

TRIBUNAL TRAINING IN SCOTLAND

REPORT ON EVALUATION OF TRIBUNAL TRAINING IN SCOTLAND

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GLOSSARY OF ABBREVIATIONS

Great Britain

AJTC	Administrative Justice and Tribunals Council
AJSG	Administrative Justice Steering Group
ASNTS	Additional Support Needs Tribunal for Scotland
ETS	Employment Tribunal Scotland
JCS	Judicial Council for Scotland
JSB	Judicial Studies Board
JSC	Judicial Studies Committee
MHRT	Mental Health Act Review Tribunals
MHTS	Mental Health Tribunal for Scotland
phrp	Private Rented Housing Panel
SCAJTC	Scottish Committee of the Administrative Justice and Tribunals Council
SCAP	Scottish Charity Appeals Panel
SCCoT	Scottish Committee of the Council on Tribunals
SSCSA	Social Security and Child Support Appeal Tribunals
STF	Scottish Tribunals Forum
TNA	Training Needs Analysis

Comparator countries

AAT	Australian Administrative Appeals Tribunal
AIAL	Australian Institute of Administrative Law
AIJA	Australian Institute of Judicial Administration
ALRC	Australian Law Reform Commission
ARC	Australian Administrative Reviews Council
CCAT	Council of Canadian Administrative Tribunals
CIAJ	Canadian Institute for the Administration of Justice
COAT	Council of Australasian Tribunals

EXECUTIVE SUMMARY

Background

1. This report represents the outcome of a review of the training provided to chairs and members of tribunals that sit in Scotland. The research was undertaken between February and June 2008.

Aims and objectives of the evaluation

2. The aims were to examine the current general training provided to tribunal members in tribunals operating in Scotland; and to explore the current training needs and requirements of tribunal members. The objectives were to:
 - compare the current training provisions in Scotland with the training for tribunal members provided in other jurisdictions, notably in England and Wales;
 - highlight any issues arising from the current system of training for tribunal members in Scotland;
 - propose options for developing and strengthening the training for tribunal members in Scotland;
 - analyse the strengths and weaknesses of existing training provisions;
 - examine how tribunal members are trained in other jurisdictions, in particular England and Wales;
 - assess the training needs of tribunal members in Scotland;
 - identify ways in which effective training can be provided to tribunal members in Scotland to ensure consistency across all tribunals in Scotland.

Methodology

3. The review included review of policy and academic sources in relation to best practice in tribunal training in selected jurisdictions outside Scotland, and review of the processes of training operating in Scotland, the latter by reference to data published in relation to 37 tribunal systems operating in Scotland by the Scottish Committee of the Administrative Justice and Tribunals Council (formerly the Council on Tribunals) and by interview and questionnaire responses with a sample of nine of the those tribunals.
4. The sample comprised both devolved and reserved tribunals. “Devolved” tribunals make decisions in an area of law that falls wholly within the devolved jurisdiction of the Scottish Parliament under the Scotland Act 1998. “Reserved” tribunals make decisions in an area of law that is reserved to the Westminster Parliament in terms of that Act.
5. The sample of devolved tribunals was:- Lands Tribunal for Scotland (LTS); Scottish Charity Appeals Panel (SCAP); Mental Health Tribunal Scotland (MHTS); Additional Support Needs Tribunals for Scotland (ASNTS); Private Rented Housing Panel (prhp). The sample of reserved tribunals was:- Employment Tribunals (Scotland); Social Security and Child Support Appeals Tribunals (SSCSA); Asylum and Immigration Tribunal (AIT); VAT and Duties Tribunal. Questionnaires were

issued to 693 chairs and members but some held positions on more than one tribunal. 180 responses were received.

Main findings

6. *Devolved* tribunal systems devise their own training and professional support processes. The existing processes for training for tribunals operating wholly in Scotland are therefore fractured and autonomous.
7. The disparity of approaches to training does not necessarily indicate poor quality training and support, but comments from tribunal Presidents and from chairs and members identify scope for improvement in each devolved system reviewed. The strength of the current system is the direct linkage between training and the tribunal system to which the chair or member has been appointed. This often takes the form of informal peer support and sophisticated training packages being used in some tribunals. The weaknesses are that training generated wholly within a tribunal system can be costly and narrowly focussed.
8. *Reserved* tribunals operating in Scotland in the main participate in an integrated training system that originated in the Tribunals Service but is now overseen by the Judicial Studies Board (Tribunals Committee).
9. Many chairs and members hold positions on more than one tribunal, and some have current or past experience on both reserved and devolved tribunals. Most are part-time in a tribunal role and balance this with other commitments, whether domestic or professional.
10. More scope exists for support mechanisms such as mentoring, appraisal and buddy schemes, although some tribunals have been introducing these mechanisms and most offer informal support. Mentoring and/or a buddy scheme may work most effectively if introduced within like groups (chair to chair, member to member) but could also operate across tribunal systems (particularly for small tribunal systems where the pool of potential mentors or buddies is limited.) Shadowing within and across tribunal systems is a further possibility.
11. Tribunal member respondents have identified training and feedback as key to their growth in confidence and competence in their tribunal roles. Some indicate concern that the dynamics of tribunal decision-making varies depending upon which individuals are sitting together on the tribunal on a given day.
12. Tribunal members appointed for particular experience and expertise noted lack of training in how to use those effectively and fairly in the role of tribunal member. A few chairs felt that competence in how to use their skills within tribunals could be assumed without further training.
13. Some respondents commented that tribunal participants who are accustomed to working within a particular sector might, albeit unwittingly, give effect to certain sector biases or schools of thought in their decision-making and stated that they did not wish to do so inappropriately. Research reports and user surveys in England

disclose similar points of concern. This suggests a need for more training that clarifies roles and dynamics within decision-making but acknowledges judicial independence.

14. Some sharing of effective training methods for devolved tribunals is essential in order to disseminate good practice and, since most training activities are funded by the public purse, to achieve best value.
15. Devolved tribunals may benefit from importing appropriate training methods from other systems or countries, and having reciprocal agreements on shared training.
16. Autonomous training within tribunal systems sits poorly with the self-development aspect of training for chairs and members, and does not promote its transferability between tribunal systems. A collaborative national training resource is desirable. The experience in Australia, New Zealand and Canada is that not all tribunals and regions have engaged with a national training resource, but this evaluation reveals considerable support for collaboration in Scotland.
17. A clearly articulated training and professional development programme in generic skills - including those related to impartial decision making - would provide tribunal members with the skills they need and address user fears or perceptions of decision-making that is influenced by professional preconceptions or preference for a particular party. Scotland's small scale, overlap of tribunal personnel and commitment to best value suggest that a national training resource would be welcomed. The judicial and tribunal communities have already put informal networks in place to discuss best practice.
18. Respondents commented upon fees for training days being paid at a level lower than tribunal sitting days. Compulsory and remunerated training, both specific to jurisdiction and generic, could be introduced across the tribunal spectrum in Scotland as a basic requirement and a platform for further training.
19. The pooling of training expertise, knowledge and resources could be achieved by the SCAJTC taking a facilitative role, or by self-management by Tribunal Presidents via the Scottish Tribunals Forum (STF). This would do little more than reflect the status quo.
20. Alternatively a single body could oversee, support and advise the tribunals in their training methods. The Administrative Justice Steering Group (AJSG) has reported in September 2008 on options for a national tribunals service for Scotland.
21. In generic skills training there would be considerable overlap between the training provided by the JSC for the professional and lay judiciary operating in the courts, and that which is appropriate for tribunals. A Tribunals arm of the JSC could be given responsibility for (at least) generic training, the design of which should involve consultation with the SCAJTC and STF and input from tribunal chairs, members and users. That training should be accessible to reserved as well as devolved tribunals operating in Scotland.

22. Training requires to address tribunal dynamics expressly. This topic has a generic aspect (multi-person decision-making) and a system-specific aspect (recognising and addressing pre-existing professional hierarchies and values amongst constituencies from which the members are drawn). Neither receives much attention in devolved tribunal training at present.
23. Considerable resource exists via the Tribunals Committee of the JSB and national bodies in Australia, New Zealand and Canada to influence development of training in tribunal dynamics. However, input from devolved tribunal user surveys or user groups and from chairs and members is needed for it to be targeted to the particular dynamics of Scotland's devolved tribunal context.
24. Training records are not kept routinely by tribunal systems. A central body overseeing training provision and standards could initiate and maintain a record for each chair and member which the individual could carry from one tribunal role to another.

CHAPTER ONE INTRODUCTION AND BACKGROUND

1.1 In Scotland a range of tribunals operate to determine disputes in many different areas of law. The majority of tribunals provide the citizen with the means to challenge decisions made by officials of local or central government (such as social security appeal tribunals and additional support for learning tribunals.) Others are created as a means of determining rights, responsibilities or disputes in relation to obligations between individuals arising under statute (such as the Private Rented Housing Panel (previously the Rent Assessment Panel) or the Social Security and Child Support Appeal Tribunal). Most tribunals are led by a President and supported by an administrative structure that deals with training, listing and issue of tribunal decisions. The administration and resourcing of a Tribunal is usually linked to a Department of Government within whose remit the subject jurisdiction of the Tribunal lies (“the sponsoring department”). Tribunals dealing with subject matter that is wholly within the devolved jurisdiction of the Scottish Parliament are referred to in this report as “devolved tribunals.” For example, the Private Rented Housing Panel is a devolved tribunal because it deals with an area of law that is devolved to the Scottish Parliament. Tribunals dealing with subject matter that is reserved to the Westminster Parliament are referred to as “reserved tribunals.” The Social Security and Child Support Appeal Tribunal is a reserved tribunal because it deals with areas of law that are reserved.

1.2 Tribunals and their functions have been the focus of considerable debate in the current decade in many jurisdictions. That debate has coincided latterly with wider reforms in relation to the appointment and support of members of the judiciary. However this research report deals only with tribunals.

1.3 Tribunals require to provide training to all members in the area of law in which the tribunal operates and to ensure that they are updated in relevant case law or changes in legislation. Chairs or members may have some familiarity with that area of law prior to appointment. This training in law is well established. However, they do not routinely receive training in how to work together to apply the law in the tribunal setting and to carry out the work of the tribunal most effectively. In some instances this has been assumed from the competencies displayed in order to secure appointment. They do not routinely receive training in how to adapt their pre-appointment skills and experiences to the tribunal environment. In some tribunal jurisdictions in Scotland, and more so in countries outside Scotland, training is provided in core tribunal skills such as effective questioning and listening, decision-making and reasoning.

1.4 The model now used in England and Wales is to foster these skills independently of the specific tribunal jurisdiction through the Judicial Studies Board (JSB) Tribunals Committee. As a result, members of different tribunals are brought together for generic training, rather than being trained solely for and within the tribunal system to which they have been appointed. At present no such training exists for devolved tribunals. A Judicial Studies Committee (JSC) operates in Scotland, but without a statutory basis, to promote training for the judiciary. It does not provide training for tribunals at present.

1.5 In other countries (Australia, New Zealand and Canada) these issues have also been considered recently and changes explored or put in place. All involve options for training in judicial skills and tribunal-craft separately from the sponsoring department of Government.

The desirability of such training taking place at arms length from the sponsoring department has been noted (AJSG, 2008; Adler, 2004, 2006; Leggatt, 2001).

1.6 Against this background (which is discussed more fully in Chapter 3) the aims of the project were to examine the current general training provided to tribunal members in tribunals operating in Scotland; and to explore the current training needs and requirements of tribunal members.

1.7 The objectives of the research were to:

- compare the current training provisions in Scotland with the training for tribunal members provided in other jurisdictions, notably in England and Wales;
- highlight any issues arising from the current system of training for tribunal members in Scotland;
- propose options for developing and strengthening the training for tribunal members in Scotland;
- analyse the strengths and weaknesses of existing training provisions;
- examine how tribunal members are trained in other jurisdictions, in particular England and Wales;
- assess the training needs of tribunal members in Scotland;
- identify ways in which effective training can be provided to tribunal members in Scotland to ensure consistency across all tribunals in Scotland.

1.8 The research team comprised Margaret Ross, Senior Lecturer in Law, Lynda Reid, Research Assistant and Sarah Bleichner, Lecturer in Law, all from the University of Aberdeen Law School.

CHAPTER TWO METHODOLOGY

Design and Methodologies

2.1 In order to fulfil the objectives of the project the following mixed methodology was adopted:

- Library and electronic resource research to uncover relevant policy and academic sources in relation to best practice in tribunal training in jurisdictions outside Scotland, with particular emphasis on the system operating in England & Wales under the oversight of the Administrative Justice and Tribunals Council (AJTC), and on systems operating in Australasia.
- Liaison with the Chair and officers of the Scottish Committee of the AJTC (SCAJTC) to understand their role in relation to tribunal training.
- Semi-structured interviews with Presidents of a sample of tribunals operating in Scotland or their nominees, including both devolved and reserved tribunals.
- A brief questionnaire survey of a sample of tribunal members and chairs.

Tribunal sampling

2.2 The Scottish Committee of the Council on Tribunals (SCCoT) the predecessor of SCAJTC has published a list of 37 decision-making bodies operating in Scotland in 2006-2007 which fell within its oversight. That list is reproduced in Appendix 1. The sample of nine tribunals was selected to include a range which varied in specialism, size of pool of chairs and members, volume of tribunal business and geographical spread, and to fill gaps in the knowledge of training across Scotland as shown in a training register established by the Scottish Committee of the Council on Tribunals (SCCoT) and maintained by the SCAJTC.

2.3 The sample was as follows:-

Table 2.1 Tribunal Sample

Tribunal system	Jurisdiction
Lands Tribunal for Scotland	Devolved
Scottish Charity Appeals Panel (SCAP)	Devolved
Mental Health Tribunal Scotland. (MHTS)	Devolved
Additional Support Needs Tribunals for Scotland (ASNTS)	Devolved
Private Rented Housing Panel (prhp)	Devolved
Employment Tribunals (Scotland)	Reserved
Social Security and Child Support Appeals Tribunals (SSCSA)	Reserved
Asylum and Immigration Tribunal	Reserved
VAT and Duties Tribunal	Reserved

Initial enquiries

2.4 Preliminary information about the SCAJTC and the establishment of the training register by the SCCoT was obtained to supplement the information available on the committee's website.

