



Mental Health Tribunal for Scotland

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# **ANNUAL REPORT 2020/2021**

**This report covers the period  
1 April 2020 to 31 March 2021**

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## FOREWORD

For the Mental Health Tribunal for Scotland, the period covered by this Annual Report (1 April 2020 to 31 March 2021) was dominated by COVID-19.

In last year's Annual Report, I referred to the abrupt change in our ways of working which occurred on 23 March 2020. On that date, we moved to holding our hearings by telephone conference call. Since then, we have held more than 8,000 hearings in this way. In July 2020, we held our first in-person hearing for four months. After that, we maintained a small number of in-person hearings, for those patients for whom a remote hearing was unsuitable. The possibility of an in-person hearing for any patient was, however, limited by whether or not a venue was available. Every in-person hearing which took place depended on access to the relevant building being permitted, and on assessment and implementation of precautions against infection.

Although this report only covers the period to the end of March 2021, I can say that, at the time of writing (November 2021) we have managed to restore in-person hearings on a regular basis at eight hospital venues in Scotland. We plan to continue the process, although not all our suites are empty and ready for reuse. At the same time, we also make use of video hearings. In August 2020, we held our first hearing over WebEx, and we have utilised this technology for a number of hearings since. Remote hearings, whether telephone or video, offer certain advantages, principally in affording an opportunity of participation to those who may be geographically distant from wherever the patient is. For example, in the past year, we have had family members join hearings from Singapore and Colombia. Video offers greater breadth of experience than telephone, but a video hearing is more complex to set up and depends on access to the right equipment and a good internet connection. Some patients, though probably a minority, prefer to attend by phone than in person. It has been illuminating to track patient attendance at telephone hearings – fears that this would drop significantly when we moved away from in-person hearings proved unfounded. It seems likely that there are individuals who attended a telephone hearing who would not have attended a hearing in person, and vice versa.

In Summer 2020, our legal secretary conducted a small survey, attempting to ascertain the views of patients who had participated in a telephone hearing. Despite starting with a large group of such patients, responses were ultimately only received from 13 people. Of that small group, the majority would want their next hearing to be held in person, although three did appear to prefer a telephone hearing. It appears likely that all three modes of conducting hearings will feature in future. Patient choice will need to be at the heart of decisions as to how hearings are held, albeit with regard necessarily paid to practical considerations too. The current context is one of transition, in which changes can and should only be made gradually.

In May 2021 we published a supplement to our regular newsletter, which set out some statistics for the year to end March 2021. These showed a 13% increase in the number of applications for a compulsory treatment order, compared to the previous year. Short term detention certificates are not granted by the Tribunal but by medical practitioners, and we do not therefore record the number of such certificates granted. The data from the Mental Welfare Commission would indicate that the rise in such certificates in the year to the end of February 2021 was around 10%. In our financial year, to end March 2021, appeals against short term detention

rose by 22%. The breakdown of the various types of application is shown on page 4.

Every hearing is conducted by a tribunal comprising a legal, medical and general member. In total, over 300 judicial members continue to serve. The daily interlocutory work is carried out by the President's office, with one legal member on duty each day. The proposed transfer of MHTS into the First Tier Tribunal for Scotland, in implementation of the relevant provisions of the Tribunals (Scotland) Act 2014, could not be progressed during the year reported on but, since the end of March 2021, progress on arrangements for the transfer has been made and it is hoped that it will take place in the summer of 2022.

Because of the pandemic, all our member training in the year took place by video. We ran seven training days on WebEx, making use of a filmed 'Mock Tribunal' and extracts from 'Final Ascent', a biographical film featuring the late Hamish MacInnes, and including material about his detention under the 2003 Act in the Belford hospital in Fort William. We have also been able to utilise WebEx for stakeholder forums and gatherings of our own members. In both cases, attendance has been higher than it would have been in person because of the removal of geographical constraints.

Our administration continues to be carried out from our offices in Hamilton, by a dedicated team of caseworkers, managers and clerks, overseen and supported by the Scottish Courts and Tribunals Service. The work during the year concerned was more unrelenting than ever before. For their commitment to that work, I thank each and every colleague, both in administration and in the small team within the President's office.

Everyone associated with the Tribunal – members, external health, care and advocacy professionals and solicitors (who serve both as legal representatives and as curators) – has shown great flexibility and adaptability in their determination to keep the system running. With such important interests at stake for patients, no alternative course could have been taken, but recognition and appreciation are due nonetheless.

