

Remit and Capacity of a Non Statutory Advisory Committee on Administrative Justice and Tribunals in Scotland

This Report provides advice to Scottish Ministers in relation to the establishment of a non-statutory advisory body by Scottish Government to discharge the functions of the Scottish Committee of the Administrative Justice and Tribunals Council (AJTC), so far as practicable, following the abolition of the AJTC. The report sets out the background to the current arrangements, including the UK government's reasoning behind its decision to abolish the AJTC. It goes on to make the case for the establishment of a new non-statutory body in Scotland, setting out proposals for its remit and functions, based on findings from consultation with key stakeholders.

Part 1 Introduction

1. On 18 December 2012 the Ministry of Justice tabled an Order in the UK Parliament, which if brought into force would lead to the abolition of the AJTC with effect from 31 March 2013 or thereabouts. This report sets out advice by the Scottish Committee of the AJTC to Scottish Ministers in relation to the structure, role and functions of a non-statutory body which might be established in the event of abolition of the AJTC. The report follows on a request by Scottish Government in October 2012 for such advice to be supplied by February 2013.
2. This Report seeks to answer three questions in relation to the proposed new advisory body, as follows:
 - what functions could be discharged by such a body?
 - what are the necessary characteristics of such a body?
 - what is necessary to be done to provide for such a body?

In formulating the advice in this Report the Committee has endeavoured to adopt as realistic a position as possible, recognising the continuing resource constraints on Government. This paper does not attempt to answer a fourth question as to what the new body might actually do although it suggests that the question will be addressed by the Committee in the run up to abolition.

Process and approach adopted by the Committee

3. In considering these matters the Committee decided at an early stage that it was appropriate to develop this advice to Ministers from as broad a base as possible. Accordingly, a Working Group was established in October 2012 and carried out a limited consultation of key stakeholders on a discussion paper in early December. Given the pressure of time and limited resources it was not possible to carry out a more

formal or wide-ranging consultation. A list of those consulted along with the membership of the Working Group is set out at Annex A.

4. The Working Group also convened a short series of round table stakeholder meetings in December 2012. A synopsis of points made at the stakeholder meetings is attached at Annex B.

Part 2 Background

The Council on Tribunals and the AJTC

5. The Administrative Justice and Tribunals Council (AJTC) is the successor body to the Council on Tribunals (CoT). CoT was established by the Tribunals and Inquiries Act 1958, following recommendations of the Franks Committee.¹ The Franks Committee had suggested two standing Councils on Tribunals should be set up, one for England and one for Scotland, to keep the constitution and working of administrative tribunals under review. In the event the 1958 Act established a single Council on Tribunals with a separate Scottish Committee. CoT was set up as an advisory non-departmental public body. Its remit was to keep under review and report on the constitution and working of tribunals under its supervision and, where necessary, to consider and report on the administrative procedures of statutory inquiries.
6. CoT did much good work, particularly in its later years, but its effectiveness was questioned by a number of commentators. It was suggested that the CoT had inadequate resources, that its legal powers were too limited in that it lacked powers of compulsion in relation to any of its functions (other than the right to attend tribunals) and so was entirely dependent on being able to persuade others to listen, that any overview of the ways in which tribunals discharged their functions was so slight as to be ineffective (due to the infrequency of visits, the lack of any review of case papers, the lack of follow-up etc.).
7. These shortcomings were not intended as criticism of the members of the CoT but were felt to be related to its lack of resources, its limited statutory powers and the attitude of Government departments. It had no research capacity, and Government departments did not always consult it in time over proposals for tribunals. Departments sometimes gave little weight to its views, a problem exacerbated by its weak links to Parliament. It was also felt that its remit was too limited, covering as it did only tribunals and not broader administrative justice issues. The Tribunals, Courts and Enforcement Act 2007 dealt with the last of these issues by giving the new AJTC responsibility over the whole field of administrative justice. AJTC was also given power to make proposals for research but no budget for research and more generally it was not given substantially greater resources than its predecessor. Otherwise AJTC's functions and powers were similar to those of the CoT.

Current arrangements for supervision of administrative justice in Scotland

8. The AJTC was established by section 44 and Sch. 7 of the Tribunals, Courts and Enforcement Act 2007. Its core functions are to keep under review (i) the administrative justice system (ii) listed tribunals, and (iii) statutory inquiries, and are set out in detail in paras 13², 14³ and 15⁴ of Sch. 7. AJTC's role and functions are in part defined in the

¹ *Report of the Committee on Administrative Tribunals and Inquiries*, Cmnd. 218 (1957).

² *Functions with respect to the administrative justice system*

13(1) The Council is to—

(a) keep the administrative justice system under review,
(b) consider ways to make the system accessible, fair and efficient,

Framework Document agreed in November 2007 between the AJTC and HMG⁵. The Council currently comprises ten members, with the UK Parliamentary and Health Service Ombudsman serving as an ex-officio member. The 2007 Act allows for a maximum of 15 members.

9. Until recently the AJTC had budgetary cover for ten full-time staff of whom six provided support in analysis and formulation of policy. As at January 2013 the Council is supported by seven staff including three who support the policy function.
10. The Scottish Committee of the AJTC is established by para 4 of Sch. 7 to the 2007 Act. The Committee's functions are not defined separately from those conferred on the AJTC; it has the same functions as its parent body but carries these out with regard to Scotland⁶. The 2007 Act allows for a maximum of 7 members of the Scottish Committee, two or three of whom are members of the Council and an additional three or four appointed by Scottish Ministers. Currently the Committee has five members, of whom two are also members of the Council. The Scottish Public Services Ombudsman and the UK Parliamentary and Health Service Ombudsman serve as ex-officio members.
11. The indicative commitment of Committee members is for 35 days per annum, for Council members 44 days and in the case of the Chair 60 days per annum. Members do not maintain formal time recording logs and therefore the Committee cannot provide detailed data as to the precise time spent by individual members on Committee business. However, in general terms, members undertake formal meetings and engagements which absorb and in some cases exceed the full-time allocation, leaving

(c) advise the persons mentioned in sub-paragraph (2) on the development of the system,
(d) refer proposals for changes in the system to those persons, and
(e) make proposals for research into the system.

...

- (3) The Council may make such reports as it considers appropriate on any of the matters mentioned in sub-paragraph (1).
- (4) In this paragraph "the administrative justice system" means the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including—
 - (a) the procedures for making such decisions,
 - (b) the law under which such decisions are made, and
 - (c) the systems for resolving disputes and airing grievances in relation to such decisions.

³ 14 (1) The Council is to—

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

⁴ 15 The Council is to—

- (a) keep under review, and report on, the constitution and working of statutory inquiries, both in general and by reference to statutory provisions under which statutory inquiries of different descriptions may be held,
- (b) consider, and report on, any other matter—
 - (i) that relates to statutory inquiries in general, to statutory inquiries of a particular description or to any particular statutory inquiry, and
 - (ii) that the Council determines to be of special importance, and
- (c) consider, and report on, any particular matter referred to the Council—
 - (i) that relates to statutory inquiries in general, to statutory inquiries of a particular description or to any particular statutory inquiry, and
 - (ii) whose referral to the Council falls within paragraph 16.

⁵ Para 2.2 and 2.3

⁶ The Franks Report had recommended the creation of a separate Council for Scotland.

preparation, writing and informal business to be dealt with in their own time. An estimate of 120% time commitment is unlikely to be excessive.

12. The Committee is currently assisted by a full-time civil servant as Secretary to the Committee. The post of Assistant Secretary has been vacant since May 2012.

