



Mental Health Tribunal for Scotland

# **ANNUAL REPORT 2015/2016**

**This report covers the period  
1 April 2015 to 31 March 2016**

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President, Dr Joe Morrow QC

## **PRESIDENT'S FOREWORD**

Welcome to this Annual Report of the Mental Health Tribunal for Scotland for the year 2015/2016. I am able with confidence to say that, since its creation by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003, the Tribunal has established itself in the operation of the 2003 Act and under the principles set out in the legislation. This report covers a year which can be described as mature performance and operation within the tribunal setting.

You will see that the Tribunal has had 4,361 applications during 2015/16, which represents an 8.8% increase in the number of applications, namely 352 applications. The largest part of our work involves dealing with compulsory treatment orders (CTOs). The 2003 Act has a range of applications, appeals, references and reviews, and these are all fully utilised by patients and other parties. During this financial year, we have had ample opportunity to consider the implications and effects of the Mental Health (Scotland) Act 2015 – some provisions of which have already come into force – based on the recommendations of the McManus Review. The patients, named persons, lawyers and other parties are gaining confidence in the use of applications, appeals etc. under the 2003 Act and fully understand the protective nature of the orders which are put in place by the Tribunal. One of the clear thrusts behind the 2003 Act was to provide that the Tribunal should regularly review all patients who are subject to detention. This now applies to all parts of the 2003 Act and is fully operational and makes up a substantial part of the Tribunal's activities.

In this reporting year, 72% of cases were dealt with and disposed of at their first hearing. In the early years of the Tribunal's operation, one of the criticisms was that proceedings under the 2003 Act required a number of hearings. This is no longer the case, with only 28% of hearings requiring to go to a further hearing. It would be fair to say that, while I am still working on the issue of the expedient disposal of cases before the Tribunal, a number of that 28% of hearings require to be continued for a variety of reasons, ranging from the unavailability of a mental health professional to the emergence of new information. This year's figure represents a 1% increase on the 2014/15 figure. This is not only clearly an efficient way to operate the Tribunal, it also ensures the expedient and helpful disposal of Tribunal business while bearing in mind the needs of patients and their families.

I am committed to the independence of the Tribunal process, but I also believe firmly that expedient disposal of Tribunal business is in the best interests of the patients and parties concerned.

You will see from this report that the targets set by the Tribunal's Administration with regard to timescales have been met, but you will also get a sense of the significance placed by the Tribunal on engagement with all who have involvement with the Tribunal. The Tribunal receives regular input not only from Tribunal Operations and Tribunal Members, but also from organisations providing advocacy services who provide us with insights which enable us to reflect how to carry out the Tribunal work more efficiently and provide a service which is focused on the care and treatment of the patients who come before the Tribunal. I will continue to engage with those who use the Tribunal and to gain from that engagement information to help improve the service provided by the Tribunal under the 2003 Act. I am sure that this engagement with all who are involved in the Tribunal's activities is the key to the effective and efficient discharge of our duties. I believe also that this approach provides a proportionate access to justice for persons with mental disorder.

I would like to put on record my thanks to all members of the Tribunal and all staff of the Tribunal's Administration for their commitment, hard work, energy and insight which ensure our continued progress – a progress which is clearly reflected in this Annual Report.

Finally, I make no apology for closing this report with the remarks I have made in several previous annual reports, namely my assurance that the patient is, and will continue to be, at the centre of the Tribunal's activity.

