

<b>Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC)</b>	<b>COSLA Conference Centre Edinburgh</b>
<b>Minute of Meeting</b>	<b>24 March 2014</b>

**ATTENDEES:**

Marieke Dwarshuis, Chair (MD)  
 Professor Tom Mullen, Glasgow University (TM)  
 Shaben Begum, Scottish Independent Advocacy Alliance (SB)  
 Paul McFadden, Complaints Handling Authority, SPSO (PMcF)  
 Lauren Wood, Citizens Advice Scotland (LW)  
 Sarah O'Neil, Consultant (SO`N)  
 Douglas Proudfoot, East Lothian Council (DP)  
 Tom Drysdale, retired solicitor and tribunal Judge  
 Alison Carmichael, Scottish Government (minute- taker) (AC)  
 John Wallace, Scottish Government (secretariat) (JW)  
 Jacqui Hagerott, Supreme Court Ohio (JH)

**APOLOGIES:**

John Sturrock, Core Solutions Group

**Welcome and introductions**

The Chair welcomed Jacqui Hagerott and thanked her for lending her expertise to the meeting. The Committee members introduced themselves.

**1. Minute of meeting 29 January**

**1.1** The minute of the previous meeting was agreed as final by the Committee.

**1.2** Action Points - MD explained that the Scottish Welfare Fund (SWF) and engagement with the Accounts Commission and Audit Scotland would be discussed later in the meeting. All the other action points from the 29 January meeting have been completed expect **4.1: MD to draft a summary of TDs paper on administrative justice (the position paper).**

**2. Further membership**

MD confirmed that the contact she had at HM Courts and Tribunals Service was retiring and that further membership will be discussed at the next meeting.

**2. Scottish Welfare Fund**

**2.1** PMcF declared an interest in the SWF.

**2.2** MD asked members for comments on the proposals and to consider points for the Policy Instructions and Regulations.

**2.3** TM commented that he thought that the SWF consultation paper was unduly negative about the tribunal option for second-tier review and that Ministers could risk being given inaccurate advice if this was the commonly held view of Scottish Government officials. TM also commented that the Council Tax Reduction Review Panel was not the best comparator for the SWF and that the First-tier Social Security Tribunal would have been a better one. He went on to explain that some of the information in the consultation paper could lead to a false understanding of tribunals.

**2.4** MD commented that applications for second-tier reviews should be made to the SPSO not the LA. MD also commented that the review of decisions by the Scottish Public Services Ombudsman should look at the merits of the original decision, not just the facts and the law. She highlighted the importance of allowing applications by e-mail and telephone to make the process as quick and accessible as possible.

**2.5** PMcF advised that the second-tier review will need careful branding to differentiate it from the SPSO complaints process. He also advised members that the SPSO had not been given any detail on how the process will work for second tier reviews. PMcF informed members that the SPSO would aim to replicate the Independent Review Service (IRS) role as much as possible and that IRS had the powers to agree, replace or ask for the decision to be made again by the DWP. PMcF also informed members that the SPSO had been to Northern Ireland to see what works well there. A short discussion followed on the uncertainty of numbers requesting a review of SWF decisions under the permanent arrangements.

**2.6** MD asked for final comments on the SWF to TM by 4 April. She commented that the processes shouldn't be tied down too much by Regulations and that quick turnaround times for reviews were essential.

**2.7** A short discussion followed on how the SWF review process would be accountable to the Scottish Parliament (SP). PMcF confirmed that the SPSO would do an annual report to Parliament on the SWF and that it could be accountable to the SP through the Local Government Committee.

### **3. Stakeholder Engagement Event**

**3.1** A short discussion followed on the scenarios for the event. MD advised that members presenting the scenarios should choose the ones they feel most comfortable with.

**3.2** LW **advised** that the DVD for the event would be ready shortly. MD advised that Jo McFarlane's poetry slot would start at 12.30. **AP: AC to circulate the delegate list and seating plan to members.**

**3.3** MD advised that the key output from the event would be the workplan (including the position paper). MD advised that she would draft the position paper

mid April to be agreed by members at the May meeting. **AP: MD to draft the position paper.**

#### **4. Other stakeholder engagement**

**4.1** MD advised that her meeting with the Chair of Accountability Scotland would be discussed at the May meeting. MD informed members that she had also met with the Lord President.

**4.2** MD informed members that she would arrange an exploratory meeting with the Accounts Commission and Audit Scotland on initial decisions and the costs of getting it wrong before the next STAJAC meeting. PMcF advised that Scottish Water have done some work on the costs of customer complaints.

**4.3** MD informed members that she had accepted the invitation to join the Scottish Legal Aid Board's Access to Justice Reference Group which is part of the Scottish Government's Making Justice Work programme.

#### **AOB**

SB informed members that the consultation period for the Mental Health Bill finishes on 25 March and that the SIAA were responding to it. SB explained that the SIAA is not supportive of some of the proposals. MD advised that the Committee would not be responding to the consultation but could keep a watching brief on the Mental Health Bill.

#### **5. Appropriate Dispute Resolution, Ohio**

**5.1** JH advised that the State of Ohio has 11.5 million inhabitants, 88 counties and 400 courts. JH also advised that she has been trying to create minimum standards and parameters for ADR over the years in the following areas:

- mediation
- training
- litigation and
- conciliation

**5.2** JH explained that the Dispute Resolution Centre in Ohio is a single Court with a multi-door system that operates like a triage to identify the most appropriate route for the user.

**5.3** JH advised that 95% of tax cases in Ohio are now settled through mediation and that the State of New Mexico is looking at a similar approach to ADR.

**5.4** A short discussion followed on the effect of cases being settled through mediation on lawyers' fees. JH confirmed that lawyers in Ohio are making more money now than they were under a litigation based system as more accounts were being paid in full.

**5.5** JH also advised that criminal cases (including domestic abuse) are also mediated in Ohio. JH also explained that the Dispute Resolution Process in Ohio is mandatory initially (except for the most serious criminal cases) but opt-out at a later stage.

**5.6** A short discussion followed on the reaction of the judiciary to ADR. JH advised that the support of a high profile Judge was used to spread the word that ADR was not a threat to their positions. JH also confirmed that the media was widely used to publicise ADR and has the support of the public in Ohio.

**5.7** JH explained that 95% of family cases don't litigate in Ohio but that there is a right to resort back to litigation after mediation has failed. A short discussion followed on the cost savings of mediation. JH advised that savings were hard to quantify and that it was easier to see time savings.

**5.8** TM asked about Statutes. JH confirmed that there was a Statute for mediation but that most legislation was made through the "Rules of Superintendence".

**5.9** A short discussion followed on lawyers reactions to the increased use of mediation in Ohio. JH confirmed many lawyers have become mediators and are seen as the "problem solvers" and Judges as the "case managers". TD advised that there are 10,000 lawyers in Scotland compared to 40,000 in Ohio.

**5.10** A short discussion followed on fees. JH advised that the fee for mediation is \$10 and \$39 for a small claim. Lawyers earn \$30 per hour for mediation; however some mediators do it on a voluntary basis.

## **6. Dates of next meeting**

The date of the next meeting is 22 May 2014, venue to be confirmed.