

# Annual Report 2013

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President, Dr Joe Morrow

## PRESIDENT'S FOREWORD

I am pleased to present the Annual Report of the Mental Health Tribunal for Scotland ("the Tribunal") for the year 2012/13. The Report covers the last year of my first 5 year appointment as President.

In this Report I want to take the opportunity to record the progress of the Tribunal over that 5 year period.

The Report also gives me an opportunity to express my thanks to the Members of the Tribunal and to the administrative staff for their commitment and flexible professionalism, which has greatly assisted in the progress demonstrated in this Report.

During this last year, I have continued a number of themes in the work of the Tribunal which we have addressed in the past. These include:

- The focus of the Tribunal remains on the patient.
- The care and treatment of the patient and the patient's views are central to the Tribunal's work.
- Getting the decision of the Tribunal right first time.
- Growing efficiencies and increasing effectiveness of the Tribunal, including an effective case management system.

This Report demonstrates the hard work of many who have been focused on these themes and have produced the results contained in the Report.

The decisions made by the Tribunal are at the sharp end of intervention in the lives of those with mental disorder and often involve detention in hospital and compulsory treatment. The above themes and the principles contained in sections 1 and 2 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act") are key to the protection of the patient's rights in the Tribunal setting. The rights and duties set out in the legislation under which the Tribunal works are central to the operation of compulsory mental health intervention in a humane society. The independence of the Tribunal ensures that these rights are protected and developed.

The 2003 Act focuses on the patient and having regard to the views of the patient. It also focuses on the participation of the patient, and of those who support the patient, in the Tribunal proceedings. Through the Tribunal's Service Users' and Carers' Group and Professional Reference Group, I continue to seek the views of service users, carers and mental health professionals to keep the principles of the 2003 Act at the forefront of

our operations. I hold the Reference Groups three or four times a year in different parts of Scotland, which enables me to identify common issues and any local matters which may require to be addressed. I hope not only to continue this work in the coming year, but also to develop a process to target specific groups such as advocacy workers, in order to expand the Tribunal's engagement policy. To date I have personally attended all of the Reference Group meetings and have received a great deal of feedback which has not only been helpful, but has led to effective changes in the way the Tribunal operates. The Notes of these meetings are published on the Tribunal's website should you wish more information on the Reference Groups.

I commend this Annual Report to you, as it will tell you much about our progress. It is clear that applications over the past year have levelled out at around 3,500 a year, coming from 14 categories of references, applications, appeals and reviews. The graph on interim orders and adjournment rates shows a steady decrease, and I am happy to say that it is predicted this trend will continue. This assists patients and their carers as they require to attend only one hearing, which is beneficial as patients and carers can find Tribunal hearings stressful at times. It also prevents delays and avoids professionals having to attend multiple hearings. These results are closely linked to the case management process now in place and the work of those involved in that activity.

The Tribunal continues to be active in its training of Members. The Tribunal invests in its Members, recognising the importance of a skilled, highly trained membership. Members have been offered training in a number of specific areas relating to the work of the Tribunal. We also carried out a recruitment process and acquired 19 new medical Members and 5 new legal Members in the early part of 2013.

While it is not the central issue for me, I would draw your attention to the Tribunal expenditure page which shows a significant decrease in Tribunal expenditure from £10.47 million to £7.56 million up to this reporting year.

Finally, as mentioned previously, the patient is at the centre of the Tribunal's work, and I will make sure that this continues to be the case in the year ahead. This is, and will remain, the principal focus for the Tribunal with regard to efficient and effective access to justice for those who appear before the Tribunal, where decisions relating to liberty and compulsory treatment are made.

