



Mental Health Tribunal for Scotland

ANNUAL REPORT 2021/2022

**This report covers the period
1 April 2021 to 31 March 2022**

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FOREWORD

In November 2021, when composing my foreword to the last Annual report, I wrote that we had managed to restore in-person hearings on a regular basis at eight hospital venues in Scotland, and that we planned to continue that process. Not long afterwards, owing to the Omicron variant of COVID-19, we were forced to halt that reintroduction and revert to telephone conference call as the default arrangement for almost all hearings. We did not completely return to the arrangements which had applied in the first lockdown, however, managing to continue to hold some in-person hearings even during the winter of 2021 to 2022, if rooms were available and individual circumstances required that format. At the end of February 2022, we were able to return to the arrangements which we had operated in mid 2021, with in-person hearings again being regularly available at seven hospital venues. That was therefore the position at the end of the reporting year.

At the time of writing, in November 2022, we have 15 hospital venues where an in-person hearing is available and four community venues, these four being in Glasgow, Edinburgh, Hamilton and Fife. We also offer WebEx hearings in a further three hospitals where, owing to specific local factors, WebEx appears a useful way of offering a visual hearing (that is, one not held over the telephone). We continue to try to increase the number of locations in which a visual hearing is available, although there are practical problems which are difficult to resolve in two moderate to high-volume hospital locations. In those locations, limited or no visual hearings are on offer.

We recognise that the system which operated prior to the pandemic, whereby all hearings took place in-person, is unlikely ever to return. One uniform way of holding hearings has been replaced by a set of three different formats. Patient choice must lie at the centre of what we do, and we therefore now utilise a simple preference form regarding type of hearing. We ask that this form is completed by the person lodging the application to the Tribunal, to record the type of hearing the patient wishes to have. The completion rate of these forms remains low, a matter which we are seeking to address. Whilst accepting the undoubted convenience to professionals of remote hearings, we suspect that the majority of patients would prefer an in-person hearing if possible, and a video hearing as an alternative. Research currently underway will provide further information on this issue. We will continue to try to improve what we offer, and also to encourage all participants to attend each hearing using the same method of communication as everyone else.

In the summer of 2021, the Tribunal undertook a recruitment exercise for all three categories of member. There was a very encouraging response, with a large number of well-qualified applicants. Selection was difficult. Ultimately, 39 new members were appointed and took up their roles at the beginning of 2022. We had organised a three-day induction training programme, to be delivered in-person, with a venue and external speakers booked. Omicron required us to convert the training to a virtual programme; the three days ran smoothly and attendees commented on the successful preservation of the course, albeit in an altered format.

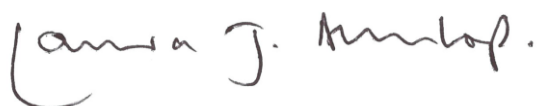
Both the new member training and our training for existing members in the Autumn of 2021 featured sessions on unconscious bias. Our training for existing members also included the related concept of conflict of interest. In addition, we utilised more sections of our mock tribunal film, made in the summer of 2020 and designed to improve tribunal craft in our particular jurisdiction. Some members have also had the opportunity to attend the Tribunal Craft course, run twice each year by the Judicial Institute for Scotland, and have benefited from the cross-tribunal mix of members and speakers present.

Beyond the day-to-day work of the Tribunal, we have also continued to hold biannual forums for stakeholders, respectively the responsible medical officers and mental health officers, and the service users, carers and advocacy workers who attend our hearings. It is, unequivocally, a welcome development that use of the WebEx platform means that we are joined by people from all over Scotland. Pre-pandemic, it would have been almost impossible for someone in Lerwick (to take the furthest away attendee) to participate in one of these events. Throughout the reporting year, the legal secretary and I were part of two subgroups of the Scottish Mental Health Law Review, chaired by Lord Scott, and we met regularly in these groups to offer contributions to the review team. The President's Office also takes part in a number of other stakeholder groups and periodic discussions regarding the operation of the system for non-consensual care and treatment of mental disorder in Scotland.

