



Mental Health Tribunal for Scotland

ANNUAL REPORT 2019/2020

**This report covers the period
1 April 2019 to 31 March 2020**

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Ochils, October 2020

This is the Annual Report for the Mental Health Tribunal for Scotland for the period 1 April 2019 to 31 March 2020, the last annual report having been laid before the Scottish Parliament on 10 October 2019. On 12 October 2019, I took over from Dr Joe Morrow as President of MHTS. I am writing this foreword almost exactly a year later. My first year as President divides into two very different six-month periods. Given that this report covers the period to end March 2020, the second six-month period is barely relevant. But it would be strange to say nothing about it, and I return to that below.

The first part of the year covered in this report was therefore a period when Joe Morrow was President. I am grateful to him for all the guidance and support he provided to me prior to my assuming the role of President, and for being available to assist with queries thereafter. Joe left the Tribunal in very good heart. During his 11 year Presidency, he unstintingly invested time and energy in creating a body dedicated to the overriding objective set in our rules: handling proceedings under the Mental Health (Care and Treatment) (Scotland) Act 2003 as fairly, expeditiously and efficiently as possible.

Having been appointed as a legal member in 2016, all my experience until last October had been in convening tribunals. Everyone in the Operations part of the organisation has been generous in helping me to learn how the administration works. Impressive teamwork is on display – many members of staff have served the Tribunal for a long time. We were all very distressed by the sudden death, in December 2019, of one of our clerks, Calum Grierson, who had been with the Tribunal since it started in 2005. He is greatly missed.

During the year, our senior operations manager Karen Burns left the organisation. Karen was replaced, in March 2020, by Grace Lennox, who has had to learn the ropes at an extraordinary time. The Tribunal is very well served by Grace and her dedicated team, and well supported by the Scottish Courts and Tribunals Service, who provide services to a range of different Tribunals across the country. It has been a point of reference in Annual Reports for the last few years that the Mental Health Tribunal is due to transfer formally into the First-tier Tribunal for Scotland. At the time of writing, there is no date set for that transfer to take place.

Decision-making under the legislation continues to be carried out by over 300 judicial members, grouped into general, legal and medical panels. The regular interlocutory work is all dealt with in the President's office, with one legal member on duty each day. As will be seen from the section on Tribunal activity on page 4, this financial year again saw an increase in the number of applications to the Tribunal although, in absolute terms, the increase was small. The proportions of different types of application are shown in the pie chart on page 5. Compulsory treatment order applications were, again, the single largest category.

After starting as President, I embarked on a programme of travelling to parts of the country where I had not sat as a member, beginning with Inverness in January and then also sitting for the first time in Aberdeen in March. As well as first-hand experience of mental health services in these parts of Scotland, such visits also offered the chance to meet members from beyond the Central Belt. Unfortunately, an evening event in Perth in April had to be cancelled, and plans to visit other areas, such as the south-west, are also on hold.

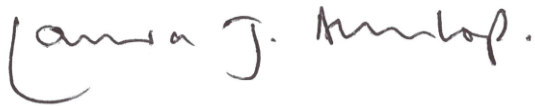
Engagement beyond the Tribunal is also important and, in November 2019, I began attending meetings of one of the subgroups of the Scottish Mental Health Law Review, under the Chairmanship of John Scott QC. In the early months, I was also able to participate in the Law Society of Scotland Mental Health Law conference in Perth in October 2019, and in February 2020 the Legal Secretary and I both spoke at the Legal Services Agency's Mental Health Law conference in Glasgow.

As mentioned at the beginning of this foreword, there was an abrupt change to the Tribunal's ways of working in the middle of March. By week beginning 16 March, it was obvious that our normal ways of holding hearings, in person, in many hospitals and community venues around the country, would have to change. On 18 March, a number of us gathered in our own Tribunal suite in Hamilton to consider the options. It would not have been acceptable to cease consideration of applications, bearing as they do on vital questions involving the liberty of individuals and serious issues relating to mental health. We therefore moved, with effect from 23 March, to holding all hearings by telephone conference call.