The process towards abolition, including the Ministry of Justice's (MoJ) appreciation of the requirement for the AJTC functions

13. In 2010 the Cabinet Office led a cross Government review of all Public Bodies (Arm's Length Bodies (ALBs)) in order to increase the transparency and accountability of public bodies and to reduce their number and cost. Cabinet Office worked with departments to agree which ALBs should be abolished, merged, modified or transferred, or whose constitutional arrangements should be reformed.

14. The review proposed that a body should only exist as an ALB if it meets one of three tests. These tests are:

- Does it perform a technical function?
- Do its activities require political impartiality?
- Does it need to act independently to establish facts?

15. The Secretary of State for Justice assessed that the AJTC did not meet any of these tests. The AJTC's sister organisations, the Civil Justice Council and the Family Justice Council, which have broadly similar remits to the AJTC in respect of civil and family justice were both thought to satisfy these tests. Abolition of the AJTC will be achieved by an Order under Section 1 of the Public Bodies Act 2010.

16. The decision to abolish was made following a consultation to which there were 41 responses. The majority of the respondents expressed the view that the AJTC should not be abolished. A majority of respondents commented that the AJTC's strength is that it is an independent organisation that exercises a UK overview of the UK administrative justice system. Four respondents were not opposed to the abolition of the AJTC. 18 other respondents replied to the specific question on abolition and were opposed. A common thread of responses was that AJTC was a valuable body, independent of Government, able to provide a holistic overview.⁷

17. The UK Parliament's Public Administration Select Committee published its report *'Future oversight of administrative justice: the proposed abolition of the Administrative Justice and Tribunals Council - Public Administration Committee'* on 21 February 2012. It noted that

- *'The role of the AJTC in providing an independent overview of the system is therefore one of vital national importance';*
- *The vast majority of the evidence we heard, except that from the Government, was opposed to the Ministry of Justice's plan to abolish the AJTC and absorb or abandon its functions. It is arguable whether or not the AJTC meets the Government's three criteria for deciding whether to retain a public body.'*
- *'It is clear that there is a fundamental difference of view between the Government and others on both the need for independent oversight of the administrative justice system, and the extent to which the AJTC has been performing such a function. We*

⁷ Response to Consultation on reforms proposed in the Public Bodies Bill – MoJ December 2011 – Cmnd 8235.

*accept that this task may be undertaken in more than one way, but consider that oversight by an entity independent from Government is valuable and should be continued in some form. The MoJ, as a part of Government, cannot replace these functions. If these are functions worth preserving, the Government will need to revisit its plans. Concerns were also raised about the resources and expertise which would be available within the MoJ, particularly as substantial elements of the administrative justice system lie outside its current remit. PASC doubts the cost savings which the Government estimates will be achieved by the AJTC's abolition, which are in any case, a small fraction of what the Government should be aiming to save by getting more decisions right in the first place. We recommend that the MoJ should publish further information on these points to enable proper scrutiny of its proposals.'*⁸

18. With reference to the recommendation that MoJ publish further information it may be noted that MoJ published its Administrative Justice and Strategic Work Programme on 18 December. The AJTC Chairman, Richard Thomas, in commenting on a final draft of the Programme, expressed regret at the absence of any apparent commitment to the AJTC's Principles of Administrative Justice, and of any clear or stable definition of the scope of administrative justice within it. His main concern was the almost complete lack of concrete commitments in the document, which reflected its weakness.
19. The Committee had hoped that that the MoJ strategy might have indicated more developed thinking about the UK perspective on administrative justice⁹. The Committee has had concerns since even before the start of the abolition process that the MoJ may have been unwilling to articulate a UK perspective. The Committee's concern arises from the fact that the majority of tribunal proceedings in Scotland are likely to fall within the areas of reserved competence. The recently published MoJ strategy suggests that the prime concern of the MoJ in this area is with administrative justice in England. The structuring of responsibility for tribunals within an Executive Agency of the MoJ concerned with the English Courts system also suggests that MoJ does not consider the maintenance of coherent structures at a UK level, to be part of its prime concerns. It has been the position of the Scottish Committee for the period since at least autumn 2009 that such an approach by MoJ would necessarily mean that the development of a Scottish administrative justice system would be rendered significantly more problematic.

The request for advice

20. The Minister for Community Safety and Legal Affairs in the Scottish Government wrote to the Chair of the Scottish Committee on 4 September 2012 setting out her intention, should the AJTC be abolished, to seek to continue the Committee's functions through a non-statutory advisory body. The Minister's letter was also copied to the Scottish Parliament's Justice Committee. Scottish Government thereafter requested the provision of advice from the Committee on the nature of such a body and the issues arising in its establishment.

Part 3 –The purpose behind setting up the Scottish Committee

⁸ Future oversight of administrative justice: the proposed abolition of the Administrative Justice and Tribunals Council - Public Administration Committee – 21 February 2012

⁹ Ministry of Justice - Administrative Justice and Tribunals: A Strategic Work Programme 2013 – 16 (para 42 – 44)

21. Given the policy intention to replicate the Committee, so far as possible, in non-statutory form, it is relevant to consider the original purpose behind the establishment of the Committee.

Leggatt and tribunal reform

22. As discussed above, the AJTC grew out of the CoT, which in turn was set up following on the Report of the Committee on Administrative Tribunals and Enquiries (1957 Cmnd. 218) (The Franks Report). CoT was an advisory non-departmental public body sponsored latterly by the Ministry of Justice. Its remit was to keep under review and report on the constitution and working of tribunals under its supervision and, where necessary, to consider and report on the administrative procedures of statutory inquiries. The CoT sought to ensure that tribunals and inquiries met the needs of users through the provision of an open, fair, impartial, efficient, timely and accessible service.¹⁰
23. In 2001 the Leggatt Report¹¹ recommended the establishment of the AJTC and the Scottish Committee, referring to the Council famously as the ‘hub of the wheel’ of administrative justice¹². The Leggatt Review’s terms of reference meant that it looked only at England and Wales; it was not able to consider Scotland, although it did remark that ‘*devolution to Scotland, Wales and Northern Ireland must be taken into account. In the interests of coherence and consistency our recommendations should be applied cross-border, where it is possible to do so; and implementation plans will have to be modified as necessary.*’¹³ Leggatt recognised that ‘*there are tensions between general (devolved) administrative justice matters and the reservation of UK tribunals.*’ However, he did not specifically see the AJTC and the Scottish Committee as having a role in alleviating that tension.
24. Whether as a matter of fact the Scottish Committee has been able to assist with the resolution of such tension is for others to judge. The Committee has however been, and remains, mindful of the tension.

Leggatt’s vision for the AJTC

25. In making recommendations for establishing the AJTC Leggatt criticised the CoT in a number of regards¹⁴, but he also set out his vision for the new body.

Thus, Leggatt suggested that the AJTC should:

- monitor the development of the new Tribunals System during the first few years of its existence, and also check that the practices and procedures of Government departments are ECHR compliant.
- have as a primary duty the championing of the cause of users.¹⁵

¹⁰ Extract from CoT website

¹¹ Lord Chancellor’s Department, *Tribunals for Users: One System, One Service-Report of the Review of Tribunals by Sir Andrew Leggatt*, March 2001 – paras 7.46 – 7.55

¹² Lord Chancellor’s Department, *Tribunals for Users: One System, One Service-Report of the Review of Tribunals by Sir Andrew Leggatt*, March 2001 – para 7.49

¹³ Para 11.2

¹⁴ para 7.47 – while ‘its Model Rules of Procedure are a major achievement, and] its work on independence of tribunals and on standards of accommodation and of training deserve notice [and while] it has also drawn attention to the importance of competence in tribunal chairmen and members, [it] has not published its visit reports, nor exposed the defects they identified, and [it] has failed to gain publicity for its criticisms, for example in its Annual Reports, whether or not the failure has been due to departmental opposition.’ Furthermore ‘visitors who have given evidence to the Council have not found the experience as challenging as they should have. In focussing on the need for detailed comment on specific issues, it has given insufficient emphasis to strategic thinking about administrative justice generally or about tribunals in particular.’