I must also mention the ongoing project to transfer the Tribunal into the First-tier Tribunal for Scotland. In November 2021, it was anticipated that this would occur in 2022, but the transfer has been further postponed. Formulating legislation to reflect the decision to reroute first appeals in restricted patient cases from the Court of Session to the Upper Tribunal continues to prove especially challenging. It is hoped transfer will take place in 2023.

Finally, I cannot end without acknowledging the sustained commitment of members of the Tribunal, and the operational teams who support us. Members continue to demonstrate invaluable adaptability in carrying out the Tribunal's task of determining applications made under the Mental Health (Care and Treatment) (Scotland) Act 2003. They bring sustained dedication and care to that work. Alongside members, our operations colleagues have carried on, under sustained pressure of work and, at times, with the unavoidable stress that attaches. The resilience shown at every level of the organisation is admirable. I must also thank my colleagues in the President's office for their constant support, whether in administration or as part of the team of in-house conveners who make interlocutory decisions each day.

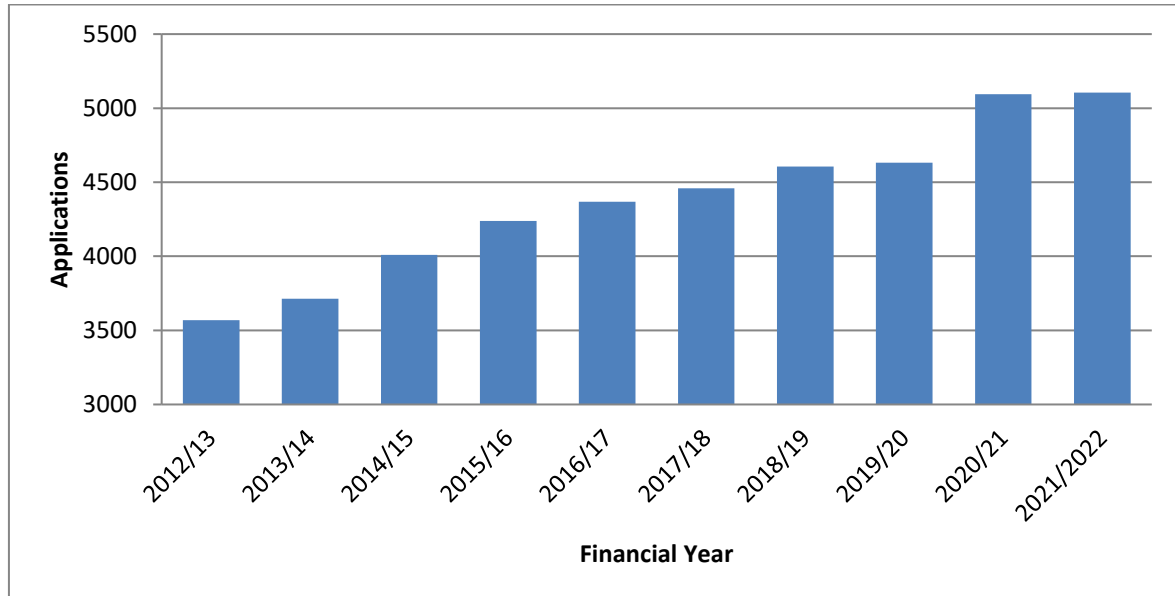
I pay tribute to everyone involved in this vital work, and commend to you the following account of our most recent reporting year.

A handwritten signature in black ink, reading "Laura J. Dunlop." The signature is written in a cursive, flowing style.