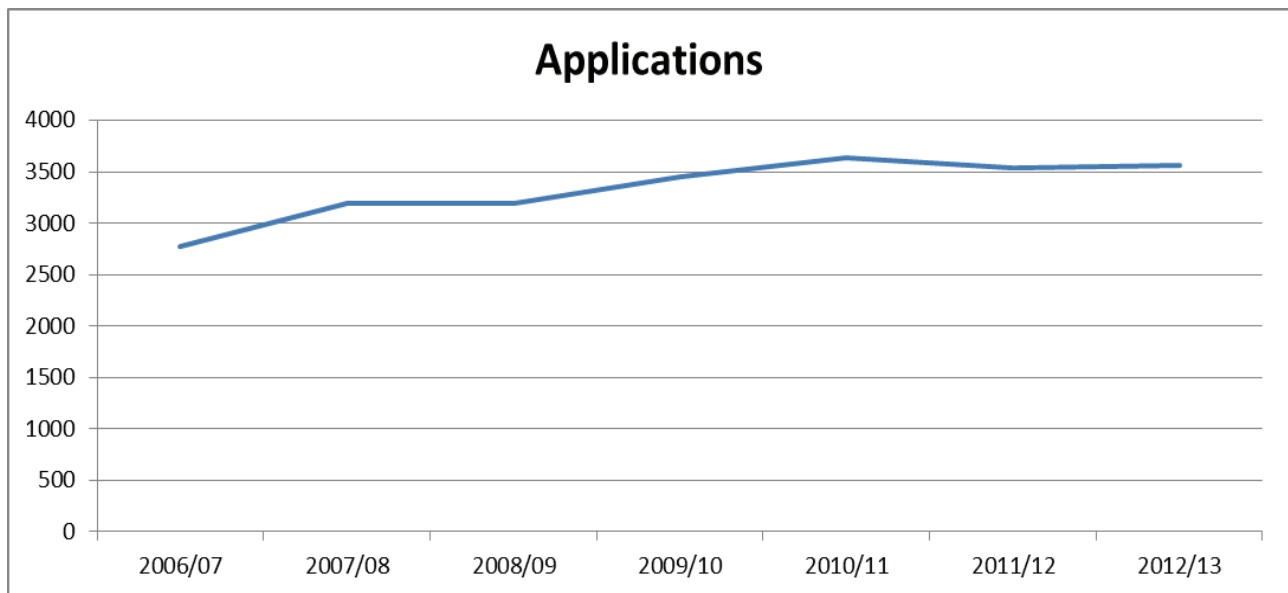
A handwritten signature in dark ink, reading "Joe Morrow". The signature is written in a cursive, flowing style. Below the signature is a single horizontal line that extends across the width of the text.

**Dr Joe Morrow**  
President

# TRIBUNAL ACTIVITY

This annual report focuses on Tribunal activity over the last 5 financial years. It provides information on the number of cases received by the Tribunal and information showing improvements in the performance of the Tribunal over this period.

## Applications

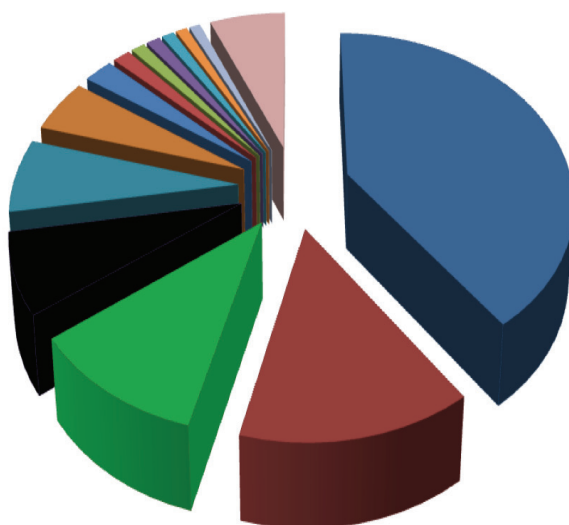


The average number of applications received by the Tribunal over the last 5 years is approximately 3,500 per reporting year. There has been little variation in the number of applications received in each reporting year.

As shown in the pie chart on the next page, by far the biggest number of applications received are applications for compulsory treatment orders (section 63 applications), which are submitted by a patient's mental health officer (MHO). These cases have accounted (over the last 5 financial years) for approximately 40% of all applications