Although not ideal, the teleconferencing system has enabled us to continue to offer the service which we are statutorily obliged to provide. Across the entire range of external participants, flexibility and cooperation have been admirable. For a minority of patients, telephone hearings appear to have proved more acceptable than attending in person. We have monitored process matters as the months have passed. Attendance by patients has dropped when compared with the same period in 2019, but not by as much as we had feared. We continue to try to improve the arrangements for telephone hearings, and have also held a few in-person hearings, for those people who would struggle with telephone participation, although there are many constraints in what we can offer within the requirements dictated by the pandemic. I hope to be able to say much more about these matters in the Annual Report next year. Early indications are that there has been a significant rise in compulsory treatment order applications under the Act since lockdown began on 23 March. The period has unquestionably proved challenging for Tribunal staff. Thanks to swift changes introduced by SCTS, many members of staff have been equipped to work from home, on a rotational basis, and these new patterns appear to be working well.

Finally, I should like to thank all those who work so hard to provide a continuous high quality service with patients at the centre. I suspect it has never been more difficult to keep the system running; the unwavering efforts by members and staff alike is a clear manifestation of the commitment at the heart of the organisation, for which we are all immensely grateful.

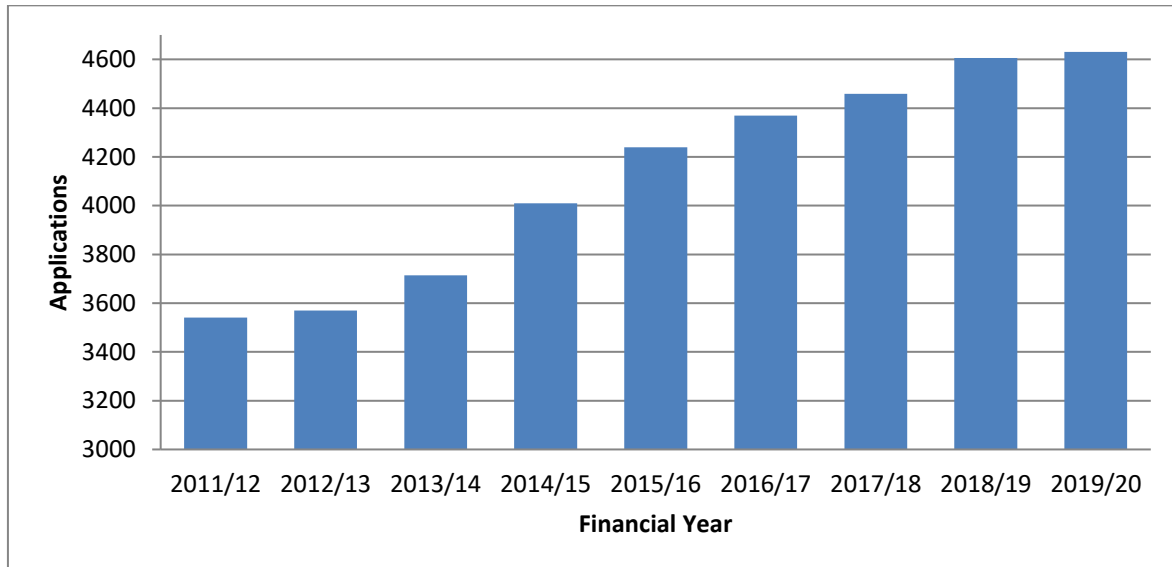
I commend this report to you.

A handwritten signature in dark ink, reading 'Laura J. Dunlop.' The signature is fluid and cursive, with a large initial 'L' and a distinct 'J'.

