



Mental Health Tribunal for Scotland

ANNUAL REPORT 2022/2023

**This report covers the period
1 April 2022 to 31 March 2023**

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FOREWORD

The aftermath of COVID continued to affect hearings of the Mental Health Tribunal for Scotland in the year to 31 March 2023. Lockdown in March 2020 had required us to convert all hearings to teleconference (that is, hearings over the phone). This enabled us to preserve our hearings schedule with no missed tribunals and no backlog, but a number of changes, probably inevitable, followed in the wake of that decision.

Even at the time of writing this foreword, in December 2023, telephone remains the predominant mode of holding our hearings. It can be practically advantageous in the small number of cases where there is no possibility of the patient attending the tribunal. And for some patients, a hearing over the telephone is their choice. But, for the majority, a 'visual' hearing, where people can see each other, either on a screen or in person, seems to feel preferable, so we are pleased to report that, as at November 2023, the number of such hearings continues to increase. Even looking only at the reporting year, the breakdown of the different types of hearing changed markedly. In April 2022, 3.25% of our hearings were visual. By March 2023, this proportion had risen to 20.93%. The vast majority of these (more than 95%) are in-person hearings. But videoconferencing is a useful mode of holding a hearing and we utilise it in some remote and/or rural locations (such as Lochgilphead, where in-patients may come from all over Argyll) and in units with a national reach, such as the State hospital, where some participants may live a long way from the hospital.

The reporting year also saw publication of two major reports relevant to the work of the Tribunal. The study undertaken by Edinburgh Napier University Centre for Mental Health and Incapacity Law and Queen's University Belfast, into experiences of attendees at hearings, was published in September 2022. The report offered a number of observations and recommendations. We considered all of these points, and our written response was published on the MHTS website in March 2023. Those topics which we said we would include in training in 2023 have now been covered, our annual member training having been completed on 1 December 2023.

At the end of September 2022, the report of the Scottish Mental Health Law Review was also published. This is a substantial piece of work, with many recommendations for change. There is now a programme of reform, led by Scottish Government, and we look forward to the particular changes to legislation which will implement recommendations arising from the significant and in-depth work of the Review team.

I referred above to training, in relation to the obligation we have to provide one day's mandatory training for members each year. In 2022, our member training took place over eight days, that number of events being required to accommodate all members. We held five in-person events and three video events. Our afternoon workshops at training offered a wide choice, with seven different topics, each of them featuring at least once online and once in person. We also continue to offer optional events, online, on topics of relevance to members; last year we were pleased to host speakers from Glasgow University to tell us about the research taking place on the use of avatars for those who hear voices as one of the symptoms of illness. Lastly, a selection of our members were able to attend the periodic 'Tribunal Craft' courses organised by the Judicial Institute for Scotland, and to benefit from that cross-jurisdictional skills training.

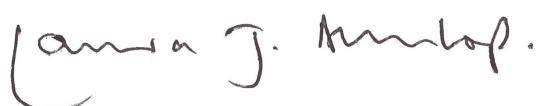
Turning to engagement with those who appear at hearings, as in previous years we also hosted stakeholder forums, one for service users, carers and advocacy

workers, and one for responsible medical officers and mental health officers. Each gathering takes place twice in a calendar year, and provides a useful opportunity to update people on recent developments in the Tribunal and to answer questions about law and practice.

During the reporting year, we completed a survey of the ethnicity of our members, such a survey having been recommended in a report by the Mental Welfare Commission in 2021. The results of our survey – which attracted a very high response rate – are available on our website. Within the President’s Office, we were pleased to welcome two new in-house conveners, to join the team of those who deal with interim and interlocutory work. Arrangements for our day-to-day operations are in the hands of the Scottish Courts and Tribunals Service; during the year, we also welcomed a new legal secretary to the Tribunal, the first to be directly employed by SCTS rather than seconded from Scottish Government. In relation to the organisational structure of MHTS, we remain an autonomous tribunal, not yet part of the First-tier Tribunal for Scotland. No date for the formal move of the Tribunal into the Scottish Tribunals has yet been set. We continue to offer our assistance in relation both to the content of the legislation required for the transfer and in connection with changes to our website, which we hope will proceed in tandem with the move to the First-tier.

