

STAJAC meeting 24/06/15 - Paper 10.1

Consultation responses re Future of the Committee

1. The following have responded:

- Scottish Public Services ombudsman
- British Medical Association Scotland
- Aberdeenshire Council Criminal justice Social Work Service
- Scottish Children's Reporter Administration
- Chris Evans
- Lady Smith – President of Tribunals
- The Law Society for Scotland
- Glasgow Council Social Work Service
- North Ayrshire health and Social Care Partnership
- Scottish Independent Advocacy Alliance
- Ann Morton State Hospital Board for Scotland
- Jessica Burns
- Capability Scotland
- Accountability Scotland
- Mr John Colledge
- Citizens Advice Scotland.

2. Generally, the responses have been supportive of the need for a body such as STAJAC, and in agreement with the proposals for a future committee as set out in our consultation paper. The responses are sufficiently brief to be attached in full below (appendix A), and therefore have not been summarised at this stage.

3. Specific comments and suggestions will be reflected, where relevant, in the revised paper (see paper 10.2). The consultation responses should therefore be read in conjunction with paper 10.2.

Response 1

SPSO

Scottish Public Services Ombudsman (SPSO) response to the consultation on Future arrangements for carrying out the functions of the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC)

About SPSO

The Scottish Public Services Ombudsman (SPSO) is the independent organisation that consider complaints from members of the public about devolved public services in Scotland. Under the Public Services Reform (Scotland) Act 2010, the SPSO has been given a lead role in improving the handling of complaints by public sector organisations in Scotland

Consultation Questions

1. *Do you agree that there is a need for a committee such as STAJAC?*

Yes. The relationship between citizen and state is one where the significant differences of power mean that it is fundamentally important that decision-makers are supported to get decisions right first time and also that systems of redress, the means by which a citizen can seek justice, are simple and accessible. There are, potentially, significant benefits to be had from having an organisation like STAJAC, with the additional security of a more permanent status, giving an independent overview of the system and helping to encourage improvements.

2. *Do you have any comments about the successes and/or limitations of the committee, as set out in this paper?*

We consider that, in a very short period of time, the Committee has already developed a reputation for being user focussed and for clear, independent advice. We agree that the breadth of this area and the relatively short planning period of two years has meant the Committee has had to focus its resources. It has done so successfully but we are aware that this has meant the Committee has been unable to take forward projects that they would have like to include in that programme.

3. *Do you agree that a future Committee should have the main functions listed in this paper? Do you have any additional comments on these?*

We agree with the functions suggested. We would highlight the importance of research in this area which is lacking. In particular, what research there is has focused on the most visible aspects of the landscape, ourselves and tribunals. There are real gaps in working out how to best support front-line decision-makers.

4. *Do you agree that a future Committee should have the main characteristics set out in this paper? Do you have any additional comments on these?*

We agree with the main characteristics set out by the Committee.

5. *Do you agree with our proposals on the membership of a future Committee?*

We agree with the proposals for a membership that reflects the breadth of interest in and the full extent of this area. In particular we support the importance of on-going user representation.

6. *Do you have any other comments on anything in this paper which you think we should take into account?*

We have no further comments to make.

Response 2

**British Medical Association's
Scottish General Practitioners
Committee (SGPC)**

BMA

Scotland

10 June 2015

Response to the draft consultation paper on the *Future arrangements for carrying out the functions of the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC)*

Dear Sir/Madam

Thank you for the opportunity to respond to the above consultation on arrangements for the continuation of STAJAC's functions after the interim committee's end date of November 2015. We have looked at the proposals particularly in relation to STAJAC's role in scrutinising NHS Tribunal which deals with independent contractor GPs held to be in breach of their terms and conditions of service.

The BMA's Scottish General Practitioners Committee (SGPC) supports the proposed creation of a more permanent committee to carry out the current functions of STAJAC and believes it is essential for a devolved body to have oversight of the administrative justice system in Scotland. The committee also supports the described extended role for STAJAC, in particular the suggestion that the new committee would be an independent and accountable review body.

We would agree with the proposed functions as outlined in the paper, in particular the suggestion that the committee should encourage best practice, facilitate coordination of administrative justice development both within Scotland and across the UK and that it should scrutinise the administrative justice system and tribunals system in devolved areas. In order to ensure the committee would be as effective as possible in its role we would also support suggestions that it should have the power to commission research and should benefit from policy support from employed staff.

We hope this response is helpful; thank you again for the opportunity to comment.

Yours sincerely,



Carrie Young
Head of Primary Care

Response 3

Aberdeenshire Criminal Justice Social Work Service (Communities Directorate)

Consultation Questions

1. Do you agree that there is a need for a committee such as STAJAC?

This response has been prepared for Aberdeenshire Council's Criminal Justice Social Work Service (Adult Services). Although the STAJAC does not have a direct bearing on the work of the Criminal Justice Social Work Service, CJSW does provide a service to courts. More generally, as part of the local authority, consideration can be given to the following from the 2013 Advice to Scottish Government Paper from the Administrative Justice and Tribunals Council Scottish Committee:

'Administrative justice is often referred to as the Cinderella of the Justice system, but it is the aspect of the overall justice system with which the vast majority of people will come into contact through everyday life. The State makes decisions which affect each of us individually and collectively, and the administrative justice system should provide the framework within which everyone should be able to have confidence that those decisions are both proper and are taken properly.' (p10)

As stated in the 2013 Advice, during the 2011 Consultation,

'A common thread of responses was that AJTC was a valuable body, independent of Government, able to provide a holistic overview' (s16, p3 of 2013 Advice).

The UK Parliament's Public Administration Select Committee report of 2012 also noted

'oversight by an entity independent from Government is valuable and should be continued in some form. The MoJ, as a part of Government, cannot replace these functions. If these are functions worth preserving, the Government will need to revisit its plans. Concerns were also raised about the resources and expertise which would be available within the MoJ, particularly as substantial elements of the administrative justice system lie outside its current remit. '(cited s17, p4 of 2013 Advice).

The Leggatt Report of 2001 referred to the Council on Tribunals (the predecessor of the Committee) as 'the hub of the wheel of administrative justice' (s 23, p 7 of 2013 Advice).

This consultation paper lists the key characteristics of any future Committee (p6 of consultation paper). These give the required element of accountability through:

- Defined work plans and annual reporting to the Scottish Parliament
- Regular engagement with stakeholders
- A varied and credible membership which enables the voice of service users to be reflected in deliberations
- The ability to legally contract and potentially establish as a statutory body.

Taken together, the information provided points to an on-going need for a credible body, potentially established on a statutory footing which operates independently from the Scottish Government and is held accountable in its own right.

2. Do you have any comments about the successes and/or limitations of the committee, as set out in this paper?

It is accepted that establishing the committee on a statutory footing may not reflect Scottish Government practice up to this point.

