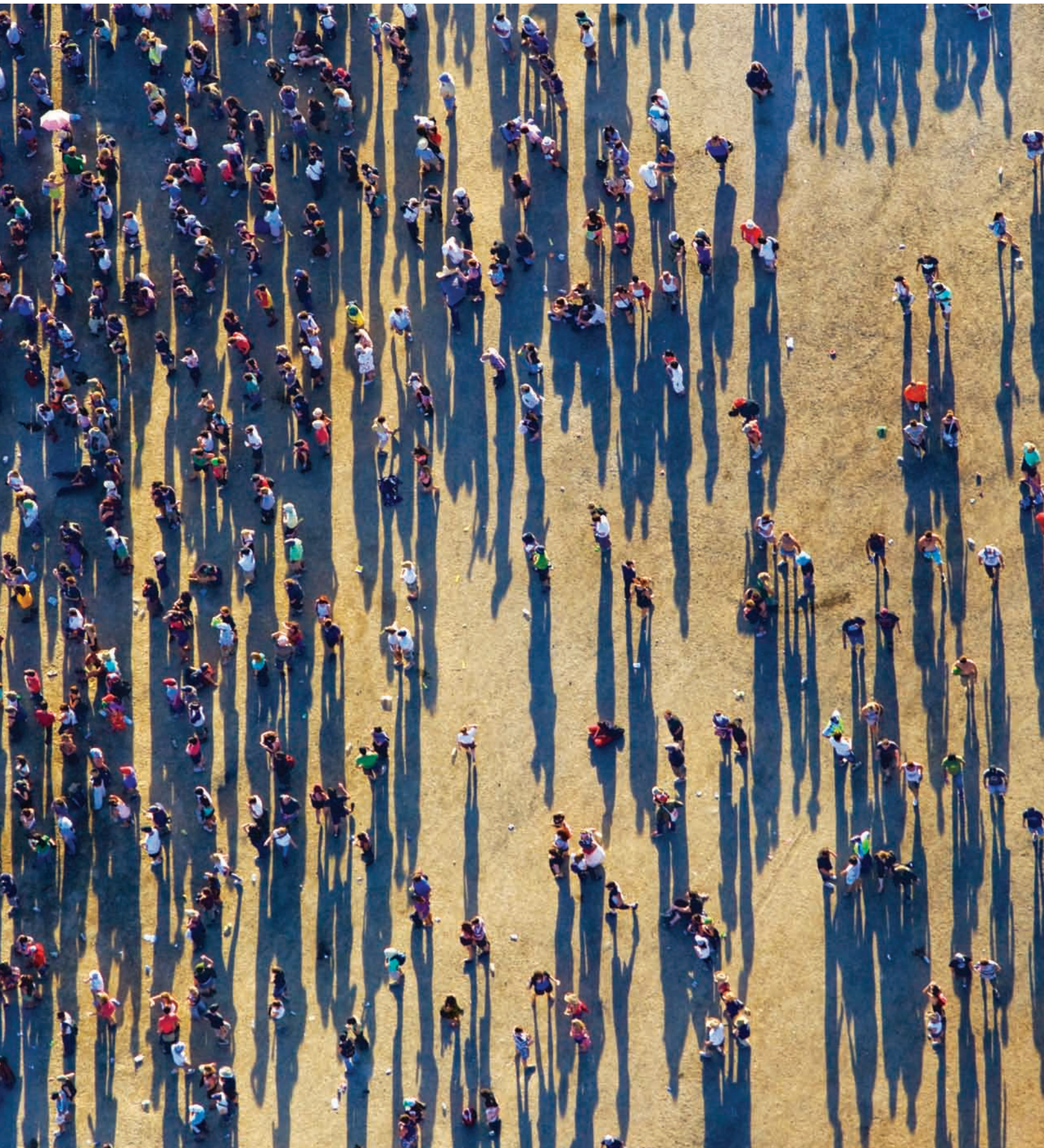
Mental Health Tribunal for Scotland

Annual Report 2011



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President's Foreword

President, Dr Joe Morrow

I remain committed to ensuring that the Tribunal discharges its functions under the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act") with regard to the compulsory treatment and detention of patients in a fair and just way. My primary aim has always been, as the principles in the 2003 Act require, to be focused on the patient and, while doing so, to provide an efficient and effective delivery of justice in the mental health arena.

During the year which this Annual Report covers, there has been a marked increase in the efficiency of the Tribunal's proceedings. The Tribunal has produced decisions in which the reasons are set out with greater clarity and structure. In the period covered by the Annual Report, this has been one of my principal aims, namely to focus on the quality of the Tribunal's decisions, which need to be clear and understandable not only to professionals involved, but particularly to the patient. The work which the Tribunal carries out is weighty and difficult work which requires not only a thorough fact finding exercise, but also a careful balancing of the rights of the patient alongside the need for protection of the patient and the public. During this year, I have promoted a strong emphasis on the need to apply a flexible approach in our hearings where both the culture of the Tribunal and the outcomes of cases should be seen as part of the front-line care and treatment of the patient concerned.

The achievements and improvements described in this Report could not have been carried out without the commitment of the Tribunal Members and the hard work of the administrative staff in a changing environment. I would like to take this opportunity to thank all of them for the work they have carried out.

The work of the Tribunal requires to be seen in the overall context of the need for an appropriate balance in the funding of the Tribunal within the justice system, which allows the administration of justice to continue to be undertaken in a timeous and effective manner. I am committed to look at how the work of the Tribunal can be carried out more effectively, which inevitably means that it will require to be done differently and areas for improvement identified and tackled in order to provide a better and more efficient justice system for those with mental disorder.

During the period of the Report, there was a judicially-led pilot scheme of holding triple hearings in certain high-volume centres, and these have proven to be successful in the best use not only of judicial and administrative time, but also the time of the professionals

involved. The reality of the effects of the reduction in funding across the justice system also affects the Tribunal. A strong emphasis has been placed on the effective use of Tribunal time, and I am pleased to report that there was a significant reduction in the number of interim orders and adjournments within the period of this Report. This allows the Tribunal to make the best use of the resources available and to focus on having a case brought before a full Tribunal only once where appropriate. The focus on having a case dealt with only once on the allocated date will play a significant part in maintaining an efficient and effective mental health law system in Scotland. I believe that this also remains key to the Tribunal's aim of keeping the patient at the centre of the proceedings as patients often find attendance at repeat hearings to be demoralising.

When hearings are adjourned on the day, there is clearly a substantial loss of resource both in terms of the patient's energies and the time of the professionals involved in the proceedings, as well as in terms of the Tribunal's resources. This will continue to be a major challenge to be faced by the Tribunal in the coming year, and I am determined to do all within my power to tackle this issue. It is my duty to oversee the discharge of the judicial responsibilities placed upon the Tribunal and not to permit them to be compromised. However, we need to discharge that duty by adopting measures which lead to greater efficiencies. I highlight once again that this Annual Report contains a number of marked improvements in the efficiency with which the Tribunal has processed its caseload.

As stated above, the Tribunal membership and the Scottish Tribunals Service staff in supporting the Tribunal have focused on fair and just outcomes for the patient. In Scotland, we have a unique and internationally recognised approach to handling cases which involve the compulsory treatment and detention of patients, and it is my intention as President of the Tribunal to further strengthen that reputation in the coming year.

The Tribunal is a specialist tribunal and, as such, brings considerable knowledge and experience to our work, but there are challenges ahead which we must be prepared to address, particularly the complex issues which present themselves to Tribunal panels on a daily basis. The Tribunal's Members are committed to training and to continuing improvement of their own performance. In addition we look forward in the future to the amendment of the 2003 Act by the Scottish Government which will take forward a number of issues highlighted in the McManus Review.

I hope that these amendments will lead to more efficiencies in Tribunal proceedings and improve the experience of patients in relation to proceedings under the 2003 Act.

Finally, I make no apology for placing the patient at the centre of all our proceedings, as this is a key component of the principles under which the Tribunal operates while dealing with the important matters that come before the Tribunal.

Regional Views of the Operation of the Mental Health Tribunal for Scotland

In its Annual Reports the Tribunal seeks to reflect various perspectives from around Scotland about its operation and the operation of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act"). These have included the views of patients and professionals and last year focused on forensic cases. In this year's report the Tribunal reflects the different practice that exists in Health Board Areas which are themselves partly a product of the varied nature of the country and the history of the development of mental health services in Scotland.

