



Mental Health Tribunal for Scotland

ANNUAL REPORT 2016/2017

**This report covers the period
1 April 2016 to 31 March 2017**

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Dr Joe Morrow QC, President

PRESIDENT'S FOREWORD

I am privileged to be President of the Mental Health Tribunal for Scotland ("the Tribunal") and to present this Annual Report for the year 2016/2017.

This report reflects a year of hard work and focus applying the law and the principles as set out in the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act"). It once again recognises and highlights the need to focus on the patient and on the independence of the Tribunal, and it further evidences the mature, efficient and effective operation of the Tribunal.

The Tribunal makes decisions which are vital and represent a sharp intervention in the lives of people with mental disorder who require involuntary detention and treatment. This is done through focusing on the patient, and not simply on the administrative or judicial process. The engagement with users, professionals and advocacy groups is key to protecting the rights of the patient, balancing this with the Tribunal's duties and obligations.

The Tribunal members have diligently discharged their statutory duties in the past year and have become a highly skilled group of people who are knowledgeable in the field of mental health law and an asset to the Scottish legal landscape. Alongside this membership of highly trained and motivated individuals, the staff of the Tribunal's Administration have discharged their duties with a professionalism and efficiency which reflects their commitment to those who come before the Tribunal.

This report documents a 3 percent increase in Tribunal business during the last year, in which a total of 4,369 applications were dealt with. At the same time, Tribunal costs have further decreased by £51,000. This reduction has been achieved through hard work, imagination and a strong sense of public service, all of which are marks of the Tribunal membership and Administration.

It may be of passing interest that the 2003 Act requires that many applications are heard by the Tribunal within a strict statutory time limit of 5 working days. The reports and charts on Tribunal activity reflect the hard work which has gone into achieving 100 percent compliance with that time limit. I have attempted to capture in this report some insight into the work of the various people who work for, or are involved with, the Tribunal and I have included a number of sections to demonstrate the efforts and contribution by the Tribunal members, the Administration and others who support the work of the Tribunal and, most importantly, the patient.

As President, I will continue to encourage this approach to the duties and responsibilities given to the Tribunal, while at the same time maintaining a high level of user/patient engagement, which substantially contributes to the understanding of how we should operate.

Much of the content in this report leads to an understanding of the way in which the Tribunal establishes a balanced and consistent approach and practice within the Tribunal. I would like to put on record my thanks to both members and staff of the Tribunal for their energy and commitment which have enabled the considerable progress made during the past year.

I will continue to focus on the principles of the 2003 Act and emphasise the need to maintain a focus and engagement centred on the patient in all Tribunal proceedings.