Approaches to Tribunal Presidents

2.5 Introductory letters including a request for interview were sent to the Presidents of the respective tribunals but in the case of the Scottish Charity Appeals Panel (SCAP) which does not have a President but is serviced by the Scottish Government via an Executive Secretary, the letter was sent to the Secretary. In the remainder of this report except where context requires otherwise, the term President is used for the person in overall charge of each tribunal system.

2.6 In order to achieve a uniform and robust set of outcomes from the respective interviews with the Presidents or nominated senior officers of the respective tribunals, a list of questions was compiled which was subsequently put to all interviewees. The questions are set out in para 4.3.

2.7 Following collation of the material obtained from these interviews an online questionnaire for tribunal members and chairs was devised and set up using Snap Surveys questionnaire software. The content of the questionnaire is set out in Appendix 2.

2.8 Presidents had agreed to disseminate these questionnaires via existing mailing lists. The weblink for the questionnaire was issued to contacts within the sample tribunals to be cascaded by email to their chairs and members using those existing mailing lists. The timing of issue of the link and deadline for responses was such that some tribunals were unable to issue the link. In the Additional Support Needs Tribunal for Scotland (ASNTS) the timing was not feasible due to the President's other commitments outside that tribunal system. In the Social Security and Child Support Appeal Tribunals (SSCSA, a reserved tribunal system which has the largest population of members and chairs operating in Scotland) it was stated that the link could only be sent with another scheduled mailing to members and chairs and this was not possible within the time available. Nevertheless there were 180 responses to the online questionnaire from a total of 693 constituency of chairs and members in the tribunal systems through which they were issued. However the responses reveal overlap of chairs and members between the systems surveyed, so the per capita pool of respondents was less than the total number of recipients. It is not possible to calculate the net pool of respondents without cross-referencing the confidential mailing lists held by the Tribunal Presidents, but calculated on the gross constituency the return of questionnaires is 26%. The responses are analysed in chapter 4 below.

2.9 A literature review of sources was carried out. In addition to academic commentaries in books and scholarly journals, policy material from England & Wales, Canada, Australia and New Zealand was studied. The source material is discussed in more detail in Chapter 5.

2.10 Conclusions and recommendations are set out in Chapter 6.

CHAPTER THREE TRAINING CONTEXT

Background to this evaluation of tribunal training

Reforms in England & Wales and Great Britain

3.1 A report by Sir Andrew Leggatt *Tribunals for Users – One System, One Service* was published in 2001 (Leggatt, 2001), in respect of tribunals operating in England & Wales and those with a GB wide jurisdiction (e.g. social security and child support appeal tribunals, employment tribunals, criminal injuries compensation tribunals). Tribunals have GB wide jurisdiction when the subject matter is governed by legislation applying throughout the GB, that is areas reserved to the Westminster Parliament. They are referred to in this report as “reserved tribunals” in so far as they operate in Scotland.

3.2 The Leggatt Report was followed by a White Paper entitled *Transforming Public Services: Complaints, Redress and Tribunals* (Department for Constitutional Affairs 2004), and in turn by the Tribunals, Courts and Enforcement Act 2007. The 2007 Act replaced the Council on Tribunals (CoT), which had had oversight of the operations of administrative tribunals in Great Britain (its activities in Scotland being carried out by a Scottish Committee, SCCoT) with the Administrative Justice and Tribunals Council (AJTC), also with a Scottish Committee (SCAJTC). The AJTC came into being in April 2008 and the membership of the Scottish Committee was carried over from the Council on Tribunals.

3.3 Reserved tribunals fall under the administrative control and judicial leadership of the Tribunals Service. The Service is undergoing restructuring as a result of the reforms implemented by the 2007 Act. Since 2002 responsibility for training for tribunals has been transferred by the Tribunals Service to the Judicial Studies Board (JSB) which it exercises through its Tribunals Committee. More information on the role of the Tribunals Committee is to be found in Chapter 5.

Tribunal Context in Scotland

3.4 In Scotland, the Tribunals Service is responsible for running the reserved tribunals. They are subject to the terms of the Tribunals, Courts and Enforcement Act 2007. The GB-wide Tribunals Service is led by a Senior President, and there are regional presidents, some of whom are based in Scotland for reserved tribunals operating here. The main reserved tribunals are the Asylum and Immigration Tribunal and the Social Security and Child Support Appeal Tribunal, The Employment Tribunal is a reserved tribunal although, in common with some other reserved tribunals, it is under the direct supervision of the SCAJTC, and historically it has had a degree of independence in its operations in Scotland.

3.5 None of these recent reforms was concerned with devolved tribunals or tribunals dealing with devolved matters only. The responsibility for tribunals dealing only with devolved matters lies with the Scottish Government and the Scottish Parliament. A Judiciary and Courts (Scotland) Bill has been passed by the Scottish Parliament in September 2008, but “judicial office holders” as defined under the Bill do not include chairs or members of tribunals generally. In 2006 the Administrative Justice Steering Group (AJSG) “was established by the Scottish Public Services Ombudsman (SPSO), in conjunction with the

former 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 in the preparation of a final report to the Scottish Government on the administrative justice framework in Scotland taking account, among other things, of the likely impact of the Tribunals, Courts and Enforcement Act 2007" (AJSG, 2008). In September 2008 the AJSG reported on a range of options for an integrated system to support tribunals operating in Scotland, to acknowledge their distinctiveness from the Tribunals Service as it relates to reserved tribunals operating south of the border, and to reinforce the independence of tribunals operating in Scotland from Scottish Ministers and sponsoring departments (AJSG, 2008).

3.6 Devolved tribunals draw their powers from legislation applying only in Scotland. There are tribunals that pre-date devolution, for example Lands Tribunal for Scotland and Children's Hearing, and new tribunals created by legislation of the Scottish Parliament such as the Additional Support Needs Tribunal for Scotland and the Mental Health Tribunal for Scotland.

The role of sponsoring departments

3.7 The Scottish Ministers have statutory roles in relation to the devolved tribunals, including the right to appoint members or to be consulted on appointments, providing buildings and staff, and involvement in the making of procedural rules and other regulations. Their respective roles vary from one tribunal system to another. Scottish Ministers fulfill their roles through the department of government with which the tribunal system is connected in substance (the sponsoring department). Development and delivery of training is a matter for each tribunal system, within operating budgets provided by sponsoring departments.

Interface with judicial bodies operating in Scotland

3.8 In the case of some tribunals (mainly reserved) statute provides a role for the Lord President, who heads the judiciary in Scotland, in approving tribunal appointments. This role of the Lord President in approving certain tribunal appointments highlights independence of tribunals from Ministers and the sponsoring department. There is no equivalent in Scotland of the Tribunals, Courts and Enforcement Act 2007. A Judiciary and Courts (Scotland) Bill passed in September 2008 does not apply to tribunals generally. There is some informal and advisory interface between the judiciary and tribunals in Scotland.

3.9 In 2007 a Judicial Council for Scotland (JCS) was established under the Lord President. This is an informal and advisory body which discusses practice and policy in judicial matters in Scotland, and helps to devise consultation responses on behalf of the Scottish Judiciary generally. Tribunals are represented on the Council by two tribunal chairs. Currently, one is a full-time regional chair of a reserved tribunal in the Tribunals Service and the other is President of a long-standing tribunal within a devolved area and also a Senator of the College of Justice (Court of Session judge).

3.10 At present, the Judicial Studies Committee in Scotland (JSC) promotes training for the Scottish Judiciary. It is an informal body. The training has been extended beyond judges and sheriffs to stipendiary magistrates and most recently to lay judiciary in the Justice of the

Peace Courts. No statutory basis exists for its functions. A statutory duty to train the lay judiciary for the Justice of the Peace Courts lies with Scottish Ministers, but is transferred by the Judiciary and Courts (Scotland) Bill to the Lord President. Training for the judiciary is in fact delivered by the Judicial Studies Committee.

3.11 The Judicial Studies Committee in its Annual Report for 2007-2008 stresses that training is a means of support to which decision-makers are entitled, rather than a reaction triggered by weakness in the role.

3.12 In 2005 the Lord President established and chaired a Scottish Tribunals Forum (STF) for identification and discussion of matters common to all tribunals operating in Scotland, including both reserved and devolved tribunals. The STF is informal and advisory. It has no formal interface with the JSC, but in 2008 the JSC at its annual conference considered its role in relation to tribunal training. The Lord President addressed the SCCoT Conference in 2005 and spoke about training as a tool to assist tribunals in performing their roles (SCCoT Annual Report, 2005-2006).

The role of the Scottish Committee

3.13 The SCCoT (now the SCAJTC) has played a pivotal role in the interface between the Lord President and Presidents of individual tribunal systems, and in the establishment of the AJSG. It has exerted influence on training for tribunals in a number of ways.

Annual reports

3.14 The activities of the Scottish Committee of the Council on Tribunals (now the SCAJTC) as reflected in its Annual Reports provide an insight into, amongst other things, the training being offered for different tribunals. The Scottish Committee's Annual Reports list the tribunals operating in Scotland in the year under report. The list in its Annual Report 2006-2007 is repeated at Appendix 1. It comprises tribunals with a wide and varied range of powers and of varied sizes and workloads. Sponsoring departments vary from large departments of the Westminster government to small local authorities which must maintain local education committees to hear appeals against decisions on education placing requests.

3.15 The Scottish Committee drew attention to the scope for a national approach to training for tribunals operating in Scotland in successive annual reports. In its Annual Report for 2003 – 2004, the Scottish Committee stated

“ we are still pressing the case for a national training resource in Scotland to mirror the tremendous work done by the Judicial Studies Board in England and Wales in developing training courses for, and cascading information to, tribunals.....we firmly believe that there should be an equivalent service in Scotland to promote and coordinate local training. It is our view that the lack of a national training resource in Scotland is hindering the proper development of tribunals north of the border, particularly those who do not benefit from GB-wide resources. If the resource were in place, all tribunals in Scotland would benefit from economies of scale and effort and might not need to reinvent the wheel and start with a blank sheet”. (Scottish Committee Annual Report 2003-2004)

3.16 The creation of the UK Tribunals Service in 2006 with a dedicated budget for training in reserved tribunals prompted the Scottish Committee to note again that there is a need for increased centralised provision of training opportunities for the devolved tribunals in Scotland, but also to remain inclusive of reserved tribunals in so far as they operate in Scotland. (Annual Report 2005-2006 paras 6 and 8). In 2007 the Scottish committee noted again the need for tribunal training for Scotland to bridge rather than divide the devolved and reserved tribunal jurisdictions operating in Scotland and they go on to state

“we believe firmly that economies of scale under a Scotland-wide initiative could be of tangible benefit to Scottish tribunals and their users... although each tribunal has a need for specialist training in its particular legislative provisions, there is plenty of scope for generic training in fairness, weighing up evidence and impartiality which is common to any component of administrative justice.”(Annual report 2006-2007 para 7)

Annual conferences

3.17 The Scottish Committee held informal discussions with the JSC to explore training issues at a Scotland wide level, and in 2004 the Chair of the JSC addressed a conference hosted by the Scottish Committee (Scottish Committee Annual Report 2004-2005).

3.18 The Scottish Committee held a conference in February 2008 entitled *Advancing Administrative Justice and Tribunals – Looking at where we are now and where we go from here*. The conference report was published in April 2008 (Conference Report, 2008). In a session devoted to “Structure and Relationships between Tribunals in Scotland” those present agreed that Scotland should follow two key principles noted by Leggatt, namely independence from the sponsoring government department, and a coherent tribunal system. The conference identified four options for tribunals operating in Scotland, and these options have been taken forward in the report of the AJSG published in October 2008 (AJSG, 2008). The four options identified for Scottish tribunals were:

- the status quo;
- subsuming all Tribunals operating in Scotland into the Tribunals Service;
- a parallel Tribunals Service for Scotland for those not already part of the Tribunals Service; or
- a parallel Tribunals Service that would include all tribunals operating in Scotland including reserved tribunals (the Employment Tribunal Scotland was named specifically).

The first two options were not favoured. It was hoped by those present that policy-makers would note the need for some integrating process (as in options three or four) as it was feared that in the absence of action a gulf would develop between those tribunals operating in Scotland which are, as reserved tribunals, within the Tribunals Service, and other Scottish tribunals operating outside it (Scottish Committee Conference Report, 2008). These options are repeated and in the AJSG report published in October 2008 (AJSG, 2008), and an option of bringing Scottish tribunals within the remit of the Tribunals Service was added. These options are explored further in the AJSG report by reference to the Leggatt Committee’s principles of independent and impartial processes, an independent and skilled judiciary and a coherent system. The report does not come down in favour of a particular option, but the one seeming to meet the principles most strongly is a service relating to all tribunals operating in

Scotland including those reserved tribunals currently under the aegis of the Tribunals Service. AJSG note that this inclusive Scottish approach would be consistent with “justice” in its broadest sense being a devolved matter.

Tribunals Training Register for Scotland

3.19 In order to map the nature and provision of training within tribunal systems operating in Scotland, the Scottish Committee sought information from those tribunals, which it then published in 2004 in the form of a Tribunal Training Register for Scotland. The information within the register has been expanded and updated periodically and Volume 4 (2007-2008) is available via the AJTC website.¹ This report should be read alongside that register.

3.20 The training register sets out the name of the tribunal system, and information on:

- Level of training
- Type of training material
- Title of training session
- Estimated length of training session
- Objectives
- Electronic formats, and
- Contact details for training provision

3.21 The Scottish Committee had started the register after becoming aware that different tribunals were trying to set up their own training aids without realising that others had or were at the same time producing the same and no other body had contacts across all tribunals operating in Scotland.² From a low level of response in 2004 the register has grown in detail with each volume published (volume 4 was published in January 2008) and now only a few tribunal systems do not appear there. After publication of the first volume of the register the SCCoT did ask those who had contributed to that volume whether, further to its publication they had been approached subsequently by other tribunals systems operating in Scotland for information about training. Although there had not been many approaches following publication of the first register, SCCoT decided to continue gathering the information and updating the register and has overseen its expansion.

The role of Scottish Ministers

3.22 On 30 January 2008 the First Minister made a statement to the Scottish Parliament on *Delivering More Effective Government*. In that statement he listed objectives for reform as

*“First, to streamline decision making and increase transparency
Second, to bring together organisations with similar skills, expertise and
processes....” (Simplifying Public Services, 2008)*

3.23 He identified an area for further work as being to “look at the case for an integrated Tribunal Service for Scotland,” and in Annex 2 to the statement, made reference to the further work including a review of administrative justice by Lord Philip (current chair of the

¹ http://www.ajtc.gov.uk/docs/sc_tribunal_training_register_07-08.pdf

² Letter to research team from Assistant Secretary to SCAJTC, March 2008.