Tayside

Val Johnson, Operations Manager, Mental Health Services, Dundee

I am delighted to be asked to contribute to the 2011 Annual Report of the Mental Health Tribunal for Scotland.

NHS Tayside, Carseview Centre, Dundee is an acute mental health facility comprising two 24-bed General Adult Psychiatry mixed sex wards, a 12-bed male intensive psychatric care unit (IPCU) and a 14-bed mixed sex Learning Disability Assessment unit. Based on the Medipark, the unit is in close proximity to the Ninewells campus and was officially opened by the Minster for Health, Susan Deacon, on 4th July 2001.

As the Operational Manager within Adult Mental Health, and also the designated "Hospital Manager", the implementation of the "new" 2003 Act brought with it the obvious day to day challenges in a rapidly changing environment.

With the "old" system, as in other areas of Scotland, we were cognisant that the majority of Hearings under the 1984 Act were conducted before a Sheriff within the setting of the local Sheriff Court, in a relatively brief but very formal arena, bringing with it the complications that such a process presents, both from a patient and staffing perspective.

Within Dundee the system had already been developed that Mental Health Hearings would be conducted within the hospital setting with a Sheriff attending the local hospital accompanied by a Sheriff Clerk. This made the process less formal, more patient focused, with the emphasis on the individual patient and those others (including advocacy services) that may be supporting him/her through the process.

The introduction of Tribunal Hearings was therefore evolutionary for us rather than revolutionary.

As part of that instinctive evolution we have worked with the Tribunal to make a range of improvements, in an ever-increasing endeavour to improve timescales, deadlines and of significant importance, cost. Some of the initiatives and improvements have included:

- Tayside being one of the first areas in Scotland to successfully submit paperwork electronically via secure e-mail to the Tribunal and Mental Welfare Commission. This in itself is a more cost efficient method of lodging papers than courier/ special delivery which was used previously and contributes to the delivery of a vastly improved service and a significant reduction in time delays.

- The agreement with the Tribunal and its Administration, of the need for risk assessment of individual patients to attend Tribunal Hearings out of the ward setting. Alternative arrangements are now in place for when the individual risk assessment deems this appropriate. This arrangement is reflected in the recently published *Memorandum of Understanding.*
- The involvement and training of local Carers through a series of meetings and focus groups and a range of topics, one of which was specifically around the 2003 Act and addressed a number of themes, i.e. Named Persons, Advance Statements, Care Plans, the Tribunal Hearing format and expectations from a Carer perspective. We can evidence increased recording of Carer involvement in nursing documentation with a Carer contact sheet developed in the *Integrated Care Pathways* (ICP) document. There has also been a sustained reduction in Carer complaints coupled with a better understanding of the legislation and the processes entrenched within it.

Our work with the Tribunal's Administration continues to evolve and local staff have now built up excellent working relationships with the staff in Hamilton and the introduction of specific Casework Teams has been particularly beneficial.

Current data indicates that within Tayside over the last year we have made 126 hospital-based compulsory treatment order (CTO) applications. Statistics indicate that on average for every one community-based CTO application there have been 28 hospital-based applications. We will be actively looking with mental health officer/clinical colleagues at why this is so, and in an ever changing environment, will continue with the good practice philosophy of recovery orientated service delivery which will:

- monitor outcomes rather than performance
- emphasise strengths rather than deficits or dysfunction
- enable and support self management
- focus on people rather than services,

and as we move towards this model may hopefully witness an emergent change in the detention figures and ratios currently presented.

As a final point I would wish to congratulate the Tribunal and its Administration in its endeavours to systematically strive to deliver an extremely high quality service which is focused on the needs of the Service User and their Carers. This is of particular significance in times of financial constraint and a requirement for us all to work "smarter" within existing resources and to continue to examine effective improvements to working practice.

Val Johnson
Operations Manager, Mental Health Services
NHS Tayside, Dundee

Carseview Centre, Dundee

Borders

Ruth Salmon, Consultant Psychiatrist, NHS Borders

The Scottish Borders is an area of almost 2,000 square miles situated on the Border with Northumberland to the South, Edinburgh and the Lothians to the North and South Lanarkshire to the North West.

It has a population of approximately 112,000 giving it a relatively low population density. The landscape is varied and at times stunning; the Tweed Valley and Eildon Hills dominate the central Borders and the flat coastal landscape of Berwickshire extends to the sea.

As well as the two largest towns, Galashiels and Hawick, both with a population of around 15,000, there are several smaller towns with populations between 3,000 –10,000 and numerous small communities all linked by a network of rural roads, which make it easy to time a journey.

The community is mostly rural. There are some small businesses, a modest fishing industry but most people are employed in the public sector and service industries. The population is stable with settled communities, each town having a distinct and cohesive identity. Like many places, there is an increasing proportion of elderly people, perhaps retiring to a place with a quieter pace of life.

Until 12 years ago, psychiatric services in the Borders revolved around Dingleton Hospital which had gained international repute in the 1960s for its cutting-edge, open-door policy and practice of community and social psychiatry, embracing the therapeutic community model under the leadership of Maxwell Jones. Whilst Dingleton closed in 2000, the culture and practice of psychiatry in the Borders has links with this philosophy and embodies some of its principles including looking after people in their own homes wherever possible, recognising the importance of the therapeutic relationship and the expectation of their involvement in care and treatment. Multidisciplinary team working and relative flattening of the professional hierarchy is deeply rooted.

The psychiatric service is currently made up of three locality-based community mental health teams for adults of working age and three locality-based teams for older adults. There are several specialist teams: the Liaison and Crisis team, the Borders Addiction Service, the Child and Adolescent service, Learning Disability Service and the Rehabilitation team, each of which operate Borders wide. The Rehabilitation team has evolved, unlike most rehabilitation services, to look after the majority of people with schizophrenia and is very experienced in looking after people with severe illness and ongoing disability at home without, currently, any 24-hour supported accommodation. Of those people on compulsory treatment orders (CTOs) most are well known to, and managed by, the Rehabilitation team.

Inpatient beds are based in the central Borders on the Borders District General Hospital campus and include 20 general adult beds and 36 older adult beds. Fifteen older adult beds are in the south of the Borders and there are 20 rehabilitation beds about 5 miles away in Galashiels. For adults of working age, there are no nominated long stay beds and only four people have been in hospital for more than 5 years. There are no secure facilities in the Borders and our contract for Intensive Psychiatric Care Unit (IPCU) beds is with West Lothian. We have actively resisted too

drastic a reduction in bed numbers and the rehabilitation beds are easily accessible and can offer brief admissions for people on their case register for relapse prevention.

We have good working relationships with our Social Work colleagues who have worked hard to embed mental health officers (MHOs) within the teams so that care is fully collaborative. As a result, we have high levels of engagement with social work and MHOs in all decision making regarding the Mental Health (Care and Treatment) (Scotland) Act 2003 and a rapid response to requests for assessments. In addition, there is a joint bi-monthly meeting to consider mental health legislation and its operation and a number of audits are now in place to ensure best practice.

In addition, Approved Medical Practitioners have always been able to rely on the meticulous and able services of colleagues in Medical Records, particularly Doreen Smith who retired last year and Abbi Penman who has stepped into her shoes.

The demographics of the Borders seems to link with our low rate of Emergency Detention Certificates and may explain our relatively low rate of CTO applications which at 22 per 100,000 are similar to that of other rural health boards.

The stability of the population, individuals and their families being well known to General Practitioners and their communities, means that emergency out-of-hours situations arise only rarely and serious mental health problems are probably picked up earlier than in urban settings. In addition, GPs have easy access to the local psychiatric teams who will routinely see individuals at home. Both these factors may make engagement easier. Relatively low rates of conversion of short-term detention certificates to CTOs and the relatively high proportion of CTOs being community based may reflect the long established practice of supporting people at home.

Whether the emphasis in the Borders in forging long-term therapeutic relationships with individuals with psychosis lessens the likelihood of compulsory measures being necessary may be less clear. What is clear is that the power to use compulsory measures carries with it the responsibility of deciding when and how to use these powers in someone's best interest to support their recovery.

