



Mental Health Tribunal for Scotland

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# Members' Newsletter

## September 2025

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Two recent court decisions

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## Message from Laura J Dunlop KC



Dear Members,

On 5th October 2005, MHTS began its work of receiving and deciding applications for the compulsory care and treatment of people with mental disorder in Scotland. Much has happened since then. Much continues to happen. But, on any view, twenty years is a significant milestone. And, for people who like numbers, we still have 83 members who have served as members from the start. An individual anniversary for all of you.

I am very grateful to members, operations colleagues, and external stakeholders who responded to our various emails seeking reflections on the first twenty years. I am enormously grateful to Jane who took on the task of preparing a supplement to reflect some of the replies, ably assisted, as ever, by Jenna.

I think I have read all the messages. I'm sorry that it is not possible to reply individually to them. We have reflected on all the comments, and taken note of the aspects people feel should be changed.

In that reflective exercise, I was struck by what I think is the same point being made many times, in slightly different ways. I'd make it too, so this represents my use of a privileged position to set it out in my words. It was in my former role in the Church of Scotland that I first heard 'nothing about us without us is for us'. Participation is a central aspect of our hearings - of course it's one of the Section 1 principles – and is express for service users only. Other people must be able to contribute their views, but participation of the patient in the discharge of our function is spelled out as a priority.

And the context for that participation is about as hard as it is possible to imagine. There is an irreducible minimum of information about the person that we need to hear in order properly to discharge our decision-making function. So much of what we do involves balancing competing points, and there is no balancing more important than how we reconcile our need for evidence with the inevitable consequence for the patient in the room of hearing that very evidence. Never losing sight of that is perhaps an unwritten principle for us.

Turning to other current events in the Tribunal, I am pleased to report that the project for our new website is up and running. Scott, Mary and I are involved in regular meetings with colleagues from SCTS IT and with the external contractor. Some

members have participated in demos and provided their feedback. I am very grateful to them. I hope that the new website will go live next year.

Also current is our programme of mandatory training for 2025. As I write this, we have had two days in Edinburgh and are looking forward to two days in Glasgow and a day in Dundee in October. Then there's Stirling in November and our two WebEx days. We have a blend of material from in-house presenters and workshops from external facilitators. So far, members' active participation has been high, which we very much welcome.

Finally, recent weeks have seen the culmination of a multi-year project, namely the preparation of a Benchbook, with entries on issues of law and practice that arise at MHTS hearings. This will be an online resource, with periodic updating, though a hard copy is available for perusal at the training days. The work of Jane, Kirsty and Jenna (and others) to reach this point has been immense; I pay tribute to all who have worked so hard.

In this newsletter, as well as the supplement to which I have referred, you will find information about two recent court decisions from appeals against tribunal decisions (pages 5 and 9) and an article by one of our in-house conveners telling you everything you need to know in preparation for attending a hearing at the State Hospital (page 11).

I hope you enjoy reading both the newsletter and the supplement.

**Laura Dunlop KC**  
**President**



## MHTS Members' Benchbook

Please note that the 1<sup>st</sup> edition of the Benchbook has now been published on our website. You can find it here -

[https://www.mhtscotland.gov.uk/mhts/Applications\\_and\\_Appeals\\_to\\_the\\_Tribunal/Guidance](https://www.mhtscotland.gov.uk/mhts/Applications_and_Appeals_to_the_Tribunal/Guidance)



## DR v MHTS

MHTS successfully defended an appeal to the Sheriff Principal against a decision confirming a determination to extend a CTO where a previous two year review was missed due to administrative oversight. The appellant's contention was that the lack of review meant the order had expired and there was no order to extend. Sheriff Principal Dowdalls disagreed and held that the tribunal did not err in deciding to confirm the determination:

*I share the view of Sheriff Principal Stephen in D v MHTS that it is inconceivable that the legislators intended that the consequence of failure to follow the statutory requirements to the minutest degree would invalidate treatment orders necessary for the benefit of patients. I am reinforced in that view in relation to the failure to comply with the requirement for review under section 101, wherein there is no timeframe set for the carrying out of any such review nor any provision setting out the consequences attendant upon failure to carry out such a review.*

The full decision can be read here: [2025scham72-dr-against-mental-health-tribunal-for-scotland.pdf](#)

## Amended Guidance to Curators ad Litem

Members will be very familiar with the appointment of curators *ad litem* in our proceedings. Curators are regularly appointed to safeguard the interests of a patient when a patient lacks capacity to instruct their own solicitor.