Scottish Tribunals Forum), to be followed by proposals to streamline the operation and administration of tribunals in Scotland. The review of Administrative Justice is ongoing, but the report of the Administrative Justice Steering Group, advocates a single national body for (at least) devolved tribunals operating in Scotland, and greater distance between the functions of tribunals and Scottish Ministers (AJSG, 2008).

Conclusions

3.24 The processes for appointment, training and decision-making vary extensively in tribunals operating in Scotland. The training approaches are disclosed for most tribunals in the Scottish Committee's Tribunal Training Register. There were gaps in input to that register and in the course of this research an attempt has been made to map the training activities of those tribunals for whom such specification does not appear in the Scottish Committee's training register.

3.25 The growth in submissions to the register is evidence that it is valued by the tribunal community. Since the date of creation of the register there has also been considerable expansion of networking within the community and with the judiciary in the form of the Scottish Tribunals Forum, the Scottish Judicial Council and annual conferences of the Scottish Committee.

3.26 The views from tribunals discussed in the next chapter are in the main consistent with positive perceptions of training (although possibly a better term would be "development") and sharing of good practice across tribunal systems.

3.27 In the course of its monitoring of tribunals the Scottish Committee notes examples of good and poor practice, which can be very valuable to those designing training for tribunals, whether that training is specific to the jurisdiction or generic. It reports on these within its annual reports and in its contemporaneous (but unpublished) feedback to the tribunals that it visits.

3.28 The Scottish Committee, although historically charged with monitoring the operation of tribunals, now has an expanded remit under the Tribunals, Courts and Enforcement Act 2007 and is an excellent resource in terms of information and expertise. It has repeatedly stressed its wish to see sharing of best practice and training opportunities, as well as creating linkages rather than divide between devolved and reserved tribunals. The creation of the Scottish Tribunals Forum, the work of the Administrative Justice Steering Group and the inclusion of Tribunals representatives on the Scottish Judicial Council are also important developments. Opportunities to expand dissemination of wisdom and experience and to feed it directly into the development of training need to be explored further.

CHAPTER FOUR VIEWS FROM TRIBUNALS

Introduction

4.1 In order to get a clear picture of how training for tribunal members is currently carried out in both devolved and reserved tribunals a sample group of tribunals was chosen and interviews conducted with their Presidents or another representative. This not only provided information as to current training procedures, but also offered an opportunity for the Presidents to comment on training issues that they perceived and offer suggestions for improvement in training provision. To properly evaluate current training regimes it was also necessary to elicit the opinions of those who are receiving the training. An online questionnaire was provided to tribunal members and chairs to allow their experiences of training to be incorporated into the analysis.

4.2 The responses from both the Presidents and tribunal members and chairs showed, primarily, that there is no standardised approach to the provision of training to tribunal members. While one might expect differences between devolved and reserved tribunals, in fact significant differences in the identification, nature and delivery of training were demonstrated among each of these sets of tribunals. The reserved or devolved status of the tribunals therefore does not determine the training process (although it did have an impact in some areas). In contrast, the size of the tribunal was observed to have an effect on training procedures with the smaller tribunals favouring informal methods that relied on personal communication rather than sophisticated reporting systems. This chapter explores the results of the consultations and analyses the responses received thematically to highlight the similarities and differences in approach by the tribunals sampled.

Comments from Presidents

Interviews

4.2 Semi-structured interviews were conducted with the Presidents or their nominees in the sample tribunals. The interviews were in all but one case carried out by telephone. The MHTS interview was scheduled to be face to face, but the interviewee was unable to meet the researcher when she visited their headquarters, so the questions were answered by subsequent email exchange.

Questions for Presidents

4.3 The list of questions posed to interviewees who were Presidents or their nominees was as follows.

- What position do you hold within your organisation?
- How many members do you have?
- Who is responsible for training or who assumes responsibility?
- How are the members' training needs identified?
- Is your training internally or externally generated?
- Is your training internally or externally carried out?

- Is there a reporting mechanism for members to identify their own training needs?
- How do you carry out lay/specialised/legal training?
- How do you identify generic training?
- How is generic training carried out?
- Is there an induction training system within your organisation?
- Is there a mentoring system within your organisation?
- Is there an appraisal system for training standards/needs?
- Do you have a recording system for training carried out by individual members and or your tribunal generally?
- Is your training system audited? Internally/Externally?
- Is there any external assessment of training needs?
- Are your training courses accredited – i.e. transferable skills?
- Should there be an upheld complaint or a member not performing to a required standard, are there any correctional/remedial training modules in place? Are they compulsory and are they carried out internally/externally?
- What is the approx. annual cost of training for your tribunal?
- Do you have any comments/suggestions for future training systems?

Interview outcomes

4.4 Interviews were carried out in April 2008 and responses are analysed and reported thematically. A summary of the information provided regarding the membership and training budgets of the sample tribunals can be found in Appendix 3.

Responsibility for Training and Training Budget

4.5 In many cases the responsibility for training tribunal members lies with the tribunal President. Of the sample tribunals the Additional Support Needs Tribunals for Scotland (ASNTS), Lands Tribunal for Scotland, and the Private Rented Housing Panel (phrp) operate in this way. The vice-President of the VAT and Duties Tribunal bears the responsibility for training of its members in Scotland.

4.6 In the case of tribunals that have no President another senior member or administrative officer takes on the responsibility. For example, the Scottish Charities Appeals Panel (SCAP) has no President and the responsibility for training falls on the tribunal Secretary. In some cases the President will work closely with a senior administrative officer to provide training – the President (currently an acting President) and Business Manager of the Mental Health Tribunal for Scotland (MHTS) work together in this way, as do the President for Scotland and vice-President of the Employment Tribunal (Scotland) (ETS).

4.7 As might be expected the size of the tribunal has an affect on who bears responsibility for training. Smaller tribunals such as the Lands Tribunal have very informal training systems with the President taking sole responsibility, while the larger reserved tribunals have a more complex structure for providing training. For example, the training for the Asylum and Immigration Tribunal is arranged on a UK-wide basis however the responsibility lies in Scotland with the Senior Immigration Judge on behalf of the President. Similarly, the Social Security and Child Support Appeal Tribunals in Scotland (SSCSA) encompasses Child

Support, Disability and Medical Appeal Tribunals, most of which are of long standing operation, the most recently formed being Child Support established in 1996. The President (who covers Great Britain) is ultimately responsible for training which is devolved to a committee and to the Judicial Training Advisory Group (JTAG) headed by the National Judicial Training Officer. Each region has its own training officer and the interviewee – the District Chairman - has the responsibility for Scotland.

4.8 The interviews also demonstrated that tribunals benefited from having Presidents who had a personal interest in training provision and/or the experience of sitting on more than one tribunal. The President of the ASNTS has a keen interest in training and education and sits on more than one tribunal, with 50 days a year time spent on Additional Support Needs. She has very specific, strong opinions on what training would be effective and extensive experience as a full-time Tribunal Chair and Regional Chair (Tribunal Service) and in Higher Education in general (former law academic). The President is currently involved in establishing an appraisal system for identifying training needs of the tribunal members. The President of the phrp has overall responsibility for training which includes identifying and organising the training of each of the 33 individual members. She is or has been a member on the MHTS, Immigration and SSCSA tribunals as well as the Judicial Studies Board and calls on her appraisal skills to assist her to a great extent in carrying out this function. She has also initiated mediation training for her tribunal system, following through procedural provision for mediation in private housing disputes and the transferable skills underlying that process.

4.9 Training costs/budgets for the devolved tribunals vary considerably according to member numbers. Of the devolved tribunals that provided training cost/budget information, the smallest – the Lands Tribunal – has no defined training budget while the larger although still relatively small SCAP (which has only been in existence since 2007 and has only heard one case to date) has invested £60,000 in initial training with an annual top-up of £5,000 envisaged. Membership size was also decisive in the training budgets for the reserved tribunals sampled. The VAT Duties Tribunal allocates £2,000 to a maximum of £3,000 p.a. for training of its 20 members in Scotland. The much larger Asylum and Immigration Tribunal spends £500,000 p.a. on training UK-wide, and the SSCSA have a budget of £993,000 for training across Great Britain, but this is for a total constituency of members and chairs numbering over two thousand.

Identification of Training Needs

4.10 The identification of members' training needs by the tribunal President or other responsible party varies greatly among the sample tribunals with factors such as size and jurisdiction again influencing the method of identification. In the Lands Tribunal, as noted above, the training process is largely informal due to the small size of the tribunal. Here the President identifies the individual members' training needs by informal discussion and reporting. In contrast MHTS, another devolved but much larger tribunal, has a more formal methodology for identifying training needs including working with an external training provider. The President works closely with the business manager to establish the training needs for members which are identified by member's survey and general feedback by individuals to the President or business manager. This generates the provision of training along with changes to legislation or procedure and also what the President feels is relevant. MHTS work with their independent commercial training provider (Walkgrove) to refine the

training requirements and the provider then prepares the materials using subject matter experts from within or outside the existing membership. They then assist with the facilitation of events which are usually carried out at training events across Scotland and using pre-course workbooks or electronic workbooks and reading materials.

4.11 Member surveys and reporting are also facets of the identification of training needs by two of the reserved tribunals sampled. The reporting here is more formalised than smaller devolved tribunals such as the Lands Tribunal and is supplemented by other identification methods. The ETS members' training needs are identified from training course feedback questionnaires, individual member feedback and by the President when there is a change in legislation. Generic training is identified by the members themselves or by the Presidents and is built into the standard training. They only occasionally have special 'back-to-basics' training (questioning techniques etc). In the Asylum and Immigration Tribunal the individual member's training needs are identified by a) a training committee who advise the President, b) appraisal system, and c) feedback from tribunal judges in consultation.

Delivery and Nature of Generic Training

4.12 Not all of the sample tribunals provided their members with generic training (training in areas common to all tribunal members regardless of the specialism their tribunal deals with). The Lands Tribunal does not provide generic training and there is induction training for surveyors only. There is no generic training as such for members of the SSCSA, only that which would be specific to certain jurisdictions – medical/social entitlement/cross tribunal. There is however a nationally organised (for Great Britain) compulsory induction training requirement.

4.13 For the remaining sample tribunals induction training was a significant method of providing generic training. SCAP, MHTS, ASNTS, Employment Tribunal, and Asylum and Immigration Tribunal all place great importance on induction training, and induction training over two or three days has been a model used by AIT and MHTS.

4.14 There was a mixture of methods of delivering training across the tribunals sampled with reserved or devolved status having little significance. The VAT and Duties Tribunal generates and delivers training internally. Other tribunals – ASNTS, prhp, and Employment Tribunals – generate training internally, and for the most part deliver training internally, but also bring in external speakers where appropriate. MHTS takes a slightly different approach by working in partnership with an external commercial training provider (see 4.10 above). The training for SCAP members is generally carried out externally.

4.15 There was not a great deal of information provided on the format the training took or the nature of any materials provided. Residential courses or courses lasting more than one day were favoured by some tribunals at the induction training level. For example, the Employment Tribunal's training regime comprises standard training of one day for all chairs (termed "judges") and members, then one day of members-only training. The training is delivered externally. This is complemented by sitting in at tribunals. From 2008, there will be no joint training of members and judges in Scotland due to budget restraints here. Only members' training will be held locally, while judges will be trained on a GB wide basis.]

4.16 As regards training materials the Lands Tribunal, for example, uses professional publications in its member training (see 4.20 below). The Lands Tribunal President, who is keen to see more communication between tribunals and information about training methods and courses shared especially in generic areas, suggested training DVDs, and a newsletter with the opportunity for feedback from members as well as the ability to participate in larger tribunal group sessions.

4.17 Mentoring also plays a role in the delivery of generic training, but again is not universally utilised. Some of the tribunals have formal mentoring systems in place: Asylum and Immigration Tribunal has a mentoring system separate to its induction programme; MHTS is introducing a mentoring system for the most recent members assisted by longer-serving members; and in the Employment Tribunals mentoring is used for judges when they are first appointed and can continue for some time. Informal mentoring is available to members of ASNTS (mentoring carried out by tribunal President), and prhp. SCAP does not have a mentoring system in place; VAT and Duties Tribunal does not have one either but the chairman makes himself available for consultation.

4.18 The suggestions of the Lands Tribunal President (see 4.16 above) as regards sharing generic training information were echoed by the Scottish Vice-President of the VAT and Duties Tribunal who would like to see more linkage to the general national training system with more liaison especially in regard to generic training. The Secretary of SCAP suggested that more training could be made available to make the lay tribunal members more procedurally comfortable. The SSCSA interviewee suggested that the format of training could be improved by using less paper and more electronic versions of training material which should be issued in advance of conferences. This type of approach would allow generic training information to be more easily shared among tribunals as favoured by some of the other respondents.

Delivery and Nature of Specialised Training

4.19 As would be expected the nature of specialised training available to tribunal members varied greatly from tribunal to tribunal according to their needs. Naturally tribunals offered different training in the area of law that they deal in and periods of great change in the law in a particular area can lead to change in the training provided, for example the VAT and Duties Tribunal respondent reported that tax tribunal were in some flux at the time of interview due to imminent changes in the law and administration regarding tax issues. Much of the training would therefore inevitably have to be changed.

4.20 Tribunals such as the Lands Tribunal use professional publications and study of relevant statutes and case law as the method of providing their members with specialised training.

4.21 In certain tribunals chairs or specialist members receive specialised training. For example Chairmen may have their own training, as occurs with the Chairmen of the VAT and Duties Tribunals and MHTS. Chair training may focus on decision writing and procedural issues that fall within the responsibility of the chair. ASNTS breaks down training on all training days for lay, specialised and legal members; the convenors (legal) have more responsibility and therefore receive one evening of special training twice a year. Until 2008 the Employment Tribunals took a similar approach and broke down their two-day standard

training into one day for all chairs (termed “judges”) and members, and then one day of members-only training; however from 2008 only members’ training will be held locally within the budgets of the Scottish arm of this reserved tribunal jurisdiction. Judges (chairs) will be trained on a GB wide basis.