The need for annual reporting by the committee should keep it focused to task and also provide visible accountability.

The issue of adequate policy support for the Committee needs to be addressed for the new committee to reach its full potential.

The previous committee had a time limited remit and it is to be hoped that its successor has the potential to be more ambitious as it will be established as an open ended entity.

3. Do you agree that a future Committee should have the main functions listed in this paper? Do you have any additional comments on these?

There are comments relating to this in the answer to question one. A central element has to be as a conduit for the views of stakeholders, with a voice being given by those who are directly affected by the work of administrative justice and tribunals.

This is reflected at p5 of this paper:

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

All of the main functions listed at p6 of this document are appropriate to the committee and will enable it fulfil the above area.

4. Do you agree that a future Committee should have the main characteristics set out in this paper? Do you have any additional comments on these?

The future committee characteristics are listed at p6 of this document:

- Independent, and seen to be independent, of both the Scottish Government and the Scottish Courts and Tribunals Service.
- Accountable, and achieve this by formulating Workplans and reporting formally to Ministers/the Scottish Parliament annually. The Committee should also sit clearly within the remit of the Scottish Parliament Justice Committee.
- Proactive and Visible- active and regular engagement with stakeholders.

- Able to command Respect- experienced membership making well considered, reasoned and where appropriate, evidenced observations, contributions and recommendations.
- Able to enter into contracts/ commission research and employ staff in its own right, if at all possible. Making the Committee a statutory body would also allow it to spend money, recruit and contract in its own right.

All of the above are appropriate to the future committee.

5. Do you agree with our proposals on the membership of a future Committee?

Aberdeenshire CJSW Service would be in agreement with the above as listed at p 7 of this document. An important element will be engaging as wide a relevant skills spread via open appointment as possible. Appointments of a reasonable length will enable the retention and development of expertise.

In addition to Committee members, adequate support to the Committee is also required.

6. Do you have any other comments on anything in this paper which you think we should take into account?

Please see preceding answers which we believe cover the relevant areas.

Response 4

Children's Reporter Administration



Thank you very much for the opportunity to comment on proposals on the future arrangements for the functions of the STAJAC. This response is being sent on behalf of Children's Hearings Scotland (CHS) and the Scottish Children's Reporter Administration (SCRA).

CHS is the national organisation responsible for the recruitment, training and support of volunteer children's panel members who make decisions about children at children's hearings. SCRA is the national organisation that facilitates the work of children's reporters within the children's hearings system, deploys and manages staff to carry out that work and provides accommodation for children's hearings.

We do not have comment to make on the specific questions asked as part of the consultation. However, we would welcome clarification about whether the children's hearings system is included within the proposed remit of the future committee. A children's hearing is a Scottish tribunal but we would not consider the children's hearings system to be "administrative justice". There are provisions within the terms of the Children's Hearings (Scotland) Act 2011 which give members of the AJTC, or the Scottish Committee, the right to attend children's hearings and to receive information provided as part of those hearings.

If the children's hearings system is within the proposed remit, we would welcome further discussion about how the Committee envisages its role within the system given the distinctive character of the hearings system when compared to other tribunals. We welcome the emphasis within the proposals that Committee's work be focussed on the interests of system users and ensuring that the user's needs are at the centre of the system and would be delighted to discuss how the Committee could contribute to the work happening in this respect within the children's hearings system.

Please do not hesitate to contact me at CHS (alyson.evans@chs.gsi.gov.uk or 0131 244 4741) or Nick Hobbs, Policy and Public Affairs Manager at SCRA (nick.hobbs@scra.gsi.gov.uk or 0300 200 1604) if you would like any further information or discussion.

Response 5

Chris Evans

I have only just has the time to read your paper, but feel very strongly that STAJAC should continue and agree with the questions set out at the end. I am sorry not to be able to give more detailed answers/comments, but feel STAJAC should be given more "status" and much greater recognition of the potential work which has been almost impossible to achieve due to funding/resource constraints. There is a need for an independent arms length body.

I am a mental health service user and attended the event in 2014. I have experience of the Mental Health Tribunal service. The publication "Just News" has been very useful, and much appreciated when I circulated it in Highland.

Apologies for this very "flimsy" reply

Chris

Volunteer for HUG (Action for Mental Health); Board member for Advocacy Highland and VOX

Response 6

Lady Smith: The President of the Scottish Tribunals

1. Do you agree there is a need for a committee such as STAJAC? –

Yes. Such a committee brings an independent perspective to policy and practice as it affects administrative justice and tribunals. That is of fundamental importance. Also, such a committee should be able to forge and maintain direct links across the operation of administrative justice and tribunals and organisations that work with and represent its users, so as to enhance their ability to achieve the best possible outcomes for users whilst having due regard to proportionality. It should be able to foster collaborative working across relevant organisations with a view to resolving disputes efficiently and holistically.

2. Do you have any comments about the successes and/or limitations of the committee, as set out in this paper?

I have no reason to doubt the accuracy of STAJAC's report of its successes thus far. It is consistent with what has been reported and discussed at meetings of the Scottish Tribunals Forum. As for its limitations, I agree, for the reasons they advance, that current constraints do seem to indicate that the effective working of the committee will not be sustainable in the long term.

3. Do you agree that a future committee should have the main functions listed in this paper? Do you have any additional comments?

I agree with what is proposed. I would, however, add a caveat regarding the commissioning and co-ordinating of research. It will, I consider, be important to see to it that STAJAC does not duplicate research work that is being done elsewhere. For example, the UK Administrative Justice Institute, which is a Nuffield Foundation funded project designed to initiate and further empirical research into administrative justice, is currently active throughout the UK; if STAJAC were proposing research, it would seem to be pointless for them to cover the same ground. Put shortly, the point is that whilst it may be appropriate for STAJAC to commission research, it may not always be necessary to do so. Otherwise, all functions proposed should add value to the system.

4. and 5. Do you agree that a future committee should have the main characteristics set out in the paper and do you agree with our proposals on the membership of a future committee?

Yes. Of particular importance is the proposal that the committee is and is seen to be independent of government thus reflecting the changes recently achieved under the Tribunals (Scotland) Act 2014. It could also be of considerable value if STAJAC were able to be proactive by, for instance, initiating and enabling discussion and engagement amongst and between all those involved with persons who are the subject of administrative decisions and users of tribunals – whether with a view to facilitating collaborative working where appropriate or to identifying where practical and constructive advice can be provided to government. With regards to the period of appointments, I would suggest a term of four years rather than two in order to reduce the frequency of the necessary process.

6.No.

Introduction

The Law Society of Scotland (the Society) aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members, but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

To help us do this, we use our various Society committees which are made up of solicitors and non-solicitors to ensure we benefit from knowledge and expertise from both within and out with the solicitor profession.