Statutory authority to appoint curators *ad litem* in MHTS proceedings can be found in Rule 55 of the Mental Health Tribunal for Scotland (Practice and Procedure) (No.2) Rules 2005. The appointment itself is common law in origin and a curator's powers are confined to the process for which they are appointed. In order to assist and support curators in our jurisdiction the Tribunal previously produced guidance to curators. This guidance has recently been updated and members might find it helpful to be aware of these changes.

The first change relates to the requirement for a curator to meet with a patient. There may be situations where such a meeting would not be beneficial to the patient or assist the tribunal process. The amended guidance now clarifies that a meeting with the patient is not mandatory. It is a matter for each curator to consider if such a meeting is needed, having regard to the particular circumstances of the patient.

The second change will be of less relevance to members and relates to the practical arrangements for curators when conducting a home visit to a patient in the community.

Members can access the amended guidance on the MHTS website here:

[Guidanceforcurators2025update.pdf](#)



## Scheduling

In order to assist the team identifying available members for hearings, please would members ensure that webroster is kept up to date with availability and any changes in conflicts of interest. **If your availability changes at any time, please add or remove available days from webroster as soon as possible.**

Please ensure when adding your availability onto webroster, that you enter the shift as 'Day'. If this isn't selected, your availability will appear as a minute and the schedulers will be unable to allocate you dates.

The Scheduling team is grateful to all those who reply to the APBs (All Points Bulletins) for members to sit at short notice. Please note only those who are available to sit should reply to these APBs. While the team appreciates the consideration of those who reply to say they are unable to sit, this is unnecessary and adds to the already large volume of emails which the team receives.

## New appointment for former President

Members will be interested to learn that Dr Joe Morrow KC has been appointed as a Trustee of the Royal College of Psychiatrists. The announcement was made by the College in July:

[Leading experts join RCPsych Board of Trustees](#)

Dr Morrow said: "I am honoured in being appointed lay trustee of the Royal College of Psychiatrists. The appointment builds on an over 30-year involvement in the mental health arena. It is a privilege to continue to be able to support and promote the role of the psychiatrist within the front-line service of our health service."



## MHTS Members' Association

Currently there is NO COST to becoming a member of MHTSMA. All it takes is an email.

The Committee met in June when further information regarding terms and conditions was considered, and an email was sent out to all MHTS updating them in August. The Committee plans to meet again at the beginning of October. We will notify members of the date of the AGM in November following this meeting.

The President's Office kindly sent out an email to all MHTS members inviting them to an MHTSMA social (meal/drink) following the training in Edinburgh on 3rd September.

I would also encourage members to contact Peter (or any member of the committee) if there are items they would wish MHTSMA to consider.

If any member is interested in joining MHTSMA, please can you contact Peter Bennie (secretary) by email. Peter can also send any member a link to the MHTSMA Forum on Microsoft Teams.

**Ruth Buchanan**  
**General member and chair of MHTS Members' Association**

## BEAT – Half Marathon Challenge

Our colleagues in Tribunals Administration ran a charity “Spin the wheel” draw to win a Portugal football strip during the summer and the lucky winner of this was our very own Fiona Queen! Not only did Fiona win the strip, but she also received £50 to donate to a charity of her choice.

Fiona chose to support her daughter Kirstyn, who’s running a half marathon in October to raise money for [BEAT](#), a charity that helps people affected by eating disorders. A great choice, being a lovely way to put the prize to good use and a brilliant example of how, when we come together, we can turn a generous donation into something meaningful.