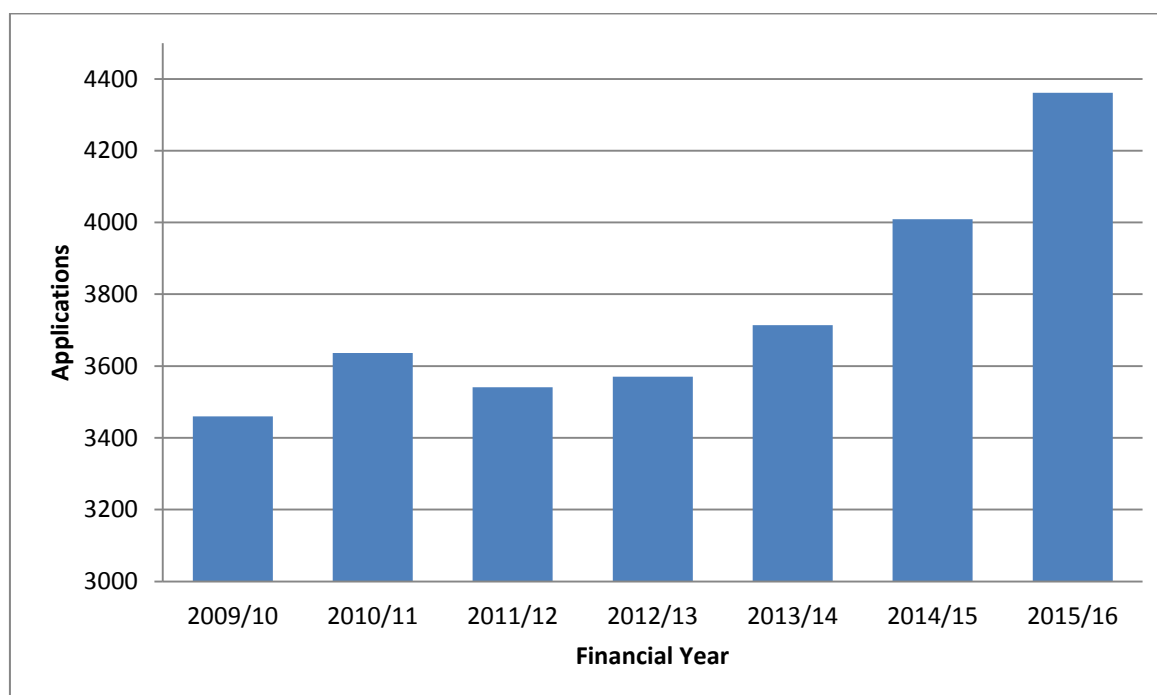
I commend this Annual Report to you.

A handwritten signature in black ink, reading "Joe Morrow". The signature is written in a cursive style with a horizontal line underneath the name.

**Dr Joe Morrow QC**  
**President**

## TRIBUNAL ACTIVITY

### Applications received by the Tribunal in the last 7 years



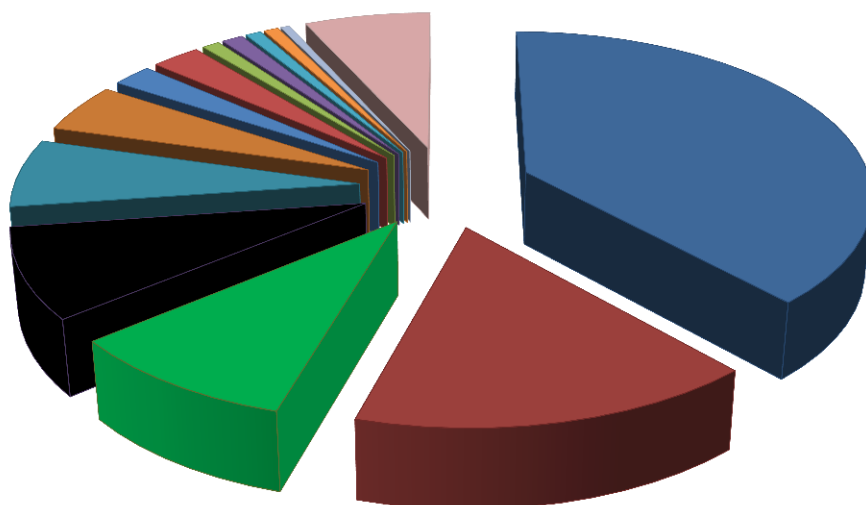
The above graph illustrates how the number of applications received by the Tribunal has increased since 2009/10, resulting in this financial year having the highest figure of 4,361 applications received, which represents a growth of 8.8% (352 applications) over the past year. This means that there have been two substantial increases back to back in the last two financial years, as 2014/15 also showed an increase of 7.4%.

