

AJC Council Meeting

11.30am – 3.30pm, 31 January 2020

The Edinburgh Grosvenor Hotel, Edinburgh

Attendees:

Sir Ernest Ryder (SPT)	Senior President of Tribunals
Chris Gill	Lecturer in Public Law, Glasgow University
Lindsey Poole	Director, Advice Services Alliance
Lady Anne Smith	President of Scottish Tribunals
Sir Wyn Williams	President of Welsh Tribunals
Donal Galligan	CEO, Ombudsman Association
Ryan McRobert	Head of Courts and Tribunals, Scottish Government
Katrin Shaw	Director of Policy, Legal and Governance, Welsh Public Services Ombudsman
Paul Yates	Head of Pro Bono, Freshfields
Rhian Davies-Rees	Head, Welsh Tribunals
Grainne McKeever	Professor of Law & Social Justice, Ulster University
Naomi Creutzfeldt	Reader in Socio-Legal Studies, Westminster University
Robert Thomas	Professor of Public Law, Manchester University
Rosemary Agnew	Scottish Public Service Ombudsman
Paul McFadden	Deputy Ombudsman, Northern Ireland Ombudsman
Paul Daly	Administrative Justice Team, MoJ
Niki Maclean	Director, Scottish Public Sector Ombudsman
Miriam Craven	Deputy Director, Social Security Scotland
Warren Seddon	Director of Strategy and Insight, Parliamentary and Health Service Ombudsman
Andrew Medlock	Deputy Director, Parliamentary and Health Service Ombudsman
Karen Ashton	Head of Public Law and Community Care, Central England Law Centres
Norma Dempster	Family Courts and Tribunals Branch, N. Ireland Department of Justice
Sarah Nason	Lecturer in Lecturer in Administrative Law and Jurisprudence at Bangor University
Ray Burningham	Consultant and former CEO of the AJTC
Richard Henderson	Chair of the Scottish Law Society, Administrative Justice Committee
Paul Smith	Former Policy Officer AJTC
Daniel Flury	Deputy Director, HMCTS
Brian Thompson	Senior Lecturer in Law, Liverpool University
Ellen Lefley	Administrative Justice Lawyer, JUSTICE
Heidi Bancroft	Secretary to the AJC, JUSTICE
Sally Hunt	Legal Administrator, JUSTICE
Daniel McKaveney	Scottish Intern, JUSTICE

Apologies:

Richard Guyatt	Former Chair, Compulsory Purchase Association
Andrea Coomber	Director, JUSTICE
Caroline Sheppard OBE	Chief Adjudicator, Traffic Penalty Tribunal
Luc Altmann	Deputy Head of Insight, HMCTS
Diane Sechi	Simmons & Simmons
Tim Gilling	Director, Centre for Public Scrutiny
David Slade	Justice Policy: Constitutional Affairs and Inter-Governmental Relations, Welsh Government
Dr Natalie Byrom	Director of Research, Legal Education Foundation
Maurice Sunkin	Professor of Public Law and Socio Legal studies, Essex University
Mr Justice Lane	President of the Immigration and Asylum Chamber of the Upper Tribunal
Lucy Scott-Moncrieff	House of Lords Commissioner for Standards
Ronan Toal	Barrister, Garden Court Chambers
Angela McDonald	HMRC Director General for Customer Service, HMRC
Jo Hickman	Director, Public Law Project
Michael Reed	Principal Legal Office, Free Representation Unit
Claire Blades	Market Development Manager, Citizens Advice
Ken Butler	Welfare Benefits and Policy Advisor, Disability Rights

1) Welcome and Update from the SPT

The SPT welcomed attendees to the fourth Administrative Justice Council meeting.

The minutes for the last meeting had been published on the website. Any matters arising to be reported to Heidi Bancroft (HB).

Update since the last meeting:

- The Legal Education Foundation had extended and increased funding to cover AJC core costs.
- The SPT announced his intention to retire on 1 July 2020. He would take up the position of Master of Pembroke College. The Council were encouraged to consider the appointment of a new chair.
- Chris Philp MP, the current Minister responsible for administrative justice, had expressed a keen interest in the work of the AJC. Should he retain his position, engagement should be continued.
- Lindsey Poole, Chair of the Advice Sector Panel had joined the Steering Group and Ray Burningham had stepped down (his contribution had been greatly appreciated).
- An update was given on the work of the three panels:
 - Advice Sector Panel – pursuing project on Department for Work and Pensions lesson learning. Seeking the involvement of an economist for the economic aspect.
 - Pro Bono Panel – a) Diane Sechi’s report on the stakeholder engagement survey would be circulated shortly and launched at the Academic Panel End of Year

Conference; b) the polluter pays project would be holding pilots in the First-tier Special Educational Needs and Asylum Support tribunals with an electronic survey for tribunal judges to complete.

