



Mental Health Tribunal for Scotland

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# Members' Newsletter

## September 2024

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## Message from Laura J Dunlop KC



Dear Members and Sheriffs,

The work of the Tribunal continues much as usual, though we are very focused on the upcoming conference in Stirling on 24 October. The capacity of the main lecture theatre we are using is 350, and we expect to be close to that number, by the time members, speakers, invited guests, colleagues from operations and prospective new members are counted. A huge amount of work has been put in already, by Fiona, and by the in house conveners, who are presenting the afternoon workshops. I hope you will find the programme stimulating. It would be good if we all heard at least one piece of information or reflection that challenged what we think we know.

Picking up the reference to prospective legal members, I am pleased to tell you that we completed a recruitment exercise in August, after a sift process and four days of interviews. We had 102 applications, so each stage was exacting, with very fine distinctions having to be drawn among the many excellent candidates. Training will be in January 2025, after which the new recruits will be observing, then sitting. We hope this will alleviate the pressure to find conveners, evidenced by the number of bulletins in recent months seeking a legal member at short notice.

More widely, the summer has offered a number of opportunities for interaction with those who regularly attend tribunals and with the wider mental health community. At the end of August, I was at a thought-provoking conference exploring the work needed to increase the ethnic diversity of the justice system in Scotland. Kirsty and I were also pleased to be part of the Scottish Sentencing Council event on Mental health, neurodivergence, and learning disability in sentencing. At the beginning of September, I enjoyed being part of the development day for mental health officers in Fife. Lastly, I imagine everyone will recognise the photo at the top of this foreword. I took it at the end of a dinner in the Clarice Pears building at Glasgow University. This is a hugely interesting and ambitious development, bringing together many disciplines which are connected to improving health, both here in Scotland and on a global basis. The ground floor is a public space (with café!), entered from Byres Road (on the site of the former Western Infirmary). If you haven't yet seen it, do go. I can't recommend it highly enough.

Elsewhere in this newsletter, you will find an article by Kirsty Watson on the recent decision of the Court of Session in the case of AB v MHTS [2024] CSIH 21 which found that the tribunal's reasons for its decision were inadequate ([page 11](#)). It serves as a useful reminder of the need to explain clearly why a tribunal's decision is reached. There are also details on where you can find out more practical information about the upcoming conference on the Tribunal website ([page 5](#)). The information includes details on travel, parking and a site map of Stirling University Campus.

As always, I am so grateful to Jane Patrick and Jenna Swan for pulling together the newsletter. I hope you enjoy reading it.

Best wishes,  
**Laura J Dunlop KC**  
**President**



## MHTS Members' Conference Thursday 24 October 2024

The Tribunal looks forward to seeing members at the forthcoming members' conference being held at the Stirling Court Hotel, Stirling University, Bridge of Allan.

Members are asked to familiarise themselves with information regarding the conference on the members' area of the website; in particular information concerning travel, parking and potential car sharing.

[MHTS - Conference 2024 \(mhtscotland.gov.uk\)](https://mhtscotland.gov.uk)



## Tayside Members' Forum

### **Tayside Members' Forum: Thursday 28 November 2024 at 5pm**

You are invited to attend a "virtual" online forum on Thursday 28 November 2024 at 5pm (please note the change in start time).

**Topic:** Julie MacDonald, Andrew Paton and Fiona Graham from the MHTS Scheduling Team will provide an overview of the team's work, followed by an opportunity for members to ask questions. Please send any questions you may have in advance of the meeting to David Gilling.

**If you wish to attend, please email:**



## Recusal

In January 2018, a process was introduced whereby forms were to be completed and returned to the Judicial Office whenever members had to decline to sit on a tribunal for personal or professional reasons (usually conflict of interest). Members are reminded of the need to adhere to this rule. If you intimate before a hearing that you cannot sit, the responsibility to return the form to the Judicial Office is yours. If it happens at a hearing, the clerk is asked to do this, but it would help if members could bear in mind that this is a step that requires to be taken. The recusal guidance and form is found on the front page of the judicial members' area of the website.

# Uploading documents for clerks

Clerks have reported being unable to access some final FFRs and other decision documents due to the website being cleared of documents before they have recovered them.

To avoid this happening and to help clerks retrieve the relevant documents from the large number which are uploaded each day, the following process should be followed:

**Hearing Date** - the hearing date should be at least **2 weeks after the date of the hearing**. If the paperwork is being uploaded in the **last two weeks of the month**, then the hearing date should be **the end of the first week of the next month** (due to documents being removed from the website at the start of every month).

