



Mental Health Tribunal for Scotland

# **ANNUAL REPORT 2018/2019**

**This report covers the period  
1 April 2018 to 31 March 2019**

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Dr Joe Morrow CBE QC, President

## **PRESIDENT'S FOREWORD**

It is my pleasure, for the last time as President of the Mental Health Tribunal for Scotland, to present this Annual Report for the year 2018/19. I will be retiring from the post in the Autumn of 2019.

The Tribunal's continuous improvement model is once again reflected in this Report. I have the privilege of thanking all the members of the Tribunal, and the dedicated administrative staff of the Scottish Courts and Tribunals Service who support the Tribunal, for their flexible professionalism and the collaborative work that they carry out. The Tribunal has continued its long-standing commitment to maintaining the patient-centred focus as prescribed by the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act"), while at the same time increasing the efficiency and effectiveness of the Tribunal.

The section of the Report on Tribunal Activity evidences the increase in the number of applications received by the Tribunal. They have risen from 3540 in 2011/12 to 4,605 in 2018/19, representing a 30 percent increase in the past 8 years. Compulsory treatment order applications continue to constitute the largest percentage of applications.

We continually evaluate the skills of the Tribunal's judicial members and administration. This ensures we are in a position to fulfil the duties placed upon the Tribunal and provide a high quality service. I have continued to provide a range of training opportunities for the Tribunal members. The contents of training are shaped by past practice and experience of our Tribunal operations and also reflect legislative changes.

There can be no doubt that the Tribunal operates within a culture of improvement. In recent years, it has also operated within an environment of transition. In my Annual Report of 2013/14, I discussed the implementation of the Tribunals (Scotland) Act 2014, which I welcomed, and noted the potential move of the Tribunal into the new structure for Scottish tribunals. The transition of the Tribunal into a standalone chamber of the First-tier Tribunal for Scotland, which has not yet taken place, will be a highly significant one and will continue to present challenges not only within the Tribunal, but throughout the mental health legal landscape.

This long period of transition, alongside the increased workload, has been challenging for the operations of the Tribunal and for the maintenance of our patient-centred tribunal process.

The Tribunal membership has remained relatively stable during 2018/19, with 359 members. We have lost 17 members during this reporting year, and plans are in place to recruit and train medical members in the near future. It should be noted that the Tribunal is a Scotland-wide body and hearings are provided in or near the places where the patients are located. At present we have over 80 venues in which cases are heard by the Tribunal.

The Tribunals (Scotland) Act 2014 provides that, upon transfer into the Mental Health Chamber of the First-tier Tribunal for Scotland, members of the Tribunal who are over 70 years of age can no longer automatically remain as members. This will impact on our ability to deliver services.

This Report serves to demonstrate the Tribunal's commitment, in all that it does, to the principles of the 2003 Act and to the continued involvement and participation of the patient throughout the tribunal process.

Finally, I would personally emphasise the need to maintain the focus of the Tribunal's work on the patient and keeping the patient firmly at the centre of Tribunal proceedings.

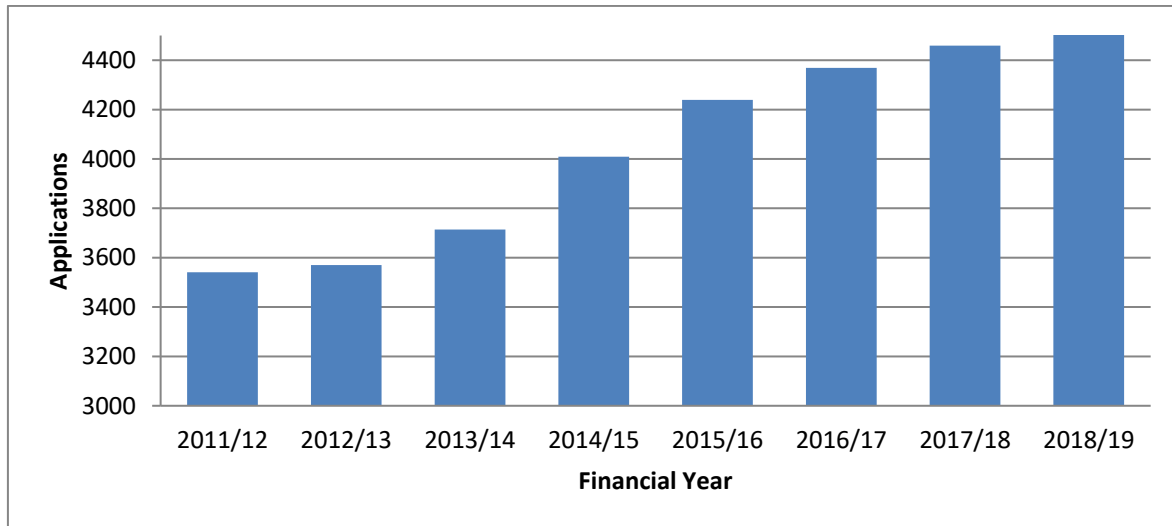
I commend this Annual Report to you.