Finally, the Mental Health Tribunal could not run without the dedication of all who serve as members, and of our colleagues who provide the administrative support from start to finish of a case. As detailed in the ensuing pages, the volume of applications continues to increase year on year, and the complexity of both substance and process in individual cases seems to rise each year too. Operational colleagues face significant pressure, yet the satisfaction of quality measures remains high. Members bring a high standard of adjudication to the cases they handle, and the finalisation of written decisions continues to be timely, to the benefit of all. I must also thank my colleagues in the President’s office for their constant support, whether in administration or as part of the team of in-house conveners.

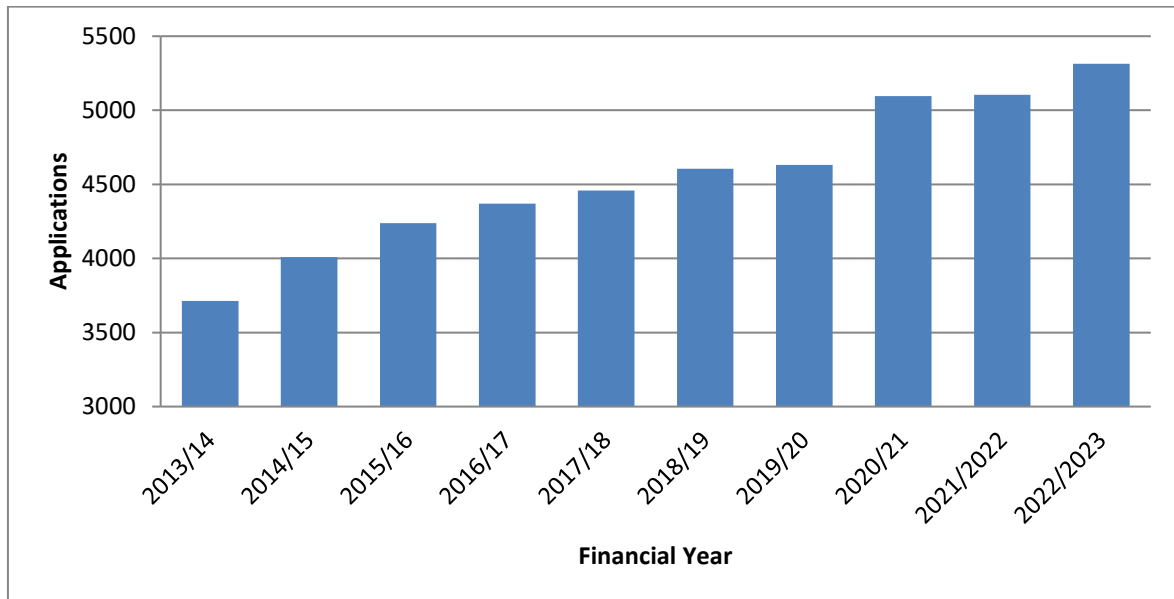
I commend to you the following account of the activities of the Mental Health Tribunal for Scotland, in its most recent reporting year.

A handwritten signature in black ink, reading "Laura J. Dunlop." The signature is written in a cursive style with a large initial 'L'.