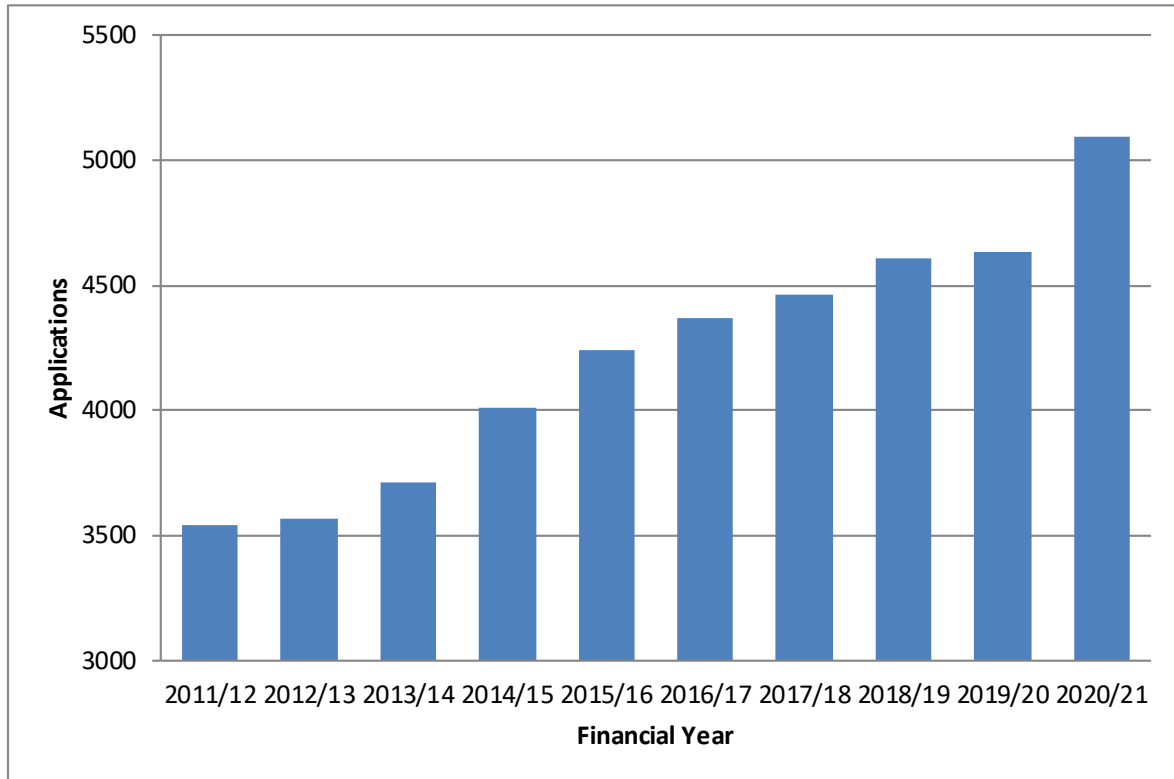
I commend this report to you.

A handwritten signature in black ink that reads "Laura J. Dunlop." The signature is written in a cursive, flowing style.

