



STAJAC

Scottish Tribunals & Administrative
Justice Advisory Committee

Making decisions fairly

Developing excellence in administrative
justice in Scottish councils

November 2015

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Executive summary

What is administrative justice?

1. Every day, public bodies make decisions that have an impact on the everyday lives of citizens. Many of these decisions are made within local authorities:

- The assessment of the care needs of older people and decisions about their eligibility for support to meet those needs.
- The decision to accept or reject a planning application for a house extension, a supermarket or a bypass route.
- The decision whether to accept or reject an appeal against a parking charge.
- Decisions about the type of support and choice of school for children with additional support needs.
- Granting licences to sell alcohol, drive a taxi or open a betting office or casino.

2. These decisions fall within the scope of administrative justice – the part of the justice system concerned with decision-making by public bodies that affect individual citizen’s rights and interests.¹ It is important because, directly or indirectly, the system of administrative justice has an impact on everyone.

3. The aims of an effective system of administrative justice are to ensure that:

- public bodies get it ‘right first time’ when making decisions
- where decisions are incorrect or treatment of citizens is otherwise defective, it is important that there are effective redress mechanisms
- public bodies learn from their mistakes to increase the likelihood of getting it right first time in future decision-making.²

4. In this report, we look at decisions made by councils because they make up the vast majority of administrative justice decisions made by devolved public bodies in Scotland. Decisions made on a daily basis by council staff in Scotland affect innumerable members of the public. At a time when council services and staff are under pressure, it is even more important that councils get things right. If they don’t, disaffected service users could generate more reviews and appeals, leading to increased costs. Getting things right first time ensures more satisfied customers and fewer appeals.

5. [Appendix 2](#) includes a list of many of the areas of administrative justice decision by councils.³

¹ Including organisations and businesses.

² The final report of the Administrative Justice Steering Group, *Administrative Justice – The Way Forward* (2009) <http://www.consumerfocus.org.uk/scotland/files/2010/10/Administrative-Justice-in-Scotland-The-Way-Forward-Full-Report.pdf>.

³ The areas of administrative justice decision-making in councils were identified as part of a recent mapping exercise of administrative justice processes in Scotland, undertaken on behalf of the Scottish Administrative Justice and Tribunals Advisory Committee (STAJAC). The report *Mapping Administrative Justice in Scotland* is available on the STAJAC website: www.adminjusticescotland.com.

Types of decision made by local authorities

6. There are three broad types of decisions that councils make in relation to service delivery, rights and entitlements for individual citizens, businesses and organisations:

- Managerial decisions as part of service delivery, for example housing repairs, where the council has clear service standards and where council staff generally make assessments as to whether the standards are met.
- Decisions conferring a right or entitlement, based in a statutory power, but also on policy priorities determined locally. For example in planning or licensing, where the council will make an individual decision on a planning or licence application, and where this decision is taken in the context of a local policy to zone particular areas for housing or another purpose, or, for example, to limit the number of licensed premises in a predominantly residential area.
- Decisions conferring a right or entitlement based in statutory power and national rules and policy, for example free personal care or housing benefit.

7. This report examines the types of decisions set out in the last two bullets.

Scope, methodology and purpose

8. Our approach was to identify a selection of case studies to model the user journey through each administrative justice decision-making process, to examine the costs attached to each part of the process and to look at how long the process takes.

9. We focused on council decisions because they make up a very large proportion of administrative justice decisions (on devolved matters) affecting citizens in Scotland. To provide a view of the whole system, we also looked at other parts of the system outside councils where council decisions can be challenged or appealed.

10. We identified a representative selection of council administrative justice processes and decisions, to examine different types of administrative processes, different types of appeal routes as well as other methods by which disputes may be resolved. These case studies are published as an annexe to this report covering:

- the planning system
- the adult social care assessment process
- the additional support needs assessment process
- parking penalty charges.

11. We do not directly assess the impact of council policy in these areas, but aim to raise awareness of the importance of sound and transparent administrative justice processes to implement council policies fairly and consistently. This report also aims to increase the understanding of administrative justice decision-making (especially at the initial stages), and offers tools and guidance to support good practice in administrative decision-making and getting it 'right first time'.

12. We collected some indicative cost information to look at the relative impact on councils of getting decisions right first time compared with going through appeals processes. However, we did not seek to establish an overall baseline cost for all administrative justice decisions in councils because this would be too time-consuming and expensive in some services and information is not available in others.

13. Councils set their own policy priorities; this report is concerned with the processes councils have developed to implement their policy fairly and consistently. The decisions resulting from their policies will inevitably be different in different council areas, dependent on the policy pursued.

Key messages

- 1** The breadth and volume of administrative justice decisions made by local authorities is significant. Councils make a vast array of different administrative justice decisions that affect many individual citizens' daily lives.
- 2** Effective decision-making and complaints and appeals processes can help to improve councils' reputations, improve services and, most importantly, improve people's experience of council services. Early resolution of appeals and complaints can achieve moderate, but significant savings.
- 3** Providing people with a clear explanation of the decision-making process and an explanation of how the council reached a decision can help to improve user experience and understanding as well as reduce the number of complaints or appeals.
- 4** Equipping front-line staff with good communication and negotiation skills and empowering them to vary decisions or find alternative solutions within clear legal and policy limits can help to pre-empt appeals and complaints.
- 5** It can take a long time for people to negotiate their way through council appeals and complaints systems when they are unhappy with a council decision. There are statutory time limits for some parts of the appeals process, but not others.
- 6** Appeals processes can be demanding and stressful both for the individuals and for the council staff involved. A service charter setting out what users can expect in relation to decision-making, timescales, outcomes, complaints and appeals, together with the provision of alternative means of dispute resolution, such as mediation and independent advice, can help to make the process easier to navigate for all.
- 7** Costs for both the individual and for the council increase at each appeal or complaint stage. In addition, there are costs that fall on other parts of the administrative justice system such as the SPSO, the tribunal service or the courts service. For example, in social work it may only cost councils £30 (staff time only) to resolve a complaint at the front-line, but this can rise to over £1,250 if this is taken to a Complaints Review Committee (CRC). Costs to the administrative justice system more widely start to escalate once the SPSO considers the case (the cost per case to the council and SPSO combined is around £3,000), and in particular in the (very rare) case of judicial review.
- 8** In some cases, for example where a point of principle or setting a precedent is involved, it will be important for the council to defend their decision through the justice system to protect the public interest.
- 9** Council members have a key role in councils' administrative justice processes:
 - they set service budgets and council policy in a number of areas of administrative justice, for example in setting eligibility criteria for access to services to keep spending within budget
 - they help their constituents to resolve problems with the council
 - they hold senior council officers to account for the performance of services.
- 10** The continued financial constraints that councils are under and the pressure this puts on services and staff make it particularly important that administrative justice decisions are seen to be fair and made according to clearly set criteria.

Recommendations

Councils should:

- Collate performance information against key indicators in each of their administrative justice processes.
- Publish appeals and complaints information as part of the council's public performance reporting process (as is already done for complaints).
- Analyse the number of appeals and complaints in each administrative justice service area to identify areas for improvement. The analysis should include the length of time taken to process appeals, their cost and the potential impact on individuals. Councils should use this analysis to target specific service areas for review and identify improvement actions in particular:
 - the reasons why incorrect decisions are being made (to identify systematic problems with decision-making)
 - the reasons why individuals are appealing correct decisions (to identify potential issues with communications and inconsistencies in decision-making).
- Compare their service and appeals processes and number of appeals with other councils to identify opportunities for improvement.
- Use citizens' panels or other methods of gathering the views of service users to find out service users' experience of administrative justice decision-making.
- Ensure councillors who are making budget decisions about services that could give rise to complaints or appeals have robust information about the impact of the decision and the number of people affected.
- Use the knowledge and feedback arising from council members' work on behalf of service users to improve service users' experience in a systematic way.
- Ensure council members have robust information on the service performance, with regard to administrative justice by reporting information on the number of appeals and complaints in each service to the relevant council committee on an annual basis, including the number of decisions made, the number of appeals made at each stage and the number upheld.
- Where there are no statutory timescales, set their own timescales for making administrative justice decisions and communicate these to service users. Where delays occur, councils should let service users know that there is a delay, why the delay has occurred and how long it is likely to take to resolve the issue.
- Provide front-line staff with learning and development opportunities to improve their communication and negotiation skills and empower them to be innovative in meeting users' needs, while ensuring they work within council policy and legislative limits.
- Ensure that staff making decisions understand the legislative basis of the decisions they make and their scope for discretion as set out in the Scottish Government's publication *Right first time*.
- Use the improvement tools and checklists for council members and council officers included in [Appendix 3](#) of this report to assess how well their council or service is managing administrative justice decisions and use the results to make improvements.

1. Setting the scene

Describing administrative justice

14. Administrative justice can be described and defined in many different ways. For the purposes of this report, the administrative justice system is the part of Scotland's justice system that helps people to resolve disputes with, or complaints about, the providers of public services. Its aim is to make sure that people can obtain redress, where justified, and ensure that public service decision-makers are accountable. In doing so, it should use procedures that are independent, open and appropriate for the matter involved.