Laura J Dunlop KC
President

TRIBUNAL ACTIVITY

Applications received by the Tribunal in the last 10 years

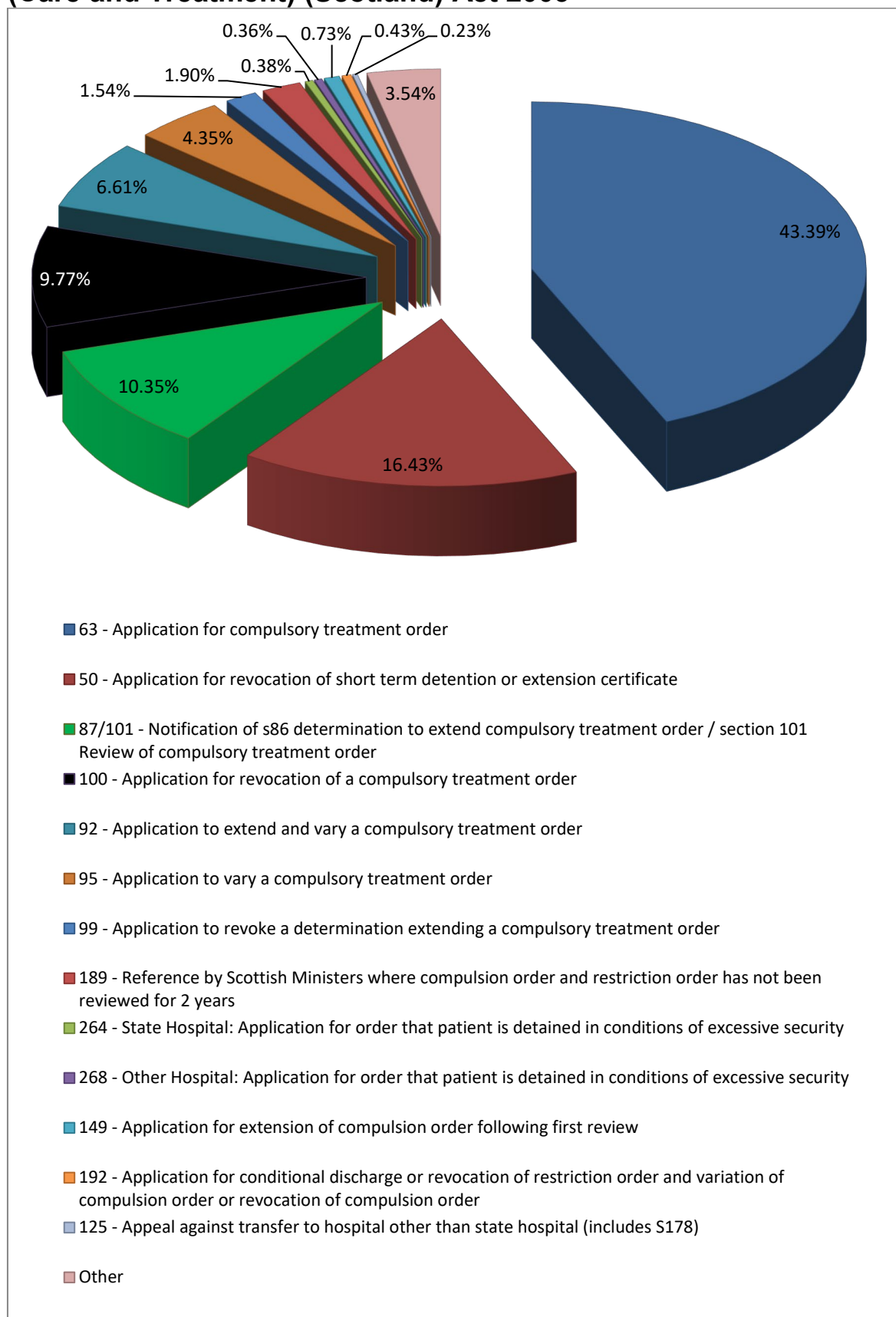


The above graph illustrates how the number of applications received by the Tribunal has increased since 2013/14, resulting this financial year in a total of 5314 applications received. Compulsory treatment order (section 63) applications continue to constitute the largest percentage of applications received, followed by applications to revoke short-term detention certificates (section 50). The proportions of different applications are shown on page 4.