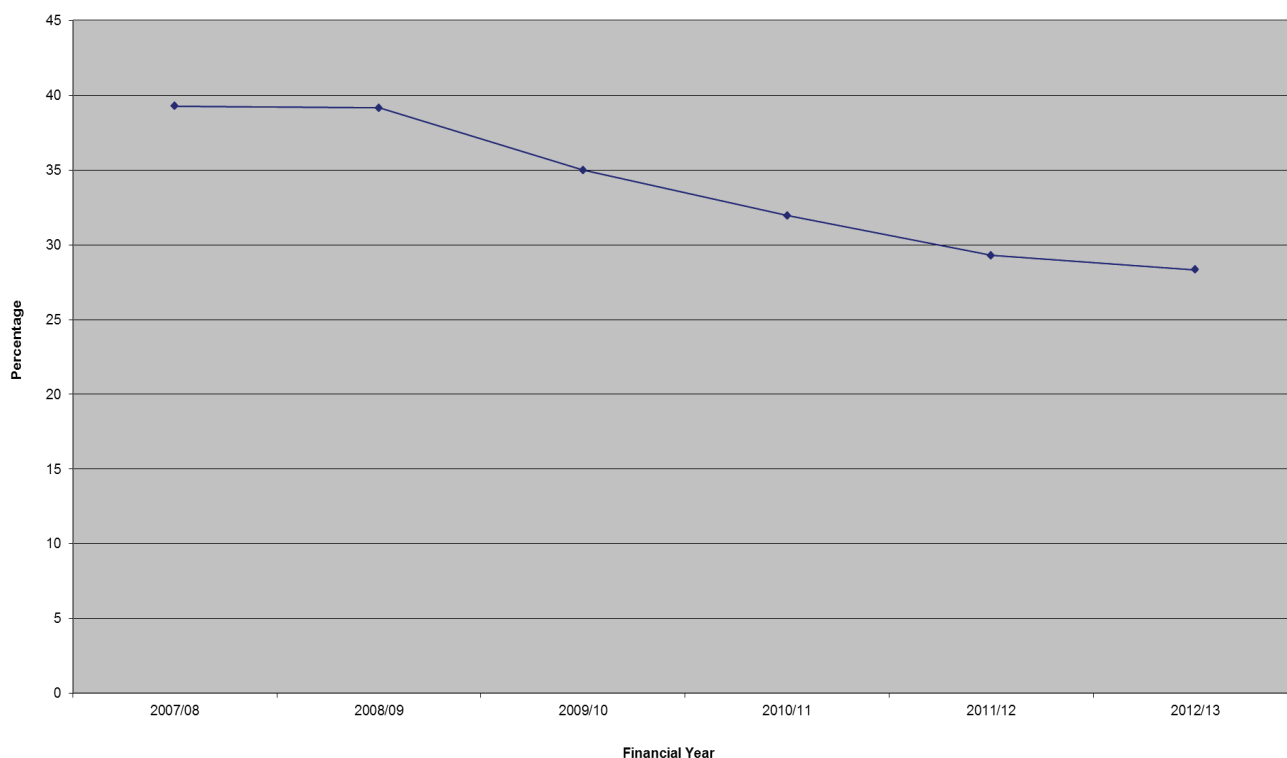
received. Applications to revoke short-term detention or extension certificates (section 50 applications) also account for a substantial amount of applications received by the Tribunal, at approximately 15% of the overall total (again over the last 5 financial years). The statutory provisions which require the Tribunal to carry out a review in certain specified circumstances of a determination made by a patient's responsible medical officer (RMO) extending a compulsory treatment order also account for a significant part of the Tribunal's work.

The pie chart below shows a breakdown of the applications, appeals, references and reviews dealt with by the Tribunal over the last 5 years.



- 63 - Application for Compulsory Treatment Order
- 50 - Application for revocation of short term detention or extension certificate
- 87/101 - Notification of S86 determination to extend compulsory treatment order / Section 101 Review of Compulsory Treatment Order
- 100 - Application for revocation of a Compulsory Treatment Order
- 92 - Application to extend and vary a Compulsory Treatment Order
- 95 - Application to vary a Compulsory Treatment Order
- 99 - Application to revoke a determination extending a Compulsory Treatment Order
- 189 - Reference by Scottish Ministers where compulsion order and restriction order has not been reviewed for 2 years
- 264 - State Hospital: Application for order that patient is detained in conditions of Excessive Security
- 100 - Application for variation of a Compulsory Treatment Order
- 149 - Application for extension of compulsion order following first review
- 192 - Application for conditional discharge or revocation of RO and variation of CO or revocation of CO
- 125 - Appeal against transfer to hospital other than state hospital (includes S178)
- Other