Compulsory treatment order (section 63) applications continue to constitute the highest number of applications received, namely 38.32% of the total, followed by applications to revoke short-term detention certificates (section 50) at 16.14%, and applications to revoke or vary compulsory treatment orders (section 100) at 9.93%.

The Tribunal's Administration continually evaluates staffing levels and skills and this year successfully reorganised the casework teams to improve quality and efficiency.

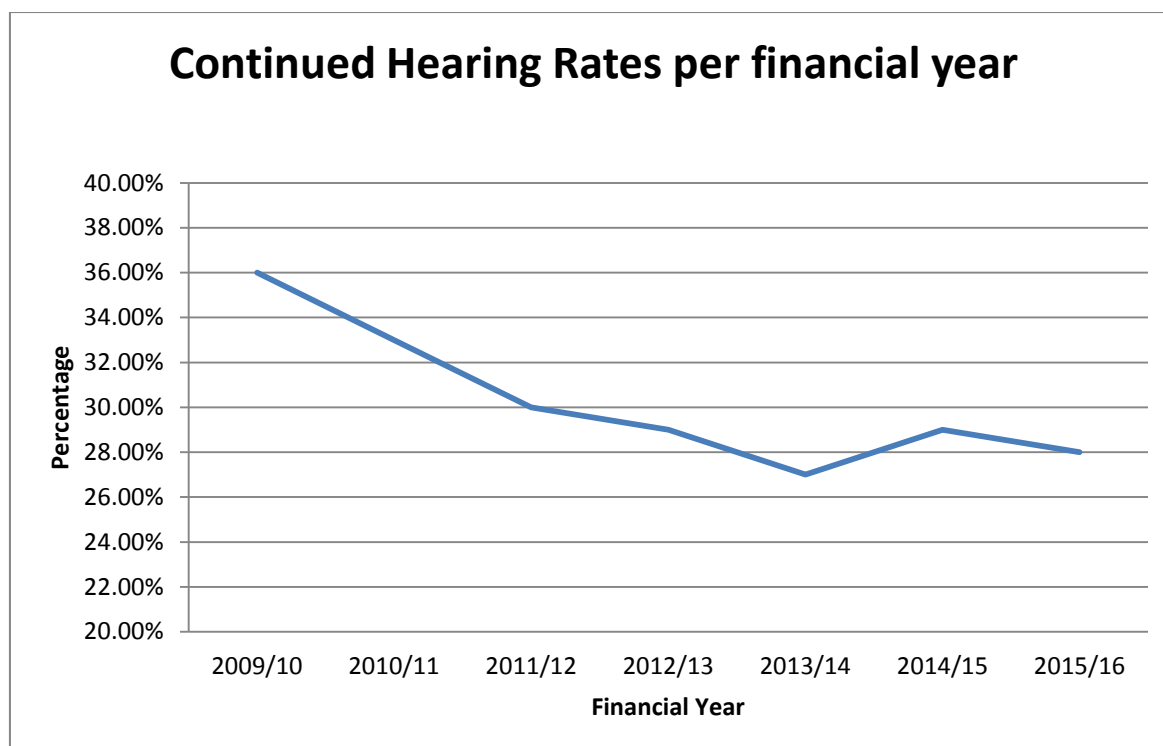
The Key Performance Indicator (KPI) was once again met in 100% of cases in relation to the statutory timescale for holding a hearing within 5 working days of the expiry of a patient's short-term detention certificate.