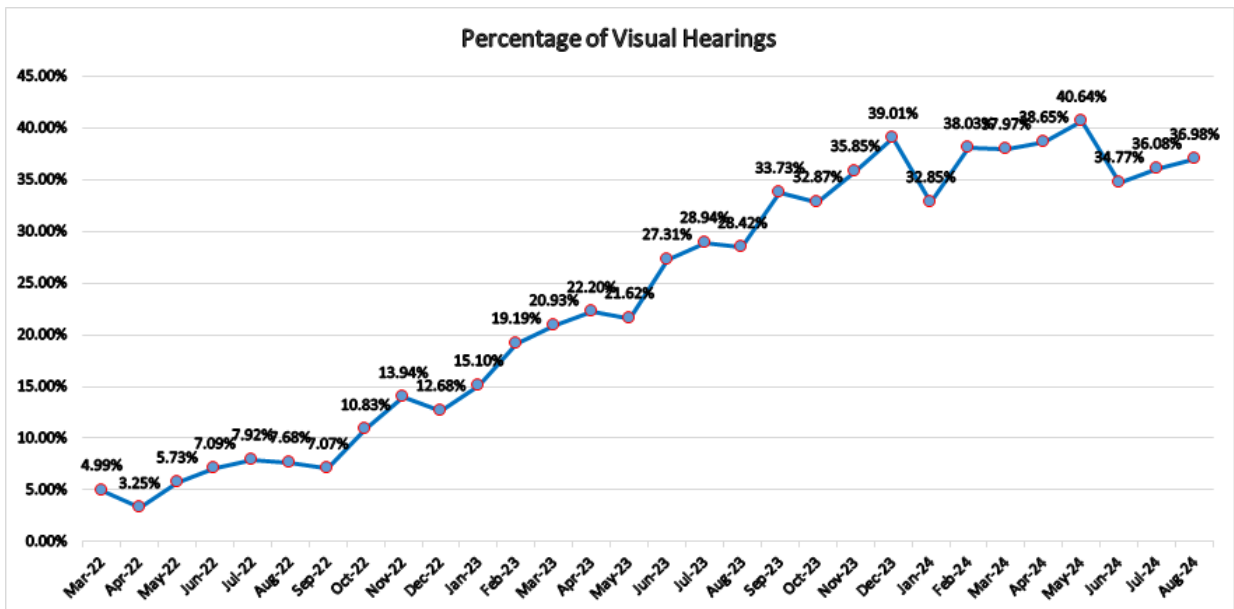
**Description** – please insert the following:

- FAO [*clerk's name*]
- Patient's name
- Hearing date



## Visual Hearings

This is the latest version of the graph showing the number of visual hearings (either video conference or in person) since March 2022. Efforts continue to increase the number of these hearings, almost all of which are in person.



# LawCare

LawCare is the mental wellbeing charity for the legal community. It is an independent charity run by volunteers from the legal profession. It offers free, independent and confidential support through its helpline, live online chat and email service. Its services are available to anyone in the UK legal community, including concerned family members. This includes all fee-paid tribunal members, not just those with a legal background.

All calls, chats and emails are responded to by trained staff and volunteers who have first-hand experience of working in the law. It provides a space to talk through how things are for you, whatever is on your mind. It can signpost you to other support agencies too.

The helpline number is 0800 279 6888 Monday – Friday 9am – 5pm

Online chat is available Tuesday, Wednesday and Friday- 9am – 5pm

[www.lawcare.org.uk](http://www.lawcare.org.uk)

For **World Mental Health Day (10 October 2024)** LawCare is highlighting the importance of mental health in the workplace, particularly how relationships with colleagues affect our wellbeing. It is offering **two free webinars** on **8<sup>th</sup>** and **10<sup>th</sup> October 2024** to support mental health and build healthier work relationships - [World Mental Health Day \(10 October 2024\) | LawCare](#).



## Scheduling

The Scheduling team is grateful to all those who reply to the APBs (All Points Bulletins) for members to sit at short notice. Please note only those who are available to sit should reply to these APBs. While the team appreciates the consideration of those who reply to say they are unable to sit, this is unnecessary and adds to the already large volume of emails which the team receives.

It would be appreciated if members could ensure that webroster is kept up to date with availability and any changes in conflicts of interest. **If your availability changes at any time, please add or remove available days from webroster as soon as possible.**

Please ensure when adding your availability onto webroster, that you enter the shift as 'Day'. If this isn't selected, your availability will appear as a minute and the schedulers will be unable to allocate you dates.

As a reminder:

- Select on webroster **the week** you are available
- Select **New**
- At **Shift**, select the down arrow and select **Day**
- **Tick the days** that week which apply
- Select **Save change**

# MHTS Members' Association

Currently there is NO COST to becoming a member of MHTSMA. All it takes is an email.