15. In the context of council services described in this report, we use the term 'administrative justice' to describe decision-making by councils affecting individual citizens' rights and interests. This includes:

- the rules under which decisions are made
- the procedures councils follow in making decisions
- the procedures and processes available for resolving disputes relating to decisions, including complaints and appeals.

16. Administrative justice is the aspect of the overall justice system with which the vast majority of people will come into contact through everyday life. It concerns, for example:

- decisions made by Her Majesty's Revenue and Customs (HMRC) on how much tax someone should pay
- decisions made by the Department of Work and Pensions on entitlement to benefits (eg, Jobseeker's Allowance; income support, child benefit, disability living allowance, etc)
- decisions made by the Home Office in relation to someone's immigration status
- decisions by the Office of the Scottish Charity Regulator on the charitable status of organisations
- decisions by the Student Awards Agency for Scotland on whether or not to award students financial assistance.

Administrative justice in local government

17. The breadth and volume of administrative justice decisions made by local authorities is significant. Councils are public bodies that make a vast array of different administrative justice decisions that affect many individual citizens' daily lives, for example:

- granting taxi licences, HMO licences, licences for pubs, betting shops and casinos
- granting planning permission
- deciding housing benefit claims; deciding council tax reduction claims
- making assessments for help with social care
- making assessments for additional support needs of children
- assessing whether people are homeless and eligible for assistance.

18. The number of such decisions taken on a day-to-day basis across Scotland by local authorities further emphasises the impact of administrative justice on our daily lives. For example:

- in September 2013 there were 547,860 council tax reduction recipients across Scottish councils⁴
- 40,032 homelessness assessments were made by Scottish councils in 2012/13⁵
- there were 468,380 households claiming housing benefit in Scotland in March 2015⁶
- 29,892 school placement requests were received across Scottish councils in 2008/09⁷
- 30,123 planning decisions were made by Scottish planning authorities in 2013/14⁸
- in Glasgow alone, 12,646 homecare and personalisation service agreements were opened in 2012-13.⁹

Defining complaints and appeals

19. Complaints are expressions of dissatisfaction made by members of the public about:

- a public body's action, lack of action, or slowness in taking action
- the standard of a service (whether the council itself, or a person acting on behalf of the council, took the action).

20. Appeals are concerned with the accuracy or correctness of a decision in terms of:

- a citizen's legal rights
- natural justice
- other relevant criteria, for example stated council policy.¹⁰

21. It is not always easy to make a clear distinction between complaints and appeals. Also, in some settings, such as in social care, the terms *complaint* and *appeal* can be ambiguous as councils process both appeals and complaints through the same social care complaints system, and they are usually all described as 'complaints' in that context.

Making administrative justice more effective

The work of the Administrative Justice and Tribunals Council

22. The Tribunals, Courts and Enforcement Act 2007 established the Administrative Justice and Tribunals Council (AJTC), a UK advisory non-departmental public body (NDPB), which had a Scottish Committee. Its role was to help make administrative justice and tribunals more accessible, fair and effective by:

- developing clear principles and good practice
- promoting understanding, learning and continuous improvement
- ensuring that the needs of service users are at the centre of processes.

23. In its 2010 report, *Principles for Administrative Justice*, the AJTC set out what it

4 *Council Tax Reduction: Caseload and Expenditure, Scotland*, Scottish Government, December 2013

5 *Scottish Government Homelessness Statistics 2012/13*, www.scotland.gov.uk/homelessstats, Scottish Government 2013.

6 www.gov.uk/government/publications/number-of-housing-benefit-claimants-and-average-weekly-spare-room-subsidy-amount-withdrawal

7 *Scottish Government Education Statistics*, www.scotland.gov.uk/Publications/2010/03/19130022/3 (Note: the Scottish Government discontinued central data collection after 2009).

8 Scottish Government: Planning statistics, www.scotland.gov.uk/Topics/Statistics/Browse/Planning/Publications/planapps2013annual, Scottish Government.

9 www.gro-scotland.gov.uk/statistics/theme/population/estimates/mid-year/2012/index.html, Glasgow City Council Social Work Services, Freedom of Information request: 4596203.

10 Fit for Purpose Complaints System Action Group, Report to ministers, July 2008.

considered were the seven key principles for administrative justice. The report concluded that a good administrative justice system should:

1. make users and their needs central, treating them with fairness and respect at all times
2. enable people to challenge decisions and seek redress using procedures that are independent, open and appropriate for the matter involved
3. keep people fully informed and empower them to resolve their problems as quickly and comprehensively as possible
4. lead to well-reasoned, lawful and timely outcomes
5. be coherent and consistent
6. work proportionately and efficiently
7. adopt the highest standards of behaviour, seek to learn from experience and continuously improve.¹¹

24. The report also explained how public bodies could achieve these standards and it included a self-assessment toolkit to help senior managers assess their services against these seven key principles. A revised and updated version of this checklist is included at [Appendix 3](#).

25. In 2011, the AJTC published *Right First Time*, a guide on how to improve initial decision-making. It suggested that in an administrative justice context 'right first time' should mean:

- making a decision or delivering a service to the user fairly, quickly, accurately and effectively
- taking into account the relevant and sufficient evidence and circumstances of a particular case
- involving the user and keeping the user updated and informed during the process
- communicating the decision or action to the user in a clear and understandable way, and informing them about their rights in relation to complaints, reviews, appeals or alternative dispute resolution
- learning from feedback or complaints about the service or appeals against decisions
- empowering and supporting staff through providing high-quality guidance, training and mentoring.¹²

26. 'Right first time' in this context therefore is concerned with more than the technical or legal accuracy of a decision and, importantly, encompasses the need to communicate clearly, fully and in a timely fashion with the user, as well as the need to learn from complaints or appeals.

27. The UK Government abolished the Administrative Justice and Tribunals Council (including its Scottish Committee) on 19 August 2013 as part of its savings programme.

¹¹ *Principles for Administrative Justice*, Administrative Justice and Tribunals Council, November 2010, http://ajtc.justice.gov.uk/docs/principles_web.pdf.

¹² *Right First Time*, Administrative Justice and Tribunals Council, June 2011. [http://ajtc.justice.gov.uk/docs/AJTC_Right_first_time_web\(7\).pdf](http://ajtc.justice.gov.uk/docs/AJTC_Right_first_time_web(7).pdf).

The Scottish Tribunals and Administrative Justice Advisory Committee

28. After the abolition of the UK-wide body, the Scottish Government established the interim Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC) in November 2013, for a period of two years. Its role is to maintain a strategic overview of the administrative justice system in Scotland. This involves:

- promoting the interests of users in administrative justice
- encouraging better decision-making
- engaging with decision-makers to improve procedures and rules.

29. The membership of STAJAC reflects skills, expertise and experience from a number of different backgrounds and perspectives across the administrative justice and tribunals system in Scotland. It includes legal and consumer policy specialists, advice providers, those with experience of decision-making (in both tribunals and local or central government) and academics.

30. One of its priorities was to consider the impact – both on users and on decision-makers – of any failure in administrative justice decision-making and processes, especially at the initial stages. In 2014, STAJAC coordinated a Steering Group to focus on this stream of work,¹³ and established a development project to better understand the costs and impact of administrative justice and increase the likelihood of ‘getting it right first time’ (as described by the AJTC in its 2011 report) in Scotland.

About this report

31. This report is the outcome of the work of that Steering Group. STAJAC commissioned this report to help councils improve their administrative justice processes. The decision to focus on administrative justice in councils was based on the breadth and volume of the administrative justice decisions they make: of all of the devolved Scottish public bodies, councils’ administrative justice processes have the biggest impact on the public. Audit Scotland supported work on this report.

32. The aim is to help public bodies, particularly councils, to make administrative justice more effective. It has four main objectives:

- To raise awareness and understanding of the importance and impact of administrative justice in the public sector.
- To understand better the impact and cost of administrative justice decision-making and processes, especially at the initial stages – both in relation to the user and the decision-making authority.
- To develop a methodology for better understanding the impact of administrative justice decisions, for use by decision-making authorities.
- To develop tools and guidance to support good practice in administrative decision-making and ‘getting it right first time’.

33. Achieving these objectives is important because effective decision-making and appeals processes can help to reduce complaints, improve councils’ reputations, improve services and reduce costs and, most importantly, improve service users’ experience.

¹³ A list of Steering Group members can be found at [Appendix 1](#).

34. Local government organisations with a particular interest in this project and who have been represented on the steering group include:

- The Confederation of Scottish Local Authorities (COSLA)
- The Improvement Service
- The Society of Local Authority Chief Executives (SOLACE)
- The Society of Local Authority Lawyers and Administrators in Scotland (SOLAR).

