Provisions) Act 1919 or the Pensions Appeal Tribunal Act 1943
	Police Pensions Appeal Tribunal (Scotland)	s.67(3) of the Police Pensions (Scotland) Regulations 2007 and s.35(3) of the Police (Injury Benefit) (Scotland) Regulations 2007
	Social Security and Child Support Appeals	s.4 of the Social Security Act 1998
	Social Security Commissioners ² Child Support Commissioners ²	Sch.4 to the Social Security Act 1998 s.22 of the Child Support Act 1991
Social Work	Children's Hearings ³	Children (Scotland) Act 1995
Traffic / Transport	Civil Aviation Authority	s.2 of the Civil Aviation Act 1982
	Scottish Parking Appeals Service	s.73 of the Road Traffic Act 1991
	Traffic Commissioners (Scotland)	for the purposes of the Public Passenger Vehicles Act 1981 in respect of functions under s.18 of the Civic Government (Scotland) Act 1982
	Transport Tribunal	Sch.4 to the Transport Act 1985
Other Tribunals	Horse Betting Levy Appeal Tribunal for Scotland	s.12 of the Betting, Gaming and Lotteries Act 1963
	Scottish Charities Appeal Panel	s.75(1) of, and Sch.2 to, the Charities and Trustee Investment (Scotland) Act 2005
	Competition Appeal Tribunal	s.12 of the Enterprise Act 2002
	Gender Recognition Panel	Sch.1(3) to the Gender Recognition Act 2004
Planning Inquiries	Enforcement Notice Appeals	s.130 of the Town and Country Planning (Scotland) Act 1997
	Local Plans	s.15 of the Town and Country Planning (Scotland) Act 1997
	Planning Appeals	s.47 of the Town and Country Planning (Scotland) Act 1997
Other Inquiries	Fair Trading	Appeals to the Secretary of State from determinations and decisions of the Office of Fair Trading under the Consumer Credit Act 1974 (determinations) and the Estate Agents Act 1979 (decisions)

¹ Waiting times are estimates.

² Average time from receipt of application for leave to appeal to appeal decision issued - 10.9wks; from receipt of appeal to appeal decision issued - 9.15wks; from receipt of application to application issued - 2.9wks.

³ Average waiting time before hearing is 71 days for offence referrals and 130 days for non-offence referrals.

	Judiciary pool / days sat	Cases c.fwd	received	w/drawn	decided	o/s	success	oral	Waiting Times before	after
	2 / 97	143	131	21	112	141	92%	51%	15wks	35dys
	29 / 49	9	202	10	168	33	–	72%	22wks	54dys
	248 / 154	31,412	8,026	24,033	447	14,958	5%	74%	–	4dys
	12 / 66	*	*	*	*	*	*	*	*	*
	21 / 75	88	254	13	235	96	49%	89%	12wks	14dys
	–	–	–	–	–	–	–	–	–	–
	*	*	*	*	*	*	*	*	*	*
	2 / –	60 8	641 22	24 1	622 18	55 11	66.7% 61.5%	7.4% 66.6%	see note	
	– / 11,977	–	56,199	–	6,744	–	–	100%	see note	
	*	*	*	*	*	*	*	*	*	*
	4 / 63	30	1,432	62	899	491	57%	35%	4wks	14dys
	*	*	*	*	*	*	*	*	*	*
	*	*	*	*	*	*	*	*	*	*
	1 / –	–	–	–	–	–	–	–	–	–
	24 / 1	0	2	0	1	1	0%	100%	16wks	20dys
	*	*	*	*	*	*	*	*	*	*
	*	*	*	*	*	*	*	*	*	*
	–	61	104	17	97	51	–	–	–	–
	–	52	5	–	–	57	–	–	–	–
	–	465	1,106	56	1,041	474	–	–	–	–
	*	*	*	*	*	*	*	*	*	*

Annex A : The Tribunals Service

As at 12th June 2008 the Tribunals Service provides independent administrative support to the 30 central government tribunals and organisations listed below.

(Please note only those tribunals and organisations with an asterisk operate in Scotland; the remainder operate in England and Wales.)