The Committee has continued to explore the issues of Pension Benefits and other employment rights. They have been supported in this by additional legal members offering their advice and expertise and we are very grateful to them for this. Mark Dennis has now agreed to be co-opted onto the Committee.

Following the President's email of 5th July relating to Remuneration representing holiday pay, the President offered to come to a Committee Meeting to explain the complexities around this and answer possible questions. This online meeting took place on 14th August. A committee Meeting took place online on 11th September to further discuss these issues.

**The MHTSMA AGM will take place online on Tuesday 26th November at 6.15pm** when members will be updated in relation to these matters. Reports will be sent out prior to the AGM.

The MHTS Members' Association would like to extend an invitation to all tribunal members (not just MHTSMA members) to a meal at Stirling Court Hotel on Wednesday 23rd October at 7.30pm. Please can you email Caroline Ritchie if you are interested by Sunday 6th October at the latest as the hotel requires numbers and payment in advance.

Máire Cooney has decided she needs to step down from the Committee due to other time commitments and I would like to thank her for her time and effort.

If any member is interested in joining MHTSMA, please can you contact Peter Bennie (secretary) by email. Peter can also send any member a link to the MHTSMA Forum on Microsoft Teams.

**Ruth Buchanan**  
**General member and chair of MHTS Members' Association**



## Judicial Hub - Reminder

This is a reminder that tribunal members should sign up to and access the Judicial Hub on a regular basis to remain abreast of the latest news and learning opportunities [Judicial Hub: Log in to the site](#).

The Hub's news section is updated throughout the week and provides various articles relevant to all judicial office holders. This includes information about the recent launch of the Dignity and Respect Policy for judicial officer holders.

The Hub also hosts a Tribunals' section which includes relevant information for each Chamber, such as guidance on claiming expenses.

Information on the Hub is updated frequently and can be accessed from any computer or profile. If you do not yet have log-in details, or if your email address changes, please contact the Hub team at [Judicialhub@scotcourts.gov.uk](mailto:Judicialhub@scotcourts.gov.uk)



# Giving Back to the Community

One thing that drives us in Tribunal operations and brings us together as a team is our shared desire to help those in need. Not only are we committed to doing our best for Tribunal users, we are also very passionate about the work we do to help support charities within the wider community.

## Foodbank Initiative

We recently set up a Foodbank Initiative across all Tribunal centres to donate non-perishable goods and toiletries to local foodbanks & charities; and this is something we plan to make a permanent feature. Bothwell House administration and the MHTS President's Office staff donated items which were taken to [Hamilton District Foodbank](#) at the beginning of September and they were very grateful for our donations as they are currently running really low on supplies, which is heartbreaking to hear.

The next charity which will benefit from our donations will be the Hamilton Churches' Drop-In Centre. The centre is based just around the corner from Bothwell House. It is opened every night to provide the homeless or people in crisis with a safe, warm place to go and a hot meal. It is also able to provide emergency clothing and shower facilities, if needed, so it provides an invaluable service to those in need.



Donations given to Hamilton and district foodbank in September 2024

## MacMillan Coffee Morning

On Wednesday 9th October we will be holding our annual MacMillan Coffee Morning, where there will be a variety of baked goods on offer and we get the chance to come together to eat cake, have a chat and most importantly, raise much needed funds for MacMillan Cancer Support. If you are near Bothwell House on this date, please pop in for a cake & a cuppa and help us to support this amazing charity.

## Barnardo's Spirit of Christmas Appeal

Some of you may remember the article from the January newsletter where we shared our efforts in supporting the Barnardo's Spirit of Christmas Appeal 2023. We started to donate to this appeal in 2018 as an alternative to the office Secret Santa and it's something that we are proud to say we will be continuing to support again this year. We have a contact from Barnardo's who provides us with a list of ages and genders of individuals and families they work with, and who use their service for a variety of different reasons, and we buy a gift for each person on the list. Sadly, Barnardo's advise that in many cases the gift we donate is the only one the child will get for Christmas.

We are also going to be able to accept donations, again via PayPal, which we will use to purchase vouchers to give to Barnardo's to use as they see necessary; whether it be to put with a gift, purchase more gifts or buy food for families etc. The Barnardo's appeal is something we are all proud to be a part of each year; coming together to make a difference for children is truly heart-warming. If you, too, would like to be a part of it and help support this appeal, please contact [Jenna Swan](#) from the President's Office who will be more than happy to give you further details.