35. This report has three parts: Setting the scene; Lessons from the case studies; and Improving decision-making. The report also includes a list of tools to help improvement, including:

- a self-assessment checklist for council members
- a self-assessment checklist for council managers
- assessing the cost of appeals
- process mapping
- potential performance measures for administrative justice processes.

36. In addition to this report, we have produced a compendium of the case studies in the annexe: *Making Decisions Fairly – Case Study Annex*.

2. Lessons from the case studies

Content of the case studies

37. We produced four case studies in four council services to look at users' routes through councils' decision-making and appeals processes:

- planning and development control
- the adult social care assessment process
- how parking penalty charges are administered
- the additional support needs assessment process.

38. We chose these areas as representing different types of administrative justice processes (for example the high-volume process of parking penalty charges at one end of the spectrum, and the highly individual process of assessing additional support needs on the other), and representing varying appeal routes and processes as well as different methods by which disputes may be resolved.

39. In each of these case studies (available as a report supplement: *Administrative Justice – Council Case Studies*) we examined:

- why this process is an administrative justice issue
- the legal basis for councils' decision-making
- the service context
- how the process works
- 'real life' examples of the impact of administrative justice decisions on individuals
- the cost and impact of reviews and appeals (staff cost information is provided on an indicative basis only and is not intended to be used for benchmarking purposes).

40. This section of the report summarises some of the key features of the case studies. The report supplement includes full information about the case studies.

Planning

41. Most councils use E-planning, a national web-based system to provide planning information, submit and receive planning applications. When a council receives an application for planning permission it sends a notice to neighbours to inform them what is proposed and how to make comments. Councils put information about applications on a register and make a full list of applications available in libraries and on their website. Anyone can comment on an application for planning permission, including neighbours, people directly affected by a proposal and the wider community.

42. Each council has a 'scheme of delegation' setting out who is responsible for deciding different types of planning applications. The planning officer will normally decide applications for smaller developments under delegated authority, while council members decide controversial or large proposals. In all cases, the council must make decisions in line with its development plan unless 'material considerations' justify going against the plan. Councils usually approve applications that are in line with the development plan.

43. The time to make a decision on the 30,123 planning applications considered in 2013/14 averaged 10.6 weeks for local developments. The time varies between types of development. Householder developments (local developments, where the time limit for decision is 2 months) which form over 46 per cent of the total, have the shortest decision time, on average 7.7 weeks. Applications for electricity generation (almost 3 per cent of all local decisions) have the longest (23 weeks) because of the controversial nature of some of the developments.¹⁴

44. In 2013/14, councils decided 92 per cent of planning applications under delegated authority and approved 94.1 per cent of them. Approval rates varied from 87.9 per cent in Perth and Kinross to 98.4 per cent in Eilean Siar. Over the same period, there were 543 appeals to local review boards; the original decision was upheld in 59.8 per cent of these cases. There were 427 appeals to Scottish ministers, with the original decision upheld in 53.6 per cent of cases.

45. If a council refuses a planning application, a person can appeal to a Local Review Body or to Scottish Ministers (in practice this involves an appeal to a reporter of the Directorate for Planning and Environmental Appeals (DPEA)), depending whether a planning officer or councillors decided the application. Appeals via either of these routes can be expensive, with costs falling on the council, the individual and the Scottish Government.

46. The costs to the public purse will depend on the complexity of each case, but information supplied by Aberdeen City Council indicates that the staff costs to the council are between £440 and £464 for appeals to a Local Review Body and £600 or more for an appeal to Scottish Ministers by way of the Directorate for Planning and Environmental Appeals (DPEA).

47. The Directorate for Planning and Environmental Appeals (DPEA) provided us with information on the cost and outcome of appeals. The cost information is based on the percentage of staff time spent dealing with appeals work divided by the number of appeals decided in 2014/15. This gives an estimate of just over an average of £4,000 per appeal, some appeals will cost significantly less whilst others significantly more. The cost provided here includes overheads as well as staff time. Information from the Scottish Government indicates that it allowed 48 per cent of appeals.

48. In appeals cases, there is also a right to legal challenge to the Court of Session against the reporter's decision. On average, there are approximately 10 appeals to the Court of Session in each financial year. The cost to DPEA of each challenge varies considerably depending on the approach. If they concede at the outset, the costs involved will be minimal. The losing party in the appeal is required to pay the other party's costs, so the cost will vary from very little to a significant sum. The DPEA estimated that an average appeal decision through the Court of Session would cost around £2,500.

49. Third parties can make representations on a planning application (either in objection or support), and these will be taken into account by the Planning Authority, but there are no third party rights to challenge a decision in planning law. The only remedies available for a third party would be to raise judicial review proceedings or to complain, about maladministration and service failure, to the Scottish Public Services Ombudsman.

50. The Audit Scotland report *Modernising the planning system* found that users are generally satisfied with the planning system, but not with the time taken to process applications to respond to enquiries. One-third of service users felt the council had not kept them well informed throughout the planning process and that the council did not deal with enquiries in a reasonable timescale.

¹⁴ *Annual planning performance statistics 2013/14*, Scottish Government, July 2014.

Adult social care assessment

51. Councils have a statutory duty to assess people's social care needs. If they assess a person as needing support and eligible to receive services, councils must provide or pay for services to meet these needs. This duty can be difficult to manage as demand is hard to predict and councils' ability to pay for services is finite. Demands are increasing because older people make more use of services and Scotland's population is ageing.

52. To balance their budgets, councils prioritise resources to those people most in need by setting eligibility criteria and assessing each person's needs against these criteria. Councils assess users' and carers' needs using a common framework of four eligibility levels: critical risk, substantial risk, moderate risk and low risk. The case study supplement explains these eligibility levels in detail.

53. Councils have discretion over the eligibility thresholds they set locally. Levels in each council will depend on the resources available and on the council's policies and priorities. Individuals assessed as having needs below a certain threshold may not be eligible for care arranged or funded by the council. In addition, thresholds may change in response to changes in demand and the resources available to meet that demand. Because of these constraints, many councils only provide services to people at critical and substantial risk. Thresholds may also vary from council to council depending on the resources they have and their local priorities.

54. The case study examples illustrate some of the issues and difficulties arising from the assessment of people's social care needs, in particular, when councils change eligibility criteria or when people contribute to their care ([Example 5 'dispute over financial assessment' in the case study annex](#)), and complaints and disagreements could become more common as the financial pressures on councils increase. Although the council's view was upheld in both of these examples there were a number of lessons for the council:

- the complaints process can be lengthy during which time a person can be left isolated and without support
- better communication and empowering staff to propose alternatives at the beginning of the process could have identified alternative community support options at an earlier stage and avoided the stress of the appeals/complaints process
- providing clear and full information early on about assessment criteria and the process is important and could prevent misunderstanding and manage expectations
- resolving these issues at an early stage at the front-line would have reduced direct staff costs through the reduction in staff time spent on appeals.

55. There are also instances in the case study examples in which the council will need to defend its judgement to ensure consistency and fairness and to comply with legislation. In some instances, the council could incur considerable expenditure defending its position. This may be necessary and appropriate because of the long-term financial implications of the issue for the council (as well as the individual); but equally because it is important to be consistent and coherent in decision-making, and for the council to comply with legislation.

56. Although the number of cases going to Complaints Review Committees is small, the costs per case rise significantly at that stage of the process: information supplied by East Lothian Council indicates a cost to the council of £1,230 per case once that stage has been reached.

57. In addition to appeals, members of the public may take their case to the SPSO if they are unhappy with council services and the matter has not been resolved through the council's internal processes. Costs to the administrative justice system more widely start to increase once the SPSO considers the case (the cost per case to the council and SPSO combined is around £3,000). This illustrates the benefits of, as far as possible, resolving issues early in the process.

Parking on public land

58. Parking on public land in Scotland is managed by the local council or by the police, depending on the council area. Where a council manages parking restrictions, they employ parking attendants. People not following the rules may receive a penalty charge from the council. This is then a civil matter, not a criminal offence.

59. The initial cost of a penalty charge is £60; a discount of £30 is given to payments made within 14 days of the date of issue. Failure to pay within the first 14 days (at £30) results in a Statutory Notice to Owner being sent to the registered keeper 28 days after the issue date, for the full charge of £60. Failure to pay at £60 within 28 days from receipt of a Notice to Owner results in the charge increasing to £90 and a charge certificate is issued. Failure to pay the charge within 14 days of its issue will result in the debt being forwarded to sheriff officers. The sheriff officers can award additional costs by issuing a charge.

60. The penalty charge notice informs the person of the reason for the charge. If the person doesn't agree that they have committed an infringement, they can appeal to the council. A council must consider the case and inform the individual whether it accepts or rejects their appeal. If it accepts the appeal, it will cancel the penalty charge notice. If it rejects the appeal, it must send a notice of rejection along with appeal forms and details of how to make a further appeal to the Scottish Parking Appeals Service (SPAS).

61. The City of Edinburgh Council issues around 180,000 parking tickets per year. Overall, around 14 per cent of people who get a parking ticket in Edinburgh appeal to the council to have their ticket set aside. The council's parking service upholds about half of these appeals.

