



Mental Health Tribunal for Scotland

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# Members' Newsletter

## May 2023

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## Message from Laura J Dunlop KC



Dear Members,

I was lucky enough to have a week's holiday last month, when we travelled to Budapest by train. I managed to walk along Jane Haining embankment, to be photographed there by my travelling companion and to visit the former school where Jane worked until arrested by the Gestapo in 1944. Originally from Dunscore near Dumfries, she is one of my heroines.

In terms of developments in the Tribunal, the period since the last newsletter at the end of January has not been a particularly eventful one. We still await definitive information about the transfer into the First-tier Tribunal, though there was a meeting last week to try to progress the legislation needed to support the rerouting of the restricted patient appeals to the Upper Tribunal. In the wider tribunals landscape, the Local Taxation Chamber is now up and running (since 1 April), being also headquartered in Hamilton. In addition, there has been a 'light touch' recruitment exercise for medical members of MHTS who wish also to sit in the Social Security Chamber. Thanks are due to all those who responded positively to this request.

In the President's Office, we are very pleased to have been joined by Kirsty Watson, our new legal secretary. Kirsty has now been with us for three months, and has settled in very well. She has written an introductory piece for this newsletter, and it appears on page 5.

Elsewhere in the newsletter there is an update from the Members' Association and an article on rule 58 cases. This newsletter also has a Data Protection and IT supplement which contains important information about data security and helpful tips for marking up PDF documents.

One of Kirsty's first projects was to tackle issues around interpreters. You will recall the guidance she sent out towards the end of February. We have had further communications with the largest health boards, and appear to have reached an understanding that an in-person interpreter should be provided for a patient detained in hospital wherever possible. This is irrespective of whether the actual hearing is telephone, WebEx or in-person. We are also arranging a WebEx event for members with two interpreters, one experienced in British Sign Language and the other a foreign language interpreter. I realise that the two types of interpreting should not be viewed as the same exercise, but there are some common points and we thought it preferable to hold one event rather than two. It is likely to be in the last week of June, in the early evening, and will be intimated to members very soon.

Turning then to arrangements for hearings, this continues to be a very challenging topic. We are still short of suites, with some hospitals not offering a consistent venue for us to use and even one not offering any accommodation at all, whether for in person or video. As members will realise from my bulk email sent at the end of April, it can also prove difficult to populate a particular hearing with members, especially if this is in person and especially for patients in the North of Scotland. I would again urge members to offer as much availability as they can, and reiterate that we do not have a category of membership which enables members to choose to participate in telephone hearings only. With some regularity, I am asked why we are still holding so many telephone hearings. I do not find this an easy question to answer. On a brighter note, we do now have 33 venues on our website as those where an in person hearing can be arranged, and 7 where WebEx is on offer. There will be further growth in those numbers.

Lastly, earlier this month I was pleased to attend a large gathering from across the mental health and capacity fields, hosted by the Scottish Government and designed to inform us all about progress thus far with the report of the Scottish Mental Health Law Review, chaired by John Scott. Since publication in September, the team have been analysing the report, and they have also held a number of round table events to elicit the views of different stakeholders as to what reforms to implement and the manner of proceeding. It was an informative and constructive discussion. There is much work ahead; to no one's surprise, the issues around those who lack capacity, including deprivation of liberty, are particular priorities. I am sure further information as to implementation of the different reforms will become available in the coming months.

It only remains for me to thank everyone for all that they do to maintain our hearings, whether the casework and clerking colleagues who arrange and staff the tribunals or the members who sit. The statistics to 31 March 2023 reflect a further increase in the number of applications received and it is to the credit of all involved that the service continues to be provided to such a high standard – perhaps especially so, given the challenges to which I have alluded above.

Best wishes,

**Laura J Dunlop KC**  
**President**

# News

## Introducing Kirsty Watson, new legal secretary



I have really enjoyed my first few months in the President's Office. I am very grateful to the casework teams and everyone in the President's Office for being so welcoming and for keeping me right as I get to grips with my new role.