A handwritten signature in black ink that reads "Joe Morrow". The signature is written in a cursive style and is underlined with a single horizontal line.

**Dr Joe Morrow CBE QC**  
**President**

# TRIBUNAL ACTIVITY

## Applications received by the Tribunal in the last 8 years



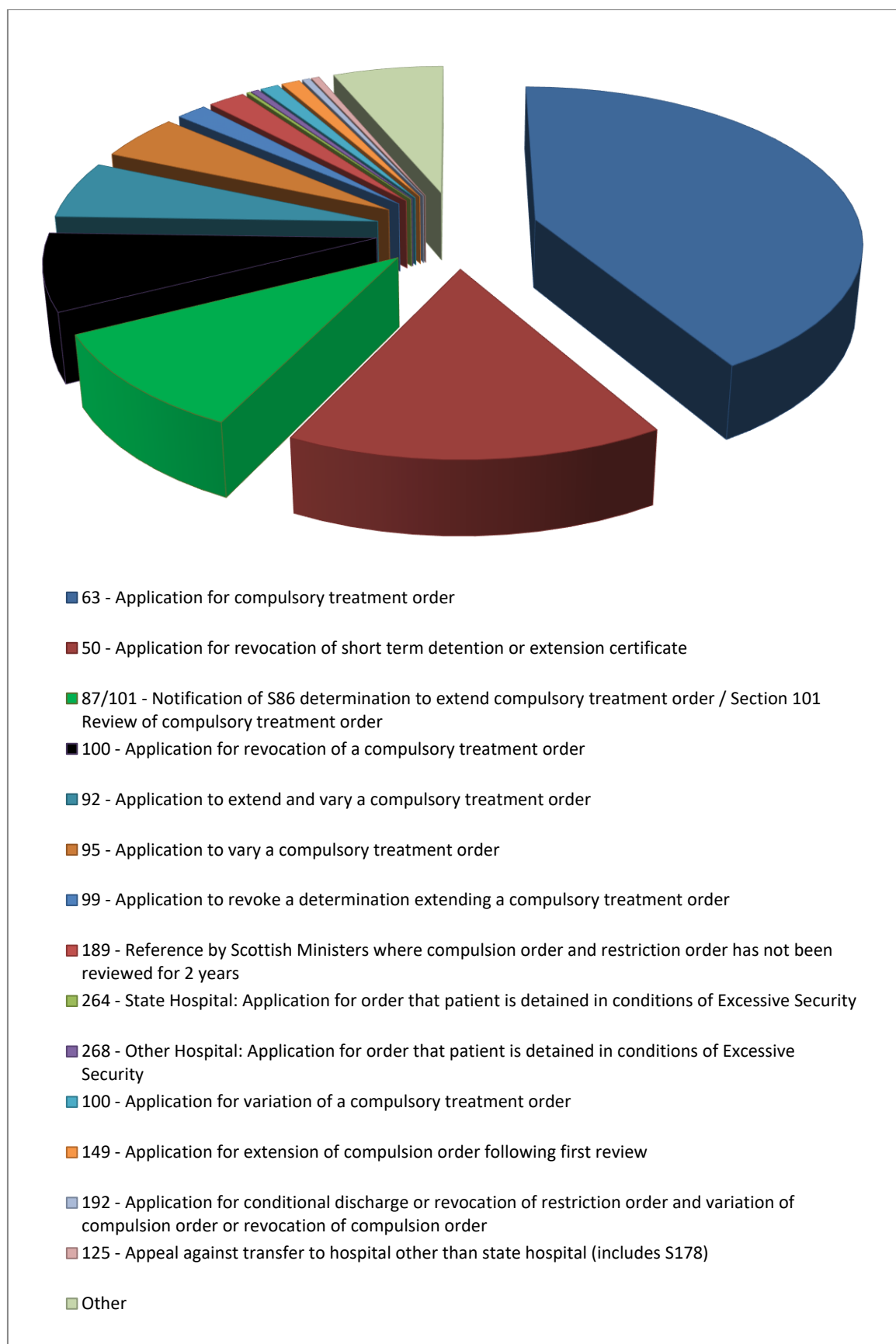
The above graph illustrates how the number of applications received by the Tribunal has increased since 2011/12, resulting in this financial year having the highest figure so far with 4,605 applications received.