¹⁵ Para 7.49

- be more proactive [than the CoT], providing more conferences, more detailed tribunal information, more special reports, and more guidance on standards and best practice.
- have a right to attend the deliberations of tribunals. The results of visits should be discussed with tribunals, and the Council's recommendations acted on.

Leggatt also suggested that:

- The Council's functions should include taking evidence from user groups, from the Tribunals Service, from departments, and from the JSB about how well the system is working. Importantly, Leggatt said that this oversight should be in addition to, not instead of, the direct relationship that will exist between the participants in the tribunal process.
- The Council should monitor the training of chairmen and members, proposals for procedural change, the development of IT, the usefulness of the information provided for users by the Tribunals Service, and the adequacy of independent sources of assistance and advice for users; and
- It should continue its own programme of visits, albeit scaled down, and after each visit should report its findings at once to the Senior President and to the President of the Division concerned. The Council should have standing to supervise tribunals which operate across borders in the UK.¹⁶

Finally Leggatt advised that:

- The work of the Council should be reported to the relevant Ministers and to an appropriate Select Committee such as the Home Affairs Parliamentary Select Committee.
- The Council's reports, and in particular its Annual Reports, should be published to a wider public, 'as will befit its higher profile.'
- There was in general terms a need for 'a generally higher profile for the Council'.
- There should be a general expectation that where the Council has made formal representations to a Government department it should receive a reasoned and constructive reply, capable of being put into the public domain. That applies particularly strongly to material in the Annual Report, and even more to the Council's occasional special reports.¹⁷

Tribunals, Courts and Enforcement Act 2007

26. The key elements of the vision set out by Leggatt are reflected in the legislation that established the AJTC, namely the Tribunals, Courts and Enforcement Act 2007. The principal functions for the AJTC are laid down in the Act as follows:

- to keep the administrative justice system under review;
- to keep under review and report on the constitution and working of listed tribunals; and
- to keep under review and report on the constitution and working of statutory inquiries.

¹⁶ Para 750

¹⁷ Para 751

27. The AJTC's functions also include considering ways to make the administrative justice system accessible, fair and efficient, advising the Lord Chancellor, Scottish Ministers, Welsh Ministers and the Senior President of Tribunals on its development and referring to them proposals for change, and making proposals for research.

28. The AJTC and its Scottish and Welsh Committees can, we believe, rightly claim to have fulfilled this remit and to have met many of the aspirations set out in Leggatt's vision. Annex C to this paper sets out a brief note of the work done by the Committee since its inception.

Part 4 What functions could be discharged by such a body? - An outline for a non-statutory body for Scotland

The requirement in relation to an administrative justice system for Scotland

29. The overall aim of administrative justice policy should be to ensure that the administrative justice system serves both the needs of its users and the public interest. This would align administrative justice policy with existing civil justice policy¹⁸ and criminal justice policy. More particularly, the administrative justice system should have three aims:

- ensuring public bodies get it right first time when making decisions;
- ensuring that where decisions are incorrect or treatment of citizens is otherwise defective there are effective redress mechanisms;
- ensuring that public bodies learn from their mistakes and thereby increasing the likelihood of getting it right first time.¹⁹

Amongst other functions, the new body would have the prime function of providing advice to the Scottish Government that will assist it in achieving those aims.

The necessity that the body be independent

30. The Committee noted that Scottish Ministers asked for advice not on whether there should be a body to succeed the AJTC but what that body might look like and how it might work. Conversations which the Committee have had with Scottish Government indicate a full appreciation by government both of the need for a successor body and also, importantly, the need for independence. However for completeness the Committee would wish to reinforce the points, which are relevant to the requirement for independence. It is useful to look again at the PASC report²⁰ referred to in the 'Process towards abolition' paragraph in section 2 of this Report.

PASC said;

'The role of the AJTC in providing an independent overview of the system is one of vital national importance.'

¹⁸ It is generally understood that civil justice and administrative justice overlap.

¹⁹ Administrative Justice Steering Group, *Administrative Justice in Scotland – the Way Forward* (2009).

²⁰ 'Future oversight of administrative justice: the proposed abolition of the Administrative Justice and Tribunals Council - Public Administration Committee' - 21 February 2012.

It noted also that

'The vast majority of the evidence we heard, except that from the Government, was opposed to the Ministry of Justice's plan to abolish the AJTC and absorb or abandon its functions. It is arguable whether or not the AJTC meets the Government's three criteria for deciding whether to retain a public body.' ...'It is clear that there is a fundamental difference of view between the Government and others on both the need for independent oversight of the administrative justice system, and the extent to which the AJTC has been performing such a function. We accept that this task may be undertaken in more than one way, but consider that oversight by an entity independent from Government is valuable and should be continued in some form. The MoJ, as a part of Government, cannot replace these functions.'

PASC was quite clear on independence where it said –

(para 6) – *'We accept that this task may be undertaken in more than one way, but consider that oversight by an entity independent from Government is valuable and should be continued in some form.'* (underlining is ours)

31. The reference to the vast majority of the evidence is mirrored in the Committee's experience in the round table discussion sessions conducted in December 2012²¹. All of those involved, without exception, suggested independence as a key attribute for whatever non-statutory body was developed.
32. In the House of Lords debates on the passage of the then Public Bodies Bill there was no support for the government's proposal for abolition of the AJTC²². Most speakers referred to the necessity for independence and to the dangers of the conflict of interest which would surround the discharge of the functions from within government itself. Thus for example Lord Pannick²³, in the Lords Committee stage, said

'There is a further reason why it is so essential that we retain an independent and impartial body to review the performance of tribunals; so many of the decisions of these tribunals concern the implementation of government policy, and it is government departments that are the defendants in those tribunal proceedings',

and Baroness Scotland said

'Independence has to be established and has to be seen, felt, and tasted. If the Council is removed, I add a question to those posed by the noble Lord, Lord Newton: how is that to be guaranteed if everything is invested in the department, which may be in need of challenge, assistance and advice?'²⁴

Purpose and Functions of a non-statutory advisory body

33. The landscape of administrative justice in Scotland is complex. The Scottish Government is in many ways at the beginning of a journey to ensure that justice for the citizen in their individual dealings with the state and public authorities can be

²¹ See Annex B

²² See Lord Borrie HoL col 1337 29 Nov 2010

²³ HoL Col 1330 29 Nov 2010

²⁴ col 1332

guaranteed. Administrative justice is often referred to as the Cinderella of the Justice system, but it is the aspect of the overall justice system with which the vast majority of people will come into contact through everyday life. The State makes decisions which affect each of us individually and collectively, and the administrative justice system should provide the framework within which everyone should be able to have confidence that those decisions are both proper and are taken properly.