Ruth Salmon
Consultant Psychiatrist
NHS Borders

Orkney

Jacqueline Osborne, Social Worker and Mental Health Officer

Working with the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act") has always been a challenge here on the Orkney Islands. At the time of writing we are battling a volcanic ash cloud (again) and wild winds in order to get off the island. Couple such environmental conditions (and in winter snow and fog!) together with the fact we have no on island psychiatrist or Approved Medical Practitioner and no psychiatric beds and one begins to appreciate the extent of such challenges. 72 hours to transfer a detained patient down to Aberdeen doesn't seem very long when your air ambulance has been rerouted owing to a physical health emergency and stormy weather is setting in.

Until January 2009 when Orkney Health and Care and Grampian NHS established a consultant psychiatrist post, based at Royal Cornhill Hospital but visiting Orkney on average two days per week, our team of six Mental Health Officers (MHOs) was only able to work with local GPs to consider grounds for emergency detentions. Of course, mental health emergencies don't always fit conveniently with our psychiatrist's diary and it remains a rare opportunity to use short-term detention as "the preferred 'gateway order' to compulsory powers".

The key to effective working with the 2003 Act on Orkney has been a strong commitment by the Authority to having sufficient numbers of MHOs qualified to work in our testing rural environment (encompassing 16 inhabited islands) together with an equally strong commitment to supportive multi-disciplinary working. Two of the six MHO posts are based within Orkney's Community Mental Health Team (CMHT). The other post holders are placed within adult, children and learning disability services. This works well not least as we benefit from the development of individual MHO's expertise on aspects such as use of the 2003 Act with children and the 2003 Act's interface with the Adults with Incapacity (Scotland) Act 2000 and the Adult Support and Protection (Scotland) Act 2007. Orkney Health and Care has invested in a dedicated out of hours MHO service which is much appreciated by the out of hours GP service and police surgeon who prior to its introduction in 2007 were obliged to operate an ad hoc "catch an MHO if you can" plan. Each MHO presently provides approximately one in four/five weeks out-of-hours cover for the island throughout each year.

I work within the CMHT with a fellow social worker and student MHO who has expertise in working with dementia. We are usually the first port of call in a mental health crisis as often patients are primarily known to our team and we are working alongside Community Psychiatric Nurses (CPNs) and Support Workers. Their expertise is invaluable and where possible joint assessments are undertaken. Where use of the 2003 Act is being considered, CPN and support worker ongoing intervention enables us to identify and provide a range of options which are least restrictive. A 24/7 skilful and enthusiastic on call CPN service together with a supportive out-of-hours GP service has on several occasions enabled us to facilitate a person remaining in the community when the individual would clearly fit the criteria for consideration of using compulsory measures. A formal Home Treatment service has been piloted and it is to be hoped this hugely effective service can be established in this time of budget restraints. In my opinion home treatment is proven to be "emotionally" cost effective for individuals and their families and demonstrates real commitment to the principles of "maximum

benefit" and "minimum restriction" as legally binding 2003 Act duties.

As an MHO team we have forged valuable operational links with community colleagues not only the GP service but also hospital staff and our island police force. Within a ward of our local hospital exists the "transfer bed" used for patients awaiting transfer by air ambulance to Royal Cornhill Hospital in Aberdeen be it informally or using compulsory measures. The ward team remains extremely accommodating in ensuring safe and timely transfer invariably of people who are quite unwell. Additionally, our local police force is supportive and ever helpful when warrants have been required or, when after risk assessment, their presence has been deemed valuable. Our local officers we note are highly skilled in promoting dignity and demonstrating sensitivity in working with people experiencing mental health crisis.

Applications for Compulsory Treatment Orders (CTOs) here on Orkney are few and far between. As Orkney patients are hospitalised in Aberdeen the most common application for a hospital based CTO is undertaken by MHOs based in Aberdeenshire. Invariably Aberdeenshire MHOs have become involved with the patient particularly if s/he has previously been subject to a short-term detention certificate (STDC) whilst in Cornhill Hospital. This is managed by a service level agreement and we are most grateful to our Aberdeenshire colleagues for taking on this detailed task. This said when we have previously undertaken the STDC or indeed CTO application is being made for community measures, the application sits firmly with myself or an Orkney MHO colleague. Again, this can prove particularly challenging for all of us not least the patient's GP in providing the mental health reports and attending subsequent tribunals. Increasingly we have been able to use video-conferencing facilities to effectively meet these requirements although even with the best of technology I feel some of the subtlety of information/ evidence can be lost in video translation.

I'm sure that Rule 58 (Power to decide a case without an oral hearing) will ultimately prove beneficial for Orkney patients and mental health professionals particularly around applications under section 95 to vary a CTO from being hospital-based to being community-based.

At times I envy my city MHO colleagues their opportunity for ever-developing expertise through more regular opportunity to use the 2003 Act. However, I am reminded the challenge is, wherever possible, to identify alternatives to using compulsory measures. I value my island colleagues in supporting me in my role and thoroughly enjoy living and working in my island environment even when the wild weather or the ash cloud threatens my trip to the big city.

Jacqueline Osborne

Social Worker and Mental Health Officer
Orkney Health and Care

Purpose and Values

Bothwell House, Hamilton

The Mental Health Tribunal for Scotland was established by the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act"). Its work focuses principally on patients and carers. The Tribunal also interacts with, among others, doctors, nurses, social workers, lawyers and advocacy workers.

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 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 work the Tribunal is committed to upholding its core values of independence, professionalism 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;
- 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.

The Tribunal is strongly committed to upholding its judicial independence.

Forth Valley Royal Hospital, Larbert

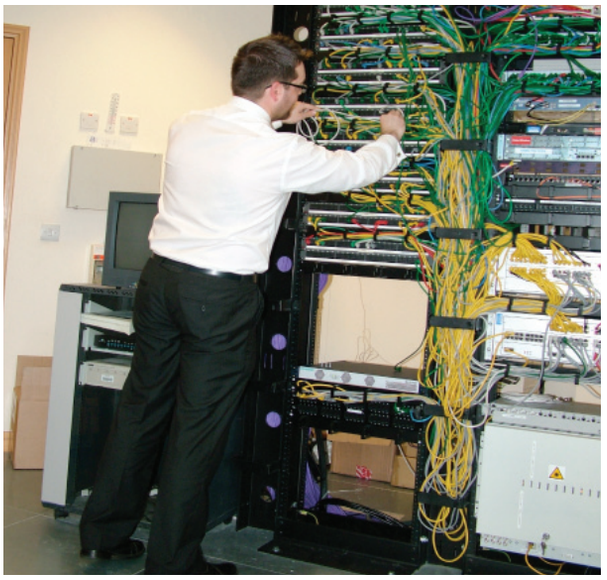
Key Developments in 2010 – 2011

2010-2011 was another busy and eventful year for the Tribunal, its fifth full year of operation. Key developments included:

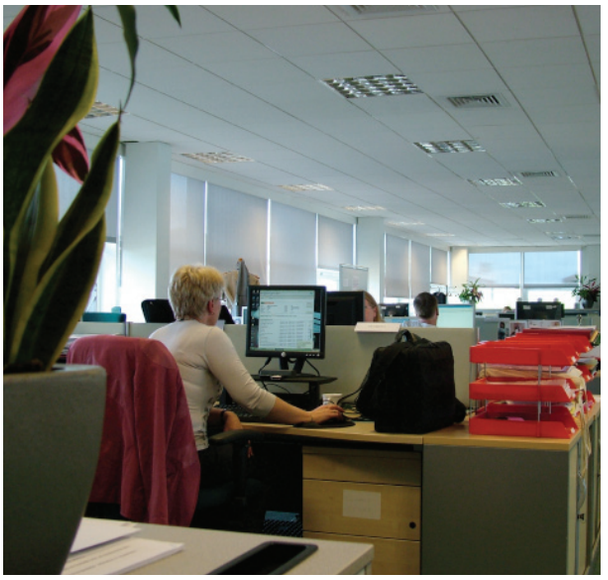
- The creation of the Scottish Tribunals Service (STS) in December 2010, which supports the Tribunal in its work. The STS comprises the Tribunal's Administration and the administrations which support five other Scottish Tribunals.
- The Scottish Government's continued consideration of the outcomes of the limited review of the 2003 Act (the McManus Review). The Tribunal submitted a detailed written response to the Scottish Government's consultation paper on the McManus Review.
- The putting in place by the Tribunal of a robust process to ensure that when a recorded matter is made by the Tribunal and is not implemented by a specified time, a further hearing is scheduled; or, alternatively, the Mental Welfare Commission (MWC) is made aware of the non compliance, as the MWC has the power to make a reference to the Tribunal in respect of a compulsory treatment order where the MWC considers it appropriate to do so.
- In June 2010 the Tribunal submitted detailed proposals for amendment of the Tribunal's Practice and Procedure Rules to the Scottish Government with the intention of making the Rules more user friendly and to contribute to improving the overall effectiveness of Tribunal proceedings.
- The Tribunal continued to schedule two hearings per panel per venue, whenever possible and appropriate, throughout the year, with the multiple hearing rate for the year sitting at 45.9%. The positive effect of this can be seen in the reduction in the number of hearing days required to be held by the Tribunal, and the better use of Members' time.