62. Very few people use the second stage of the process in Edinburgh, with only 437 appeals (0.23 per cent) going to the SPAS in 2013/14. The Scottish Parking Appeals Service rarely upholds appeals against the City of Edinburgh Council (23 in 2013/14).

63. The SPAS currently adjudicates parking appeals for 13 councils that have decriminalised parking. In 2013/14, the SPAS received around 1,500 appeals. This represents around 0.34 per cent of penalty charge notices issued. The percentage of appeals varies between 0.11 per cent in Perth and Kinross to 0.63 per cent in Glasgow.

64. The cost to the council of dealing with an individual first stage appeal is very small because staff work within guidelines using a highly automated system. However, as the volume of appeals is high, the cost can still mount up. The cost of an appeal to the SPAS is made up of three components: the direct cost to the council of providing evidence to the SPAS; the cost of SPAS staff administering the process; and the cost of adjudicator's fees. In the case of the City of Edinburgh, the total cost to the public purse of appeals to the SPAS comes to around £286 per case. The SPAS is fully funded by the councils that use it through an arrangement with the DVSA, making it worthwhile for councils to keep the number of appeals and the reasons for them under close review.

Pupils with Additional Support Needs

65. Councils have a duty to provide additional support, where needed, to enable any child or young person to benefit from education. This may range from more time from their classroom teacher, to part-time or full-time attendance at a special school.

66. The legislative framework is set out in the Education (Additional Support for Learning) (Scotland) Act 2004. The Act provides a right for parents or young people to request the Education Authority to carry out an assessment to determine whether there are additional support needs. The council must create a Coordinated Support Plan if a child has enduring and complex additional support needs.

67. The Act also makes provision for the resolution of disputes between education authorities and the parents of children and young people. These provisions include rights to independent mediation, independent adjudication and advocacy services.

68. Although a council may be right in law, there are occasions when parents and schools disagree about the best way to make provision for children with ASN. Common reasons include:

- there is an assumption within the legislation that pupils with ASN will normally attend a mainstream school – but sometimes parents take a different view
- parents want their child to go to a particular school, but the council believes their needs can best be met in another
- parents who have difficulty coping with a child's behaviour want a residential school but in the Council's view a mainstream local day school is appropriate
- the parents' school of choice is fully subscribed.

69. Most disputes are settled through discussion. The number of parents going to tribunal and other external processes is small. There were 77 tribunal cases involving pupils with additional support needs in 2014/15. In 2010/11, a smaller number of parents used advocacy (35 cases), mediation (55) or adjudication services (18).¹⁵

70. The total costs of the tribunal (administration plus members' fees) were £189,000. The average direct cost to the tribunal service is therefore around £2,450 per case. Mediation and adjudication services are funded by councils, and the average costs per case (excluding council staff time) for mediation or adjudication are considerably lower than the direct tribunal costs.¹⁶

71. The Scottish Government funds Enquire, the national advice and information service for additional support for learning, through an annual grant of £280,000.

¹⁵ *Supporting Children's and Young People's Learning: A Report on Progress of Implementation of The Education (Additional Support for Learning) (Scotland) Act 2004 (As Amended)*, The Scottish Government, 2012.

¹⁶ Education (Additional Support for Learning) (Scotland) Bill, Revised financial memorandum, Scottish Parliamentary Corporate Body, 2009.

3. Improving decision-making

72. Our discussions with council staff and others (and the case studies) show that councils can take action to improve customer satisfaction and experience. By doing so, councils can improve the quality of services, reduce the number of appeals and complaints, reduce risks to their reputation and reduce costs. They can do this by:

- providing service users with good information on the decision-making process
- employing skilled front-line staff and empowering them to make decisions within clear policy and legal limits
- having an accessible and easy-to-understand appeals process
- resolving appeals in a timely manner
- providing service users with alternative means of resolving disputes, including mediation, dispute resolution and advocacy services
- learning lessons from complaints and appeals and using these to improve services.

73. In addition, council members have a key role in that they set council policy in a number of administrative justice areas, helping constituents with queries and hold officers to account for their performance in managing services.

74. Some appeals against council decisions are inevitable and do not necessarily indicate poor decision-making processes or poor decisions having been made; for example, when councils need to ensure they are implementing policy decisions consistently or where they need to uphold obligatory national standards.

Providing service users with good information before and during the decision-making process

75. Providing good information to service users can give them realistic expectations of the services the council can provide and explain the process that will be used to make a decision and how long it may take. This also enables service users to provide accurate information to the council, help the council to make decisions quickly and get them 'right first time'.

76. There are a number of ways of providing service users with information about decision-making processes. They include:

- providing information leaflets (on paper and online)
- developing service charters setting out what users can expect in relation to decision-making, timescales, outcomes, complaints and appeals
- involving users and stakeholder groups in the design and review of services and the production of information
- asking service users about their experience of services and taking account of their views.

77. Keeping users well informed during the decision-making process can ensure they understand the reasons for any delay or why further information is being sought, and reassure them that the council is making the decision as quickly as possible.

Employing skilled front-line staff and empowering them to make decisions within clear policy and legal limits

78. Equipping front-line staff with good communication and negotiation skills and empowering them to look at alternative forms of service provision or vary decisions at the assessment stage within clear legal and policy limits can help to pre-empt appeals and complaints.

79. At all times staff need to be fully aware of the limits of their discretion and the council policy and legislation that both empowers them to make decisions and requires them to do so in a certain way. Making decisions that are inconsistent with council policy or legislation will lead to anxiety and frustration for service users and appeals and reputational damage to the council. Guidance manuals or flowcharts can help staff ensure they make decisions consistently and help service users to understand why the council made a particular decision.

80. Empowering frontline staff and providing them with appropriate training was also covered in the Fit for Purpose Complaints System Action Group report¹⁷ that said, 'all public service organisations should review their Schemes of Delegation to ensure that the authority to resolve complaints at the front-line and by complaints handlers is maximised and that the chain of decision-making is as short as possible. Also all public service organisations should review the training needs of frontline employees and complaints handlers to ensure they have the skill and confidence to exercise the authority delegated to them in handling complaints'.

81. The Scottish Government has published *Right first time*, a practical guide for public authorities to decision-making and the law. It focuses on the need to ensure that decisions are made with due regard to the law and includes a helpful set of questions and guidance for decision-makers ([Exhibit 1, page 20](#)).¹⁸

Having an accessible and easy-to-understand appeals process

82. In our case studies, appeals process was sometimes complex, difficult for service users to navigate and lengthy. Providing users with clear information in plain language about decision-making and appeal processes can help to reduce the number of appeals and, where appeals do go ahead, make the process more straightforward and reduce stress and anxiety for service users ([Case study 1, page 21](#)).

83. It is important to provide reasons for the decision taken, and to ensure that these reasons are understandable and in plain language. Decisions should be confirmed in writing and include information about any further right of appeal or complaint and other methods for resolution.

17 Fit for Purpose Complaints System Action Group – Report to Ministers, July 2008, <http://www.gov.scot/Topics/Government/PublicServiceReform/IndependentReviewofReg/ActionGroups/FCSAG>.

18 *Right first time: a practical guide for public authorities in Scotland to decision-making and the law*, Scottish Government, 2010.

Exhibit 1

Questions to consider in ensuring that decisions made by public authorities are lawful, as set out in the Scottish Government's publication *Right first time*

Step 1 – Getting ready to decide

- Where does the power to make this decision come from and what are its legal limits?
- For what purposes can the power be exercised?
- What factors should I consider when making the decision?
- Is there a policy on the exercise of the power?
- Does anyone have a legitimate expectation as to how the power will be exercised?
- Can I make this decision or does someone else need to make it?
- Have devolution and the Scotland Act affected the power?
- Am I complying with human rights and European law?
- How has equal opportunities legislation affected the power?
- Am I handling data in line with Data Protection or Freedom of Information obligations?

Step 2 – Investigate: Investigation/evidence gathering process

- Does the power have to be exercised in a particular way, eg does legislation impose procedural conditions or requirements on its use?
- Have I consulted properly?
- Will I be acting with procedural fairness towards the persons who will be affected?
- Could I be, or appear to be, biased?

Step 3 – Decide: Taking the decision

- Have I taken necessary considerations into account, and is my decision reasonable?
- Does the decision need to be, and is it, proportionate?
- Are there decisions where the Court is less likely to intervene?

Step 4 – Notify: Notifying others of the decision

- To what extent should I give reasons for the decision?

Source: Scottish Government

Case study 1

The City of Edinburgh parking appeals process

Transparent processes and good information can reduce appeals.

The council has a highly automated back-office system to manage the penalty charge workload. The council gives people receiving penalty charges Internet access to photographs of their infringement (the council also uses this system for bus lane infringements). This allows people to see the evidence against them and cuts down the number of appeals. The system also automatically generates the statutory documentation required, including explanations of the nature of the infringement, the penalty, rights to appeal and timescales. All the documentation has been plain English tested.