34. The purpose of any new body would be to provide independent and informed advice to the Scottish Government on administrative justice matters. Its principal function would be to keep the administrative justice system under review with a view to providing that advice. For this purpose, administrative justice should be defined in broadly the same way as in the 2007 Act, i.e. to include all those systems whereby decisions of an administrative or executive nature are made in relation to particular persons, including the procedures for making such decisions, the law under which such decisions are made, and the systems for resolving disputes and airing grievances in relation to such decisions.
35. Thus understood, the body would be able to consider initial decision-making by public bodies and the resolution of disputes by courts, tribunals, inquiries, internal and external complaints procedures, ombudsmen and others. The body should be able to consider all aspects relating to the operation of administrative justice in Scotland and not just devolved matters. The aim of the body must be to help the Scottish Government to develop the administrative justice system so that citizens can have genuine and well-founded confidence in it and so that, thereby, the welfare of the people of Scotland is enhanced. In securing that aim the new body must have certain clearly agreed functions by which it can operate and through which government can secure the development of a proper administrative justice system.
36. Looked at in more detail, a new non-statutory advisory body should have the following functions, amongst others:

- *Functions on a strategic level identifying and addressing broader issues affecting the development of an administrative justice system for Scotland*

A central issue emerging from the consultation process was that the new body should operate on a more strategic level across the piece in order to identify broader issues within the administrative justice system. It should also take an interest in users and the operation of user groups. This would carry forward the Leggatt prescription as the 'hub of the wheel'.

- *A function of encouraging best practice*

Both the Scottish Committee and the emerging Scottish Administrative Justice System have benefited from the work of the AJTC in its various projects to encourage best practice – e.g. Principles of Administrative Justice, Right First Time, Putting it Right etc. - both in policy development and also delivery. Policy making within Government has always been a problematic area; it is only comparatively recently that Government has adopted an evidence-based approach to policy making. In the field of administrative justice it will be important that Government has access to a constituency which can assist in the design of policy options based on wide experience and access to relevant networks. For example the Committee has been involved in 2012 in a variety of discussions on policy development, including in particular in relation to Health and Community Care, and issues concerning the devolution of Social Fund and Council Tax Benefit schemes. Separately, in part through its tribunal monitoring function, the Committee has been able to assist in the development of best practice, for example in relation to the work of Education Appeal Committees, in

particular through the publication of best practice guidance on the provision of information for parents on local government websites.

Best practice can also be encouraged in the context of tribunal procedures. Several consultees, including those with a tribunal background, favoured the new body continuing with tribunal visits although in a more targeted and focussed context.

- *A function of encouraging co-ordination in administrative justice development within Scotland*

The Scottish Committee has a strong record of awareness of issues within and across the administrative justice sector, which can on occasion be more developed than that of Government. For example, the Committee may well be aware of the nature and proceedings of tribunals or decision making in some areas and be able to juxtapose that with awareness of other tribunals or decision making elsewhere, when Government may by its nature deal with such issues within departments or directorates, finding it more difficult to make links across different sectors. This makes it important that government departments and directorates consult effectively with any new body on emerging policy proposals. As the Scottish Tribunals Service evolves co-ordination across the sector will improve. The Committee suggested, however, in its report on Tribunal Reform²⁵ that the necessary changes would be unlikely before 2015. It is now unlikely that the Scottish Tribunal Service will itself be formally established before 2015, while transfer of responsibility for reserved tribunals in Scotland to Scottish Ministers will not be considered by the UK Government before that date.

- *A function of facilitating co-ordination with other parts of the UK.*

The challenges facing administrative justice in Scotland will not change with the demise of the AJTC although the context most certainly does. The removal of the AJTC creates a vacuum in the UK perspective on administrative justice. So far as concerns Scotland, MoJ's emerging strategy does not reflect a concern with the general aspects of administrative justice beyond those which relate to the operation of the reserved tribunal functions in Scotland. As noted above the Scottish Government will require to consider the extent to which it may properly concern itself with administrative justice at large in Scotland, including aspects of the discharge of functions by the UK Government in Scotland. It will also wish to consider the extent to which it can achieve co-ordination in the development of administrative justice with other parts of the United Kingdom. To an extent the function of securing that co-ordination was ensured by the AJTC; with the departure of that body it will be necessary to assess what other opportunities may be available for that purpose. A Scottish non-statutory body would see that function as falling within the remit of monitoring or keeping administrative justice under review.

- *A function of encouraging networks to ensure best possible advice to Ministers*

The Scottish Committee has in the past enjoyed good relations with tribunals, both reserved and devolved and with the judiciary. It has endeavoured more recently to develop further its relations and networks with the user side. It does not see encouraging such networks as a substitute for access which users and others may already have to departments and Ministers, but it does consider that there is an, as yet, unexplored opportunity for co-operation and for development

²⁵ Tribunal Reform in Scotland: A Vision for the Future – February 2011

of networks which would enhance the direct relationships referred to, and which would also contribute more effectively to the development of an administrative justice system in Scotland.

- *A function of ensuring that users are listened to and can properly feel that their interests are represented*

Several consultees spoke of the need for there to be a body which would champion the cause of users, with its appointed membership including a “users’ champion”. Such a body should have good links with service users and their representative groups. It should also champion the cause of good justice.

- *Functions in relation to party vs. party tribunals*

The AJTC developed from the CoT but retained a particular responsibility in relation to tribunals. Most tribunals fall within the system of administrative justice and therefore it should on one level be unnecessary to describe the new body’s functions by reference to tribunals. It is however a fact that not all tribunals fall within the umbrella of administrative justice. Party and party tribunals, such as Employment Tribunals or the Lands Tribunal may more properly on one view be seen as closer to the civil courts than to administrative tribunals. At some point the allocation of structures between what is at present divided between the two systems may have to be looked at. For the time being however and on the basis that the immediate intention is that the new body should take over substantially that for which the Committee was responsible, it will be appropriate to delineate functions in relation to tribunals.

- *Functions in relation to Research*

The AJTC has specific functions in relation to research²⁶ and has been working on a research strategy which is due to be published by the time of its abolition. The strategy also seeks to co-ordinate the future development of research across the sector. In a rapidly developing area it is of benefit if research efforts are effectively co-ordinated and focused, and the new body should have functions in that regard. It will also be the case of course that the new body will require to undertake research in relation to its own reports.

Powers of a non-statutory advisory body

37. By definition as a non-statutory body the new body would have no statutory powers. The general function of keeping administrative justice under review could be performed in a variety of ways without statutory support, including keeping up with developments, drafting reports and providing policy advice.

Tribunal visits

If it were decided that the new body should have the same right as the AJTC to attend hearings of tribunals, legislation would be necessary in due course.

Members of the new body would not be able to attend hearings without the consent of both the parties and the tribunal, unless the hearings were public, and then only the hearing but not the post-hearing deliberations. Whilst it might be possible to negotiate full access with the new Scottish Tribunals Service and HMCTS, even if this were done parties might still have the right to withhold consent.

13(1) The Council is to—
(e) make proposals for research into the system.

Consultees were clear however that the function of visiting tribunals, and presumably other dispute resolution processes, was a valuable function as providing information and intelligence on the operation of the system.

Data gathering

At present the Scottish Committee collects and collates data on tribunal statistics both for reserved and devolved tribunals in Scotland, including tribunals which are run neither by STS nor HMCTS. We would anticipate that both devolved tribunals and HMCTS would continue to supply such data as required to the new body to enable it better to inform itself and disseminate knowledge about tribunals.