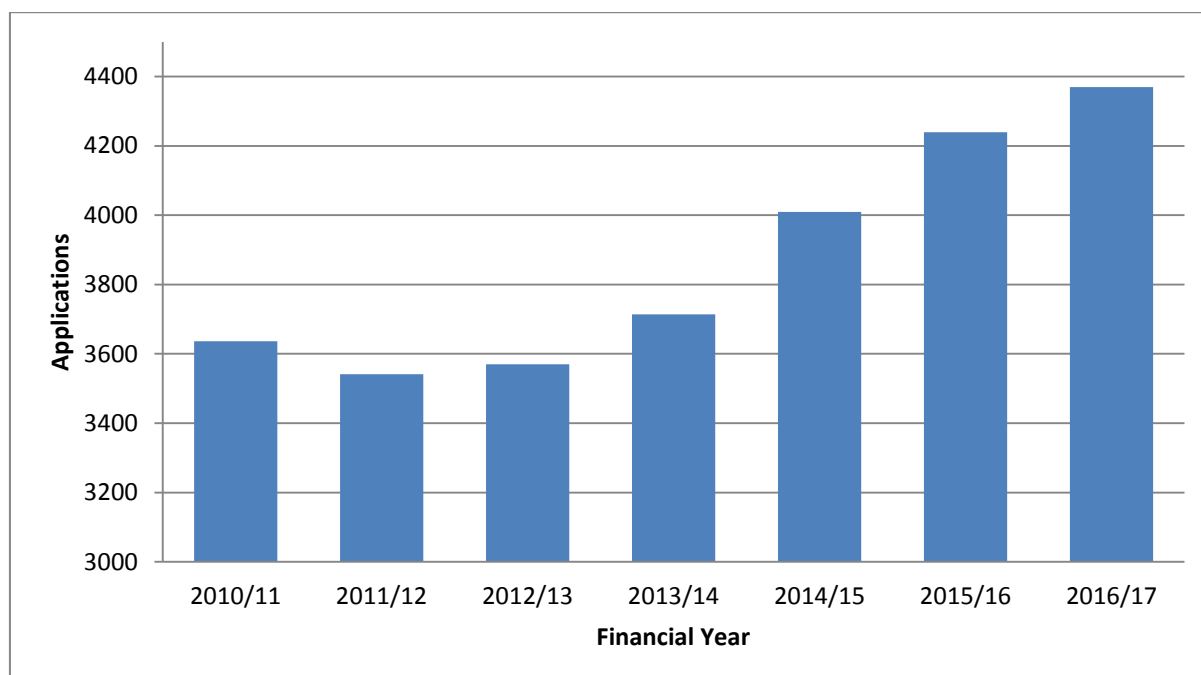
I commend this Annual Report to you.

A handwritten signature in black ink, reading "Joe Morrow", with a horizontal line underneath.

Dr Joe Morrow QC
President

TRIBUNAL ACTIVITY

Applications received by the Tribunal in the last 7 years



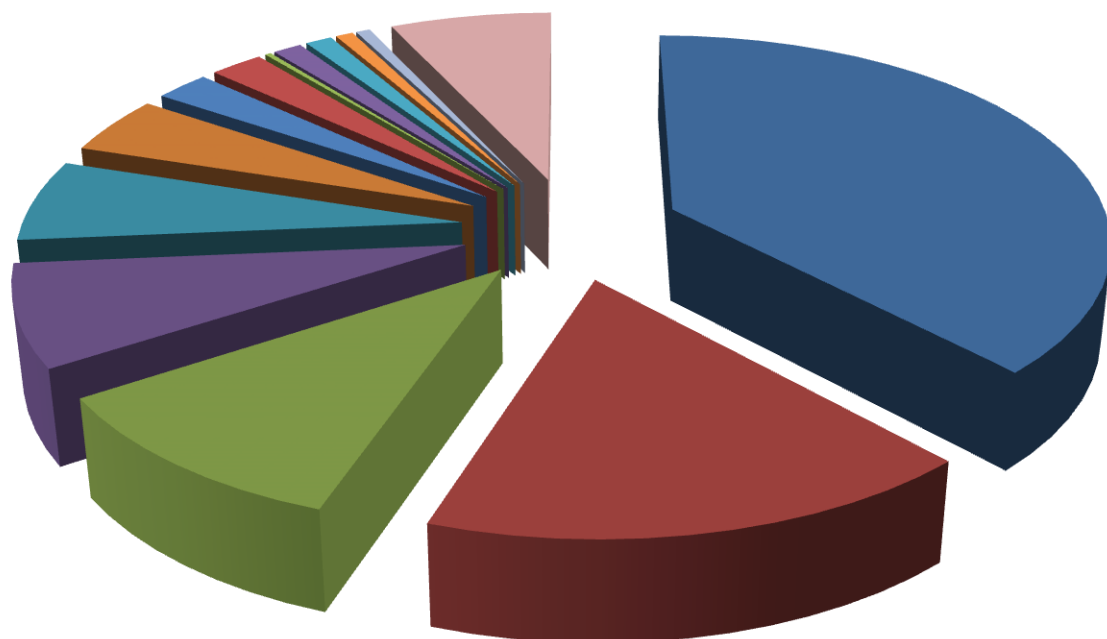
The above graph illustrates how the number of applications received by the Tribunal has increased since 2010/11, resulting in this financial year having the highest figure so far with 4,369 applications received, which amounted to a 3% increase from the previous year.