Laura J Dunlop QC
President

TRIBUNAL ACTIVITY

Applications received by the Tribunal in the last 9 years

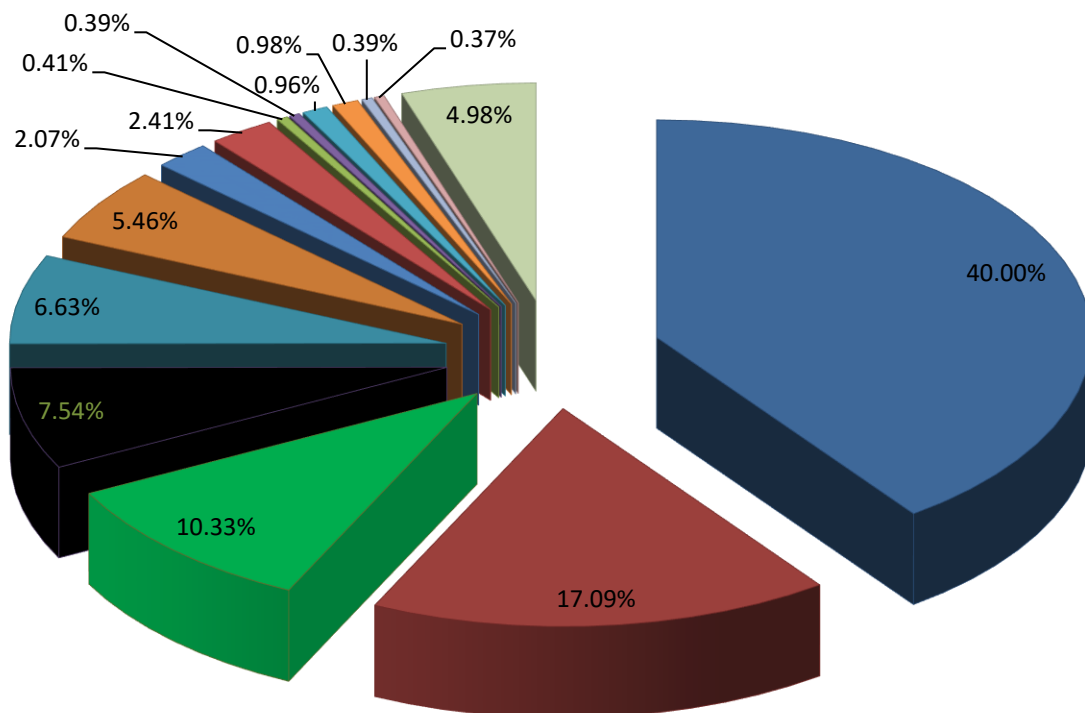


The above graph illustrates how the number of applications received by the Tribunal has increased since 2011/12, resulting this financial year in a total of 4,631 applications received. Compulsory treatment order (section 63) applications continue to constitute the largest percentage of applications received, followed by applications to revoke short-term detention certificates (section 50). The proportions of different applications are shown on page 5.

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

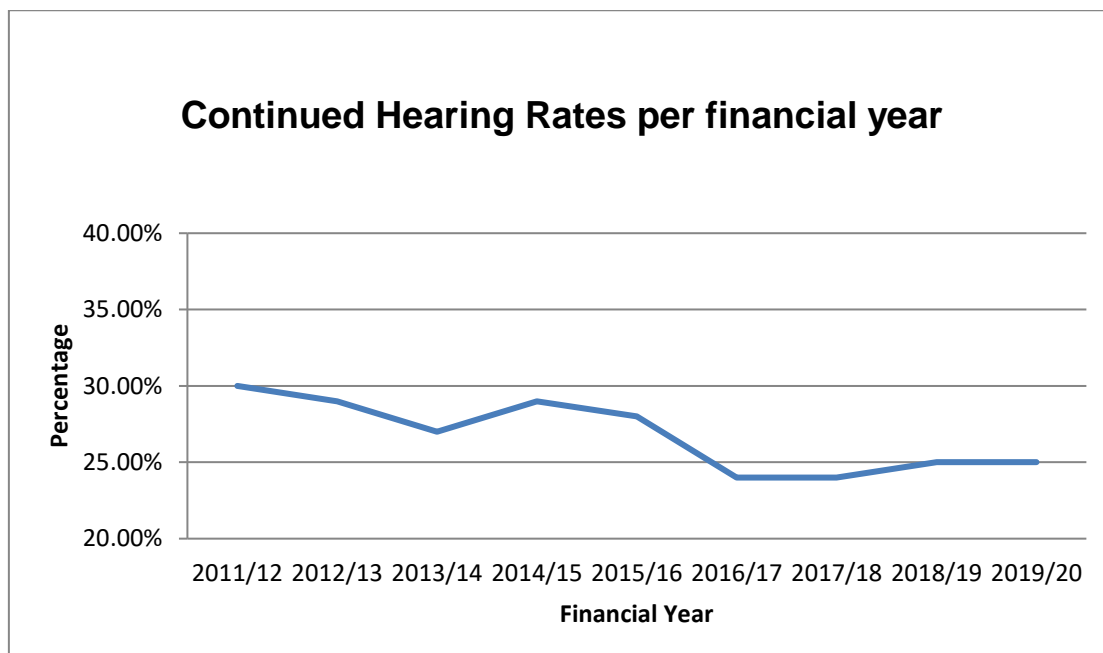
The Key Performance Indicator (KPI) was once again met in 100% of cases in relation to the statutory timescale for holding a hearing for a section 63 application within 5 working days of the expiry of a patient's short-term detention certificate.