## Interim Orders and Adjournments of Hearings



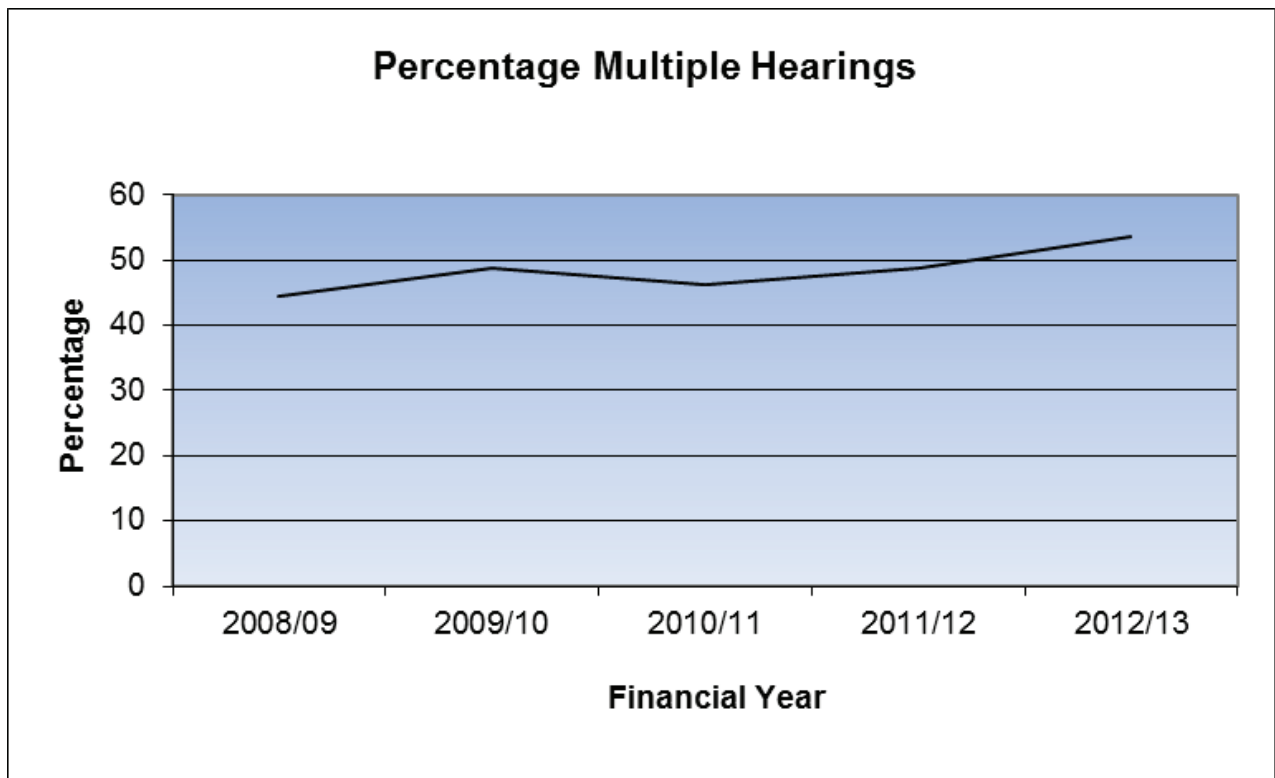
The above graph relates to the adjournment/interim order rate covering the financial years 2007/08 to 2012/13. The average percentage of adjournments/interim orders in the year 2007/08 was 39.28 %. When compared to the last financial year's figures, which had an average return of 28.33 %, it can be seen that significant improvements have been made in this area.

There is a direct correlation between the appointment of the In-house Conveners (two part time judicial Members of the Tribunal who work in Hamilton House) and the decline in continued hearings. In February 2009, the Tribunal introduced two initiatives: Casework Surgeries, which offer advice and guidance from an In-house Convenor or one of the solicitors in the President's Office to Members of the casework teams on how to progress

individual cases; and Standing Tribunals, where an In-house Convenor or the President considers any matters which a Convenor sitting alone may determine under rule 43 of the Tribunal's Rules of Procedure, e.g. requests for appointment of a curator *ad litem*. These internal initiatives have augmented the caseworkers' skills by their increased exposure to legal advice and the Tribunal judiciary. The obvious result of the reduction in the adjournment/interim order rate is a better service being provided to the patient and other stakeholders, with the budgetary benefits of reduced hearings being a welcome byproduct.

71.67 % of all hearings which took place in 2012/13 resulted in a substantive decision in the case without the need for a further hearing.