The Law Society of Scotland's Administrative Justice Sub-committee (the committee) welcomes the opportunity to comment on the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC) consultation: Future arrangements for carrying out the functions of the Scottish Tribunals and Administrative Justice Advisory Committee.

The committee met with STAJAC members in November 2014 and March 2015 to discuss areas of mutual interest and concern and to consider closer working arrangements between the two bodies. The committee wish to put forwards the following comments in response the questions contained within the consultation document.

Q1 Do you agree that there is a need for a committee such as STAJAC?

We believe that it is important to ensure that the interests of the users of the administrative justice system are represented. This is best achieved, in our view, by an independent body having oversight of the administrative justice system. We believe that over the past two years STAJAC has fulfilled that remit. Going forward, we would suggest that a committee or body, with a similar or identical, remit must be appointed on a permanent basis. In addition, responsibility for oversight of administrative justice should remain a distinctive function from the Executive, and must not be subsumed within the role of the Scottish Civil Justice Council. Any committee or body which succeeds the current arrangements for STAJAC will need to be fully transparent and independent.

We therefore agree with the consultation's proposition that there is a need for a body such as STAJAC to provide effective oversight of administrative justice in Scotland.

Q2 Do you have any comments about the successes and/or limitations of the committee as set out in this paper?

So far as it is possible to measure the perceived successes and limitations of STAJAC after a relatively short period of time, it appears to have been reasonably successful in a reactive sense, judging by the responses it has made to government consultations and placed on its website. We would suggest that perhaps STAJAC could have played a more proactive role if it had been properly resourced. Many of its apparent limitations in terms of its powers, remit and effectiveness arise, we would suggest, because of its constitution and structure, which fall far short of the

recommendations set out in the advice to Ministers given by the former Scottish Committee of the Administrative Justice and Tribunals Council (SCAJTC) in 2013¹. In our view, STAJAC:

- is not sufficiently independent since its members were not appointed through an open, fair and transparent process;
- is not properly resourced and has no staff of its own;
- cannot commission independent research;
- has only been in existence for 18 months, and
- is not sufficiently accountable for its work.

We endorse entirely the comments by STAJAC concerning its relationship with the Scottish Parliament. We believe that strong links with the Parliament are essential if the Committee or future body is to fully discharge its role.

On a more positive note, we note the documents and record of activities as set out on STAJAC's website, and we congratulate STAJAC on those. However, the publication of a more general annual report from STAJAC at the end of its first year of operation would have been helpful. Such annual reports are an essential feature of an independent but accountable body. We also welcome the project which STAJAC is reported to be undertaking with Audit Scotland and separately, its work to map out the administrative justice landscape. We look forward to learning further details about both these initiatives in due course.

Q3 Do you agree that a future Committee should have the main functions listed in this paper? Do you have any additional comments on these?

We suggest that in setting out a definition for administrative justice against which to list its functions, any future Committee may wish to adopt the definition of administrative justice as set out in the Tribunals, Courts and Enforcement Act 2007 –

'the overall system by which decisions of an administrative or executive nature are made in relation to particular persons, including: the procedures for making such decisions, the law under which such decisions are made and the systems for resolving disputes and airing grievances in relation to such decisions'.

We suggest that the list of functions should include, and ideally lead with, 'championing the needs of users'. We also suggest that the functions could be a bit more specific as to their aims; for example, with regard to 'encouraging best practice', some reference to 'right first time' and 'effective dispute resolution' could be added. It is also not clear what the specific purpose is of the function of 'encouraging networks' (which the former AJTC achieved through its annual conference).

We agree that any future new body should take a close interest in the scrutiny of tribunal rules and should be represented on the Tribunals Committee of the Scottish Civil Justice Council.

¹ http://ajtc.justice.gov.uk/docs/Advice_to_Scottish_Gov_Jan_2013.pdf:

Q4 Do you agree that a future Committee should have the main characteristics set out in this paper? Do you have any additional comments on these?

We believe and suggest that any future new body should be, and be seen to be, independent. In order to achieve this, we would further suggest that consideration should be given for it to be established on a statutory basis to enable it to operate effectively at arm's-length from Ministers and to put it on an equal footing with the Scottish Civil Justice Council. If, for whatever reason, this is not possible, then there should be some form of memorandum of understanding (or framework agreement as the paper describes it) setting out the parameters within which the new body will operate such that it can function with the maximum degree of independence.

The new body should be accountable to the Scottish Parliament, and be required to produce an annual report giving an account of its work and achievements during the year and setting out its workplan and aims for the ensuing year(s).

We would suggest that item (d) 'Able to command respect' is not so much a characteristic in itself but flows naturally from characteristics (a) to (c). We endorse the necessary characteristics for such a body as set out in the SCAJTC's advice to Ministers in 2013.

Q5 Do you agree with our proposals on the membership of a future Committee?

We believe that it is important to ensure that appointments to any new body should be by means of an open, fair and transparent process, ideally, managed by the Judicial Appointments Board for Scotland. The period of appointment for any member should, we would suggest, be three to four years with the possibility of renewal for a second term. In our view, two-year appointments may be too short, although it may be necessary to have some shorter appointments at the outset to avoid the risk of the entire Committee having to be replaced at the same time.

Whilst we agree with the proposition that the membership should demonstrate balance across administrative justice and tribunals, we would suggest that it may not be appropriate for tribunal judiciary or administrators, or ombudsmen to be included as full members of any future body because of the potential conflict of interest in their being members of an independent oversight body. Rather, they might be invited to attend meetings as observers or to attend from time to time by invitation to address particular issues on the agenda.

It is also suggested 'user interests' be distinguished from 'users' and the reference to 'advice providers' also needs to be clarified.

Overall, we believe that the list of potential membership should not be unnecessarily exhaustive and welcome a reference to membership covering a wide range of skills and experience.

Finally, we suggest that there should be provision for members to be remunerated by reference to existing practice in respect of appointments to public bodies (rather than by reference to whether or not they attend in consequence of their employment).

Q6 Do you have any other comments on anything in this paper which you think we should take into account?

We believe that consideration must be given to the relationship between any new body and the Scottish Civil Justice Council (SCJC), particularly in the light of the assumption that the SCJC should assume responsibility for the formulation of tribunal rules with effect from 2017.

Overall, we note the rather 'low-key' approach of the consultation paper. Administrative justice is an area of real and substantial importance in the lives of the large numbers of people who use it.

It is a dynamic system which we believe is all too often relegated to a position in which its significance can be underplayed and diminished. It is tempting to conclude that proper monitoring by an independent body in this area may not be seen as convenient by Scottish Government generally. However, the volume of decisions taken by public bodies each year, the importance of the need to get more decisions 'right first time', the growth of punitive practices such as sanctioning are among the issues which militate in favour of a more rather than less robust monitoring system. Putting in place effective new arrangements for a new body to oversee administrative justice in Scotland provides an ideal opportunity to set a clear benchmark for the future in this important area of law for the citizens of Scotland.