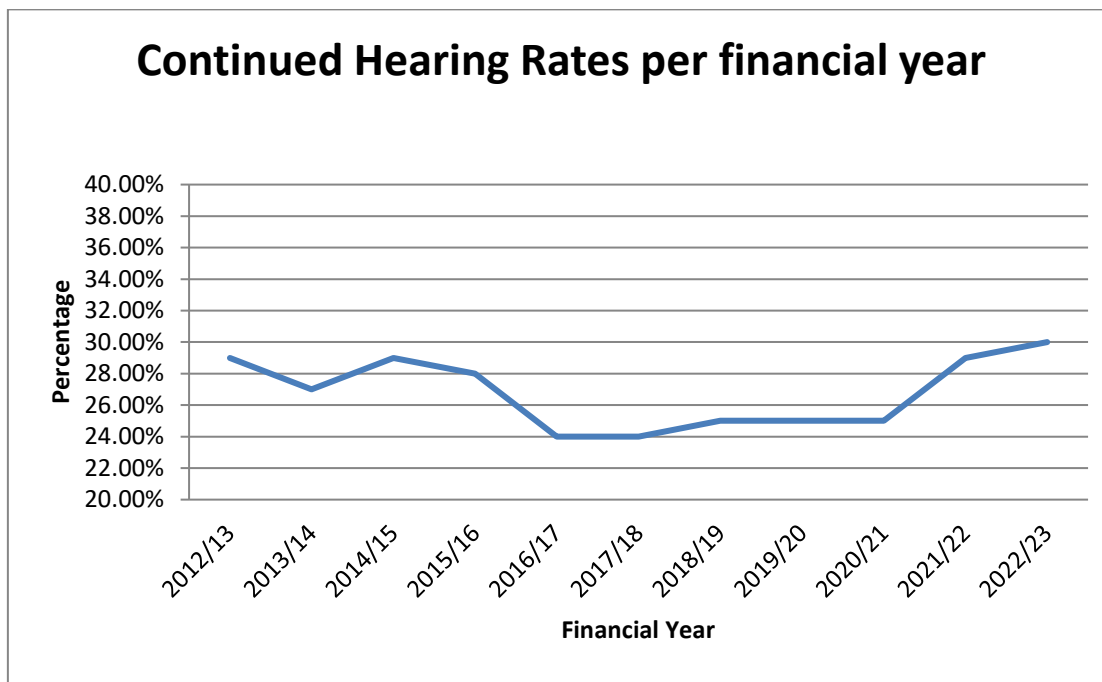
The Tribunal's Administration continually evaluates staffing levels and skills to ensure that a high quality and efficient service is delivered at all times.

Unfortunately, the first of our Key Performance Indicators (KPI) was not met in 100% of cases in this reporting year. This KPI is 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, if the relevant application has been received during the 28 days of short-term detention. In one case, in October 2022, we did not manage to hold a hearing within the required five-day timeframe. The required hearing was held six working days later.

Applications, Appeals, References and Reviews dealt with by the Tribunal in 2022/2023, by individual sections of the Mental Health (Care and Treatment) (Scotland) Act 2003



Interim Orders and Adjournments of Hearings



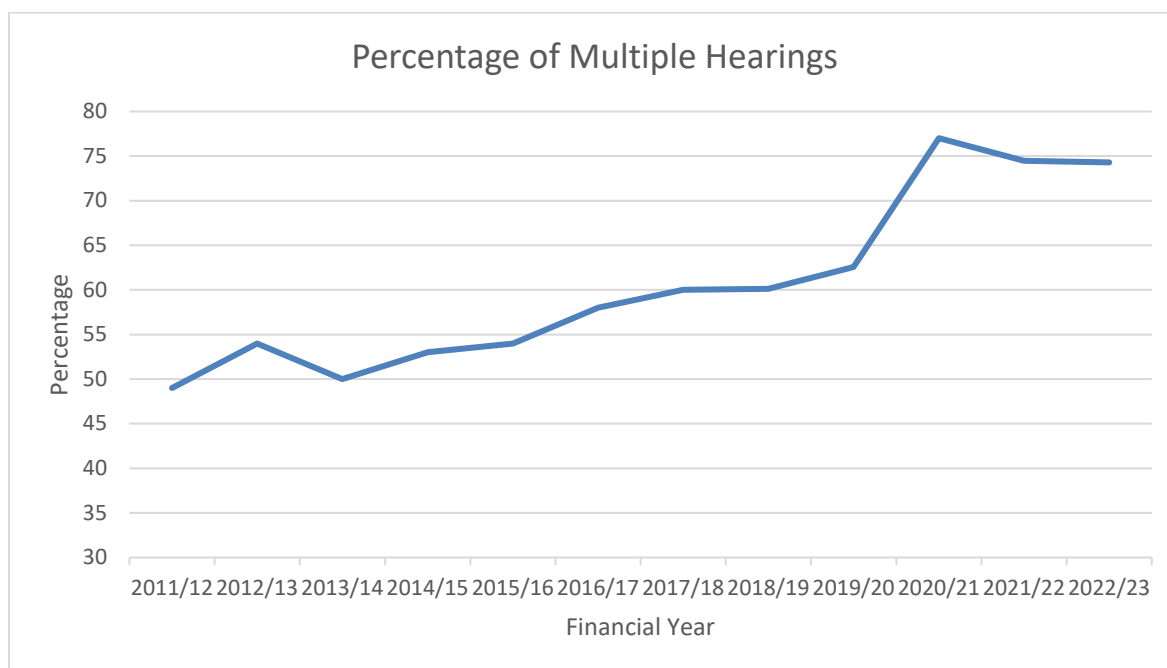
In total, 6,195 hearings were held in the financial year 2022/23, which is an increase of 511 on the previous year.