Unlike the last few incumbents, I am not a secondee from the Government Legal Service and I am instead directly employed by SCTS. I've come from the Civil Legal Assistance Office (part of SLAB) where I covered the Highlands and Islands area doing a mix of housing, family and mental health and incapacity law. Other than a brief stint at a commercial law firm, I have practised in these areas since qualifying in 2010. Over the years I have represented many clients at Tribunal hearings in hospital locations and here at Hamilton House and it does still feel a little strange to be letting myself into the building and not immediately running back downstairs with a parking pass.

Now that I am no longer commuting from Hamilton to Inverness I have more time to indulge my hobbies of watching true crime documentaries and gin 'tasting' mixed with some competitive pursuits like board games and karaoke.

Please feel free to pop your head round my door if you are ever in Hamilton House as it will be good to put faces to names and I am very happy to be distracted with a chat.

## In-person and WebEx hearings

The Tribunal is now able to offer In-person hearings and WebEx hearings at the following venues:

<b>In-person</b>	<b>In-person</b>	<b>WebEx</b>
An Drochaid Centre, Fort William	Midlothian Community Hospital	An Drochaid Centre, Fort William
Ayr Clinic	Midpark Hospital, Dumfries	Dudhope House
Belford Hospital, Fort William	Murray Royal Hospital, Perth	Forth Valley Royal Hospital
The Bruce Centre, Dumbarton	New Craigs Hospital	Glasgow Royal Hospital for Children and Young People
Carseview Centre, Dundee	The Priory, Glasgow	Mid Argyll Hospital
Dr Gray's Hospital, Elgin	Rohallion, Murray Royal	Rohallion, Murray Royal
Dudhope YPU, Dundee	Rowanbank	Rowanbank
Dykebar Hospital	Royal Cornhill Hospital	Royal Cornhill Hospital
Falkirk Community Hospital	Royal Edinburgh Hospital	Skye House
Galavale, Galashiels	St John's Hospital	The State Hospital
Gartnavel Royal Hospital	Skye House	
George House, Edinburgh	Stobhill Hospital (Nevis Building)	
Glasgow Royal Hospital for Children and Young People	Stracathro Hospital, by Brechin	
Glasgow Tribunal Centre	Stratheden Hospital	
Hamilton House	Wishaw General	
Hairmyres Hospital	Woodland View	
Langhill, Inverclyde	Wemyssfield	
Lynebank Hospital		

- ❖ Members sitting on WebEx hearings will be asked to attend Hamilton House, George House in Edinburgh or the Glasgow Tribunal Centre to conduct the hearings from there.
- ❖ Members are reminded that, if adjourning a case for a further hearing at one of the venues stated above, the patient's preference for the mode of the next hearing should be sought.

# Conflict of interest and recusal

## Conflict of interest

Given the current difficulties experienced by the Scheduling team, members are reminded to check papers as soon as possible after they are uploaded to ensure there is no conflict of interest. In the event that the member wishes advice in relation to a potential conflict of interest, they should contact the President's Office to discuss this with an in-house convener or Kirsty Watson, the legal secretary. The Scheduling team is not able to assist with such queries so please only contact them if you require to withdraw from sitting on a case and not for advice.

## 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.



## Scheduling reminder

It would be appreciated if members could ensure that webroster is kept up to date with availability and any changes in conflicts of interest.

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 changes**

**If your availability changes at any time, please add or remove available days from webroster as soon as possible.**

## Date of appointment of curators *ad litem*

Members should be aware that the date of a Rule 55 interlocutor is not necessarily the date the appointed solicitor receives instruction to act as curator *ad litem* in a case. This is because caseworkers, following processes to prioritise their workload, may take some days to action the Rule 55 interlocutor and contact the appointed solicitor to advise them of their appointment. So, if it is relevant to proceedings, please check with the curator *ad litem* about the date they were advised of their appointment.