Response 8

Glasgow City Council Social Work Services

Consultation Response

1. Do you agree that there is a need for a committee such as STAJAC?

Yes. With current changes on the horizon there is a need for a committee such as STAJAC to ensure that there is a coherent and accessible system of appeals that serves the interests of the residents of Scotland.

With the proposed devolution of powers within the Smith Commission and subsequent Scotland Bill there is an intention for responsibility for tribunals in Scotland to be devolved. Currently the Scottish Tribunal Service has limited jurisdiction but will expand when the proposals in the Bill become law.

- There may be scope to revisit the issue of whether or not there should be fees for lodging employment appeals.
- The intention to devolve powers for certain welfare benefits to Scotland will then require a new appeal mechanism which could come under the jurisdiction of the Scottish Tribunal Service.
- The possibility of the transfer of the responsibility for the administration of appeals for reserved welfare benefits where the rules of entitlement would remain reserved but the administration of the appeal is devolved.

Collectively these present challenges along with opportunities for change which require the oversight of a committee or body charged with the responsibility of ensuring that there is no loss of access to social justice.

2. Do you have any comments about the successes and/or limitations of the committee, as set out in this paper?

If the committee is to deliver its remit effectively then it clearly does need a (small) pool of dedicated administrative and policy staff to coordinate the work of the committee and translate its deliberations and advice into deliverable action plans and structured policy.

It also may wish to review its pool of stakeholders. Despite a strong focus on social welfare matters and on complaints processes, the work of the committee does not appear to have a high profile amongst management and decision makers for those matters at local authority level.

There should be, as stated, a stronger link with Scottish Parliament. Extending the influence of committee with policy and law makers can only enhance its effectiveness, whilst extending its links with practitioners and consumers will better inform its work and the pragmatic utility of its recommendations to those policy makers.

3. Do you agree that a future Committee should have the main functions listed in this paper? Do you have any additional comments on these?

No, the remit is too wide and duplicates work done by others. In particular the development of best practice, commissioning research and encouraging networks. There is already a body of research on what works and various interested and engaged parties formulating and promoting best practice in individual spheres of administrative justice. Best practice in respect of existing processes is known, if not always applied. A centralised committee cannot remove the barriers to best practice being applied within the context of the complex dynamics of delivery systems and organisations. The committee should tap into research, consultation and best practice already in the public domain, not create new work in these areas. Additional research is not required except in the narrow sense of officers working for committee researching what is already in the public domain or consulting with small groups of interested parties in order to inform the deliberations of committee.

The real need for a body like STAJAC is at a strategic level, scrutinising and analysing processes and proposed developments, influencing policy and law makers (in particular at governmental level) to ensure that both the exercise and development of existing systems of administrative justice are the most accessible and effective for consumers whilst also being the most efficient and least wasteful of the public purse. This would be in terms of the improved coordination of existing administrative justice processes, reduction in multiple parallel or sequential avenues of redress, the elimination of duplication of processes both within and between different systems, elimination or reduction of inefficient or excessively lengthy means of delivering administrative justice processes from the consumer's perspective. This in part would be accomplished by ensuring that processes already in place or being developed that may impact upon the rights of consumers takes place in a coordinated fashion founded upon the consumer's fundamental right to challenge such decisions in a fair, considered and transparent manner. This not only covers the merging of court and tribunal processes referred to but other areas of social policy impacting on administrative justice for consumers for example the work currently being done by Scottish Government and SPSO on producing model complaints processes in the public sector or the integrating of health and social care budgets, care delivery and decision making.

The main listed functions that should form the ongoing basis are therefore the encouraging of coordination of administrative justice development, the coordination with other parts of the UK (and indeed the EU in terms of consistency of observance of rights), the oversight and scrutiny of administrative justice and tribunal systems in devolved areas, the monitoring of development in those areas and the raising of awareness amongst policy

and decision makers as to those developments and significant changes which will impact on future policy and service delivery.

The remit referred to on page 2 of the paper should continue, with the exception of the aim of building networks to encourage sharing of best practice.

4. Do you agree that a future Committee should have the main characteristics set out in this paper? Do you have any additional comments on these?

Yes, with the exception of it having the role of commissioning research set out within point (e) page 6. We also do not agree that the committee requires a statutory footing in order to execute the functions described in this paper. Any competent and respected body of experts appointed and constituted as described giving useful advice to ministers and parliament should be able to improve the development of administrative justice processes in the manner described without requiring the statutory power to enforce its advice.

5. Do you agree with our proposals on the membership of a future Committee?

Yes.

6. Do you have any other comments on anything in this paper which you think we should take into account?

No.

Response 9

North Ayrshire Health and Social Care Partnership

Future Arrangements for Carrying out functions of the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC)

Consultation Questions / Responses

1. Do you agree that there is a need for a committee such as STAJAC?

Yes we believe the committee provides a level of independence and an opportunity for people who are users of the system to have their perspective/s represented.

2. Do you have any comments about the successes and/or limitations of the committee, as set out in this paper?

We believe the committees function, whilst being largely successful has been constrained due the lack of administrative support/ capacity. Whilst we support the idea of dedicated resource to assist in the administration and running of the committee we would caution against the suggestion of direct employment of staff by the committee.

3. Do you agree that a future Committee should have the main functions listed in this paper? Do you have any additional comments on these?

We are in agreement with the key functions as set out in the consultation document. The clear commitment to retain the system user as the key focus is laudable.

4. Do you agree that a future Committee should have the main characteristics set out in this paper? Do you have any additional comments on these?

Greater clarity on what is meant by the 'legal status' of the group and the comment to have the committee set up on a 'statutory footing' require further explanation. In particular it would be helpful to see detail of what the benefits are that this would bring to the committees functioning.

5. Do you agree with our proposals on the membership of a future Committee?

Yes we are fully in agreement with the increased emphasis on openness and transparency relating to the appointments of committee members. In particular we support the selection of the chair on this basis and with clear time periods set for office bearer.

6. Do you have any other comments on anything in this paper which you think we should take into account?

We have not further substantive comments to make.

STAJAC Consultation Response

1. Do you agree that there is a need for a committee such as STAJAC?

Yes, we feel it is important that there should be a similar committee to STAJAC in the future.

2. Do you have any comments about the successes and/or limitations of the committee, as set out in this paper?

Considering the size of the committee and the resources available to it we think the committee has achieved a great deal. Such a committee in the future should have proper support and staff to undertake tasks.

3. Do you agree that a future Committee should have the main functions listed in this paper? Do you have any additional comments on these?

Yes we think that a future committee should have the main functions listed.