4.22 Of the tribunals sampled several provided training that could be used to claim accreditation from professional bodies: MHTS members are able to use their tribunal training to claim CPD (Continuing Professional Development) credit; the Chairmen of the VAT and Duties Tribunal are able to register their attendance at their annual two-day conference as CPD; and some of the courses provided by prhp are accredited for CPD and mediator’s certificate. Judges in the Employment Tribunal can also use their training towards CPD and the Asylum and Immigration Tribunals’ training courses are approved for CPD by the Law Society of Scotland and are accredited by the Law Society in England. Accreditation of SSCSA training exists so that lawyers can use their training courses attended towards CPD. There are ongoing negotiations with the medical authorities to allow the medical members to use their training courses towards their annual CPD requirement however the British Medical Association has still to confirm their acceptance.

4.23 The reserved tribunals, therefore, have a greater tendency to provide professionally accredited training than the devolved tribunals. SCAP’s training courses are not accredited but do contain transferable skills. The ASNTS interviewee reported that its training courses are not externally accredited and there has been no demand to date for evidence for CPD.

Appraisal of Training and Identification of Ongoing Training Needs

4.24 Schemes to appraise training (see below for evaluation of training by members themselves) exist in several of the tribunals but vary in their nature. MHTS’ appraisal scheme involves evaluation of the training by the members, the training provider (external commercial provider), and the President. ASNTS also operates an appraisal system whereby the training is recorded and then audited by the President using feedback received from the members. Other tribunals operating appraisal schemes are: prhp, Asylum and Immigration Tribunal, and SSCSA.

4.25 The Asylum and Immigration Tribunal’s training has been appraised externally. A recent review of training was carried out by the Judicial Studies Board which also assesses the training procedures of the tribunal. This Judicial Studies Board audit looking at the quality of training for reserved tribunals did not include Employment Tribunals Scotland, apparently by oversight. SSCSA training courses are also externally assessed by the Scottish Committee who attend training events and review and report annually.

4.26 Several of the devolved tribunals (SCAP, MHTS) operate recording systems for training already carried out by individual members which allows identification of ongoing training needs. MHTS employs the Webroster system and issues letters confirming training attendance for members who will be claiming CPD credit. The VAT and duties tribunal uses a more basic system of recording tribunal members’ training attendance in their personal file.

4.27 Of the reserved tribunals, the Employment Tribunals use a robust recording system and if a member opts out of training regularly, the vice-president is notified and can consider each instance on a case-by-case basis. Similarly, the Asylum and Immigration Tribunal has a

centralised training records centre in Loughborough and there is an annual audit which would raise concerns if a member was not attending. The SSCSA has a different but sophisticated system. The individual training needs are assessed by way of a complex and mature appraisal system involving amongst other things a needs assessment questionnaire which is filled in by each member at the end of each training session and the findings fed through to JTAG who devise and organise the internal delivery of training for each member (also see 4.31 below regarding member's evaluation); training records are maintained on a national database.

4.28 The interviewee from the Employment Tribunals was very interested in increased development of mentoring, appraisal and auditing particularly as their tribunal had many equality and diversity themes to deal with.

Auditing and Evaluation by Tribunal Members

4.29 The opportunities for and methods of member evaluation and auditing of training were also highly varied. Some of the sampled tribunals did not have any procedures in place. Others, such as the VAT and Duties Tribunal use informal personal feedback on training needs from members.

4.30 Several of the devolved tribunals, such as MHTS, have incorporated member auditing and evaluation into their training appraisal schemes (see 4.24 above). Feedback from members on the training received also forms part of ASNTS's training appraisal scheme - there is an e-bulletin every two months for member's information and members respond with a questionnaire after training for feedback. prhp members assist in the identification of their training needs by feedback questionnaire's provided at training, through personal contact with the President, and through the member's forum on the Panel website.

4.31 The reserved tribunals also utilise member feedback and evaluation of training. SSCSA training sessions are assessed by all attendees with a sophisticated feedback system where they are required to outline their expectations before attending the course, then immediately afterwards and then six months later. Individual members of the Asylum and Immigration Tribunal can report their own training needs via the questionnaires at the end of training courses and by the appraisal system.

Remedial Training

4.32 None of the tribunals sampled, whether large or small, devolved or reserved, had formal remedial training programmes in place to assist members who in some way had failed to carry out their duties properly. A number of the tribunals, for example, SCAP, Asylum and Immigration Tribunal, and SSCSA have established complaints procedures. The general attitude was to deal with remedial training on an ad hoc basis in response to any complaints against tribunal members being upheld.

4.33 The President of prhp noted that she has never received any complaints about tribunal members, but that some sort of remedial training ought to be in place should such an instance occur. However, the President of ASNTS reported that the lack of provision under statute or established procedure for dealing with complaints (how or by whom they should be overseen or processed) was an ongoing issue. This lack of clarity of complaints procedures in the

tribunal context and the linkage between complaints and training is identified also in the AJSG report (Consumer Scotland, 2008).

Observations on Presidents' comments

4.29 There is a large difference between the training provisions of the reserved tribunals and the devolved. Even those reserved tribunals in Scotland with smaller numbers of member have the raft of UK wide training facilities available to them – e.g. Immigration and VAT. The robust training systems and requirements in the reserved tribunals in Scotland are clear, structured and in the main, compulsory.

4.30 The devolved tribunals are relatively young in comparison and, as may perhaps be expected, their induction training and pre-post training is established. However there is little mentoring, appraisal or auditing and the small amount of generic training offered is usually structured within the induction training. Exceptions are the ASNTS and (to a lesser extent) MHTS. The ASNTS approach has been influenced by training models in the Tribunals Service, due to cross-over of experience of the current President with that service.

4.31 Most of the training in devolved tribunals is internally generated and identified by informal means (except for the questionnaires at the end of training sessions) and each tribunal seems to be operating in relative isolation with no guidance on standards or methods and no shared training. The structure, amount and quality of the training seems to depend to some extent on the prior experiences and personal preferences of those charged with overseeing it.

4.32 Only MHTS seems to use externally provided training as the norm (other than occasional external guest speakers) and the training materials available to members (some of which was seen by the researchers) seems to be comprehensive. ASNTS seem to be taking positive steps in formalising their training internally. They are a much smaller tribunal with fewer resources but having a President with a strong background in full-time tribunal judicial service and in higher education appears to have given this relatively new tribunal a mature and reflective start in its training approaches.

4.33 Private Rented Housing Panel have a members' forum on their website for feedback. MHTS have members' space on the website and make use extensively of electronic resources and electronic methods of communication. In some tribunals (Charity Appeals Panel; VAT) a few of their members are reported to be not yet using email or the internet for communication or access to resources.

4.34 Training costs/budgets for the devolved tribunals vary considerably according to member numbers with the smallest (Lands Tribunal) having no defined training budget.

Comments from members and chairs

Questionnaires

4.35 An electronic link to a short online questionnaire was issued to the sample tribunals in late May 2008 for completion by 9 June 2008. The questionnaire is set out in Word format in Appendix 2. The SSCSA and ASNTS were unable to issue the link within that timescale (respectively because it could not be linked with a scheduled email circulation and because the (part-time) President was not available to authorise the issue at the relevant time).

4.36 A total of 180 responses were received within the time specified. A report of responses to questions by percentage is set out in Appendix 4. One other response was received late and has been dealt with in textual comments rather than tables. Most of the responses were received from those sitting on only one tribunal (85.6%) and from members (138 respondents) as opposed to chairs (41 respondents, with one respondent not specified). Most of those who reported regularly sitting on more than one tribunal were chairs. Table 4.1 displays the breakdown of respondents by chair and member.

Table 4.1

Number of roles	Role in tribunal		
	member	chair	Total
1	122	31	153
2	7	6	13
3	0	7	7
3+	2	4	6
Total*	131	48	179

*One respondent did not answer this question

4.37 The questionnaire captured multiple roles but did not allow for tribunal-specific responses to all questions on training. However free-text boxes in key questions and at the end of the questionnaire allowed for explanation or comment as to different experiences in the various the tribunal roles.

4.38 Questionnaire responses are analysed by theme, and the numeric values (and in some cases the percentages) are set out, where appropriate, in table/chart form.

Induction (and Pre-Post Training)

4.39 Many respondents were unsure as to the difference between induction and pre-post training however almost all tribunals offered formal induction training (93%), some of which was residential, and predominantly compulsory (85%). Pre-post training is a term used for tribunal system specific training offered before the first real tribunal sitting within the

SSCSA. Members and chairs of the SSCSA tribunal system were not able to access the questionnaire in the timescale offered, so for respondents other than those who held a concurrent SSCSA appointment, this term was not familiar.

4.40 Many respondents praised residential induction training, however, a number of comments were negative as to the length of such training. For example one chair (multiple tribunals) commented that training could be “more concentrated and less wasteful of time” and an MHTS member noted that being expected to spend so much time on induction training affected willingness to attend more training...A number of respondents’ comments about undue length of induction training applied to the 3-day residential course originally delivered for MHTS when the tribunal was introduced, but other responses indicate that this has been reduced to 2 days. Criticisms about the length of induction training were common to chairs and members. A high percentage of respondents regarded the induction training as useful in content (92.2%) and volume (83.9%).

In-Post Training

4.41 Almost all tribunals offered in-post or refresher training. It should be noted however that only 52.8% reported that training was compulsory at this stage. Again, the majority of the members and chairs found the training useful in its content (86.7%) and in the volume provided (77.2%).

4.42 In the case of both Induction and In-Post training, the subject matter of the training focussed predominantly on the specific subject area of each tribunal. Respondents who offered freetext comment were either positive as to content and relevance, or critical of training that was not sufficiently interactive, focussed or challenging. Generic training offered by non-experts was valued more than system-specific or specialist training facilitated by non-experts, the latter drawing adverse comment from a number of MHTS members and chairs.

Generic Training

4.43 A few tribunal members reported no provision of “generic” training. Generic training was indicated in the questionnaire by examples. The generic training topics reported as being covered in training are set out in table 4.2.

Table 4.2

Generic Skills	Percentage of respondents recalling having received such training
Decision Making	80%
Questioning	61.7%
Recording Decisions	60.6%
Active Listening	56.1%
Assessing Credibility	28.3%
Note-taking	20.6%

Generic training was normally provided as part of induction training. Of those who undertook generic training 71.1% found it useful in content and 65.6% found it useful in volume.

4.44 A wide range of other generic types of training had been undertaken by individual respondents or was suggested in responses. These fell into a number of categories, set out in Table 4.3; some of which are overlapping. Many of these coincide with Leggatt (2001) principles.

Table 4.3

Equality and compliance	Tribunal conduct and management	Chairing roles	Generic skills
Diversity	Risk assessment,	The role of the chair	Reflective practice
Human Rights	Balancing represented and unrepresented parties	Case management	Teamwork
Data Protection	Adversarial questioning	Determination writing	Communication (simple English)
Freedom of Information	Fact-finding skills		Non-verbal communication
Equality	Managing and avoiding negative or aggressive contributions		Fairness and Impartiality
			Transparency

4.45 A few respondents indicated in freetext comments that generic training should not be required at all as generic skills should already be possessed by those appointed. Lawyer chairs/judges were more inclined than members to question the relevance of such training per se (and of mentoring or buddying as discussed below).

Shared Training

4.46 Very few respondents reported shared training with other tribunal jurisdictions having been offered (3.9%) or having been undertaken (4.4%). Opinion was divided over shared training with 37.2% for and 32.9% against. Respondents who commented on this point said that perhaps generic-type training could be carried out on a shared basis with more specific/substantive training carried out by the individual tribunals.

Post-Training Feedback

4.47 The principal means open to members and chairs to provide feedback on the usefulness of training was by post-training questionnaire (94.4%). Around 44% of respondents were able to give feedback on training through discussions with tribunal

colleagues. A very small proportion of those who had attended training were sent repeat post-training feedback requests (3.3%). This is offered to SSCSA participants but perhaps not used in other tribunal systems. It would appear that such repeat requests for feedback allow those who attended training the opportunity to gauge in the longer term the effectiveness of a training topic/course instead of judging it only immediately after the training has been delivered. It also allows those who commission or provide the training to judge whether it has had a lasting or deferred impact.

Assessment and Support of Personal Training Needs

4.48 A training needs analysis was rarely offered to tribunal members/chairs (20.6%). The only devolved tribunals stating that they practised this option were MHTS and prhp, whilst ASNTS uses appraisal to determine training needs. Apart from prhp members and chairs, those who reported having a training needs analysis were chairs on reserved tribunals. Of the training analyses that had been undertaken, only around half were reported to have had led to further training. It was the opinion of some respondents that self-analysis improves the relevance of training.

Training Records and Transferable Skills

4.49 One third (33.9%) of respondents reported that a record of their training is maintained. Where a record of their training is maintained it is used for professional CPD credit (28.9% of respondents) while much smaller percentages of respondents reported transferring the training record to another tribunal jurisdiction (2.2%) or for recognition within college or university settings (2.8%). Only 0.6% (1 respondent) noted that part of the training was a credit-bearing course from a college or university.

4.50 Only 3.3% of respondents reported carrying the effects of training from one tribunal jurisdiction to the other. This may suggest a dominance of subject-specific training or lack of perception of the transferability and value of training, particularly induction and generic training.

Mentoring/Buddy Schemes

4.51 A low percentage of respondents reported the existence of a mentoring scheme (8.3%) and even fewer reported the existence of a buddy scheme (5.6%) although an increased number expressed interest in the introduction of either mentoring (27.2%) or buddy (26.7%) scheme, however one commented that a mentor should be properly trained and know the purpose of mentoring, “not just someone who has been around for a long time.”

4.52 Freetext comments indicate that regular meetings with colleagues to discuss issues and to allow a confidential “download” are highly valued. This would point to the introduction of a (non-compulsory) buddy scheme for those willing to participate. Some members expressed a feeling of isolation especially if they were not called to sit very often feeling somehow “outside” the system. Members of smaller tribunals expressed a similar wish for “download” opportunities. Some members (MHTS in particular) reported that they knew of or participated in self-generated informal mentoring groups, and a few respondents

commented that any opportunity for discussion with other members of tribunals was worthwhile, particularly since some tribunal members or chairs sit rarely. Some members noted the value of sitting in to observe tribunals as part of a process of training, but others noted that the value of the experience depended upon the precise make up of the tribunal or tribunals observed and whether the tribunal was willing to allow the new member or chair to observe its private deliberations. Where sitting in was not available or not offered because the tribunal was a new one, respondents who made freetext comments noted the value of role-playing tribunals. This was valued less in cases where the respondent had prior experience in another tribunal.

4.53 New member insecurity could be relieved by mentoring and/or a buddy scheme. This may work most effectively if introduced within like groups (chair to chair, member to member) but could also operate across tribunal systems (particularly for small tribunal systems where the pool of potential mentors or buddies is limited.) Shadowing within and across tribunal systems is also a possibility with Presidents' consent.