- Adjudicator to HM Land Registry
- Asylum & Immigration Tribunal*
- Asylum Support Tribunal*
- Care Standards Tribunal
- Claims Management Services Tribunal
- Charity Tribunal
- Consumer Credit Appeals Tribunal
- The Commissioners Office
- Criminal Injuries Compensation Appeals Panel*
- Employment Tribunals
- Employment Appeal Tribunal
- Estate Agents Appeal Panel
- Financial Services and Markets Tribunal *
- Gambling Appeals Tribunal
- Gender Recognition Panel*
- General Commissioners of Income Tax*
- Information Tribunal*
- Immigration Services Tribunal
- Lands Tribunal
- Mental Health Review Tribunal
- Pathogen Access Appeals Commission (*not under AJTC oversight*)
- Pensions Appeal Tribunal
- Pensions Regulator Tribunal
- Proscribed Organisations Appeals Commission (*not under AJTC oversight*)
- Social Security and Child Support Appeals Tribunal*
- Special Commissioners of Income Tax*
- Special Educational Needs and Disability Tribunal
- Special Immigration Appeals Commission (*not under AJTC oversight*)
- Transport Tribunal*
- VAT and Duties Tribunal*

The UK Government has agreed that all new, non-devolved, central government tribunals will automatically be established as part of the Tribunals Service.

Annex B : 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	Scottish Consumer Council
Jane Irvine	Scottish Legal Services Ombudsman
Colin McKay	Constitution, Law and Courts Directorate, Scottish Government
Prof. Alistair McLeary	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	Scottish Consumer Council
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
Fiona Paterson	(Secretary) SPSO

Annex C : Visits and Events Attended during 2007/08

Tribunal systems		
Additional Support Needs Tribunal Scotland	2	Aberdeen, Dundee
Asylum & Immigration Tribunal	1	Glasgow
Children's Hearings	3	Bathgate, Edinburgh, Perth
Criminal Injuries Compensation Appeals Panel	1	Glasgow
Education Appeal Committee	3	Irvine, Kirkintilloch, Kilmarnock
Employment Tribunal	1	Edinburgh
Mental Health Tribunal for Scotland	4	Edinburgh, Perth, Livingston, Wishaw
NHS Discipline Committee	1	Edinburgh
NHS National Appeal Panel	1	Stonehaven
Private Rented Housing Panel	1	Edinburgh
Social Security & Child Support Appeal Tribunal	4	Dundee, Galashiels, Edinburgh, Stirling
Traffic Commissioners	1	Edinburgh
Valuation Appeal	3	Glasgow, Hamilton, Perth
Total	26	

Conference/Seminars		
Additional Support Needs Tribunal Scotland	2	Edinburgh, Glasgow
Administrative Justice Research	1	Edinburgh
Civil Justice	1	Edinburgh
AJTC Away day	1	Durham
AJTC Conferences	2	Cardiff, London
Criminal Injuries Compensation Appeals Panel	1	Glasgow
Employment Tribunal Scotland	1	Crieff
Scottish Civil Courts Review	1	Glasgow
Parking Seminar	1	Edinburgh
SCAJTC Conference	1	Edinburgh
Total	12	

SCAJTC Sub group Meetings		
Scottish Civil Courts Review	2	Edinburgh
SCAJTC Conference	4	Edinburgh
Total	6	
Meetings		
Criminal Injuries Compensation Appeals Panel	1	Glasgow
Employment Tribunal Scotland	2	Edinburgh, Glasgow
Scottish Government Officials	1	Edinburgh
Various	13	
Total	17	
User Groups		
Additional Support Needs Tribunal Scotland	1	Glasgow
Asylum & Immigration Tribunal	1	Glasgow
Social Security Commissioners & VAT and Duties	1	Edinburgh
Total	3	
Training		
Additional Support Needs Tribunal Scotland	1	Glasgow
Judicial Studies Board	1	Northampton
Mental Health Tribunal Scotland	1	Stirling
Social Security & Child Support Tribunal	1	Edinburgh
Total	4	
Stakeholders		
Scottish Tribunals Forum	4	Edinburgh
Scottish Public Services Ombudsman	1	Edinburgh
Total	5	
Total for 2007/08	72	

Annex D : Tribunals in Scotland

More than half of all tribunals operating in Scotland are UK tribunals dealing with reserved matters i.e. their policy responsibility lies with the UK Government at Westminster. These “**Reserved Tribunals**” include:

