

## **Future arrangements for carrying out the functions of the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC)**

### **A draft paper for consultation and comment (May 2015)**

#### **This Consultation**

The Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC), as an interim body, will reach the end of its lifespan in November 2015. As part of our remit, one of the functions of the STAJAC is “to recommend how the functions of the Committee should be carried out in the longer term.”

This paper briefly outlines the current and previous arrangements, and sets out our initial considerations and recommendations in line with our remit. In coming to these recommendations, we have referred to the Administrative Justice and Tribunals Council (AJTC) Scottish Committee report of 2013: [\*Remit and Capacity of a Non Statutory Advisory Committee on Administrative Justice and Tribunals in Scotland\*](#). The AJTC report was drawn up following comprehensive stakeholder engagement. Due to restraints of time and resources, we have only undertaken limited further consultation with stakeholders.

We welcome all comments on the proposals in this paper, and in particular your answers to the consultation questions at the end of this document. Please submit your comments to: [STAJAC@scotland.gsi.gov.uk](mailto:STAJAC@scotland.gsi.gov.uk) by **10 June 2015**.

#### **Background**

The predecessor to the STAJAC was the Scottish Committee of the Administrative Justice and Tribunals Council (AJTC). The Council and its Scottish Committee were established by the Tribunals, Courts and Enforcement Act 2007. The Schedule to that Act set out the Council’s core functions: to keep under review a) the administrative justice system b) listed tribunals, and c) statutory enquiries. The Scottish Committee carried out these functions in relation to Scotland.

The Cabinet Office of the UK Government carried out a review of Arm’s Length Bodies in 2010, with a view to reducing the number and cost of public bodies and to increase transparency and accountability. A consultation was held which demonstrated that a majority of respondents thought that the AJTC should be retained. Ultimately, however, the Secretary of State for Justice recommended that the AJTC should be abolished. The Council and its Scottish Committee were formally abolished in August 2013.

Upon abolition of the AJTC by the UK Government, the Scottish Government committed to developing a ministerial advisory committee on administrative justice and tribunals.

## **Current Arrangements**

The STAJAC was established in November 2013 by the then Minister for Community Safety and Legal Affairs, Roseanna Cunningham MSP. It was established as an interim committee with a lifespan of two years, ending in November 2015. The Committee is non-statutory in nature. It was established to play a vital role championing the needs of users across the administrative justice and tribunals system in Scotland, to provide external scrutiny of the system in devolved areas, and to highlight any issues to Scottish Ministers.

A wide ranging remit was agreed for the Committee:-

- to promote the interests of system users and champion an administrative justice system that is accessible, responsive and has users' needs at the centre
- to focus on engaging with decision makers to improve rules, procedures and the complaints handling processes within the administrative justice system
- to encourage better decision making within the administrative justice system with the emphasis on getting the decision right first time to support early and appropriate dispute resolution
- to build networks and encourage the sharing of good practice amongst practitioners
- to provide scrutiny of the whole of the administrative justice system in devolved areas, including the development of the proposals to merge the Scottish Tribunals Service and the Scottish Court Service and the new structure following the Tribunals Bill
- to advise Ministers on the development of the Strategy for Administrative Justice and the future direction and priorities of the strategy
- to engage across Government and identify to Ministers any policy and practice issues affecting the administrative justice system in devolved areas which may require Government attention
- to monitor developments in reserved areas of administrative justice and tribunals pre and post referendum that affect citizens in Scotland
- to recommend how the functions of the committee should be carried out in the longer term

In establishing the membership of the Committee, the Minister invited Marieke Dwarshuis to chair the Committee and for Marieke to select the remainder of the membership. Care was taken to ensure that relevant skills, expertise and experience from a number of different backgrounds and perspectives are well represented. In particular, the aim has been that overall membership should allow for the perspectives of users, advice providers, decision makers and experts/academics to be represented.

At present, the Committee has eight members including the Chair – and membership has adhered to the aims above in order to ensure a balanced and well-informed contribution to policy and practice development in the administrative justice and tribunals system in Scotland.

The Committee held a stakeholder engagement event in April 2014. The purpose of this event was to engage with stakeholders at an early stage to inform them of the Committee and its remit and to begin building relations with a range of stakeholders. The Committee also used the event to gain input and ideas from stakeholders for the Committee's Workplan for the duration of its limited two year life span.

The Workplan is a reflection of the Committee's priorities, given the limited time and resources afforded to it. The agreed Workplan was drawn up under three broad headings – Reactive Work; Proactive Work; and On-going Engagement.