Applications, Appeals, References and Reviews dealt with by the Tribunal in 2019/2020, by individual sections of the Mental Health (Care and Treatment) (Scotland) Act 2003



- 63 - Application for compulsory treatment order
- 50 - Application for revocation of short term detention or extension certificate
- 87/101 - Notification of s86 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
- 268 - Other 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 S178)
- Other

Interim Orders and Adjournments of Hearings



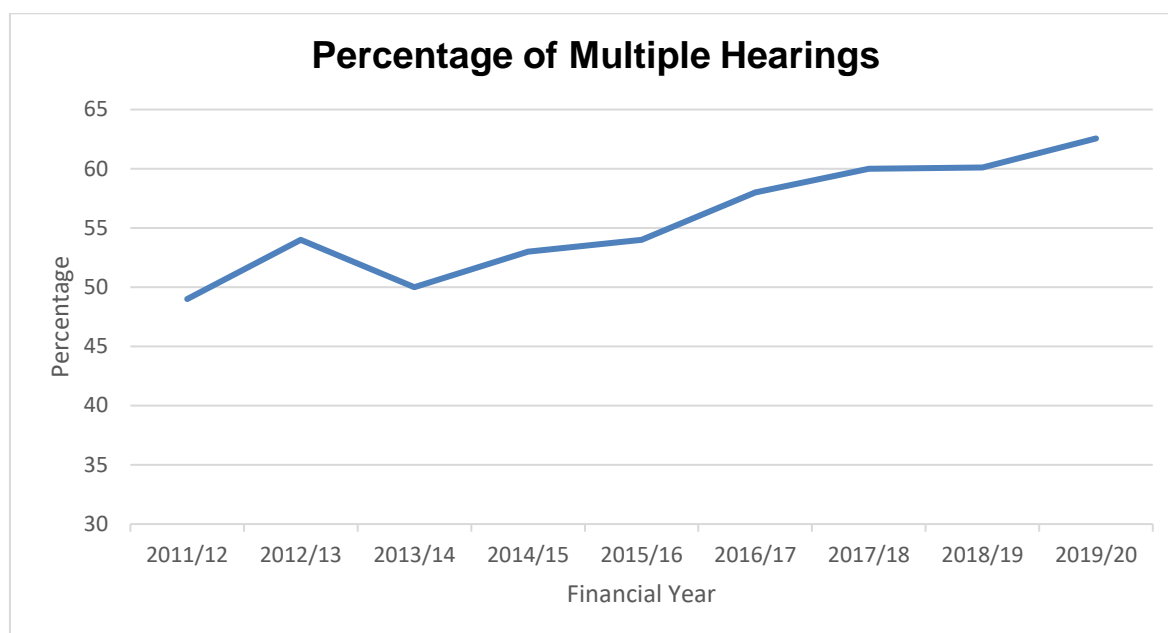
In total, 5,017 hearings were held in the financial year 2019/20, which is a slight increase (of 9) on the previous year.

In this reporting year, 75% of cases were determined at their first calling, which is consistent with the previous year.

The Tribunal Administration staff undertake a wide range of tasks prior to a Tribunal hearing taking place in order 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, whilst keeping in mind the key principles of the Tribunal, with the aim of improving the experience for all stakeholders and reducing financial costs.