Laura J Dunlop KC
President

TRIBUNAL ACTIVITY

Applications received by the Tribunal in the last 10 years

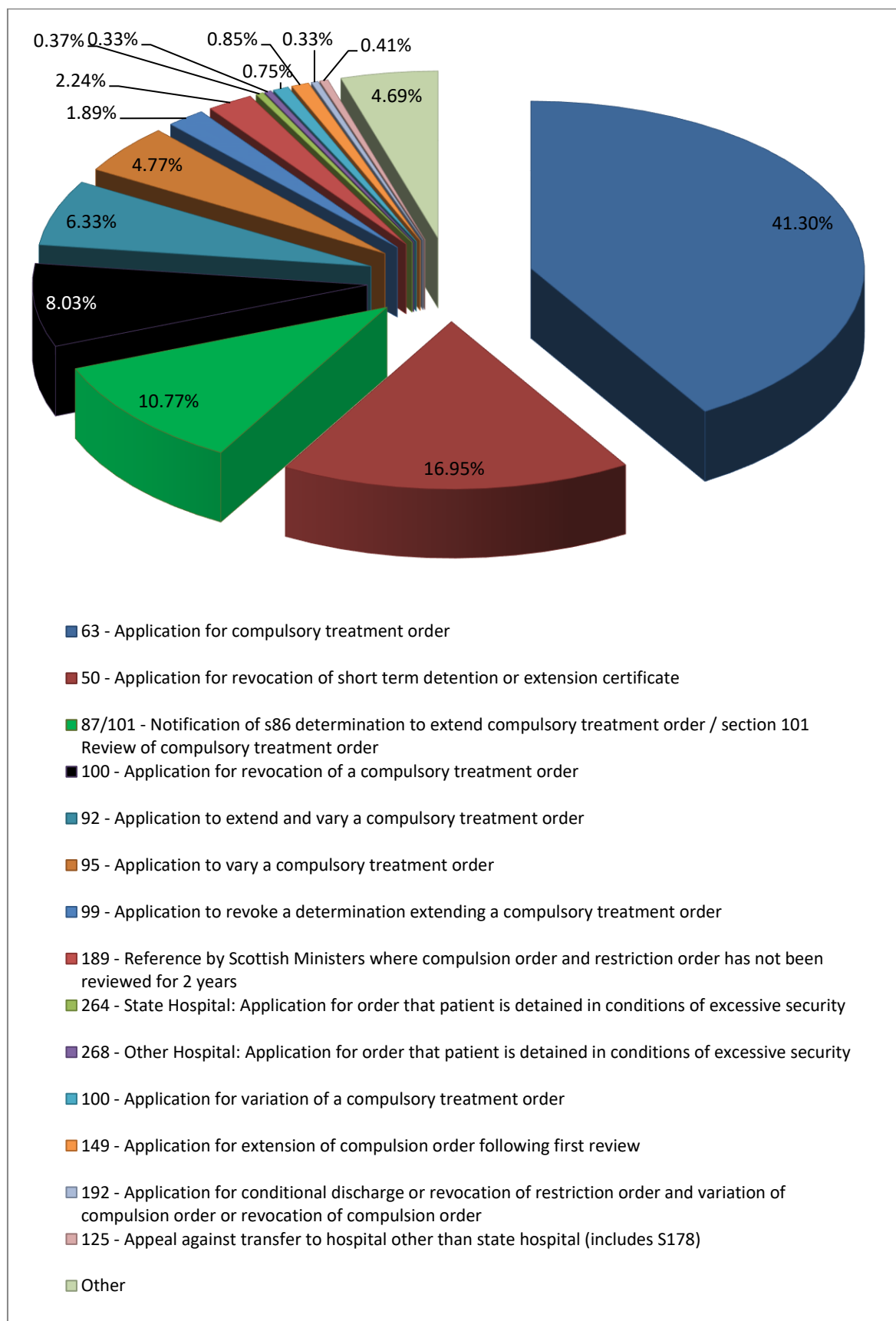


The above graph illustrates how the number of applications received by the Tribunal has increased since 2012/13, resulting this financial year in a total of 5,105 applications received. Compulsory treatment order (section 63) applications continue to constitute the largest percentage of applications received, followed by applications to revoke short-term detention certificates (section 50). The proportions of different applications are shown on page 4.

