

Scottish Tribunals and Administrative Justice Advisory Committee (STAJAC)	Jurys Inn Hotel, Edinburgh
Minute of Meeting	04 December 2014

ATTENDEES: Marieke Dwarshuis, Chair (MD)
Professor Tom Mullen, Glasgow University (TM)
Paul McFadden, Complaints Handling Authority, SPSO (PMcF)
Sarah O'Neil, Consultant (SO`N)
Douglas Proudfoot, East Lothian Council (DP)
Shaben Begum, Scottish Independent Advocacy Alliance (SB)
Tom Drysdale, retired solicitor and tribunal Judge (TD)
Lauren Wood, Citizens Advice Scotland (LW)

SECRETARIAT: Alison Carmichael, Scottish Government (AC)
John Wallace, Scottish Government (minute- taker) (JW)
Alan Morrison, Scottish Government (AM)

APOLOGIES: Alicia McKay, Scottish Government (AM),
Lesley Black, STS (LB)

1. Welcome and apologies

1.1 **MD** welcomed everyone to the meeting.

2. Conflicts of interest

No conflicts of interest were declared and **JW** advised that members' conflict of interest information was now on the STAJAC website.

3. Minutes of meeting 22 May 2014

3.1 The minutes of the last meeting were discussed and agreed.

3.2 The action points from the previous meeting were reviewed. Actions to be carried forward are **Action Point 6:** Alison has rescheduled the meeting with the new Minister for Community Safety and Legal Affairs, Paul Wheelhouse MSP for 13 January. **Action Point 7:** **AC** to re-send the Social Care Alliance information to the Committee. **Action Point 8:** Not yet complete, the new date for the draft Health and Social Care integration document is 18 December. **Action Point 9:** As there has been no significant progress with the Administrative Justice Strategy, the presentation will be re-scheduled for a future date.

4. Updates from Committee Members (reactive work)

4.1 **Scottish Welfare Fund (SWF):** **DP** advised that he, **MD**, **LW** and **TM**

met with the Scottish Government (SG) on 26 November. A number of topics were discussed including the legislation and supporting guidance, local discretion and Second- tier review. **DP** advised that implementation was now planned for April 2016. **DP** advised that the Committee should continue to keep a watching brief over the SWF.

4.2 **TM** noted that the issue of local policy versus national requirements is under theorised and needs further investigation.

4.3 **PMcF** advised that the SPSO planned to take a common sense, non-bureaucratic approach regarding SWF maladministration cases. **PMcF** also advised that the SPSO will include information on SWF work in its annual report, but the aim is to have a separate report for the SWF. **MD** commented that she would like the Committee to discuss the regulations, guidance and the consultation process, with the SPSO before the consultation stage.

4.4 **PM** Noted that the Independent Review Service (IRS) was a model of good practice; and that the Committee should contact the Office of the Social fund Commissioner which continues to use the IRS model.

Action Point 1: AM to investigate how STAJAC can gain input from the Office of the Social Fund Commissioner in Northern Ireland.

Action Point 2: AM to arrange meeting between SPSO and STAJAC.

4.5 **Tribunals Unification:** **TM** advised that a further meeting with **SW** had taken place to discuss the Tribunals (Scotland) Act; and that **SW** had confirmed that:

- 13 sets of regulations will be required for day one.
- There will be a targeted consultation
- The Lord President and Lady Smith were being consulted on the proposed Chamber Structure
- The Judicial office were working on the assignment policy.
- The Housing Chamber should be in place by December 2016. It is estimated that 174 new members will be required for the new jurisdictions along with 50 staff. This is based on a caseload estimate of 2,500 per annum.

4.6 **TD** noted that, although **SW** had explained the rationale for the implementation timescale, he was still concerned that things would take too long, particularly in light of the Smith Commission report advising that reserved tribunals should be devolved. **LW** noted that there may be a political will in Scotland to prioritise the integration of reserved tribunals.