- Asylum & Immigration Tribunal
- Asylum Support Tribunal
- Civil Aviation Authority
- Competition Appeal Tribunal
- Copyright Tribunal
- Criminal Injuries Compensation Appeals Panel
- Financial Services and Markets Tribunal
- Gender Recognition Panel
- General Commissioners of Income Tax
- Information Tribunal
- Information Commissioner
- Insolvency Practitioners Tribunal
- Patents, Designs, Trade Marks and Service Marks (Comptroller General)
- Reserve Forces Appeal Tribunal
- Social Security and Child Support Appeal Tribunal
- Social Security Commissioners
- Special Commissioners of Income Tax
- Transport Tribunal
- Value Added Tax and Duties Tribunal

Under the Scotland Act 1998, the UK Parliament continues to legislate for Scotland on reserved matters. While the Scottish Parliament may not make laws on reserved matters; all tribunals in Scotland must, when making decisions, take into account any modifications to Scots law made by the Scottish Parliament.

There are also a number of smaller tribunals under UK legislation, some of which may not even sit in Scotland in any particular year, for whom the Scottish Parliament has legislative competency. These include:

- Forestry Committees
- Horse Betting Levy Appeal Tribunal for Scotland
- Pensions Appeal Tribunal for Scotland
- Police Appeal Tribunals

The remainder of Tribunals operating in Scotland are devolved tribunals i.e. their policy responsibility is a matter for the Scottish Government and the Scottish Parliament. The ***Devolved Tribunals*** operating in Scotland include:

- Additional Support Needs Tribunal for Scotland
- Children's Hearings
- Crofters Commission
- Education Appeal Committees
- Employment Tribunal for Scotland
- Lands Tribunal for Scotland
- Mental Health Tribunal for Scotland
- NHS Discipline Committees
- NHS National Appeal Panel for Entry to the Pharmaceutical Lists
- NHS Tribunal
- Panel of Agricultural Arbiters
- Police Pensions Appeal Tribunal
- Private Rented Housing Panels
- Scottish Charities Appeal Panel
- Scottish Parking Appeals Service
- Traffic Commissioners for Scotland
- Valuation Appeal Committees

Annex E : Scottish Committee's Workplan for 2008/09

OBJECTIVE 1

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

Our Scottish Committee will work to establish a common understanding of its role within the developing administrative justice framework in Scotland. That understanding will help the Committee in providing influential advice to the Scottish and UK Governments, and will improve outcomes for all users.

To this end, in 2008/9 our Scottish Committee will:

- Actively contribute to the discussions surrounding the future of administrative justice in Scotland, including the First Ministers "Review of Tribunals", to maintain its strategic overview
- Continue to build and maintain strong mutually beneficial relationships with Ombudsmen, and other relevant office holders, acting in Scotland to facilitate sharing of information in areas of common interest
- Continue to be the first port of call for Scottish Government officials on issues relating to administrative justice in Scotland thus enabling the sharing and exchange of information regarding current issues
- Establish better communications with those organisations exploring new approaches to dispute resolution in order to act as a catalyst in the sharing of information and best practices
- Promote a better understanding of administrative justice in Scotland building on the work already begun at our February 2008 conference
- Seek to increase readership of the AJTC's electronic magazine "Adjust" in Scotland and increase content of Scottish administrative justice articles within it
- Identify and improve links with Scottish based academic groups to encourage academic research particularly in areas of relevance to Scottish users

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 affects Scotland

Our 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 Tribunals Service.

To this end, our Scottish Committee will :

- Conduct visits to the hearings of both devolved and non-devolved tribunals, including those within the Tribunals Service
- Provide feedback following the visits including information to be included in the periodic accounts to the Senior President of Tribunals
- Build and maintain strong mutually beneficial relationship with the Tribunals Service judiciary and officials with responsibility for Scotland
- Monitor the Tribunal Service's tribunal reform programme and identify issues of particular interest to users in Scotland

Our Scottish Committee will also produce an analytical paper focusing on issues affecting devolved tribunals. This will afford us a better understanding of their working processes and allow us to maintain and further develop effective, mutually beneficial relationships.

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

Our 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 Children's Hearing system in Scotland, the Gill Review of the Scottish civil court system and the Crerar Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland.

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

Printed in the UK for the Stationery Office Limited
on behalf of the Queen's Printer for Scotland.

C6 10/08

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