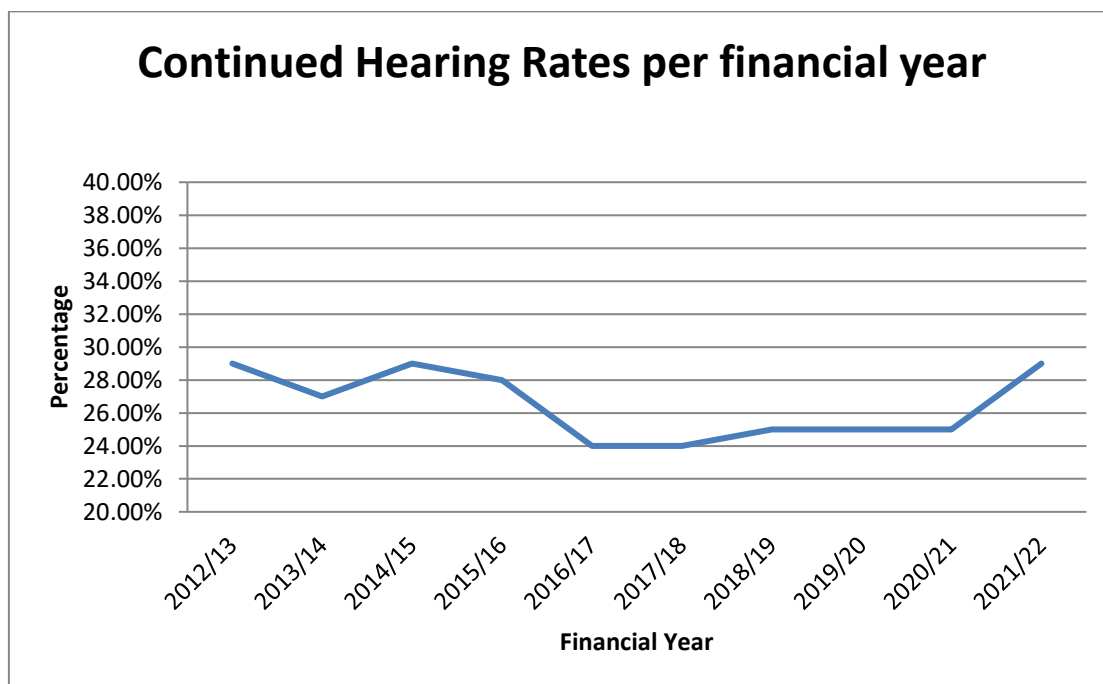
The Tribunal's Administration continually evaluates staffing levels and skills to ensure that a high quality and efficient service is delivered at all times.

Our primary Key Performance Indicator (KPI 1) reflects the statutory requirement to hold a hearing for a section 63 application within 5 working days of the expiry of a patient's short-term detention certificate. This was once again met in 100% of section 63 cases.

Applications, Appeals, References and Reviews dealt with by the Tribunal in 2021/2022, by individual sections of the Mental Health (Care and Treatment) (Scotland) Act 2003