**Laura J Dunlop**  
**President**

# TRIBUNAL ACTIVITY

## Applications received by the Tribunal in the last 10 years

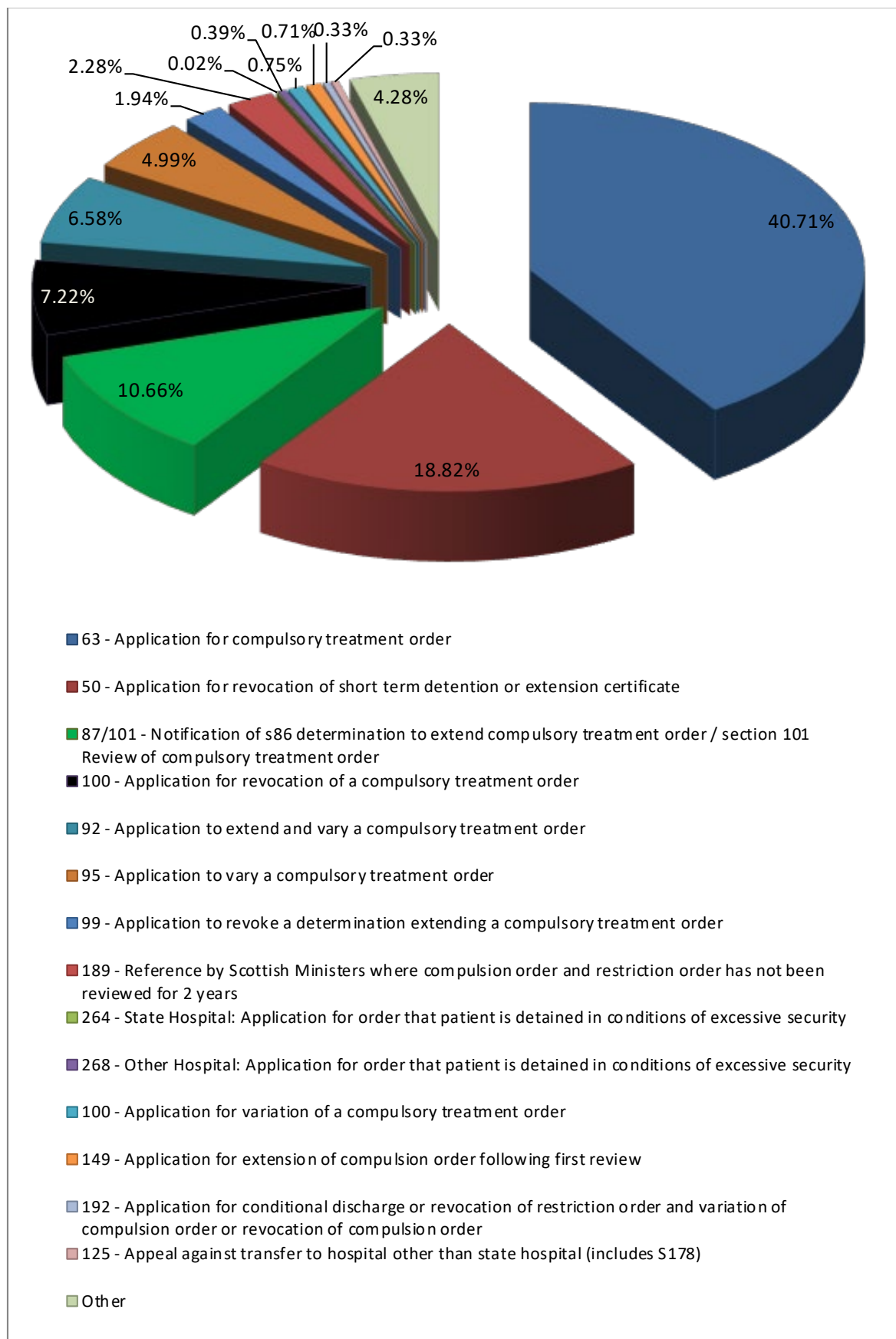


The above graph illustrates how the number of applications received by the Tribunal has increased since 2011/12, resulting this financial year in a total of 5,095 applications received. Compulsory treatment order (section 63) applications continue to constitute the largest percentage of applications received, followed by applications to revoke short-term detention certificates (section 50). The proportions of different applications are shown on page 5.