Kirstyn sent a message of thanks –

*“At the start of 2025, I set myself a wellbeing challenge and have been training for the AJ Bell Great Scottish Half Marathon in Glasgow this October. This will be the second year in a row I’ve taken part in this half-marathon, but this time I’m running for an incredible charity called BEAT.*

*BEAT is an eating disorder charity that helps people all over the UK. It’s so important to feel understood, supported, and not alone during the road to recovery — and that’s exactly what BEAT does. They offer helplines, resources, and support for anyone affected, as well as families and loved ones who might not know where to turn. I chose BEAT because it’s a charity that isn’t very well known but does truly incredible work.”*

Kirstyn also shared her JustGiving page (link below), so if you’re able to show your support - whether by donating or simply sharing her cause - it would mean a lot. It’s amazing what we can do when we support one another, and this is a great chance to help make a difference for a charity doing vital, often unseen, work.

[https://www.justgiving.com/page/kirstyn-queen-1736182921950?utm\\_medium=FR&utm\\_source=CL](https://www.justgiving.com/page/kirstyn-queen-1736182921950?utm_medium=FR&utm_source=CL)



## Scottish Mental Health Arts Festival

This will take place from 20 October to 9 November 2025, exploring the theme of ‘Comfort and Disturb’. It is led by the Mental Health Foundation and is a platform for people to create and share art which is inspired by mental health, engaging audiences and participants in regions across Scotland.

[Home | Scottish Mental Health Arts Festival](#)



# Articles

## Dr Agnes Louise Johnston against GA and another

In June 2024 patient 'GA' appealed successfully to the tribunal against a cross-border transfer to a hospital in England. Three weeks after that decision the RMO sought another warrant from the Scottish Ministers for the same purpose. The Scottish Ministers granted another warrant and so 'GA' appealed again. A tribunal was convened in December 2024 and parties were directed to make submissions on a preliminary issue, *res judicata* (the matter has been decided). Following submissions, the tribunal concluded that they should again make an order that the proposed removal shall not take place on the basis that the June decision governed the issue and they had not been presented with a basis on which to rehear the same evidence and arguments.

That decision was appealed by the RMO to the Sheriff Principal and ultimately remitted to the Inner House of the Court of Session. It was heard by the Second Division of the Inner House in June 2025 and the Opinion of the court was delivered by Lord Malcolm - <https://www.scotcourts.gov.uk/media/cm2dtu0n/2025csih18-dr-agnes-louise-johnston-against-ga-and-another.pdf>. In refusing the appeal, Lord Malcolm made clear that whilst the court preferred the doctrine of *res noviter veniens ad notitiam* (things newly come to light) to *res judicata* (the matter has been decided), "*it does not follow from the non applicability of strict res judicata that it is open season for repeated requests to a mental health tribunal until the desired outcome is achieved.*" Punchy.

The December tribunal referred to the case of R (Abidoye) v Secretary of State for the Home Department [2020] EWCA Civ 1425 where it was held that an earlier decision will be final and binding on the parties to it unless there is a legal justification for departing from it; but that absent a change in circumstances, material which could and should have been presented to the original tribunal cannot be relied upon. For there to be such legal justification, there required to be additional material that (i) could not have been used at the earlier tribunal and (ii) if given to the tribunal would have had an important influence on the outcome (see Ladd v Marshall [1954] 1 WLR 1489). The Tribunal held that this dual test was not met - "*the significant concerns raised by the tribunal in its decision in June do not appear to have been met by the material on which reliance is now placed*". The Inner House agreed that the interests of justice did not require further exploration of the materials now produced:

*The tribunal is a specialist body well able, as part of its case management powers, to assess the material relied on by the RMO and decide whether it justified exploration at an evidential hearing. Although not binding in the sense of res judicata, in the event the June decision was highly relevant to the outcome. To have granted an evidential hearing would, in effect, have allowed a repeat adjudication on substantially the same basis as that which occurred in June.*

and concluded:

*While we might not have expressed matters in exactly the same way, we are satisfied that the December decision is not vitiated by a material error in law. It was a decision which the tribunal was entitled to make. It follows that the appeal is refused.*

Comment:

Both MHTS and the Scottish Ministers declined to enter proceedings as interested parties. The patient and her named person were both parties and were represented by Counsel. The Health Board were also represented by Counsel.

It is important to note that the June tribunal did not (and could not) say that the transfer could never happen. It did however comment on the evidence which was missing and which might have made a difference to the outcome, had it been available. Beyond the application of *res judicata*, the decision serves as a timely reminder that the tribunal's function is not to simply rubber stamp what health professionals think is best for a patient. All professionals are expected to adequately prepare for tribunal hearings and ensure all relevant documentation is submitted in advance, including anything identified as important in any previous decision or direction, in order to assist the Tribunal in discharging its function.