## Breakdown of the applications, appeals, references and reviews dealt with by the Tribunal in 2015/2016



- 63 - Application for compulsory treatment order
- 50 - Application for revocation of short-term detention or extension certificate
- 87/101 - Notification of section 86 determination to extend compulsory treatment order / section 101 review of compulsory treatment order
- 100 - Application for revocation of a compulsory treatment order
- 92 - Application to extend and vary a compulsory treatment order
- 95 - Application to vary a compulsory treatment order
- 99 - Application to revoke a determination extending a compulsory treatment order
- 189 - Reference by Scottish Ministers where compulsion order and restriction order has not been reviewed for 2 years
- 264 - State Hospital: application for order that patient is detained in conditions of excessive security
- 100 - Application for variation of a compulsory treatment order
- 149 - Application for extension of compulsion order following first review
- 192 - Application for conditional discharge or revocation of restriction order and variation of compulsion order or revocation of compulsion order
- 125 - Appeal against transfer to hospital other than state hospital (includes section 178)
- Other

## Interim Orders and Adjournments of Hearings



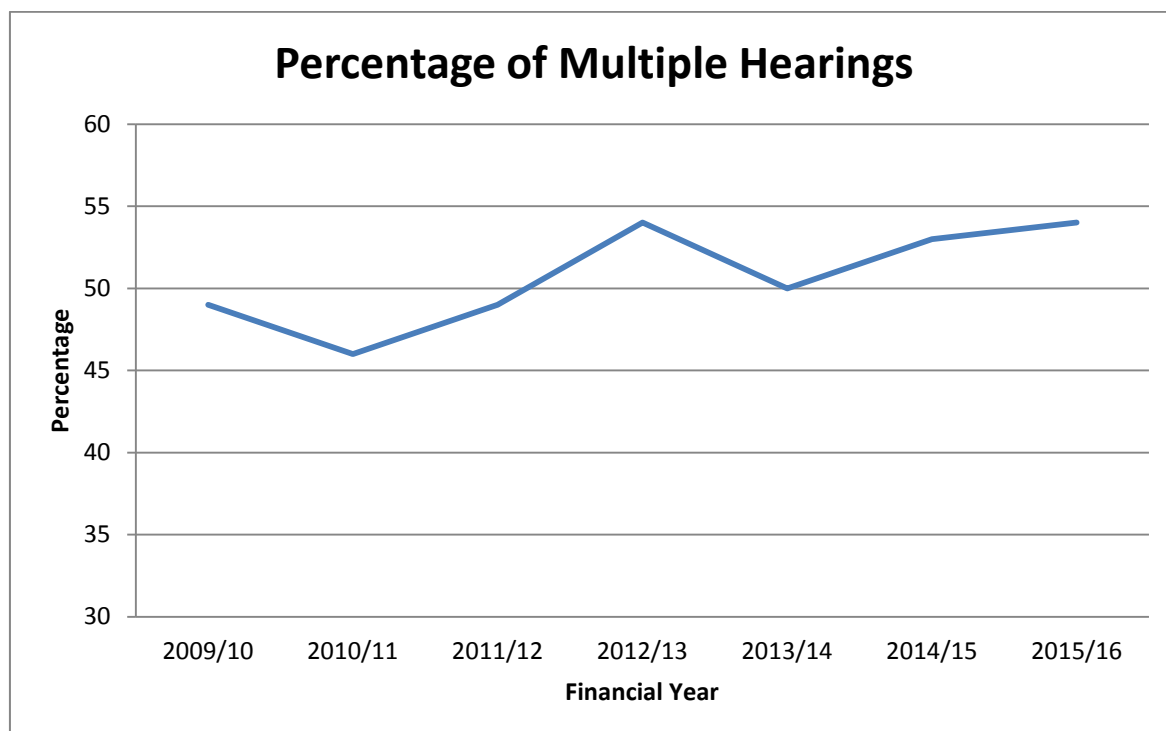
4,748 hearings were held in the financial year 2015/16, which further reflects the growth in the number of applications received, being the highest number of hearings since the Tribunal became operational in 2005, and which also represents a 6.17% (277 hearings) increase on the previous year.

In this reporting year, 72% of cases were determined at their first calling, which represents a 1% increase on 2014/15 and continues to show the steady increase in cases which are completed at their first calling.