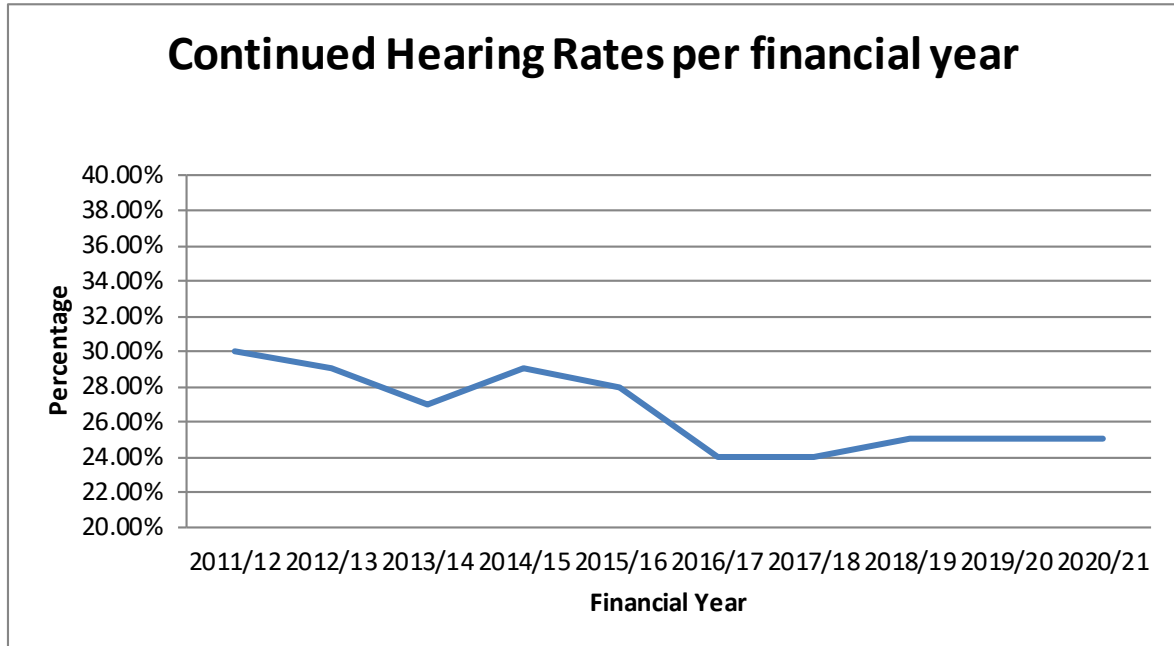
The Tribunal's Administration continually evaluates staffing levels and skills to ensure that a high quality and efficient service is delivered at all times.

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 2020/2021, by individual sections of the Mental Health (Care and Treatment) (Scotland) Act 2003



## Interim Orders and Adjournments of Hearings



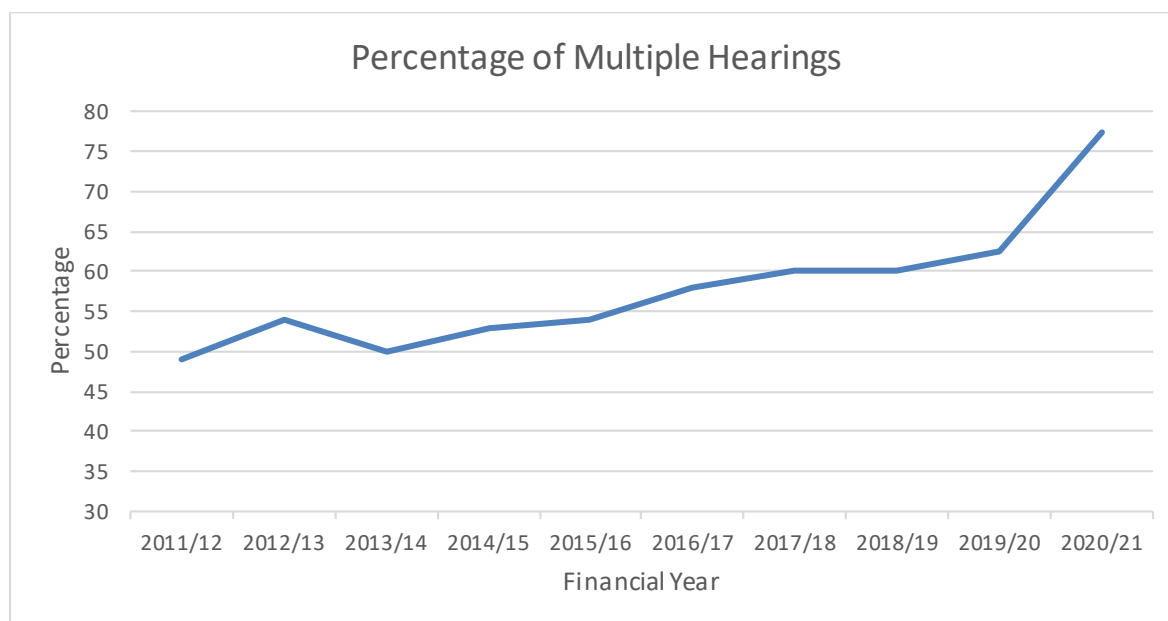
In total, 5,317 hearings were held in the financial year 2020/21, which is an increase of 300 on the previous year.

