

PE1449: submission of Accountability Scotland (September 2014)

Scotland's administrative justice system needs to be properly monitored and reviewed on a permanent basis in respect of both reserved and devolved matters. The Advisory Committee (STAJAC) is a useful interim measure, but it is poorly funded, is not clearly independent of government and has no provision for direct input from members of the public that have actually suffered administrative injustice. Sound administrative justice is important to us all individually for its influence on decision making, governance and the whole relationship between citizens and state.

Much was made of the delivery of social justice in the referendum campaigns. Social justice can only be delivered through effective administrative justice. We have not so far seen much evidence of effective administrative justice in Scotland. This needs exhaustive research and subsequent reform.

All this is surely accepted as axiomatic, but it may be useful for us to indicate some specific problems that a new committee should address.

There needs to be much more transparency in the functioning of public bodies. Complaint handlers should be unconnected with the individuals or bodies complained about. Indeed, there can be no confidence in investigations of an authority by its own staff; i.e. there must be structural independence. (Recall the Kevin Ruddy case in this connection in which police complaints handling breached the European Convention on Human Rights through lack of structural independence – because the investigating officer was of the same force.)

There should be no gagging orders, no confidentiality agreements and no victimization of whistle blowers. Instead, it should be obligatory for employees to report faults, as in the aircraft industry – a duty of candour for all public employees.

Vital to administrative justice is the SPSO. However, the ombudsman can only investigate individual acts of maladministration and, although he has instituted a procedure for complaints handling by bodies under his jurisdiction, it is not in his remit to oversee the whole of the administrative justice landscape nor can he consider the complaints of whistle blowers. It should be an urgent task of a new justice committee to consider the adequacy and effectiveness of SPSO investigations and subsequent outcomes to establish why the SPSO has achieved satisfaction rates no better than 50% (as shown by the Craigforth surveys). These compare poorly with satisfaction rates of other ombudsmen worldwide, e.g. in Australia, New Zealand and, most strikingly Gibraltar where satisfaction is very close to 100%. Part of the problem seems to be inherent in the Scottish Public Services Ombudsman Act 2002, or at least in the way it is interpreted; the proposed committee should look into this. (We especially have in mind that complainants cannot see and check the correctness correspondence between SPSO and the body complained about.) A committee with statutory powers of investigation and reporting is needed to establish through statistics the present and future performance of the SPSO.

Most of the notable cases of administrative injustice to have been given media attention have been English (such as Mid-Staffordshire and the CQC), but we cannot assume that Scotland is better. Newspapers are mostly interested in big and simple stories, but one has read of Scottish problems relating to HM Inspectorate of Education and the NHS and to the scandal of Edinburgh City Council. So Scotland cannot be complacent; we do need a body independent of government and adequately funded to oversee administrative justice.

The views we express here accord with STAJAC's document "Workplan May 2014 – December 2015", but here we also call attention here to some specific issues for the proposed committee to address. We regard our "Submission provided by the petitioners on 23 May 2013" to be still valid.