

Developing excellence in administrative justice

Project Brief

Project aims and objectives

1. The overall aim of this project is to support public authorities in more effective administration and decision making in areas of administrative justice. A list of members of the project steering group is included at [Appendix 1](#).
2. Administrative justice can be broadly defined as:
 - decision-making by public bodies affecting individual citizens' rights and interests, including the substantive rules under which decisions are made and the procedures followed in making decisions
 - systems for resolving disputes relating to such, including complaints.^{1 2}
3. The project has four primary objectives:
 - To raise awareness and understanding of the importance and impact of administrative justice in the public sector.
 - To better understand the impact and cost of administrative justice decision making and processes, especially at the initial stages – both in relation to the user and the decision-making authority.
 - To develop a methodology for better understanding the impact of administrative justice decisions, for use by decision-making authorities.
 - To develop tools and guidance to support good practice in administrative decision-making and 'getting it right first time ' ([see paragraph 8 below](#)).
4. Details of what we will examine under each of these headings can be found in the list of key questions in [Appendix 2](#).

Background

5. The Scottish Government established the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC) in November 2013, for a period of two years. Its role is to keep a strategic overview of the administrative justice system in Scotland. This involves promoting the interests of users in administrative justice, encouraging better decision making and engaging with decision makers to improve procedures and rules.

¹ The final report of the Administrative Justice Steering Group, Administrative Justice - The Way Forward (2009) <http://www.consumerfocus.org.uk/scotland/files/2010/10/Administrative-Justice-in-Scotland-The-Way-Forward-Full-Report.pdf>.

² A more technical definition would be that administrative justice is the exercise by an administrative agency, (such as a council) of judicial powers delegated to the agency by a legislative body (such as the Scottish Parliament). Agencies typically possess both legislative and judicial powers in their area of authority. The legislative power gives the agency the authority to issue regulations (eg by-laws), and the judicial power gives the agency the authority to adjudicate contested cases within its area of jurisdiction (eg planning applications).

Why we are doing this work

6. One of the early priorities for STAJAC is to consider the impact – both on users and on decision makers – of any failure in administrative justice decision making and processes, especially at the initial stages. At a meeting on the 7th May 2014, a group of interested parties agreed to progress a development project to better understand the costs of administrative justice and increase the likelihood of 'getting it right first time'.
7. There is a consensus that the aims of a system of administrative justice should be:
 - 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
 - ensuring that public bodies learn from their mistakes, increasing the likelihood of getting it right first time.³
8. The Administrative Justice and Tribunals Council (AJTC) produced guidance on how to improve initial decision-making in its document Right First Time (2011). 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.⁴
9. There are three broad types of decisions that public authorities make in relation to service delivery, rights and entitlement for individual citizens:
 - managerial decisions as part of service delivery, for example housing repairs, where the council has clear service standards and where council staff generally make assessment as to whether the standards are met
 - decisions based conferring a right or entitlement, based in on a statutory power, but on policy priorities locally determined, for example in planning or licencing, where the council

³ The final report of the Administrative Justice Steering Group, Administrative Justice - The Way Forward (2009) <http://www.consumerfocus.org.uk/scotland/files/2010/10/Administrative-Justice-in-Scotland-The-Way-Forward-Full-Report.pdf>.

⁴ 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).

will make a decision to zone particular areas for housing or another purpose, or, for example, to limit the number of licenced premises in a predominantly residential area

- decisions conferring a right or entitlement based in statutory power and national rules and policy, for example housing benefit.

10. This project, in looking at administrative decisions, will examine the types of decisions described in the last two bullets.

Scope and methodology

11. The scope of this project will be limited to local authorities, although the lessons learned should be applicable to all public authorities. We will identify a representative selection of council administrative justice processes and decisions to examine that represent different types of administrative process, for example planning decisions, housing benefit assessment and access to care at home services. The project will not look at council policy in these areas but will aim to raise awareness of the importance of sound and transparent administrative justice processes to implement policies fairly and consistently.
12. The proposed approach is to identify a selection of case studies to model the user journey through the administrative justice decision-making process, with costs attached to each part of the process. An early task for the project team will therefore be to identify some potential areas for focus, such as planning, housing benefit determination or social care.
13. We will focus initially on council decisions, because they make a large proportion of administrative justice decisions (on devolved matters) on a wide range of issues affecting individual citizens. This work will also include the other parts of the administrative justice system outside councils (i.e. when decisions are challenged or appealed) in order to provide a whole system view.
14. The project will not seek to establish baseline costs for all administrative justice decisions, as this would be too time consuming and costly. However, we will explore whether any suitable information is available that we could use to examine costs and activities. The project will be careful not to blur the lines between complaints handling and administrative justice.
15. Further details of the proposed methodology can be found in [Appendix 2](#).