Compulsory treatment order (section 63) applications continue to constitute the largest percentage of applications received, namely 38.09% of the total, followed by applications to revoke short-term detention certificates (section 50) at 17.12%, and applications to revoke or vary compulsory treatment orders (section 100) at 10.62%.

The Tribunal's Administration continually evaluates staffing levels and skills to ensure a high quality and efficient service is delivered at all times.

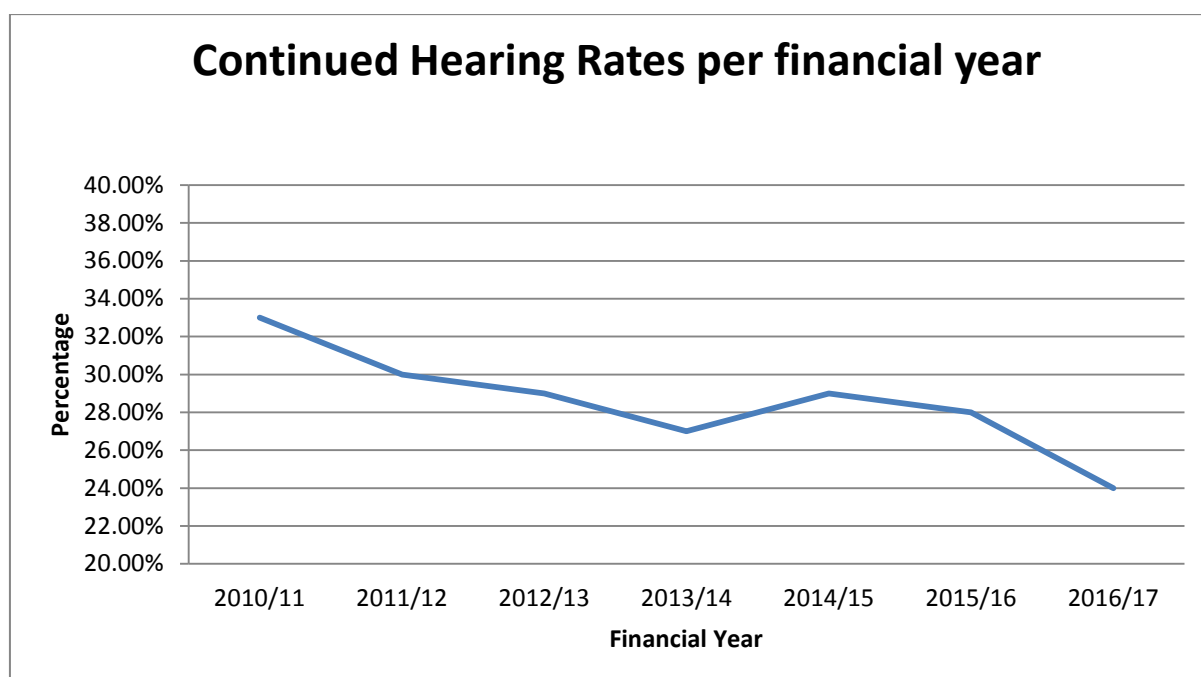
The Key Performance Indicator (KPI) was once again met in 100% of cases in relation to the statutory timescale for holding a hearing within 5 working days of the expiry of a patient's short-term detention certificate.