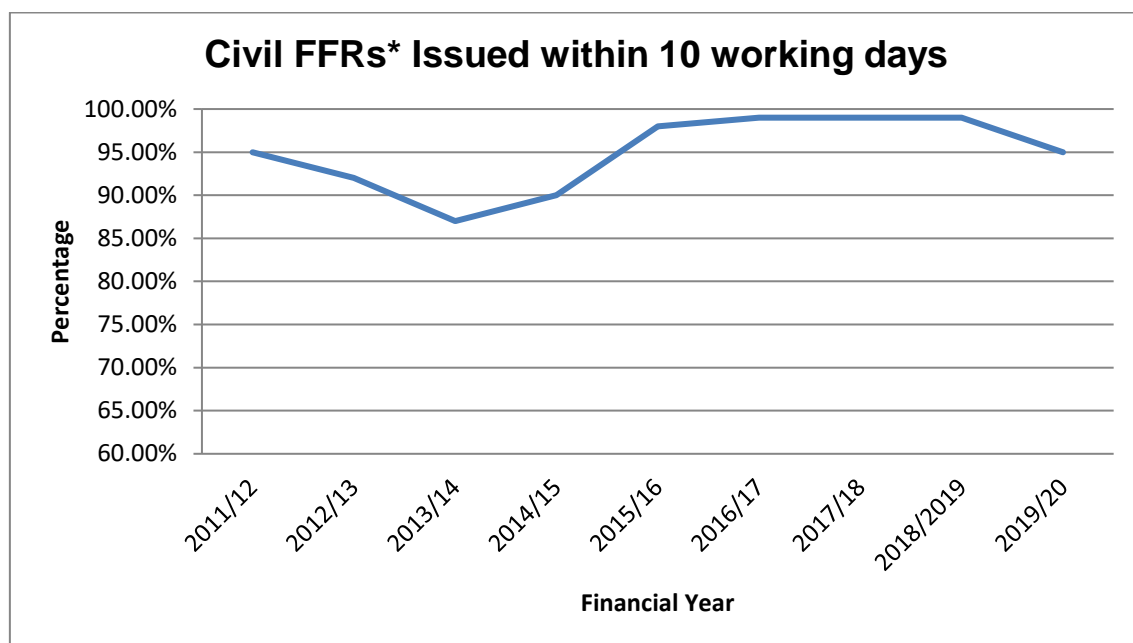
Multiple Hearings



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.

Since 2017, the Tribunal has monitored the percentage of hearings which were part of a multiple session (two hearings in one day or, occasionally, three). In the first two of those reporting years, the percentage was constant at around 60%. In the year to 2020, the figure saw a slight increase to 63%, which represents the highest percentage of multiple hearings to date. This was largely due to the hard work of the Tribunal's Administration, who work collaboratively with external stakeholders to ensure that the Tribunal is operating in the most efficient manner in relation to the scheduling of hearings. At the time of preparation of this report in the Autumn of 2020, the percentage has increased further, owing to the absence of geographical factors when hearings are held by teleconference.

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).

This KPI is considered a priority for the Tribunal's Administration, and in 2019/20 we have achieved an annual result of 97.29%.

Complaints and Appeals to the Tribunal under the Mental Health (Care and Treatment) (Scotland) Act 2003

From 1 April 2019 up until 31 March 2020 the Tribunal has had formal intimation of seven new appeals to the Sheriff Principal, of which three were either refused without a hearing or withdrawn prior to a hearing date. During the reporting period, the Tribunal has received no intimation of new appeals to the Court of Session. One appeal which was initiated prior to the reporting period was heard in the Inner House of the Court of Session and was refused, and permission for a further appeal to the UK Supreme Court was not granted, although sought both from the Inner House and the Supreme Court.

Around the end of the reporting period, one Court of Session action was raised which named the Tribunal as a Respondent, and this was settled by alternative dispute resolution. Whilst case law has developed and has largely settled initially contentious aspects of the legislation over our fifteen years of operation, from time to time we receive intimation of an appeal which will proceed to a hearing.

