Mental Health Tribunal for Scotland

Annual Report 2010

Contents

SG/2010/254

President's Foreword

President, Dr Joe Morrow

I am pleased to report that 2009-10 has been a year of continued improvement for the Tribunal. Since I became President at the end of 2008 I have been committed to making sure that we deliver fair and just outcomes for patients at the same time as achieving greater efficiency and effectiveness. During the period covered by this Annual Report there has been a marked improvement in the way we carry out our business.

As is detailed in this Report we dealt with more applications, held more hearings and made more decisions than at any time since the Tribunal came into operation, at the same time as reducing our costs. In 2009-10 we remained within budget for the first time. The Tribunal and its Administration excelled in meeting the strict statutory five day time limit within which a tribunal panel must convene and make a decision on a compulsory treatment order (CTO) application, against a background of nearly 80% of CTO applications being received by the Administration during the final five days before the expiry of the short-term detention certificate. We issued our full findings and reasons more quickly and processed applications more promptly than in any previous year. We also managed to arrange more days when individual panels heard more than one case in a day.

All this could not have been achieved without the commitment of Tribunal Members and the efforts of its Administration. I take this opportunity to thank them all. Such commitment was more than evident for me at what was one of the highlights of the Tribunal's year: our first national conference for Members. Held over two days in Dunblane, this achieved an attendance of well over 90% of Members, which is commendable in itself considering the busy professional lives of our 355 Members. It brought home to me the fantastic store of knowledge and experience that Members bring to the work of the Tribunal and their willingness to continue to learn about the complex issues that are presented to panels on a daily basis.

The conference was also an opportunity for Members to meet and get to know representatives of some of the key groups and organisations that work with patients who are involved in the Tribunal process. I have been keen to foster strong and constructive relations with service users and those who support them as well as with the groups of professionals who help them recover. 2009-10 saw the start of a new way of connecting with those who participate in the work of the Tribunal with the organising of regional reference groups enabling the Administration and myself to meet at a local level and hear about and

respond to local issues and concerns regarding the Tribunal's work.

Other important developments for the Tribunal during 2009-10 included the Scottish Government's consultation on the limited review of the Mental Health (Care and Treatment) (Scotland) Act 2003. I was keen to emphasise in the Tribunal's response the need to make early changes to 'our' legislation to ensure that we can carry out our work more effectively and ensure that patients receive earlier decisions that help them in their recovery. Also during the year we saw the formal transfer of sponsorship of the Tribunal's Administration from the Health Directorate to the Justice Directorate of the Scottish Government. This is very much in line with the need to establish a clear separation between the Scottish Government's policy responsibility for mental health law and the operation of the Administration in support of the Tribunal. This welcome change has meant that the Tribunal's Administration is at the forefront of developments leading to the establishment of a Scottish Tribunals Service, a key part of the Government's reform of civil justice.

By the end of 2009-10 the Tribunal was well placed to take on the new challenges presented by a rapidly changing policy and budgetary environment and to further improve the way we work. By agreeing to a new set of performance indicators for the Administration I am now better placed to track progress and seek further improvements in service. I am particularly keen to improve the quality of the work we do by ensuring that the Administration has greater 'ownership' of the cases it handles. I also want to enhance the positive working relationships developed during 2009-10 between my Office and the Administration through Legal Case Management meetings and the availability of in-house conveners. I know that these initiatives have contributed to the more effective delivery of our service through the fostering of much better team work between the legal and administrative arms of the Tribunal.

I very much appreciate that 2010-11 and beyond will present further financial and policy challenges. I want to ensure that the improvements we have secured over the last year are not jeopardised by the inevitable need to find further cost efficiencies. We cannot afford to reduce the level of commitment to secure fair and just outcomes for patients. I also want to ensure that our unique and internationally regarded approach to compulsory measures of care and treatment of patients with mental disorder will be strengthened – not compromised – by the move towards a Scottish Tribunals Service.

Views of the Mental Health Tribunal for Scotland

Dr Lindsay Thomson Professor of Forensic Psychiatry and Ed Finlayson – Team Manager Social Work Service at the State Hospital

In previous Annual Reports the Tribunal has sought the views of patient representative groups and professionals associated with the work of the Tribunal. In this Annual Report we have chosen to focus on the work of the Tribunal in relation to its forensic cases, sometimes referred to as "Restricted Patient" cases (cases where the patient is subject to a Compulsion Order and a Restriction Order). The provision in the 2003 Act, which enabled patients detained at the State Hospital to seek to be placed in an environment with less restrictive security as a possible step to an eventual return to the community, has been seen by many as one of the most positive and therapeutic results of the Millan Report that informed the 2003 Act. Although forensic cases represent less than 6% of the Tribunal's cases they are a very important element.

Entrance, The State Hospital.

The view from the State Hospital

The State Hospital provides mental health care and treatment for those requiring conditions of high security from Scotland and Northern Ireland. All patients are subject to mental health compulsory measures under either the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995.

In respect of human rights and public protection it is essential that these compulsory measures and associated care and treatment plans are subject to robust, independent and informed scrutiny.

Here the introduction of the Mental Health Tribunal for Scotland has generally been a welcome experience. Broadly the nature and manner of tribunals has offered improved opportunities for professionals, patients and carers to engage with the very serious matters associated with applications, reviews, and appeals. (Prior to the 2003 Act the role and powers of the Courts were generally limited to consideration of appeals against detention and were conducted in an adversarial manner.)

Two thirds of State Hospital patients are 'Restricted Patients' and their care and treatment is overseen by Scottish Ministers to ensure public safety. The case of a 'Restricted Patient' must be dealt with by a Shrieval Tribunal, chaired by either the President of the Tribunal or a Sheriff.

The State Hospital currently provides two dedicated tribunal suites and has commissioned similar modernised provision in the new hospital due to be completed in 2011.

Prior to the 2003 Act the Mental Welfare Commission had consistently expressed concern at the significant number of 'entrapped' patients within the State Hospital. These were patients who were assessed as still requiring compulsory measures but who did not need to be held in conditions of high security and would benefit from care in less secure local services.

Section 264 of the 2003 Act introduced the right of a patient to appeal against being held in conditions of excessive security. This right of appeal has now been asserted and upheld by the tribunal in a number of cases. In conjunction with the development of forensic facilities at a regional and local level this has resulted in an improved and more balanced range of services throughout Scotland and more effective care and treatment planning for patients. Since 2006, 182 appeals against excessive security have been lodged and 108 of those patients have transferred to conditions of lesser security.

In a small number of cases where the identification of appropriate services has been particularly challenging the involvement of the Tribunal has been extensive and prolonged but has finally resulted in beneficial outcomes for those patients and their families.

Whilst acknowledging the positive impact this right of appeal has had for many patients, the State Hospital is mindful that it must also ensure that those patients who are assessed as being ready to transfer to lesser security, but who do not feel able or choose not to assert their right of appeal, are not unfairly disadvantaged, when there are finite step down facilities available.