Breakdown of the applications, appeals, references and reviews dealt with by the Tribunal in 2016/2017



- 63 - Application for compulsory treatment order
- 50 - Application for revocation of short-term detention or extension certificate
- 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



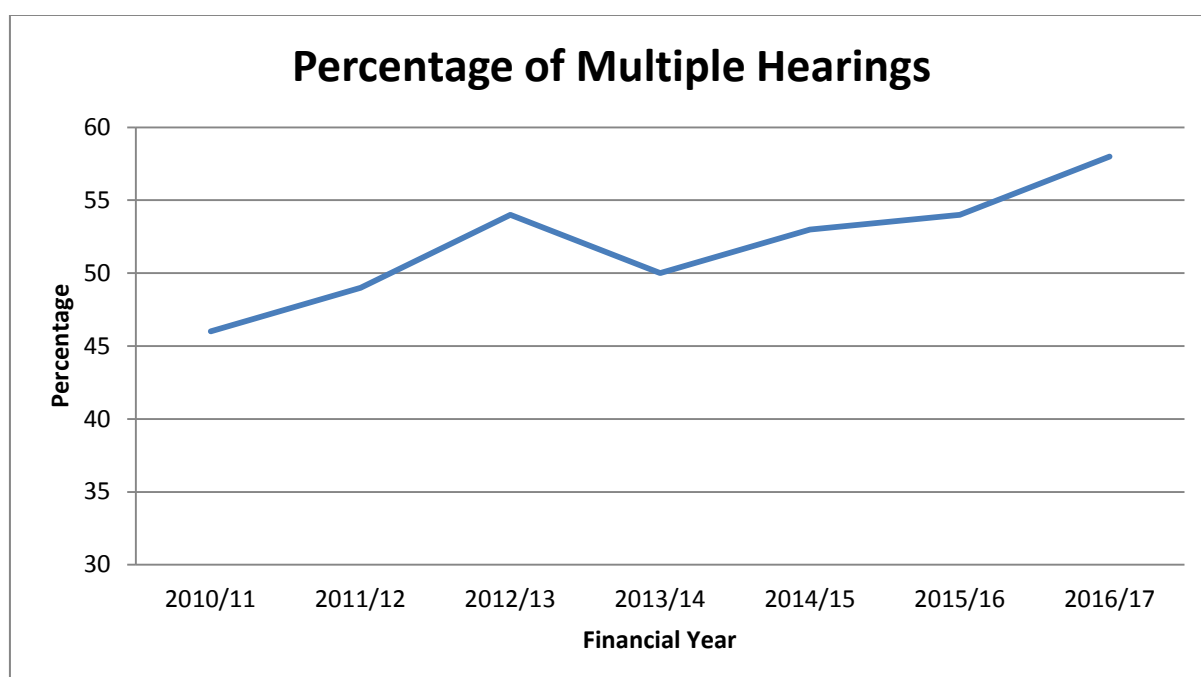
4,817 hearings were held in the financial year 2016/17, which is a slight increase on the previous year.

In this reporting year, 76% of cases were determined at their first calling, which represents a 4% increase on 2015/16 and continues to show the steady increase in the number of cases which are completed at their first calling.

A number of initiatives introduced in 2009 continue to contribute 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 Administration staff also undertake a wide range of tasks prior to a tribunal taking place, to ensure that, wherever possible, a case is determined at the first calling.