- a) Reactive Work: this has involved responding and contributing to policy and legislative developments. The Committee has, for example, been very actively engaged in the development of the Scottish Welfare Fund proposals.
- b) Proactive Work: this involves the Committee carrying out its own work and research. In particular, the Committee is engaged in a project with Audit Scotland which is examining the financial and other impacts for Local Authorities of not getting decisions "right first time"; is in the development stages of a Tribunals user research project; and is carrying out its own project to map out and describe, as comprehensively as possible, the administrative justice and tribunals landscape in Scotland.
- c) On-going Engagement: the Committee is continuing to engage with key stakeholders, contributing to and ensuring representation on a number of relevant forums and committees – for example, the UK Administrative Justice Forum, the UK Administrative Justice Institute advisory board, the Scottish Tribunals Forum and the Scottish Legal Aid Board Access to Justice Reference Group.

The Committee's lifespan ends in November 2015. Ministers will now need to consider whether, and if so what, future arrangements should be put in place to continue to carry out the functions of the Committee.

## **Our recommendations**

The following sections of this paper set out (1) the considerations which we believe should be taken into account and (2) our recommendations for any future arrangements.

### **1. Considerations to be Taken into Account for Future Arrangements**

#### ***Is there a need for a committee such as STAJAC?***

We believe that there is a clear need for a committee such as STAJAC. Administrative Justice is a wide ranging policy area which affects a large number of people in many aspects of their lives. It is an important area of policy in which there is a need for Government to receive expert advice. Without a body such as STAJAC, it is doubtful whether the Scottish Government would have adequate expert input into policy making. It is vital that there is independent oversight of the system, with the overarching aim of ensuring that there is public and user confidence in the system and that it is continually improving to the benefit of users, and the taxpayer.

There are significant changes on the horizon for the administrative justice and tribunals system in Scotland – not least the introduction of new devolved tribunal jurisdictions and the consequences of the Smith Commission which has recommended the further devolution of reserved tribunals. The involvement of a committee such as STAJAC will support the development of an efficient and expanded system through expert oversight. This in itself should leave no doubt that a committee such as STAJAC has an important and necessary purpose, and will continue to do so for years to come.

#### ***Successes and Limitations of the STAJAC Model***

##### **a. *Successes:-***

Following an extremely successful stakeholder engagement event in April 2014, the Committee agreed a very clear and focused Workplan. This had limited priorities in the context of a wide ranging remit and allowed the Committee to achieve a lot despite constraints in terms of time and resources. The Committee has managed to develop strong working relationships with stakeholders and this has only further increased its reach and influence.

As previously mentioned, the Committee has given advice on a number of policy areas to the Scottish Government and this has had a significant influence on policy development. Furthermore, the Committee has managed to take a proactive approach in shaping and commissioning research and becoming involved at the forefront of administrative justice project steering groups in partnership with other stakeholders.

### ***b. Limitations:-***

Whilst the Committee has dealt well with the broad range of work to be done, it has been difficult with a lack of dedicated policy staff. This resulted in much of the early work having to be carried out by the Chair and other committee members, all of whom have other commitments. In the longer term, this is not a sustainable approach. This may result from the Committee's status – it cannot employ staff directly or contract in its own right – and this is something which requires to be considered should the Minister decide that the functions of the Committee should be continued.

Given that the Committee is established on an interim basis, it was necessary to delineate a lifespan. Whilst the Committee has achieved much in a short period, the prescribed period of two years has limited the work that the Committee would have liked to have pursued. It is also apparent that some of the proactive work that the Committee has undertaken with stakeholders will not be completed by the end of this Committee's lifetime.

We also believe that the work of the Committee would have benefited from a stronger link with the Scottish Parliament. The Committee has had very little interaction with the Parliament or its committees. As a consequence, we believe that administrative justice policy has not been subject to the same degree of parliamentary scrutiny as civil justice or criminal justice. Part of the difficulty may lie in the way in which the remit of the Justice Committee is expressed. This is stated on the Scottish Parliament's website as being:

'To consider and report on a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice and b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.'

While there is specific reference to criminal and civil justice, there is no specific reference to administrative justice, which falls under "other matters falling within the responsibility of the Cabinet Secretary for Justice".

## **2. Recommendations for future arrangements**

### ***Main functions of a future Committee***

The primary focus of a future Committee should be to promote the interests of system users and champion an administrative justice and tribunals system that is accessible, responsive and has users' needs at its centre. This is the first line of the current Committee's remit, and this should be retained.