The 2003 Act introduced the requirement that a tribunal must review a detained patient's circumstances at least every 2 years, where no such review has otherwise occurred. As a consequence of serious mental illness or personal factors a number of patients in the State Hospital may not feel able to assert their right of appeal or to seek review of their circumstances. It is therefore important and usually beneficial when the Tribunal of its own accord takes the time to review the circumstances of such patients either satisfying itself that the care and treatment plans and compulsory measures are appropriate or perhaps identifying aspects of care planning or compulsion that require to be addressed. Since 2005 there have been 317 two year reviews, 2 of which have resulted in variation of the order by the inclusion of recorded matters. In one case the order was revoked.

The recent review of the civil elements of the 2003 Act identified some of the concerns and challenges faced by Named Persons of forensic patients in particular. Under the 2003 Act and the associated Rules there is a general duty to provide the Named Person with the range of information made available to the Tribunal. This has sometimes led to Named Persons receiving unexpected and very detailed information relating to offending or a patient's personal circumstances which has caused the Named Person distress. In future the review recommends that Named Person's should only be appointed at the choice of the patient and not automatically by default as can occur currently. The State Hospital welcomes this recommendation.

The State Hospital's annual Carers' Survey indicates that Named Person attendance at tribunals has increased and their experience has improved over the past 3 years.

The importance of taking account of the views of victims is understood in forensic services. It is therefore appreciated that in certain circumstances the Tribunal will take into account such views or representations in a sensitive and careful manner.

The complexity of some forensic cases may require protracted consideration by the tribunal. However in common with general mental health services there was some concern about the number of 'adjournments' in the early stages of the tribunals. These concerns are clearly acknowledged in the recent review of the civil elements of the 2003 Act.

It is appreciated that more recently there has been a noticeable improvement in this area and a welcome commitment by the MHTS to maximise efficiency without diminishing effectiveness.

Aerial view of the new State Hospital Hub.

A view from a Sheriff Convener

Sheriff Deirdre MacNeill QC Sherival Convener

As a full time sheriff since 1999 I was familiar with the old system of Mental Health Hearings in the Sheriff Court when the patient arrived escorted by nurses at the Sheriff Court building for usually brief and formal hearings. I recognise and commend the huge change in emphasis from the proceedings themselves to the patient brought about by the 2003 Act with the focus of the hearing now being the patient, his application, his treatment plan and his voice articulated by himself or an Advocacy worker in his own familiar, albeit, hospital surroundings.

The 2003 Act provides that in the case of patients who are subject to a compulsion order and a restriction order and those patients subject to a hospital direction or a transfer for treatment direction, the Convener of the Tribunal must be the President of the Tribunal or a Sheriff, and the cases usually take place at the State Hospital, Rowanbank Clinic, at Stobhill Hospital Glasgow, at Leverndale Hospital, Glasgow or at the Royal Edinburgh Hospital. The general Members and medical Members of the tribunal panel come from a fairly small pool and are often familiar faces bringing with them their own unique and individual experience and skills. Needless to say, the subject matter of the patient's application and its outcome is of the utmost importance to the patient himself personally, with ramifications for the rest of us more generally. The stress of the whole proceedings, the run up to the date of the hearing and exactly how the application is dealt with cannot be underestimated for him for it is almost always a he. It is often the case patients choose not to attend the hearing or, having heard part of the evidence in their case about themselves, retreat to the ward.

The first consideration for the Tribunal, when they meet, is exactly how to handle the hearing. Ideally the Tribunal meet in the hour before the hearing. By then the voluminous papers have been digested and a preliminary view taken on the parameters of the hearing. What evidence is to be presented? What should we hear? What do we need to know that is not apparent from what we have? Is there any more up to date information available? Who is in attendance? Is the patient to be here? Who is with the patient? Is there a named person involved or is there an Advocacy worker?

The Tribunal Clerk is, as ever, ready with tea, coffee, biscuits and information. We are told that the patient is represented by one of the small and familiar team of specialist solicitors. There is a new report on the patient to digest before the hearing starts. A plan for the management of the hearing is agreed upon.

The hearing itself should, in my view, be primarily patient focused and be as informal as it can be, balancing the need for the evidence to be heard and handled in a judicial manner according to the principles of Article 6 resulting in a judicial decision. I was disappointed to read in previous contributions that there was criticism of the proceedings being too "legalistic". For myself I think it is a little demeaning to be asking a consultant psychiatrist or others serious in their intent to care for the patient to take an oath to tell the truth. Examination, cross examination and re-examination takes place and the patient of course has the last word.

The Tribunal decision, and I emphasise the Tribunal decision, is reached after discussion of the facts and the law. The patient or his representative, if he is not there needs to know the decision, in simple terms, that day and I think if he is there he should be told what the decision is face to face. A detailed decision follows, agreed to by all Tribunal members. If there is dissent amongst the members, then there is written dissent.

Training of Tribunal members takes place. What is available is improving. I am down to do a day of "cross training" shortly and hope to learn more about schizophrenia and psychopathy which should make me better informed than at present, remembering of course that each decision is made on the evidence presented in that particular case, rather than my own researches.

I am one of six shrieval volunteers, permitted by our respective Sheriffs Principal to chair shrieval Tribunals. I volunteered at the time the new system was set up and my fellow colleagues who also volunteered seem seriously committed and enthusiastic. For my own part, I find the whole process of chairing a Tribunal requires one to develop and employ different skills from those required for my every day job of sheriffing. I have found the experience most worthwhile and I have met some very interesting people along the road.

Advocacy Worker view

Ann Morton – Advocacy, The State Hospital

The mental health tribunals have had a huge impact on the Patients' Advocacy Service within the State Hospital as advocacy had little involvement with the previous system. Advocacy has attended over 500 tribunals from April 2005 till 31st March 2009. The actual time spent on tribunals is on average 12 hours per tribunal which includes preparation work, attendance and follow-up.

Tribunals have given advocacy the opportunity to work with a minority group of patients who in the past have not accessed the service and helped us build working relationships with them. It has also raised the profile of advocacy in a positive way with other disciplines and professionals creating a better understanding of advocacy.

In our experience, the patients' experience and perspective of the tribunals is unique to the individual but the majority of patients prefer the tribunal system to the old system. In the beginning patients were surprised that the sheriff and others did not have robes on and patients would wear suits, as this was traditionally what you wore when you went to court. Now patients dress 'smart but casual' and feel more comfortable in everyday clothing.

Some patients tell us they like being able to walk to the tribunal whereas before they had to be handcuffed and transported to court. Others tell us it has given them hope that they will move on, it's not as formal as court and that it wasn't as bad as they thought it would be.

Patients still get anxious and worried about attending tribunals and can get exasperated when they arrive for a tribunal and it doesn't start on time, when people don't turn up who are crucial to the proceedings or it is adjourned for whatever reason.

