



Mental Health Tribunal for Scotland

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# Members' Newsletter

## September 2023

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## Message from Laura J Dunlop KC



Dear Members,

Photographs are as good a subject as any with which to begin this foreword. Since the last newsletter, those on our website have been changed. You will no doubt recall that the previous images were three 'stock' photos, featuring scenes which did not seem representative of the work of MHTS or the range of people attending hearings. These have been replaced with three photos taken by our colleagues in Operations, as part of an initiative for a mental health awareness week. It seemed much better to have real scenes, and the part played in good mental health by the great outdoors is beyond question. The photographers readily consented to use of their work, and are pleased to see it prominently displayed.

More widely, but still on the idea of images, the rather mixed message from the picture above (and there would certainly be a prize for anyone getting in touch with the PO before close of business on 9 October to say where this is) chimes with the current picture in mental health compulsory care and treatment. There are some fine stories of individual care and treatment, but also many pressures within the overall system. These can become apparent at hearings, whether in the area of preparation and attendance, or in the substance of discussions. I am grateful to members for the countless ways in which they endeavour to solve practical problems at hearings, seeking constantly to meet our overriding objective of handling cases as fairly, expeditiously and efficiently as possible.

We continue to try to make greater use of 'visual' hearings, by which I mean hearings where patients can see those who are taking decisions about them. We are now operating with default in-person hearings at three hospital venues. One of those is Leverndale, where we have a new suite. The need for this resulted from the repurposing by the hospital of our former suite during the pandemic. It is undoubtedly

a benefit that, unlike the previous suite, this one is on the ground floor, and we are grateful to all those at the hospital who worked to finalise the necessary adaptations. We also continue to make some use of WebEx; there are venues and situations where a video hearing is the best way to secure participation of key stakeholders. The graph on page 7 illustrates the steady rise in visual hearings since March 2022; almost all of these are in-person events. The rise in in-person hearings would not be possible without members returning to sitting in person, as was the universal format before 23 March 2020. Any members who asked not to sit on in-person hearings for a time but who are now in a position to resume doing so are asked to intimate that to the President's Office.

Turning to other recent developments, we were pleased to host a virtual event at the end of June on the topic of working with interpreters in hearings. Both Anna Gyongy (spoken language interpreting) and Paul Belmonte (BSL interpreting) gave excellent presentations, and there were interesting questions and discussion points raised by members. Revised guidance on interpreters in hearings is on the 'Guidance' page of the website, accessible through the 'Applications and Appeals to the Tribunal' tab in the left sidebar. We hope that there will be a further virtual event for members in November, on the subject of the new secure facility for young people at Foxgrove in Ayrshire. Further details will be provided in due course. As regards mandatory training, we have within the past few weeks begun our programme for 2023. The majority of members are attending in person, though there are still members who choose to attend WebEx training and two of the three online events are well-subscribed. Whilst we understand there are practical and personal reasons which lead people to choose to train online, all of us in the President's Office enjoy being out and about around Scotland and meeting so many of you face to face. I am grateful to colleagues who are presenting the constituent parts of the day programme, and to the MHOs who are joining these events to assist with the care plans session.

Finally, this newsletter includes information on the increased use of visual hearings and, on pages 11 to 13, an article from Vicky Soutar reflecting on telephone hearings. We are very grateful to Vicky for taking the time to contribute in this way, and sharing reference material too. We also have a book review, and information on a number of events, whether a meal out with your fellow members in Edinburgh, an evening on screen with an interesting speaker or an arts festival on a mental health theme. As ever, I am indebted to Jane Patrick and Jenna Swan for putting it all together.

I hope you enjoy reading it.

Best wishes,

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

**\*\*SAVE THE DATE\*\***

**24.10.24**

The President is pleased to announce the.....

