

Written evidence from the Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC) to the Justice Committee on the Courts Reform (Scotland) Bill

Introduction

1. The Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC) welcomes the opportunity to submit its views to the Justice Committee on the general principles of the Courts Reform (Scotland) Bill.
2. STAJAC was established by Scottish Ministers, following the abolition of the Scottish Committee of the Administrative Justice and Tribunals Council, to provide external, expert scrutiny of the devolved administrative justice and tribunals system in Scotland. Its remit includes promoting the interests of system users and championing an administrative justice and tribunals system that is accessible, responsive and has users' needs at the centre.
3. Given the committee's remit, our comments focus on one specific aspect of the Bill - namely Part 7, which establishes a new Scottish Courts and Tribunals Service (SCTS). STAJAC has a particular interest in the impact which the proposed merger of the Scottish Court Service (SCS) and the Scottish Tribunals Service (STS) will have on users.

Comments on Part 7 of the Bill

4. The committee broadly supports the proposal to merge the SCS with the STS. In conjunction with the establishment of a new, more coherent tribunal structure under the Tribunals (Scotland) Bill, this should address the concerns about the present system identified by the Administrative Justice Steering Group (AJSG) chaired by Lord Philip.¹ At present, the STS is a delivery unit of the Scottish Government Justice Directorate, and is therefore not independent of government, in line with the principles set out by the Leggatt Review of Tribunals² and the AJSG. Bringing it within the SCS would ensure the independent administration of tribunals in Scotland.
5. The proposed merger also makes sense given both the new dual leadership role of the Lord President in relation to tribunals and courts under the recently passed Tribunals (Scotland) Bill, and the intention that the Scottish Civil

¹ Administrative Justice Steering Group (2008) *Options for the Future Administration and Supervision of Tribunals in Scotland*, Glasgow: Scottish Consumer Council

² Lord Chancellor's Department (2001) *Tribunals For Users: One System, One Service-Report of the Review of Tribunals* by Sir Andrew Leggatt, London

Justice Council will in future make rules for devolved tribunals as well as the courts.

The needs of users

6. It is vital that the new SCTS is focused on the needs of users. Tribunals provide a vital public service - many more people have their disputes dealt with by tribunals than in a court - and should therefore be focused on the needs of the public who use them. While others working within the system, such as tribunal members, tribunal staff and lawyers have an interest in ensuring a modern and efficient system, ultimately the system is there for the benefit of the public who need to use it.
7. We therefore welcome the statement made by the Minister in her foreword to the recently published consultation report³ that the proposed merger will not make any fundamental changes to the principle of putting users at the centre of the system. It must be ensured, however, that this commitment is translated into practice. We note the requirement incorporated in Section 120 of the Bill that the SCTS must take account of the needs of members of the public and those involved in proceedings in tribunals.⁴ It will be important that this requirement is borne in mind in the design of tribunal forms, processes and procedures, including where and when cases are heard.
8. We also welcome the Minister's assurance in the consultation report that the expertise, flexibility, sensitivity, specialism and ethos of each individual tribunal will be maintained. From the user's perspective, having their case heard in a specialist forum where decisions are made by experts who understand the relevant area of law, and the related issues which can arise for those involved in that category of dispute, should result in better quality, better informed decision making. Ensuring that decision makers have specialist knowledge of and insight into the relevant issues will also be important in maintaining the inquisitorial nature of tribunals.
9. While it is important to retain the specialist nature of individual tribunals, however, users will also benefit from a consistent approach to how the different tribunals are administered and run. The merger will provide scope for central co-ordination of premises, training and administrative support. It also provides an opportunity to improve the administrative work and procedures underpinning courts and tribunals, and share best practice in case handling and management, to ensure that services are delivered in the best way to meet users' needs.

³ Scottish Government (2014) Proposed Merging of the Scottish Tribunals Service and the Scottish Court Service- Consultation Report

⁴ Section 120 (2), which incorporates the equivalent provisions in the Judiciary and Courts (Scotland) Act 2008

Our concerns about the proposed merger

10. We have a number of concerns about the potential impact of the proposals. Firstly, while the consultation report contains assurances that the ethos and nature of tribunals will be maintained, we are keen to ensure that this will work in practice. The recent consultation report simply states that, as head of both court and tribunal judiciary, the Lord President will be able to ensure this, and that the new President of Tribunals will also ensure that tribunal business is kept distinct from that of the courts.
11. Tribunals are generally perceived to be more accessible and informal than the courts, particularly where they adopt a more inquisitorial approach. The ASJG found that they are generally seen to score highly as a method of dispute resolution in terms of appropriate outcomes, impartiality and independence and fairness of procedures, and as having advantages compared to the courts in terms of speed, cost and accessibility.⁵
12. The courts are by their nature more formal and adversarial than tribunals, and may be that this ethos is influenced by the dominance of criminal business. The current SCS is much larger than the STS, and there is a possibility that its culture and working practices could dominate the way in which the new merged service is managed and run. There is, we feel, a risk that the more adversarial culture of the courts could have a (negative) influence on how tribunals are run, and consequently how they are viewed by the public, which could deter people from taking a case to a tribunal.
13. One means of minimising this risk would be to make provision for adequate and appropriate representation of the tribunal sector on the joint board of the new SCTS. We note that the Bill provides that the President of Tribunals and one of the chamber presidents will be appointed to the SCTS board,⁶ but does not make provision for any additional new members representing the tribunal sector. The consultation report on the proposed merger recently published by the Scottish Government states that these two additional members would provide appropriate tribunal representation on the board to ensure tribunal interests are covered.⁷

⁵ Administrative Justice Steering Group (2009) *Administrative Justice in Scotland- the Way Forward*, Glasgow: Consumer Focus Scotland at paragraph 7.60

⁶ Schedule 3 Part 1 Paragraph 8

⁷ Scottish Government (2014) *Proposed Merging of the Scottish Tribunals Service and the Scottish Court Service- Consultation Report* at paragraph 64

14. We believe, however, that more needs to be done. Firstly, we would suggest that there should be representation from tribunals at a senior administrative level, as well as at judicial level. This would be in keeping with the current membership of the SCS board, which includes the Chief Executive of SCS, as well as members of the judiciary. Secondly, there should also be clear provision for the interests of tribunal users to be represented on the board, to ensure that their views are heard at strategic level. We appreciate that in order to be effective, the board should not be too large. We would therefore suggest that it may also be appropriate to establish a tribunals sub-committee, with a wider membership reflecting the broad range of different tribunals.
15. In addition to ensuring the user interest is represented in its governance structure, the new service should also make a clear commitment at the outset to engage directly with tribunal users. This will be an important way to ensure that tribunals, and the processes they adopt, take on board and address the issues of greatest importance to users. A commitment to ongoing user engagement and research will also help to ensure that the objectives behind the merger are being met from the user's perspective.
16. Finally, we would simply note our concerns about the timescale for the proposed merger, which would involve a significant expansion in the scale and remit of the SCS. The policy memorandum for the Bill states that it is intended that the merger should take place by April 2015, ahead of the wider court reforms.⁸ The SCS has undergone a number of major changes in recent years, and currently has other significant tasks, such as the court closure programme and the implementation of civil courts reform, on its agenda. At the same time, the new tribunal structure set out in the Tribunals (Scotland) Bill is still to be put in place.