Appraisal

4.54 The outcome of the question of the existence of appraisals in tribunals may be slightly misleading as many of the respondents had not yet received their appraisal although the tribunal had introduced the system. (This was the case especially in MHTS). So 32.8% of respondents had been appraised but 39.4% said that appraisal was compulsory for them. Pre-appraisal training was reported to have been given to less than half of those who reported having been appraised.

4.55 Of those who had been appraised, 89.6% found appraisal effective as a process and 85% found it a useful part of their training and support package. Comments were made about appraisal by a third of respondents. A few negative comments were made claiming that regular, scheduled or annual appraisals were unnecessary, paper exercises and a waste of resources. A small number suggested that appraisals should be prompted by the member/chair wishing to be appraised or by an adverse performance indicator of some description. (Appraisal and training on this basis alone would not be consistent with training being viewed as a right to support good practice rather than a remedy for bad practice.) Another respondent stated that an appraisal system keeps practice sharp over time however a non-threatening system is required for it to be effective. Comments from members of Employment tribunals (employer and employee representative) show an advanced awareness of appraisal (and of appraisal-generated training), but indicate that this awareness comes from workplaces other than the tribunal.

Analysis of other freetext comments

4.56 The lack of payment or the low level of payment for members to attend training was commented upon by a number of respondents across tribunal systems. This affected willingness to attend. Some members noted that training opportunities had been arranged at a tribunal venue to coincide with the date of a particular tribunal hearing, but were lost when the tribunal hearing was cancelled at short notice. Most tribunal members and chairs are not full-time in that role and balance it with commitments in other work environments or domestic commitments. Training had to appear good use of time and good value if it was not

remunerated at full tribunal rates. It would be difficult to introduce compulsory training that is not so remunerated unless there is a clear process of transferring the training into a currency for CPD requirements of other professions or for development of transferable skills of the person being trained that would otherwise have to be paid for at commercial rates by that person. One respondent (ETS) commented that the training did not feel sufficiently “commercial” in standard nor was it properly evaluated.

4.57 Some respondents in freetext comments expressed a preference for outside training providers to carry out the training (particularly generic-type). However, others (mainly MHTS) expressed disappointment in the lack of robust checks on the trainers’ knowledge of the tribunal specialist context and the lack of their credibility with those who did have prior knowledge of the context. It was suggested that a training appraisers’ group be established to maintain standards and ensure consistency.

4.58 Budget cuts (notably for Employment Tribunals) are perceived to have caused a reduction in the range of training that is now offered to its members and chairs. Residential induction training is viewed by more than 90% of respondents as valuable, provided it is not too long in duration. Tribunal members and chairs only rarely carry out tribunal work on a full-time basis and instead carry out that work part-time alongside other professional or domestic commitments. Accordingly time to attend training is at a premium, and the training provided must make most effective use of time. Courses spanning three days have been criticised as too long, in that they require too many days in succession away from home or business, and are not felt to sustain effectiveness across the full period away. Three day training courses were noted to be less commonly used because of budget restraints).

4.59 There was a wide variety of suggestions/preferences about the type of training or support that should be given. Comments included:

- it should be collaborative and interactive as opposed to lecture-based and cerebral
- workshops, case studies, discussion or consultative methods preferred
- role-play (favoured by some, but some very definitely against)
- feedback to members on the outcome of tribunals and subsequent group discussions or a type of debriefing to help the integration of all types of members/chairs
- separate training to be carried out for chairs and members
- website with a members area (already used by some tribunals)
- insecurity of members on specific tribunal procedures, due to lack of procedural training offered to them prior to sitting.
- some lawyer chairs noted that “mentor”, “buddy” and “appraise” are not terms in their (professional) language.

Conclusion

4.60 Preferences of members and chairs for methods and volumes of training vary (to some extent according to the prior qualifications of the respondent). Some chairs see little need for training, particularly in generic skills, stating that such skills should be well-established by legal practice experience before appointment. On the same reasoning there were comments from some chairs that regular appraisal or mentoring would be an inappropriate use of scarce time, suggesting that processes of appraisal, mentoring and skills training, if appropriate at all, should be corrective rather than diagnostic or proactive. However to direct appraisal and training only to situations of concern about skills would be inconsistent with statements by

the Lord President and Chair of the Judicial Studies Committee to the effect that training for judicial roles should not be associated with perception of weakness and should instead provide proactive support.

4.61 There is considerable interest from most members and many chairs in training that is targeted to skills that will make tribunal hearings and decision-making work better. The fact that there are contrasts in view about the need for training may be in part due to a lack of attention in training to what makes a tribunal most effective, viewed from the perceptions of its President, members, and chairs as well as its users. There is also interest in having more opportunities to discuss performance in an informal way with tribunal colleagues within their particular tribunal system and in other tribunal systems. Such opportunities could be arranged to coincide with training events or other support activities, bearing in mind that most tribunal work is not a full-time role for the person concerned. Value for money in training must also be balanced with valuing the time of tribunal participants to engage in meaningful training and by paying for time spent on training or giving the training a transferable currency.

4.62 Tribunal members are themselves a resource of ideas to generate training options, and to assist in delivery, but much is to be gained from building upon training resources developed for other tribunal systems and jurisdictions.

4.63 The report of the AJSG at paragraph 49 notes that “tribunal users in Scotland should have access to tribunal performance and delivery that is equivalent to or better than, that available to users elsewhere” (AJSG, 2008). The wishes of users informed the reviews in England and Wales and in other jurisdictions which are discussed in the next chapter. Many of the areas of training which members and chairs had been given do appear to support the Leggatt Principles of independence and impartiality, skilled judiciary and a coherent system, but gaps in training were identified by some of the respondents and many showed an interest in training and support beyond that already received.

CHAPTER FIVE COMPARATIVE CONTEXT FOR TRIBUNAL TRAINING NEEDS AND REFORMS

Academic writing

Tribunal dynamics in England & Wales

5.1 Although there is not a great deal of recent academic writing regarding training for tribunals, recent commentaries exist regarding the Leggatt Report (Adler, 2002, 2006) and the Department of Constitutional Affairs White Paper in so far as it proposes proportionate dispute resolution (Adler, 2006).

5.2 Some study has been made previously into tribunal dynamics in decision-making, particularly with regard to the operation of the Mental Health Review Tribunals (MHRTs). Peay's first research into the functioning of these tribunals in the 1970s found that tribunal members often brought their own knowledge and attitudes and past experience of reaching decisions into their tribunal decision-making (Peay, 2003). The research demonstrated a great deal of variation among decisions, both individually and between tribunals. Group decisions were frequently reflections not of the group's view but of that of the most dominant member. Peay notes that this research was conducted at a time when there was no meaningful training of MHRT members in their roles. Peay repeated her study in the late 1980's and found that little had changed (Peay, 1989)

5.3 Further research was conducted in 2002 by Perkins, again on MHRTs. Perkins found enormous variation in statutory interpretation by tribunal members, with the legal members of the tribunal being "heavily guided" by the medical experts who were themselves unsure about the meaning of some of the terms (Perkins, 2002). Both Perkins and Peay found a preferential reliance on medical evidence and various other flaws in the decision-making process. These problems with decision-making were arguably the product of poor basic skills that tribunal members ought to have. Peay again notes that there have been recent significant efforts to improve the training of tribunal members to try to achieve greater uniformity of practice (Peay, 2003).

Tribunal dynamics in Scotland

5.4 Concern about dynamics in tribunal decision making based on professional hierarchies external to the tribunal and the role of training in dispelling these has been discussed with respect to the Mental Health Tribunal for Scotland (Turner, 2005; Ross, 2006, Atkinson, 2006). Turner (a tribunal chair who resigned shortly after appointment) expressed concern about bias against patients of psychiatrist members and noted that community psychiatric nurses also sitting on the tribunal would be similarly biased and prone to following the lead of the psychiatrists. Such perceptions (whether based in fact or not) that in certain situations the majority of the three member panel would bring their own professional biases inappropriately to the tribunal process is potentially damaging to the dynamic of tribunals and the confidence that users will have in the fairness and impartiality of the tribunal.

Role of training in core tribunal skills

5.5 In general it has been noted that for review tribunals to be effective the members must conduct an accurate and fair review of administrative decisions (Richardson & Genn 1994). In order to ensure that this is done properly and consistently it is suggested that training in core skills be made available to all tribunal members rather than assumed within core competencies on appointment. Training has been identified as important to addressing diversity issues effectively in tribunals (Genn et al 2006).

Comparator Jurisdictions

England and Wales

5.6 The tribunal system in England and Wales, and Northern Ireland is currently undergoing restructuring (Ministry of Justice Tribunals Service, 2007; 2008). While these changes may have future implications for the provision of training to tribunal members, the legislation itself does not directly address training needs.

5.7 The *Tribunals, Courts and Enforcement Act 2007* does not specifically address training issues, but places a general duty on, and grants corresponding powers to, the Lord Chancellor to “ensure that there is an efficient and effective system to support the carrying on of the business of” certain tribunals; assisted in this by the Senior President of Tribunals who must report to the Lord Chancellor annually, and by the Administrative Justice and Tribunals Council which has an oversight function.

5.8 Although changes to the structure and composition of tribunals could produce varied training needs or require changes to the format of training provision, the core skills for tribunal members identified by the Judicial Studies Board would remain the same. Training provision for tribunal members has been and continues to be comprehensively dealt with by the Judicial Studies Board (JSB, 2007).

5.9 Since 2002, in response to the Training Needs Analysis (TNA) carried out on behalf of the Tribunals Committee, the JSB has published a number of pieces of detailed guidance as to standards and training of tribunal members (Judicial Studies Board, 2007). The JSB identified a number of “core competences” and “additional competences” required of tribunal members, including specialists and Chairs. These were generic skills applicable to all tribunals. These include effective communication, proper management of the hearing, and decision-making skills. Using these competences meant a “shift in focus of their training towards the acquisition of judicial skills – in addition to continuing to learn about the substantive law essential to their work.”(Genn & Cole, 2002) The TNA recommended national co-ordination of training schemes to ensure uniformly high standards and the JSB has produced a range of guidance available to all tribunals to aid in this.

5.10 The JSB publications provide a framework for training tribunal members in generic skills and for evaluation of that training, thereby producing a standard which all tribunal members must reach (JSB 2003(1), 2003(2), 2004, 2006). The training methods include induction, mentoring, and continuing development (including residential training and on-line

programmes), as well as the monitoring and appraisal of training. Although the emphasis is on core competences the framework allows for the needs of individual tribunals to be addressed too.

5.11 If it is decided that changes need to be made to the provision of tribunal training in Scotland, then the access to this material is invaluable. Not only is the material carefully thought out and comprehensive, but it is also familiar to those members of devolved tribunals who also have experience of sitting on tribunals already using the system. Several respondents stated that they had already been exposed to the JSB training and that they found it useful.

5.12 As well as emphasising continuing education/professional development other jurisdictions are working towards creating tribunal networks to encourage good standards and practice. The Tribunals Service and the Administrative Justice and Tribunals Council could be used to facilitate the sharing of information and experience among tribunals as is currently the situation in Australia and New Zealand, and Canada noted below.

Australia

5.13 The Australian system is similar to that in Scotland in that it consists of federal tribunals, analogous with Scotland's reserved tribunals, and state tribunals which may be compared with the devolved Scottish tribunals. As in Scotland, tribunals at both these levels deal with a wide range of issues.

5.14 In the early 1990s the Australian Administrative Appeals Tribunal (AAT) conducted a training needs analysis. The 1992 national training needs assessment conducted by the AAT found that there was a diverse range of professional development needs of tribunal members, and that

*“the nature of these needs was influenced significantly by a number of factors including the **role** of member (presidential: President, Judges and Deputy Presidents; or non-presidential: Senior Members or Members), **qualifications** and **experience** (law trained or non-law trained), **nature of appointment** (full time, part time or sessional), **seniority** (inexperienced or experienced), and **registry** (size of registry and geographic location). In essence, the AAT research disclosed that the needs of members may vary depending on their role, qualifications, nature of appointment, tribunal and registry.”(quoted in Armitage, 2004)*

5.15 At this time it was noted that the continued professional development of tribunal members was highly important. As regards the members of the AAT, it was stated that the AAT members appointed from the legal profession or other areas of law bring legal methods of doing things with them, but

“[p]rofessional development can be a useful means of equipping members with different, non-legal techniques which they can use in conducting matters in the Tribunal.” (O'Connor, 1998)

5.16 In response to this analysis various changes were made to the provision of training for tribunal members, and as of 1997 training for federal tribunal members consisted of an in-

house induction for new appointees and ongoing professional development training (in-house). Training was also provided in the form of seminars and conferences (organised by the Australian Administrative Review Council (ARC) and Australian Institute of Administrative Law (AIAL)).

Training focus

5.17 The training covered areas such as decision making, mediation, case management and cultural and gender issues (ALRC 1998). Manuals and publications on procedural and substantive matters were also made available to tribunal members. Some tribunals, for example, the Social Security Appeals Tribunal had a mentoring system in place. Training methods varied from tribunal to tribunal with no common system for all tribunal members.

Role of Australian Law Reform Commission

5.18 In the late 1990's the Australian Law Reform Commission (ALRC) conducted a comprehensive review of the Australian Justice System, part of which was an examination of the functioning of the tribunal system. In its issue paper on federal tribunal proceedings, the ALRC considered the provision of member training as it stood in 1997 (ALRC 1998). In this discussion it was noted that a legal background is not a prerequisite to tribunal appointment, and members come from a diverse range of occupational backgrounds.

Essential and desirable skills for tribunal members

5.19 The ALRC paper goes on to list a number of skills that the Australian Administrative Review Council (ARC) considered essential or desirable for tribunal members. Although some, such as statutory interpretation, are primarily legal skills, the majority are placed under the sub-headings and are more generic in nature.

5.20 The following sub-headings are used

- “Analytical skills,” for example, the ability to analyse evidence and apply relevant law;
- “Personal skills and attributes,” for example, empathy, gender and cultural awareness, ability to work cooperatively as part of a team; and
- “Communication skills,” for example, written and oral communication skills, listening skills, ability to give concise and clear reasons for decisions.

5.21 These apply to all areas of decision making and can be considered “generic” skills, and the ARC recommended development of a “minimum set of core skills and abilities required of an effective tribunal member, for use in organizing professional development of members and in the process of developing selection criteria.”