Beckford Lodge, a new Tribunal Venue

- The meetings of the Tribunal's Users' and Carers' and Professional Reference Groups were reorganised in early 2010 so that they would meet on the same day, allowing Members of the Service Users' and Carers' Group and the Professional Reference Group to interact. Throughout 2010/11 this has proven very successful with membership of both groups increasing significantly, a trend assisted by holding the meetings in different locations across the country such as Inverness, Dundee, Ayr and Edinburgh.
- The Tribunal's Responsible Medical Officer (RMO) Forum continued to meet and consider a range of subjects, which have included:
  - Rule 46A (Requests to the Tribunal for non-disclosure of documents)
  - Rule 58 (Power to decide a case without an oral hearing)
  - Late lodging of applications under sections 92 (application to extend and vary a compulsory treatment order) and 158 (application to extend and vary a compulsion order)
  - Adjournment of Tribunal hearings
  - The application process.



MHTS IT Communications Room



MHTS Administration Bothwell House

- The Scottish Tribunals Service has developed and enhanced a demanding set of key performance indicators (KPIs) with the intention of building on the significant efficiency gains achieved so far. These amended KPIs allied with various business improvement projects have focused primarily on enhancing the quality and timeliness of the service provided to all those involved in Tribunal proceedings.
- A Memorandum of Understanding (MoU) with Scotland's nine mainland Health Boards, the three Island Health Boards and the Scottish Prison Service was agreed at the beginning of 2011. The MoU updates an earlier document; simplifies requirements for venues; improves the understanding of security issues; and sets out agreements on the management of cases and hearings.
- An increase in the number of applications received electronically by the Tribunal has speeded up administrative processes, allowed more time for the consideration of applications by applicants and reduced mailing costs for the Tribunal and applicants. The Tribunal has also increased its use of electronic communications with legal representatives through the use of the Criminal Justice Secure Mail (CJSM) system. CJSM allows the speedy flow of paperwork, helping solicitors to prepare for hearings often held of necessity within tight statutory timescales.
- The Scottish Tribunals Service installed multi-functioning devices which copy, fax and scan documents, allowing much more efficient secure distribution of internal and external mail and reducing costs in both staff time and hardware.
- During the severe weather conditions of November and December, the efforts of Members and administrative staff ensured that the Tribunal continued to discharge its functions effectively.

Business Activity

3632 applications were received under the provisions of the 2003 Act during the year, a 5% increase over the previous year and 27% higher than the first full year of the Tribunal's operation.

The number of Compulsory Treatment Orders (CTOs) made by the Tribunal also increased, in this instance against a previously falling trend. The increase is not seen as statistically significant and figures are broadly in line with results from previous years.

Applications to revoke short-term detention certificates (STDCs) have again risen from the previous year to 556, a rise of over 25% in a year and a rise of 38% in two years.

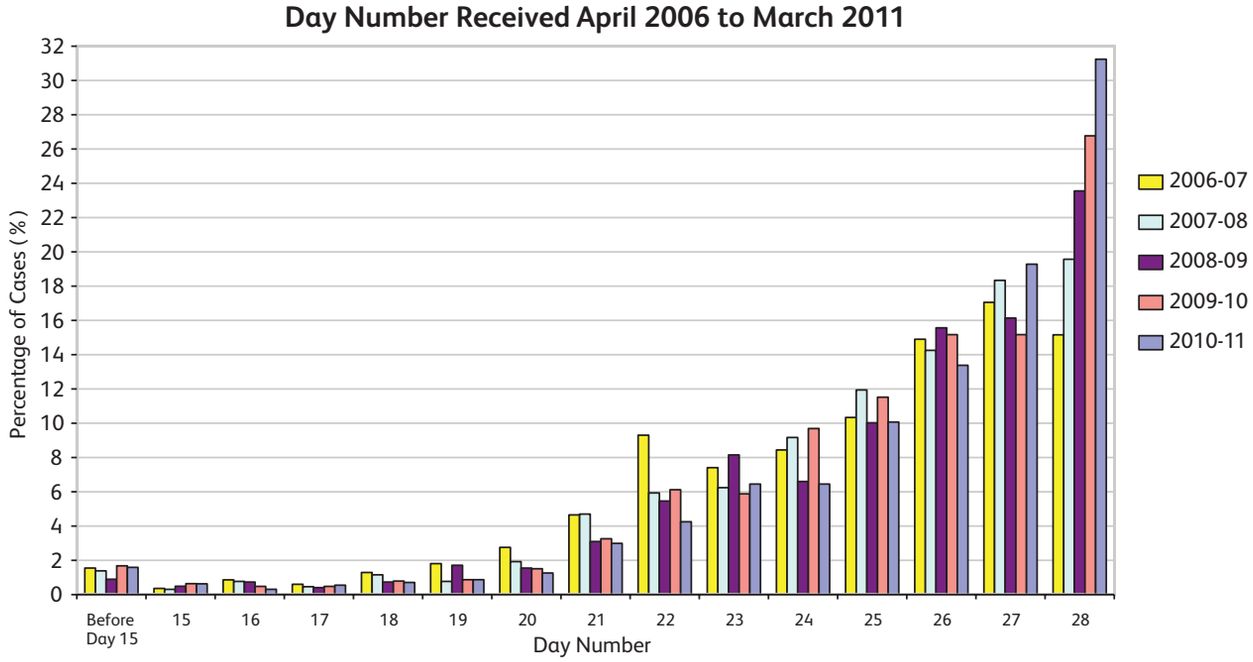
Applications to revoke a CTO remained stable after a doubling the previous year.

Two-year reviews for forensic patients fell by almost exactly the number they rose by the previous year, reflecting the cyclical nature of these references.

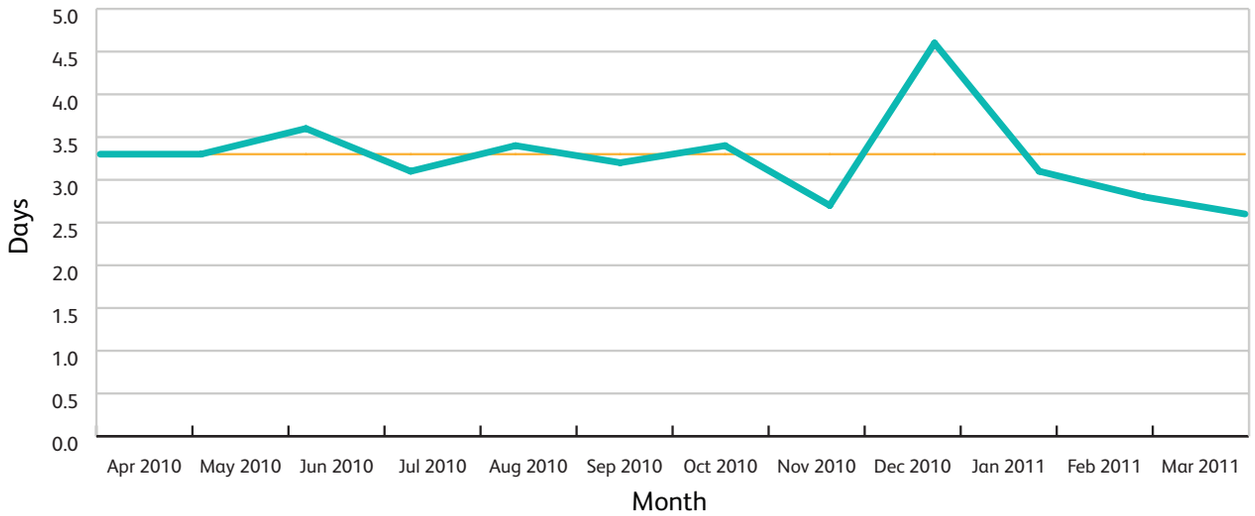
A number of references to the Tribunal were made by RMOs in relation to recorded matters made by the Tribunal which were not complied with. A total of six hearings took place in relation to non compliance with recorded matters.