The Tribunal also receives formal complaints and concerns from parties, including but not limited to patients, Named Persons, advocacy workers, Mental Health Officers and psychiatrists. Sometimes, the substance of these complaints is such that an appeal may be appropriate, particularly where there is a novel legal point or an aspect of legislation which has not been subject to judicial scrutiny. If a complaint is made about an individual, or about the conduct of a hearing, the Tribunal will investigate in conjunction with the Judicial Office to resolve matters. Four formal complaints were received which did not go forward to an appeal hearing during the reporting period and, for each, the matter was successfully resolved by investigation and correspondence with those involved. Sixteen concerns were recorded during the reporting period, also resolved by correspondence.

Often, a complaint will arise based on different understandings of the role of the Tribunal, and sometimes of those who take part in hearings. We always aim to resolve issues quickly and effectively. Whilst we accept that, sometimes, the outcome will not be what the complainant had hoped for, they should be satisfied by the process of investigating and considering the complaint. The Tribunal recognises in particular the value of alternative dispute resolution when appropriate, to avoid lengthy and potentially costly legal proceedings. Sometimes someone is making contact not so much to complain as to express unhappiness with how matters were handled at a hearing. In any such situation, we will respect a person's wish to be heard. If an issue arises with our practice, we will try to identify ways in which we can learn from the comments made.

Occasionally, people contact the Tribunal because they are dissatisfied with the outcome of a hearing. Unfortunately, this is not something we can address in-house; the 2003 Act requires that each tribunal sits as an independent judicial decision making body, and their decisions are not subject to influence or review from the Tribunal President or administration. When any complaint appears to be intended to form an appeal to the Sheriff Principal or Court of Session, the Tribunal will always get in touch with the complainant to advise them of the appropriate appeal route.

In addition, we will forward any such documents received to the relevant court, as appeals are subject to time limits. These limits and all other provisions about appealing against a decision of the Tribunal (including the grounds on which an appeal can be brought) are found in part 22 of the 2003 Act.

Whilst none of those working with or for the Tribunal can offer specific legal advice to parties, our general advice is that, where any party feels they may have relevant grounds for appeal, they should seek independent legal advice without delay.

Jennifer Whyte
Solicitor
Legal Secretary to the Tribunal

TRIBUNAL MEMBERSHIP

Total Number of Members* as at 1 April 2019	Legal Members	Medical Members	General Members	Part-time Sheriffs (also Tribunal Members)	Part-time Sheriffs (not Tribunal Members)
344	110	115	119	7*	12
				These members are included in the total number of legal members	

During financial year 2019/20, 20 members retired from the Tribunal including the President Dr Joe Morrow QC. Of those, 4 were general members, 7 were medical members and 9 were legal members.

Eleven new medical members were appointed on 1 October 2019 and underwent a 2-day induction training course. The training covered various topics including Tribunal practice and rules of procedure, collaborative decision making, thinking and acting judicially, and appeals case law. Laura Dunlop QC was appointed President of the Tribunal by Scottish Ministers, with effect from 12 October 2019.

MEMBERS' CONFERENCE

The Tribunal hosted its all Member Conference on Wednesday 20 November 2019. This conference is held every 5 years to deliver a training programme where all member types can meet and participate in training collectively.

The newly appointed President, Laura Dunlop QC, delivered the opening address welcoming the Lord President and Lord Justice General, Lord Carloway, the President of Scottish Tribunals, Lady Smith, Minister for Community Safety, Ash Denham MSP, as well as MHTS Members and invited guests from various organisations including SCTS, Scottish Government and the Mental Welfare Commission for Scotland.

The keynote speech was delivered in the morning by award winning Mental Health Campaigner, author and vlogger Jonny Benjamin MBE. The afternoon session began with the Napier University Project Research Team providing an update on their study 'The Mental Health Tribunal for Scotland: The Views and Experiences of Patients, Named Persons, Practitioners and Tribunal Members'. Members and guests also attended workshops delivered by Scottish Association for Mental Health, University of the West of Scotland, University of Aberdeen, Scottish Human Rights Commission and the Scottish Commission for Learning Disability, covering various topics from Law and Ethics to Creativity and Hope in Dementia Care.

The Conference received positive feedback from those who attended. The opportunity to meet almost all of their colleagues at a single event was welcomed by many.