**Kirsty Watson**  
**Legal Secretary**

## State Hospital: Helpful information

Many tribunal members will have extensive experience of attending hearings at the State Hospital in Carstairs and will have well-developed security protocol panache. I recently attended my first hearing there in many years and my own panache was put to the test as much had changed. As we return to a greater number of in-person hearings, and as we welcome new(ish) members, this article is aimed at those who are less familiar with the practicalities of visiting the State Hospital.

### What is the State Hospital?

The State Hospital at Carstairs is the only high-secure forensic hospital covering Scotland and Northern Ireland. The original buildings were completed by 1939 but had to be handed over to the army for use as a military hospital until 1948. Since 1994 the hospital has been managed by the State Hospitals Board for Scotland, accountable to the Scottish Ministers. A £90 million redevelopment took place between 2008 and 2012.<sup>1</sup>

The Mental Welfare Commission for Scotland visits the State Hospital a minimum of once per year, and produces regular visit reports, available on their website.

### Patients at the State Hospital

In 2008 the Scottish Government committed to reducing the number of beds at the State Hospital from 240 to 140, following the opening of medium secure hospitals at the Orchard Clinic and Rowanbank Clinic.<sup>2</sup> Wards take the form of four hubs: Lewis, Mull, Iona and Arran. Twelve beds are specifically for patients with a learning disability.

Since 2009 all of the patients have been men. However the Scottish Government has confirmed plans for high secure provision for women within the State Hospital, following an Independent Review into the Delivery of Forensic Mental Health Services.<sup>3</sup> The service will have capacity for up to six women.

### What sort of hearings might a tribunal member attend?

Medical and general members can expect to hear applications/appeals/reviews relating to patients subject to a wide variety of legal orders under the 2003 and 1995 Acts.

Conveners are in a slightly different position. Where a patient is subject to a Compulsion and Restriction Order “CORO”, a Hospital Direction, or a Transfer for Treatment Direction, the convener shall either be the MHTS President or a person selected from a shrieval panel,<sup>4</sup> and therefore either a Sheriff Principal, a Sheriff or a Part-Time Sheriff. You might notice from your hearing invite that we have a dedicated “CORO” casework team who deal with these hearings as well as excessive security applications.

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<sup>1</sup> NHS Scotland State Hospital Communications Service: [History of the State Hospital information sheet](#)

<sup>2</sup> State Hospital places to be cut, BBC News 6<sup>th</sup> March 2008: [BBC NEWS | Scotland | Glasgow, Lanarkshire and West | State hospital places to be cut](#)

<sup>3</sup> [Independent Review into the Delivery of Forensic Mental Health Services: Scottish Government Progress Update Report 2024](#)

<sup>4</sup> 2003 Act Schedule 2, Part 2, para 7

Other legal members might therefore be scheduled on hearings at the State Hospital less frequently, but there are still many patients who will be there under Compulsory Treatment Orders or Compulsion Orders, who do not require a shrieval panel.

A further unusual feature of some, but not all State Hospital hearings, is that the parties involved might include the Scottish Ministers,<sup>5</sup> the ‘relevant health board’<sup>6</sup> and the hospital managers.<sup>7</sup>

### Practicalities: getting there

The State Hospital is not the easiest place to find either by car or public transport. We would be inundated by ‘below the lines’ comments if we were to suggest the best route by car. In general terms, leave yourself plenty of time, and don’t be too reliant on your Sat Nav.

Carstairs Railway station appears deceptively handy but trains do not stop there very frequently. Those wishing to travel by public transport might also consider taking the train or bus to Lanark then changing for a bus to the hospital.

Members might be relieved to hear that after their journey, they can find toilet facilities in the reception area, but alas no café.

### What (not) to bring

There is a handy guide for all visitors available online<sup>8</sup> and members will also find a Secure Venues – Equipment and Protocols Information Sheet in the secure area of the MHTS website.<sup>9</sup> I will highlight some key features of particular relevance to members. Firstly, before leaving home, **check you have your photo ID**, as you won’t be admitted without it.