A number of initiatives introduced in 2009 have contributed to the increase in the number of cases determined at their first calling, these being: Standing Tribunals (consideration by the President of the Tribunal or an In-house Convener of requests for a curator *ad litem*, for hearing adjournments, for non-disclosure of documents, etc.); Casework Surgeries (requests from the Administration for legal guidance from the President's Office); and Legal Case Management (fortnightly meetings with casework teams, in which the Legal Secretary and In-house Conveners provide oversight of ongoing cases).

The Tribunal regularly evaluates existing practices in order to further reduce the number of continued hearings, while keeping in mind the key principles of the Tribunal, with the aim of improving the experience for all stakeholders and reducing financial costs.

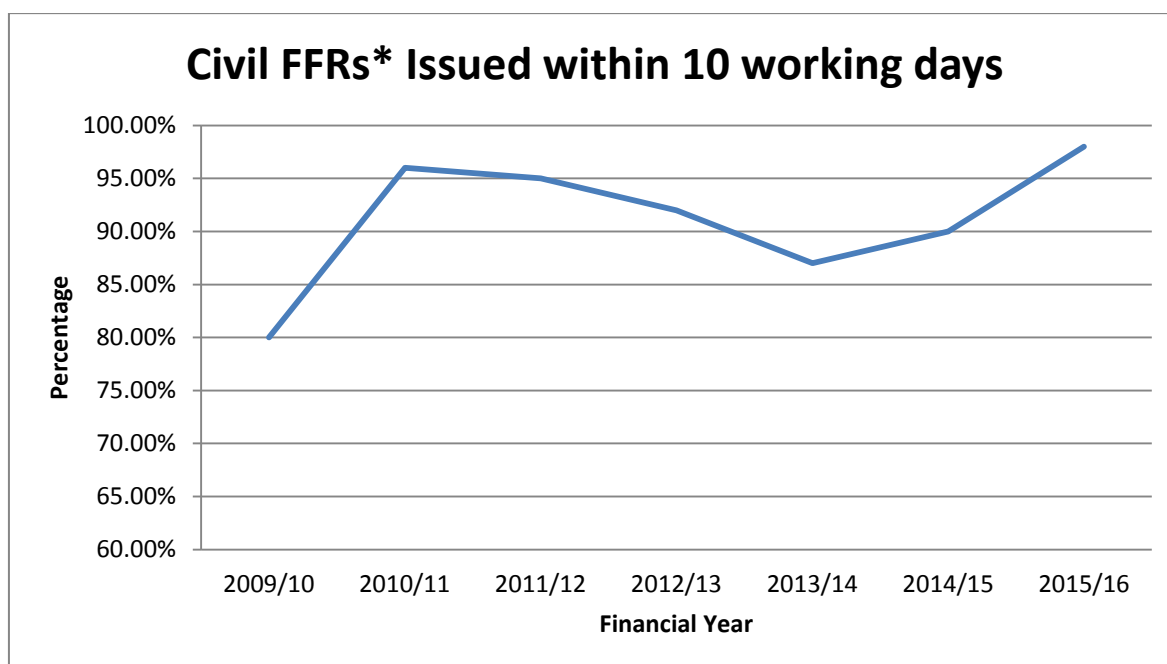
## Multiple Hearings



Whilst maintaining a patient-centred approach, the Tribunal continues to focus on reducing the number of days required for hearings through implementation of the Multiple Hearings initiative, whereby a single Tribunal panel hears more than one case on the same day. The above graph shows that the percentage of hearings which took place as part of the multiple hearings initiative was 54.06%, which represents an increase of 1% over last year (the KPI set at the beginning of the reporting year was 50% and will be adjusted to 52% for the year 2016/17). This was largely due to the hard work of the Tribunal's Administration, who work together and in tandem with external stakeholders to ensure that the Tribunal is operating in the most efficient manner in relation to the scheduling of hearings. The financial year 2015/16 matches 2011/12 as having the highest rate of multiple hearings achieved over the course of a year.