CORPORATE STRUCTURE AND FINANCES

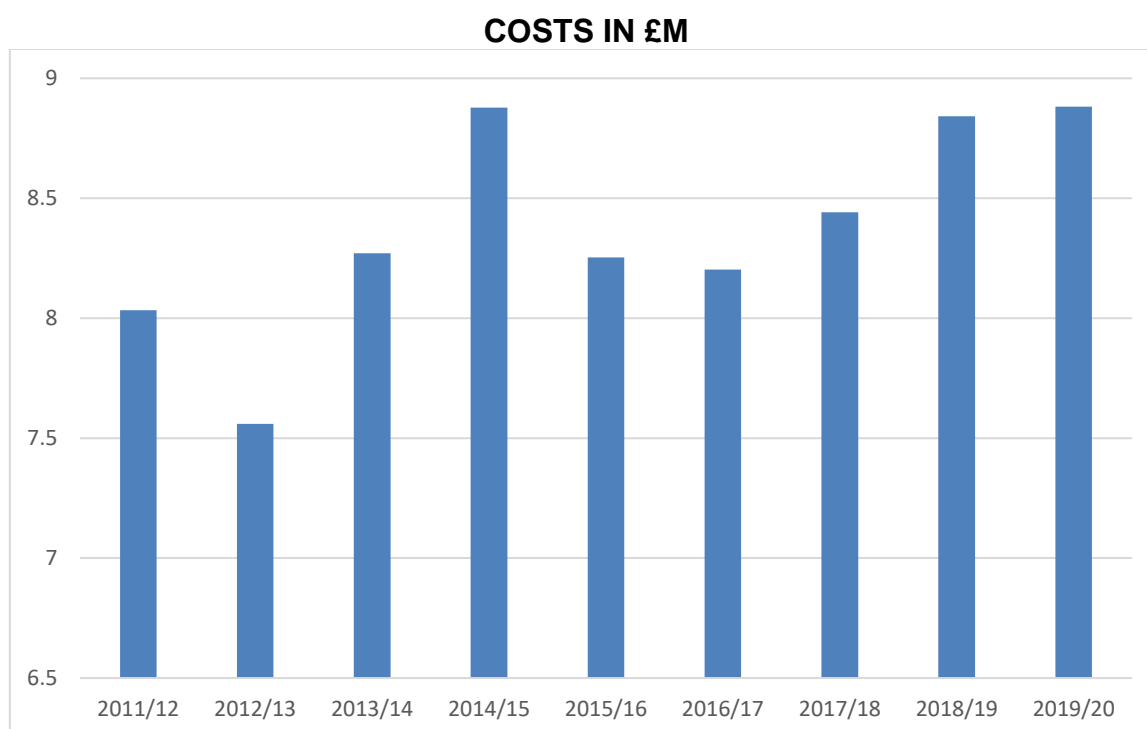
Expenditure relating to public relations, overseas travel, hospitality and entertainment and external consultancy by the Tribunal during 2019/20:

Public relations	Nil
Overseas travel	£4,565*
Hospitality and entertainment	£106**
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

*Attendance at the XXXVI International Congress on Law and Mental Health (IALMH) Rome

**Flowers for the family of a deceased colleague

Mental Health Tribunal Expenditure



FINANCIAL RESULTS

Scottish Courts and Tribunals Service

Operating Cost Statement for the year ended 31 March 2020

2018/19		2019/20
£000s		£000s
6,376	Tribunal Costs	6,344
	Administrative Costs	
2,295	Staff	2,333
171	Other Costs	205
<hr/> 2,466 <hr/>		<hr/> 2,538 <hr/>
8,842	Net Operating Costs	8,882

Financial Performance

Costs have increased during 2019/20 by approximately £40,000 due to the continued increase in the Tribunal's workload. There was a 0.6 percent increase in applications compared to 2018/19, although the Tribunal delivered a 1 percent reduction in hearing days. This was achieved through a 'multiple hearing rate' of 63 percent this year, up from 60 percent in the previous two years. This illustrates the continued strong collaboration between the Tribunal and Administration to maximise hearings. Despite this ongoing efficiency, the continued growth in demand is leading to additional costs.