In this reporting year, 70% 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 reduce further 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.

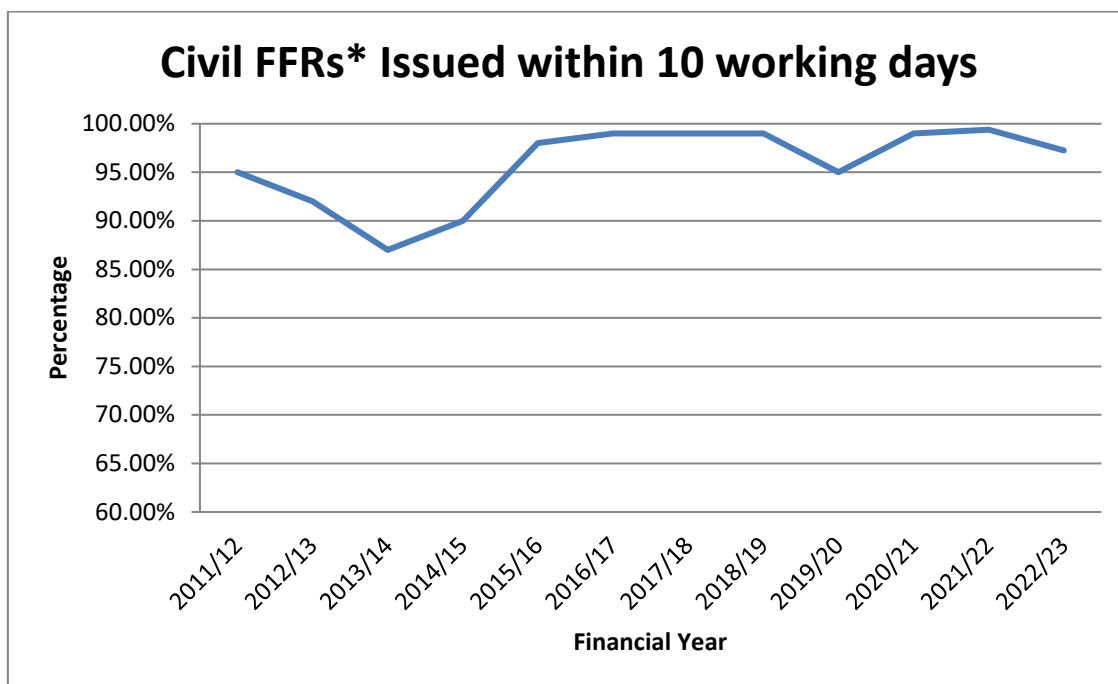
Multiple Hearings



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 was the greater 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. In the reporting year 2021/22 there was a drop in this percentage, as we started to re-introduce more in-person hearings. That reduction has been maintained, but has largely stabilised at around 74%, though numbers of in-person hearings continue to increase.

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 2022/23 we have achieved an annual result of 97.24%. 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

Appeals

Appeals were lodged with Sheriffs Principal by or on behalf of four individuals during the reporting period. Of those, one was not defended by the Tribunal and was remitted back to the Tribunal to be considered again at a fresh hearing. Two appeals were refused by the Sheriff Principal after a substantive hearing and one appeal was abandoned at an early stage.

During the reporting period, the Tribunal received no intimation of new appeals to the Court of Session.

The Tribunal received intimation of a potential damages claim but this was resolved extra-judicially.

Complaints

Two complaints about members were received and both were remitted to the Judicial Office and subsequently dismissed. In relation to the conduct of hearings, concerns were received in respect of six tribunals and all of them were resolved by correspondence. There were four complaints in relation to administrative processes and apologies were issued in each. There were no complaints received in relation to a Curator ad Litem during the reporting period.

Communications from individual tribunal users which raised queries or concerns were either investigated and resolved in-house by the Legal Secretary and the Tribunal President or redirected to the appropriate body.

