



STAJAC

Scottish Tribunals & Administrative
Justice Advisory Committee

e-mail: STAJAC@scotland.gsi.gov.uk

Mr Paul Wheelhouse
Minister for Community Safety and Legal Affairs
The Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

xx December 2014

DRAFT LETTER

Dear Minister,

Tribunal Reform

I am writing to you on behalf of the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC) to express our concern about the timetable for implementation of the reforms of devolved tribunals associated with the Tribunals (Scotland) Act 2014.

As the Policy Memorandum suggested the Bill aimed, amongst other objectives, to provide users with reassurance that tribunal hearings are more independent and that "by establishing a more coherent framework for tribunals opportunities will be created for improvement in the quality of services that cannot be achieved by tribunals operating separately." The overriding aim of the reforms – as originally set out in the 2008 report of the Administrative Justice Steering Group under the chairmanship of Lord Philip - has from the outset been to improve the user experience. The Philip Report emphasised that the reformed system should be coherent, independent and user-friendly, sentiments repeated in the recommendations of the Scottish Committee of the Administrative Justice and Tribunals Council (AJTC) in 2011.

STAJAC is concerned that on the current timetable many years will elapse before the aims of the reforms are actually realised, in terms of tangible benefits for users. We understand that the new First-tier Tribunal (FTT) and Upper Tribunal will not begin operating till December 2016 and initially the FTT will only have a single Chamber (the Housing Chamber). Thereafter, further Chambers are planned to be introduced one at time, at intervals of 6 to 8 months. The process of integrating the tribunals currently supported by the Scottish Tribunals Service (STS) would then not be fully completed until August 2019 and the complete integration of all devolved tribunals not until August 2023.

This seems to be an extraordinarily protracted timetable, and STAJAC finds it difficult to understand why such a worthwhile reform should take so long to achieve.

A number of important benefits for users should result from the reforms, such as the power for all tribunals in the new structure to review their own decisions to correct administrative errors so that this can be done quickly, thus avoiding unnecessary and costly second appeals; having clear and consistent appeal structures for appeals *from* tribunal decisions and avoiding complex, unnecessary and costly appeals to the sheriff court or even the Court of Session; improved and independent processes for investigating complaints about the conduct of tribunal members, thus enhancing public confidence in the tribunal system.

These are worthwhile improvements for users and STAJAC is concerned to ensure that these should not be delayed for years.

The Committee does not find the reasons it has been given for the length of the implementation timetable very compelling. They are, amongst others, the complexity of the legislative changes required, e.g. there are very many prior statutes to be amended; limited parliamentary time for adoption of the necessary subordinate legislation; the need to draft new tribunal rules; the scale of the member recruitment exercise that will be required for the tribunals; and resource constraints within Scottish Government.

The length of the timetable appears to be largely dictated by the strategy of creating new chambers sequentially. We would question whether some means could not be found by which work on the different chambers could be progressed in parallel streams.

It is instructive to compare the suggested timetable for reform of devolved tribunals with the time actually taken to introduce the analogous reforms under Tribunals, Courts and Enforcement Act 2007 (TCEA). The Act received royal assent on 19 July 2007. The UK First-tier Tribunal (UK FTT) and the Upper Tribunal were established on 3 November 2008, with three of the UK FTT's chambers becoming operational at that date. All the chambers of the UK FTT were operational by mid-February 2010. It is, of course, true that the Ministry of Justice had much greater resources at its disposal than the Scottish Government has, but the scale of the operation required was enormously greater than that which is being undertaken by the Scottish Government: the UK FTT replaced more than forty formerly separate tribunals and HMCTS tribunals had a combined caseload approaching three quarters of a million cases in 2011-12.

Given the important benefits to users that should result from tribunal reform, we would suggest that further consideration be given to ways in which the current implementation timetable may be shortened. I hope we may be able to discuss this further when we meet.

Yours sincerely,

Marieke Dwarshuis

Chair, Scottish Tribunals and Administrative Justice Advisory Committee