	All applications	Change from previous year	Compulsory Treatment Orders	Change from previous year
2010/11	3632	5%	1410	2.4%
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	–

Compulsory Treatment Order (Section 63) Applications, Day Number Received April 2006 to March 2011



Compulsory Treatment Order (Section 63) Application Received to Issue of Hearing Notice (Average) April 2010 to March 2011



Timing of Compulsory Treatment Orders

Last year the Tribunal reported that the percentage of Compulsory Treatment Order (CTO) applications arriving with the Tribunal on day 28 of the short-term detention certificate (STDC) had for the first time exceeded 25%. This year the percentage has increased to over 31% (more than double the percentage that arrived on day 28 of the STDC in the Tribunal's first full year of operation) with the number arriving on day 27 of the STDC also increasing to its highest level ever. The average day of arrival now sits at day 25 of the STDC, a day later than last year. Applications arriving late on in the period of short-term detention mean there is limited time for the Tribunal Administration to provide notice to parties of the making of the CTO application and of the date of the hearing.

Application to Revoke Short-term Detention Certificate to 1st Hearing April 2010 to March 2011

Interim Orders

Statistics show that the first calling of an application for a Compulsory Treatment Order before a Tribunal very often finds the parties not ready to proceed for a variety of reasons, mainly the tight statutory timescales between lodging the application and the hearing, and parties wishing to instruct an Independent Medical Report. In such circumstances, it has often proved necessary for the Tribunal to adjourn the case to a later date and to make an interim CTO (ICTO) which authorises the detention in hospital and treatment of the patient for the period specified in the ICTO, which can be up to 28 days.

Given the nature of the Tribunal's hearings, it can be distressing for patients and Named Persons to require to attend further hearings where they may have to listen to the same information being presented again. The Tribunal has been working hard to improve our working practices to help minimise the number of Interim Orders, without compromising the independence and quality of the process. Whilst accepting that in many cases it will be impossible to reach a final decision at the first hearing, the aim is always for the Tribunal to be in a position to make a full assessment of the application and for the panel to reach a decision.

The President and the Tribunal's Administration have been working together to achieve this aim in as many cases as possible and have taken a number of initiatives. Taken together these initiatives have had a positive impact and this is reflected in the statistics below. The number of Interim orders is at its lowest ever figure with a fall of over 12% on the previous year and a figure 15% lower than the previous high. This is despite the increase in the total number of cases and the increase in the number of CTO applications being submitted towards the end of the 28-day period of the short-term detention certificate.

Some of the decrease is due to refined procedures that were put in place in 2009/10 for the appointment of Curators. These procedural changes aimed to ensure that a Curator is appointed in time for a first hearing. Such early appointments do not always prevent a further hearing being necessary, but they regularly prevent a third hearing being required.

All RMOs have been contacted to request details of regular non-availability for hearings due to clinics and other commitments. This information is now stored on a database and used to avoid scheduling conflicts whenever possible.

Further steps have also been taken to take greater cognisance of the availability of parties. Improved notice can make it easier for parties to attend hearings and therefore easier for all required to attend and present their evidence. The Tribunal has introduced Key Performance Indicators relating to periods of intimation that parties should receive. This has helped to ensure that parties are given as much time as possible to prepare.

The concept of Legal Case Management within the Tribunal has been developed further with regular communication between

	Interim orders granted	Change from previous year
2010/11	920	-12.2%
2009/10	1048	2.8%
2008/09	1019	-5.3%
2007/08	1076	1.2%
2006/07	1063	-

the Administration's Casework Teams and the Tribunal to identify issues which can be resolved prior to hearings. The use of Casework Surgeries and Standing Tribunals to provide judicial decisions and direction in individual cases has also helped, as has the introduction of the Practice and Procedures Manual, which contains Practice Directions and Guidance Notes to the Administration.

The Tribunal Administration has improved the quality and consistency of training and has provided regular updates of its operational manual for caseworkers. In-house conveners have also provided training to cover changes to existing practice and clarification on points of law. Low turnover of Administration staff has created a well trained and experienced workforce.

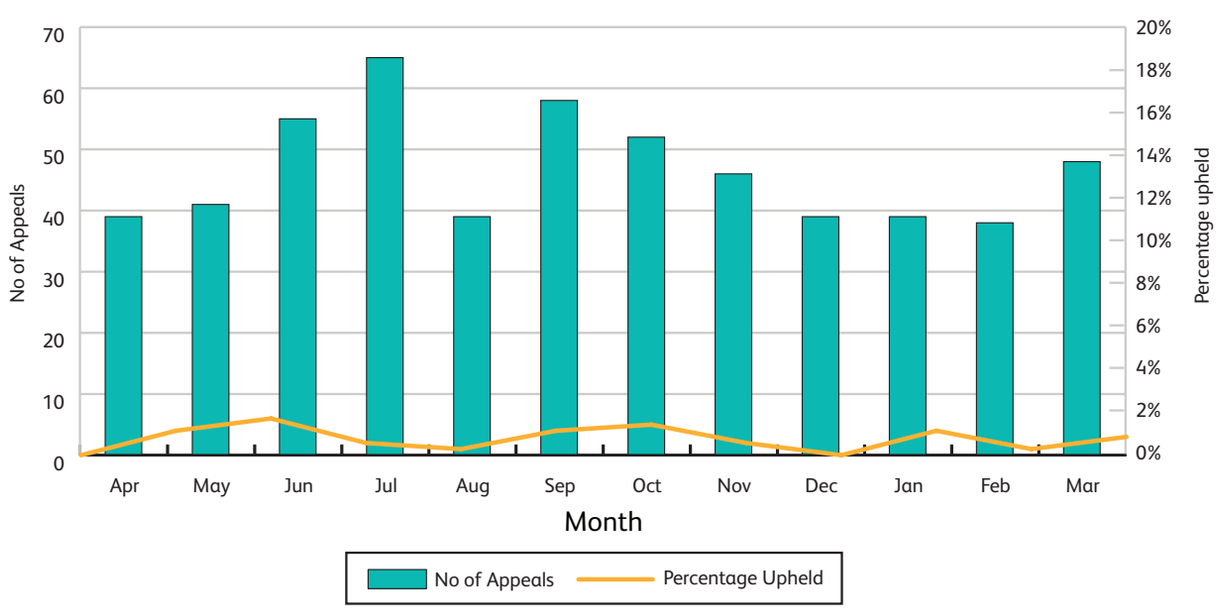
The training of Tribunal Members through a dedicated training committee delivering a programme of training on specific topics including Tribunal Craft has been of great assistance as has regular communication from the President in the form of guidance notes, other written communications and the Members' Newsletter. In the same way as reduced turnover of administrative staff has helped build experience, low membership turnover has created a well trained and experienced membership. Further voluntary and unpaid training focusing on specific topics and the informal Members' networks supplement the mandatory training.

Applications to revoke Short-term Detention Certificates

The Tribunal Administration has been successful in its attempts to reduce the time between receipt of an application to revoke a Short-term Detention Certificate (STDC) and the hearing date. Average time has fallen from over 7 to under 5 days. This is a significant improvement and ensures that patients are able to have the lawfulness of their detention speedily reviewed by the Tribunal.

As reported below, the overall number of applications to revoke STDCs increased by 25%, a very significant increase. At the same time, the number of successful applications only fell by 0.2%.