Because of the effectiveness of the system, very few people use the independent stage of the appeals process to the Scottish Parking Appeals Service (SPSA). In 2013/14, only 437 appeals (0.23 per cent) were made to the SPSA with only 23 being upheld.

Trained staff manage the appeals process and the service has a dedicated trainer to ensure staff are kept informed. Quality checks are undertaken regularly to ensure that appeals staff make consistent judgements.

If the council becomes aware of new evidence when a person appeals to the SPAS, the council does not contest the appeal.

The council also has a customer service charter for its parking operations which sets out:

- the purpose of the parking regulations
- the service provided
- traffic regulation and other orders
- the standard of service they expect to provide
- objectives and performance targets
- performance monitoring arrangements
- details of how to make a complaint, comment or suggestion
- service contact details.

Source: City of Edinburgh Council, Scottish Parking Appeals Service

Resolving appeals in a timely manner

84. The time limits within which local authorities have to make decisions or deal with appeals may be set in legislation or regulations. Examples in our case studies included:

- For planning applications, the council has 2 months to determine the application for local developments and 4 months to determine the application for major or national developments.
- For social work complaints (which include appeals), the council has 28 days to investigate a complaint. If the complainant requests a review, a Complaints Review Committee (CRC) has to make recommendations within 56 days from the date the complainant requested it, and the council then has a further 42 days from the date of the CRC decision to agree actions and notify the complainant in writing of the decision.
- In assessing pupils with additional support needs, there are statutory time limits for each stage of the process of finding out if a child or young person needs a Coordinated Support Plan (CSP).

85. Nevertheless, for some parts of these processes and in other administrative justice areas there are no time limits, for example for undertaking social care assessments, (although there are time limits for complaint handling in this area – see above).

86. To clarify service user expectations, it is important that services should set clear timescales for making administrative justice decisions (compliant with the statutory time limits, where relevant) and communicate these timescales to service users. Councils should operate within the time limits they have set and communicated to users (and within the statutory time limits). When delays do occur, councils should let service users know that there is a delay, why the delay has occurred and how long it is likely to take to resolve the issue.

87. At times (perceived) delays in the process may occur owing to necessary information (from the user or elsewhere) not being available to make a decision. This highlights the importance of providing good information about the process to users at the outset, so enabling them to play their part in effective decision-making.

88. It can take a long time for people to negotiate their way through council appeals processes and our case studies showed that it could take several months for service users' appeals to be heard when they are unhappy with a council decision. It is important therefore that people are told how long appeals are likely to take and that they are kept fully informed of progress. Where possible, it would also be helpful to set time limits for reviews and appeals, with the needs of service users in mind.

89. If a review or appeal is taking longer than expected, it is important to stay in regular contact with service users to reassure them that their case is being handled as quickly as possible and keep service users fully informed about any delays and the reasons.

Providing service users with alternative means of resolving disputes

90. In some of our case studies, for example in meeting the needs of children with additional support needs, councils provided opportunities for alternative means of dispute resolution both at an early stage and as the case progresses. Using alternative dispute resolution methods can help to avoid the necessity for appeals to a formal tribunal or court. Examples found in our case studies included:

- the use of mediation and conciliation services
- the use of advocacy services
- reference to an independent disputes resolution process.

91. Councils have successfully used mediation in the additional support for learning area of education complaints. Mediation can offer service users and service providers with a clear and transparent process to resolve complaints.

Learning lessons from complaints and appeals

92. Councils should seek to understand the reasons for appeals and complaints, and what action they may take in response. This is relevant whether appeals are upheld or not. For decisions that are overturned, it will be important to understand why and how incorrect decisions have come to be made, and consideration should be given, for example, to changing procedures, training staff or providing additional guidance. The City of Edinburgh Council incorporates a feedback loop into its parking appeals process to ensure it takes action – for example if an appeal is upheld because a parking sign had been vandalised, the roads department is informed to ensure a repair.

93. Where an appeal is not upheld and the decision has been correct, it is still important to understand why individuals are appealing correct decisions, as there may, for example, be issues with communication and the information supplied to applicants. For example, lessons can be learned from the case of a dispute over financial assessment to determine self-funding for residential care costs in the case study compendium. This highlights that the information provided by the council on the financial assessment process could have been clearer and should be discussed with relatives at an early stage when residential care is being considered to prevent misunderstanding and manage expectations.

Council members have a key role in improving administrative justice

94. Council members have a key role in improving administrative justice in setting policy, helping constituents and holding officers to account. They are involved in administrative justice decisions in four main areas:

- They make council policy decisions, usually based on a statutory power, but with locally determined policy priorities. Council staff decisions need to be made within relevant legal parameters and consistently in line with the policy set by members.
- They provide advice and support to their constituents and local businesses on administrative justice issues at their local surgeries.
- They hold council officers to account for the effective delivery of council services in line with council policy.
- They may make administrative justice decisions directly in some areas, for example planning, and as part of appeals processes, for example in social care. Where council members are directly involved in decision-making, it is important that they receive specific training to ensure that they are fully aware of their roles and responsibilities.

Council policy and budget decisions have a significant impact on administrative justice

95. Council members make policy decisions that influence a range of administrative justice areas. For example, they decide council policy on eligibility criteria for adult social care and they make decisions on the content of local development plans.

96. Council members also make policy decisions indirectly through budget-setting processes. For example, the social care budget agreed for the council will have an impact on how eligibility criteria will be used to ensure social work departments operate within their budget. Education budgets will indirectly influence the number of school places and the number of placement requests they can meet.

97. It is important that council members have high-quality information to support their decision-making in relation to policies and budget setting where that has an impact on decisions made through administrative justice processes: for example, information on the number of people likely to be affected by budget changes in social care and its potential impact on service accessibility criteria. Good information will give an indication of the number of appealable decisions that will be made and will allow council members to ensure that service changes, including rationing, are done in the most transparent and equitable way.

Council member advice to constituents can provide intelligence on how effectively councils are implementing policy

98. One of council members' key roles is to hold surgeries to provide advice and support to constituents and to help them to resolve problems they may have with the council. This gives them a unique insight into the operation of services and how decision-making processes work from their constituents' point of view. This direct link with service users can help to ensure that services are responsive to the needs of users and can help to address problems in their decision-making.

99. Councils need to be clear on this role of elected members and, in particular, the need for feedback from any cases in which elected members have assisted individual citizens. By doing so they can ensure they learn from complaints and complete the feedback loop from complaint to service improvement.

Holding to account

100. An important role of council members is to hold council officers to account for the effective and efficient delivery of services. Moreover, because they can look at the appeals processes from the citizen's point of view, they are ideally placed to hold service managers to account for the way in which decisions are made. To do both, members need good information. Our checklist for council members in [Appendix 3](#) includes suggestions of the type of information that can support scrutiny (for example the time taken to make decisions, the number of appeals and how many have been upheld, the cost of appeals). It is also important that the effectiveness of the councils' performance in respect of decision-making and appeals-handling performance is integrated in other performance management processes.

Appendix 1

Steering group members

Marieke Dwarshuis, Chair of STAJAC, chaired the steering group.

The members of the Steering Group were:

- Malcolm Burr – Chief Executive, Comhairle nan Eilean Siar (for SOLACE)
- Ken Graham, Head of Legal & Democratic Services, Renfrewshire Council (for SOLAR)
- Cllr Peter Johnston – West Lothian Council, COSLA Health and Social Care Spokesman
- Sally Loudon – Chief Executive, Argyll and Bute Council (for SOLACE)
- Mark MacAteer – Director, Governance and Performance Management, Improvement Service (replaced by Colin Mair, Chief Executive, Improvement Service)
- Paul McFadden – Head of Complaints Standards, SPSO and Member; Scottish Tribunals and Administrative Justice Advisory Committee
- Fraser McKinlay – Director of Performance Audit and Best Value, Audit Scotland
- Michael O'Neill, Economist, Economic Analysis, Scottish Government.
- Linda Pollock – Head of Administrative Justice Policy, Scottish Government (replaced by Alicia McKay)
- Douglas Proudfoot – Head of Development, East Lothian Council and Member; Scottish Tribunals and Administrative Justice Advisory Committee
- Douglas Sinclair – Chair, former Fit for Purpose Group Complaints System Action Group.

Appendix 2

Local Authority Administrative Justice Decisions

The areas of administrative justice decision-making in councils listed below were identified as part of a recent mapping exercise of administrative justice processes in Scotland, undertaken on behalf of the Scottish Administrative Justice and Tribunals Advisory Committee (STAJAC). The report *Mapping Administrative Justice in Scotland* is available on the STAJAC website: www.adminjusticescotland.com.

Although this list may not be exhaustive, it represents the most comprehensive list available.