It can be a difficult and daunting experience for patients having to sit through a tribunal with a lot of other people and listen to historical information given as evidence and at times information that they do not agree to be true or accurate. The patients have an opportunity to question and disagree with this evidence and are very good at articulating or expressing any inaccuracies in person, through the solicitor or with their advocate.

The tribunal experience has given patients a voice that can now be heard and listened to; a greater involvement and understanding of decisions being made that affect their lives. Patients and advocates now have a better understanding of the orders patients are on and in many cases how patients meet the criteria, their rights and what patients have to do to progress.

The last word at the tribunal is for the patient and we reinforce the fact they are the most important person at the tribunal and help the patient prepare a statement so that whatever they want to say is prepared and not forgotten by them before they get the chance to speak. It is their time to be heard and at times make a positive statement about their progress, how they feel they are doing and what they want.

Tribunals have given patients hope when they see others moving on, in particular with levels of excessive security, decisions can be overturned in the patients favour and patients are given clear direction on how to progress their care.

Anne Morton,

Manager Patients' Advocacy Service, The State Hospital

Purpose and values

Bothwell House

The Tribunal is a key part of the unique Scottish mental health law system brought into effect by the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act") and is committed to ensuring that it works as effectively as possible.

Aim:

The Aim of the Tribunal is to provide independent judicial decision making which is just, fair, responsive, accessible, transparent, robust and efficient.

Commitment:

The Tribunal is committed to building on and continually improving the unique Scottish mental health law system. By examining the facts presented to it including documentary evidence and the oral evidence given at hearings the Tribunal applies the law having regard to the principles set out in the 2003 Act, such as maximum benefit to the patient.

Values:

In undertaking its crucial task the Tribunal is wholly committed to upholding its core values of professionalism, independence and inclusiveness through:

- handling cases sensitively and responsively;
- taking full account of the needs and rights of individuals;
- ensuring that equality and diversity issues are addressed at all times;
- engaging proactively with stakeholders;
- ensuring hearings are fair and impartial;
- providing clear and timely information on our decisions and activities; and
- maximising efficient and effective use of public resources.

Relationship with Government:

The Tribunal is very strongly committed to upholding its judicial independence.

However, the Tribunal acknowledges that its work is broadly aligned with the Scottish Government's Purpose and Strategic Outcomes including living longer, healthier lives, and living our lives safe from crime, disorder and danger.

Key Developments in 2009 - 2010

- At the start of the 2009/10 Operating Year the Tribunal's Administration moved from being an executive agency to become a delivery unit of the Scottish Government's Justice and Communities Directorate General. The policy 'lead' for Mental Health Law remained with the Scottish Government's Mental Health Division whilst sponsorship of the Administration passed to the Legal Services Division of the Justice Directorate. This was very much in line with the Government's policy of making a clear separation between responsibility for policy affecting the jurisdictions of tribunals and the sponsoring of tribunal Administrations. In July 2009 Paul Smart became head of the Tribunal's Administration joining it from the Justice Directorate.
- The Tribunal also came in on budget for the first time in four years despite an increase in the number of hearings of around 5%.
- Operationally the Tribunal oversaw an increase in the number of 'doubled-up' hearings (i.e. two hearings in the same venue with the same panel). At the end of the operating year doubled-up and other multiple hearings accounted for 52.1% of all hearings held compared to 43.9% at the end of 2008/09. This resulted in a better utilisation of Tribunal Members' time.
- In November 2009 the Tribunal introduced on a trial basis in civil cases 'Triple Hearing Days' (three hearings in the same venue with the same panel) in Aberdeen. From February 2010 the trial was extended to Edinburgh and Glasgow. Again the intention was to test out if this will make better use of Members' time as well as that of the professionals involved. It should be emphasised that the Tribunal continues to monitor the impact of triple and double hearings on patient welfare, but we have no reason to believe that this has been compromised in any way. The trial is due to last for a year after which consideration will be given to whether to continue with this approach.
- The year also saw a change to the way meetings of the Tribunal's Reference Groups for Users and Carers and for Professionals are co-ordinated. From February 2010 these are being held around the country to allow local representatives of relevant groups and interests to meet with the President and senior Members of the Administration and discuss local matters affecting the operation of the Tribunal.
- To complement these moves to improve the way the Tribunal communicates with a variety of groups it also started at the beginning of the year to hold informal evening meetings with local groups of solicitors. These are now held on the same day as the local Reference Groups.
- The Tribunal submitted its detailed response to the Government's consultation on the McManus review of the civil provisions of the 2003 Act. The response was very much premised on the opportunities the review provided to improve the effective operation of the law based on over 3 years of practical experience.
- The Framework Agreement between the President, the Scottish Government and the Administration was revised during the year and signed-off by the President. It was updated to reflect the new governance arrangements brought about by the change in status of the Administration and the transfer of administrative sponsorship to the Justice Directorate and provides a clear separation of responsibilities between the Tribunal and Scottish Ministers.
- The Tribunal Administration, in close collaboration with the President, developed a demanding set of key performance indicators to enable the effective measurement of improvements to operational efficiency. In addition a number of business improvement projects were initiated in line with agreed priorities to improve service delivery.

- A Memorandum of Understanding between the Tribunal Administration and Scotland's Local Authorities was agreed in March 2010 which clarified respective roles and responsibilities in pursuit of the more effective implementation of the 2003 Act. Work also commenced on revising similar arrangements with Scotland's Health Boards.

MHTS Reception Bothwell House

- The Tribunal's in-house Conveners introduced a new Responsible Medical Officer (RMO) Forum in October 2009. The first Forum meeting was well attended by around 12 RMOs and a representative from the Royal College of Psychiatrists (RCP). The Forum provides an opportunity to share information and for the discussion of topical issues which includes statutory duties on the RMO, procedural matters and case law implications on practice.

Business Activity

The Tribunal received a total of 3458 applications under the provisions of the 2003 Act in 2008/09 (around 288 per month) a significant increase on our caseload for any previous year.