4.7 The housing numbers were discussed in detail. Concerns were raised that the number of members required seemed excessive and could impact on the implementation timescale. It was agreed that the Committee would seek

clarification from officials on the assumptions used including whether the new jurisdictions would sit locally and if existing tribunal venues would be protected; and whether it was wise to bring in all of the members at the beginning. **LW** noted that tribunal user representation on the SCTS board could help protect tribunal venues.

4.8 **TD** noted that the reserved tribunals already had a network of local venues and asked if these would remain following the transfer-in of reserved tribunals.

4.9 It was noted that the draft letter to Mr Wheelhouse may contain inaccurate data, and it was agreed that it would be redrafted.

Action Point 3: TM & TD to redraft a letter to the Minister.

Action Point 4: MD to arrange a meeting with Lady Smith to discuss concerns relating to representation of users and protection of tribunal venues.

Action Point 5: TM & TD to contact SW regarding the housing chamber staffing and member numbers.

4.10 **Housing:** **LW** noted that a new Housing Bill was planned for 2015 which would introduce a new modernised type of private sector tenancy in Scotland. A consultation on this issue runs until 28 December. **LW** queried whether policy around the consultation (and wider reform to the PRS) was acknowledging the planned change of jurisdiction – particularly in planning appeals mechanisms. Depending on the timing of implementation, **LW** was concerned that rules may be required for the Sherriff court which are short lived because of the change in jurisdiction. **LW** was also concerned that the importance of communication between departments of the Scottish Government was stressed. **SO’N** questioned whether the proposed changes would be set out in new legislation or if they would be made by an amendment to the existing housing legislation on assured/short assured tenancies as, if it were the latter, this should not be an issue.

Action Point 6: SO’N & LW to contact officials on; if proposed changes will amend existing regulations, and what the plans are for an appeal route.

4.11 **Mental Health Bill:** **SB** advised that the Health and Sport Committee has been taking evidence on the Bill. **SB** noted that organisations presenting evidence raised similar issues and concerns. **SB** also advised that a United Nations concern relating to involuntary detention has not been reflected in the Bill. **SB** highlighted that further attention to the Bill will be required when it reaches Stage 2.

4.12 **Health and Social Care integration:** **MD** advised that this will be one of the subjects raised with the Minister. **PMcF** noted that a meeting has been organised with CAS on 14 January which the Committee has been invited to and that he will be in attendance.

4.13 **Justice Digital Strategy:** **LW** advised that progress has been made on the Strategy . There are 6 projects in total with SLAB managing the Video Conferencing project. **LW** highlighted the projects which may be of greatest interest to the Committee - the Justice Information Platform Project (the single portal for justice information and advice) and the Alternative Dispute Resolution Project (enabling early access to mediation etc). The next stage is for the 6 project managers and the Project Board to be appointed. The timescales are still being discussed.

4.14 On 28 January Holyrood Magazine are hosting a conference on Digital Justice at which **LW** will be a speaker.

5. Research into Tribunal users experience

5.1 **MD** advised that it had been agreed that governance for the two research strands had been decided with the Committee leading on the qualitative research and STS leading on the quantitative. The Committee was content with this.

5.2 Time constraints mean that Mental Health Tribunal for Scotland (MHTS) will not be included in the research. Additional Support Needs Tribunals for Scotland (ASNTS) and the homeowner housing panel (ho hp) and private rented housing panel (pr hp) will still be included.

5.3 **SO'N** advised that the timescales for the research were still to be agreed. **MD** also advised that the Committee only had funding available in this financial year for the qualitative research. If the quantitative research was not able to be commenced until the next financial year, **MD** would prefer to not commission the qualitative research. A rush job to meet a financial deadline could be detrimental to the committee and potentially waste public funds.

AC advised that she would check with SG Finance if funding for the project could be accrued back.