You can bring a laptop but **no other ‘devices.’** This includes phones/tablets/smart watches/USB sticks and dictaphones.

You can’t bring water but, like at airports, you can bring an empty water bottle and refill it at the venue.

You can’t bring in ‘sharp objects’ for obvious reasons but be aware this includes umbrellas. Syringes for personal medical use, e.g. for diabetes, should be considered ‘essential items’ but anyone wishing reassurance about this might wish to seek advance guidance from the security manager before visiting.

Have a good look in your bag before leaving your car in case you are inadvertently secreting “items that could assist in an escape.” The list ranges from the obvious ropes and GPS systems, to everyday items such as blue tac and chewing gum.

It’s worth leaving any non-valuable items you don’t need at home or in the car. There is a locker available at reception but it is only really large enough for keys and a phone or small tablet.

### Getting through security

There are special security arrangements which apply to all staff and visitors including tribunal members. It is important to leave yourself extra time to allow for this,

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<sup>5</sup> E.g. CORO cases and Cross- border transfers

<sup>6</sup> E.g. in excessive security cases

<sup>7</sup> E.g. in appeals against transfers

<sup>8</sup> [Safety and Security Requirements - August 2025](#)

<sup>9</sup> [Secure Venues – Equipment and Protocols Information Sheet](#)

particularly at 'rush hour' at the beginning and the end of the working day and at lunchtimes. For example, I arrived at 12.45 for a 2pm hearing and didn't reach the venue until 1.30. The other members were further delayed at reception.

Once you have shown your photo ID reception staff will check you in. If it is your first visit or, as in my case, you haven't been for an unflatteringly long time, they will take a photo to store on their system for future use. You will then be given a temporary photo pass to use for the day. This will only work with a four-digit code, which you might wish to write down.

Next, scan your pass and enter the 4 digits to enter a tube-shaped doorway which resembles something from the Starship Enterprise. You will then be in the main security area, like an airport but without the holiday, where you empty your pockets, remove metal objects and put your bag through the scanner and prepare for your own scan. The security information sheet clarifies that any searches "will be gender specific and captured on CCTV. Private searching facilities are available upon request."

There is no duty free but instead you will be provided with a personal alarm. If you're not wearing a belt, you will be given a stylish one on loan.

You will then be shown to a seated area while you await transport as you cannot walk freely around the hospital grounds. This is where some of the delay comes from as you might have to wait for an available car/driver. The main hazard that can occur here is extreme social awkwardness as you wait: some enthusiastic women assumed I was their next interview candidate.

When your car/driver is available you will pass through an outer door. Your personal alarm will go off at this point and you have to press a reset button. The driver will take you to the tribunal suite where you will be relieved to see the familiar face of your hearings clerk, who might even be kind enough to make you a cuppa if there is time.

Overall, my recent visit was a helpful refresher of the security arrangements in place and I plan to hone my panache for next time. For anyone feeling daunted, be assured you are now better prepared than I was. The staff are extremely helpful and used to patiently assisting baffled people like me who can't retain a four-digit pin number for more than three seconds.

**Lyndsey Reynolds**  
**Convener**

# Useful Information

## MHTS

- DR v MHTS  
[2025scham72-dr-against-mental-health-tribunal-for-scotland.pdf](#)
- MHTS News  
[MHTS - News \(mhtscotland.gov.uk\)](#)
- MHTS Guidance on the Provision of documents in Tribunal applications (This guidance sets out the documents which will form the Tribunal papers in each type of application, review, etc, under the relevant sections of the 2003 Act. It was updated again in September 2025)  
[MHTS - Guidance \(mhtscotland.gov.uk\)](#)
- MHTS Caselaw and Decisions  
(scroll to the bottom of the page to find MHTS decisions table. The search function is helpful to find decisions under specific sections of the Act)  
[https://www.mhtscotland.gov.uk/mhts/Legislation\\_and\\_Caselaw/Legislation\\_and\\_Caselaw](https://www.mhtscotland.gov.uk/mhts/Legislation_and_Caselaw/Legislation_and_Caselaw)

## MWC Publications

- Significantly impaired decision-making ability in individuals with eating disorders; Good practice guide – May 2025  
[Significantly impaired decision making ability in individuals with eating disorders: Good practice guide](#)
- Significantly impaired decision making ability (SIDMA) general guidance; Advice notes – July 2025  
[SIDMA general guidance advice note 2025](#)