## Multiple Hearings

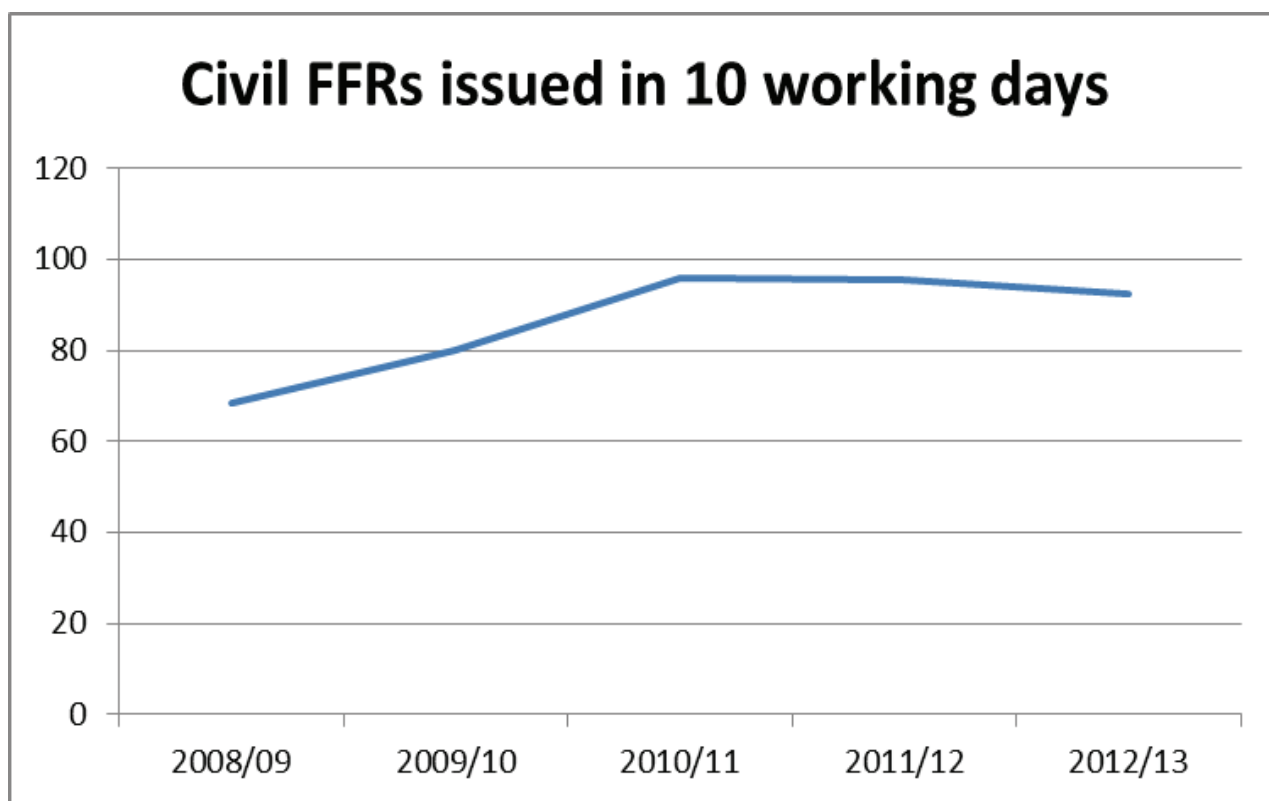


The Tribunal has worked towards reducing the number of hearing days required while maintaining the patient-centred approach which is pivotal to the Tribunal's overarching ethos.

The above graph demonstrates the improvements in this area over the last 5 years. The Multiple Hearings initiative has placed a strong emphasis on ensuring that we use our Member and staffing resources in a more progressive way. This initiative involves scheduling at least two hearings per panel per

venue, wherever possible and appropriate. The Tribunal has consistently raised expectations in relation to the delivery of multiple hearings, and work undertaken with the scheduling team has proved highly successful, in the last 2 years in particular. The Tribunal is confident that the existing scheduling team are suitably equipped to maintain last year's average multiple figure of 53.54%. This compares favourably to the 2008/09 figure of 44.39%. These figures represent an average increase in efficiency of approximately 2% year on year over the last 5 years.