4. Do you agree that a future Committee should have the main characteristics set out in this paper? Do you have any additional comments on these?

We agree with the characteristics listed in the paper.

5. Do you agree with our proposals on the membership of a future Committee?

We agree with the proposals on the membership of a future committee.

6. Do you have any other comments on anything in this paper which you think we should take into account?

n/a

Response 11

Ann Morton – Manager Patients' Advocacy Service

State Hospitals Board for Scotland

4. Do you agree that there is a need for a committee such as STAJAC?

No. Its functions would be better undertaken by a group established by the Scottish Courts and Tribunal Service. That group would have a wide membership drawn from users (both lay and professional) of the Tribunal with the same or similar remit to the STAJAC and an independent Chair. It would be ideal if it had to report annually to the Scottish Parliament, thus ensuring that its voice was heard.

5. Do you have any comments about the successes and/or limitations of the committee, as set out in this paper?

It seems to have done a fine job - except that very few would know that it existed

6. Do you agree that a future Committee should have the main functions listed in this paper?

Yes but for the Group within SCTS.

Do you have any additional comments on these? No

7. Do you agree that a future Committee should have the main characteristics set out in this paper?

No

Do you have any additional comments on these?

No

8. Do you agree with our proposals on the membership of a future Committee?

Yes - for the Group. But no need for such a formal and expensive appointment process

9. Do you have any other comments on anything in this paper which you think we should take into account?

We agree with all the aspirations of the existing committee but think it more realistic in staffing and financial terms to locate it within SCTS and not have it outside it; this way it loses some independence (but that is not much value if no one has to listen to it anyway - as has been demonstrated in practice) in exchange for a greater chance of influencing things

Response 12

Regional Tribunal Judge
Miss Jessica Burns



TRIBUNALS
JUDICIARY

MISS JESSICA M BURNS

REGIONAL TRIBUNAL JUDGE, SCOTLAND

FIRST-TIER TRIBUNAL, SOCIAL ENTITLEMENT CHAMBER

STAJAC Consultation questionnaire response

Consultation Questions

1. Do you agree that there is a need for a committee such as STAJAC?

No. I think that there exists, or could be put in place, other more appropriate and efficient mechanisms to achieve the remit of this body. There is no equivalent body in England and Wales and I have confirmed with colleagues in England that they do not perceive that the lack of such a body has been detrimental to the interests of SSCS Tribunal users. I cannot comment in respect of other jurisdictions or the wider administrative justice landscape.

2. Do you have any comments about the successes and/or limitations of the committee, as set out in this paper?

I have had little awareness of the work of the Committee as regards my own Tribunal (Social Security and Child Support in the Social Entitlement Chamber) since the committee was established in 2013. I appreciate that the Committee is limited by its budget and the voluntary nature of its members.

I attended the stakeholder engagement event held in April 2014. I had met once with the convener prior to that event but have had no contact since that time. I note that the Committee has managed to develop strong working relationships with stakeholders and this may be entirely accurate but I am unaware of any impact on the Tribunal for which I am responsible.

I also attended an afternoon event on 20 May hosted jointly by Glasgow University, the UK Administrative Justice Institute and Queen Margaret University which was considering the potential for administrative justice research in Scotland. It appears that the research objectives of STAJAC may well be covered by other bodies.

I have tried to search on the website to read past minutes of STAJAC and note that the last Minutes available date back to a meeting held in October

2014 so I am uncertain about its current level of activity. I imagine that it is primarily concerned with the devolved jurisdiction.

3. Do you agree that a future Committee should have the main functions listed in this paper? Do you have any additional comments on these?

I can only comment on each of the bullet points from the perspective of the jurisdiction for which I have responsibility.

- encouraging best practice
It is difficult to envisage how the STAJAC or any successor committee can encourage (or achieve) best practice through any additional mechanisms. I assume that the reference to best practice relates to both best practice within the first-tier decision making and at the Tribunal level. It is difficult to see how STAJAC can influence first tier performance which is a UK matter. The Tribunal has strict internal performance indicators and regular meetings with users which invariably indicate high levels of satisfaction with both administrative and judicial performance. Where any concerns are indicated I take appropriate steps to address these.
- encouraging the coordination of administrative justice development within Scotland
This is a function, so far as tribunals are concerned, which can be achieved through proper government management and the creation of a Scottish Courts and Tribunals Service headed judicially appropriately by a Senator of the College of Justice, currently Lady Anne Smith.
- facilitating of co-ordination with other parts of the UK
It is difficult to envisage what is meant by this. It is questionable to what extent this is necessary or how this could be achieved. There are regular meetings between judicial heads in all parts of the UK which relate to the same first-tier agencies. In my own jurisdiction these occur 8 times a year.
- encouraging networks
“networks” have no intrinsic value unless they are required to achieve performance aims. Jurisdiction specific networks are already in place through the Regional Appeals, Liaison Network with the SCS Tribunal and first-tier agencies such as DWP and HMRC; Annual Tribunal User Groups for SCS are held in 7 locations throughout Scotland; Scottish Tribunals Forum; the Reserved Tribunals Group.
- commissioning and coordinating research
There are other mechanisms to promote research. See above.

- oversight and scrutiny of the administrative justice and tribunals system in devolved areas
The Judge appointed to represent tribunals in Scotland has the responsibility and oversight for this. The accountability of the Scottish Parliament is such that if there were concerns these could easily be raised at Parliamentary level and addressed through that mechanism.
- monitoring development in reserved areas
It is difficult to see how an informal group can be more aware or better informed about developments in reserved areas than the managing judges in those fields and those working regularly within the specified fields.
- awareness raising amongst policy makers and decision makers
As regards the first-tier decision making of the DWP and HMRC, there are national meetings of HMCTS, judges and policy makers from those departments which work closely together to achieve better outcomes such as e-mailed decision notices and liaison over timetables for receipt of responses.

4. Do you agree that a future Committee should have the main characteristics set out in this paper? Do you have any additional comments on these?

No. I find it difficult to think how the expenditure required for such a group could be justified. The Scottish Council on Tribunals (and Council on Tribunals) did have a role when tribunals were very much less sophisticated and publicly accountable bodies than they are now.

One of the main functions is commenting on proposed legislation but this is more effectively done by those working consistently in the field.

5. Do you agree with our proposals on the membership of a future Committee?

No. For the reasons stated above.

6. Do you have any other comments on anything in this paper which you think we should take into account?

No except that the above comments are no reflection on the considerable work and energy of the existing members of STAJAC.

Jessica M Burns

5 June 2015



Policy Response

Capability Scotland

2nd June 2015

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

General comments

Capability Scotland campaigns with, and provides education, employment and care services to disabled people across Scotland.