Compulsory treatment order (section 63) applications continue to constitute the largest percentage of applications received, followed by applications to revoke short-term detention certificates (section 50). There were 32 excessive security applications in relation to patients detained in medium security (section 268/269).

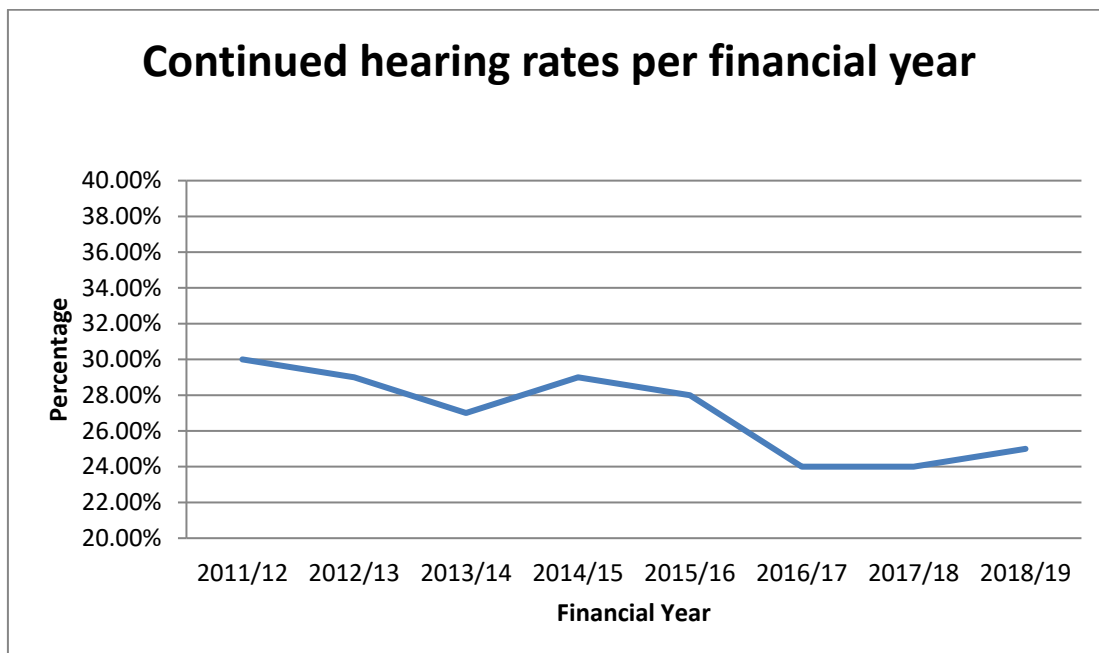
The Tribunal's Administration continually evaluates staffing levels and skills to ensure that a high quality and efficient service is delivered at all times.

The Key Performance Indicator (KPI) was once again met in 100% of cases in relation to the statutory timescale for holding a hearing for a section 63 application within 5 working days of the expiry of a patient's short-term detention certificate.