Interim Orders and Adjournments of Hearings



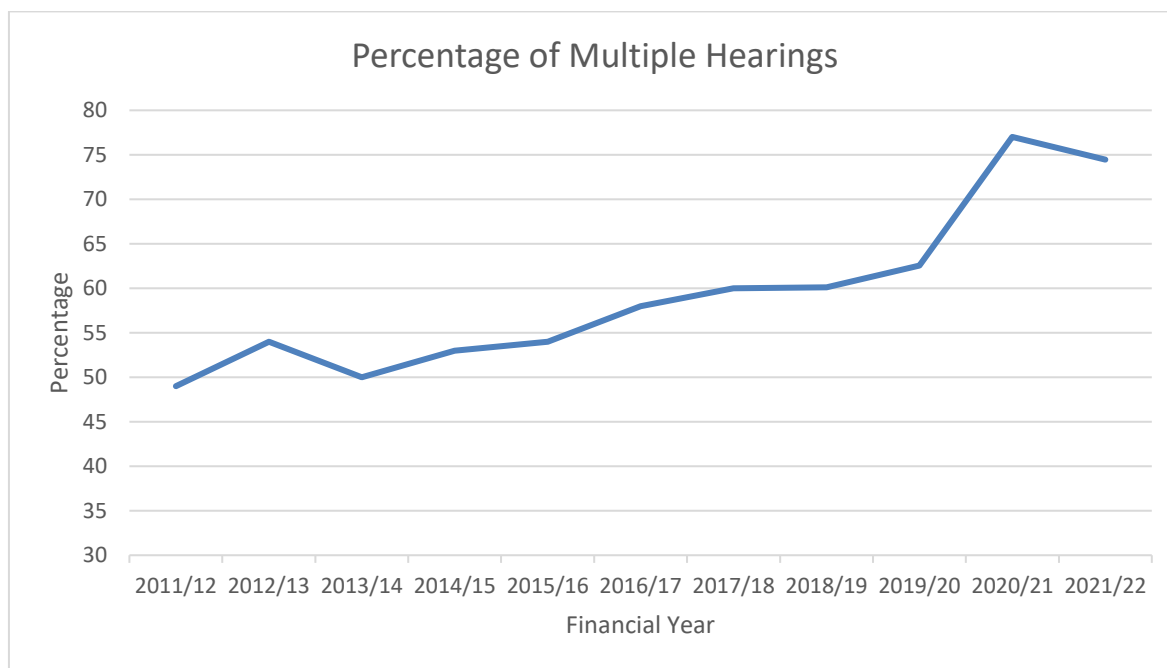
In total, 5,684 hearings were held in the financial year 2021/22, which is an increase of 367 on the previous year.

In this reporting year, 71% of cases were determined at their first calling, which is consistent with the previous year.