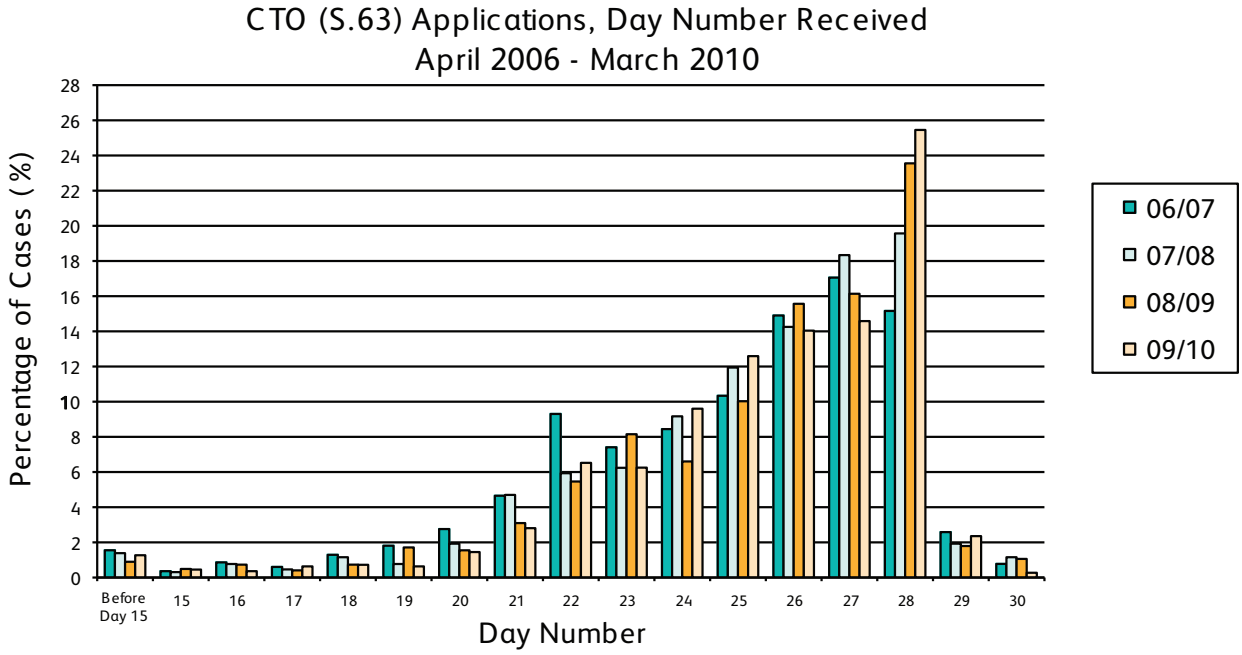
	All Applications	Change from previous year	Compulsory Treatment Orders	Change from previous year
2009/10	3458	8.4 %	1377	-0.6 %
2008/09	3190	-0.8 %	1385	-6.9 %
2007/08	3215	12.3 %	1488	-6.9 %
2006/07	2863	–	1599	–

Whilst Compulsory Treatment Order (CTO) numbers have remained almost static there has been significant growth in other areas. The number of applications to revoke a CTO has risen from 89 to 182 (104 %), whilst applications to revoke short term detention certificates (STDCs) have risen from 403 to 443 (10 %). These rises are attributed to greater awareness of patients' rights and greater engagement with patients by representing solicitors. The Tribunal would anticipate that this trend is likely to continue.

Two year reviews for forensic patients also rose by 31 % but this is largely a feature of the cycle of reviews and the Tribunal would expect the figure to fall back next year.

Compulsory Treatment Orders

CTO applications (section 63 of the 2003 Act) represent around 40 % of all applications made to the Tribunal. The number of CTO applications has fallen again this year but the rate of decline has slowed considerably from previous years and appears to be stabilising.

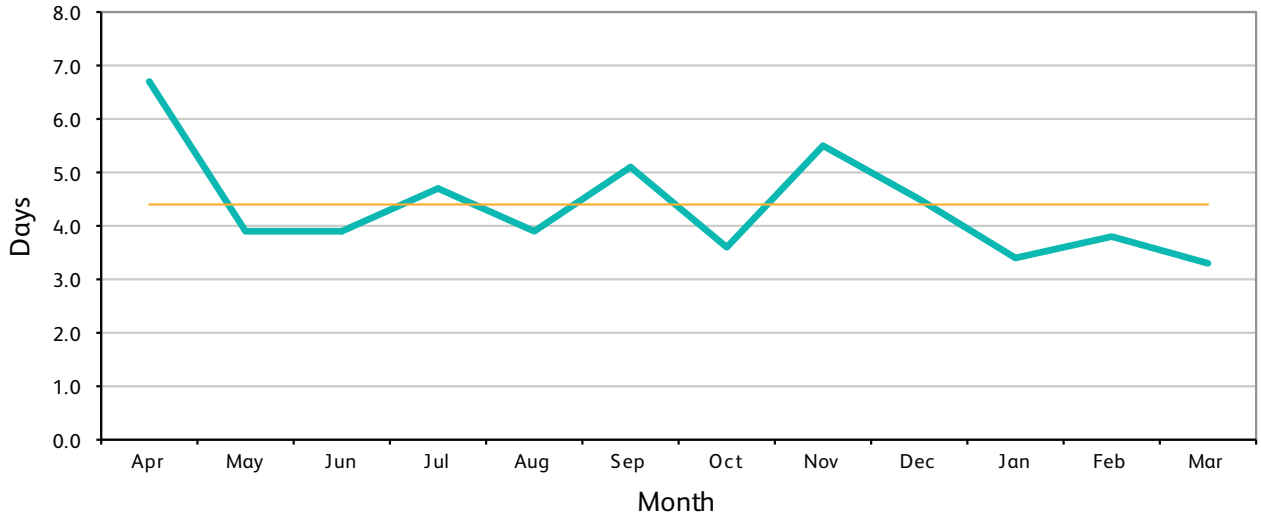


Prior to an application for a CTO being made to the Tribunal the patient has often been detained in hospital by virtue of a short-term detention certificate (STDC). A STDC authorises detention in hospital and treatment for up to 28 days. The percentage of CTO applications arriving with the Tribunal on day 28 of the STDC has for the first time exceeded 25%, although the increase has been partially balanced by a decrease in the proportion arriving on days 26 and 27. Where the Tribunal receives an application for CTO and the patient is subject to a STDC the 2003 Act requires the Tribunal to hold a hearing within 5 days of the expiry of the STDC. The average day of receipt has once again moved back and some 79% of cases are now received on day 24 or later. This does place additional pressure on the Tribunal and its Administration.

100% of CTO applications were processed within the statutory time limits despite a decrease in the time available to arrange a hearing.

On average hearing notices are issued within four days of receipt of application and many participants will have been made aware of the hearing in advance of that notice by telephone or email. There has been a general improvement in the time taken to issue notices although varying performance and peaks throughout the year reflect the varying work flow experienced by the Tribunal. The Administration also made real efforts to speed up the transmission of documents to all parties including increased use of electronic transmission to professionals.