TRIBUNAL MEMBERSHIP

Total Number of Members* as at 1 April 2022	Legal Members	Medical Members	General Members	Part-time Sheriffs (also Tribunal Members)	Part-time Sheriffs (not Tribunal Members)
348	108	120	120	6*	8
<p>These members are included in the total number of legal members</p>					

During financial year 2022/23, 13 members resigned from the Tribunal. Of those, 2 were general members, 5 were medical members and 6 were legal members.

During training year 2022/23, the Tribunal delivered a total of 10 member events. Eight of the events were the one day of mandatory training for members consisting of a mix of 5 in person dates and 3 virtual dates, with members having the choice to attend either in person or virtually. Of the 2 remaining events, one was a virtual meeting to provide new members who undertook their induction training in January 2022 with the opportunity to reflect on their tribunal experience to date and share their observations. The second event was a virtual All Members Forum inviting members to attend a talk and presentation. The Tribunal continues to use the WebEx platform to host various stakeholder and member forums.

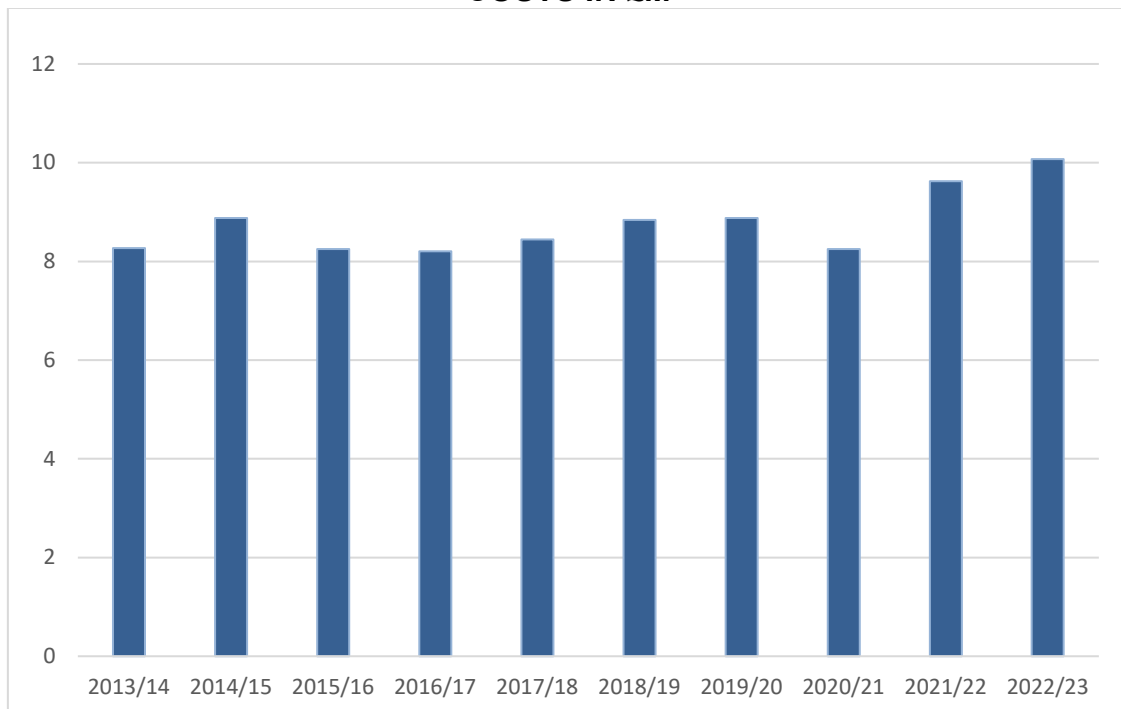
CORPORATE STRUCTURE AND FINANCES

Expenditure relating to public relations, overseas travel, hospitality and entertainment and external consultancy by the Tribunal during 2022/23:

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

Mental Health Tribunal Expenditure

COSTS IN £M



FINANCIAL RESULTS

Scottish Courts and Tribunals Service

Operating Cost Statement for the year ended 31 March 2023

2021/22		2022/23
£000s		£000s
6,341	Tribunal Costs	7,010
	Administrative Costs	
2,810	Staff	2,848
234	Other Costs	207
<hr/> 3,044 <hr/>		<hr/> 3,056 <hr/>
9,385	Net Operating Costs	10,066

Financial Performance

Costs have increased in 2022/23 by £681k. This increase is driven by Tribunal Costs and can be directly related to the 9% increase in hearings when compared to 2021/22.