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

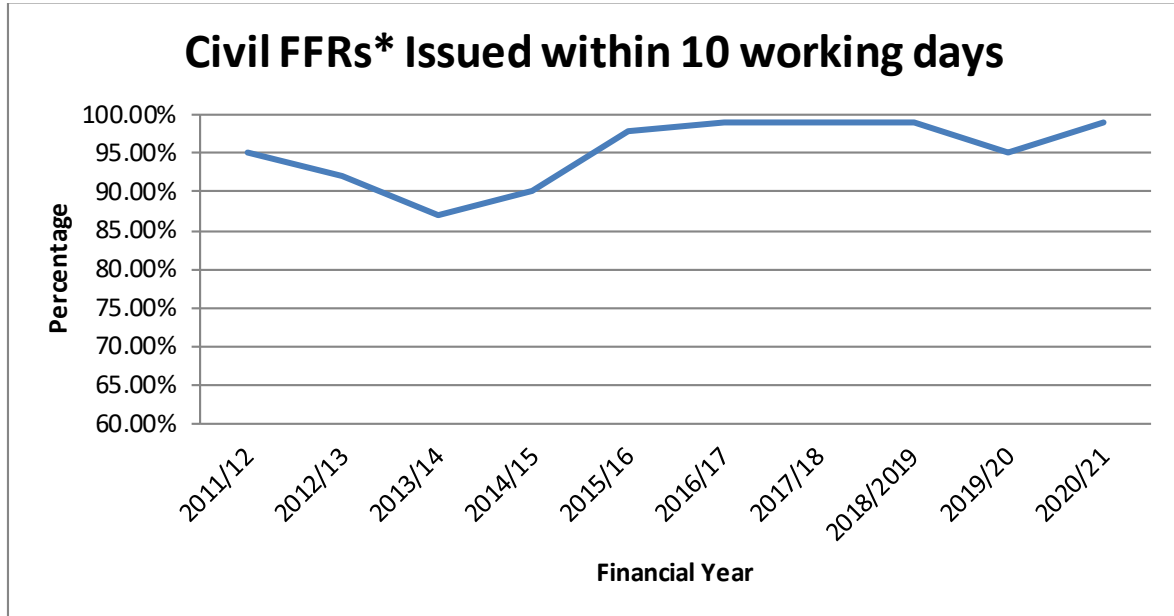


Whilst maintaining a patient-centred approach, the Tribunal continues to focus on reducing the number of days required for hearings through implementation of the multiple hearings initiative, whereby a single Tribunal panel hears more than one case on the same day.

For some years now, the Tribunal has recorded the percentage of hearings which are held as part of a multiple hearing day. It is apparent from the table that there has been a steady increase in this percentage year on year since 2013/14. However, in 2020/21 there was a marked increase in the figure – from 63% in 2019/20 to 77% in 2020/21. The main reason for this increase is the increased potential for doubling up of hearings. This was not restricted by geographical location, given that the majority of our hearings were held by teleconference during 2020/21. It is likely that we will see a drop in this percentage in the coming reporting year, as we start to re-introduce more in-person hearings.



## 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 2020/21 we have achieved an annual result of 99%. This is attributable to the diligence of members, particularly legal members, in formulating the written decisions promptly after the conclusion of a hearing, and to efficient administration in distributing these documents.

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

From 1 April 2020 up until 31 March 2021 the Tribunal had formal intimation of six new appeals to the Sheriff Principal, of which two were not defended and of those, one was remitted back to the Tribunal for a fresh hearing. Three appeals were refused by the Sheriff Principal and one was granted. Two further potential appeals which were intimated to the Tribunal did not progress to a hearing, not having been accepted by the Court. During the reporting period, the Tribunal has seen one application for permission to appeal a decision to the UK Supreme Court refused by that court.

In taking a decision on whether to defend an appeal, the Tribunal must decide if the expense of the action is justified in terms of the significance of the appeal point. Considerations include whether there is an important policy or public interest point which should be explored, and whether an alternative means of resolving the issue can be identified.

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, and parties will be advised of this. If a complaint is made about the conduct of an individual, or about the conduct of a hearing, the Tribunal will investigate in conjunction with the Judicial Office to resolve matters. During the reporting period, all such complaints and concerns were addressed by investigation and correspondence with those involved.

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, our goal is that they should be satisfied by the process of investigating and considering the complaint. The Tribunal recognises in particular the value of alternative dispute resolution, 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 remedy it if we can, and 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 2020	Legal Members	Medical Members	General Members	Part-time Sheriffs (also Tribunal Members)	Part-time Sheriffs (not Tribunal Members)
<b>335</b>	101	119	115	5*	11
				These members are included in the total number of legal members	

During financial year 2020/21, 12 members resigned from the Tribunal. Of those, 6 were general members, 3 were medical members and 3 were legal members.