Compulsory Treatment Order (Section 63) Application Received to Issue of Hearing Notice (Average)
April 2009 to March 2010



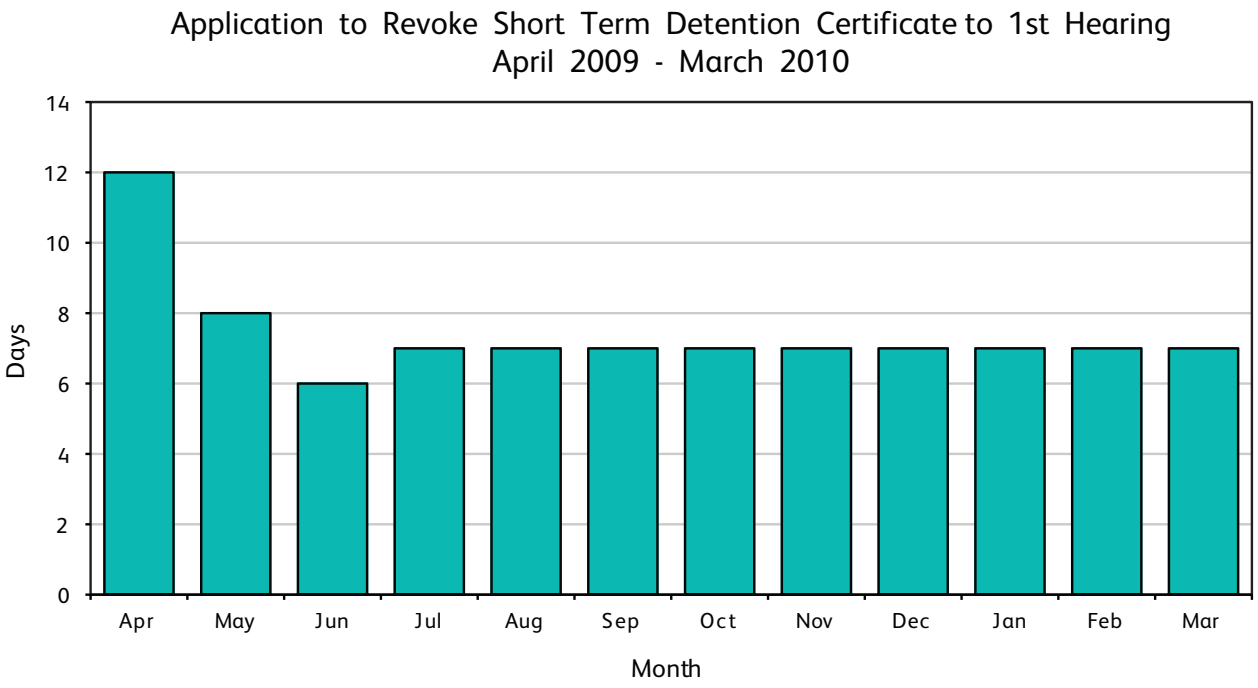
Although there has been a small increase in the number of Interim Orders during the reporting period the table below illustrates that the annual figures have remained stable through the years. Steps have been taken to reduce the administrative barriers to making final decisions, for example the introduction of a more streamlined system for the appointment of Curators ad Litem (solicitors who represent the patient's interests when patients are not capable of instructing a solicitor themselves).

	Interim Compulsory Treatment Orders Granted
2009/10	1048
2008/09	1019
2007/08	1076
2006/07	1063

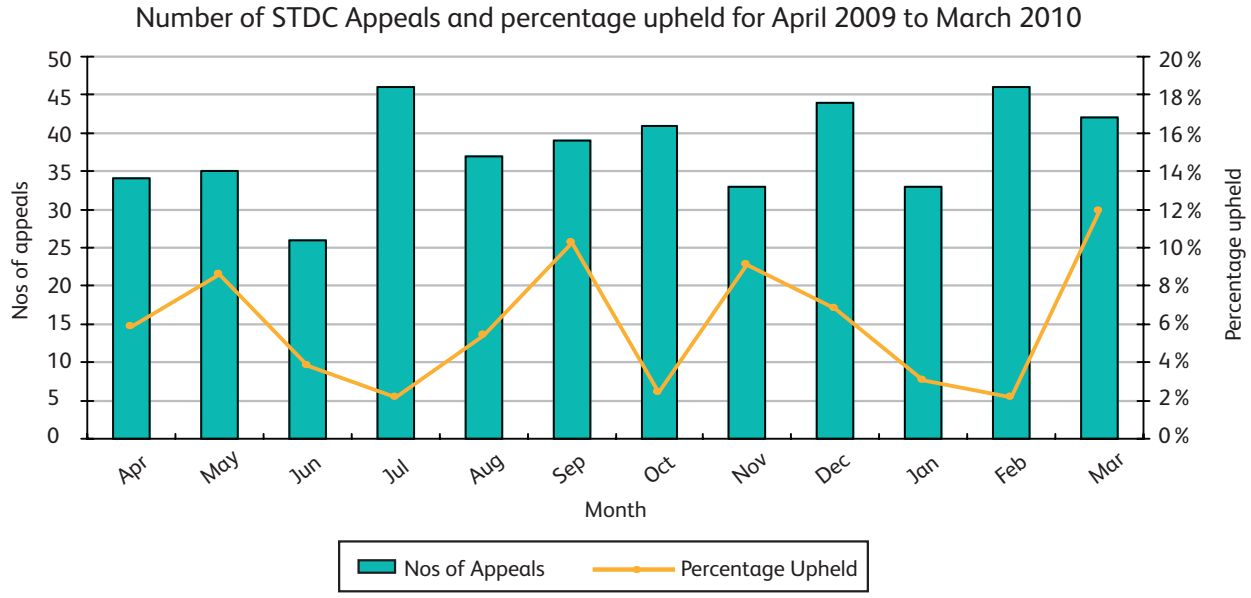
The main factor that leads to Interim Orders is the lack of parties' ability to proceed which in turn often stems from the need for patients' representatives to obtain independent medical reports. As illustrated on page 15 many CTO applications arrive within the last few days of a Short Term Detention Certificate. As a result there is often insufficient time for legal representatives to meet with patients; organise an independent report; and for that report to be produced before a first hearing must be held.

Applications to revoke Short Term Detention Certificates

During 2009/10 the majority of hearings held to determine an application to revoke a Short Term Detention Certificate (STDC) have been held at around 7 days from receipt of the application. The Tribunal Administration continues to work to reduce that time period further.



Out of the 456 applications to revoke STDCs made within the reporting period (393 were made in 2008/09), 5.92 % have been upheld a fall of 1.46 % on the previous year.



Decisions

Over the whole year the Tribunal issued 75.8 % of Full Facts and Reasons (FFRs) (the written Tribunal decision) within five days of the respective hearing, giving more patients and professionals earlier notification of the reasons for the Tribunal decision. This had reached over 85 % in the final quarter of the year. This is a significant improvement on earlier performance which had reached 46 % against the previous measure of 10 days.

MHTS Administration, Bothwell House

Hearings

A total of 4532 hearings were held during the year, 233 and some 5% more than the previous year due largely to rises in certain types of applications as detailed above. The Tribunal continues to hold hearings in both hospital and community venues across Scotland.