Consultation on rule changes etc

The AJTC has specific responsibility to keep listed tribunals under review. Ministers are required to consult with the AJTC before making rules for any such tribunals²⁷. AJTC's experience was that this requirement was not always complied with and indeed may have been seen by departments as something of an imposition rather than as a potential help and assistance. Such consultation would, in any event, always be late in the process when policy decisions and drafting had already been completed. The function was also a carry over from the Council on Tribunals' arrangements.

The Committee's view is that a pre-legislative consultation function for the new body is potentially very valuable from the user's perspective, and that the current approach to consultation could be built on. In particular, the Committee has in mind that there is likely to be a real opportunity for added value if the new body were to be consulted, as a matter of routine, on proposals which are likely to have impact on individuals (without restricting consultation simply to Rule changes). Obviously, the extent to which this could be undertaken would, as with all projected functions, be dependent on resources, but the new body should be encouraged to develop thinking in this area. The Committee has recently been closely involved with Scottish Government directorates as they develop policy options for the successor arrangements for the social fund and council tax benefit, and there is clearly scope for further development in this area.

The Committee appreciates that there is also a task however for Scottish Government in persuading different policy directorates to recognise the desirability of considering justice issues at the early stages of policy development. A key benefit of the early involvement of an expert advisory group lies in the ability to mutually share information and expertise in order to better inform the policy development process. It would also bring to bear experience in other contexts, which would otherwise not be available.

Part 5 - What are the necessary characteristics of such a body? - Nature of the new advisory body

38. Any new body would have to exhibit certain characteristics if the intention were that it should, so far as possible, continue the work of the current Committee. Thus the new body must:

- be independent
- be able to consider issues on its own initiative

²⁷ Sch 7 para 24 TCE Act 2007.

- relate at arms length to Government, while recognising that it should have close working relationships with Government and with other agencies; this suggests a Framework Agreement approach
- be assured that recommendations would be considered and if rejected, reasons would be given;
- be made up of members with experience of as many aspects of administrative justice as possible, with particular emphasis on the perspective of the user of the system, but avoiding any potential conflicts of interest;
- operate in a culture in which it is to be proactive and interventionist rather than simply reactive, and
- be accountable by producing work plans and reporting formally to Ministers and Parliament annually

39. The manner of operation of the Judicial Appointments Board for Scotland before it was put on a statutory footing might provide a useful model.

Identity and title

The new body should have a title which indicates the nature of its portfolio. Consultation disclosed a clear preference that the title should include reference to tribunals; given that at present tribunals in Scotland encompass those dealing with both state/citizen and citizen/citizen disputes. A working title could be the Scottish Administrative Justice and Tribunals Council; or SAJTC for short.

Independence

SAJTC should be visibly independent of Government. Independence was a characteristic referred to by all consultees as essential. While it will respond to requests for advice from Government and while it will seek to agree its ordinary work programme with Government, SAJTC should be able to set its own agenda and undertake programmes of work of its own initiative

Part 6 - What is necessary to be done to provide for such a body?

Framework Agreement

40. A non statutory body would fall within the category of public bodies in Scotland referred to as advisory NDPBs.²⁸ In the absence of a statutory basis the new body will necessarily be almost an extension of a Directorate of Government. In that case it will have to have its independence and separate character reinforced by conventional non statutory mechanisms. In short it will have to be supported by government by way of a Framework Agreement or similar arrangement.

41. A Framework Agreement will underline the independence of the new body. Such an Agreement would set out:

- i. the aims and vision for the new body;
- ii. the roles of the SAJTC on the one hand and Government on the other;

²⁸ *Guide to Public Bodies – December 2011* ‘Advisory NDPBs which provide independent expert advice to Ministers and others or input into the policy-making process in relation to particular subject. They are normally established by Ministers on a non-statutory basis; do not normally employ staff (administrative support is usually provided by the SG); and are not normally responsible for budgets or expenditure other than remuneration for Board members. They are accountable to a board whose members are normally appointed by Ministers;’

- iii. the operating protocols which would govern its relationship with Government, including the obligation for Government to consult effectively with the new body;
- iv. performance measures;
- v. accountability;
- vi. the financial and other resource arrangements which govern its existence.

A work programme would be an essential feature in any Framework Agreement.

42. The level of resources provided for the new body will have a major impact on its effectiveness. The Committee's current running costs are estimated at circa £170K p.a. This figure includes referable costs associated with the two members who are also members of the AJTC and whose cost is paid for out of the central AJTC budget. Also included is an element of running costs attributable to the Scottish Committee which are charged directly to the AJTC budget by the MoJ. However, not all costs attributable to the Committee are included in this figure and, post abolition, we expect the overheads to be higher than the £170K referred to. At this time it is not possible to accurately quantify these costs but we estimate the cost of the new body to be between £90K-£250K per year as reflected in Annex D. However, adopting a model at the lower end of the scale inevitably raises questions of independence.

Funding

43. The size of any budget to be allocated by the Scottish Government will dictate the type and volume of work which can be done by a new body. For the reasons given above, it is unlikely, even with a budget at the current £170K level, that the current output could be maintained. The new body is unlikely to be able to carry out all of the functions previously described (Purpose and Functions) in a comprehensive way. The body will have to set priorities and choose a limited number of tasks to perform in any given period. and it would inevitably have to develop new working methods, for example, brokering new relationships with interested groups and developing new approaches to any monitoring and oversight functions. It is hoped that it would be able to draw on the expertise of the administrative justice community on a low-cost basis and in this way magnify its impact.

44. The resource requirement set out below is what the Committee believes to be the realistic level for a feasible work plan, assuming a remunerated membership. It also assumes uplift on the MoJ's contribution but, equally, it recognises that resources are unlikely to be available at the level currently enjoyed by the Scottish Committee. The new body will need resources for

- maintaining a secretariat and appropriate business systems
- office accommodation;
- paying fees to members for their work;
- paying expenses to members and others attending meetings etc.;
- arranging conferences, meetings etc.; and
- the publication of reports.

Secretariat

45. The Committee is currently supported by a full-time Secretary. The post of Assistant Secretary is currently vacant. However, the Committee has also had the benefit since July 2012 of the presence in George House of a policy adviser [MoJ Band A (Grade 7/6)] who has assisted in a number of items of business while still working remotely, but full-time, for the AJTC in London
46. Staff resource will be necessary for essential administration in for example, arranging meetings, circulating agendas, maintaining correspondence, monitoring relevant activity across Government, even taking into account that most work will be handled electronically. Ideally, there should also be staff resource available to support research and policy development. It is difficult to see the new body delivering meaningful work in any quantity without the input of a staff component. Whether the Committee requires full-time allocated staff resource will depend on activity levels. Activity levels will in turn depend on the time commitment of members and the co-ordination and support for the new body's work. Time commitment is likely to be affected by remuneration as discussed below
47. The Committee recommends that Scottish Government carry out a detailed assessment of the level of support required.

Business systems.

48. The new body will require to have systems available to it by which it will be able to communicate with its stakeholders, maintain records and publish reports and papers. In shorthand this means that there will have to be a website under the name of the SAJTC. Currently, Scottish Committee business as part of the AJTC is transacted on MoJ's e-systems. Its website, as a part of AJTC's, is administered through MoJ. As a matter of fact, however, Scottish Committee members use their own personal systems for e-mail and file storage. Quite apart from other considerations the MoJ system is unreliable, at times difficult to access, and has not been found to be user friendly, largely because of the difficulties in managing remote access to the MoJ's London-based IT system.
49. SAJTC members should continue to be able to deal with Committee business through their own IT systems and store material securely on their own e-systems. The Committee should, however, interface with Scottish Government through the SCOTS system. It should have its own website administered by staff assigned from time to time by Scottish Government.