## OTHER

- The Children and Young People's Commissioner Scotland  
[The Youth Commission On Mental Health Services: What progress has been made with the recommendations? - The Children and Young People's Commissioner Scotland](#)
- Judicial Hub  
<https://www.judicialhub.com/login/index.php>
- Judiciary.scot – Judicial Ethics  
[STATEMENT OF PRINCIPLES OF JUDICIAL ETHICS \(judiciary.scot\)](#)

**\*Please note that links to informative publications are included for information only. Any views expressed in these publications are those of the author(s) and not necessarily those of the MHTS.**

## Clerks' Contact Details

<b>Team 1</b>		<p>Please email clerks on the following generic email address and not on their individual email address:</p> <p><a href="mailto:MHTSHearingsOps@scotcourtsribunals.gov.uk">MHTSHearingsOps@scotcourtsribunals.gov.uk</a></p> <p>Post hearing paperwork to be uploaded to:</p> <p style="text-align: center;"><b>MHTS_Order_FFR2</b></p> <p style="text-align: center;">on members' website</p> <p><b>Hearing Team Leaders:</b></p> <p>Team 1: Gordon Hope – ☎ 01698 390094</p> <p>Team 2: Sandra Devlin – ☎ 01698 390013</p> <p>Team 3: Jeanette Thomson – ☎ 01698 390088</p>
Alan Swan	07386687134	
Jean Allan	07721590926	
Paul Cowie	07721590370	
Gemma Barnes	07423779555	
Tajinder Singh	07919199569	
Stuart McLagan	07584158127	
Hanaf Hussain	07919199538	
Margaret Zachary	07386687130	
Eilidh Ferguson	07386687126	
Holly Stewart	07386687178	
<b>Team 2</b>		
Cath Hope	Hearings Support	
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Hannah McCrae	07353893058	
Mandy Miller	07385950477	
Chris Paterson	07386687161	
Stephannie Kydd	07393797845	
Muriel Walker	07387258578	
Cari Carruthers	07386687105	
Nicola Bradley	07940269252	
<b>Team 3</b>		
Grant Armstrong	07721592267	
Ian Bruce	07733794798	
Felicia Oyewusi	07386687125	
Elaine Ferguson	07917898813	
Ellen Paterson	07423779977	
Callum Richardson	07884655908	
Brooke Cairns	07749920413	
Margaret Higgins	07386687163	
Catriona Gilhooley	07353893085	
Eileen Mitchell	07386687156	

## Useful Contacts

### Scheduling Team

**(including re-setting Webroster passwords)**

✉ [schedulingmhts@scotcourttribunals.gov.uk](mailto:schedulingmhts@scotcourttribunals.gov.uk)

❖ Telephone ☎: 01698 390034

### e-Expenses Helpdesk

✉ [webrosterexpenses@scotcourttribunals.gov.uk](mailto:webrosterexpenses@scotcourttribunals.gov.uk)

### Finance Team

✉ [opsfinancetribunals@scotcourttribunals.gov.uk](mailto:opsfinancetribunals@scotcourttribunals.gov.uk)

❖ Telephone ☎: 01698 390 016

### President's Office

**(including re-setting Website passwords)**

✉ [mhtspresidentsoffice@scotcourttribunals.gov.uk](mailto:mhtspresidentsoffice@scotcourttribunals.gov.uk)

**Fiona Queen, Executive Assistant to President and Member Liaison Officer**

❖ Telephone ☎: 01698 390033

**Jenna Swan, President's Office Secretary**

❖ Telephone ☎: 01698 390001

## Newsletter Contributions

The Tribunal welcomes contributions to the Newsletter from all members.

Members who wish to contribute to the Newsletter should contact Jenna Swan at [MHTSPresidentsOffice@scotcourttribunals.gov.uk](mailto:MHTSPresidentsOffice@scotcourttribunals.gov.uk)

The following timescales will apply for contributions\*:

**January edition:** contributions by the end of November

**May edition:** contributions by the end of March

**September edition:** contributions by the end of July

**\*Contributions may require to be edited**