## Historical papers on members' area of the website

IT is aware of the issue concerning papers not being automatically deleted from the members' area of the website after a tribunal hearing. If members find that their papers have not been deleted after one month, please contact Fiona Queen who will arrange for them to be removed manually: [fqueen@scotcourtribunals.gov.uk](mailto:fqueen@scotcourtribunals.gov.uk)



## 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.

The Hub 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 .....



# Additional parking at the Royal Edinburgh Hospital

An additional parking area has been created at the Royal Edinburgh Hospital, as shown in the image below. This will be available for use by tribunal members attending hearings there on a first come first served basis.

## Parking at Royal Edinburgh - Additional Parking Area

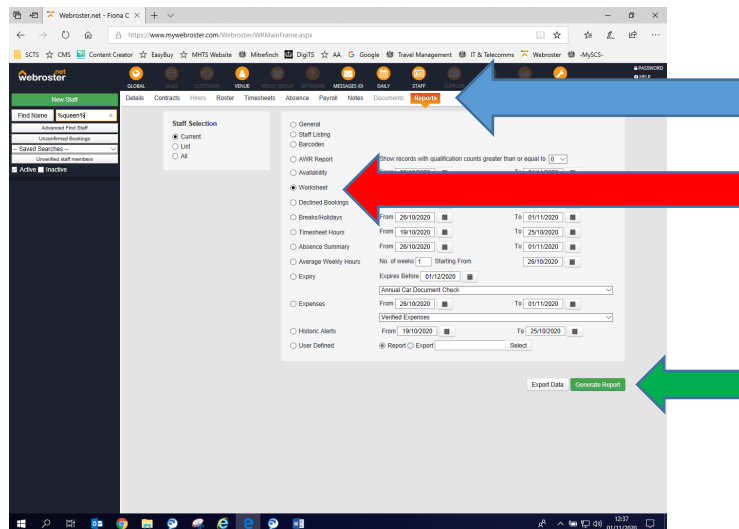
There has been an additional parking area created at the Royal Edinburgh Hospital. This area can be used when attending tribunal hearings at the venue, it will be available on a first come first served basis. The new parking can be found in the picture below.



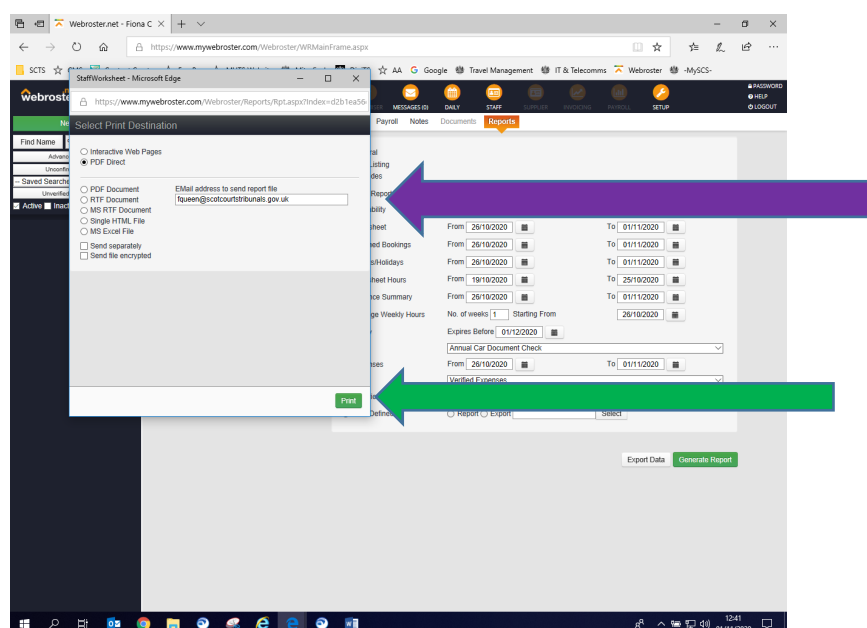
## How to run a sittings report from webroster

Members are advised they can run a report directly from webroster with this information. This information is required for member reviews. Details are as follows:

Click on **'Reports'** tab found on the white ribbon at the top of the webroster page (please note screen shot below). Shade the **'Worksheet'** dial and input dates. Click the green **'Generate Report'** button at the bottom of the page (this will produce a new screen).