Common Training Program

5.22 The AAT had also, at the time of publication of this Issue Paper, discussed developing a common program for all tribunal members with the Australian Institute of Judicial Administration (AIJA). The responses to these enquiries were dealt with in the comprehensive report *Managing Justice: a review of the federal civil justice system* (Australian Law Reform Commission, 2000). Although the Issue Paper had sought responses on the effectiveness of the then current in-house training and asked if the training of tribunal members should be linked to judicial education and training programmes. The Report considered that an Australian judicial college should be set up, and that it could provide some training to tribunal members; in addition, universities could be encouraged to offer training programmes for tribunal members including offering graduate certificates in tribunal procedures. These could be made available on-line, would cover topics applicable to all tribunals, and would be relevant to tribunal members with different backgrounds. The ALRC recommended that

“[e]very federal review tribunal should have an effective professional development program with stated goals and objectives. This should include access to induction and orientation programs, mentoring programs, and continuing education and training programs. In particular, training in administrative law principles relevant to decision making should be made available to members of tribunals who do not have legal qualifications.” (ALRC 2000, recommendation 9)

5.23 A further recommendation that is relevant to the development of tribunal members is that multi-member tribunal panels should be used where appropriate – one noted basis/advantage for their use was the continuing professional development of tribunal members, particularly with regard to the idea of “mentoring” of less experienced members by their participation on panels with more experienced tribunal members (recommendation 119).

Professional development and judiciary

5.24 Since this consultation there has been a move toward providing professional development to tribunal members in a similar way to the training provided to members of the judiciary. The Australian Institute of Judicial Administration (AIJA) develops and conducts “educational programmes for judicial officers, court administrators and members of the legal profession in relation to court administration and judicial systems.” AIJA now offers this type of education to tribunal members.

5.25 It held its Inaugural Tribunals Seminar in 1998, and over the past 11 years this has developed into a two-day conference which provides continuing professional development on a variety of generic topics. Some sessions are targeted towards members of tribunals dealing with particular types of issue but for the most part the training offered is applicable to all tribunals and includes decision-making (on papers and after oral argument), pre-empting difficulties and dealing with contemptuous behaviour (AIJA, 2008).

5.26 In addition to this move towards provision of training on a similar basis to members of the judiciary, Australasia has also seen progress in the area of pooling expertise in order to provide a benchmark standard of competency for tribunal members with information and

training accessible to members of all tribunals and both state and federal level. The ALRC recommended the establishment of a

“Council on Tribunals ... as a national forum for tribunal leadership to develop policies, secure research and promote education on matters of common interest. The membership of the Council on Tribunals should include the heads of federal and State tribunals engaged in administrative review and the President of the Administrative Review Council. The functions of the Council on Tribunals should include: developing performance indicators, charters, benchmarking, and best practice standards in tribunal management, practice and procedure, and professional development; improving and coordinating data collection arrangements; developing research and information services for decision making; and developing policies on tribunal member selection, induction and training.”(ALRC, 2000)

5.27 The Council of Australasian Tribunals (COAT), established in 2002, “is intended to facilitate liaison and discussion between the heads of tribunals. It will support the development of best practice models and model procedural rules, standards of behaviour and conduct for members and increased capacity for training and support for members.” (<http://www.coat.gov.au/objects.htm>) Member organisations of COAT include various Australian federal and state tribunals, and some New Zealand tribunals.

5.28 However, membership is not universal. Among COAT’s specific objectives are the establishment of a national network of tribunal members through which common issues and areas of interest may be discussed, and to provide training and support to tribunal members, particularly those of smaller tribunals whose training funding may be limited (<http://www.coat.gov.au/objects.htm>). In order to facilitate this COAT maintains a tribunal register although that does not contain training information such as found in the Tribunal Training Register Scotland. It does provide a Practice Manual for Tribunals covering key competencies for tribunal members that were developed in response to the AAT national training needs assessment conducted in 1992. (Armytage, 2004)

5.29 Although the 1992 assessment revealed that the training needs of the federal AAT members varied depending on factors such as their role or qualifications, it was also felt that the COAT membership diversity was greater than that of the AAT and so the COAT manual should provide more generic training and proceed on the basis that members would have limited access to additional training and professional development resources. At the same time, COAT should encourage the use of additional training resources where already in place, and develop professional development programmes for members. The manual, although generic, could be tailored to individual tribunal’s needs.

5.30 COAT proposes that the “one-size fits all” approach should “establish, promote and support a universal benchmark standard of competence and best practice for all tribunal members” on which to build with the addition of induction training and continuing professional development.

5.31 Another demonstration of the attempts being made to combine resources and share expertise can be seen by the collaboration between COAT, the Australian Institute of Administrative Law (AIAL) and bar associations to provide continuing education to tribunal

members.³ The AIAL national executive also organises seminars some of which are targeted at tribunal members.

5.32 Although there is still no standardised method of delivery of tribunal training to members of Australian tribunals, the overall picture is one of induction training with ongoing mentoring within the tribunal, bolstered by continuing professional development. This may be delivered in the form of seminars and conferences in a manner similar to that provided to members of the judiciary by organisations such as AIJA. The majority of this professional development is generic with individual tribunals left to provide continuing education tailored to the specific area of competence of the tribunal.

Role of HE institutions

5.33 Universities are also involved in the provision of training to tribunal members, for example, Monash University has offered graduate programmes in tribunal procedures, including a Graduate Certificate in Tribunal Procedures, a Graduate Diploma in Law (Tribunal Procedures) and a Master of Laws (Tribunal Procedures).⁴ These programmes are targeted towards tribunal members, and have options for members with both law and non-law backgrounds. Again, many of the units making up these programmes emphasise generic skills applicable to tribunals whatever their subject matter, for example, decision making, negotiation and mediation skills, fact finding in administrative procedures, and administrative justice issues. However, it should be noted that these programmes are currently under review and are not enrolling additional students at this time.

Resource materials for sharing

5.34 In addition to the provision of continuing professional development, some of it accredited, by bodies such as the AIJA and universities, the development of resource materials - such as COATS' Model Practice Manual - made accessible to all tribunal members and the development of tribunal networks is intended to assist in creating a benchmark standard of practice across all tribunals.

New Zealand

5.35 As noted above, some New Zealand tribunals are member of COAT and use the resources made available through that organisation. New Zealand is, however, currently undertaking a review of its tribunals, part of which is a consideration of the competency of tribunal members and the provision of ongoing professional development (NZ Law Commission, 2008). As to training of members, the Issues Paper references both the findings of the Judicial Studies Board in 2003 regarding key competencies for tribunal members in Great Britain and the recommendations of the Australian Law Reform Commission in 2000 regarding the establishment of professional development programmes for tribunal members.

³ <http://law.anu.edu.au/aial/AboutAIAL/AbIndex.html>

⁴ <http://www.law.monash.edu.au/postgraduate/law-tribunals.html>

5.36 Training for New Zealand tribunal members is “haphazard,” according to the Issues Paper, with some tribunals offering their members comprehensive training including induction courses, mentoring programmes, and day or weekend training sessions. On the other hand, the members of some tribunals receive no training at all, or there is an initial induction but no continuing professional development.

5.37 The Issues Paper identifies a need for continuing professional development and suggests that training for tribunal members consist of new-member induction, development of generic skills such as conducting hearings and writing decisions, and keeping members informed of developments relevant to the particular tribunal. In addition tribunals should be encouraged to share information and expertise with each other, and possibly with the judiciary. Chairs would require additional training but it was noted that this may be problematic where the Chair is the one who organises and delivers training for the tribunal members. To deal with this situation it was suggested that an overarching training programme for Chairs was required.

5.38 Noting that the Institute of Judicial Studies provided extensive ongoing training to the judiciary, the Issues Paper suggested that a similar approach was needed for tribunal members, even those who had legal or judicial backgrounds.

5.39 The report of the Commission’s findings has not yet been published, but the issues raised and the suggestions made echo the deliberations of their counterparts in England and Australia.

Canada

5.40 Council of Canadian Administrative Tribunals (CCAT) is a national non-profit organisation that supports administrative tribunals and promotes excellence in administrative justice (<http://www.ccat-ctac.org/en/index.php>). The organisation emphasises continuing professional development and develops training programmes for tribunal members and staff. Membership includes individuals from federal, provincial, and territorial tribunals. The training programmes offered include on-line courses and conferences, with materials available on-line such as conference papers, educational materials including relevant court decisions, and information on recent developments. CCAT also offers a network through which tribunal members can collaborate and share experiences.

5.41 The Canadian Institute for the Administration of Justice (CIAJ) performs similar functions and develops training programmes for members of both the judiciary and administrative agencies (<http://www.ciaj-icaj.ca>) It organises conferences that promote interaction between members of different tribunals and between tribunals and the courts. The training courses offered cover areas common to all tribunals, for example, the hearing process, decision writing, and evidence.

5.42 As with Australia, the aim is to support good standards in administrative decision-making and emphasis is placed on the provision of easily accessible training and continuing professional development programmes delivered in a similar style to those provided for judges, and on the sharing of information between tribunal members.

Conclusions

5.43 The training needs analyses carried out in both England and Wales and Australia have highlighted a need for using training to equip tribunal members with certain generic skills – the “core competencies” of the English review - to aid them in the performance of their tribunal duties. These skills are applicable to members of all tribunals and include effective communication, hearing management, evaluation of evidence and decision-making. In addition, the Australian review noted that training should also be informed by the individual tribunal member’s attributes – the role that individual played in the tribunal, their qualifications and experience – as well as the nature of the tribunal itself, including location and size. In order to give effect to both these aspects of training it would seem that the identification of training needs should be driven both from the centre – the identification of core generic skills – but also from the tribunal members themselves using systems of appraisal and reporting. Both these jurisdictions – as do some of the Scottish tribunals studied – use induction training and mentoring to support their tribunal members.

5.44 In terms of delivery of training the Australian experience is very informative. There is an emphasis on the use of accredited continued professional development as a worthwhile mode of training delivery (this is echoed by the arrangements in Canada and the current discussion in New Zealand). Australia has embraced the use of a judicial training model administered by a centralised body, and has included universities in the provision of training. These approaches for delivery should be carefully considered for application in Scotland.

5.45 In the commonwealth comparator jurisdictions studied, the pooling of expertise is of high importance. In the Australian context this was driven by the desire to create a benchmark standard of competency for members of all tribunals at both state and federal level. COAT was established to facilitate this and has successfully produced a Model Practice Manual available to all member tribunals covering key generic competencies. This manual can then be built on to tailor further training to the specialised needs of particular tribunals. The network created allows for the communication of ideas and issues related to training between tribunals. It also makes the training materials easily accessible to the tribunal members. However, COAT’s membership is not universal which works against the aim that all tribunal members are provided with the training required to obtain a minimum standard of performance. Any introduction of this type of network to Scotland should take place with the understanding that to obtain the maximum benefit all tribunals should be included.

5.45 A great deal of transferable training material has been produced in England and Wales in the wake of the recent reforms there. The expertise of the bodies established and training materials produced should be utilised in any changes to tribunal member training in Scotland.

5.46 There is considerable synergy and resonance between what is being considered about tribunal training for Scotland and what is being developed or under discussion in other comparator countries. The challenge is to ensure that the best of a federal system of training is combined with strengths for regional training so that no one system is left to claim superiority or to feel subservient or less advanced in training. Even in the highly sophisticated COAT system, not all tribunals have opted to participate. Policy makers in the much smaller jurisdiction of Scotland may wish to consider what is the priority between what will secure highest level inclusion and what may be in accordance with comparative and absolute best practice.

CHAPTER SIX CONCLUSIONS AND RECOMMENDATIONS

Conclusions

6.1 The evaluation revealed

- autonomous approaches to design and delivery of training within the devolved tribunal systems (whether existing before devolution or created thereafter);
- a more integrated approach to training in reserved tribunals, but some Scottish specialisation in areas of that training, directed to members in particular;
- a range of reactions to training needs, provision and support mechanisms, with divergence of view often linked to the prior experiences of the respondent whether within or outwith the tribunal context;
- chairs' and members' differing perceptions of training value, and of dynamics within the tribunal hearing;
- a general desire (with a few exceptions) for high return, challenging and interactive training;
- significant interest in mentoring or other opportunities for sharing experiences and reflective practice.

Autonomy vs integration in training

6.2 The existing fractured, autonomous and remote system is inappropriate, with some tribunals producing a high level of training input while others are unable to do so due to type, size and financial constraints. Although no tribunals are understood to operate without any training the term “haphazard” which has been used in relation to tribunal training in New Zealand and to pre-Leggatt tribunals in Great Britain is perhaps relevant to the operation of tribunal training in Scotland, particularly given the contrast between sophisticated models applying to SSCSA or in the smallest of reserved tribunals and the ad hoc forms of support offered in some devolved tribunals. The disparity of approaches to training may not indicate poor quality of support, but comments from Presidents and from those chairing or sitting on tribunals identify scope for development or improvement. Disparate approaches may not play out in ways that are directly evident to tribunal users, but are perceived by some respondents to create a variable performance within different tribunals hearings which in turn may affect the experience of the disputants and undermine the integrity of process and decision. It is important that tribunal members as distinct from chairs feel confidence in the contributions that they are able to make in tribunal hearings, and respondents have identified training and feedback as key to growth in confidence. Confident and well-supported tribunal members (and chairs) can generate user confidence in the tribunal system and its decision for that user. Training and support that builds confidence is consistent with the Leggatt principles, against which the AJSG have measured options for an integrated tribunal system for Scotland.

6.3 The fragmentation of devolved tribunals in Scotland contrasts sharply with the highly integrated system operating, and being developed further, in England & Wales and for the GB wide aspects of reserved tribunals in Scotland. The system in Scotland for devolved tribunals is evolutionary in nature due to the recent introduction of new tribunal systems alongside others of long standing. Some harnessing and sharing of effective training methods for devolved tribunals is essential in order to disseminate good practice and, since most

training activities are funded by the public purse, to achieve best value. Respondents are receptive to the idea of shared training in generic tribunal skills in particular.

6.3 Will exists within the tribunals sampled to reflect upon and enhance training for tribunals. However, the development of training resources in isolation within tribunal systems is not cost effective. Moreover, tribunal chairs and members may underestimate the self-development aspect of training and its benefit beyond that particular tribunal system and beyond the specific hearing context. At the same time respondents see the need for specific training for their own tribunal context in a form that is targeted, and functional.