Action Point 7: AC to check with SG Finance if funding for the project could be accrued back.

6. Developing Excellence in Administrative Justice.

6.1 **MD** noted that the exact brief of the research with Audit Scotland will be agreed before the end of the year. It was agreed that **AM** could be a resource for this project as it would feed into his mapping exercise.

6.2 **MD** also noted that she will be meeting with SOLACE in March and that a meeting with COSLA was still to be arranged.

7. Other Committee Activity/ Correspondence

7.1 **Administrative Justice Forum (AJF) London: LW** noted that;

- a presentation had been made by the Nuffield Foundation relating the new UK Administrative Justice institute which aims to address the lack of empirical research evidence on different administrative justice mechanisms;
- there was a discussion about the lack of a social welfare fund in England;
- Social Security appeals had dropped, and no information was available on whether this was due to the DWPs mandatory reconsideration policy, and that no data was available.

MD noted that the AJF focussed entirely on English issues; and that other organisations seemed to share the Committees concerns on this. **MD** asked whether the question of lack of data for mandatory considerations could be pressed, and a joint letter issued.

Action Point 8: LW to explore the possibility of CAS leading on raising the issue of lack of data on mandatory reconsiderations

Action Point 9: MD to sound out the interest of other AJF members on mandatory reconsiderations

7.2 **Petition PE1449 Accountability Scotland: MD** advised that petition has now been closed.

7.3 **Meeting with the Law Society for Scotland: MD** advised that the meeting went well and was productive.

8. Future Options for an Advisory Committee

8.1 Due to time constraints, this discussion will be carried forward to the next meeting.

9. Meeting Minister for Community Safety and Legal Affairs

9.1 It was agreed that the implications of the Smith Commission Report should be added to the agenda for the meeting.

10. Any Other Business

10.1 **Town And Country Planning (Hazardous Substances) (Scotland) Regulations:** a request has been made to the Committee to comment on the changes to these regulations. It was agreed that the Committee was not in a

position to comment as the regulations were very technical and there were no statutory requirements to do so.

Action Point 10: AM to draft a response declining the invitation to comment on the draft regulations

10.2 MD advised the Committee that she was now on the steering group of the UK Institute for Administrative Justice. Potential research areas were discussed and the following were mentioned for consideration

- User expectations versus actual service delivery – the expectation gap of the user
- What to do if unhappy with ombudsman decisions
- What happens to those cases that are turned away from an ombudsman (premature or out of scope)

11. Date of next meeting.

11.1 The next meeting will be on **25 February 2015** at **10 am**, with the venue to be arranged.

Action Point review.

Action points carried forward from previous meeting:

Action Point 7: AC to re-send the Social Care Alliance information to the Committee.

Action Point 8: PMcF and SB: Briefing note on Health and Social Care Integration to be drafted for 18 December.

Action Point 9: AC: As there has been no significant progress with the Administrative Justice Strategy, the presentation will be re-scheduled for a future date.

Action points taken forward from this meeting

Action Point 1: AM to investigate how STAJAC can gain input from the Office of the Social Fund Commissioner in Northern Ireland.

Action Point 2: AM to arrange meeting between SPSO and STAJAC.

Action Point 3: TM & TD to redraft a letter to the Minister.

Action Point 4: MD to arrange a meeting with Lady Smith to discuss concerns relating to representation of users and protection of best practice.

Action Point 5: TM & TD to contact officials regarding the housing chamber staffing and member numbers.

Action Point 6: SO'N & LW to contact officials on; if proposed changes will amend existing regulations, and what the plans are for an appeal route.

Action Point 7: AC to investigate the options relating to the timing of the finance of the research.

Action Point 8: LW to explore the possibility of CAS leading on raising the issue of lack of data on mandatory reconsiderations

Action Point 9: MD to sound out the interest of other AJF members on mandatory reconsiderations

Action Point 10: AM to draft a response declining the invitation to comment on the draft regulations