Education

- School Placing Requests
- Exclusions
- Attendance Orders
- School Closures
- Assessments for Additional Support for Learning

Health and Social Care

- Assessments for the provision of Social Work Services and Community Care
- Approving potential foster carers or adopters

Planning and Development Management

- Planning Permission and other delegated Planning Decisions
- Building Standards 'Verification' Decisions
- Planning and Building Standards Enforcement
- Private Roads Construction Consent
- Adoption, Listing and Maintenance of Roads

Housing, Property and Land

- Social Housing Allocation and Maintenance
- Houses in Multiple Occupation Licensing
- Landlord registration
- Anti-Social Behaviour Notices (on landlords) and subsequent enforcement action
- Demolition and Closing Notices/Orders
- Work Notices for housing improvement
- Homelessness Assessment and provision of support
- Compulsory Purchase of Land and Property

Environment

- Mineral Workings and Hazardous Substances Consent
- High Hedges Control
- Water Quality Improvement Notices (for private supplies)

Transport

- Roads Orders for public construction of roads and improvements
- Traffic Regulation Orders
- Traffic Calming Measures
- Decriminalised Parking and Bus Lane Enforcement

Revenue and Welfare

- Council Tax administration and collection
- Administration of Council Tax Reduction
- Administration of Housing Benefit and Local Housing Allowance
- Scottish Welfare Fund

Food and Feed Hygiene and Safety

- Registration of Food Retail and Catering Businesses
- Approval of Food Business Operators
- Inspection and Enforcement of Food Hygiene and Food Safety Law
- Registration and approval of animal feed and pet food businesses

Licensing and permissions

- Animals:
 - Animal Boarding Licence
 - Animal Dealer Licence
 - Dangerous Wild Animal Licence
 - Dog Breeding Licence
 - Performing Animal Licence
 - Pet Shop Licence
 - Riding Establishment Licence
 - Zoo Licence
- Entertainment:
 - Child Entertainment Licence
 - Cinema Licence
 - Fireworks Displays Dispensation
 - Hypnotism Licence
 - Indoor Sports Licence
 - Late Hours Catering Licence
 - Public Entertainment Licence
 - Sexual Entertainment Licence
 - Theatre Licence

- Alcohol and Gambling:
 - Premises Licence (Alcohol and Gambling)
 - Personal Licence (Alcohol)
 - Extended Hours Licence (Alcohol)
 - Occasional Licence (Alcohol)
- Taxi and Private Car Hire:
 - Taxi Driver Licence
 - Taxi Vehicle Licence
 - Private Hire Car Driver Licence
 - Private Hire Car Vehicle Licence
 - Booking Office Licence
- Trade and Business:
 - Boat Hire Licence
 - Caravan Site Licence
 - Market Operator Licence
 - Metal Dealer Licence
 - Pedicab/Rickshaw Licence
 - Public Charitable Collection Licence
 - Second Hand Dealer Licence
 - Sex Shop Licence
 - Skin Piercing and Tattoo Licence
 - Street Trader Licence
 - Venison Dealer Licence
 - Window Cleaner Licence
 - Hazardous Items
 - Knife dealer licensing
 - Firework sales licensing

Roads and footpaths permissions

- Processions and Parades permissions
- Tables and Chairs/Street Café Licensing
- Roads and Pavements Excavations
- Permits for Mobile Cranes, Scaffolding, Tower Cranes, Skips.

Appendix 3

Improvement tools and guidance

This appendix includes a number of tools that councils can use to help improve administrative justice processes. These include:

- a self-assessment checklist for council members
- a self-assessment checklist for service managers
- the development of information on cost
- guidance on the use of process maps to describe the decision-making process
- a list of comparative information to measure progress.

We have developed a checklist for council members that sets out some issues that elected members may wish to consider in relation to administrative justice in their own council. The checklist highlights the need for information on performance and cost of administrative justice to be available – to both council members and council officials. The checklist will help councils to assess how effectively and efficiently the council delivers administrative justice processes and where improvements may be required.

The Administrative Justice and Tribunals Council published a self-assessment toolkit in *Principles for Administrative Justice* in 2010. They designed the toolkit to help organisations to assess themselves against the criteria for good administrative justice. We have amended it to some extent to reflect the situation in Scottish councils. We intend this toolkit to be a flexible improvement tool that councils can integrate into their wider self-assessment processes.¹

We have included a brief tool to illustrate how councils can collect information to assess the cost of appeals processes.

Process maps can describe a process as it applies to the decision-making in the council, and reflect all considerations and checks that staff will need to undertake before reaching a decision. These can be helpful in staff training, and can help ensure consistent decision-making. Different process maps can be developed to describe the same process from a citizen's (applicant's) point of view. This can be helpful in explaining the process to an applicant, and to highlight where key decisions are made and need to be communicated to applicants, as well as where challenges can arise.

The final tool provides a list of comparative information that councils could use to measure progress improving administrative justice processes.

1 *Principles for Administrative Justice*, Administrative Justice and Tribunals Council, November 2010, http://ajtc.justice.gov.uk/docs/principles_web.pdf.

Tool 1

A self-assessment checklist for council members

This checklist sets out some issues that elected members may wish to consider in relation to administrative justice in their own council.

Questions for elected council members to consider	Assessment	Required actions
Councillors' role in administrative justice governance		
Can the council demonstrate that governance arrangements relating to decision-making and complaints and appeals handling are consistent with the Nolan principles?		
When the council is making budget decisions, do we have good information about how this may affect services, the number of people affected, and how the decision-making process will take account of the budget decision?		
Is there a committee with specific responsibility for administrative justice in the council? If not has the council identified which committees have a role in monitoring administrative justice?		
Do the committees of which I am a member have any specific responsibilities for administrative justice processes?		
Am I clear about the principles of good decision-making and administrative justice and my role in monitoring the council's performance in this area?		
Do I have a good understanding of the main administrative justice systems in the council, including the key decision-making processes involved?		
Does my council have service charters setting out what users can expect in relation to decision-making, outcomes, complaints and appeals and do council staff work to clear and published policies and guidelines so that users can understand the criteria against which decisions are made?		
Do I have access to, and take up, training and development opportunities about administrative justice processes?		
The council's administrative justice goals and objectives		
Does the council have plans in place to improve administrative justice decision-making?		
Do I know how the council services learn lessons from reviews and appeals of their decisions?		

Questions for elected council members to consider	Assessment	Required actions
Performance management		
Does the council publish clear customer service and operational standards and performance data by which I expect residents to judge the council?		
Are effective and regular monitoring arrangements in place to ensure that decisions comply with council quality and timeliness standards?		
<p>Do committees with an administrative justice remit receive regular reports about:</p> <p>(a) the performance of systems where decisions affect members of the public</p> <p>(b) administrative justice outcomes including progress against:</p> <ul style="list-style-type: none"> • the council's own key performance measures? • the time taken to make decisions? • the number of avoidable errors made in each decision-making system? • the number of appeals made against decisions, including: <ul style="list-style-type: none"> – the number upheld and the reason for errors – the number not upheld and the reason for making the appeal – The time taken to resolve appeals • the number of complaints about each system? <ul style="list-style-type: none"> – the number of complaints upheld – the time taken to resolve complaints • the cost of appeals and complaints? • comparative performance against similar councils? 		
Do I challenge officers on the performance information presented to me where it is unclear or where it indicates poor performance?		
Promoting and sharing best practice		
Does my council play an active role in relevant networks and national working groups to gather and promote best practice in administrative justice?		

Tool 2

A self-assessment checklist for council managers

The Administrative Justice and Tribunals Council published a self-assessment checklist in *Principles for Administrative Justice* in 2010. The AJTC designed the toolkit to help organisations to assess themselves against the seven Principles for Administrative Justice, which we set out in paragraph 32 of this report. We have amended it to some extent to reflect the situation in Scottish councils.²

Administrative justice is not just a matter for tribunals, appeal committees, ombudsmen or the courts. It begins, in the case of councils, when staff gather information, exercise discretion and apply legislation and rules to reach decisions that affect people or other organisations.

This checklist should therefore encourage council managers to ask:

- Which of our activities are covered by the principles for good administrative justice?
- Is the way we take decisions and deal with appeals fair to users?
- Do we know what our users think of how we take decisions, and do we know what they would say about our adherence to the principles for good administrative justice?
- How can we check whether we are getting things right?

We intend this toolkit to be a flexible improvement tool that councils can integrate into their wider self-assessment processes. The knowledge and experience of customer-facing staff and their managers is important in assessing how well councils do things and what they need to do to bring about improvements.

Self-assessment could start with a small cross-section of people completing the self-assessment matrix. The next step could be a workshop bringing together front-line staff and managers to discuss the service's strengths, weaknesses opportunities for improvement and risks, with the aim of producing an action plan.

The important question is 'Do we have enough information from users to say how well we are doing and what might be improved?'. While front-line staff know a lot about users of the service, this does not necessarily mean that they know how they are affected by the way they take decisions. Understanding and trying to meet users' needs should help to speed up decision-making and reduce appeals.

The benefits of this approach are that it helps councils to:

- encourage learning and improvement
- make a difference on the ground
- improve strategic planning and performance monitoring
- build good relationships with service users
- work with partners to make improvements
- builds relationships and reduce the cost of serial error and unnecessary appeals
- encourage a team approach and a consensus for change
- produce an action plan and identify priorities.

