



STAJAC

Scottish Tribunals & Administrative
Justice Advisory Committee

Note of meeting to discuss Local Authorities and (the cost of) Administrative Justice -
Edinburgh 7 May 2014

Present:

- Marieke Dwarshuis – Chair, Scottish Tribunals and Administrative Justice Advisory Committee
- Douglas Sinclair – Chair, Accounts Commission
- Paul Mc Fadden – Head of Complaints Standards, SPSO and Member, Scottish Tribunals and Member, Scottish Tribunals and Administrative Justice Advisory Committee
- Fraser McKinlay – Director of Performance Audit and Best Value, Audit Scotland
- Mark MacAteer – Director Governance and Performance Management, Improvement Service
- Malcolm Burr – Chief Executive, Comhairle nan Eilean Siar, for SOLACE
- Linda Pollock - Head of Administrative Justice Policy - Scottish Government
- Debbie Headrick and Michael O'Neill - Justice Analytical Services - Scottish Government
- Douglas Proudfoot – Member, Scottish Tribunals and Administrative Justice Advisory Committee

Apologies were received from :

- Ronnie Hinds, Chair, Local Government Benchmarking Board
- Ken Graham, Head of Legal & Democratic Services, Renfrewshire Council, for SOLAR

1. Introduction

By way of introducing the discussion, Marieke Dwarshuis (MD), gave a brief background to the Scottish Tribunal's and Administrative Justice Advisory Committee, which had been established by Scottish Ministers in November 2013 following the abolishment of the Administrative Justice and Tribunals Council (AJTC) and its Scottish Committee. The new (interim) Committee has a wide remit, of which the critical elements relevant to this discussion are promoting the interests of users in administrative justice, encouraging better decision making and engaging with decision makers to improve procedures and rules.

MD explained that the STAJAC wants to build on work that others have done before, such as the AJTC, the Fit for Purpose Complaints Action Group and the SPSO. The discussion of the day was informed in particular by the AJTC publication *Right First Time* (2011)¹, guidance on how to improve initial decision making in administrative justice. In it, the following problems were identified:

- (i) that volumes of appeals and complaints across the public sector were worryingly high;
- (ii) too few public bodies have in place feedback mechanisms to ensure that the outcomes of appeals and complaints are understood throughout the organisation;
- (iii) there is little evidence that the financial costs of not getting it right first time are fully understood and quantified by public bodies.

¹ 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)

2. What does 'Getting it Right First Time' mean?

Before turning to the purpose of the discussion, MD explained briefly what is understood by 'getting it right first time' in this context of administrative justice decision making.

The AJTC guidance *Right First Time* (2011) suggests 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.

Those at the meeting confirmed that this was, broadly, their understanding also.

3. Purpose of the meeting

Paul McFadden (PMcF) introduced the purpose of the main part of the meeting: to explore the value and possibility of looking at the cost to local authorities of not 'getting it right first time' in relation to a range of administrative justice decisions. He explained this to be an initial discussion to share views and possible commitment to undertaking further work and, if there is agreement on progressing, what the first steps would need to be.

4. Exploring the cost of administrative justice decision making to local government

PMcF posed two questions to the group: would assessing the cost to LA's of not getting it right first time in administrative justice decisions be of value, and, if so, would it be possible?

Would it be of value?

The following points were made in discussion:

- It could be an incentive to LA's to drive improvements in first level decisions (and subsequent levels of review/appeal/complaint)
- Could create baseline to help benchmark of possible further measuring of future progress in improving/reducing costs
- Give wider knowledge of what AJ system costs?
- Can help create a win-win situation whereby process and outcomes better for the user and less costly for LA
- Can help drive down cost of failure
- Money spent on complaints/appeals is money not spent on frontline services – so knowing how much it costs is first step in reducing the cost
- Can assist in creating a continuous learning culture in organisations
- It could add value , but could be very complicated and costly, depending on how it is done

Is it possible?

The following points were made in discussion:

- SPSO previously looked at possibility of assessing cost of complaints in LAs, and encountered barriers and challenges including: lack of reliable or consistent information; ability to retrospectively measuring time spent is limited; scale of the task
- a comprehensive whole system (or even part system) cost approach is very complex, difficulties as above: lack of consistent definitions; differences in service delivery across LAs making collating and comparing data (in so far as available) difficult; scale; cost
- rather than whole (system) cost approach, it may be more feasible to build representative case studies, fully costed for different scenarios (so showing the cost of , for example, early intervention or of escalating problem/complaint, not only to the local authority, but also to other agencies and the end user)

- there must be some recognition that not all complaints/appeals etc. necessarily indicate a failure in getting it right first time – thought would need to be given to what a reasonable and ‘healthy’ level of challenge is

How/what could be done?

The discussion move to exploring what could be done, based around the idea of several end-to-end , representative, fully costed case studies. The following ideas were shared:

- In selecting types of case studies, thought could be given to selecting scenarios where (first instance) decision makers have total discretion (eg housing repairs); have professional discretion within boundaries of law and policy (eg planning); make a legal decision/determination (eg housing benefit determination)
- The output needs to be clear from the outset – it was proposed the output could be to develop a *methodology* that would allow LAs or services within LAs to assess the typical cost of a complaint/appeal to them (and others). This could be accompanied by a good practice guide.
- Examples of how representative user journeys (following different paths) can be used to illustrate costs can be found in youth justice, where this approach has been used to good effect
- What can be done will be to an extent be determined by what data is readily available

5. Next Steps

Those present agreed that further work in scoping a proposed approach will be worthwhile, and all indicated willingness to support an initiative and to be further involved in its development. In particular:

- Mark McAteer agreed to find out what information on (any type of) administrative justice decisions and decisions making may already be gathered by some or all LAs , and be usefully available
- Debbie Headdrick and Michael O’Neill agreed to (1) find examples of where the approach of developing representative case studies had been used, and share these and (2) look also outside the public sector /outside Scotland for examples
- Fraser McKinlay agreed to make a member of staff available to work, as a first step, on developing a scoped proposal for this work (together with Justice Analytical Services and with input from STAJAC)
- Marieke Dwarshuis (with Fraser McKinlay) to propose the detail of governance arrangements to oversee any further work to be undertaken – those present in principle that the group present would be an appropriate reference group for any project that would be developed

It was concluded that the timescale for the work was to have a report (findings; methodology; good practice guide) available by Summer 2015 at the latest.

6. Next meeting?

Based on the above next steps, it is anticipated that a further meeting (possibly a first meeting of a reference group, as above) will be convened in approximately 6-8 weeks time.