Capability Scotland has a particular previous interest in reform to the administrative justice system in Scotland as a result of our involvement with the Justice Disability Steering Group (JDSG). The JDSG comprised representatives from the Scottish Government, the Association of Chief Police Officers in Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Court Service, the Law Society of Scotland, the Scottish Legal Aid Board and the Scottish Prison Service.

Capability Scotland managed an involvement programme with disabled people on behalf of the JDSG from June to December 2009. The project highlighted the numerous obstacles disabled people face in accessing administrative, civil and criminal justice. We are therefore keen to ensure that any changes to the administrative justice system in Scotland result in a system which is accessible to all and sensitive to those who use it.

Our main concern in relation to any successor body to the Scottish Tribunals and Administrative Justice Advisory Committee is that it has an adequate understanding of the obstacles to administrative justice faced by disabled people in Scotland. Research conducted by Capability Scotland revealed that 40% of disabled people did not feel they had equal access to Scotland's justice system².

Clearly this is not only a practical and moral concern, it is also a legal one. The Human Rights Act 1998, European Convention on Human Rights and the

² Findings of Capability Scotland's involvement project in partnership with JDSG, 2010 http://www.capability-scotland.org.uk/media/63459/jdsg_final_report_rh_21898_26908.pdf

International Covenant on Civil and Political Rights all guarantee a right of equal access to justice, free from discrimination. In particular, article 13 of the UN Convention on the Rights of Persons with Disabilities states that:

“State parties shall ensure effective access to justice for persons with disabilities on an equal basis with others including through the provision of procedural accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses in all legal proceedings.”

Capability Scotland believes it is essential that all bodies with a role in administering justice, including the Scottish Government, take positive steps to ensure that the needs of disabled people are taken into account at all stages of policy development.

The predecessor to the STAJAC, the Scottish Committee of the Administrative Justice and Tribunals Council (AJTC) made significant progress in making the Scottish Government more aware of many of the issues Capability Scotland has raised in relation to disabled people’s access to administrative justice.

In addition Capability Scotland believes that there is an urgent need for an effective right of appeal for all administrative decisions made by public bodies which impact upon the individual civil rights of disabled people. This is necessary if the Scottish Government is to fulfil its responsibilities under article six of the European Convention on Human Rights (ECHR) which states that:

‘in the determination of his civil rights, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal’.

For disabled people across Scotland the need for independent tribunals is particularly urgent in relation to decisions by public bodies, namely local authorities and Registered Social Landlords, on the provision of community care, and housing in the social rented sector.

Our advice team receives numerous calls from disabled people each year who are unhappy about decisions made about their packages of care and/or their access to suitable housing. These same individuals find that they have no right of appeal having gone through an unsatisfactory complaints or review procedure. The following case studies provide an illustration of this:

Case Study 1

A man who uses a Capability Scotland support service in Glasgow was re-assessed for Self-Directed Support and saw his care at home package cut in half despite the fact that his needs had increased due to poor health. The impact on his day to day life in terms of what social activity he was then able to do led him to experience a severe deterioration in his mental and physical health. He sought legal advice about how to challenge this decision and followed a complaints procedure to no avail. It was only when his care needs were outlined by Capability Scotland under the Adult Support and Protection process that his care package was re-instated.

Case Study 2

A man contacted our advice service to say that following a housing needs assessment by an OT he was encouraged to move into a property that was classified as being wheelchair accessible. The property is not meeting his basic needs, he cannot use his kitchen, he has great difficulty using his bathroom and shower and he cannot operate lighting and temperature controls in his house. He also has nowhere to store his wheelchair and other equipment relating to disability. His physical and mental health have suffered as a result. The local authority are refusing to provide further adaptations to his house to meet his unmet needs. He has followed a complaints procedure which he found unsatisfactory and would like to appeal the original decision that the house would meet his assessed needs but is unable to do so.

The impact community care and housing decisions can have on the human rights of disabled people and their families and carers cannot be underestimated, with failures in the provision of care and suitable housing having been held to constitute violations of the right to life, the right to freedom from inhuman and degrading treatment and the right to family life.

We do not accept that either internal complaints procedures or judicial review provide an adequate mechanism for appeal for disabled people. Judicial review does not provide a remedy for decisions that are based on inaccurate information or those which do not meet the extremely stringent test of unreasonableness. Even where a decision could in principle be taken to judicial review, in practice, such an outcome is highly unlikely due to a number of reasons including lack of knowledge of this course of action, inability to access a solicitor willing to represent or being unable to access legal aid and the process therefore being too costly.

Judicial review is expensive, poorly understood and extremely inaccessible, particularly to disabled people. Research undertaken by Capability Scotland on behalf of the Justice Disability Steering Group (JDSG) in 2009 found that disabled people are likely to experience additional barriers to court-based dispute resolution, including:

- Failure by courts to provide accessible information about procedures and/or provide a suitable means of communication for disabled people.
- A lack of appropriately trained solicitors willing to take on disability, equality and/or human rights based cases.
- A feeling of intimidation, particularly for those with sensory impairments and/or learning disabilities.
- The physical inaccessibility of solicitors' offices and courtrooms/buildings.

The importance of an independent appeals system goes far beyond the settlement of individual disputes. An awareness that community care and housing decisions can be quickly, easily and effectively challenged by an external tribunal will impact on the culture of Local Authorities and Registered Social Landlords; hopefully leading to decisions being better documented and easier to understand.

Vitally, independent tribunals should also help to address the imbalance of power between individuals and the public bodies who deal with community care and

housing cases. In many cases disabled people feel disempowered by a lack of information and a fear that using internal complaints procedures will prejudice important relationships they have built up with the staff providing them with a service.

The ability to challenge decisions relating to the assessment of need and allocation of tenancies within social housing is also particularly important for disabled people. Disabled people are not only significantly over-represented in the social rented sector, they can also have more specific housing needs which often must be fulfilled before they can live independently and enjoy their most basic human rights.

Together with the Glasgow Centre for Inclusive Living (GCIL), we are one of the Scottish Government's Key Strategic Partners for housing and disability. Capability and GCIL carried out a involvement project aimed at improving disabled people's access to suitable housing.

As part of this project Capability carried out a series of involvement events in 2015 in order to gather the experience of disabled people in relation to housing. At these events, many people said they felt that Registered Social Landlords do not take account of the needs of disabled people when allocating accommodation. In particular, many people felt that housing officers did not have the requisite expertise in disability issues to assess their housing requirements or their level of priority. In particular it was noted that people with hidden impairments (such as acquired brain injuries, mental health problems and autism) were not given priority because social landlords did not understand their conditions. This often results in inappropriate offers being made and no formal means of redress being available.