Records.

50. The intention is that SAJTC should take over the roles or modified roles from the Committee and Council on the abolition of the AJTC. Arrangements should be made to ensure that the Committee's files and records, both hard copy and electronic, are transferred to the new body, and that the AJTC website material is passed to the SAJTC. Arrangements should be made to ensure that the website is in effect continued under the management of the new body.

Accommodation

51. The Scottish Committee currently occupies office accommodation at George House, 126 George Street, Edinburgh. The property is owned by the Scottish Government,

other occupants being staff and judiciary of reserved and devolved tribunals. There is no rental or other service charge for occupancy. On the basis that the new body is to be more than simply a virtual entity it will require accommodation for meetings, storage of files etc and for the use of a Secretariat. The Committee is not aware of any reason why the current arrangements should not continue, dependent on an assessment of the actual accommodation requirements of the new body.

Membership

52. The current Committee complement is five. The Committee is carrying two vacancies within its complement of appointed members, one since 2009 and the other since September 2011. The Committee's output is set out in the Annex C to this note. The Committee believes that for the functions recommended in this paper a membership of 6 is the absolute minimum, including a Chair, to provide sufficient diversity and spread of expertise.

Working arrangements.

53. While no formal records are kept of the actual time spent by members, in general terms members contribute in excess of the expected time commitment²⁹. Whilst we do envisage that working practices would differ from those which currently apply for the Committee, we also believe that in order to function at anything like the level of the current Committee the new body would need to be able to call on members to contribute time at not less than the current levels. While some functions such as visiting tribunals may reduce in future, other functions may require greater involvement – e.g. engaging with those involved in the sector, whether in tribunals, as users or more broadly in the non-tribunal sector. It is recognised that it is also possible that the Secretariat support may not be able to be continued at current levels, certainly when taking into account assistance from the AJTC to the Committee. If that were the case then the productivity of the new body might be affected as time would have to be directed to administration in addition to the regular tasks on the work programme.

Remuneration

54. The Committee considers that endeavouring to conduct a proactive interventionist undertaking without a remunerated membership would be neither realistic nor reasonable. It recommends that members of any non-statutory body should be remunerated at levels appropriate to lay members of Arms Length Bodies in Scotland. It does not recommend however a fee paid, or daily rate, basis. The nature of the work involved would be more suited to a retainer basis. Daily rates are more suited to commissioned work rather than 'self starting' situations. It is likely that the levels of contribution by members would, as at present, exceed minimum requirements

Part 7 - Transitional issues

55. The Committee recognises that it will probably be necessary, unless Scottish Government envisages a gap between the demise of the AJTC and the establishment of the new body, for the new body to be identified and established in advance of the AJTC's abolition. In such case the Committee also recognises that it may be difficult for Scottish Government to achieve that position without also appointing the current membership of the Committee to the new body. This would facilitate a smooth transition from the statutory to the new non-statutory body. The existing Committee members

²⁹ See Current Arrangements above

would be prepared to accept this appointment but also consider that any appointment should be restricted to a limited period, possibly of one year, in order to allow for Government to appoint to the new body when the aims and structure of that body have been better identified.

Part 8 – Next steps

Working arrangements

56. The Scottish Committee will between February and April, develop its thinking about how a new body would actually work in terms of developing relationships and creating networks. Assuming abolition of the AJTC by the end of March 2013, a new body might aim to report on this aspect by mid April.

Outline strategy and work programme for the new body for 2013/14.

57. On the assumption that Scottish Ministers wished to proceed to appoint a new body in advance of abolition of AJTC, then, in order to allow for an orderly transfer of business, the new body should aim to produce and consult on a provisional work programme for the period to 31 March 2014 by not later than end May 2013. That work programme would include advice as to the longer term development of an administrative justice strategy for Scotland.

Part 9 – Conclusions

58. The Committee welcomes the indication from Scottish Ministers that there be a non-statutory advisory body established to discharge as many of the functions of the Committee as practicable in the event of abolition of the AJTC and its Scottish and Welsh Committees.

59. The Committee invites Ministers to consider the advice set out in this paper and to agree that:

- (i) There is a need for an independent body to provide informed advice to Ministers on the operation of the administrative justice system in Scotland;
- (ii) The administrative justice system should be defined in broadly the same way as in the TCE Act 2007, i.e. the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including - the procedures for making such decisions; the law under which such decision are made; and the systems for resolving disputes and airing grievances in relation to such decisions;
- (iii) The body's strategic functions should comprise:
 - identifying and addressing broader issues affecting the development of administrative justice in Scotland,
 - encouraging coordination in the development of administrative justice in Scotland,
 - encouraging best practice,
 - facilitating coordination of administrative justice with other parts of the UK,
 - encouraging networks to ensure best possible advice to Ministers

- ensuring that users of the system are listened to and can properly feel; that their interests are represented,

- encouraging and promoting the undertaking of research in administrative justice.

- (iv) Mechanisms should be developed to enable the body to attend tribunal hearings; in the absence of a statutory right of attendance, this will need to be by agreement with HMCTS and STS and parties to proceedings.
- (v) The body should collect, collate and publish statistical information about the operation of tribunals in Scotland.
- (vi) The body should be demonstrably independent, operate at arms length from government and be accountable by reporting annually to Ministers and Parliament .
- (vii) The body's members should include those with direct experience of the administrative justice system and of the perspective of its users.
- (viii) The status of the new body and its operating model should be confirmed by a Framework Agreement, which would include a protocol for effective consultation between Government and the new body.
- (ix) The body should have sufficient resources to cover the costs of a secretariat and business systems, office accommodation, members' fees and expenses, holding conferences and meetings and the publication of reports.
- (x) The body should comprise at least 6 appointed members, including the Chair, and 2 members of staff on its secretariat.
- (xi) A new body should report further on its prospective working arrangements by mid April 2013.
- (xii) In order to ensure a smooth transition, the existing members of the Scottish Committee should be appointed to the new body for a period of at least one year.
- (xiii) The new body should consult on a provisional work programme for 2013-14 by end May 2013.

Working Group membership & Consultation List

Scottish Committee Members

Richard Henderson, Chair
Michael Scanlan

Secretariat

Debbie Davidson
Paul Smith

Working Group – Expert Members

Professor Alice Brown
Colin Milne
Professor Tom Mullen, Glasgow University

Consultation List

Citizens Advice Scotland
Scottish Association for Mental Health
Children's Hearing Panel's Chairman's Group
Citizens Advice Scotland
Consumer Focus Scotland
CoSLA
Criminal Injuries Compensation Authority
Crofting Commission
Employment Tribunals (Scotland)
ENABLE Scotland
Ethnic Minorities Law Centre
Faculty of Advocates
First-tier Tribunal (Asylum and Immigration)
First-tier Tribunal (Social Security & Child Support)
Friends of the Earth & the ELCA
Govan Law Centre
Govan Law Centre
Healthcare Improvement Scotland
Highland & Western Isles VAP
Judicial Appointments Board for Scotland
Lands Tribunal for Scotland
Law Works
Mental Health Tribunal for Scotland
Money Advice Scotland
NHS Discipline Committees

NHS National Appeal Panel for Entry to the
Pharmaceutical Lists
Parole Board for Scotland
Pension Appeals Tribunal Scotland
People First (Scotland)
Planning Aid for Scotland
Planning Democracy
Scottish Public Services Ombudsman
Scottish Association of Law Centres
Scottish Court Service
Scottish Federation of Housing Associations
Scottish Independent Advocacy Alliance
Scottish Land Court
Scottish Law Commission
Scottish Legal Aid Board
Scottish Mediation Network
Scottish Parking Appeals Service
STUC
The Law Society of Scotland
The Scottish Housing Regulator
Traffic Commissioner for Scotland
Upper Tribunal (Administrative Appeals Chamber)
Welfare Rights Officers Forum

SYNOPSIS OF POINTS MADE AT STAKEHOLDER MEETINGS

Question 1 – Is there a need for a non-statutory body?