## Breakdown of the applications, appeals, references and reviews dealt with by the Tribunal in 2018/2019



## Interim Orders and Adjournments of Hearings



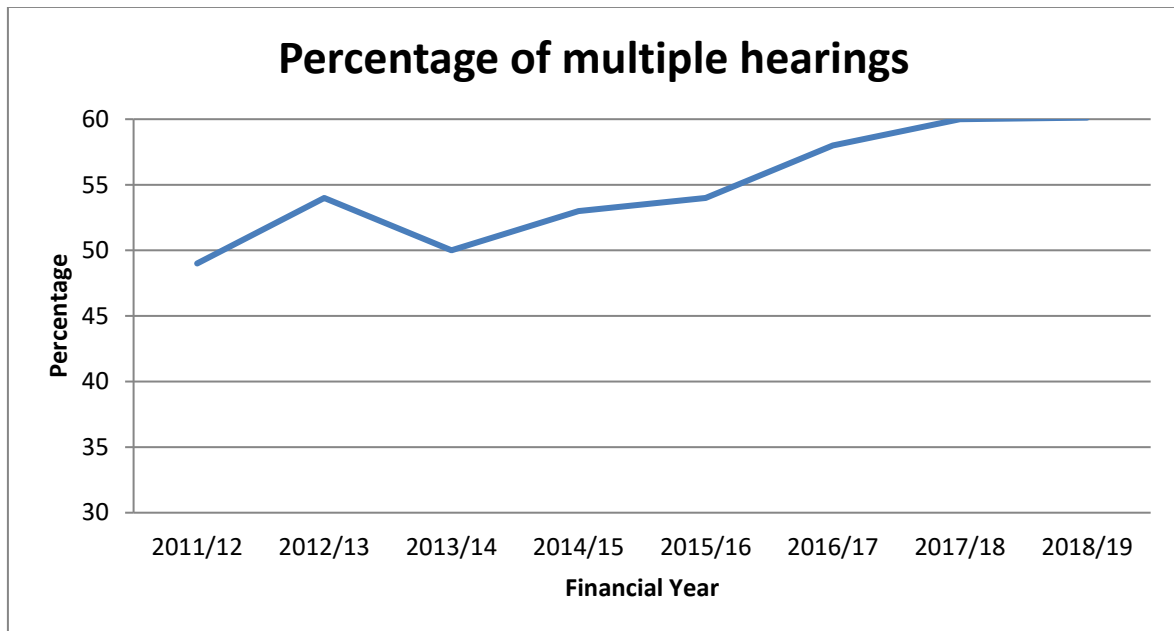
In total, 5,008 hearings were held in the financial year 2018/19, which is a slight increase on the previous year.

In this reporting year, 75% of cases were determined at their first calling, which is a 1% increase from the previous year.

The Tribunal Administration staff undertake a wide range of tasks prior to a Tribunal hearing taking place in order to ensure that, wherever possible, a case is determined at the first calling.

The Tribunal regularly evaluates existing practices in order to further reduce the number of continued hearings, while keeping in mind the key principles of the Tribunal, with the aim of improving the experience for all stakeholders and reducing financial costs.