Project staffing

16. John Lincoln, Project manager, Audit Scotland will provide some resource to manage the project, under the overall direction of the steering group chaired by Marieke Dwarshuis, Chair of STAJAC. The project manager will work with steering group members, in particular the Scottish Government (particularly justice analytical services), SPSO, the Improvement Service and with local government staff to collect information to develop the case studies. Exact time commitments are still to be agreed.

Outputs

17. It is proposed that the project will deliver three key outputs:

- A report, based on a series of case studies, which examines a range of administrative justice processes and assesses their impact on service users and councils and makes recommendations to help improve understanding of the impact and operation of administrative justice processes.
- A methodology for councils to use to examine and improve administrative justice processes. This would include issues such as the examination of administrative justice processes, costs, time, effort, user experience and reputational risk.⁵
- A set of tools and guidance to help councils to improve administrative decisions' in the broad sense, as described by the Administrative Justice and tribunals council, including support for councillors and others involved in scrutiny of administrative justice processes.

Timescales

18. The outline project timescale is set out below. We anticipate that the steering group will be normally be consulted on issues such as methodology and via email.

Project stage	Provisional timescale
Methodology development	November to December 2014
Fieldwork and data analysis	January to March 2015
Steering group meeting to discuss emerging findings	April 2015
Report drafting and consultation on report (via email)	April to May 2015
Steering group meeting to approve the report and agree a publication strategy	May 2015
Publication of report	June 2015

Further information

19. If you have any questions on this project please contact:

- John Lincoln, Project Manager, jlincoln@audit-scotland.gov.uk, 0131 625 1864 or in writing to Administrative Justice Project, Audit Scotland, 18 George Street, Edinburgh EH2 2QU; or
- Marieke Dwarshuis, Chair, Scottish Tribunals and Administrative Justice Advisory Committee, 07754 - 184705, STAJAC@scotland.qsi.gov.uk

Appendix 1

Steering group members

Marieke Dwarshuis, Chair of STAJAC, will chair the steering group and will be responsible for reporting progress to STAJAC and the Minister.

The members of the Steering Group are:

- Douglas Sinclair – Chair, Accounts Commission
- Paul McFadden – Head of Complaints Standards, SPSO 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
- Cllr Peter Johnston - West Lothian Council, COSLA Health and Social care Spokesman
- Malcolm Burr – Chief Executive, Comhairle nan Eilean Siar, for SOLACE
- Linda Pollock - Head of Administrative Justice Policy - Scottish Government (Alicia McKay is substituting for Linda Pollock at the moment)
- Douglas Proudfoot – Acting Head of Development, East Lothian Council and Member, Scottish Tribunals and Administrative Justice Advisory Committee
- Ken Graham, Head of Legal & Democratic Services, Renfrewshire Council, for SOLAR
- Michael O'Neill, Economist, Economic Analysis, Scottish Government.

Appendix 2

Key questions

The main existing institutions and processes currently for resolving disputes and considering grievances are:

- internal complaints procedures
- ombudsmen and other independent complaints handlers
- internal and external reviews
- tribunals
- the courts - judicial review
- elected representatives.

Our choice of case studies will try to capture a range of processes and subject areas. We will base case studies on assessments of how a selection of administrative processes work and how prevalent these are. Where possible, we will gather the following information:

- A 'map' of how the process works (to show the user journey)
- the number of decisions made
- the time taken to make decisions
- the number of decisions appealed
- the number of appeals upheld (and whether they indicate systemic issues)
- where possible, we will gather cost information on each stage of the process.

We will use the following questions to examine the effectiveness of administrative justice processes:

- How does the service ensure that it 'gets decisions right first time' in the broad sense- as described by AJTC and set out above?
- When a decision is communicated, is it made clear how, where and when it can be challenged?
- Is there a single point of contact to receive and route complaints to the appropriate person (we can examine council websites to assess this) and is there a one door' approach to complaints and appeals handling?
- Are challenge mechanisms likely to result in the correction of errors in initial decisions?
- Is there a feedback system from appeals processes (internal and external) to identify recurring weaknesses and ensure improvements can be made?