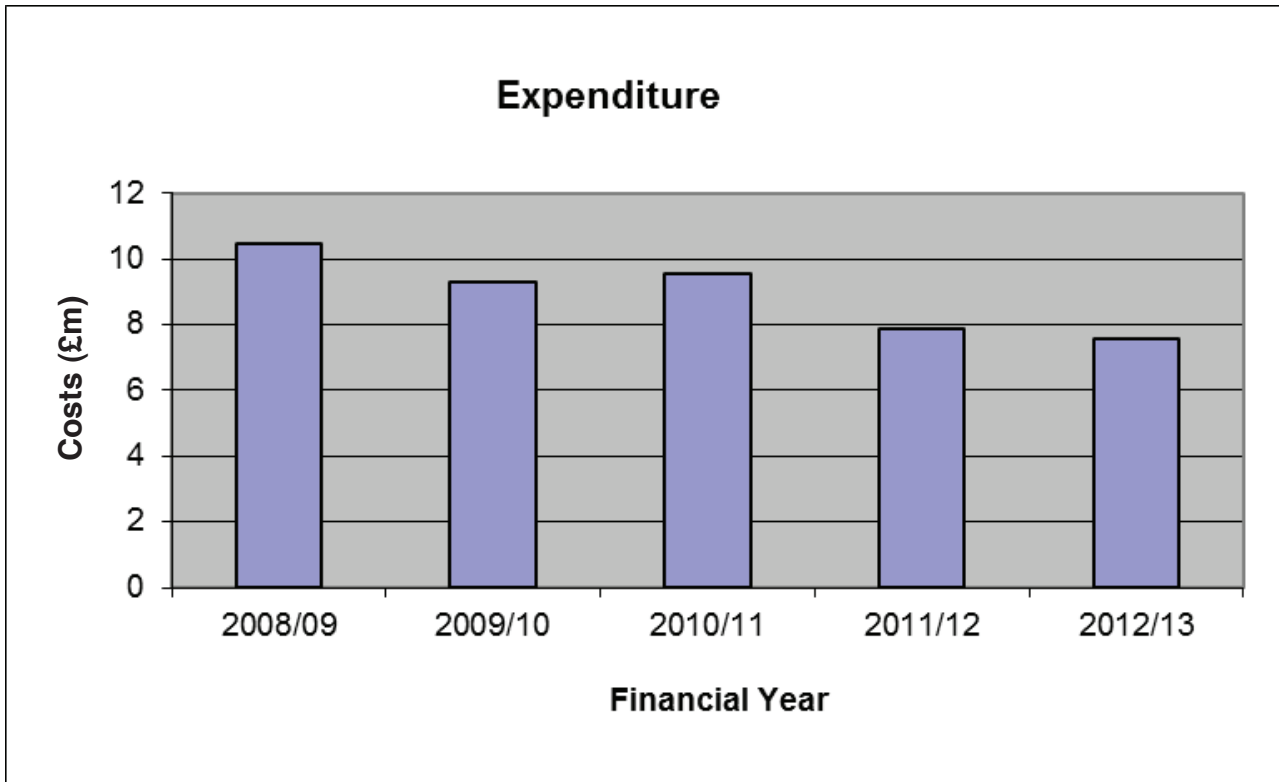


*\*FFR refers to the full statement of facts found by the Tribunal and the reasons for the decision*

The above graph charts the progress made by the Tribunal's Administration in terms of the timely progression of final decision paperwork being sent to parties. The Tribunal identified the importance of improving the percentage figure returned in the financial year 2008/09 (68.48 %). It is important that patients and other parties to proceedings before the Tribunal receive the Tribunal's written decision in a case timeously.

An internal Key Performance Indicator (KPI) was set at 90 % and reporting mechanisms were developed to monitor the performance of the Tribunal's Administration in meeting the internal KPI set. This KPI was treated as one of the Administration's priorities and, as a result, the following year, 2009/10, saw a marked improvement, with the figure increasing 12 % to 80.15 %. The last 3 years, where the KPI has been met consistently above 90 %, demonstrates the efficiencies and improvements made in this area.

# TRIBUNAL EXPENDITURE



This graph shows the expenditure of the Tribunal over the last 5 financial years. The Tribunal's budget has been steadily reducing over this period (with the exception of financial year 2010/11 where there was a small increase, which was a direct result of the creation of the Scottish Tribunals Service

(STS) and the administrative staff costs arising from the setting up of the STS). In financial year 2012/13, the Tribunal's budget was approximately £7.56 million, a significant decrease from the budget of £10.47 million in the Tribunal's first full financial year of operation.

## CONTINUOUS IMPROVEMENT IN THE TRIBUNAL

The Tribunal and the Scottish Tribunals Service (STS), which is responsible for providing administrative support to the Tribunal, made a specific commitment to Continuous Improvement (CI) around 12 months ago. The CI programme focuses on finding the most efficient way to meet the needs of those involved in proceedings before the Tribunal and continually striving to improve the way the Tribunal and the STS work. It is about empowering people to make small, incremental changes which, together, will create improvements in efficiency and effectiveness of the Tribunal and the administrative support provided to it by the STS.

Value Stream Mapping (VSM) is a technique used to show all the steps in a process, which can then be analysed to make improvements. Examples where this has been applied in the Tribunal include:

- the compulsory treatment order process;
- the judicial decision making processes by a Convener sitting alone;
- the compulsion order and restriction order process.

Early benefits realised include reduced processing times, standardisation of processes and increased quality while actively promoting increased engagement and cooperation between administrative staff and the Tribunal judiciary. The Tribunal is focused on streamlining administrative procedures and quantifying the staff resources needed as a result of these efficiencies. A major training programme is underway within the Tribunal to build a more efficient, flexible and resilient way of working while ensuring continued engagement with, and development of, staff.