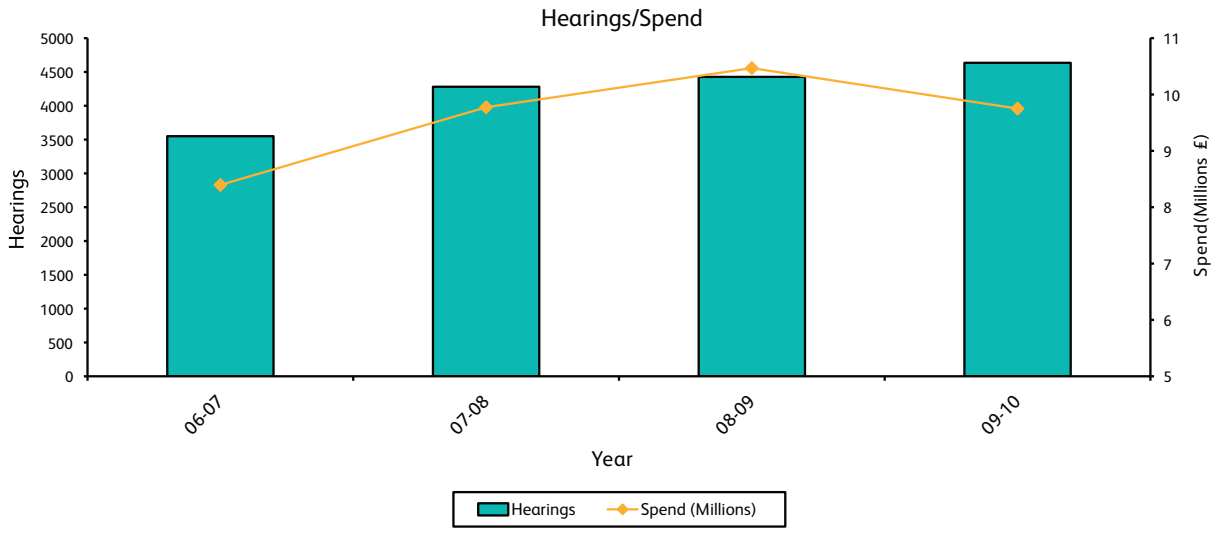
Wellgreen Tribunal venue, Dumfries

The Tribunal's rolling venue review programme has ensured that standards remain largely high. As a range of new bespoke venues become available improvements in standards are set to continue especially in the area of improved technology allowing for video links and broadband connections supporting further efficiency gains. One venue failed to meet the required standard and was taken out of use.

The number of hearings the Tribunal held per week varied considerably from 30 to 125, and month to month from 334 to 464, making planning and deployment of resources an administrative challenge.

The Tribunal has made great efforts to increase the number of hearings that are "doubled-up" (i.e. two hearings taking place on the same day with the same three panel Members and usually in the same location). This not only reduces the costs involved but can reduce inconvenience to many of the participants and the venue providers. The Tribunal also started to pilot Triple Hearing days in Aberdeen and later this extended to Edinburgh and Glasgow in 20010/11. The rate of doubling-up had increased to around 50% by the end of the year and averaged 47% across the year (an increase from 42% in 2008/09). The potential for multiple hearings is restricted by the geographical spread of cases; the unpredictable application numbers; and the time limits which exist for many cases. The Tribunal will be seeking further ways of improving efficiency in hearing organisation in 2010/11 in order to reduce the total number of hearing days and thus minimise disruption to others whilst containing its own costs.

The following graphs illustrate how the work of the Tribunal has increased during its first four years of operation but show it has managed to contain and reduce its costs. Hearings themselves are the main cost to the Tribunal and each additional hearing will cost in the region of £1,600 dependant upon location. The Tribunal managed to reduce its overall costs by £1.15m in 2009/10 partially by increasing the efficiency of hearing planning and subsequently increasing the number of doubled up hearings.



Compulsion Order And Restriction Order Case Activity

Rowanbank Clinic (Medium Secure Unit), Glasgow

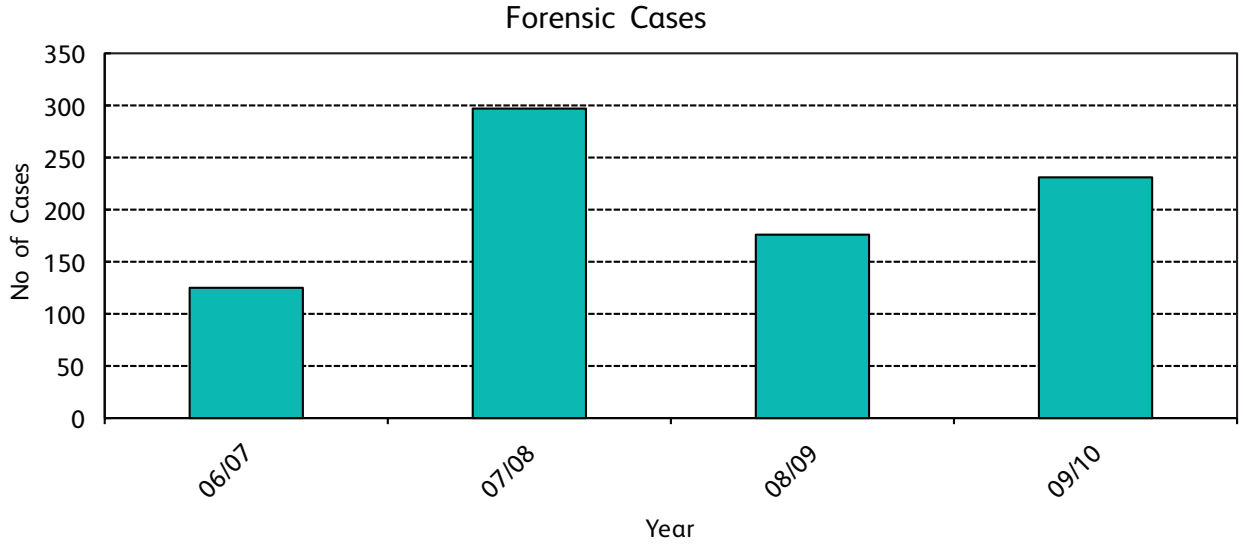
Orchard Clinic, Royal Edinburgh Hospital

Secure Venues

In restricted patient cases the Tribunal holds hearings in a number of specialist venues within High Secure and Medium Secure Units in Scotland.