2 *Principles for Administrative Justice*, Administrative Justice and Tribunals Council, November 2010, http://ajtc.justice.gov.uk/docs/principles_web.pdf.

Using the toolkit

Appendix 2 and **Tool 3** of this report should help councils to identify potential areas where they can apply this checklist. While this will certainly include services where there is a right of appeal to tribunals or external appeal bodies, councils should consider looking further than that. For example, this self-assessment should apply to:

- the way the council processes entitlements such as benefits (Scottish welfare fund, housing benefit) (and some grants)
- applications for permission to do something
- enforcements of steps the council has required to be taken by individuals or bodies
- the granting of licences
- other actions (or omissions) by the council which generate internal reviews or appeals.

As councils are complex organisations, involving many different departments and service areas, it may help a council to develop common approaches and standards, where appropriate.

The sections below follow the same structure as the *Principles for Administrative Justice* report. It would be helpful to read the relevant section of that report before you use the toolkit.

The toolkit works by allowing council staff and managers to use their knowledge and judgement to rate their service in one or more areas of decision-making by marking the boxes that best describe the current situation.

For the council as a whole, or for any given service/area of decision-making, the options are set out in the table below:

For your service as a whole or any given area of decision-making?	Rating	
We do this really well, making a major contribution to our success	***	Mark this box if you have approaches which are innovative, successful, well established and from which others can learn.
We have some solid approaches in place but there is more to do	**	Mark this box if you have a well-developed successful approach that is deployed in at least half of the organisation.
We have some things in place but they are patchy and incomplete	*	Mark this box if you have something in place but it is new, or you know it could be improved, or it is only implemented in a few areas.
We are just starting to look at this	!	Mark this box if you recognise the need for action, but little has been implemented.
Don't know or not applicable	?	

When you have marked the boxes for each section, note down the strengths, weaknesses opportunities and risks that you identify in the boxes below the questions. Use these notes in the workshops that follow the assessment to prioritise areas for improvement.

1. Are users and their needs central to the service and do you treat them with fairness and respect at all times?

Self-assessment questions	***	**	*	!	?
1. Have you identified who the users of your service are and have you designed services to meet their needs?					
2. Does your council or service have service charters setting out what users can expect in relation to decision-making, outcomes, complaints and appeals?					
3. Do you involve users in the design and review of services? For example, do you routinely ask service users about their experience of your services and take account of their views; and/or consult with user and stakeholder groups?					
4. If you hold appeal or complaint hearings, do service users have rights to be helped, accompanied and/or represented?					
5. Are appeal or complaint hearings local and easily accessible by public transport? Do they meet user needs in terms of signage, security, comfort, and access to private meeting facilities? Do they accommodate a wide range of physical needs and levels of understanding?					
Strengths	Weaknesses				
Opportunities	Risks				

2. Enable people to challenge decisions and seek redress using procedures that are independent, open and appropriate for the matter involved

Self-assessment questions	***	**	*	!	?
1. Does your decision-making process comply with natural justice and human rights legislation in providing a fair and unbiased opportunity for users to make representations and/or attend a hearing?					
2. Do decision-makers work to clear and published policies and guidelines so that users can understand the criteria against which decisions are made?					
3. Do you provide opportunities for alternative means of dispute resolution (such as mediation), both at an early stage and as a case progresses, and ensure that users know about this?					
4. Does the council or service offer inquisitorial as well as adversarial processes when conducting hearings and ensure you help service users to make their case, understand the issues and challenge decisions? ³					
5. Do your arrangements routinely include a right of appeal /complaint to an independent person/body?					
Strengths	Weaknesses				
Opportunities	Risks				

³ 'Inquisitorial processes' refers to an administrative justice is a process that has the aim of adding knowledge, resolving doubt, and solving problems, for example through conciliation. An adversarial process is where people with opposing views compete to convince a judge or tribunal of the strength of their case.

3. Keep people fully informed and empower them to resolve their problems as quickly and comprehensively as possible

Self-assessment questions	***	**	*	!	?
1. Do you provide step-by-step information in plain language to users about your services' decision-making and appeal processes in ways that accommodate diversity and cultural differences?					
2. Do you identify the names and titles of staff, or contact points to enable users to ask questions, seek help and give feedback?					
3. If some stages may take longer than expected, do you stay in regular contact with service users to reassure them that their case is being handled as quickly as possible, or do they have to chase progress?					
4. Do you keep service users fully informed about the requirements and tests they will need to satisfy in order to reverse or change a decision?					
Strengths	Weaknesses				
Opportunities	Risks				

4. Lead to well-reasoned, lawful and timely outcomes

Self-assessment questions	***	**	*	!	?
1. Are the reasons for decisions always provided and given in plain language? Do you confirm decisions in writing and include information about any further right of appeal or complaint and methods of resolution?					
2. Within the applicable legislation, do you exercise appropriate discretion in decision-making? For example, do you give warnings or opportunities to correct rather than moving straight to enforcement or penalties?					
3. Do your decision-making and appeal-handling processes comply with current law and regulations including any non-statutory procedural rules for case handling?					
4. Do you set time limits for decision-making and reviews with the needs of service users in mind?					
5. Do your decision-making, review and appeal systems adequately take into account the rights and interests of affected third parties to have a say?					

Strengths	Weaknesses
Opportunities	Risks

5. Be coherent and consistent

Self-assessment questions	***	**	*	!	?
1. Are your decision-making and dispute-resolution arrangements adequately resourced to provide good quality decisions without backlogs? Are staff trained to analyse evidence and decide issues to consistently high standards?					
2. Is your service well coordinated internally and with other relevant agencies to ensure that there are no gaps in the administrative processes leading up to decision-making that will cause delay or confusion for the user?					
3. Is the evidence gathering process used in decision-making comprehensive and robust?					
4. Can you resolve problems quickly and easily with minimum form filling for users or do you regularly have to rely on independent complaints or appeals processes to settle disputes?					
5. Is there a guidance manual available to staff and service users to ensure that you handle disputed decisions consistently?					
Strengths	Weaknesses				
Opportunities	Risks				

6. Work proportionately and efficiently

Self-assessment questions	***	**	*	!	?
1. Is the end-to-end journey from information gathering, through internal decision-making and appeal or review understandable and straightforward for users?					
2. Are effective and regular monitoring arrangements in place to ensure that decisions comply with your quality and timeliness standards? Do you regularly review the costs associated with handling appeals and complaints?					
3. Is it an objective of your council to seek to settle disputes as straightforwardly and as simply as possible without the cost and stress for service users associated with having to appeal / progress to a formal appeal?					
4. Have you considered the range of dispute handling tools that might reduce the necessity for a stressful / costly appeal to a formal tribunal / court? In particular: <ul style="list-style-type: none"> • by reference to a neutral case handler to provide information to an appellant • reference to an internal complaints system or review by a more senior person not involved in the original decision • use of an independent complaints handler • invitation to mediate / conciliate / neutrally evaluate 					
5. Do you use external evaluation, peer review or challenge in seeking continuous improvement in efficiency?					

Strengths	Weaknesses
Opportunities	Risks

7. Adopt the highest standards of behaviour, seek to learn from experience and continuously improve

Self-assessment questions	***	**	*	!	?
1. Do you publish clear customer service and operational standards and matching performance data by which you expect your service/the council to be judged?					
2. Do you have an accessible and published means by which service users can complain about the way they are treated?					
3. Is the effectiveness of your decision-making and appeals-handling performance monitored in an integrated way with the council's other performance management processes, to alert you to opportunities to address underperformance, improve accuracy, fairness, consistency and customer service?					
4. Is there scope to consider such information at front-line, management and leadership levels, at appropriate intervals?					
5. Can the council /your service demonstrate that governance arrangements relating to decision-making and complaints and appeals handling are consistent with the Nolan principles?					
Strengths	Weaknesses				
Opportunities	Risks				

Producing an action plan

When staff have completed the checklist and noted the strengths, weaknesses, opportunities and risks that they have identified, they use them in workshops that follow the assessment to prioritise areas for improvement.

The service management team should consider the outcomes of these workshops and develop a plan based on the following questions:

- To what extent do the principles for good administrative justice permeate across all the decision-making activities of the service?
- How can the council as whole ensure that the principles are adopted and reinforced as values across the organisation, for example by incorporation in corporate statements or service standards, or celebration of good practice? How and when should service managers check and monitor adherence to the administrative justice principles and make improvements in the way staff make decisions?

Tool 3

Assessing the cost of appeals

Our case studies show that costs to the council and the administrative justice system more widely increase as appeals progress through the administrative justice system. In addition, appeals may become more common in some service areas as financial pressures on councils increase. For the council, one of the benefits of resolving complaints at an early stage is that it can prevent appeals and complaints taking up staff time ([Exhibit 2](#)).