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

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

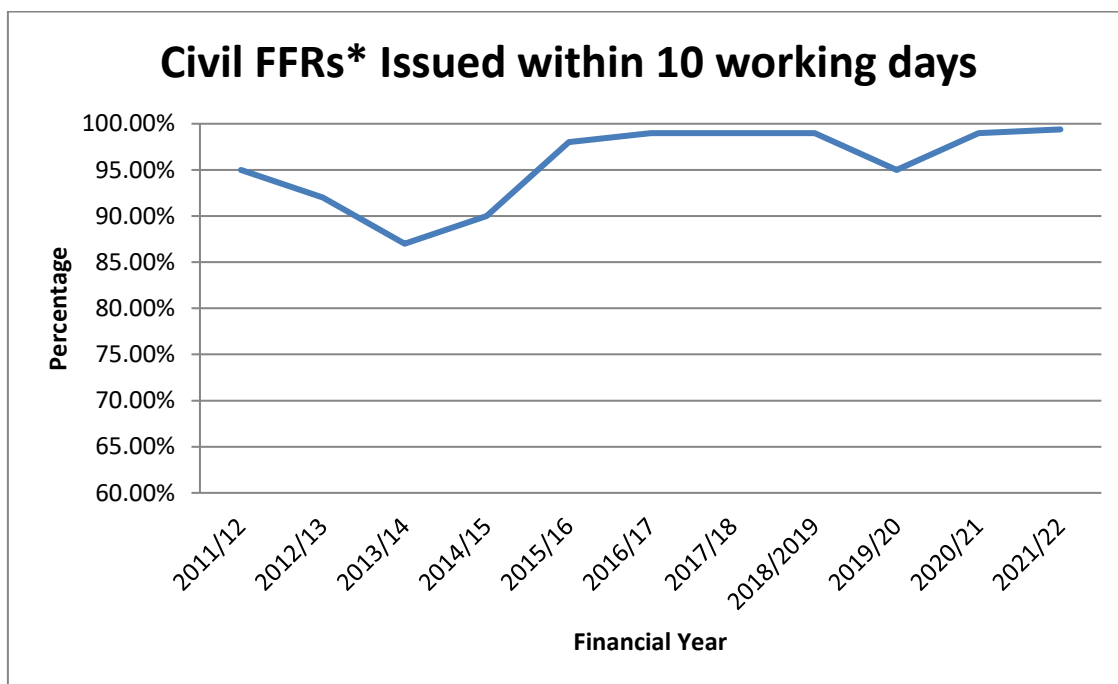
Multiple Hearings



Whilst maintaining a patient-centred approach, the Tribunal continues to focus on reducing the number of days required for hearings through implementation of the multiple hearings initiative, whereby a single Tribunal panel hears more than one case on the same day. Some types of hearing, for example those relating to children and young people under 18, are excluded from this initiative.

For some years now, the Tribunal has recorded the percentage of hearings which are held as part of a multiple hearing day. It is apparent from the table that there has been a steady increase in this percentage year on year since 2013/14. However, in 2020/21 there was a marked increase in the figure – from 63% in 2019/20 to 77% in 2020/21. The main reason for this increase was the increased potential for doubling up of hearings. This was not restricted by geographical location, given that the majority of our hearings were held by teleconference during 2020/21. We now see a drop in this percentage to 74% in the reporting year 2021/22, as more in-person hearings were re-introduced.

Civil Decisions



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

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

This performance measure is considered a priority for the Tribunal's Administration, and in 2021/22 we have achieved an annual result of 99.39%. This is attributable to the diligence of members, particularly legal members, in formulating the written decisions promptly after the conclusion of a hearing, and to efficient administration in distributing these documents.

COMPLAINTS AND APPEALS TO THE TRIBUNAL

Complaints and Appeals to the Tribunal under the Mental Health (Care and Treatment) (Scotland) Act 2003

Appeals against a decision of the Tribunal

Appeals were lodged with Sheriffs Principal by or on behalf of four individuals during the reporting period. Of those, one was not defended by the Tribunal, and was remitted back to the Tribunal to be considered again at a fresh hearing. Two appeals were refused and one was dismissed by the Sheriff Principal at a procedural hearing, as no remedy was available to the appellant. This decision was appealed in turn to the Court of Session, but that appeal was withdrawn by the appellant prior to any hearing.

Complaints

No complaints about members were remitted to the President for consideration by the Judicial Office. In relation to the conduct of hearings, concerns were received in respect of three tribunals. Of those, one was remitted to the Judicial Office, but no further action was taken. The other two were resolved informally, with apologies issued. Four further hearings were the subject of complaint in relation to a Curator ad Litem, acting on the Tribunal's instructions. These were investigated by the Legal Secretary and MHTS President and dealt with through alternative dispute resolution.

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

TRIBUNAL MEMBERSHIP

Total Number of Members* as at 1 April 2021	Legal Members	Medical Members	General Members	Part-time Sheriffs (also Tribunal Members)	Part-time Sheriffs (not Tribunal Members)
323	98	116	109	5*	11
				These members are included in the total number of legal members	

During financial year 2021/22, 15 members resigned from the Tribunal. Of those, 4 were general members, 8 were medical members and 3 were legal members.

40 new members were appointed on 1 December 2021; 15 general members, 12 medical members and 13 legal members. One appointee did not take up the post.

During training year 2021/22, the Tribunal delivered a total of 8 training events. Seven of the events were the one day of mandatory training for existing members and involved a mix of 2 in person dates and 5 virtual dates, with members having the choice to attend either in person or virtually. In January 2022, the Tribunal successfully delivered an induction training programme to the newly appointed members. This training programme was held over 3 days and delivered virtually on the WebEx platform. The Tribunal continues to use the WebEx platform to host various stakeholder and member forums.