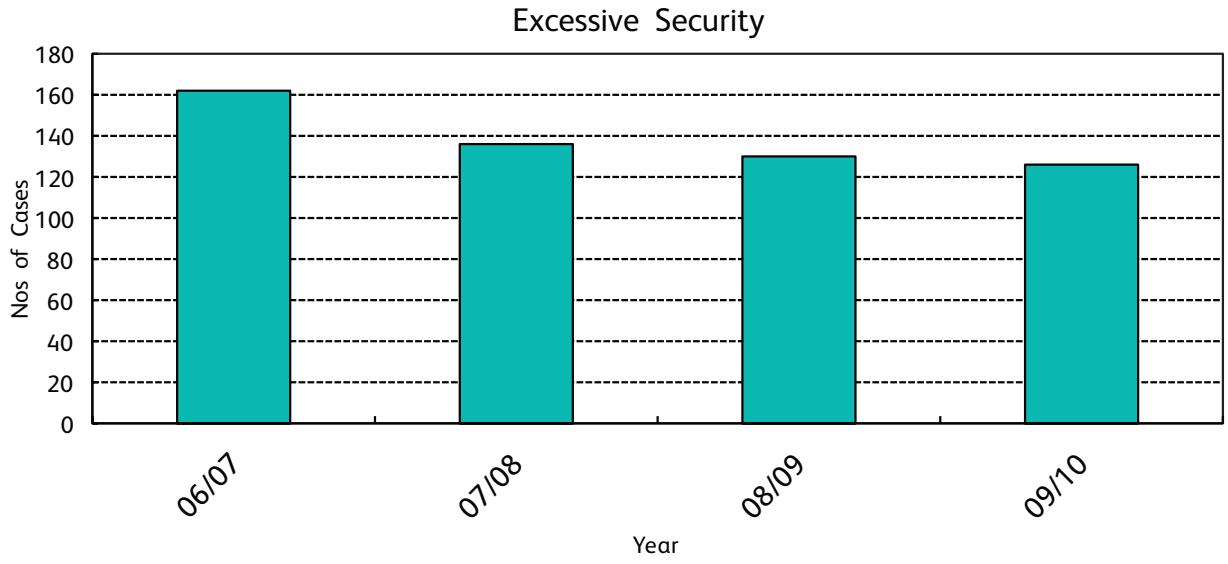
Forensic Cases

Overall the number of Forensic (i.e."Restricted Patient") cases increased from the previous year and the Tribunal experienced peaks in numbers in the summer of 2009 before they reduced at the beginning of 2010. These figures are a reflection of the pattern of two year reviews (section 189 of the 2003 Act) which started in October 2006. The pattern suggests there will be another peak in spring 2011. The flow of cases is not a reflection of the forensic mental health system but rather the way the Act has worked in relation to those patients.



Since the provisions relating to appeals against detention in conditions of excessive security have been invoked, often successfully, by patients, the number of patients detained in the State Hospital has reduced and the excessive security cases before the Tribunal have also declined. There are now no women detained at the State Hospital.

Within the Tribunal's Administration the Forensic Team now schedule their own cases which allows for a more bespoke service to address the needs of these generally more complex cases.



The Skye Centre, The State Hospital

Complaints

During the year 25 complaints were recorded representing complaints in just 0.7 % (down from 2 %) of all cases.

	Members	Staff	Facilities	Systems	Paperwork	Outcomes
2009/10	4	8	0	5	5	3
2008/09	10	13	2	6	23	11

The average date of a final response to a complaint was 14.4 working days.

A copy of the complaints procedure can be found on the Tribunal's website at www.mhtscotland.gov.uk/mhts/451.html.

Members' Training

The Tribunal is aware of the importance of ensuring that its Members are trained to ensure that they can deal effectively with the cases which come before them. The Members' Training Committee, which was established in early 2009, carried out a Members' survey to identify training needs and was involved in developing and delivering training to the Members. This led to the Tribunal carrying out a full training programme in the period of this Report.

Two one-day training events on 'determination writing' took place in the summer. This contributed to ensuring that Tribunal decisions are clear and accessible and legally robust.

In November 2009, Members who act as appraisers i.e. who appraise the competencies of other Tribunal Members, attended a one-day appraisal skills course provided by the Judicial Studies Committee. This course has fully equipped them to carry out this important role.

On 22 September 2009, the Tribunal held a Members' Training Event in Dunblane, attended by almost all Members. The event provided a valuable opportunity for Members to discuss practice and procedure and to reflect on the last four years of the Tribunal's operation. Its keynote speaker was the Minister for Public Health, Shona Robison MSP. The event gave Members the opportunity to participate in workshops including medical, legal and general tribunal related themes. The event was a great success, with much positive feedback from Members.

Throughout January, February and March 2010, the Tribunal provided training on Recorded Matters at a number of evening events at venues across Scotland. Training consisted of a formal presentation, followed by a problem based facilitated discussion and an update from the President. This evening "roadshow" style of delivery marked a new development in training, making it accessible to Members. The events were extremely well attended demonstrating the commitment of Members to training and real interest in the use of Recorded Matters. It is likely that similar evening sessions covering specific topics will be held in the coming year.

Looking Ahead To 2010/11

The Tribunal is committed to securing further improvements to the way it works during 2010-2011. The following summarises a number of key developments that will affect the delivery of that commitment:

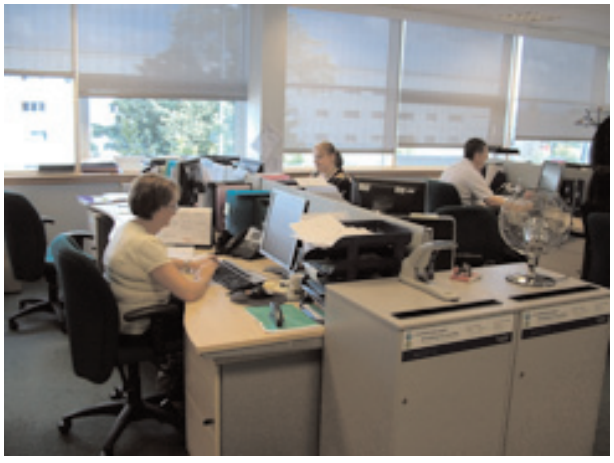
The Work of the Tribunal

- We will continue to look at better ways in which we can deal with cases. In doing so we will have to take proper account of the budgetary constraints we will face while making sure we do not compromise on the need to continue to deliver just, fair and timely decisions. Further efforts will be made to make best use of Members' time through doubling-up hearings and following through the piloting of triple hearings. At the same time as building on the advances already made in more effective scheduling of hearings, the Tribunal's Administration will be taking up opportunities to improve its efficiency and cost effectiveness.
- From the beginning of the new operational year the Tribunal will introduce a follow-up procedure for Recorded Matters (actions that the Tribunal requests that those responsible for caring for patients take as part of complying with the Tribunal's decision). We are keen to ensure that where Recorded Matters have been specified by a tribunal in the interests of the patient's treatment and recovery that they have been complied with. Where Recorded Matters have not been complied with there is a statutory duty on the patient's responsible medical officer to make a reference to the Tribunal. When such a reference is made a further hearing will take place to hold to account those that had been asked to give effect to the recorded matters
- One of the key developments for the Tribunal in the coming year is the proposed amendment of the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005 ("the Practice and Procedure Rules"). In 2010 we intend to carry out a detailed review of the Practice and Procedure Rules. In particular we will look to reduce the amount of duplication in the Rules and suggest amendments which should make the Rules more user friendly. In addition, we intend to see whether any amendments are required to increase the efficiency and effectiveness of the Tribunal's proceedings and user experience of those proceedings. It is intended that the Tribunal will submit proposed amendments to the Practice and Procedure Rules to the Scottish Government by summer 2010. Thereafter, it will be a matter for the Scottish Government to consider the proposed amendments and to consult on them as they see fit, with a view to Ministers making a new set of Practice and Procedure Rules.
- The current Practice and Procedure Rules allow cases to be determined without an oral hearing (i.e. on the basis of written evidence and representations) where all parties to the case consent and the Tribunal considers that sufficient evidence is available to enable it to come to a decision (rule 58). We want to explore what possibilities exist for the use of "paper hearings" for cases where there is no contention and where the patient's rights will not be adversely affected by the lack of an oral hearing.