## Multiple Hearings

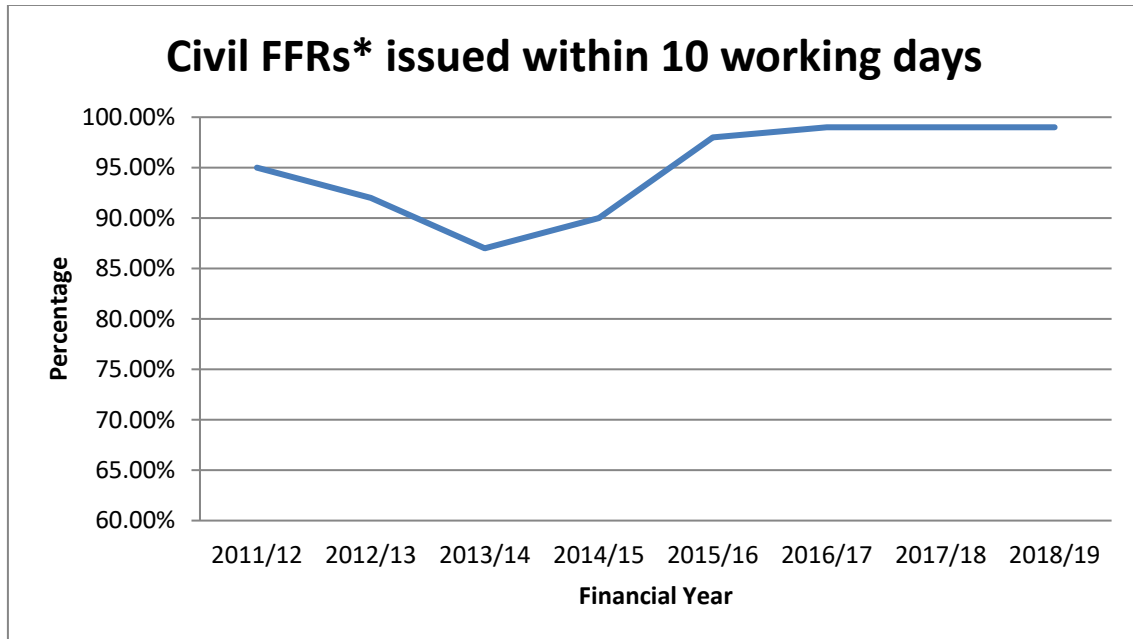


While maintaining a patient-centred approach, the Tribunal continues to focus on reducing the number of days required for hearings through implementation of the multiple hearings initiative, whereby a single Tribunal panel hears more than one case on the same day.

Both 2017/18 and 2018/19 saw the highest percentage of multiple hearings to date, namely 60%. The Tribunal's Administration work collaboratively with external stakeholders to ensure that the Tribunal is operating in the most efficient manner in relation to the scheduling of hearings.



## Civil Decisions



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

It is an essential part of the work of the Tribunal's Administration to ensure that parties to Tribunal proceedings receive the final decision paperwork in a timely manner (within 10 working days of the final hearing in a case).

This KPI is considered a priority for the Tribunal's Administration, and in 2018/19 we have achieved an annual result of 99%.

## TRANSITIONS AND PROGRESS

One of the themes that have influenced the Tribunal's work over the past year is that of transition. We have been preparing for change and considering what we do well, what works for Tribunal users and what we can do better. In-house Conveners and the team in the President's Office have been reviewing the work that we do to engage with stakeholders, including reference groups, which we hold on a regular basis. This year, we have started to look at how these platforms could and should change to reflect the experience of stakeholders and how that has developed since the Tribunal's early years. Work started during this financial year will carry on over the winter, allowing a refresh of the ways in which the Tribunal reaches out to and engages with all of the groups and individuals who have an interest in our work.

The most significant transition for the Tribunal has yet to take place: the transfer from our current stand-alone status to becoming a chamber within the First-tier Tribunal for Scotland (FTT). This transition has proven to be complex, with more detailed planning and statutory drafting required to ensure a smooth change-over. As a consequence, the Tribunal remains in the same position as it was at the end of the previous reporting year. Much work has been done over the course of the reporting year to facilitate this, and the Tribunal Administration will continue to work with Scottish Ministers and with the Scottish Courts and Tribunals Service to ensure that the needs of mental health tribunal users will be fully and appropriately met in the future.

One aspect of the transition to the FTT is that cases heard by the Mental Health Chamber of the FTT will have a right of appeal to the Upper Tribunal for Scotland, rather than to a Sheriff Principal sitting in a courtroom. Again, this is a transition which requires careful planning, to ensure that individual patients' rights are preserved and respected. All of those involved in planning and managing progress towards entering the FTT are tasked with the responsibility of ensuring high quality services, making improvements where possible, to ensure that mental health tribunal hearings remain fit for purpose and in accordance with the principles set out in the first section of the Mental Health (Care and Treatment) (Scotland) Act 2003.

This year has also taken us into a period of change and challenge across the wider legal landscape for mental health services. Scottish Ministers announced in March 2019 their intention to commission an independent review of mental health law in Scotland. The review will consider the future shape of incapacity, mental health and adult support and protection legislation.

The review group, chaired by John Scott QC, will examine current provisions with a view to strengthening rights and protections of those living with mental illness. It will also examine and address barriers to those caring for their health and welfare. The review will examine developments in mental health law and practice on compulsory detention and on care and treatment since the current legislation came into force in 2005. This follows on from work already underway to review incapacity law and practice and from a review of learning disability and autism.

**Jennifer Whyte**  
**Solicitor**  
**Legal Secretary to the Tribunal**

## TRIBUNAL MEMBERSHIP

| Total Number of Members | Legal Members | Medical Members | General Members | Part-time Sheriffs (also Tribunal Members) | Part-time Sheriffs (not Tribunal Members) |
|-------------------------|---------------|-----------------|-----------------|--|---|
| <b>359</b>              | 114           | 121             | 124             | 6  | 11  |

During financial year 2018/19, the Tribunal lost 17 members. Of those, 5 were general members, 5 were medical members and 7 were legal members.