A future Committee should also have the following functions:

- encouraging best practice

- encouraging the coordination of administrative justice development within Scotland
- facilitating of coordination with other parts of the UK
- encouraging networks
- commissioning and coordinating research
- oversight and scrutiny of the administrative justice and tribunals system in devolved areas
- monitoring development in reserved areas
- awareness raising amongst policy makers and decision makers.

These functions are mostly, but not all, reflected in the current STAJAC remit.

We also believe that a future Committee could make an important contribution to the scrutiny of future draft tribunal rules. We understand that from 2017, the Tribunals Committee of the Scottish Civil Justice Council (SCJC) will take on responsibility for drafting new tribunal rules. We believe that there would be merit in ensuring that a future Committee is involved in consideration of any new rules, perhaps through the co-option of one of its members to the Tribunals Committee of the SCJC.

### ***Key characteristics of a future Committee***

We recommend that a future Committee should be:

- a) Independent, and seen to be independent, of both the Scottish Government and the Scottish Courts and Tribunals Service.
- b) Accountable, and achieve this by formulating Workplans and reporting formally to Ministers/the Scottish Parliament annually. The Committee should also sit clearly within the remit of the Scottish Parliament Justice Committee. Scrutiny of administrative justice policy should be seen as a core element of the Justice Committee's function in the same way as civil and criminal justice. Scrutiny of administrative justice will be all the more important over the next few years given the devolution of responsibility for currently reserved tribunals proposed by the Smith Commission and the UK government.
- c) Proactive and Visible. A future Committee should not just be reactive, but should take a proactive approach – through active and regular engagement with stakeholders.
- d) Able to command Respect. And achieve this by (a) being made up of members with experience of many different aspects of the administrative justice system, and (b) making well considered, reasoned and where appropriate, evidenced observations, contributions and recommendations.
- e) Able to enter into contracts/ commission research and employ staff in its own right, if at all possible. Consideration should be given to establishing the Committee with some form of legal status/personality in order to allow this. While we are aware that this is unlikely given the Scottish Government's policy approach to such bodies,

consideration should be given to establishing a future Committee on a statutory footing. This would give the Committee a more secure status, and would send a clear signal about the priority that the Scottish Government gives to its role. This would also allow for the statute to specify the remit of the Committee and to set out clearly the interests that should be represented in the membership. Making the Committee a statutory body would also allow it to spend money, recruit and contract in its own right.

### ***Membership of a future Committee***

Irrespective of whether a future Committee is established as a statutory or non-statutory body, we recommend that:-

- appointments, including that of the Chair, should be through an open and transparent selection process. A process akin to a public appointments process would lend greater legitimacy and transparency, and would also allow for a greater pool of people with relevant skills and experience to be considered for membership.
- following from this, appointments should be for a set period of time – between 2 and 4 years – with the possibility of renewal.
- membership should demonstrate balance across administrative justice and tribunals – academics, user interests, advice providers, service providers and decision makers, tribunal judiciary/administration etc. Membership should seek a range of skills and experience.
- there should be provision for members to be remunerated if they are not attending in consequence of their employment.
- a future Committee should make use of sub-committees or portfolios, based on members' skills and experience, and should have adequate policy support for this.

### ***Resource, support and other arrangements that need to be in place for a future committee to be able to be effective***

Irrespective of whether a future Committee is established as a statutory or non-statutory body, we consider that:-

- sufficient provision of resources will be required to ensure the Committee is supported by permanent, dedicated staff. This can be modest, but must include a policy/research capacity as well as an administrative capacity.
- a budget will be required which is sufficient: to pay fees and expenses where appropriate; arrange conferences, events and meetings; establish and maintain a website and publications; and should include a modest research capacity.
- a future Committee needs to have the ability to employ staff and enter into contracts – this would ideally be in its own right, but could be achieved through a clear arrangement with its sponsor body.

- finally, there should be a clear framework agreement between the Committee and its sponsor body – the Scottish Government.

### **Consultation Questions**

- 1. Do you agree that there is a need for a committee such as STAJAC?***
- 2. Do you have any comments about the successes and/or limitations of the committee, as set out in this paper?***
- 3. Do you agree that a future Committee should have the main functions listed in this paper? Do you have any additional comments on these?***
- 4. Do you agree that a future Committee should have the main characteristics set out in this paper? Do you have any additional comments on these?***
- 5. Do you agree with our proposals on the membership of a future Committee?***
- 6. Do you have any other comments on anything in this paper which you think we should take into account?***

We welcome all comments on the proposals in this paper, and in particular your answers to the consultation questions above. Please submit your comments to:

[STAJAC@scotland.gsi.gov.uk](mailto:STAJAC@scotland.gsi.gov.uk) by **10 June 2015**.