## Civil Decisions



\* FFR is the full statement of facts found by the Tribunal and the reasons for the decision

It is an essential part of the work of the Tribunal's Administration to ensure that parties to Tribunal proceedings receive the final decision paperwork in a timeous manner (within 10 working days of the final hearing in a case).

An internally agreed KPI of 90% and a reporting mechanism were introduced following 2008/09. Since then, a marked improvement has followed. The KPI is now being met and, in fact, is generally exceeded year on year, with the exception of 2013/14 where there was a slight dip below the target.

This KPI is considered a priority for the Tribunal's Administration and, in 2015/16, we have achieved an annual result of 98%, which is an 8% increase on the previous year and is also our highest yearly result to date.

# ENGAGEMENT

## Advocacy

It is a real privilege to be advocating for people who, at times, may be finding it difficult to express themselves in a variety of forums – especially in Mental Health Tribunal hearings, where the combination of professions from medical, legal and social care backgrounds could serve to exclude people with less experience of such matters. If you add in family dynamics, in the form of named persons or interested parties, then things can get quite complicated, and potentially very stressful, for individuals who may already be confused and discombobulated.

I am continually impressed by the way the Tribunal and its panel members handle these circumstances and keep the individual at the focus of proceedings. At times, it requires a very skilful convener to be able to negotiate the legal framework in such a way as to allow the individual to engage fully and participate actively in what is usually a very dynamic process.

In my role as advocacy worker, working mainly with inpatients in a variety of settings, I regularly see that it is increasingly more difficult for service users to engage with services which are under increasing demands and financial constraints. It is therefore refreshing to see how the Tribunal has maintained a consistent approach throughout the years.

My colleagues and I have attended more than a thousand hearings since the Tribunal came into operation and I can recall only one occasion when someone had to be asked to leave the proceedings. By any measure, this is testament to how people are encouraged by all those involved to participate in incredibly important, and pivotal, discussions about their lives.

**Ben Baldock**  
**Advocacy Worker with AdvoCard**

## **Tribunal Operations**

The Tribunal Operations staff engage with the Tribunal judiciary and stakeholders in many ways. They are based at the Administration's offices in Hamilton and consist of caseworkers, schedulers, peripatetic hearings clerks and support staff. There are excellent communications between Tribunal Operations and the President's Office.

The Casework teams meet fortnightly with their allocated In-house Convener or Legal Secretary to discuss live cases and any issues arising in relation to their cases. The advice and input provided during these legal case management meetings assist in ensuring that the Tribunal is able to operate as smoothly as possible and also promote productive discussions on perhaps less familiar parts of the Act and the Tribunal process. Regular seminars are also conducted in-house, which assist to update staff on changes to the Act and provide a deeper knowledge and understanding of judicial processes.

The Scheduling team are responsible for booking the panel and the venue. Each Tribunal panel comprises a legally qualified convener, a medical member and a general member. In restricted patient cases, the hearing is convened by the President of the Tribunal or a sheriff. On the basis of available dates provided by Tribunal members, the team allocate dates for members to note in their diaries. Once a hearing date has been confirmed, members are advised of the hearing venue and time. The Scheduling team utilises an online rostering system for bookings, to which members also have access and on which they can view their bookings and other relevant information. There is a dedicated email inbox which members and schedulers use to communicate with one another. The Scheduling team also provide information to members regarding roadworks, bridge closures or other hold ups to assist members when planning their travel to a hearing and help ensure that they reach the venue timeously.

Wherever possible, panels will hear two Tribunal hearings in one day, and some hospital venues are set up to hear three hearings on the same day. It is often the case that one Tribunal panel hears a double hearing but in two separate venues, with the panel members travelling to a different venue for the second hearing, which is a benefit for patients and those appearing at the hearing and which further contributes to cost efficiencies. Schedulers, hearings clerks and caseworkers all aim to identify doubling-up opportunities on a daily basis.