The Scottish Committee of the Administrative Justice and Tribunals Council (AJTC) report in 2012 supported our views on independent tribunals for community care and housing decisions. The report concluded that present arrangements for dealing with disputes over community care decisions in Scotland were unsustainable and that there was an urgent need to enable those who were dissatisfied with a community care decision to take it to an independent forum. In relation to housing the report recommended establishing a new housing tribunal to consider appeals against a wide range of disputed decisions made by local authorities and Registered Social Landlords.³

Our main contention in responding to this consultation is therefore our wish to see progress made on these recommendations by any successor to Scottish Tribunals and Administrative Justice Advisory Committee.

Specific points

1. Do you agree that there is a need for a committee such as STAJAC?

Yes. We believe that there is a clear need for a committee such as STAJAC to provide the Scottish Government with expert advice on the administrative justice system. A Committee such as STAJAC can provide independent oversight of the

³ Administrative Justice and Tribunals Council (AJTC) Scottish Committee (2012) Right to Appeal A review of decisions made by Scottish public bodies where there is no right of appeal or where the appeal procedure is inaccessible or inappropriate

system, a role that has become even more important with the proposed changes to the Tribunal system as a result of the Smith Commission. Our hope is that any successor committee can take forward the recommendations made by AJTC in relation to the right of appeal and improve the new tribunals system to the benefit of disabled people across Scotland.

2. Do you have any comments about the successes and/or limitations of the committee, as set out in this paper?

No.

3. Do you agree that a future Committee should have the main functions listed in this paper? Do you have any additional comments on these?

Yes, we agree with the main functions of the committee. We would like to see the committee ensuring that the administrative justice system meets the needs of all those with a protected characteristic under the Equality Act 2010.

4. Do you agree that a future Committee should have the main characteristics set out in this paper? Do you have any additional comments on these?

Yes. We agree that the primary focus of a future Committee should be to promote the interests of system users and champion an administrative justice and tribunals system that is accessible, responsive and has users' needs at its centre.

5. Do you agree with our proposals on the membership of a future Committee?

Yes. We would like to see the appointment of a member with personal experience of disability and/or significant experience of promoting disability equality within the public sector.

6. Do you have any other comments on anything in this paper which you think we should take into account?

No.

Contact Us

Thank you for the opportunity to respond to this consultation. If you require more information on this response, please contact:

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Response 14

Accountability Scotland

Consultation on future arrangements for carrying out the functions of the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC)

We write on behalf of **Accountability Scotland** who submitted PE 1449 to the Scottish Petitions Committee and otherwise pressed for a committee much as is being proposed. The petition was referred under rule 15.6.2 to the Justice Committee on 4th November 2014.

Here are our answers to the listed consultation questions:

1. *Do you agree that there is a need for a committee such as STAJAC?*
YES
2. *Do you have any comments about the successes and/or limitations of the committee, as set out in this paper?*
NO
3. *Do you agree that a future Committee should have the main functions listed in this paper? YES Do you have any additional comments on these?*
4. *Do you agree that a future Committee should have the main characteristics set out in this paper? YES Do you have any additional comments on these? The committee lacks truly effective representation of lay people with personal experience of the administrative justice system. There is also a need for members trained in investigation.*
5. *Do you agree with our proposals on the membership of a future Committee?*
YES, but see question 4.
6. *Do you have any other comments on anything in this paper which you think we should take into account? YES – see below*

We strongly recommend that the new committee takes over, or makes better arrangements for, the oversight of the SPSO. What is needed is a statutory body with a statutory right to investigate the SPSO. At present the Local Government and Regeneration Committee (LGR committee) oversees the SPSO, questioning the Ombudsman on his Annual Report. We do not criticize individual members of the LGR committee, but they have much else to think about and are not generally given time to digest relevant documents. When they question the Ombudsman on his annual report, they ask pertinent questions but lack time to notice, for example, that responses are not always answers. In short, there needs to be better provision for scrutiny of the SPSO's performance.

Unfortunately there is more to be said about the LGR Committee in relation to the SPSO. Particularly disturbing was their response to the more recent petition PE

1538 on the transparency of SPSO investigations. This was supported by the Public Petitions Committee, with the additional recommendation that the SPSO be investigated. When the LGR committee first met to consider this, they only had the relevant documentation because Accountability Scotland sent it to them at short notice. At the later meeting of the LGR committee to give fuller consideration of the petition, it was dismissed with minimal discussion on the grounds that the SPSO legislation had been re-considered too recently (i.e. at the end of Prof. Brown's term of office). This is a spurious argument, because what was then considered were aspects of the Act raised by Prof. Brown that did not include the issue raised by PE 1538. Presumably, the proposed new Scottish Tribunals and Administrative Justice Advisory Committee, had it existed, would have received the recommendations of the Public Petitions Committee without the involvement of the LGR Committee.

The new committee should be such that it can:

1. promote equality of arms in investigations. Accepting that complainants are always at a disadvantage, the committee should encourage adoption of the Netherlands principle of assuming in the first instance that a complainant is telling the truth, and not the opposite.
2. promote a duty of candour in all public bodies.
3. consider the injustice that results from individuals being unable to afford tribunals.
4. press for a statutory requirement that the effectiveness of complaints handling of all public bodies be investigated every (say) five years.

Peter Stewart-Blackler, Chairman

Richard Burton, Secretary

Response 15

Mr John Colledge

1. Do you agree that there is a need for a committee such as STAJAC?

Yes

2. Do you have any comments about the successes and/or limitations of the committee, as set out in this paper?

More contact with The Scottish Parliament would seem to be of benefit.

3. Do you agree that a future Committee should have the main functions listed in this paper?

Yes

Do you have any additional comments on these?

Might it be possible to have any input over the part played by the SPSO within the Scottish justice system and their reluctance to address maladministration and failure to provide a service within local authorities in particular? The LGRC refuse to address their failings.

4. Do you agree that a future Committee should have the main characteristics set out in this paper?

Yes

Do you have any additional comments on these?

No

5. Do you agree with our proposals on the membership of a future Committee?

Yes

6. Do you have any other comments on anything in this paper which you think we should take into account?

There appears to be a lack of accountability when failings are brought to the attention of local authorities. Anything that can be done to change that has to be a good thing from the public's point of view.

I am not part of a formal organisation. I have been involved in corresponding with City of Edinburgh Council, numerous councillors, MSPs, a number of MPs and the SPSO on behalf of between 24 and 30 local residents on and off over the past 15 years regarding maladministration that has led to four local breaches of planning control. These in turn have led to hardships/injustice, including in some cases, structural damage to some of our houses. This was avoidable as I pointed out potential problems in advance, (as the Planning Charters recommend).

When SPSO staff try to convince you that a development can be in two places at

once, and a developer can install a new gas mains through your back garden without you noticing the work being done, you know there is something very wrong taking place. The more digging we do, the more we are convinced that the SPSO Act 2002 is a very cynical piece of legislation which BUJs hide behind knowing they will do little or nothing other than maintain the status quo, rather than make any effort to fulfil the ombudsman's vision of improving service by addressing maladministration etc. Our own MSP, (former Justice Secretary Kenny MacAskill) acknowledged that the SPSO was a 'somewhat toothless ombudsman'.