**Donations made to Barnardo's – Christmas 2023**

**Gillian Hutton and Jenna Swan  
MHTS**

# Articles

## Inadequate Reasons: AB v MHTS [2024] CSIH 21

A decision of the Tribunal to direct Ministers to revoke a Transfer for Treatment Direction (TTD) was recently the subject of an Inner House Appeal. The appeal was allowed and the case was remitted back for consideration by a newly constituted Tribunal. The Opinion is critical of the written decision and serves as a reminder that the informed reader should be left in no real doubt as to why the Tribunal reached the conclusions it did.

### Background

In 1988 the appellant was convicted of rape and murder. He was sentenced to life with a punishment part of 14 years. Four years later he was transferred from prison to the State Hospital because of a deterioration in his mental health. Over the course of 30 years he had been a patient at several hospitals within the forensic estate. A review in 2023 concluded that the criteria for a TTD were no longer met and recommended its revocation. The Scottish Ministers, having obtained their own report, disagreed with the RMO's opinion and recommendation. They referred the case to the Tribunal. The appellant obtained a separate report which concluded that the criteria for a TTD continued to be met. After two days of evidence, the Tribunal determined that the criteria were not met and directed the ministers to revoke the TTD. Revoking the TTD would mean sending the patient back to prison. The appellant appealed to the Inner House against the Tribunal's decision.

### Decision and reasons

The critical questions for the Inner House were whether it was clear from the FFR that the Tribunal had addressed the correct issue (whether compulsory treatment in hospital continued to be necessary) and whether it was clear from the reasons that it had adequately explained why it reached the conclusions it did. It concluded that both ought to be answered in the negative.

The court felt that the informed reader was left in real doubt whether the Tribunal did in fact consider whether compulsory treatment in hospital continued to be necessary, rather than whether it was possible for the relevant treatment and medication to be made available to the appellant in prison. It appeared that the focus was on the latter. The Tribunal relied heavily on one expert's evidence, preferring it over that of the Ministers' and appellant's experts. The decision refers to the evidence that it would be "possible" to continue anti-psychotic care in prison and notes that it was accepted that if the appellant did not comply with his medication there was "more than a possibility" that his mental health would deteriorate. Even taking that into account, the expert concluded that the TTD was not necessary. The problem was that the decision offered no real explanation for the reasons for this conclusion. This is a serious defect as the Tribunal would not have been entitled to accept this conclusion if it lacked a properly reasoned basis.

## Two further observations

The first concerned the appellant's submission that the Ministers were obliged to revoke the TTD immediately upon receipt of the Tribunal's direction. The court disagreed finding that the Minister's duty is to act expeditiously in making arrangements for transition to prison and to revoke the TTD once that has been done.

The second involved the Tribunal's approach to the section 1 principles. The decision refers to evidence from one witness that the principle of maximum benefit to the patient would not be met with a transfer to prison because he would be segregated there. The decision noted that the patient was effectively segregated in his new (current) unit in the hospital. In fact, the patient was free to associate with the three other male patients in the unit, had contact with staff and was permitted regular escorted leave. The Court also referred to a MWC report on a visit to the unit for a description of the conditions in which the patient was living. In those respects the facts differed from those to which the Tribunal had regard when it applied the section 1 principles.

## Comment

Whilst it may seem obvious to us that all Tribunal hearings are concerned with whether or not compulsory treatment is necessary, consideration of the evidence on that point needs to be laid out explicitly in the FFR and there needs to be adequate explanation of why the Tribunal reached the conclusions it did.

Those who want to read the full decision can read it [here](#).

**Kirsty Watson**  
**Legal Secretary**

# Useful Information

## MHTS

- **MHTS News**  
[MHTS - News \(mhtscotland.gov.uk\)](https://www.mhtscotland.gov.uk/news)
- **MHTS Guidance on the Provision of documents in Tribunal applications (Revised)** (This guidance sets out the documents which will form the Tribunal papers in each type of application, review, etc, under the relevant sections of the 2003 Act)  
[MHTS - Guidance \(mhtscotland.gov.uk\)](https://www.mhtscotland.gov.uk/guidance)
- **MHTS Caselaw**  
[https://www.mhtscotland.gov.uk/mhts/Legislation\\_and\\_Caselaw/Legislation\\_and\\_Caselaw](https://www.mhtscotland.gov.uk/mhts/Legislation_and_Caselaw/Legislation_and_Caselaw)
- **MHTS Decisions** (This contains decisions which have been made by the MHTS)  
[https://www.mhtscotland.gov.uk/mhts/Legislation\\_and\\_Caselaw/Legislation\\_and\\_Caselaw](https://www.mhtscotland.gov.uk/mhts/Legislation_and_Caselaw/Legislation_and_Caselaw) - *click on this link and scroll to the bottom of the page to find the decisions table.*
- **AB v MHTS [2024] CSIH 21**  
[AB v MHTS \[2024\] CSIH 21](https://www.mhtscotland.gov.uk/mhts/Legislation_and_Caselaw/Legislation_and_Caselaw/AB_v_MHTS_2024_CSIH_21) - *click on this link to read decision*