A hearings clerk facilitates each hearing. The clerk carries out an assessment prior to the commencement of the hearing to ensure the venue is fit for purpose. The clerk has an attendee list for each hearing and welcomes parties, deals with on-the-day requests, ensures that all paperwork is in order and highlights any potential issues to the convener. The clerk liaises with the office to keep them updated and advises of the hearing outcome.

Meetings regularly take place with the Service Users and Carers Reference Group and the Professional Reference Group. These meetings are chaired by either the President, an In-House Convener or a Legal Secretary and are regularly attended by members of staff from the Tribunal's Administration. These meetings are held at locations throughout the country and provide a valuable opportunity to share information, to network with others and to discuss any arising issues.

**Sandra Devlin**  
**Hearings Operations**

## **Tribunal Members**

Mental Health Tribunals have been hearing cases now for 11 years, and during that time much has been refined in the way the Tribunal members individually, and as a panel, engage with the range of people who attend. These include patients, named persons, family members/supporters and the health, social work and legal professionals. One factor which has enhanced good engagement practice by Tribunal members has been the extent to which team working and communication skills have been a central theme at the MHTS development training sessions. These events have allowed the range of professionals and service users and carers who make up the Tribunal panels to learn from one another's best practice, taking into account the different professional approaches to engagement and participation. In addition to this, many Tribunal members across all three cohorts – legal, medical and general – have been members of the Tribunal since it started or for several years, and it is now unusual for a member to sit on a panel with other members unfamiliar to them. Whilst panel members are allocated in such a way as to avoid routine same sitting members whose practice might become entrenched, the reality is that each panel which sits shapes itself due to the increased understanding of colleagues' approaches and shared understanding of engagement practice – and, in our experience, this presents to attendees a unified and coherent panel of members.

No two Tribunals are the same and, while many will have similar features, it is the Tribunal's appreciation of the uniqueness of each hearing that sets aside any complacency of approach. The pre-hearing discussion between members and their reading of the Tribunal papers beforehand is crucial in setting out the approach to be adopted. It is now common practice for the panel to set out very clearly at the start of the hearing the role of the tribunal and how it intends to conduct the hearing of evidence and the decision making process. The default position is one of ordered informality with the patient being put as much at ease as possible, being afforded the first and last word, and being encouraged to request adjournments for comfort or for consultation with representatives. Tribunal hearings are always conducted with respect to all attendees and with the centrality of the patient firmly established at the outset. Panel members adopt an active listening approach to the hearing of evidence, which further encourages the attendees to engage meaningfully in the hearing's inquisitorial style in the asking of questions from panel members. Although a patently judicial process, this transparent communication approach adopted during the hearing does, in my view, best offer the patient and other parties the most open forum possible to explore the issues, provide the evidence and enable the Tribunal to reach a decision.

There are challenges to engagement and participation in hearings, and these are usually unforeseen and emerge on the day. An example is where a key party, for example the RMO, is only available to attend by a telephone link. These situations are generally acceptable, if less than welcome, as a disembodied voice in the room is inevitably a distraction for the patient and others and, in some cases, might have a negative impact on a patient's willingness to engage in the proceedings. Often in these circumstances, where a further hearing is to be held, the Tribunal will request that the telephone party attend in person next time.

**Roger Davis**  
**General Member of the Tribunal**

## TRIBUNAL MEMBERSHIP

Total Number of Members	Legal Members	Medical Members	General Members	Part-time Sheriffs (also Tribunal members)	Part-time Sheriffs (not Tribunal members)
<b>311</b>	101	94	116	7	5

The membership of the Tribunal remains reasonably static, which reflects the members' commitment to the work of the Tribunal.