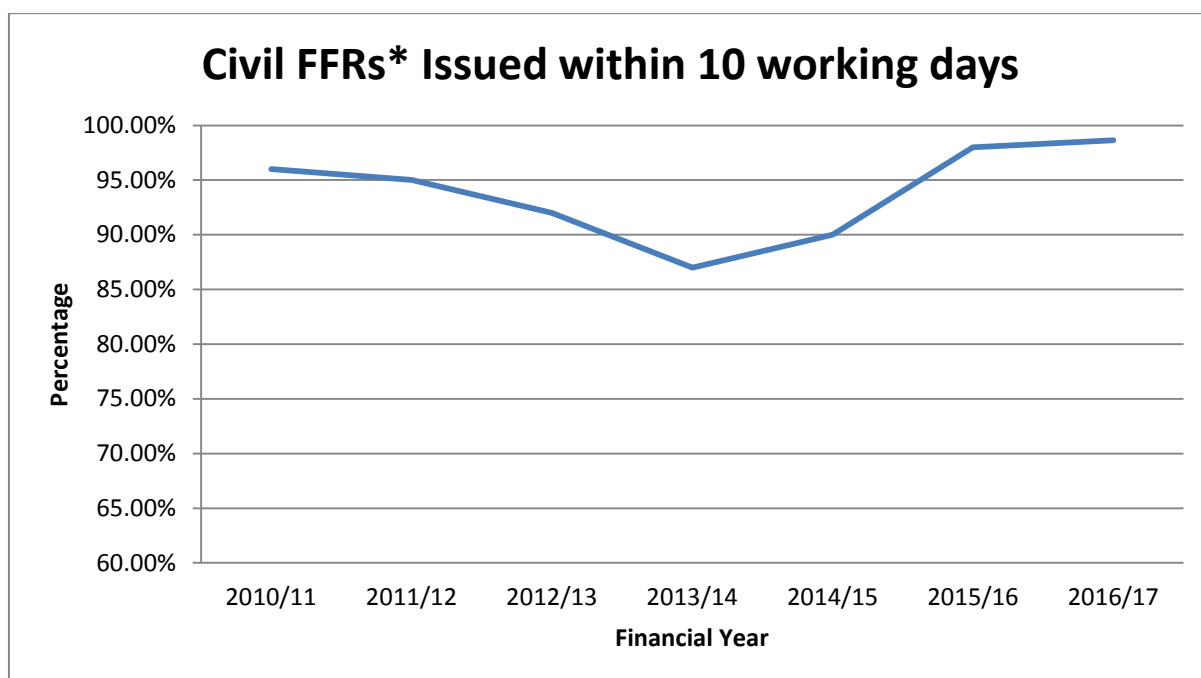
The Tribunal regularly evaluates existing practices in order to further reduce the number of continued hearings, while keeping in mind the key principles of the Tribunal, with the aim of improving the experience for all stakeholders and reducing financial costs.

Multiple Hearings



While 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 formed part of the multiple hearings initiative was 58.02%, which represents an increase of nearly 4% over last year (the KPI set at the beginning of the reporting year was 52% and will be adjusted to 54% for the year 2017/18). 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. This reporting year saw the highest percentage of multiple hearings to date.

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 and, since then, a marked improvement has resulted. The KPI is now being met and, indeed, is generally being 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 2016/17, we have achieved an annual result of 98.65%, which represents a 0.65% increase on the previous year and is also the highest yearly result to date. The KPI for this process has now been revised to 95% for 2017/18 onwards.

SUPPORTING THE PATIENT IN THE TRIBUNAL PROCESS

From the perspective of a Curator *ad litem*

Every solicitor has a duty to work at all times in the best interests of the client. Sometimes what is in a person's best interests is obvious and undisputed, but mostly it is not so easy to define. There are frequently competing views about what is in a person's best interests. Unfortunately, there is no formula that you can apply to achieving the absolute answer, but the best way to proceed is to have as much information as possible in order to weigh up all the competing views. The doctors and mental health officers who are making applications to have persons detained do so because they believe that is in the best interest of their particular patient. Generally, the patient does not agree and has an alternative view on how their best interests can be achieved.

When I first have contact with a client, acting either as solicitor or as curator *ad litem*, the first thing I need to know is what they want to happen. By and large people want to go home if they are detained or want to be free from medication if they are in the community. I always explain to my client that, while I would try to get them their desired outcome, in order to achieve that I would have to know and understand why their care team wanted them to remain in hospital for treatment or to continue to receive treatment in the community. We would then discuss the various reasons and what the client's position is in relation to those detailed reasons. This is always the most difficult aspect of discussion with the client. It is a balancing act with the client, trying to get them to see their case from the perspective of the care team and the duty of care that they owe to them. The obvious danger is that the client feels that you are simply going along with the doctor's view and not really listening to their perspective. Often the client feels that they have no voice because of their diagnosis. In my view, this is a really important point to discuss with a client. I am always keen to ensure that, however the discussion goes, I do not do anything which could undermine the relationship that my client has with their care providers. It is vital that the client knows that, whilst you are arguing their case, this does not mean that you are against somebody. I am always very keen to avoid a "them and us" situation. My client will most likely be involved with the care team for many years to come and it is really important that I do not do or say anything which undermines that relationship or makes it more difficult for the client to work with the care team.