In the new screen, **input your email address** and shade either the **'PDF Direct'** or **'PDF Document'** dial and then click the green **'Print'** button. 'PDF Direct' will produce a report which will pop up immediately on your screen. 'PDF Document' produces a pdf report which will be emailed to you.



## MHTS Members' Association

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

The MHTS Members' Association ('MHTSMA') met online on 24th January when there was discussion in relation to response from the Directorate for Justice at Scottish Government in relation to the daily fee increase. There was also discussion re IT and Data Protection issues as MHTSMA had raised a number of concerns with the President's Office in relation to the expectation that we should be moving towards a paperless system. The issue of returning to face to face hearings, concerns about the low return of patient preference forms and whether patients were aware of the choice of having a face to face hearing was also discussed. Concerns were also raised in relation to hearings involving an interpreter and it was agreed that Brian and Ruth would add 'interpreters' to the issues to be discussed with the President.

The minute of the meeting, information relating to venue information held on MHTS website, feedback on Remote Hearings Research Project Focus Group and an update re MHTSMA fees was posted on the MHTSMA Microsoft Teams Forum. Members were also asked to post any ideas they had for MHTSMA events and activities for 2023.

On 10th February Brian and Ruth met with The President, Kirsty Watson (the new Legal Secretary) and Scott Blythe.

The President explained that throughout the justice system all modalities of hearing (in person, telephone and video) will be used but that in the Tribunal, hearing type is

about patient preference. The President highlighted when you are running a time critical process then defaults require to be in place as a starting point but changes can be made. Face to face hearings are now available in approximately 80% of venues (by volume). Hamilton House is a WebEx hub, as will be George House in Edinburgh. A Glasgow based WebEx hub is currently being reviewed. The default for Forth Valley Royal, Argyll & Bute and The State Hospital will be WebEx hearings. There is flexibility and no specific hearing request can be completely dismissed. 'Visual hearing' stats (in person/WebEx) are passed to the President on a weekly basis. The hearing preference form has been cascaded to all stakeholders and is available on the MHTS website. Advocacy workers can prompt MHOs/RMOs to submit the preference form. In relation to interim orders, the President confirmed that, where there was a need for a further hearing, the tribunal could ask the patient if they had a preference for in-person or teleconference for the next hearing.

The President advised that interpreters are a huge issue. Statutory responsibility for interpreters for patients lies with hospital managers but the Tribunal are considering what requests can be made for in person interpreters and whether it is possible to request the same telephone interpreter for the whole hearing.

The President advised that the website is going to change. Scott confirmed that guides will be published but that the members' area of the website will not be changing at the moment. Scott advised that a further IT supplement will be issued again this year with an update to cover devices.

The President advised that if members felt they required guidance then they could contact Scott and that if there was a gap (and not just with IT), then MHTSMA should advise the President's office with specific details.

There are concerns with the removal of posting of CORO papers however for security reasons this had to happen. The Tribunal will look into issuing simple guidance on how to bookmark.

The President requested that MHTSMA pass onto members that they email caseworkers with any queries relating to a hearing rather than phoning.

Fiona Queen kindly took a note of the meeting and this is available on MHTSMA Microsoft Teams.

The Committee met online on 23rd March when the main topic of discussion was the meeting with the President. It was also agreed to send a survey to all members seeking clarification as to what would be their preferred method of communication. Minutes will be uploaded onto MHTSMA Microsoft Teams Forum.

On 10th May MHTSMA held a committee meeting and a members' meeting (both online). Both sets of minutes are available on MHTSMA Microsoft Teams and minutes of the members' meeting have been emailed to all members. Maire Cooney, Rob Gray, Lovely Rajan and Perminda Sihra have all agreed to be co-opted onto the committee.