There was universal agreement among stakeholders that there is a need for a body like the SCAJTC to continue post-abolition. The following points were made:

- There is very much a need for a well-informed body like the Scottish Committee to have oversight of administrative justice in Scotland.
- A body like the Scottish Committee would help to maintain the profile of tribunals within the administrative justice world.
- Reservations were expressed about the proposed non-statutory nature of the new body.
- There is a need for an independent body like the Scottish Committee to ensure that the user's voice is heard.
- There is a need for an independent body to oversee administrative justice, which could perhaps be situated within the Courts Service.
- The good reputation of the AJTC has been built up over 50 years, with its focus primarily on the user. It has been of significant value to tribunals and their users to have an overseeing Council to check on their practices and procedures and to monitor standards.
- The cost of the Committee, around £170,000 per annum, is minimal for the significant benefits that accrue from its work.
- Now is not a good time to get rid of a body like the AJTC whose independent role is invaluable.
- The loss of the Scottish Committee would be keenly felt as there is a need for its expertise and experience to feed into a strong justice system.
- There is a clear need for a body like the Scottish Committee which is independent, apolitical and which can offer constructive criticism to Government.
- There is a need for an independent body to oversee the broader administrative justice landscape and to keep a watching eye on policy proposals affecting administrative justice.
- The Scottish Committee should have a clear view of the roles played by the different bodies involved in delivering administrative justice to ensure greater transparency of the judicial process and helping make justice more accessible and less intimidating.
- The administrative justice landscape is very complex for people to understand and so a body like the Scottish Committee is needed to bring a greater degree of clarity and understanding of the system.

Question 2 – What should the new body's functions be?

- The new body should operate on a more strategic level across the piece in order to identify broader issues within the administrative justice system. It should also take

an interest in users and the operation of user groups. This would carry forward the Leggatt prescription as the 'hub of the wheel'.

- The new body should promote openness and transparency within administrative justice and take an interest in the outcomes for users of the system.
- The body could act as a buffer between Scottish Government and a future Senior President of Tribunals in Scotland.
- It should look at administrative justice in the round but also take an interest in its component parts and how effectively they fit together.
- The body should take on a more strategic role, which would still involve attending hearings, not in a supervisory capacity but to inform its members about systemic issues. It should also have a role to play in promoting research on administrative justice issues.
- The new body should be able to attend hearings in order to check on how tribunals are operating from the user's perspective. One of its key functions should be to draw attention to flaws in the system.
- A non-statutory body may not have sufficient clout to make people pay attention.
- A new non-statutory body should take a broad perspective of administrative justice and include both devolved and reserved tribunals operating in Scotland.
- Visits to tribunals should adopt a risk-based, targeted approach and reports of members' visits should provide a means of providing feedback, both to individual tribunals and systemically.
- The new body's focus should be on 'improving the administrative justice system' rather than simply keeping it under review. The existing functions need to be tightened up to make them clearer and more specific.
- A non-statutory body might have greater flexibility in what it might be able to do.
- The new body's functions need to be strengthened with a greater focus on securing improvements in the system and getting more decisions right first time. This will need better focused visits and greater emphasis on contact with the user community to find out where things are going wrong.
- Complaints can be a useful form of user intelligence, and while the new body should not have a complaint-handling role it should not discourage complaints, but put in place effective mechanisms for recording the details of complaints in order to influence future work.
- A discussion should be had about whether the new body should have statutory visiting rights.
- Championing the cause of users should be one of the new body's primary functions and the membership should include a users' champion. It should have good links with service users and their representative groups. It should also, perhaps preferably, champion the cause of good justice.
- It should have a board overview of the issues coming before tribunals, including the source of the problems leading to appeals.
- Employment Tribunals, being party versus party tribunals, are not strictly speaking part of the administrative justice system. The question arises whether they might more properly sit within civil justice.

Question 3 – How should these functions be delivered?

- A non-statutory body will only work if agreements are drawn up with Scottish Government to enable it to operate freely and independently.
- The new body should include a member with direct experience of dealing with users of the system.
- It should work closely with user groups.
- It should ensure that citizens have open and accessible appeal rights.
- The new body will need to have statutory powers, including the right to attend hearings, in order to be fully effective and to maintain its profile and standing.
- It should also have the power to lay reports before Parliament and should report to the Justice Committee. It should also be able to produce special reports on issues of importance.
- The body's main focus should lie in securing improvements in the system, with users being placed at the heart of everything it does. It will also need to have a proactive, two-way relationship with Government.
- The amount of resources it will need should flow directly from the prioritisation of its functions.
- The key areas should be oversight of the administrative justice system, safeguarding the system and championing the cause of users.
- There are difficult issues to be resolved around the devolution question, particularly relating to reserved tribunals and the future role of the MoJ in overseeing administrative justice.

The Record of the Scottish Committee

The remit of the Scottish Committee is as listed in para 13 of Sch 7. The Committee discharges functions related to that remit.

The remit relates to keeping administrative justice under review, including by way of making proposals for research and considering ways to make the system more accessible etc, and separately, keeping listed tribunals under review.

The latter function is discharged principally through the medium of visits, in respect of which the Committee has statutory powers to attend proceedings of listed tribunals.

The former function has to date been discharged through the conduct of reviews planned for in the Council's Strategic Plan.

Tribunal Visits

Over the four years of its existence between November 2007 and November 2011 Committee members undertook 59 tribunal visits in Scotland. The Committee has statutory authority to attend tribunal proceedings under para 22 of Sch 7 to the 2007 Act. Abolition of AJTC would necessarily mean that there was no statutory right of attendance.

Tribunal statistics

The Committee' also monitors tribunal performance through collection of statistical data. The Committee's Annual Report provides the only collated statistical data in relation to tribunal proceedings in Scotland; there is no other central source of statistical data for the tribunals sector. This data source will be lost on abolition.

Publications

Over the period since inception the Committee has published the following papers

- **Right to Appeal** - A review of decisions made by Scottish public bodies where there is no right of appeal or where the appeal procedure is inaccessible or inappropriate. - *August 2012*.
- **Modernising Planning - Local Review Bodies** - A Working Paper in support of "Right to Appeal – *September 2012*
- **Scottish Committee Annual Report 2010/11** – *November 2011*
- **Tribunal Reform in Scotland "A Vision for the Future"**- The report sets out a number of recommendations, which the Committee believes would establish an independent, coherent and user-friendly tribunal system in Scotland. – *January 2011*