No new members were appointed during this financial year. Despite the move away from in person events, we were able to complete a programme of training for existing members, who each received one day's training in the Autumn of 2020, using the WebEx platform. This platform was also used successfully for stakeholder gatherings and member forums on issues of relevance to the Tribunal.

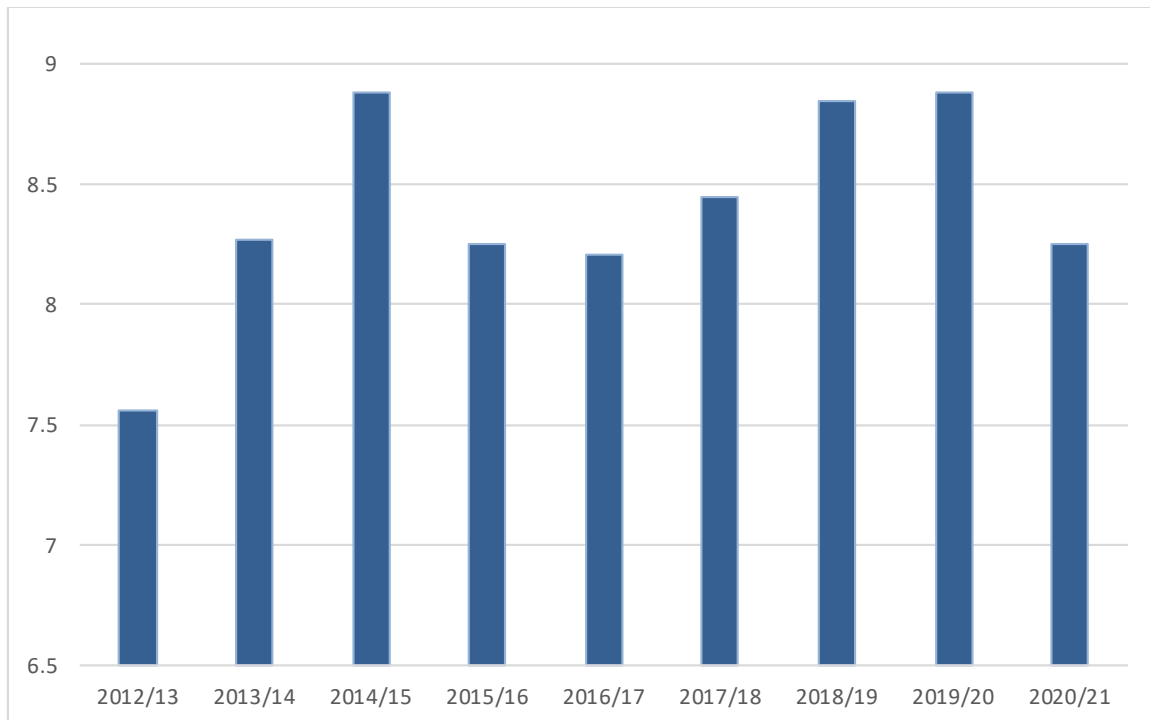
## CORPORATE STRUCTURE AND FINANCES

Expenditure relating to public relations, overseas travel, hospitality and entertainment and external consultancy by the Tribunal during 2020/21:

Public relations	Nil
Overseas travel	Nil
Hospitality and entertainment	£130.19
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

### Mental Health Tribunal Expenditure

#### COSTS IN £M



# FINANCIAL RESULTS

## Scottish Courts and Tribunals Service Operating Cost Statement for the year ended 31 March 2021

2019/20		2020/21
£000s		£000s
6,344	<b>Tribunal Costs</b>	5,592
	<b>Administrative Costs</b>	
2,333	Staff	2,438
205	Other Costs	219
<hr/> 2,538 <hr/>		<hr/> 2,657 <hr/>
8,882	<b>Net Operating Costs</b>	8,249

### Financial Performance

Costs have decreased during 2020/21, by approximately £633k. Compared to 2019/20, there was an 11% increase in applications and a 6% increase in hearings, although the Tribunal delivered a 5% reduction in hearing days. This was achieved through a 'multiple hearing rate' of 77% this year, up from 63 % in the previous year. This was primarily due to the impact of the COVID-19 pandemic. Through necessity, the MHTS hearings delivery model had to be adapted to hold hearings remotely during this period.