Work has been done this year to recruit and train additional medical members, and this will be completed in the new reporting year of 2019/20, with 11 new medical members expected to take up post.

## CORPORATE STRUCTURE AND FINANCES

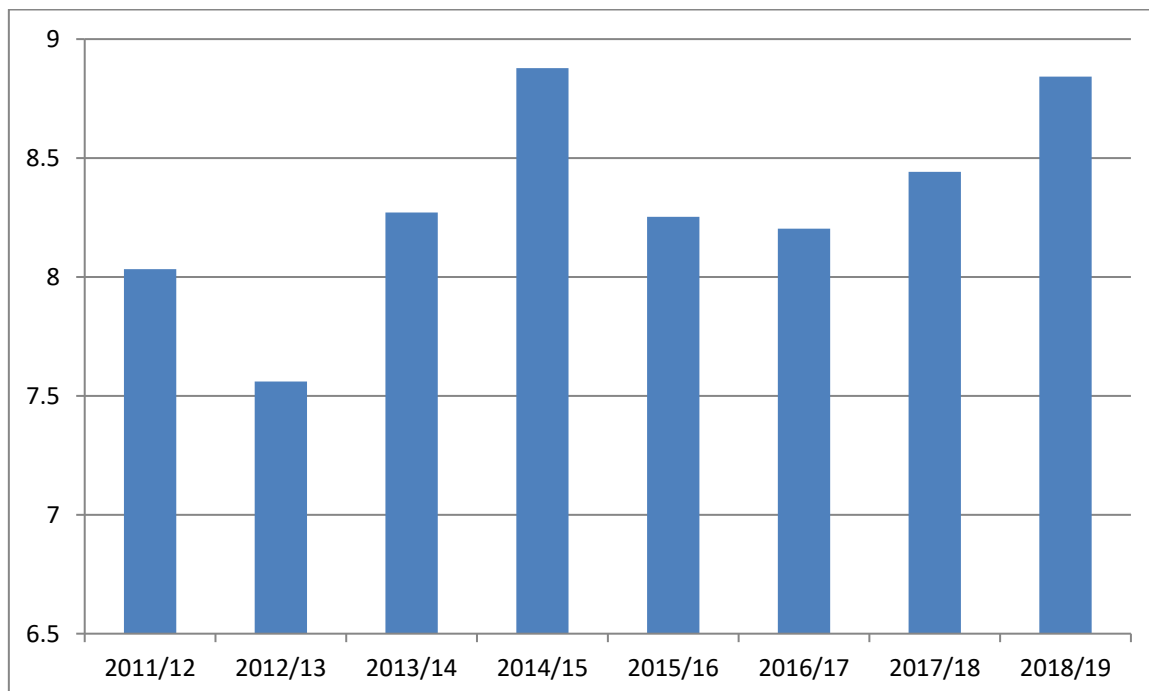
Expenditure relating to public relations, overseas travel, hospitality and entertainment and external consultancy by the Tribunal during 2018/19:

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

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## MENTAL HEALTH TRIBUNAL EXPENDITURE

### COSTS IN £M



# FINANCIAL RESULTS

## Scottish Courts and Tribunals Service Operating Cost Statement for the year ended 31 March 2019

| 2017/18                     |                            | 2018/19           |
|-----------------------------|----------------------------|-------------------|
| £000s                       |                            | £000s             |
| 6,191                       | <b>Tribunal Costs</b>      | 6,376             |
| <b>Administrative Costs</b> |                            |                   |
| 2,082                       | Staff                      | <b>2,295</b>      |
| 169                         | Other Costs                | <b>171</b>        |
| <hr/> 2,251 <hr/>           |                            | <hr/> 2,466 <hr/> |
| <b>8,442</b>                | <b>Net Operating Costs</b> | <b>8,842</b>      |

### Financial Performance

Costs have increased during 2018/19 by approximately £400,000 due to the continued increases in the Tribunal's workload.

There was a 2% increase in both hearings and hearings days compared to 2017/18. The Tribunal has achieved a 'multiple hearing rate' of 60% again this year, illustrating the continued strong collaboration between the Tribunal and the Administration to maximise hearings. Despite this ongoing efficiency, the continued growth in demand is leading to additional costs.