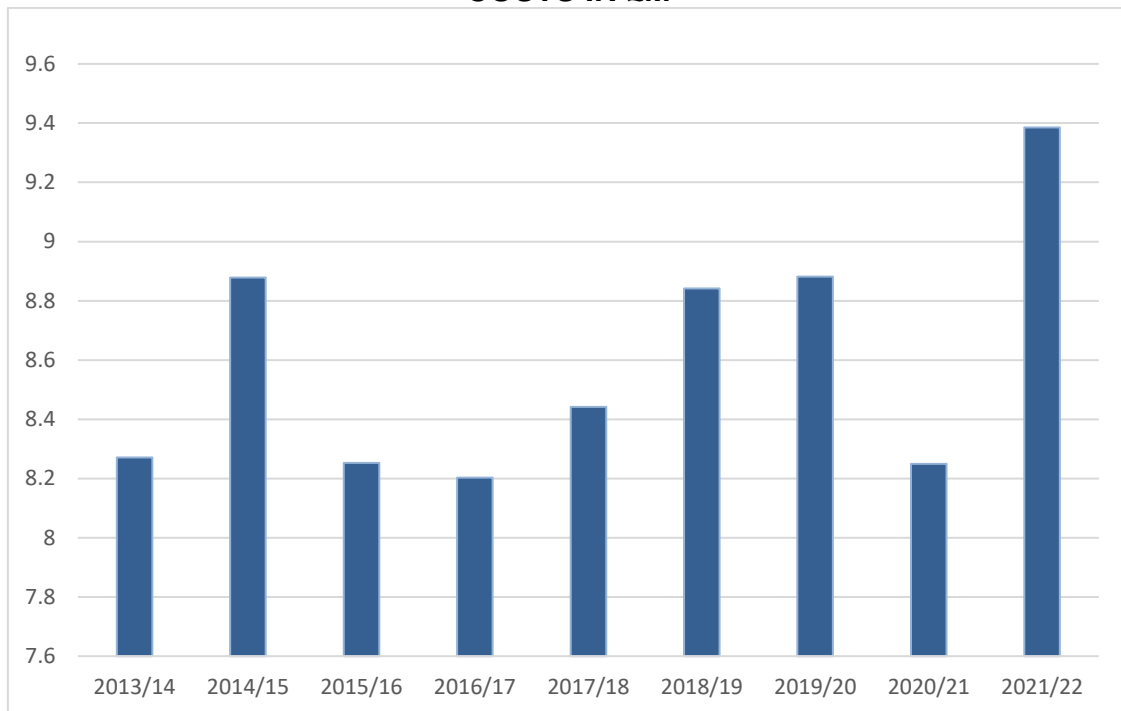
CORPORATE STRUCTURE AND FINANCES

Expenditure relating to public relations, overseas travel, hospitality and entertainment and external consultancy by the Tribunal during 2021/22:

Public relations	Nil
Overseas travel	Nil
Hospitality and entertainment	£190.94
External consultancy	Nil
Members and members of staff of the Tribunal who received remuneration in excess of £150,000	Nil
Payments with a value in excess of £25,000	Nil

Mental Health Tribunal Expenditure

COSTS IN £M



FINANCIAL RESULTS

Scottish Courts and Tribunals Service

Operating Cost Statement for the year ended 31 March 2022

2020/21		2021/22
£000s		£000s
5,592	Tribunal Costs	6,341
	Administrative Costs	
2,438	Staff	2,810
219	Other Costs	234
<hr/> 2,657 <hr/>		<hr/> 3,044 <hr/>
8,249	Net Operating Costs	9,385

Financial Performance

Costs have increased during 21/22, by approximately £1,135k. The increase in expenditure may be better seen in the context of a decrease in expenditure last year, when compared with 2019/20. The increase in expenditure since 2019/20 is £503k. This reflects the sustained increase in applications, and in the number of hearings, which has taken place over the two years since 1 April 2020. The multiple rate, which influences the cost of hearings, reduced from 77% to 74%, due to the adoption of three different formats for hearings and consequent complexity in scheduling.