Staff will be utilised in key areas where a business need is identified, and the Tribunal's multi functioning agenda ensures it is best placed to meet this demand.

Alongside VSM events, Team Information Boards (TIBs) have been introduced in the Tribunal's Administration, which are a form of visual information management and:

- enable anyone in the Tribunal's Administration to see team information in a clear, visual form;
- display performance targets, data and information;
- display ongoing issues and information and provides an escalation route;
- identify opportunities for improvement;
- provide a measurement of the improvement process; and
- celebrate team success.

CI activity is now being led by two Members of staff in the STS trained to CI Practitioner level through the Ministry of Justice.

CI activity is not restricted to the application of CI tools and techniques but also supports staff engagement and development. Front-line staff are the main participants in VSM events and it is they who suggest and drive forward the recommended improvements. A cross-jurisdictional Continuous Improvement Group supports CI activities at ground level. Team Leaders within the Tribunal's Administration have completed a Leadership Development Programme comprising six modules ranging from manager v leader, coaching and 360 degree feedback.

All of these initiatives and measures should help to bring further improvements in the efficient and effective discharge of the Tribunal's functions.



Team Information Boards (TIBs)

## TRIBUNAL MEMBERSHIP

Total Number of Members	Legal Members	Medical Members	General Members	Part-time Sheriffs (also Tribunal Members)	Part-time Sheriffs (not Tribunal Members)
331	107	96	128	8	4

The Tribunal membership has remained fairly static since the Tribunal came into operation. This reflects the fact that Members of the Tribunal are committed to the work of the Tribunal. A relatively small number of Tribunal Members have resigned or not sought reappointment. Often when a fee-paid Tribunal Member has resigned, this has been due to their securing a full-time judicial appointment.

The fact that the membership has remained static means that the current membership is highly experienced in dealing with cases under the 2003 Act, further enhancing the specialist nature of the Tribunal.



## MEMBERS' TRAINING



It is important for the efficient and effective functioning of the Tribunal that all Tribunal Members are appropriately trained and kept up to date with developments in the field of mental health law. Specialist training is developed in-house, which ensures that the training reflects the specialist nature of the Tribunal and the cases considered by tribunals.

The Tribunal delivered 5 days of training to Conveners during October and November 2012. The training covered a number of issues, including an update on recent appeals caselaw, in particular the case of *DC Petitioner for Judicial Review*. Conveners worked through various scenarios which required them to apply the *DC* case to particular facts and circumstances and come to a decision on the status of the patient and the patient's compulsory treatment order (CTO). Conveners also heard a presentation on the amended rule 58 and related procedure. Rule 58 of

the Tribunal's Rules of Procedure allows the Tribunal to decide a case on the written evidence without an oral hearing.

In addition, Conveners considered a number of scenarios which were based on matters which had arisen in cases which had come before the Tribunal. This provided Conveners with a valuable opportunity to consider difficult issues which have arisen in Tribunal proceedings and to discuss those topics with other Conveners with a view to developing as consistent an approach as possible. The training offered Conveners the opportunity to reflect on their own practice and to discuss that with other Conveners. The Conveners appreciated the opportunity to discuss legal issues with other Conveners, as they very seldom have the opportunity to discuss issues arising from the 2003 Act and the Rules of Procedure in detail with other Conveners.

The feedback from the Convener training was extremely positive. As a result, the Tribunal held a further 5 training events in February and March 2013 for medical and general Members of the Tribunal based on the training which had been delivered to the Conveners. General and medical Members require to be aware of legal matters arising in tribunals and why Conveners approach certain issues in a particular way. It was therefore

considered beneficial for other Members of the Tribunal to consider some of the topics covered at the Convener training. The training was undertaken at evening training events on a voluntary basis. There was a very good attendance at the evening training evidencing the commitment of Tribunal Members to keeping up to date with developments in the area of mental health law and practice.

## LOOKING AHEAD

### 2013 Members' Conference

By the time this Annual Report is published, the Tribunal's Members' Conference will have taken place. This Members' training event takes place once every 5 years and provides an opportunity for the Tribunal's membership to come together to consider and discuss issues pertinent to the work of the Tribunal. The Tribunal has secured a wealth of high profile and interesting speakers. Tribunal Members will hear from Roseanna Cunningham MSP, Minister for Community Safety and Legal Affairs; from the Lord President of the Court of Session, who will be speaking about Tribunal reform in Scotland; and from Professor Dame Hazel Genn DBE QC (Hon), who will speak about the experience of tribunal users. In the afternoon, Members will attend a workshop chosen from the following:

- effective early childhood intervention and mental disorder/offending;
- capacity and consent;
- comparative law (looking at English mental health law);
- participation in the justice system and the enabling capacity of mental health tribunals;
- dementia and whether Scotland is rising to the challenge; and
- the DSM5 and the medicalisation of human behaviour.

