

STAJAC Workplan May 2014 – December 2015

Introduction

Upon the abolition by the UK Government of the Administrative Justice and Tribunals Council and its Scottish Committee, the Scottish Government committed to developing a ministerial advisory committee on administrative justice and tribunals.

The Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC) was established in November 2013 as an interim committee with a lifespan of 2 years, ending in November 2015. During this time, Scottish Ministers will consider what arrangements are required in the longer term, as part of its administrative justice strategy.

The Committee was established to play a vital role in championing the needs of users across the administrative justice and tribunals system in Scotland, to provide external scrutiny of the system in devolved areas, and to highlight any issues to Scottish Ministers.

A wide ranging remit has been agreed for the Committee:

- to promote the interests of system users and champion an administrative justice and tribunals system that is accessible, responsive and has users' needs at the centre
- to focus on engaging with decision makers to improve rules, procedures and the complaints handling processes within the administrative justice and tribunals system
- to encourage better decision making within the administrative justice and tribunals system with the emphasis on getting the decision right first time to support early and appropriate dispute resolution
- to encourage the building of networks and the sharing of good practice amongst practitioners
- to provide scrutiny of the whole of the administrative justice and tribunals system in devolved areas, including the development of the proposals to merge the Scottish Tribunals Service and the Scottish Court Service, the new structure following the Tribunals Bill, and any relevant developments within the wider civil justice system in devolved areas
- to monitor developments in reserved areas of administrative justice and tribunals pre and post referendum that affect citizens in Scotland
- to advise Ministers on the development of the Strategy for Administrative Justice and the future direction and priorities of the strategy

- to engage across Government and identify to Ministers any policy and practice issues affecting the administrative justice and tribunals system in devolved areas which may require Government attention
- to recommend how the functions of the committee should be carried out in the longer term

In its work, the Committee will 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”*

Given the very wide scope of its remit, the limited lifespan of the Committee and the modest resources available for its work, it is necessary to prioritise which issues the Committee will work on. After setting out the overall approach STAJAC intends to take to its work, this brief document sets out the priorities the Committee has set for its work until December 2015, and how these have been arrived at.

Comment [S1]: Wording of this sentence very similar to the wording in setting priorities’ section

Approach

In its work, the Committee intends to build on the work that has been undertaken in recent years by other bodies with a similar remit working in the field of administrative justice and tribunals.

Rather than spending its limited time and resources determining the principles for a good administrative justice and tribunals system that will form the basis of its scrutiny and analysis, the Committee will adopt and work on the basis of the excellent work of others, most notably (and most recently): -

The final report of the Administrative Justice Steering Group¹, chaired by Lord Philip, which stated three general **aims** of a system of administrative justice:

- ensuring public bodies get it right first time when making decisions;
- ensuring that, where decisions are incorrect or treatment of citizens is otherwise defective, there are effective redress mechanisms;

¹ *Administrative Justice in Scotland – The Way Forward* (2009)

<http://www.consumerfocus.org.uk/scotland/files/2010/10/Administrative-Justice-in-Scotland-The-Way-Forward-Full-Report.pdf>

- ensuring that public bodies learn from their mistakes, increasing the likelihood of getting it right first time.

These aims flow from the general idea that the administrative justice system should be focussed on the needs of users. Citizens are entitled to expect high quality public services, and getting it right first time, providing effective redress and learning from mistakes are integral to providing high quality services.

The Administrative Justice and Tribunals Council (AJTC) formulated principles in *Principles for Administrative Justice* (2010)². According to the AJTC, a good administrative justice system should:

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

The AJTC also produced guidance on how to improve initial decision-making in its document *Right First Time* (2011)³. It suggested that 'right first time' means:

- 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 and explaining 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.

² Principles for administrative Justice (2010); http://ajtc.justice.gov.uk/docs/principles_web.pdf

³ Right First Time (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)

A key finding in the report is that in order to get things right first time, public sector bodies must be learning organisations, always understanding their users and genuinely putting their perspective at the heart of processes and systems.

Setting priorities

In the first months of its existence the Committee has concentrated on contributing to current and ongoing developments in tribunals and administrative justice policy, in particular the Housing (Scotland) Bill; the consultation on the draft Welfare Funds (Scotland) Bill; the Tribunals (Scotland) Bill; and the Courts Reform (Scotland) Bill.

However, given the very broad remit for the Committee, the modest resources at its disposal, and its limited lifespan, the Committee believes it should set realistic and priorities for its work, in consultation with its stakeholders. We therefore organised a stakeholder event on 1st April 2014, to get views from stakeholders on the concerns and issues arising in the delivery of administrative justice (in particular for users), and to obtain input into our work priorities for the period May 2014 – December 2015.

Comment [S2]: See earlier comment on this sentence

This very successful event gave us a wealth of ideas and information, from which a set of priorities has now been drawn up. These are organised under the following three headings:

- 1, Reactive work
2. Proactive work
3. Ongoing engagement:

1. Reactive work – responding and contributing to policy and legislative developments

We will aim to monitor a number of specific developments for impact on the users of tribunals and administrative justice:

- Welfare Funds (Scotland) Bill, and any supporting regulations
- Implementation of the merger of the Scottish Tribunals Service and the Scottish Court Service
- Implementation of the devolved tribunals unification, following Royal Assent of the Tribunal (Scotland) Bill
- Next stages of Housing (Scotland) Bill
- Mental Health (Scotland) Bill , in particular the proposals in relation to Named Persons

We will aim to monitor and contribute to a number of ongoing or upcoming policy developments, to understand the impact these will have on users of the administrative justice or tribunals system, and to ensure the needs of users are considered in these policy developments:

- the integration of health and social care – in particular we will review possible impact on the availability and effectiveness of remedies for grievances
- the Scottish Government’s Administrative Justice strategy
- the Scottish Government Digital Strategy for Justice – focusing on increasing information sources (and their accessibility) for users
- the outcome of the independence referendum , in particular the impact this will have on the administration of tribunals

Comment [S3]: Is it wider than this-Making Justice Work more broadly? Also add reference to SG’s strategy on ADR?

2. Proactive work

The Committee intends to explore with local authorities the financial and other impacts of not getting administrative decisions ‘right first time’; how this impact could be assessed and communicated; and how to further share best practice on ‘getting it right first time’.

We will seek examples and experiences from other jurisdictions on how aspects the delivery of administrative justice can be improved, and will share these examples with stakeholders.

The Committee will explore further the issue of administrative decisions for which no right of appeal exist (as initiated by AJTC), with a view to making recommendations, where appropriate, for remedies.

The Committee intends to select one or two contexts in which to examine whether/how learning from appeal/review decisions is currently working, to prepare for a more comprehensive examination in the future.

We intend to produce a comprehensive ‘map’ of the overall administrative justice and tribunal landscape in Scotland, to inform priorities for further policy work.

3. Ongoing engagement

We will be represented on, and contribute to, a number of relevant forums and committees, in particular:

- Administrative Justice Forum (UK wide)
- Scottish Tribunals Forum
- Scottish Legal Aid Board Access to Justice Reference Group