- Members are appointed for five-year renewable terms. For many of the Members their first five year term came to an end at the beginning of 2010, for others it will end during 2010. Most Members have indicated their wish to be reappointed. The reappointments are handled by the Scottish Government's Health Directorate General's Public Appointments Unit, but much of the preliminary work is facilitated by the Tribunal and its Administration. The second tranche of Member reappointments should be completed by September 2010 and we anticipate that most Members will be reappointed meaning that patients and professionals will continue to benefit from their knowledge and experience of the operation of the 2003 Act.
- The Tribunal will build on previous years' training by delivering a programme for Members including one day courses in August, September and October on "tribunal craft". Other courses will be delivered around the country using the successful evening format .

The work of the Tribunal's Administration

- During 2010-11 the Tribunal Administration will be working to increase levels of co-operation with both Health Boards and Local Authorities in terms of the provision of hearing facilities and making improvements to the application process. To this end the Memorandum of Understanding with each Health Board will be revisited during 2010 and revised versions agreed by the end of the year.



MHTS Administration, Bothwell House

- The Tribunal's Administration will be redoubling its efforts to encourage regular correspondents (Health Boards, Local Authorities and Law Firms) to communicate with it electronically via secure email services. Electronic transmission is proven to contribute to the delivery of a more efficient service by: reducing time delays to virtually nil (which is extremely important when timescales are very short for arranging and notifying parties of hearings); is more secure that conventional mail; is more cost efficient; and, has far less of an environmental impact.
- The Tribunal will review its current arrangements for meeting its duty of care for the safety of those attending the hearing other than the patient who quite rightly is under the care of the Health Board.
- The Tribunal's Administration will seek to make arrangements with Health Boards about the risk assessment and management on a case by case basis.

Working with others

- In pursuit of more effective communications the Tribunal's Reference Groups have been aligned so that they meet on the same day allowing Members of the Users' and Carers' Groups to interact with those of the Professional Reference Group. The Tribunal will also make efforts to extend the Membership of the User's and Carers' Group and to engage with other representative groups who may wish to be involved with the Reference Groups or be kept informed of and be consulted on Tribunal developments. The Tribunal is always interested in hearing from groups who have an interest in mental health and mental health law issues.
- It is intended that the RMO Forum that was established in October 2009 will be expanded in October 2010 to include Mental Health Officers (MHOs) to bring wider engagement on practical issues concerning the Tribunal process.

Policy developments

- At the time of writing the Scottish Government was considering its response to the McManus Review of the 2003 Act. The Tribunal had made representations to the Review and to the Scottish Government following the subsequent consultation. We would hope that any legislative proposals that are brought forward by the Scottish Government support the more effective working of our proceedings to the benefit of patients.

- On the wider Tribunal policy front early moves have already taken place to take forward various recommendations to better integrate the administration of Scotland's devolved tribunals. During 20010/11 further developments are expected to take place that will eventually lead towards the merger of the Administrations of the existing devolved Scottish Tribunals into a single Scottish Tribunals Service. This development is expected to lead to a sharing of expertise and resources and to increased efficiency and cost effectiveness.

Entrance to Leverndale Hospital

Corporate Structure and Finances

Tribunal Suite waiting area, Hamilton House

The Scottish Ministers appointed Dr. Joe Morrow as President of the Tribunal in October 2008 and he presides over the discharge of the Tribunal's functions. At the end of 2009/10 the Tribunal had 355 part-time Tribunal Panel Members also appointed by the Scottish Ministers. The panel Members are responsible for the judicial functioning of the Tribunal Hearings and are split roughly equally into three groups, legal Conveners, medical Members and general Members. The Tribunal also draws on the support of a number of Sheriffs who along with The President, are required by statute to convene forensic cases

By the end of March 2010 the Tribunal's Administration had a staff of 86 civil servants and temporary staff under a Head of Administration. The Administration is responsible for carrying out the administrative and corporate functions of the Tribunal as delegated to it by the President.

From its inception in 2005, the Mental Health Tribunal for Scotland Administration was an executive agency of the Scottish Government (within the Health Directorate General portfolio) and was required to produce audited Annual Accounts (which included a balance sheet and an independent Auditor's report).

From 1 April 2009, the Administration was assimilated into the core Scottish Government as a delivery unit within the Justice and Communities Directorate General. There is no longer a requirement on the Administration to produce audited Annual Accounts since these are produced by the Scottish Government. Therefore, there is no separate balance sheet or independent Auditor's statement included in this year's Annual Report. The summary financial results for the Tribunal Administration for the year ended 31 March 2010 are shown on the following page.

The President of the Tribunal, in line with the leaders of other public bodies and the Scottish Government and in a spirit of openness has agreed to the publication of specific financial information about the expenditure of the Tribunal during 2009/10:

Fees paid to the President of the Tribunal	£117,245
Tribunal Judicial Members Daily Rate	
Legal Members	£430
Medical Members	£387
General Members	£387
Cost of overseas travel (all costs relate to the International Academy of Law and Mental Health Congress - New York including conference fees of £475)	£2,236

During the year the Scottish Government's Internal Audit Team undertook an audit of the Tribunal Administration. They provided reasonable assurance on the risk, control and governance arrangements in place. The Tribunal Administration has accepted the Auditor's report (which contained both finance and non-finance related recommendations) and has acted upon it.

Annex i

Financial Results

The Mental Health Tribunal for Scotland Administration

Operating Cost Statement

For The Year Ended 31st March 2010

2009 £000		2010 £000
6,521	Tribunal Costs	5,450
	Administrative Costs	
2,122	Staff	2,015
168	Depreciation	108
1,706	Other Costs	1,747
3,996		3,870
-49	Rental Income Received	–
10,468	Net Operating Costs	9,320

Financial Performance

2009-10 was the first year that The Tribunal spending stayed within its allocated budget £9.32m (£9.5m in 2008-09). This improved financial management was due to increased efficiencies and improved financial control within the Administration despite increased work loads.

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