## MWC Publications

- **Consent to treatment, Good practice guide, July 2024**  
[Consent to treatment good practice guide \(mwcscot.org.uk\)](https://www.mwcscot.org.uk/guidance/consent-to-treatment)
- **Advance statements, Good practice guide, September 2024**  
[AdvanceStatements-2024.pdf \(mwcscot.org.uk\)](https://www.mwcscot.org.uk/guidance/advance-statements)

## OTHER

- **Judicial Hub**  
<https://www.judicialhub.com/login/index.php>
- **Statement of Principles of Judicial Ethics**  
[STATEMENT OF PRINCIPLES OF JUDICIAL ETHICS \(judiciary.scot\)](https://www.judiciary.scot.gov.uk/statement-of-principles-of-judicial-ethics)

**\*Please note that links to informative publications are included for information only. Any views expressed in these publications are those of the author(s) and not those of the MHTS.**

## Clerks' Contact Details

<b>Team 1</b>		<p>Please email clerks on the following generic email address and not on their individual email address:</p> <p style="text-align: center;"><a href="mailto:MHTSHearingsOps@scotcourtribunals.gov.uk">MHTSHearingsOps@scotcourtribunals.gov.uk</a></p> <p>Post hearing paperwork to be uploaded to:</p> <p style="text-align: center;"><b>MHTS_FFR_Order</b></p> <p style="text-align: center;">on members' website</p> <p><b>Hearing Team Leaders:</b></p> <p>Team 1: Gordon Hope –</p> <hr style="border: 1px solid blue;"/> <p>Team 2: Sandra Devlin –</p> <hr style="border: 1px solid blue;"/> <p>Team 3: Jeanette Thomson –</p> <hr style="border: 1px solid blue;"/>
Alan Swan	07557484869	
Jean Allan	07917898792	
Paul Cowie	07917898801	
Gemma Barnes	07423779555	
Tajinder Singh	07919199569	
Stuart McLagan	07584158127	
Hanaf Hussain	07919199538	
Claudia Finlayson	07423779707	
Anne Lithgow	07917898823	
<b>Team 2</b>		
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Margaret Zachary	07917898796	
Mandy Miller	07385950477	
Chris Paterson	07884667970	
Stephannie Kydd	07786028852	
Martin Krummins	07393799214	
Nicola Bradley	07527899812	
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Grant Armstrong	07917898818	
Ian Bruce	07876884046	
Elaine Ferguson	07917898813	
Ellen Paterson	07423779977	
Calum Richardson	07884655908	
Margaret Higgins	07884655912	
Brooke Cairns	07901101615	
Margaret Higgins	07884655912	
Andy Dick	07769878509	

## Useful Contacts

### Scheduling Team

**(including re-setting Webroster passwords)**

[schedulingmhts@scotcourtribunals.gov.uk](mailto:schedulingmhts@scotcourtribunals.gov.uk)

❖ Telephone: 01698 390034

### e-Expenses Helpdesk

❖ [webrosterexpenses@scotcourtribunals.gov.uk](mailto:webrosterexpenses@scotcourtribunals.gov.uk)

### Finance Team

[opsfinancetribunals@scotcourtribunals.gov.uk](mailto:opsfinancetribunals@scotcourtribunals.gov.uk)

❖ Telephone: 01698 390054

### President's Office

**(including re-setting Website passwords)**

[mhtspresidentsoffice@scotcourtribunals.gov.uk](mailto:mhtspresidentsoffice@scotcourtribunals.gov.uk)

**Fiona Queen, Executive Assistant to President and Member Liaison Officer**

❖ Telephone:

**Jenna Swan, President's Office Secretary**

❖ Telephone:

## Newsletter Contributions

The Tribunal welcomes contributions to the Newsletter from all members.

Members who wish to contribute to the Newsletter should contact Jenna Swan at [MHTSPresidentsOffice@scotcourtribunals.gov.uk](mailto:MHTSPresidentsOffice@scotcourtribunals.gov.uk)

The following timescales will apply for contributions\*:

**January edition:** contributions by the end of November

**May edition:** contributions by the end of March

**September edition:** contributions by the end of July

**\*Contributions may require to be edited**