- **Interim Report to Ministers** - Options for Grouping of Tribunals in relation to the introduction of Chambers - *December 2011*
- **Guidance for Local Authorities re Content** applicable to EAC websites – *summer 2011*
- **Scottish Committee Annual Report 2009/10** - *November 2010*
- **Options for tribunal reform in Scotland** - a discussion paper seeking views and observations on the issues requiring to be addressed in establishing a Scottish Tribunals Service. - *June 2010*.
- **Tribunal Training Register (Vol. 6)** - provides an overview of the training provided to members of tribunal and appeal systems in Scotland - *April 2010*
- **Scottish Committee Annual Report 2008/09** - *November 2011*
- **Valuation Appeal Committees in Scotland (Special Report)** -a special report looking at the operation of the Valuation Appeal Committees in Scotland – *summer 2009*
- **Tribunal Training Register (Vol. 5)** - provides an overview of the training provided to members of tribunal and appeal systems in Scotland – *summer 2009*
- Response to Scottish Government for advice in relation to Chapter 4 of the report *Options for the Future Administration and Supervision of Tribunals in Scotland* - *May 2009*.
- **Scottish Committee Annual Report 2007/08** - *October 2008*
- **Tribunal Training Register (Vol. 4)** - provides an overview of the training provided to members of tribunal and appeal systems in Scotland – *summer 2008*

Separately the Committee through its membership of the Council has been involved in the preparation of publications and reports published by the Council. These include not only the Council's work plans and Annual reports but also:

- **Putting it Right** - The report suggests that taking steps at the earlier stages of complaint and stopping disputes from reaching external dispute handlers, be they tribunals, ombudsmen or something else, is the real way to save money for the taxpayer and deliver a better service to users – *June 2012*

- **Securing Fairness and Redress - Administrative Justice at Risk?** - The report identifies the main challenges facing the administrative justice system and outlines the strategic agenda we believe that others will need to follow and act on to reduce risks to the system and continue along the path to improvement. *October 2011.*
- **Right First Time**
This report addresses a core concern for all those responsible for public services – how to ensure that decisions relating to individuals are ‘right first time’. Its key message is that public bodies can save money and improve the quality of service by making fewer mistakes and learning more from those they do make. *June 2011*
- **Patients' Experiences of the First-tier Tribunal (Mental Health)**
A report commissioned by the Administrative Justice and Tribunals Council (AJTC), and the Care Quality Commission (CQC) - *May 2011*
- **Time for Action**
The report highlights the impact of appeal delays on benefit claimants, recommending the introduction of 42 day time limit for decision makers in the Department for Work and Pensions (DWP) and Her Majesty’s Revenue and Customs (HMRC) to deal with appeals - *February 2011*
- **Principles for Administrative Justice**
The result of the two "development" papers. Principles for Administrative Justice seek to help public services to deliver decision-making processes that are fair and accessible as well as efficient and cost-effective. - *November 2010*
- **Developing Principles of Administrative Justice**
This paper sketches the historical background and context in which some general principles relating to the application of administrative justice have emerged and grown. *November 2010*
- **Developing the Administrative Justice Landscape**
This paper examines the landscape of the administrative justice “system” and the importance of administrative justice to ordinary people. *November 2010*
- **Strategic Plan 2010 - 2013** - *February 2010*
- **The Developing Administrative Justice Landscape**
This paper provides an initial examination of the developing landscape of the administrative justice system and the importance of administrative justice to ordinary people, the paper also focuses on the different components that make up the administrative justice system. *September 2009*
- **Tribunal User Groups Survey Report**
In 2007 the Council on Tribunals, now the AJTC, undertook a short survey focusing on the operation of tribunal user *April 2008*
- **AJTC's Framework Document** - 2007

Responses to consultation

Government requires in certain cases to consult with the Committee in particular in relation to the preparation of certain regulations.³⁰ Recently, and on an increasing basis we have

³⁰ See para 24 TCE Act 2007.

been asked by Government for comment and assistance in the development of policy in which issues of administrative justice and/or tribunals arise. The Committee also responds to consultation exercises through invitation from both Scottish and UK Governments. Since inception in November 2007 the Committee has responded to over sixty such requests. We have also responded to, and gave oral evidence to the Calman Commission.

Conferences

Organisation of conferences can be seen as part of the consideration of ways to make the system more accessible etc. The Committee organised a conference in January 2009 in the wake of the first Report of the Administrative Justice Steering Group in 2009, and a further conference in June 2010 as part of the procession of preparation of the Vision of the Future Report published in 2011. The Scottish Committee has also contributed to the Annual AJTC conference, with presentations in 2009, 2010 and 2012.

Since November 2007 the Scottish Committee has organized the following events

November 2007	SCAJTC Launch Event at Dynamic Earth
September 2008	SCAJTC Annual Report Reception & Administrative Justice Steering Group "Philip 1" Report Launch
January 2009	Tribunal Options Round table Stakeholder Seminar
3 April 2009	EASI EAC Training Event
June 2009	SCAJTC Annual Report Reception & Administrative Justice Steering Group "Philip 2" Report Launch
22 June 2010	Options for Tribunal Reform Conference & launch of discussion paper
August 2010	Roundtable Stakeholder Meetings re Options for Tribunal Reform

Method of working

It may be relevant to note the Committee's system of working when considering its performance of its functions. Thus

Structure of meetings – In September 2009 the Scottish Committee adopted a practice of monthly meetings, replacing the earlier practice of quarterly meetings which had also applied for the proceedings of its predecessor the Council on Tribunals. It was thought that such a regime would help to develop and maintain the momentum required to address issues in particular those arising from the tribunal reform agenda. The Committee meets on at least 12 occasions in any year, and may meet outside of the regular schedule for special issues.

Members' portfolio responsibilities – Since 2009 members have had individual responsibility for different areas of the administrative and tribunal system. Thus one member may be responsible for looking at issues arising in the health field as opposed

to others. The portfolio system allows a swifter allocation of incoming business to members by the Secretariat and for the development of expertise. However it was less successful in relation to the development of Committee agendas since for the most part pressure of general business tended to displace routine issues.

Other activities

Since 2007 Members of the Committee have undertaken tribunal visits, attendance at conferences, meetings with stakeholders and others, meetings of sub groups etc along with time spent researching, preparing reports and preparing for meetings. The rough statistics for such other activities but excluding research, preparation etc is as follows;

	2007/2008	2008/2009	2009/2010	2010/2011
Visits to Tribunals	26	17	12	4
Conferences /Seminars	11	14	10	7
Sub Group Meetings	6	1	5	13
Meetings	17	36	21	42
User Group Meetings	3	5	3	3
Training Events	4	7	4	1
Stakeholder Events/Meetings	5	6	2	14
Total	72	86	57	84

**Ongoing Costs of a Non-Statutory Body
(based on current rates)**

	Cost per Year			
	Min ³¹		Max	
Staff Costs	FTE	£	FTE	£
SEO Salary	Shared SG Employee	£0	1	£47,000
HEO Salary	Shared SG Employee	£0	1	£37,000
Subtotal		£0		£84,000
Staff Training		£0		£2,000
Members remuneration				
Chair (60 days)		£28,025		£28,025
5 X Members (35 days)		£50,970		£50,970
Subtotal		£78,995		£78,995
Members T&S		£2,000		£4,000
Members Training/ Events		£1,000		£2,000
Office Costs				
Stationery & Office Supplies		£0		£3,000
Postage etc		£0		£2,000
IT/ Telephony Costs		£0		£3,000
Printing/ Publishing		£0		£8,500
Accommodation		£0		£55,000*
Other Costs				
Meeting Costs		£3,000		£3,000
Hosting Events		£5,000		£9,000
Total		£89,995		£254,495

* - Accommodation costs are based on 1/6 share of the annual operating costs of George House. These costs are currently met by Scottish Government as part of their contribution to the upkeep of the Scottish Committee of the AJTC.

³¹ The Minimum figure is based on the Secretariat function being performed "in house" by Scottish Government with the Secretariat being a shared resource. All costs associated with the Secretariat and office costs would fall to Scottish Government to meet.