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

**Ruth Buchanan**

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

# Articles

## Rule 58: Power to decide case without oral hearing

Members will recall that rule 58 of the 2005 Rules gives the Tribunal the power to decide a case without an oral hearing where certain conditions are met. Essentially it means that such cases are decided by the three tribunal members considering the written evidence only.

The conditions for cases to be determined in this way are set out in rule 58(1), namely:

- (a) the Tribunal considers that, having regard to the nature of the issues raised in the case, **sufficient evidence** is available to it to enable it to come to a decision without a hearing;
- (b) to hold a hearing in this way will **not be contrary to the interests of the patient**;
- (c) the Tribunal has given **notice** to those who require to be afforded the opportunity of making representations or of leading or producing evidence that it is proposing to dispense with an oral hearing;
- (d) **the patient has not applied for oral representations or oral evidence to be heard**;
- (e) no other person has, in the opinion of the Tribunal, shown cause why there should be an oral hearing;

Cases deemed suitable to be determined in this way are some two year reviews (provided the previous review was not determined under rule 58), an application to extend and vary a hospital-based CTO or CO to a community-based one or an application to vary a CTO or CO in the same way. Some CORO cases, for example section 189 or 213 references, and some excessive security applications, may also be suitable. Appropriate cases are identified either by caseworkers using parameters given by the President's Office or when a request is made by a party for the case to be determined under this rule.

When a case is identified as potentially suitable to be dealt with under rule 58 or this is requested, the caseworker sends the application or review papers over to an in-house convener or the President. They then scrutinise the application or review and assess if the conditions (a) and (b) above are met. They may decide that further information is required in which case they will ask the caseworker to request this.

Once the in-house convener or the President is satisfied that there is sufficient evidence available to enable the Tribunal to reach a decision and that it would not be contrary to the interests of the patient, they will advise the caseworker to send out notice to the patient and to other notified persons of the Tribunal's proposal to dispense with oral representations and oral evidence. The Tribunal has pro-forma letters which are used for this.

If a patient requests an oral hearing, then an oral hearing will be scheduled. If another notified person applies for an oral hearing, the in-house convener or the President will decide if that person has shown cause why oral representations or oral evidence should be heard. If cause is shown an oral hearing will be fixed, otherwise the case will proceed under rule 58. A person may choose not to request oral representations or oral evidence but may still wish to make representations. Any written representations received will form part of the Tribunal papers and will be circulated to members and parties in the usual manner.

The important point for members to note is that, when they receive papers for a rule 58 hearing, the above process has been followed and the decision has been made about the suitability for the case to be determined under rule 58. So members are not required to assess whether the case is suitable for rule 58. In the absence of a new factor coming to light which necessitates an oral hearing, to overturn the decision that the case should proceed in accordance with rule 58 would breach the principle of finality in decision-making.

Rule 58 cases will usually be scheduled as a second case in a double hearing. Members should consider the case in the normal way and then complete the usual paperwork. The FFR should narrate that the case has been determined using the rule 58 procedure.

Advice is always available from the President's Office should any issue arise in relation to such cases.

# Useful Information

- Judicial Hub  
<https://www.judicialhub.com/login/index.php>
- Safer services: A toolkit for specialist mental health services and primary care, The National Confidential Inquiry into Suicide and Safety in Mental Health, NCISH/The University of Manchester, 2022  
[display.aspx \(manchester.ac.uk\)](display.aspx (manchester.ac.uk))

## Mental Welfare Commission Publications

- The right to advocacy - A review of how health and social care partnerships, local authorities and NHS boards are discharging their responsibilities under the Mental Health (Care and Treatment) (Scotland) Act 2003  
[TheRightToAdvocacy2022\\_April2023.pdf \(mwscot.org.uk\)](TheRightToAdvocacy2022_April2023.pdf (mwscot.org.uk))
- Good practice guide: The use of mental health legislation for individuals with 'drug-induced psychosis' May 2022  
[DrugInducedPsychosisAndTheLaw-GoodPracticeGuide\\_2022.pdf \(mwscot.org.uk\)](DrugInducedPsychosisAndTheLaw-GoodPracticeGuide_2022.pdf (mwscot.org.uk))