6.4 In order to achieve broader recognition of effective training and efficiency of support, a regulatory body could oversee, regulate, guide and advise the tribunals in their training methods. Lessons can be drawn from the experience of reserved tribunals. Many favourable comments were made in respect of the SSCSA but some room for improvement was noted for Employment Tribunals in Scotland. That particular system appears to sit uneasily within the reserved tribunal domain where it is supported by the Tribunals Service, because it has in the past enjoyed more autonomy in training and administration in Scotland.

6.5 Some devolved Tribunal training procedures, more so than reserved, showed flexible development of training in range and content. Scope also exists for related support mechanisms such as mentoring, appraisal and buddy schemes. It should be noted that very positive comments were received from members and chairs on the Private Rented Housing Panel (phrp) training and, to some extent, that provided for MHTS.

6.6 Because of practical issues preventing cascade mailing via the Tribunal Service in particular (which in itself raises a practical issue for dissemination of training materials in a national system) evidence is not available for ASNTS or SSCSA to support or contradict some evidence about training successes in those spheres. The Tribunal Service aims to limit its emailings to regular consolidated issues rather than flooding its members (who tend to undertake tribunal work part time) with frequent mailings of separate items of information. However some tribunal members or chairs in these systems received the mailing as a chair or member of another surveyed tribunal and included material about these systems in their responses. A database of those occupying tribunal roles across Scotland could be a useful product of reform.

6.7 The devolved tribunals may benefit from importing appropriate training methods from other systems or countries, and reciprocal agreements on shared training may be possible in some areas.

Tribunal dynamics

6.8 In all tribunal systems sampled, freetext comments disclosed some degree of distance between the chair (usually legally qualified) and members (qualified in other disciplines or “lay” in a sense of having experiences of using the service to which the tribunal is linked). Perceptions of training need varied between some chairs and members.

6.9 Legally qualified chairs may consider themselves approachable on an informal basis and able to conduct mentoring or appraisal without difficulty. However members can feel

cowed by a perceived gap of skill or knowledge between member and chair, and a lack of understanding of procedures (in which training is targeted to chairs).

6.10 Although decisions on procedural matters are, according to most tribunal procedural rules, firmly the domain of the chair, members appear to crave more training on procedural issues, and their exclusion from such training may fuel a sense of distance from the chair. Training for members on procedures per se would have to make clearer what procedural decisions do lie with the chair, whilst acknowledging that members require familiarity with procedures in order to feel comfortable with their own role on the tribunal.

Access to training for Scotland

6.11 Consultation with the Judicial Studies Board (Tribunals Committee) in England and Wales should be a priority on the topic of generic skills training and training in tribunal dynamics. A national body in Scotland could administer the standards and methods of training for the devolved tribunals, especially in the light of the number of tribunals recently established in Scotland. Whether that body should include reserved tribunals operating in Scotland is a matter still open for debate, but is identified by the AJSG as an option appropriate in a devolved Scotland where justice is a devolved issue. From a user standpoint a Scottish system for all tribunals operating in Scotland has more coherence, but there would have to be a protocol or memorandum of understanding between the national bodies.

6.12 A national body to oversee the appointment and management of tribunals operating in Scotland has been proposed by the AJSG in their first report (AJSG , 2008). Such a body could take an oversight role in relation to training, but there may be value in following the model used in England and Wales and for reserved tribunals of delegating that training to the Judicial Studies Committee which in turn could draw upon training models and contents already operating in Scotland. Indeed even if the national body for reserved tribunals remains the Tribunals Service, training for tribunals operating in Scotland could be delegated to the Judicial Studies Committee to ensure that training is consistent with devolved justice in Scotland. An alternative approach would be for the training to be a collaborative venture of e.g. the Scottish Tribunals Forum. Whatever the centralised provision of generic training, there would be some need for training particular to a tribunal jurisdiction. However that too could be overseen by a national body, to assist with the perception of independence from the budgets and agendas of sponsoring departments. Options for training provision are discussed further in the recommendations below.

Generic skills overlaid on prior skills and knowledge

6.13 Training in generic skills such as decision-making and evaluation of evidence is arguably paramount where a tribunal member brings specialist knowledge or experience to a tribunal. Following the findings of Peay and Perkins it should be recognised that even though an individual brings extensive knowledge in a particular area to the tribunal, it does not necessarily follow that they also automatically bring the skills needed to be an effective and fair tribunal member. Those who have experience working within a particular sector may, albeit unwittingly, give effect to certain biases or schools of thought to which they subscribe in their decision-making. At the same time, those tribunal members who have been appointed precisely for that experience require training in how to use it effectively and appropriately within the tribunal.

6.14 Evidence from surveys of user groups also suggests that members when given the scope for discussion may respond true to type/discipline/prior agenda (AJTC 2008). Even if many do not do so, the perception of this risk amongst users of the tribunal should be considered when training is developed.

6.15 Although Turner anecdotally dismisses training for MHTS as ineffective (Turner, 2005) a clearly articulated training and professional development programme in generic skills - including those related to impartial decision making - would not only provide tribunal members with the skills they need but could potentially go some way to allaying perceptions or fears of bias. In turn this can reassure those who use the tribunals that they are being given a fair hearing, but the best source of evidence on that point would be users groups.

6.16 A survey of users groups operating in England & Wales published in February 2008 (AJTC 2008), albeit low in volume response at 17%, suggests a need for participative practices and more inclusive chairing skills. The ASNTS President reported using user group feedback to influence training.

Paying for training

6.17 Compulsory, remunerated induction training both specific to jurisdiction and generic could be introduced across the tribunal spectrum in Scotland as a basic requirement. Budgets may be tight, but money spent on training (particularly if pooling reduces the need for development of some training in-house or using external providers) should provide long term gain in effective working of tribunals. Alternatively more effort is needed to identify for tribunal decision-makers the transferable benefit to them of funded (but not remunerated) training.

Recommendations

Pooling of training expertise and resources for devolved tribunals

6.17 There are a number of avenues to achieve the desired pooling of training expertise, knowledge and resources for devolved tribunals. The SCAJTC could take a facilitative role, or the STF could promote greater voluntary collaboration. If a national body is created to take responsibility for tribunals in Scotland, this body could take oversight of standards and provision of training. However in terms of generic skills training there would be considerable overlap between the training provided by the JSC for the professional and lay judiciary operating in the courts and that needed by tribunal decision-makers.

6.18 A Tribunals arm of the JSC could take responsibility for (at least) generic training for devolved tribunals in Scotland. The JSC could design and deliver such training and could do so acting in consultation with the SCAJTC and STF pending the establishment of any national tribunals service for Scotland.

6.19 The training should address the topic of tribunal dynamics and the skills needed to achieve the most effective working of all participants on the tribunal panel. This project reveals that this important topic has a generic aspect (multi-person decision-making) and a

system-specific aspect (addressing pre-existing professional hierarchies amongst member groups). However ample resources exist via the Tribunals Committee of the JSB and the Australasian bodies to influence development of training in this area. The JSC and the STF (supported by the SCAJTC) could work with this body of material to design training that acknowledges and makes the most of the peculiarly Scottish context (a small country, devolved government, efficient government agenda, respect for tribunal integrity and respect for disputants preferences in Scotland as identified in the *Paths to Justice Scotland* study (Genn & Paterson, 2001)).

Training for reserved tribunals operating in Scotland

6.20 More attention should be given to how those populating *reserved* tribunals operating in Scotland can be supported and trained for their work in Scotland. Training dedicated to activities in Scotland was called for in particular in responses from chairs and members of the Employment Tribunal (Scotland). An option identified by AJSG to address the needs of reserved tribunals in Scotland, is that a national body for tribunals in Scotland would include such tribunals. They could obtain training from the JSC in accordance with the recommendation above for devolved tribunals. However those who are engaged with reserved tribunals other than Employment Tribunals (many of whom are Scots also populating devolved tribunals) think highly of the integrated and targeted training regimes that operate for reserved tribunals under the oversight of the Tribunals Committee of the JSB.

6.21 Training for reserved tribunal operations in Scotland should draw appropriately on the existing expertise of the JSB (Tribunals Committee). Through collaboration between the JSB and the JSC a training protocol could operate as a bridge between the Tribunals Service, and any new national body for tribunals in Scotland. However discussions should acknowledge and address the differences between the legal and justice systems of Scotland and England and the social cultures of its parties and tribunal decision-makers.

Training records

6.21 Training records are not kept routinely by tribunal systems in Scotland. Any central body overseeing training provision and standards in Scotland should initiate and maintain a database of chairs and members and a record in standard form for each chair and member which the individual could carry from one tribunal role or system to another.

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APPENDIX 1

List of Tribunals operating in Scotland by subject matter, taken from Scottish Committee Annual Report for 2006-2007 Annex D

A = Tribunals under the direct supervision of the Scottish Committee

B = GB tribunals supervised in Scotland by the Scottish Committee on behalf of the Council

A

AGRICULTURE

Agricultural Arbiters under S.63 of the Agricultural Holdings (Scotland) Act 1991

B

AVIATION

The Civil Aviation Authority constituted in accordance with S.2 of the Civil Aviation Act 1982

B

BETTING LEVY

The Horse Betting Levy Appeal Tribunal for Scotland under S.29 of the Betting Gaming and Lotteries Act 1963

A

CHARITIES

Scottish Charities Appeal Panel appointed under the Charities and Trustee Investment (Scotland) Act 2005

B

COPYRIGHT

The Copyright Tribunal under S.145 of the Copyright, Designs and Patents Act 1998

B

CRIMINAL INJURIES

Criminal Injuries Compensation Adjudicators appointed under S.5 of the Criminal Injuries Compensation Act 1995

A

CROFTING

Crofters Commission under S.1 of the Crofters (Scotland) Act 1993

A

EDUCATION

Additional Support Needs Tribunals for Scotland under S.17-21 and sch. 1 of the Education (Additional Support for Learning) (Scotland) Act 2004
01.08.05 to 31.07.06

Education Appeal Committees under S.28D of the Education (Scotland) Act 1980

A

EMPLOYMENT

The Employment Tribunal under the Industrial Tribunals Act 1996

B

FAIR TRADING/COMPETITION

The Director General of Fair Trading under sch.1 to the Fair Trading Act 1973
Competition Appeal Tribunal established under S.12 of the Enterprise Act 2002

B**FINANCE**

Financial Services and Markets Tribunal under S.132 of, and sch.13 to, the Financial Services and Markets Act 2000

A**FORESTRY**

Forestry Committees appointed in Scotland for the purpose of the Forestry Act 1967

B**GENDER**

Gender Recognition Panel under sch 1 to the Gender Recognition Act 2004

B**IMMIGRATION**

Asylum Support Adjudicators under S.102 of the Immigration and Asylum Act 1999

Asylum and Immigration Tribunal under S.81 of the Nationality, Immigration & Asylum Act 2002

B**INFORMATION**

Information Tribunal constituted under S.6 of the Data Protection Act 1998

Information Commissioner appointed under S.6 of the Data Protection Act 1998

B**INSOLVENCY**

Insolvency Practitioners Tribunal under S.396 of the Insolvency Act 1986

A**LAND**

Lands Tribunal for Scotland under S.1(a) of the Lands Tribunal Act 1949

A**LOCAL TAXATION**

Valuation Appeal Committees under S.29 of the Local Government (Scotland) Act 1994 and Local Government Finance Act 1992

A**MENTAL HEALTH**

Mental Health Tribunal for Scotland under the Mental Health (Care and Treatment) (Scotland) Act 2003

A**NATIONAL HEALTH****SERVICE**

Discipline Committees in accordance with S.19 of the NHS (Scotland) Act 1978

National Health Service Tribunal under S.29 of the NHS (Scotland) Act 1978

National Appeal Panel for Entry to Pharmaceutical Lists under sch.4 to the NHS (Pharmaceutical Services) (Scotland) Regulations 1995

B**NATIONAL SAVINGS**

National Savings Bank and National Savings Stock Register Adjudicator under S.84 of the Friendly Societies Act 1992

B**REVENUE**

General Commissioners of Income Tax under S.2 of the Taxes and Management Act 1970

Special Commissioners of Income Tax under S.4 of the Taxes and Management Act 1970

B**ROAD TRAFFIC**

Scottish Parking Appeals Service under S.73 of the Road Traffic Act 1991
The Traffic Commissioner under part 1 of the Transport Act 1985 and the Public Passengers Vehicles Act 1981

B

SOCIAL SECURITY

Social Security Commissioners under sch.4 to the Social Security Act 1998
Child Support Commissioners under S.22 of the Child Support Act 1991
Social Security and Child Support Appeals under the Social Security Act 1998

A

SOCIAL WORK

Children's Hearings under the Children (Scotland) Act 1995

B

TRANSPORT

Transport Tribunal under sch.4 to the Transport Act 1985

A

VALUE ADDED TAX

VAT and Duties Tribunals for Scotland under sch.12 to the Value Added Tax Act 1994

APPENDIX 2

QUESTIONNAIRE FOR TRIBUNAL MEMBERS AND CHAIRS

Research into the Provision of Training for Tribunal Members in Scotland Questionnaire for Tribunal Members and Chairs

The School of Law at the University of Aberdeen has been sponsored by the Scottish Government (Civil and Analytical Division) to carry out a short study of the training for chairs and members of tribunals operating in Scotland. This research is supported by the the Scottish Committee of the Administrative Justice and Tribunals Council and the Judicial Studies Committee.

The Presidents or Chief Officers of your Tribunal Service have contributed to the study and have agreed to pass on to you this short questionnaire. The responses will be collected online by the University of Aberdeen and will be known only to the research team. Should you wish to, you may give your name but equally you may remain anonymous. We will not attribute any responses to a particular individual.

PLEASE COMPLETE THE QUESTIONNAIRE ONLINE BY MONDAY 9 JUNE 2008.

Research team: Margaret Ross, Lynda Reid and Sarah Bleichner
Please tell us about your current tribunal membership(s) in Scotland and elsewhere

How many tribunal memberships and tribunal chairing roles do you have in total?

1 2 3 3+

Name of tribunal 1

—

Role in tribunal

member Chair

Is your membership related to a particular qualification or specialism?

Yes No

If, yes what is that qualification or specialism?

Number of years in post

0-2 3-5 over 5

Name of tribunal 2 (if applicable)

—

Role in tribunal

member Chair

Is your membership related to a particular qualification or specialism?

Yes No

If yes, what is that qualification or specialism?

Number of years in post

- 0-2 3-5 over 5

Is this your only other tribunal role?