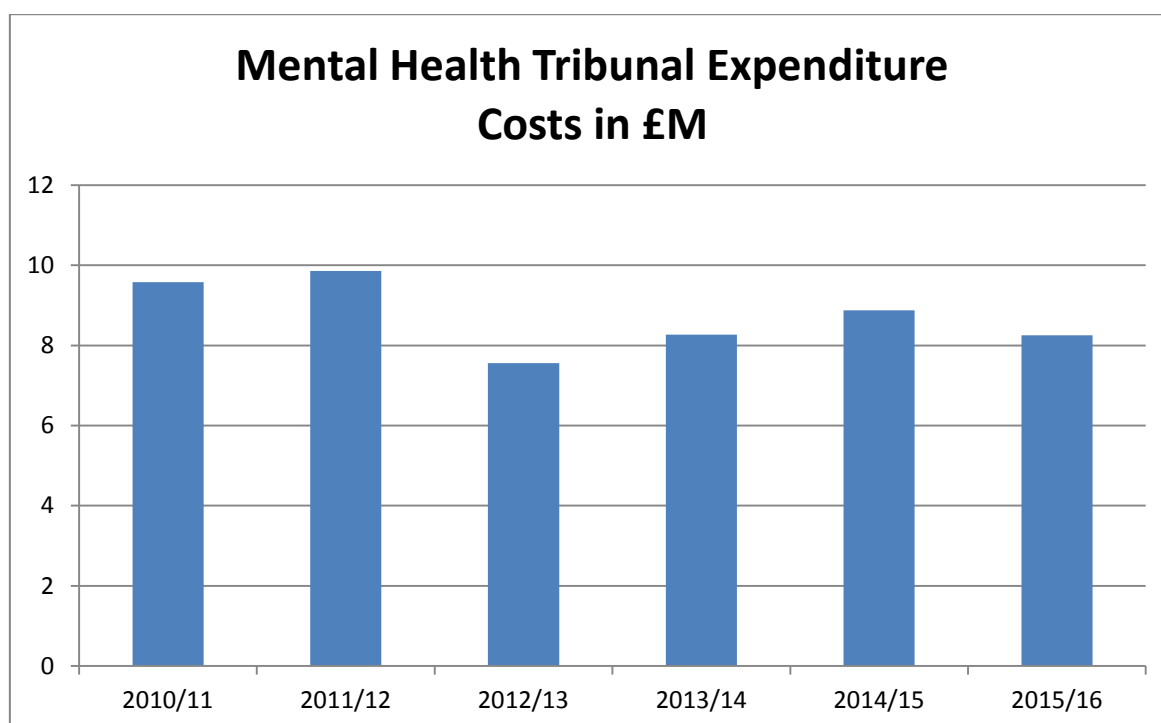
A relatively small number of Tribunal members have resigned or not sought reappointment. There have been three recruitments of legal and medical members since the Tribunal came into operation. Often a fee-paid Tribunal member resigns to take up a full-time judicial appointment.

As the membership remains static, there is a high level of expertise. The members are highly experienced in dealing with cases under the 2003 Act, which reinforces the specialist nature of the Tribunal.

## CORPORATE STRUCTURE AND FINANCES

Expenditure relating to public relations, overseas travel, hospitality and entertainment and external consultancy by the Tribunal during 2015/16:

Public relations	Nil
Overseas travel	Nil
Hospitality and entertainment	Nil
External consultancy	Nil
Members and Members of staff of the Tribunal who received remuneration in excess of £150,000	Nil
Payments with a value in excess of £25,000	Nil



# FINANCIAL RESULTS

## Scottish Courts and Tribunals Service Operating Cost Statement for the year ended 31 March 2016

2014/15		2015/16
£000s		£000s
6,405	<b>Tribunal Costs</b>	6,128
	<b>Administrative Costs</b>	
2,013	Staff	1,902
28	Depreciation	0
431	Other Costs	208
<hr/> 2,472 <hr/>		<hr/> 2,125 <hr/>
<b>8,878</b>	<b>Net Operating Costs</b>	<b>8,253</b>

## Financial Performance

Operating costs have been reduced in the 2015/16 statement due to work being centralised within Finance, the Property and Services Unit and IT as a result of the merger which took place between the Scottish Court Service and the Scottish Tribunals Service, forming the Scottish Courts and Tribunals Service (SCTS). The budget was therefore also transferred and actual costs are now reported within the respective units. The Tribunal is also operating with cost saving efficiencies and initiatives while the case load is increasing.