**MHTS Members'  
Conference**

is being held on

**Thursday 24 October 2024**

at

**The University of Stirling**

**[www.Stirlingvenues.com](http://www.Stirlingvenues.com)**

**Further information to follow in early  
course**

## New President of Scottish Tribunals



On the retirement of Lord Woolman, President of Scottish Tribunals since August 2020, from his role as a Court of Session judge, a new President, Lady Wise, took office in May 2023. Having qualified as a solicitor in 1989 and worked in general civil litigation, Lady Wise thereafter called to the bar in 1993 and practised in civil work, specialising in family law. Lady Wise became a Queen's Counsel in 2005, was appointed as a Senator of the College of Justice (Court of Session judge) in 2013 and thereafter appointed to the First Division of the Inner House, the appellate Bench, in January 2022. She also has judicial experience in tribunals, having been a judge of the Employment Appeal Tribunal for three years until December 2018. On 14 September, Lady Wise visited Bothwell House and Hamilton House, to meet people working in MHTS and also in the Local Taxation Chamber.

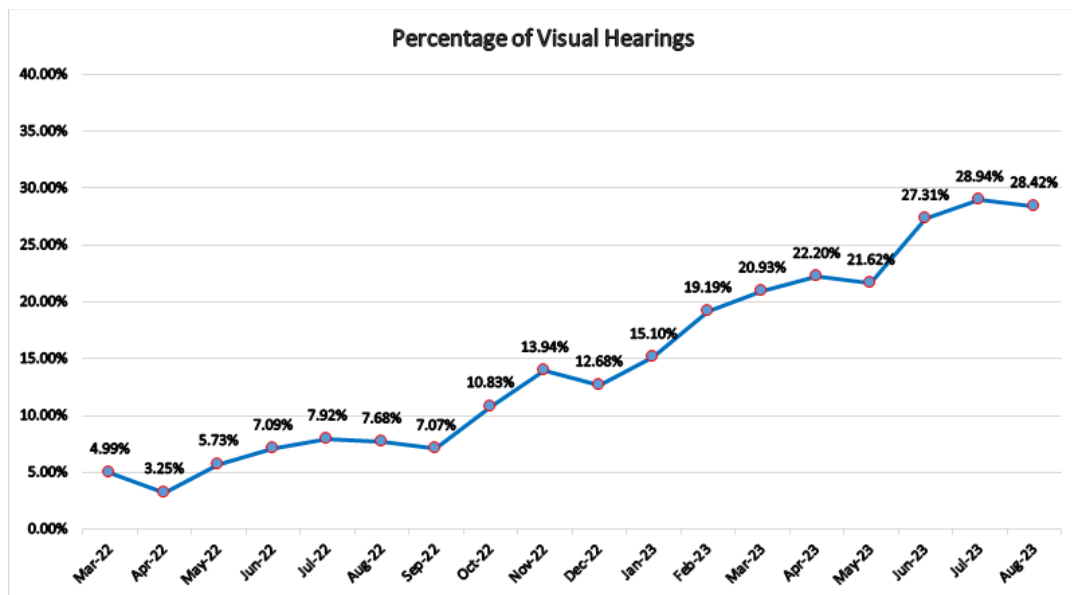


## Steps in the right DIRECTION

Directions are a useful tool for the Tribunal to further the overriding objectives in the conduct of a case. They prove most effective when they are framed well as this provides clear instructions for the caseworker intimating the direction. So, for example, if the tribunal directs a social worker to provide a report and/or attend the next hearing, the caseworker will need to send the direction to this social worker. The caseworker is unable to do so unless the necessary information, i.e. the name and address of the social worker, is contained in the direction. When making a Direction members should ensure that they have all necessary information and clearly specify what is required (e.g. a report only or a report and the attendance of the person at the next hearing) so that the direction can be intimated correctly. This may mean members have to ask parties or witnesses at hearings for this information. It is worth bearing in mind that if these persons are unable to provide this information then a caseworker will have similar difficulty ascertaining it.

# Visual hearings

Members will be interested to see how the numbers of visual hearings have increased over the period March 2022 to August 2023. More than 90% of these are in person hearings, though we use WebEx regularly in Argyll and in the State hospital, so a small percentage are video. The remainder are still telephone. Sometimes, telephone hearings are requested but in other cases they remain the default mode. It is likely that the number of telephone hearings will continue to decline.



# Scheduling

Thank you to the members who responded to the recent request for members to sit in the more remote venues in the north east.

The responses to the emails for members to sit at short notice (the APBs) is also greatly appreciated. (An All Points Bulletin is a rapid message to many recipients).

As always, please would members 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.

# MHTS Tayside Members' Forum

You are invited to attend a "virtual" online forum on Thursday 26 October 2023 at 6pm.