In the final run-up to preparation, I would normally spend time with the client talking about the Tribunal and about the kind of evidence that is likely to be led and to get them to consider how they might view the evidence were they sitting on the Tribunal panel. I do remind patients that they could become Tribunal panel members, and there are already a number of service users who serve on the Tribunal. There is a very small number of clients who want a very adversarial, attacking approach because they are very angry about their situation. Those clients tend to sack me because they do not like the advice given. I make it clear from the outset that my job is to give them the best advice I can to achieve the best outcome I consider possible in their particular circumstances.

The involvement of the patient in the Tribunal process is in my view its greatest success. In order to be fully involved, the client needs to have an understanding of how the Tribunal arrives at its decisions. If during the process you can explain to your client about the value of their evidence and the evidence from other parties and that all evidence – including perhaps evidence from independent reports – is all considered, then most often the client is able to understand the decision.

Even when you have prepared your client for what you consider to be the likely outcome, they can become upset and disappointed and sometimes even angry. However, after the anger abates, the client can usually understand and accept the outcome.

Anne Bolger
Solicitor and Curator *ad litem*

From the perspective of a member of the Scheduling Team

The Scheduling team strive to prioritise the needs of patients in the Tribunal process by ensuring dates are confirmed in an efficient, timely manner alongside the availability of venues and Tribunal members.

We aim to ensure the venue most easily accessible to the patient is used, taking into account travelling distance and public transport links whilst trying to host community patients in community venues.

Similarly we cater to the availability of responsible medical officers to ensure their presence at Tribunals and prevent a negative effect for other patients under their care by avoiding Tribunal hearings clashing with their regular clinics.

Paula Miller
MHTS Scheduling Team

From the perspective of a Tribunal Hearings Clerk

The Tribunal Clerk plays a vital role in the smooth operation of Tribunal hearings. We are the 'face' of MHTS, out on the front line providing a service to our stakeholders – panel members, RMOs, MHOs, solicitors, advocacy workers, nurses, social workers, family members and, most importantly, the patients.

Mental Health Tribunal hearings can be a daunting and stressful experience for patients. In Tribunals we often hear of the detrimental affect they can have on a patient's mental health as they await their hearing date, and also after the decision is made. It is therefore paramount that the patient is put at ease at the hearing, and this starts with the welcoming from the clerk.

The clerk will arrive approximately one hour before the commencement of the hearing. We check all rooms to ensure they are clean, tidy and fit for purpose and that they meet our Health and Safety standards. Should an issue be highlighted, the clerk will liaise with venue staff to resolve the issue promptly and ensure it does not disrupt the running of the hearing.

The clerk meets and greets the patient and all other Tribunal attendees and shows them to the waiting areas. Should the patient wish to speak with their solicitor, advocacy worker or named person, the clerk can ensure that they are afforded the privacy to do so.

The clerk will then run through any 'housekeeping' with the patient and attendees, such as informing them that the proceedings are recorded for administrative purposes only; whether a fire alarm test is planned for a time during the hearing; pointing out restrooms and fire exits; and explaining how the Tribunal will run.

The clerk will also liaise between the parties and panel, answering any questions the patient or other attendees may have, and help to highlight any preliminary matters. We will always endeavour to resolve any issues prior to the hearing commencing, to ensure that the patient is not kept waiting for a prolonged period of time or having to sit through a lengthy and distressing hearing unnecessarily.