The case studies show examples of how a costing exercise can help identify the scale of the cost involved in dealing with reviews and appeals, as well as which stage in the process may draw the most resources. Creating a table such as [Exhibit 2](#) is relatively straightforward, as it does not attempt to work out an exact cost of appeals, but an approximate cost for comparative purposes. In the example below, we used staff salary costs to work out the relative cost of each stage of the process. This is the amount of time (in hours) that each member of staff working on the appeal spent on each of the appeal tasks and multiplying by their hourly rate.

Although such a methodology will not give an exact cost, as it excludes national insurance pension costs, central service costs and property costs, it is a 'good enough' method for comparing the cost of appeals processes across the council to establish priorities for further review and action.

Exhibit 2

The number and cost of complaints (social care appeals) in East Lothian Council

Stage	Cost of each stage (range)	Number of complaints	Cumulative cost to the council per case ¹	Total annual cost to council for each stage
Complaint at the front-line	£10 – £50	29	£30	£870
Complaint + investigation	£400 – £500	48	£480	£23,040
Complaints review committee (in addition to investigation)	£700 – £800	3	£1230	£3,690
Response to SPSO (in addition to CRC and investigation)	£300	6	£1530	£9,180
Judicial review	£30,000 – 50,000	1	£41,530	£40,000

Note: 1. We calculated the cost using the midpoint of the range at each stage.

Source: East Lothian Council, Scottish Government

Tool 4

Process mapping

A process map is a visual aid for picturing work processes. Using process maps can promote new thinking and improvements in decision-making processes. The maps can show the processes involved, the key activities and decision-making points that make up each process, the sequencing of those activities, the information and resources required and the outputs produced by each activity.

Although the service user is concerned about service quality and good decision-making, rather than the background processes, to make good decisions it is essential that each individual process delivers what is required. If any one part of the process fails then there is a risk of poor decision-making. This is particularly the case where a multi-agency approach is required, such as in social care assessments or in the assessment of pupils with additional support needs.

Mapping processes, particularly those that are very complex, such as in planning, can assist services in ensuring that councils make good decisions and that the service user gets what they are entitled to. Process maps can help good decision-making in a number of ways:

- they ensure that managers and staff understand all the activities that make up the process – the sequence, resources required and the standards and performance targets to be met
- roles and responsibilities can be agreed and defined, ensuring everyone involved in the process, regardless of where they are in the organisation, knows what to do
- they help ensure that decision-making on a multi-departmental or multi-agency basis is integrated so that the service user does not fall into the gaps between departments and different organisations
- they help ensure that service user requirements are properly understood. A key part of process mapping is agreeing the outputs required from the process, for example a care plan including intended outcomes.

How complex flowcharts need to be depends primarily on what they are for and who will use them. The purpose is not to produce a complex sophisticated diagram, but to help the service improve its performance by understanding its decision-making processes better. [Exhibit 3 \(page 44\)](#) shows a simple process map showing the parking ticket process from a citizen's point of view. This can be helpful for staff explaining the process to customers, and to customers themselves.

Process mapping also provides an ideal opportunity to benchmark processes with those of other councils to compare performance and identify opportunities for improvement. They can help in comparing the resources and costs involved as well as the quantity and quality of the decisions made.

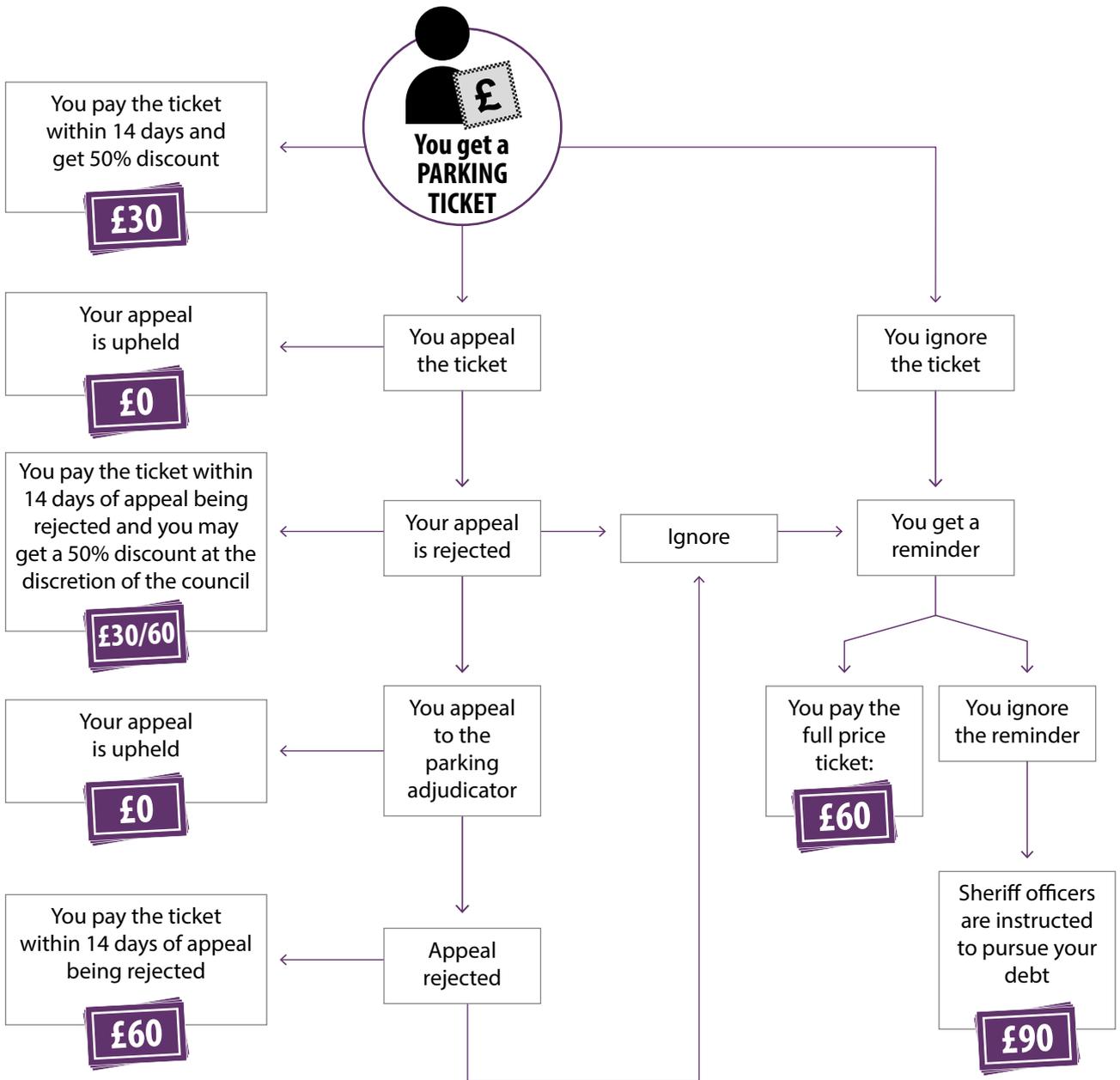
Deciding which decision-making processes to map

As councils have a huge number of decision-making processes it is not possible to examine all of them within a short time. Councils need to prioritise, for example by looking at:

- processes in an area of critical importance to those affected by the decision which a council must get right to provide a quality service
- those processes where there appears to be a problem, for example those generating a lot of appeals or complaints
- processes where it is felt the service is underperforming compared with others, for example if statutory timescales are being missed.

Exhibit 3

A process map showing the parking ticket process from a citizen's point of view



Who should be involved in process mapping?

Process mapping is primarily about trying to see where you can improve the decision-making process. To get the most out of process mapping you need to involve the right people. This will vary from service to service, and roles and responsibilities will need to be defined. It can be helpful, either formally or informally, to involve the following:

- a senior manager with the authority to make changes to the process
- operational staff involved in the process being mapped
- someone with in-depth knowledge of the relevant law or regulations, and the council policy
- if the process involves other departments or agencies, representatives from each
- In some instances councils may wish to involve user groups to consider their views, particularly where there has been a significant number of appeals and complaints.

Tool 5

Potential performance measures for administrative justice processes

Timescales

It is important to ensure that decision-making processes where decisions affect members of the public meet statutory timescales, and it is therefore essential that information on council performance in meeting statutory timescales is collected and reported to council members.

Where the council has published its own (non-statutory) targets for making decisions and for dealing with reviews and appeals it is equally important that these are reported on.

Potential performance measures

Administrative justice outcome measures, including progress against the council's own key performance measures could include:

- the number of decisions made in key areas of administrative justice
- the time taken to make decisions
- the number of avoidable errors made in each decision-making system
- the number of reviews/appeals made against decisions, including:
 - the number upheld and the reason for errors
 - the number not upheld and the reason for making the appeal
- the time taken to resolve reviews and appeals
- the number of complaints about each system
 - the number of complaints upheld
 - the number of complaints not upheld
- the time taken to resolve complaints
- the cost of appeals and complaints (staff costs as well other costs, eg legal costs)
- comparative performance against similar councils.



STAJAC

Scottish Tribunals & Administrative
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