Topic: Amanda Millar (solicitor) will provide '**Reflections of the first accredited specialist in Mental Health Law**'. This will be followed by opportunities for questions and discussion.

If you wish to attend, please email:



## Winter infections

As winter approaches, it is worth reminding all members of the current SCTS advice in relation to COVID-19 and other respiratory infections. Essentially, as all COVID rules and restrictions have been lifted, the advice is similar to the position in relation to a respiratory infection pre-pandemic ([Coronavirus \(COVID-19\) in Scotland - gov.scot \(www.gov.scot\)](https://www.gov.scot/Topics/Health/InfectiousDiseases/COVID-19)). Those who have symptoms of a respiratory infection, plus either a fever or feel too unwell to carry out normal activities are asked to remain at home while they are unwell or have a fever. There is no need for any testing or self-isolation. Likewise, there is no need for members to remain at home if another member of their household or a close contact is unwell.

Some targeted clinical testing for COVID-19 does still take place. If you have tested positive for COVID-19, following a visit to a clinical setting, you should follow the guidance to stay at home for five days.



## 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 [Judicialhub@scotcourts.gov.uk](mailto:Judicialhub@scotcourts.gov.uk)



# MHTS Members' Association

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

The Committee met briefly prior to the MHTSMA members' online meeting on 10th May and we are delighted to co-opt onto the committee four new members - Perminder Sihra, Rob Gray, Lovely Rajan and Máire Cooney.

At the meeting on 10th May, various matters were discussed including the meeting that had taken place with the President on 10th February. A note of that meeting and the minutes of the MHTSMA members' meeting are available on the MHTSMA Teams Forum. Brian updated the meeting in relation to the Members' Engagement Survey, the results of which are also available on the Teams Forum.

MHTSMA committee met online on 20th June with minutes available on the Teams Forum.

MHTSMA are planning an informal meet up following the training in Edinburgh on Tuesday 21st November, details to follow. Please can you email (if you wish to come along?)

The Committee are meeting online on 25th October. If there are items that members would wish to add to the agenda please can you email Brian.

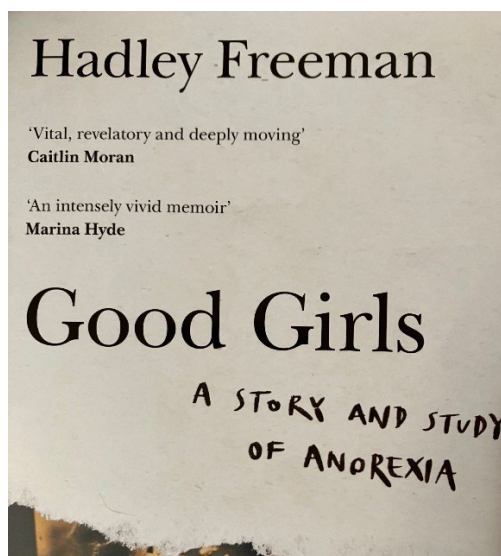
The MHTSMA AGM will be online on Thursday 30th November at 6.30pm. The President has kindly agreed to speak following the AGM.

MHTSMA committee would like to re-iterate our sadness on hearing of David Preston's death. David was instrumental in setting up the Members' Association and the Glasgow Forum. We are indebted to David for his knowledge, enthusiasm and sense of humour.

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**

## Book Review – Good Girls



Good Girls, by Hadley Freeman, is ‘a story and study of anorexia’ told by someone who spent most of her time between the ages of 14 and 17 in psychiatric hospitals. Today, she has three children and is a successful writer. So what happened in between?

The book begins with an identification of the trigger, the moment that, in retrospect, started everything. How simple it was, and how complex and long-lasting its effects. In her second chapter, Hadley lists the reasons others have suggested for why she became anorexic – 75 ideas, including many opposing pairs (‘I wanted to be beautiful’/‘I wanted to be ugly’; ‘My parents were too strict’/‘My parents were too indulgent’) and some really far-out notions (‘I was born by Caesarean’; ‘I read too much’). Whatever the cause(s), the ensuing periods as an in-patient, with the tube feeding, the subterfuge, the competitiveness and the constrained horizons will be recognisable to anyone who’s ever sat on a hearing for a person with the condition. And the long slow emergence from the darkness, the blips and the diversions into things that weren’t going to work, lead to the ultimate self-knowledge, the acceptance of what is, and how to live with that.

