

## **Paper 6.1**

### **STAJAC Proactive Work – Update on The Mapping Project**

#### Purpose of the Project

The purpose of the mapping project is “*to inform priorities for further policy work*”. It would be worth nailing this down – including who the intended audience of the finished report is. It would also be worth clarifying what the finished report will actually be used for.

#### Update on Progress

I began the project with initial scoping work of public bodies, regulators and complaint handlers in Scotland. Initially casting the net wide, this exercise had resulted in a list of over 200 public bodies (although there are many more than this).

Taking Tribunals as a starting point, I detailed the underlying legislation and associated onward review and appeal processes for each. I then used this to go to the layer behind tribunals, mapping out the same details for the first instance bodies whose decisions are reviewed by the Tribunals. This has resulted in the attached list.

#### Going Forward

I plan to continue to use this model to map out every body that we wish to include within the project. In order to make it more visually accessible, I intend to present it in a more straightforward way – showing the first instance bodies leading through to the final body of appeal/review/complaint.

It is this list that I plan to base an accompanying report on, which would analyse the findings of the mapping – showing how fragmented and piecemeal the approaches to appeals, reviews and complaints processes are (if there are any at all) – including perhaps, the varying procedures, time limits, fees etc.

In relation to the report, whilst the first task is to complete the information gathering phase and list creation, I have had the following initial thoughts for Chapters for inclusion:

- The role of Tribunals in the AJ System
- The role of Ombudsmen in the AJ System
- Other Regulators in the AJ System
- Bodies with No Right of Appeal/Review
- Implications for the Future of AJ in Scotland

I envisaged including within this report particular examples taken from the list to explore further and to supplement each Chapter, using visually accessible tables and maps to illustrate this: - see the below example for a customer seeking redress in regard to the handling of an application made to a local authority for council tax reduction.

<b>Council Tax Reduction - Remedies</b>			
<b>Redress Mechanism</b>	<b>Jurisdiction</b>	<b>Time Limits</b>	<b>Potential Remedy</b>
Local Authority, Revenue & Benefits – Internal Review	Internal Review of Original Decision	2 months from date of decision	Redetermination
Council Tax Reduction Review Panel	External Review of Final Authority Decision	42 days from date of internal review decision	Redetermination
Court of Session, Statutory Appeal	External and Final Appeal, on a point of law only, of the External Review	21 days from date of external review decision	Mandatory Order, Prohibition Order, Declaration, Damages
Local Authority Internal Complaints Procedure	Service Failure and Maladministration	Normally 6 months from problem arising	Apology, changes to procedures
Scottish Government, CTRRP Internal Complaints Procedure	Service Failure and Maladministration	Normally 6 months from problem arising	Apology, changes to procedures
Scottish Public Services Ombudsman	Service Failure and Maladministration of either the Local Authority or the CTRRP, once internal complaints routes exhausted	Normally 12 months from problem arising	Makes recommendations to the body complained within its jurisdiction: eg. To apologise, change procedures, compensate

### The Smith Commission

It is also intended to base a chapter of the report – “Implications for the Future...” on the possible implications of our findings for the Smith Commission proposals on the devolution of reserved tribunals. This would particularly focus on the potential impact upon users given the reservations in the draft clauses for the UK Government to retain control over many administrative, structural and regulatory issues.

### Issues and Hurdles

The main issue at the moment is one of scope. The intention is to create a map that is “as comprehensive as possible” – but how far do we take this? There needs to be an agreed definition of what constitutes a public body for the purposes of this exercise. This can be obvious in some cases, but see the following examples to consider:-

-> Housing Associations – (are included in a NI Mapping Project; Registered Social Landlords are within the remit of the SPSO; 355 cases from Housing Associations brought to SPSO in 2013/14)

-> Universities and Colleges – (are included in a NI Mapping Project; Further Education is within the remit of the SPSO; 125 cases brought to SPSO in 2013/14)

-> Historic Scotland – (is involved in the Planning System and in Environmental Impact Assessments; awards and administers grants; under the remit of the SPSO)

### **Questions for the Committee**

The main questions for discussion/decisions at the 25 February meeting are:

- Who is the intended audience of the ‘Map’/report?
- What is it likely to be used for?
- What are members' views on the helpfulness and usefulness of the information collated so far?
  - Can anything be left out?
  - Should anything else be included?
- Starting from tribunals, and then the first instance decisions making bodies that lead to these tribunals, how can we now identify first instance decision-making in administrative justice that does not lead to tribunals?
- In answering the above, what will determine what is in scope for this mapping, and what is out of scope?
  - This could for example (and in part) be based on referral to the SPSO (but issues dealt with by SPSO are service failure and maladministration – are these administrative justice matters?)
  - Some administrative justice first instance decisions find their way to the court (eg. homelessness) – do we include these? How do we identify them? And how to list them (This is an issue in particular in relation to local authorities – who make a range of decisions stemming from different legislation, some of which may end up in tribunal, some in court, and some which have no external route of appeal.)

- It will be useful to visualise the system in a graphic map – given the amount of bodies, do members have any ideas as to how this could be done?
- Some ideas are provided for an accompanying report – is an accompanying report an effective manner of representing our findings?
  - If so, what should be included in the report?
  - Are there any Chapters, in particular, that it would be useful to include?