This will be followed by Member category discussions on issues arising from the 2003 Act. The conference will provide an important opportunity for Members to consider the impact of Tribunal reform and reforms proposed to mental health law.

### Reappointment of Members of the Tribunal

The bulk of the Tribunal's Members are due to be reappointed in tranches in March and October 2015. Work will begin on the reappointment exercise in January 2014.

### Tribunals (Scotland) Bill

The Tribunals (Scotland) Bill, which makes provision for the reform of Tribunals in Scotland and the creation of a First-tier Tribunal and an Upper Tribunal (to be known collectively as the Scottish Tribunals), is a major piece of legislation which will affect the Tribunal. Members of the Tribunal will – as with the other devolved Tribunals – over time be transferred to the new First-tier Tribunal. The Tribunal has been involved in the consultation process and produced a detailed written response to the Scottish Government's proposals. The Bill was introduced into the Scottish Parliament in May 2013, and the Tribunal understands that at present it is anticipated that the Bill will complete the Parliamentary process and receive Royal Assent in May 2014.

### Mental Health (Scotland) Bill

In January 2008, the Scottish Ministers appointed the McManus Review Group to undertake a limited review of the 2003 Act. The Group reported in March 2009 and, in August 2009, the Scottish Government consulted on the Review Group Report. The Tribunal submitted a detailed response to the consultation and was involved in consultation events. It is anticipated that the Mental Health (Scotland) Bill, which will amend the 2003 Act, will be introduced into the Scottish Parliament in June 2014 and receive Royal Assent in December 2014. The amendments proposed in the Bill will impact on the work of the Tribunal and the Tribunal will require to provide training to Members on the new legislation.



## Amendment of the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005

Some time ago, the Tribunal asked the Scottish Government to consider amending the Tribunal's Rules of Procedure in order to make the Rules more user friendly and better fit for purpose. The Tribunal provided the Scottish Government with a comprehensive document outlining the changes which the Tribunal thinks are necessary. The Scottish Government policy team with responsibility for mental health law have recently indicated that they hope to be in a position to take forward the drafting of new procedural rules in the near future.

It can be seen, therefore, that there is a very full legislative programme which will impact on the Tribunal in the next few years.





## 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 2012/13, the Tribunal had 331 Tribunal Members, also appointed by the Scottish Ministers. Members are responsible for making judicial decisions on cases and are split 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 patient cases.

By the end of March 2013, the Tribunal's Administration had a staff of 74 permanent civil servants under a Head of Operations, who in turn is responsible to the Chief Executive of the STS. 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's Administration for the year ended 31 March 2013 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 (Scotland) Act 2010 and, in accordance with statutory requirements, provides:

- a statement of expenditure relating to public relations; overseas travel; hospitality and entertainment; external consultancy; 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) improve efficiency, effectiveness and economy in the exercise of its functions.

**Expenditure relating to public relations, overseas travel, hospitality and entertainment; external consultancy; and payment for goods and services which are greater than £25,000, by the Tribunal during 2012/13:**

Public relations	Nil
Overseas travel	£1,871.52*
Hospitality and entertainment	Nil
External consultancy	Nil
Members and Members of staff of the Tribunal who received remuneration in excess of £150,000	Nil
Payments with a value in excess of £25,000	Nil

\* In respect of attendance of the President and Legal Secretary at the International Academy of Law and Mental Health Conference in Amsterdam in July 2013

**Steps taken to:**

- (a) promote and increase sustainable growth; and**
- (b) improve efficiency, effectiveness and economy in the exercise of the Tribunal's functions.**

During the year, the Tribunal and the Tribunal's Administration have continued their efforts to reduce both expenditure and carbon footprint in a number of areas.

- Virtually all records are now maintained electronically.
- Efforts continue to encourage the use of secure electronic mail by Health Boards, Local Authorities and legal community, reducing costs and mail miles.
- The Administration continues to work with Health Boards to use their networks to access the Tribunal's systems, meaning that Tribunal Clerks are able to work securely from those locations without the need to travel to a different location, with the resultant time, money and fuel savings.
- The Tribunal maintains maximum productivity by having Tribunal panels hear more than one case on the same day without compromising the rights of patients or other participants.



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