Like Tribunal members, clerks receive specialist training in facilitating child and adolescent hearings. These proceedings are particularly sensitive due to the age of the patients and the often distressing circumstances surrounding their mental illness. These hearings tend to be lengthier and have more attendees than usual, so it is important to ensure the patient remains the focus of the proceedings. It is imperative that the clerk establishes any fixed meal times to advise the panel so that appropriate breaks can be factored into the hearing.

The clerk can also gauge how anxious the patient is beforehand and highlight this to the panel. In adolescent and learning disability hearings, we can offer to take the patient through to meet the panel prior to the hearing, if appropriate, to help them relax a little and know what to expect.

Kristen Taylor
Tribunal Hearings Clerk

From the perspective of the Tribunal Liaison Officer

Clerks, caseworkers, schedulers, team leaders and managers regularly attend training events for members of the Tribunal – which focus on the importance of the patient participating so far as the patient can and wishes – contributing to scenario-based exercises.

Caseworkers are alert to identifying cases where a patient may require to have a curator *ad litem* appointed, if the patient lacks capacity to instruct a solicitor, and referring such cases to the President's Office for consideration and action; and also to identifying cases where the patient may communicate in a language other than English or has other communication difficulties, and taking steps to ensure that the appropriate person meets their responsibilities under section 261 of the 2003 Act so that all reasonable steps are taken to enable the patient to communicate in proceedings before the Tribunal.

Scott Blythe
Tribunal Liaison Officer

From the perspective of a Legal Convener of the Tribunal

Since becoming a convener, I have chaired many Mental Health Tribunal hearings. I have been involved with applications concerning patients from the age of 12 to patients in their 90s. Whilst there may be similar features to some applications, no two cases are the same. I strive to ensure that hearings are conducted fairly with a patient-centred approach. I aim to balance consistency in my approach as convener with flexibility to enable each patient the opportunity to participate as fully and appropriately as he or she may wish.

The Tribunal panel's preview discussion is an important stage of the hearing process. The panel discuss any issues that arise in the papers and consider how we might want to take the oral evidence. Some applications have limited information about the patient, while other applications may provide a lengthy detailed history. A patient-centred approach avoids the unnecessary repetition of the patient's history during the hearing, which can be extremely upsetting for the patient and for any family members who might be present.

A comprehensive preview discussion helps to tailor my introductory comments to the parties, particularly the patient. My approach will vary depending on the circumstances. I use language appropriate to the age and ability of the patient. At the outset, the panel members introduce themselves. Then I speak to the patient, setting out the purpose of the hearing and how it will be conducted. It is for the patient to decide how much or little he or she may wish to contribute. Some patients will be represented at the hearing by a solicitor and/or be supported by an independent advocacy worker, but many will choose not to be represented. Some patients may be keen to give evidence, while others come with a prepared statement or may choose to say nothing. How the patient wishes to participate may change during the hearing and will be accommodated. I always tell the patient that they can ask for a comfort break, or an opportunity to speak to their solicitor or advocacy worker if something arises during the hearing. I want the patient to know that there is flexibility within the framework of the hearing. Some patients have attended many hearings but, for others, it might be their first experience of the Tribunal. In such cases, often involving children or elderly patients, the prospect of detention and compulsory treatment can be overwhelming for family members. It is therefore important for the panel to be receptive to the needs of the patient throughout the hearing.

When it comes to delivering the decision, I address the patient to advise the decision and make it clear that the written decision will set out the reasons. The patient may be disappointed with the decision, but their experience of the Tribunal should always be a positive and fair one.

Morag Jack
Legal 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)
335	108	112	115	10	4

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. Some fee-paid Tribunal members resign to take up a full-time judicial appointment.