Introduction

Citizens Advice Scotland (CAS) and the associated network of Citizens Advice Bureaux (CAB) form Scotland's largest independent advice and advocacy network. CAS is the umbrella organisation for Scotland's network of 82 CAB offices. These bureaux deliver frontline advice services throughout over 200 service points across the country, from the city centres of Glasgow and Edinburgh to the Highlands, Islands and rural Borders communities.

In 2013/2014, Citizens Advice Bureaux in Scotland advised clients on almost 560,000 new issues. This included 119,492 debt issues, 46,000 employment issues, and 40,000 housing issues. While many of these issues were resolved at a stage earlier than the need for legal intervention, over 22,000 issues were recorded as 'legal' meaning advice was provided on formal legal process.

CAS welcomes the opportunity to respond to this consultation on future arrangements for carrying out the functions of the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC). We commend the work of the Committee to date and its user-focused approach to the development of administrative justice and tribunals.

Key Points

- Citizens Advice Scotland strongly believe that there is a need for the functions currently undertaken by STAJAC to be continued
- We believe that a future Committee should consider all tribunals and administrative justice in Scotland, and not find itself limited to Scottish tribunals
- CAS believe that the functions of a future Committee should echo the functions which the Scottish Civil Justice Council currently has in relation to civil justice: particularly to keep the administrative justice and tribunals systems under review and to make recommendations for change

Consultation Questions

1. Do you agree that there is a need for a committee such as STAJAC?

Citizens Advice Scotland strongly believe there is a need for a Committee such as STAJAC. Administrative justice (including tribunals) is the facet of the justice system which citizens are most likely to encounter in their lives. It is essential that a body exists to oversee this landscape: to monitor how the system is functioning, to analyse the interaction between different jurisdictions, to offer the benefit of their collective expertise, and most of all to make sure that administrative justice is an effective tool which citizens can use to solve their problems.

The need for this function to exist has been recognised since the first Council on Tribunals was set up in 1958. Those functions were then taken over (again on a statutory basis) by the Administrative Justice and Tribunals Council which was

awarded more power in statute than its predecessors on the basis that a lack of power had perhaps hindered them.

This development over time awarded a status to administrative justice and tribunals. It was progressive development which acknowledged the importance of these branches of justice.

We were opposed to the abolition of the Administrative Justice and Tribunals Council (AJTC) as a move which we saw as regressive. To go from a position of statutory recognition to one of interim Committees with short-term funding is an extremely disappointing statement of the value placed by the UK Government on administrative Justice.

With the devolution of reserved tribunals, the implementation of a new Scottish Tribunal structure under the Tribunals (Scotland) Act 2014, the merger creating the Scottish Courts and Tribunals Service and massive changes to the Scottish civil court system, there is much uncertainty ahead. In amongst these changes it is important to have a strong, independent body with expert knowledge of administrative justice and tribunals. Such a body should be relied upon as a pillar to ensure the changes are knit together to the benefit of the citizens of Scotland.

2. Do you have any comments about the successes and/or limitations of the committee, as set out in this paper?

CAS agrees with the comments in the consultation. In a short time, STAJAC has proved to be progressive and forward looking. The Committee has taken positive steps towards the improvement of the devolved Scottish landscape. After the life of the Committee is spent, there will be tangible outcomes in the forms of documents, research and advice to Ministers which has made a difference.

Sadly the same cannot be said for the Administrative Justice Forum – the UK counterpart to STAJAC with a remit for reserved tribunals. Despite the introduction of employment tribunal fees and mandatory reconsideration during its lifetime, the Committee has made no move to make representations on the impact these issues are having on users. With applications to the Employment Tribunal down by 80% and to the social entitlement chamber down by a similar degree, it is questionable what it would take for the AJF to act.

CAS believes that one limitation of the Committee has been in the restriction that it only speaks for the devolved landscape. To those facing problems, it does not matter whether the governance for a tribunal is reserved or devolved and so the ability to speak for Scottish consumers rather than simply on Scottish tribunals would be a positive step.

3. Do you agree that a future Committee should have the main functions listed in this paper? Do you have any additional comments on these?

CAS agrees with all of the functions listed in the consultation document. We would also recommend the inclusion of functions which echo those of the Scottish Civil Justice Council (SCJC) in relation to civil justice.

The founding legislation of the SCJC makes their functions clear:

S2(1)The functions of the Council are—

- (a) to keep the civil justice system under review,
- (b) to review the practice and procedure followed in proceedings in the Court of Session and in civil proceedings in the sheriff court,
- (c) to prepare and submit to the Court of Session draft civil procedure rules,
- (d) to provide advice and make recommendations to the Lord President on the development of, and changes to, the civil justice system, and
- (e) to provide such advice on any matter relating to the civil justice system as may be requested by the Lord President.

By virtue of the amendments in Schedule 9(13) of the Tribunals (Scotland) Act 2014 the functions of the SCJC become (insertions in bold):

S2(1)The functions of the Council are—

- (a) to keep the civil justice system under review,
- (b) to review the practice and procedure followed in proceedings in the Court of Session and in civil proceedings in the sheriff court,
- “(ba) **to review the practice and procedure followed in proceedings in the Scottish Tribunals,**
- (c) to prepare and submit to the Court of Session
 - (i) draft civil procedure rules,
 - (ii) draft tribunal procedure rules,**
- (d) to provide advice and make recommendations to the Lord President on the development of, and changes to, the civil justice system, and
- (e) to provide such advice on any matter relating to the civil justice system as may be requested by the Lord President.

The Act makes provision for the Scottish Civil Justice Council to review process and procedure in relation to proceedings, but it does not expressly confer on the Council the duty to keep the whole system under review. It has been implied that the definition of “civil justice” does not include administrative justice and tribunals. This then raises the question: if this role is not to fall to the SCJC then who?

CAS strongly believes that the function to keep the administrative justice and tribunals systems under review should be express. This would echo the SCJC

function at s2(1)(b). We would also suggest that s2(1)(d) is echoed: that the new Committee should have the function to provide advice and make recommendations to the SCJC on the development of, and changes to, the administrative justice and tribunals systems. As the SCJC will make the rules, this would embed a connection between the Committee and the SCJC.

4. Do you agree that a future Committee should have the main characteristics set out in this paper? Do you have any additional comments on these?

CAS does agree with the main characteristics set out in the consultation paper.

5. Do you agree with our proposals on the membership of a future Committee?

CAS does agree with the proposals for membership of a future Committee

6. Do you have any other comments on anything in this paper which you think we should take into account?

We have nothing to add but would be happy to be contacted at any time to discuss this response.