Number of Applications to Revoke STDC Appeals and Percentage upheld for April 2010 to March 2011

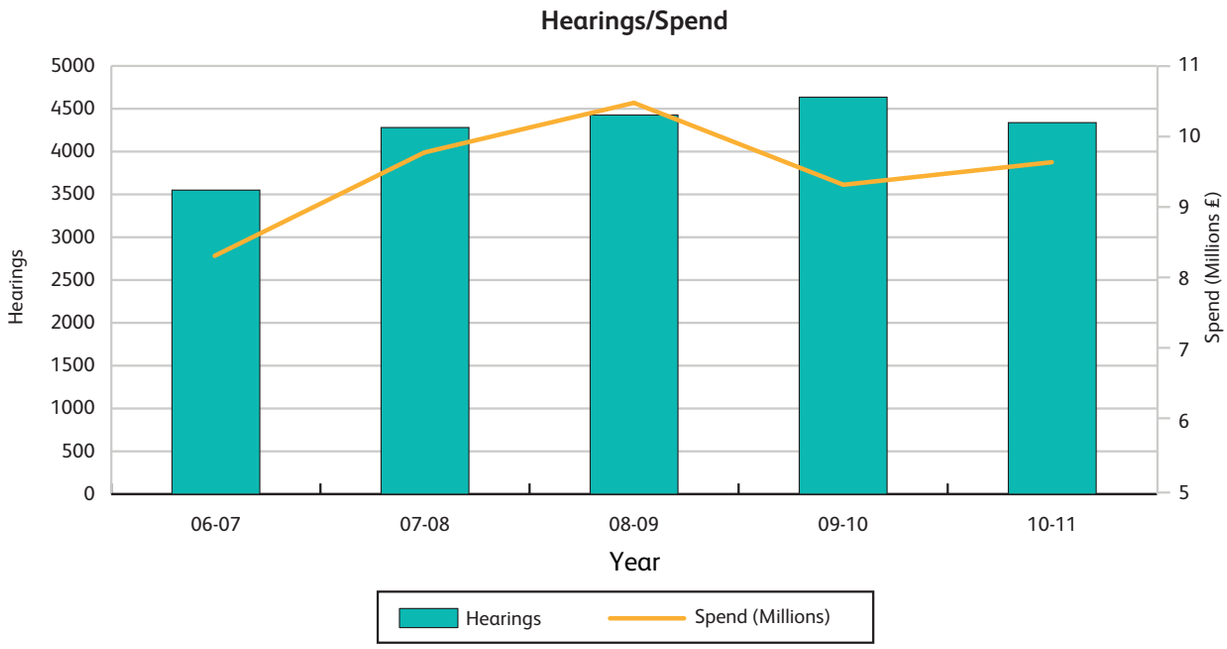


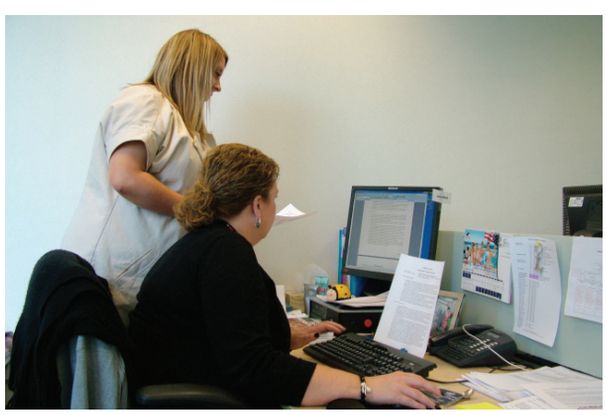
Volumes vs. Costs

The number of hearings (or more particularly hearing days) is the main driver for the costs of the Tribunal. The following graph highlights the relationship between volumes of work and the costs of running the Tribunal.

Decisions

Significant progress has been made in improving the speed at which the Tribunal's written decisions (Full Findings and Reasons (FFRs)) are issued, building on the success of the second half of the previous year. Over 88% of FFRs are now issued to parties within 5 days of the hearing.





MHTS Administration, Managers

Forensic cases

Forensic cases (i.e. those cases where the patient has entered the mental health system through the criminal justice system) represent only a small proportion of all cases dealt with by the Tribunal (around 5%). During the year the number of cases fell back to those of 2008/09. This was in line with expectations, in that Two-Year Reviews remain on a bi-annual cycle from the date the Two-Year Review provisions of the 2003 Act came into force. In consequence the figure is expected to rise again next year.

Excessive Security cases (cases where the patient seeks an order from the Tribunal declaring that s/he is being detained in conditions of excessive security in the State Hospital – section 264 of the 2003 Act) fell dramatically during the year (not all Excessive Security cases are Forensic cases) from 39 to just 7. Again, this is in line with expectations as the number of patients at the State Hospital has reduced and medium secure beds have become more readily available elsewhere in the country.

Hearings

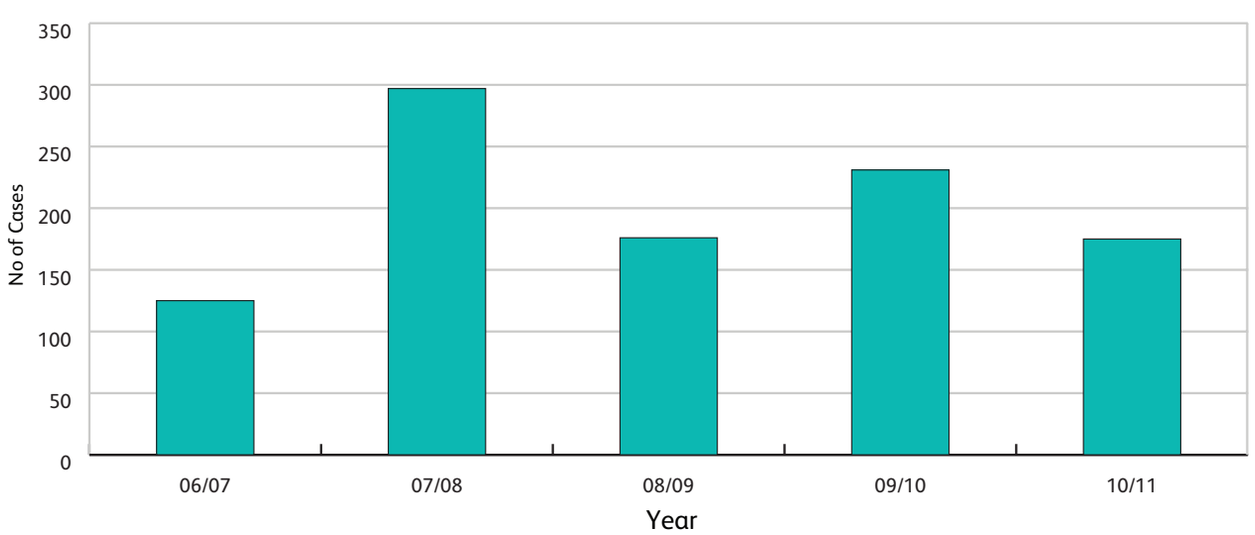
The Tribunal held fewer hearings than anticipated in 2010/11, 4338 hearings compared to 4635 in 2009/10 and the lowest figure since 2007/08. The 6% decrease was despite an increased number of applications. The decrease is partially accounted for by a reduced number of Interim Orders. The Tribunal also experienced a 27% increase in the number of cases that were withdrawn by applicants before the associated hearing took place, 503 compared to 396 the previous year. Although withdrawals in good time allow the Tribunal to reallocate resources, those which occur close to, or at, a hearing involve a considerable waste of resource and inconvenience to other parties.

The Tribunal continues to hold hearings in both hospitals (45) and community venues (34) across Scotland.

Meetings with Health Boards, partially in connection with negotiations over the revised Memorandum of Understanding, and on going reviews of venue facilities have resulted in the improvement of some venues and the consolidation of the available venues. At the same time additional venues have been made available to accommodate local patient needs, for example an additional venue has been made available in Oban, reducing the need for community patients to travel long distances. Health Boards have also increased the availability of video conferencing facilities to allow parties and witnesses to give evidence without the need to travel long distances.

The Tribunal held an average of 83 hearings per week, ranging from 64 to 111. Over the last 2 years the Tribunal and its Administration

Forensic Cases



Royal Cornhill Hospital, Aberdeen

have made great efforts to "double-up" (i.e. two hearings taking place on the same day with the same three panel Members and usually in the same location). This process offers best value to the tax payer and less disruption for the medical and social services. Similarly in Aberdeen, Glasgow and Edinburgh triple hearing days have been held. It has proven to be a very difficult task to move the doubled-up or multiple hearing figure above 50%. Whilst that figure has been achieved in a number of individual months the overall multiple hearing rate for the year was 45.9%, which was slightly lower than the previous year.