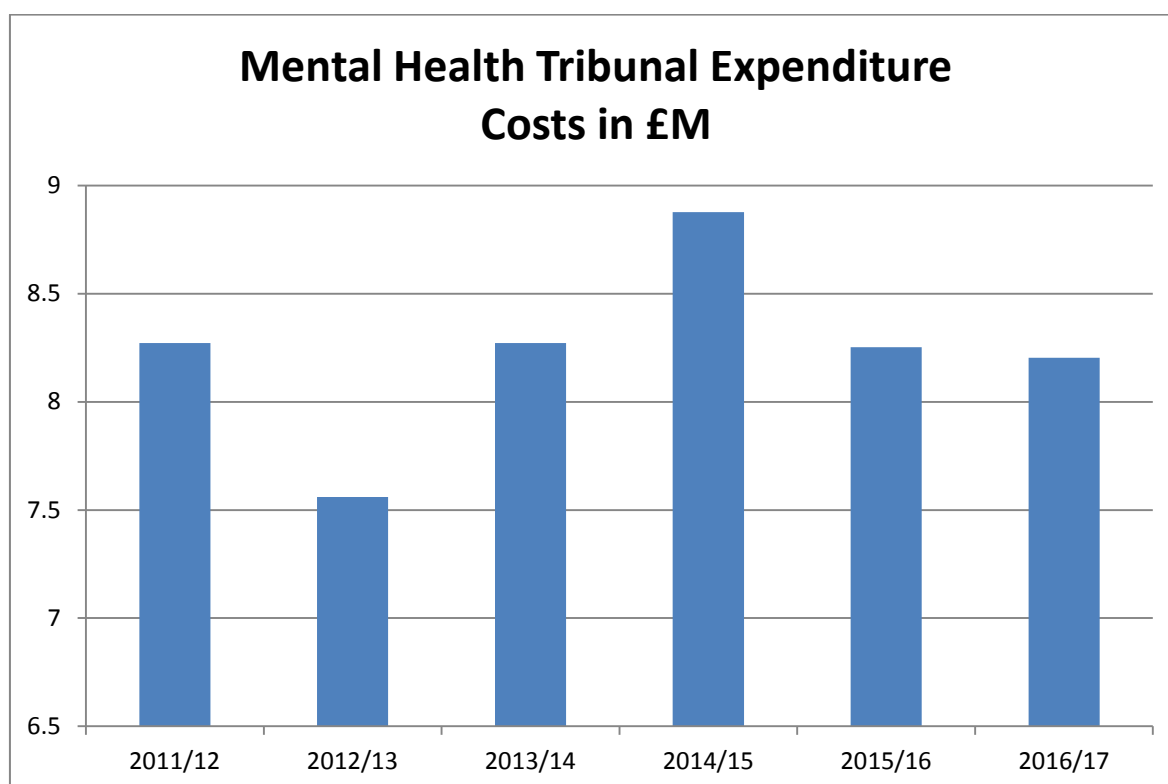
As the membership remains static, there is a high level of expertise. The members are highly experienced in dealing with cases under the 2003 Act, which reinforces the specialist nature of the Tribunal.

CORPORATE STRUCTURE AND FINANCES

Expenditure relating to public relations, overseas travel, hospitality and entertainment and external consultancy by the Tribunal during 2016/17:

Public relations	Nil
Overseas travel	£580.32*
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

*IALMH Conference July 2017 – fee for attendance of the President



FINANCIAL RESULTS

Scottish Courts and Tribunals Service Operating Cost Statement for the year ended 31 March 2017

2015/16		2016/17
£000s		£000s
6,128	Tribunal Costs	5,982
	Administrative Costs	
1,902	Staff	2,026
0	Depreciation	0
208	Other Costs	194
<hr/> 2,125 <hr/>		<hr/> 2,221 <hr/>
8,253	Net Operating Costs	8,203

Financial Performance

Costs have fallen during 2016/17 by approximately £51,000. Despite an increase in the number of hearings, Tribunal costs have fallen due to an increase in the number of multiple hearings and a reduction in curator costs. A year on year increase has arisen within staff costs due to recruitment to consolidate the operational staffing structure. The figure above includes 80% of Operational Support staff costs. Other running costs have decreased due to reduced travel and subsistence costs for staff following the implementation of a new policy and as a result of reduced hearing days.