- Yes No

Name of tribunal 3 (if applicable)

Role in tribunal

- member Chair

Is your membership related to a particular qualification or specialism?

- Yes No

If yes, what is that qualification or specialism?

Number of years in post

- 0-2 3-5 over 5

Is this your only other tribunal role?

- Yes No (if this is the case please add further details in the comments box at the end of the questionnaire)

Please tell us more about your training experiences for tribunals that sit in Scotland

Induction

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Were you offered induction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was induction compulsory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Were you able to attend induction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the training focus on your specific tribunal jurisdiction (e.g. employment, child support, land)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you find induction useful in content?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you find induction useful in volume?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

What form did your induction training take? _____

Comments on induction training _____

"Pre-post" training (offered by some tribunals separately from induction)

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Were you offered pre-post training?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was pre-post training compulsory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Were you able to attend pre-post training?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you find the pre-post training useful in content?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you find the pre-post training useful in volume?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the training focus on your specific tribunal jurisdiction (e.g. employment, child support, land)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

What form did your pre-post training take? _____

Comments on pre-post training _____

In-post (ongoing or refresher) training

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Were you offered in-post (ongoing or refresher) training?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was it compulsory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Were you able to attend in-post training?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you find the in-post training useful in content?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you find the in-post training useful in volume?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was this training to reflect <i>changes</i> in law or procedure?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the training focus on your specific tribunal jurisdiction (e.g. employment, child support, land)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

What form did your in-post training take? _____

Comments on in-post training _____

Some training may be termed generic to all tribunals. Did you receive training on the following generic skills? (tick all that apply)

- | | | | |
|---|--|--|--------------------------------|
| <input type="checkbox"/> Questioning | <input type="checkbox"/> Note-taking | <input type="checkbox"/> Decision-making | <input type="checkbox"/> Other |
| <input type="checkbox"/> Active listening | <input type="checkbox"/> Assessing credibility | <input type="checkbox"/> Recording decisions | |

What 'Other' training did you receive in generic skills? _____

If you received generic skills training

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Was it compulsory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you find it useful in content?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you find it useful in volume?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

What form did your generic training take? _____

Comments on generic training _____

Some tribunals share training with other tribunal jurisdictions

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Were you offered shared training?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you participate in shared training?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Would you be interested in the opportunity of shared training?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

What form did shared training take? _____

Comments on shared training _____

- | | | |
|---|---|------------------------------------|
| <input type="checkbox"/> Questionnaires at conclusion of training | <input type="checkbox"/> Discussions with tribunal colleagues | <input type="checkbox"/> Appraisal |
|---|---|------------------------------------|

- Discussions with course provider Periodic post-training feedback Other
 Other (please specify) requests

Assessment and support of personal training needs

Some tribunals carry out an individual training needs analysis

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Did you complete a training needs analysis?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was it in the form of a self-review in paper form?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was it in the form of a discussion with a tribunal colleague?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was that colleague a training officer?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was that colleague the president?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was that colleague a mentor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the analysis lead to training that you found useful?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments on training needs analysis _____

Some tribunals keep a record of training which may be transferable to other contexts

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Do you have a record of training?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is that record transferable to another tribunal's jurisdiction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is that record accessible for professional CPD purposes?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Would the contents of that record be recognised by a college or university for credit transfer?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was any part of your training a credit-bearing course from a college or university?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have you carried training from one tribunal jurisdiction (country or topic) to another?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments on record of training _____

Some tribunals offer a mentor and/or buddy scheme for new or continuing members

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Do you have a tribunal mentor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do you have access to buddy scheme in your tribunal?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Would you value nomination of a mentor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Would you value allocation of a tribunal "buddy"?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments on mentor or buddy schemes _____

Some tribunals have appraisal schemes

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Have you been appraised in your tribunal experience?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was the appraisal compulsory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Did you receive training on appraisal in advance of the process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was the appraisal carried out by the president?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was the appraisal carried out by another tribunal member or chair?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Was the appraisal effective?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the appraisal involve completion of a self-evaluation form?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the appraisal involve an interview with the appraiser?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did the appraisal involve a report back to you as appraisee?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you receive training as a direct result of the appraisal?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you find the appraisal process useful?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments on being appraised _____

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Have you appraised tribunal members or chairs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Did you think the process effective?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Were you offered training in appraisal in advance of conducting the process?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments on conducting appraisal _____

Comments not given previously.

Any comments that you have on tribunal training issues are valuable to this project. Please enter them here. No comments will be attributed in a way that allows identification of the commentator.

Your contact details

If you wish you may provide your contact details here.

Thank you very much indeed for completing this questionnaire.

APPENDIX 3

Membership and training budgets of sample Tribunals

Tribunal (Interviewee)	Jurisdiction	Membership (Scotland)	Responsibility for Training in Scotland	Training Budget
Additional Support Needs Tribunals for Scotland (ASNTS) (President)	Devolved	9 Convenors, 23 Lay, Specialised, and Legal Members	President	Not provided
Asylum and Immigration Tribunal (Resident Immigration Judge)	Reserved	Immigration Judges and Lay Members (unspecified)	Senior Immigration Judge on behalf of President	UK-wide training costs of approx. £500,000 p.a.
Employment Tribunals (Scotland) (ETS) (Vice President – Scotland)	Reserved Overall	220 Members	President and Vice- President for Scotland	Not provided
Land Tribunals for Scotland (President)	Devolved	President, 2 senior lawyers, 2 part-time surveyors	President	No budget allocation made for training
Mental Health Tribunal for Scotland (MHTS) (Business Manager)	Devolved	Pool of 300 Members from which each Tribunal Panel selected – each Panel consists of a Legal Member, Medical Member (psychiatrist), and General Member (experience or qualifications in social care)	President and Business Manager	Not provided
Private Rented Housing Panel (prhp) (President)	Devolved	33 Members	President	Not provided
Scottish Charity Appeals Panel (SCAP) (Secretary to the Panel – there is no President for Scotland)	Devolved	8 Chairs, 16 Members	Secretary to the Panel	Initial training cost of approx. £60,000 with approx. £5,000 annual top-up envisaged

Social Security and Child Support Appeal Tribunals in Scotland (SSCSA) (District Chairman)	Reserved	Approx. 2,000 Members	President (Great Britain), training committee and Judicial Training Advisory Group. Each region has its own training officer – for Scotland this is the District Chairman interviewed.	Budget of £993,000 p.a. across Great Britain
VAT and Duties Tribunal (Vice President – Scotland)	Reserved	20 Members	Vice-President for Scotland	Approx. £2,000 – 3,000 p.a.

APPENDIX 4

Questionnaire responses by percentage

|

Please tell us about your current tribunal membership(s) in Scotland and elsewhere

How many tribunal memberships and tribunal chairing roles do you have in total?

85.6% 1 7.2% 2 3.9% 3 3.3% 3+

Name of tribunal 1

99.4%

Role in tribunal

72.8% member 26.7% Chair

Is your membership related to a particular qualification or specialism?

80.6% Yes 17.8% No

If, yes what is that qualification or specialism? 81.1%

Number of years in post

36.7% 0-2 27.2% 3-5 35.6% over 5

Name of tribunal 2 (if applicable)

16.1%

Role in tribunal

6.7% member 8.9% chair

Is your membership related to a particular qualification or specialism?

12.2% Yes 2.8% No

If yes, what is that qualification or specialism? 11.7%

Number of years in post

3.3% 0-2 5.0% 3-5 7.8% over 5

Is this your only other tribunal role?

13.3% Yes 5.6% No

Name of tribunal 3 (if applicable)

8.9%

Role in tribunal

2.8% member 5.6% chair

Is your membership related to a particular qualification or specialism?

7.2% Yes 0.6% No

If yes, what is that qualification or specialism? 7.2%

Number of years in post

3.9% 0-2 2.2% 3-5 2.2% over 5

Is this your only other tribunal role?

10.0% Yes 2.8% No (if this is the case please add further details in the comments box at the end of the questionnaire)

Please tell us more about your training experiences for tribunals that sit in Scotland

Induction

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Were you offered induction?	93.3%	4.4%	1.1%
Was induction compulsory?	85.0%	8.3%	5.6%
Were you able to attend induction?	93.9%	3.9%	0.6%

Did the training focus on your specific tribunal jurisdiction (e.g. employment, child support, land)?	89.4%	6.7%	1.1%
Did you find induction useful in content?	92.2%	3.9%	1.1%
Did you find induction useful in volume?	83.9%	8.3%	4.4%
What form did your induction training take?	89.4%		
Comments on induction training	77.2%		

"Pre-post" training (offered by some tribunals separately from induction)

	Yes	No	Don't recall
Were you offered pre-post training?	47.2%	31.7%	11.1%
Was pre-post training compulsory?	31.7%	33.3%	11.7%
Were you able to attend pre-post training?	43.9%	21.1%	7.8%
Did you find the pre-post training useful in content?	42.8%	16.7%	7.8%
Did you find the pre-post training useful in volume?	40.0%	18.3%	8.9%
Did the training focus on your specific tribunal jurisdiction (e.g. employment, child support, land)?	42.2%	15.6%	7.8%
What form did your pre-post training take?	48.3%		
Comments on pre-post training	36.7%		

In-post (ongoing or refresher) training

	Yes	No	Don't recall
Were you offered in-post (ongoing or refresher) training?	95.6%	3.3%	0.0%
Was it compulsory?	52.8%	36.1%	6.1%
Were you able to attend in-post training?	88.3%	6.7%	0.0%
Did you find the in-post training useful in content?	86.7%	2.2%	0.0%
Did you find the in-post training useful in volume?	77.2%	10.6%	0.0%
Was this training to reflect <i>changes</i> in law or procedure?	62.2%	21.7%	2.8%
Did the training focus on your specific tribunal jurisdiction (e.g. employment, child support, land)?	83.3%	2.2%	0.0%
What form did your in-post training take?	80.0%		
Comments on in-post training	66.7%		

Some training may be termed generic to all tribunals. Did you receive training on the following generic skills? (tick all that apply)

61.7%	Questioning	20.6%	Note-taking	80.0%	Decision-making	22.8%	Other
56.1%	Active listening	28.3%	Assessing credibility	60.6%	Recording decisions		
	What 'Other' training did you receive in generic skills ?	87.8%					

If you received generic skills training

	Yes	No	Don't recall
Was it compulsory?	53.9%	21.1%	12.2%
Did you find it useful in content?	71.1%	4.4%	4.4%
Did you find it useful in volume?	65.6%	8.3%	5.0%
What form did your generic training take?	60.0%		
Comments on generic training	42.8%		

Some tribunals share training with other tribunal jurisdictions

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Were you offered shared training?	3.9%	88.9%	1.1%
Did you participate in shared training?	4.4%	66.7%	1.1%
Would you be interested in the opportunity of shared training?	37.2%	32.8%	2.8%
What form did shared training take?	6.7%		
Comments on shared training	9.4%		

What procedures exist for you providing feedback on the usefulness of your training (tick all that apply)

94.4%	Questionnaires at conclusion of training	56.7%	Discussions with tribunal colleagues	44.4%	Appraisal
36.7%	Discussions with course provider	10.0%	Periodic post-training feedback requests	3.3%	Other
	Other (please specify)		5.0%		

Assessment and support of personal training needs

Some tribunals carry out an individual training needs analysis

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Did you complete a training needs analysis?	20.6%	69.4%	7.8%
Was it in the form of a self-review in paper form?	18.3%	31.7%	2.8%
Was it in the form of a discussion with a tribunal colleague?	10.6%	36.1%	2.8%
Was that colleague a training officer?	0.6%	38.3%	2.8%
Was that colleague the president?	2.8%	37.8%	1.7%
Was that colleague a mentor?	1.1%	38.3%	1.7%
Did the analysis lead to training that you found useful?	11.1%	28.3%	3.3%
Comments on training needs analysis	24.4%		

Some tribunals keep a record of training which may be transferable to other contexts

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Do you have a record of training?	33.9%	55.6%	8.3%
Is that record transferable to another tribunal's jurisdiction?	2.2%	30.6%	27.8%
Is that record accessible for professional CPD purposes?	28.9%	23.3%	10.0%
Would the contents of that record be recognised by a college or university for credit transfer?	2.8%	33.3%	24.4%
Was any part of your training a credit-bearing course from a college or university?	0.6%	55.0%	6.1%
Have you carried training from one tribunal jurisdiction (country or topic) to another?	3.3%	55.0%	4.4%
Comments on record of training	18.3%		

Some tribunals offer a mentor and/or buddy scheme for new or continuing members

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Do you have a tribunal mentor?	8.3%	89.4%	0.0%
Do you have access to buddy scheme in your tribunal?	5.0%	79.4%	2.2%
Would you value nomination of a mentor?	27.2%	46.7%	2.8%
Would you value allocation of a tribunal "buddy"?	26.7%	48.9%	1.7%
Comments on mentor or buddy schemes	30.0%		

Some tribunals have appraisal schemes

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Have you been appraised in your tribunal experience?	32.8%	61.7%	2.8%
Was the appraisal compulsory?	39.4%	16.1%	2.8%
Did you receive training on appraisal in advance of the process?	13.3%	38.9%	4.4%
Was the appraisal carried out by the president?	6.7%	46.1%	2.2%
Was the appraisal carried out by another tribunal member or chair?	30.6%	18.9%	2.2%
Was the appraisal effective?	29.4%	15.0%	5.6%
Did the appraisal involve completion of a self-evaluation form?	29.4%	18.3%	4.4%
Did the appraisal involve an interview with the appraiser?	33.3%	15.6%	2.8%
Did the appraisal involve a report back to you as appraisee?	32.8%	16.1%	2.2%
Did you receive training as a direct result of the appraisal?	1.7%	42.8%	3.9%
Did you find the appraisal process useful?	28.3%	16.7%	4.4%
Comments on being appraised	33.9%		

	<i>Yes</i>	<i>No</i>	<i>Don't recall</i>
Have you appraised tribunal members or chairs?	5.6%	90.6%	0.6%
Did you think the process effective?	7.2%	15.0%	3.9%
Were you offered training in appraisal in advance of conducting the process?	5.6%	18.9%	2.2%
Comments on conducting appraisal	8.3%		

Comments not given previously.

Any comments that you have on tribunal training issues are valuable to this project. Please enter them here. No comments will be attributed in a way that allows identification of the commentator.

Your contact details

If you wish you may provide your contact details here. 26.7%

Thank you very much indeed for completing this questionnaire.