## MHTS

- MHTS Ethnicity Survey of Membership  
[MHTS - News \(mhtscotland.gov.uk\)](MHTS - News (mhtscotland.gov.uk))
- Response of the Mental Health Tribunal for Scotland to the Study of Experiences of hearing attendees by Edinburgh Napier University and Queen's University Belfast published in September 2022  
[MHTS - News \(mhtscotland.gov.uk\)](MHTS - News (mhtscotland.gov.uk))
- SUCAW Reference Group, Note of meeting on 15 May 2023  
[MHTS - Stakeholder Forums \(mhtscotland.gov.uk\)](MHTS - Stakeholder Forums (mhtscotland.gov.uk))
- MHTS Guidance to Tribunal members No. 1/2023 Foreign Language Interpreting and Translation  
[https://www.mhtscotland.gov.uk/mhts/files/members\\_area\\_files/2023-01\\_Guidance\\_on\\_hearings\\_involving\\_translation\\_and\\_interpretation.pdf](https://www.mhtscotland.gov.uk/mhts/files/members_area_files/2023-01_Guidance_on_hearings_involving_translation_and_interpretation.pdf)
- MHTS Guidance on the Provision of documents in Tribunal applications (Revised May 2023) (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 \(mhtscotland.gov.uk\)](MHTS - Guidance (mhtscotland.gov.uk))
- 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.**

- X v Mental Health Tribunal for Scotland [2022] CSOH 78; 2022 SLT 1234  
(In this case, Lord Harrower granting declarator that the absence of a power under the Mental Health (Care and Treatment) (Scotland) Act 2003 to enable a tribunal to specify recorded matters in relation to a patient, who had been acquitted of a criminal offence but had been made subject to a compulsion order, violated ECHR art.14 and was unlawful.)  
[2022csoh7850f1e686ae964420b6bc8f4b9307748f.pdf \(scotcourts.gov.uk\)](https://www.scotcourts.gov.uk/2022csoh7850f1e686ae964420b6bc8f4b9307748f.pdf)

**\*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><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 – 01698 292007 <a href="mailto:ghope@scotcourtribunals.gov.uk">ghope@scotcourtribunals.gov.uk</a></p> <p>Team 2: Sandra Devlin – 01698 391013 <a href="mailto:sdevlin@scotcourtribunals.gov.uk">sdevlin@scotcourtribunals.gov.uk</a></p> <p>Team 3: Jeanette Thomson – 01698 390004 <a href="mailto:jthomson3@scotcourtribunals.gov.uk">jthomson3@scotcourtribunals.gov.uk</a></p>
Alan Swan	07557484869	
Jean Allan	07917898792	
Paul Cowie	07917898801	
Margaret Higgins	07884655912	
Gemma Barnes	07423779555	
Tajinder Singh	07919199569	
Stuart McLagan	07584158127	
Hanaf Hussain	07919199538	
Kirsten Tough	07943237266	
Claudia Finlayson	07423779707	
<b>Team 2</b>		
Jennifer Shearer	07423778698	
David Barclay	07917898806	
Margaret Zachary	07917898796	
Mandy Miller	07385950477	
Chris Paterson	07884667970	
Stephannie Sinnett	07786028852	
Martin Krummins	07393799214	
Leanne Paterson	07471350730	
<b>Team 3</b>		
Anne Lithgow	07917898823	
Grant Armstrong	07917898818	
Ian Bruce	07876884046	
Audrey Mooney	07876884044	
Hannah Kilpatrick	07884664658	
Elaine Ferguson	07917898813	
Ellen Paterson	07423779977	
Calum Richardson	07884655908	
Alex Douglas	07393783336	
Brooke Cairns	07901101615	



## 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: 01698 390033

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

❖ Telephone: 01698 390001

## 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**