Hadley tells her story with a combination of narrative and analysis, interspersed with many references to research on eating disorder and some dry wit. Other seemingly related conditions, some of which Hadley also developed, feature in later chapters. And the stories of others she came to know in hospital, not all of whom survived, are told with insight and love.

It is a very good read.



## Scottish Mental Health Arts Festival

This festival is taking place across Scotland from 4 – 22 October 2023, exploring the theme of ‘Revolution’. The full programme can be found here [Events | Scottish Mental Health Arts Festival \(mhfestival.com\)](https://www.mhfestival.com)

# Articles

## Telephone hearings

*“How can this be right?”,* said the slightly tinny, disembodied voice on the other end of the line. *“How can this be a tribunal; I don’t even know where anyone is or what’s happening. How can you decide about me?”*

The person above was talking at the outset of a telephone hearing. She was living with a psychotic illness and clearly needed the grounding of a face to face hearing to give her the best chance of a truly rights-based Tribunal where her decision making was supported and encouraged. And our system thankfully was able to accommodate this, with a brief adjournment and a face to face second hearing requested.

However, this really gave me pause for thought. For many of the people at the centre of Tribunals, deciding what’s needed may be far more complicated and the reality somewhere ‘in-between’ – they may well be able to participate in a telephone hearing but are not necessarily getting the best experience they can from it. This person had managed to give voice to the elephant in the room - something that had been on my mind for some time, at least traceable back to Spring 2020 and the cataclysmic impact of the pandemic on the way most of society works, which rightly included us at MHTS. I am certainly no technophobe and in the spirit of full disclosure, I am more of the camp who have enjoyed working mostly at home, rather than believing face to face is always better. As such, in my own work practice I tend to take a case-by-case approach to deciding which mode of communication is best.

However, as a lecturer in social work and a mental health practitioner, I am very interested in the impact of wider moves to remote interactions, such as appointments, meetings, supervision, teaching and team meetings. There are mixed messages from research about the impact, but what is clear is that there is impact, and that further research is badly needed. An openness to improving and reflecting on our practice can make a big difference to the experience of those attending hearings, however they are held. A paper published in 2022 by Pascoe, although focused more specifically on relationship-building by telephone or online by social workers, may be instructive in this regard. Pascoe reviews relevant literature and interview findings to highlight the impact of a loss of non-verbal cues, the differences between face to screen (or in our case ear to phone) as opposed to face to face interactions and the differences in staff support capacity, that have arisen without time for much reflection or skills training since 2020. She suggests that ‘consideration of the ethical, practical and strategic challenges faced is essential’ (Pascoe 2022 p 3284). My practice experience alone tells me the issue is complex - in adult support and protection practice in Edinburgh between 2021 to 2022 we found we had a higher rate of participation by adults and carers at their own case conferences digitally than had been previously achieved with a default physical presence. It will certainly be the case that for some people online or remote interaction feels preferable and is more inclusive – the article referenced above offers some interesting pointers to research in this regard for those interested.

Most Tribunal members will be aware to some extent of the concept of ‘therapeutic jurisprudence’ – by earlier definitions, the discipline of creatively analysing the therapeutic or anti therapeutic impact of the law itself - (Wexler 1992). Setting to one

side for the moment some of the debates and critiques of the benefits and/or appropriateness of this approach, I think most of us would hope for as supportive and safe an environment in our hearings as possible for all concerned and perhaps would be looking for approaches and skills that may minimise any avoidable anti-therapeutic or unwanted effects of Tribunals.

I would propose that a Compassionate framework, considering self-compassion as well as compassion toward others may be useful for those members sitting round the 'virtual table' at Tribunals. (It may of course also be useful for any Tribunal!)

There are several definitions of compassion in the literature but here I have chosen to draw on one by Strauss et al who in 2016 compared facets of different definitions and measures of compassion to look for commonalities and came up with a basic five factor model and the Sussex-Oxford compassion scale.