There are many factors which influence this, but foremost amongst them are: the geographic spread of cases; the volatile nature of the flow of cases; the fact that some cases need more than half a day's consideration; and the number of cases that are withdrawn after a hearing has been scheduled. The Tribunal is continuing to look at ways in which it can improve this figure and is examining the possibility of introducing triple hearing days in other areas where there appears to be sufficient volume. Initially introduced as a pilot exercise, triple hearing days now take place regularly in Aberdeen, Glasgow and Edinburgh. Triple hearing days support the Tribunal's aim of increasing the efficiency and effectiveness of the Tribunal process, without compromising the patient's right to a full hearing of his/her case. Looking forward, the Tribunal hopes to roll out the use of triple hearings to other venues, starting with Stobhill Hospital in Glasgow in late Summer 2011.

Geographic variation

The Tribunal has been aware since it became operational in 2005 that there have been significant variations in the numbers of applications made in different areas and the different ways Health Boards and Local Authorities have used the 2003 Act. Scotland is a diverse country in many ways and in particular geographically. There are centres of dense population in the central belt and along parts of the East coast and areas of very sparse population. Over time Health Boards and Local Authorities have had to develop policies and infrastructure to meet the needs of their differing populations. On page 22 the table presents data which illustrates the difference in experience and practice across Health Board areas.

With a known relationship between deprivation and mental illness and substance misuse and mental illness it would be reasonable to expect there to be a higher incidence of significant mental health problems and hence a greater use of the 2003 Act in large urban areas with significant areas of deprivation. However, the statistical information does not always reflect that. This variation was highlighted by the Scottish Parliament's Equal Opportunities Committee when it investigated the issue and other equality issues in 2010[1]. The Mental Welfare Commission for Scotland (MWCS) has also drawn attention to this apparent disparity.

Earlier in this report we reported on three different perspectives on how the 2003 Act and the Tribunal process is working in different parts of Scotland. These perspectives offer some insight into why the apparent levels of activity under the 2003 Act vary so much across Scotland. The Tribunal is interested in discussing this issue with interested parties and it will be airing the topic through its Reference Group meetings in 2011/12.

[1] Scottish Parliament, Equal Opportunities Committee Report 24 June 2010, SP Paper 468, paragraphs 80 – 85.

CTO applications, by patient location at the time of application, by Health Board				
For the period 01/04/10–31/03/11 (05/10/05–31/03/11)				
Health Board	**Community**	**Hospital**	**Ratio**	**Total**
Ayrshire and Arran	4 (16)	64 (338)	1:16 (1:21)	68 (354)
Borders	1 (6)	22 (122)	1:22 (1:20)	23 (128)
Dumfries and Galloway	2 (5)	34 (207)	1:17 (1:41)	36 (212)
Fife	7 (29)	112 (556)	1:17 (1:19)	119 (585)
Forth Valley	2 (14)	57 (229)	1:28 (1:16)	59 (243)
Grampian	1 (14)	133 (586)	1:133 (1:42)	134 (600)
Greater Glasgow and Clyde*	6 (54)	395 (1898)	1:66 (1:35)	401 (1952)
Highland	4 (23)	94 (501)	1:23 (1:22)	98 (524)
Lanarkshire*	4 (15)	106 (500)	1:26 (1:33)	110 (515)
Lothian*	12 (52)	212 (1203)	1:18 (1:23)	224 (1255)
Orkney	0 (1)	0 (0)	N/A	0 (1)
Shetland	0 (0)	0 (3)	N/A	0 (3)
Tayside	1 (14)	128 (627)	1:128 (1:44)	129 (641)
The State Hospital	0 (0)	2 (18)	N/A	2 (18)
Western Isles	(2)	1 (11)	N/A (1:5)	1 (13)
Total	**44 (245)**	**1360 (6799)**	**1:31 (1:28)**	**1404 (7044)**

*Including predecessors

The use of community-based CTOs compared to hospital-based CTOs varies across the country and, to a certain extent, from year to year. There is roughly one community-based CTO application for every 30 hospital-based CTO applications. Excluding island communities, where all the figures are very small, there is a significant variation in the relative use of community-based CTOs from area to area.

Complaints

Twenty-three complaints were recorded during the year which was a slight decrease from the previous year. The different categories of complaints are shown in the table below.

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

	Members	Staff	Facilities	Systems	Paperwork	Outcomes
2010/11	4	1	2	8	5	3
2009/10	4	8	0	5	5	3
2008/09	10	13	2	6	23	11

Members' training

The Tribunal is committed to providing Members with high quality training to equip them to deal efficiently and effectively with cases which come before the Tribunal, while ensuring that the patient remains at the centre of Tribunal proceedings.

The Tribunal held six one-day training events for all Members on Tribunal Craft. The training began with a presentation on what makes a good beginning to Tribunal proceedings, covering the requirement to explain the manner and order of proceedings and the procedure the Tribunal proposes to adopt.

A second presentation covered the delivery of decisions. The training also included a session where Tribunal Members viewed a DVD covering a number of styles of introduction and decision delivery. The DVD presentation generated a lively discussion among Tribunal Members. The training provided Tribunal Members with an opportunity to take time to think carefully about introductions to Tribunal hearings and decision delivery and to share their experience and knowledge. It also provided Tribunal Members with an opportunity to reflect upon Tribunal proceedings and to see themselves as others involved in Tribunal proceedings might see them.

The afternoon session consisted of a number of workshops on specific topics such as violence risk assessment, the requirement for adequate reasons in Tribunal decisions, eating disorders and personality disorder.

The training was attended by nearly all Tribunal Members and was well received by the Members. In particular, Members welcomed the opportunity to reflect on their own particular practice in Tribunal proceedings and to explore issues in detail with other Members.

In February and March 2011, the Tribunal held six days of training for Conveners only. This training was targeted at legal members of the Tribunal with a view to ensuring that Conveners were up to date with recent legal developments in areas which impact on

MHTS Reception, Bothwell House

Tribunal practice and procedure and able to apply the law appropriately in individual cases before the Tribunal.

The training covered the Mental Health (Conflict of Interest) (Scotland) (No. 2) Regulations 2005 and the issue of when there may be a permitted conflict of interest in terms of the Regulations. The training also covered the approach to be taken in cases where there may be an issue of apparent bias in any tribunal considering an individual case. Conveners were required to work through a number of case studies and make a decision providing reasons for those decisions.

Finally, the training covered the issue of the approach to be taken to a failure to comply with a statutory provision of the 2003 Act. A presentation was delivered, after which the conveners required to consider two complex case studies and come to a view on the course of action they would take, giving reasons for their decisions.

Almost all of the Tribunal's Conveners attended the training. The feedback from the training was extremely positive with Conveners finding the presentations and case scenarios helpful, interesting and thought provoking. Conveners appreciated the opportunity to address these issues in detail and discuss issues with other Conveners.

As the feedback from this training was so positive the Tribunal intends to roll out the training to General and Medical Members.

Looking Ahead

The Tribunal, like other public bodies, is affected by the difficult financial circumstances in which the country is operating. During 2011/12 the Tribunal will concentrate its efforts on improving efficiency and productivity whilst ensuring that the rights of patients and other participants to cases are protected.

The Work of the Tribunal

- The Tribunal will continue to look at better ways in which it can carry out activities. This involves the Tribunal taking proper account of the budgetary constraints the Tribunal faces while making sure the Tribunal does not compromise on the need to continue to deliver just, fair and timely decisions.
- The Tribunal will continue to improve efficiency and effectiveness through judicially led pilots such as triple hearings.
- The Tribunal will seek to increase use of rule 58 hearings (Power to decide a case without an oral hearing) in appropriate cases.
- The Tribunal will continue to seek to raise awareness and knowledge of the 2003 Act through a variety of public legal education strategies such as presentations, articles and the publication of a Caselaw Digest.

