



STAJAC

Scottish Tribunals & Administrative
Justice Advisory Committee

Proactive research projects - initial outline

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

In order to ensure that the administrative justice and tribunals system in Scotland is as accessible as possible for users, it is important to first build up a comprehensive picture of the current administrative justice and tribunals landscape. The committee is aware that this landscape is complex, fragmented and unwieldy, but no comprehensive map has ever been produced. Some previous work has been done in mapping aspects of the system- for example, the first report of the Administrative Justice Steering Group¹ attempted to set out a comprehensive list of all tribunals operating in Scotland as at 2008. The Group’s second report² published in 2009, included a useful overview of the institutions and processes within the administrative justice landscape in Scotland. Neither of these reports, however, sets out a comprehensive map of all of the relevant institutions and processes which form the overall landscape.

The Committee therefore intends to produce a map of the overall administrative justice and tribunals system in Scotland which is as comprehensive as possible. Further scoping of exactly which bodies/categories of body should be included will be required. The intention, however, is that this should include reserved tribunals operating in Scotland, as well as all other GB/UK wide review/appeals bodies which have a role in relation to Scotland. In defining the scope of the landscape to be mapped, 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*

¹ Options for the Future Administration and Supervision of Tribunals in Scotland:-
http://ajtc.justice.gov.uk/docs/Tribunals_in_Scotland.pdf

² Chapter 6 in particular -see Note 1

- *the systems for resolving disputes and airing grievances in relation to such decisions”*

2. The Committee will explore further the issue of administrative decisions for which no right of appeal exists (as initiated by AJTC), with a view to making recommendations, where appropriate, for remedies and discussing these with specific arms of government.

In 2012, the Scottish committee of the Administrative Justice and Tribunals Council (SCATJC) published *Right to Appeal*,³ a report considering areas of administrative decision-making where there is no right to appeal, or where the appeal procedure is inaccessible or inappropriate. The report focused on five relevant devolved policy areas (although it noted that there were other areas which could have been included). These were: 1) community care; 2) higher education; 3) housing; 4) legal aid; and 5) planning.

The report made a series of recommendations in relation to each of these areas, most of which related to the establishment of new tribunal jurisdictions in those areas. In the report, SCAJTC urged the Scottish Government to consider seriously each of the recommendations, but recommended that priority should be given to the establishment of tribunal jurisdictions to hear appeals against community care and housing decisions since it appeared that these have the greatest impact on the individuals concerned.

The Committee understands that the report’s recommendations are currently being considered by the relevant policy teams within the Scottish Government. The Committee wishes to explore further with the relevant policy teams whether and how the SCAJTC recommendations are being taken forward.

The Committee will work with the Scottish Government and other relevant stakeholders to ensure that any proposals taken forward on its recommendation have users’ needs at the centre. Where recommendations of the Committee are not taken forward by the Scottish Government, the Committee will consider alternative options to meet the needs of users and make further recommendations to the Scottish Ministers.

³ http://ajtc.justice.gov.uk/docs/decisions_with_no_appeal__web_final.pdf

3. The Committee intends to select one or more 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.

In its final report⁴, the Administrative Justice Steering Group chaired by Lord Philip, stated that one of the three general **aims** of a system of administrative justice was ensuring that public bodies learn from their mistakes, increasing the likelihood of getting it right first time. The Administrative Justice and Tribunals Council (AJTC) also suggested in its document *Right First Time* (2011)⁵ that learning from feedback or complaints about the service or appeals against decisions is an important aspect of getting decisions 'right first time'.

There has to date been no comprehensive analysis of whether and how decision makers provide and/or receive such feedback at present, and whether where they do exist, such feedback mechanisms result in improved first instance decision making. The Committee believes that such a comprehensive examination could usefully be carried out in the future, and as a first step, intends to select one or more different contexts in which to examine this issue. Our initial thoughts are that it would be most instructive to examine several different types of appeal/review bodies. While this will need to be given further consideration, these might include, for example, a citizen v-state tribunal, a party-party tribunal, an ombudsman and one other form of review/appeals mechanism.

Methods of feedback/learning which might be examined might include:

- Route for writing up observations in some way
- Annual reports
- Whether decisions are published
- Whether feedback is given by the review/appeals body to Scottish Government and what happens to this/does the SG tell the review/appeals body what it did with the information- does it 'close the feedback loop'?

The research might also look at issues such as whether there is a statutory duty to publish, and whether there are actual or perceived barriers to providing feedback.

⁴ *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>

⁵ 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)