The five factors identified were a) recognition of suffering, b) understanding the universality of suffering, c) resonance - emotionally connecting with their distress, d) tolerating uncomfortable feelings so that we remain open to and accepting of the person suffering and e) acting or being motivated to act to alleviate suffering.

As I write these down, I can hear the critique – why would we want to be able to do some of these at a Tribunal hearing? Won't it interfere with our ability to make fair decisions? But I would argue it's harder to connect or understand the experiences of another and how it's affecting them when we can't see them; harder to convey that compassion, a lack of stigma and a recognition of how difficult facing a Tribunal can be, when the person can't see us. It may also be harder for us as a Tribunal to support or show compassion to each other over the telephone. This doesn't, in my view, mean that all remote or telephone hearings are necessarily bad, but they are likely to require heightened self-awareness and a particular skill set to make them as good as they can be.

Processing large amounts of distressing and traumatic material is part of the day job for many of us, and for some Tribunal members there will be the opportunity for supervision arrangements in those jobs to assist with this (possibly not for as many of us as would be ideal...) This isn't something that comes with the package for Tribunal members generally so after a phone hearing it may be more important than ever to debrief and check in with each other.

What practices may fit well with the framework above? Some ideas I have taken from my own experience and discussion with other members are good practice already, but may vary between hearings:

- Checking in and debriefing after hearings, not just about the findings but about how it felt and what our sense of the hearing was.
- Making explicit reference to an understanding of the difficulty of being in a Tribunal and conveying a wish to be sensitive to this. Checking that there is understanding of what is happening and whether a telephone hearing is still appropriate for second or third hearings.
- Thinking about what opportunities we have outside our annual training to talk about our daily/weekly Tribunal practice with each other – is there anything more we could be doing in this regard?
- Ensuring that we explicitly consider, within our discussions, the patient and/or carer perspectives and whether there is planning we can do in relation to the structure of the telephone hearing that will demonstrate a compassionate and sensitive approach e.g. choice over speaking order.

- Giving ourselves space after a home-based Tribunal to show compassion to ourselves in whatever way works for us and to acknowledge that we can be left with difficult feelings after a hearing and might need ways to process this.

I would be delighted to hear other members' ideas about this area, or pieces of relevant guidance or research to telephone or remote based practice you are aware of. Perhaps we could bring these together somewhere for members' use?

## **References**

*Pascoe, K. M. (2022) Remote service delivery during the COVID-19 pandemic: Questioning the impact of technology on relationship-based social work practice. The British journal of social work. [Online] 52 (6), 3268–3287.*

<https://academic.oup.com/bjsw/article/52/6/3268/6460190>

*Stobbs, N. et al. (eds.) (2019) The methodology and practice of therapeutic jurisprudence. Durham, North Carolina: Carolina Academic Press.*

[https://books.google.co.uk/books/about/The Methodology and Practice of Therapeu.html?id=C91GuwEACAAJ&redir\\_esc=y](https://books.google.co.uk/books/about/The+Methodology+and+Practice+of+Therapeu.html?id=C91GuwEACAAJ&redir_esc=y)

*Strauss, C. et al. (2016) What is compassion and how can we measure it? A review of definitions and measures. Clinical psychology review. [Online] 4715–27.*

<https://www.sciencedirect.com/science/article/pii/S0272735816300216?via%3Dihub>

**Vicky Soutar  
General Member**

# Useful Information

- **Civil justice system - pandemic response: research findings**  
<https://www.gov.scot/publications/civil-justice-systems-pandemic-response/>
- **Adult mental health, Audit Scotland September 2023**  
[Adult mental health | Audit Scotland \(audit-scotland.gov.uk\)](#)
- **Scotland's Mental Health Partnership**  
[Home | Edinburgh | Scottish Mental Health Partnership SMHP](#)
- **Core Mental Health Quality Standards, Scottish Government**  
[Core Mental Health Quality Standards \(www.gov.scot\)](#)

## MHTS

- **MHTS News**  
[MHTS - News \(mhtscotland.gov.uk\)](#)
- **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 \(mhtscotland.gov.uk\)](#)
- **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.*
- **Judicial Hub**  
<https://www.judicialhub.com/login/index.php>

**\*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>
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Calum Richardson	07884655908	
Alex Douglas	07393783336	
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## 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)

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### 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**

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

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## 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 December

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

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

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