The work of the Tribunal Administration in support of the Tribunal

- The Administration has invested time in improving and simplifying the way in which Tribunal Members are paid. From April 2011 Members will be paid via the Scottish Government's payroll system. As part of this revised method Members do not need to submit a paper claim form for standard daily fees. By accessing the Webroster scheduling system online Members can obtain a detailed breakdown of the payments they can expect to receive. Tribunal Members will also be able to view and update online their availability for hearings. This removes a resource-intensive paper process for staff and Members alike and offers convenient diary management for Tribunal Members.
- In the coming year *Lean* (Business Efficiency and Effectiveness) principles will be applied to business improvement activities.
- A reorganisation of the operational staff of the Tribunal's Administration took place in April 2011 ensuring ownership of cases and greater continuity and control throughout the overall process.
- Scheduling staff moved into each of the two casework teams in a further effort to streamline the hearings process and promote efficiency. The embedding of schedulers will serve to reduce current delays caused by moving cases between Teams. In the longer term, the changes will also promote multi-functionality among staff.
- A new Quality Manager role has been created within the Tribunal's Administration to lead on customer service by liaising with customer groups in order to consider how service could be improved and working with staff to suggest improvements to working practices. It also ensures effective and consistent communication of guidance and advice from the President's Office to operational staff.
- Following the review in 2010/11 and consultation with Health Boards and Local Authorities, a process of withdrawing Venue Assistants who have provided a security presence at hearings has continued where the Tribunal is satisfied that adequate arrangements are in place to guarantee the safety of all hearing participants.

Working with others

- The Tribunal will continue its successful policy of moving its Reference Group meetings around the country in order to

address local as well as national issues. Similarly, further efforts will be made to make sure all national and local groups with an interest in mental health and mental health law issues are invited to Reference Group meetings and kept appraised of developments within the Tribunal.

- The Tribunal's RMO Forum that was introduced in October 2009 meets twice a year at the President's Office in Hamilton House. From April 2011, the Forum will be extended to include MHOs. The In-house Conveners chair the meeting, which will be open to RMOs and MHOs from across Scotland representing a range of clinical disciplines. A process for ensuring issues are communicated will be agreed in 2011 for MHOs.
- During 2011 the Tribunal will look to improve its recording of diversity information and hence its ability to analyse such information. The Tribunal is reliant upon third parties with regard to the supply of information and will continue to work with others to improve the range and quality of data collected. The Tribunal will also improve its IT systems to allow for more effective recording and analysis. The Tribunal will be working with both the Scottish Government and the Mental Welfare Commission for Scotland to try to ensure that robust monitoring is in place.
- The Tribunal looks forward to the publication of work conducted by Dr Narinda Bansal at Edinburgh University, which should offer the first Scottish perspective on the use of Mental Health Services and compulsory measures for different ethnic groups.

Policy developments

- The Scottish Government has indicated that it is unlikely that the Tribunal's Rules of Procedure will be amended in advance of the amendments to the 2003 Act being enacted but has agreed to take forward the amendment of rule 58 (Power to decide a case without an oral hearing) separately. The Scottish Government has issued a consultation exercise on the proposed amendment of rule 58 and is expected to analyse the responses and decide how to take forward the amendment in 2011.
- In January 2008, the Minister for Public Health appointed an independent review group to undertake a limited review of the 2003 Act (known as the McManus Review) to consider efficiency and patient experience. The Review Group reported back to the Minister in 2009, the Scottish Government then went out to further consultation on its recommendations, as well as adding in some additional options around the main issues. In October 2010 the Scottish Government Response to the Report issued indicating, in relation to each of the issues, how Ministers intend to take forward the agreed recommendations, and whether this would be by means of primary legislation, secondary legislation or policy initiatives.
- The Scottish Government has indicated publicly it is aiming for an opportunity in the legislative programme to bring forward amendments to the 2003 Act. This will likely be towards the end of the 2012/2013 parliamentary session but this is not certain.
- The Tribunal looks forward to amendments, which it hopes will improve the patient experience of the Tribunal process and make the process itself more efficient for all those who are involved in it.
- 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 2011 further developments are expected to take place that will eventually lead to the integration of the administrations of other devolved Scottish Tribunals into a single Scottish Tribunals Service. This development is expected to lead to a sharing of expertise and resource and to increased efficiency and cost effectiveness.

Corporate Structure and Finances

Dr Joe Morrow was appointed President of the Tribunal in October 2008 and presides over the discharge of the Tribunal's functions. At the end of 2010/11 the Tribunal had 362 Tribunal Members, also appointed by the Scottish Ministers. Members are responsible for making judicial decisions on cases and are split roughly equally into three groups, legal members, medical members and general members. Tribunal panels comprise one member from each group, with the legal member acting as convener of the panel. The Tribunal also draws on the support of a number of Sheriffs who, along with the Tribunal's President, are required by the 2003 Act to convene panels hearing forensic cases.

By the end of March 2011 the Tribunal's Administration had a staff of 85 permanent civil servants (the Administration no longer has any temporary staff) under a Head of Operations, who in turn is now responsible to the Chief Executive of the Scottish Tribunals Service. The Administration is responsible for carrying out the administrative and corporate functions of the Tribunal as delegated to it by the President.

The summary financial results for the Tribunal Administration for the year ended 31st March 2011 are shown in the Annex at the end of this report.

Public Services Reform (Scotland) Act 2010

The President of the Tribunal, in line with the heads of other public bodies, acknowledges his responsibilities under the Public Services Reform (Scotland) Act 2010 and, in accordance with statutory requirements, provides below:

- a statement of expenditure relating to public relations; overseas travel; hospitality and entertainment; external consultancy; and payments for goods and services which are greater than £25,000; and
- a statement of the steps taken during the financial year to (a) promote and increase sustainable growth and (b) to improve efficiency, effectiveness and economy in the exercise of its functions.

Expenditure relating to public relations, overseas travel, hospitality and entertainment, and external consultancy by the Tribunal during 2010/11.

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	None
Payments with a value in excess of £25,000	None

Steps taken to:

(a) promote and increase sustainable growth; and

(b) to improve efficiency, effectiveness and economy in the exercise of its functions.

During the year the Tribunal and its administration have made concerted efforts to reduce both expenditure and carbon footprint in a number of areas.

- The Tribunal has further reduced its use of paper records, virtually all records are now maintained electronically.
- The extension of electronic mail to many of the Tribunal's regular correspondents has reduced the amount of monthly couriered mail by a half and the figure is continuing to fall reducing costs and mail miles. Further steps are being taken to encourage more correspondents throughout the Health Boards, Local Authorities and Legal community to communicate via secure electronic mail.
- The vast majority of the Tribunal's Members receive their case papers and other correspondence via secure electronic means, with only a small number receiving hard copies.
- Negotiations with Health Boards have meant that the provision of video conferencing facilities has been extended enabling participants at hearings to take part without the need to travel long distances. The use of video will remain restricted where it may impinge on a patient's ability or desire to take part in hearings.
- The Tribunal Administration has introduced the use of Multi Functioning Devices (MFDs) in its Hamilton Head Quarters and is looking to extend their use in some well used hearing venues. These devices combine the ability to fax, scan, print and copy; reduce the number of machines required and their electricity consumption; and make the printing of faxed documents unnecessary in most circumstances. Security is also enhanced by the use of the machines.
- The Administration has been exploring means of using the Health Board's own networks to access the Scottish Government's networks (used by the Administration) meaning that Tribunal Clerks will be able to undertake work on the Tribunal's cases without having to move to a different location before and after hearings saving time, money and fuel.
- The examination of security at venues which has taken place during the year will result in cost savings and a reduction in the carbon foot print via reduced travel by a smaller number of Venue Assistants.
- The Tribunal has made continued efforts to increase Tribunal productivity by increasing the number of hearings held in the same location on the same day (known as doubling and tripling). Efforts to increase the level of multiple hearings much above 50% for a sustained period have not proved fruitful. The Tribunal is limited in this area by the need to meet statutory deadlines; the intermittent and variable flow of cases; the geographic spread of cases; and the unpredictable nature of the length of time some hearings will take. The Tribunal will continue to explore ways of increasing productivity without compromising the rights of patients or other participants.
- The Tribunal's Clerks have at times to travel significant distances to service hearings. During 2011/12 the Tribunal will explore the scope for making greater use of hire or pool cars, where this will itself not compromise productivity.

Annex

Financial Results

The Mental Health Tribunal for Scotland Administration

Operating Cost Statement

For The Year Ended 31st March 2011

2010 £,0000		2011 £,000
5,450	**Tribunal Costs**	5,667
	Administrative Costs	
2,015	Staff	2,118
108	Depreciation	64
1,747	Other Costs	1,787
3,870		3,969
9,320	Net Operating Costs	9,636

Financial Performance

Costs in 2010-11 show an overall increase of 3% on 2009-10 as a result of increased investment during the year in staff and Tribunal systems and procedures. It is fully anticipated that this will result in reduced costs in future years when available funding will be more limited.

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