- The Academic Panel held two workshops - [Outsourcing](#) and [Ombudsman and Tribunals Familiarisation](#). Upcoming workshops included - Administrative Justice and Human Rights – 20th March; and the End of Year Conference on 24th April. Suggestions on additional topics to be directed to HB or Naomi Creutzfeldt (NC).
- JUSTICE and the AJC would have a joint working party on Benefits Reform to commence mid-March 2020. Expressions of interest to be sent to HB.

Actions: Diane Sechi to circulate final stakeholder engagement report; Suggestions for additional topics for the End of Year Conference to be sent to HB or NC; Expressions of interest for the JUSTICE/AJC working party on Benefits Reform to be sent to HB.

2) **An overview of Scottish Tribunals and delayed implementation to devolved judicial leadership – Lady Anne Smith**

Lady Smith (LS) gave an overview of the recent progress of Scottish tribunals, in particular, the delay in transfer of both devolved and reserved tribunals into the system established by the Tribunals (Scotland) Act 2014 (“the 2014 Act”). The need for tribunal reform had previously been set out in the Leggatt and Philip Reports (2001 and 2008/9). LS updated the group on the progress since the 2014 Act which created a two-tier structure similar to that established for the reserved tribunals by the Tribunals, Courts and Enforcement Act 2007.

LS listed the tribunals which had been transferred into the Scottish system and the challenges of a ‘parallel planet problem’. One issue was that some tribunals were devolved but were still awaiting transfer to the 2014 Act system (such as the Mental Health Tribunal). She explained the uncertainty that this brought to both the judiciary and the administration and the potential for causing confusion to users. There were also ongoing unresolved difficulties in relation to judicially resourcing some tribunals. The timetable for implementing the Smith Commission commitment to devolve those tribunals that determine issues arising in relation to Westminster legislation (particularly employment, social security matters and UK tax) had repeatedly been delayed. The transfer of “reserved” tribunals was unlikely to occur any time soon.

The SPT added that salaried judges in the reserved tribunals had been waiting to be transferred for over three years and that legislative amendment was needed for the proposals of transferring the judiciary from the “reserved” judiciary.

3) **The Ombudsman Landscape**

a) **The distinctiveness of the Scottish Ombudsman model and how that compares to other devolved jurisdictions and to England - Chris Gill, Glasgow University**

Chris Gill (CG) gave an overview of the Scottish Public Services Ombudsman (SPSO) model since devolution (slides [here](#)). There were three distinctive features of the model: a) a one-stop shop, which covered more devolved public services; b) the development of the Complaint Standards

Authority, which monitored internal complaints procedures; and c) multifunctionality, new functions not usually dealt with by an ombudsman. CG listed the new jurisdictions which had been added to the SPSO since 2002 which he showed on a timeline (including whistleblowing). He also set out the role of the Complaints Standards Authority who set standards that needed to be adhered to by public bodies and he demonstrated the multi-functionality in the Scottish ombudsman model.

In terms of the future, there had been innovation in Scotland but there were still aspects which were lagging behind other nations, including own initiative powers. This was a common feature internationally where 40 out of 47 member states with Ombudsman schemes had such powers, including Wales and Northern Ireland. In terms of the future of the model, it could be enhanced further by including own initiative powers; a more powerful relationship with the Scottish parliament; and a more explicit human rights mandate.

b) Response from the Scottish Public Services Ombudsman - Rosemary Agnew

Rosemary Agnew (RA) responded to CG's presentation. She emphasized that the SPSO's key strategic themes were based around access to justice and had been developed in order to enable people to exercise their rights and have access to a just and fair service (as part of the alternate dispute landscape). She explained the benefits of the Complaints Standards Authority (CSA) including holding organisations to account about complaint handling, without the need for a complaint and obligating organisations to signpost complaints to the SPSO.

RA responded to the added jurisdiction of whistle blowing, the duty for the NHS Scotland (NHSS) to look into concerns raised themselves and the SPSO's statutory duties to set the standards for how whistleblowing concerns should be handled by the NHSS. The standards would be published and go live on 26th July 2020.

Regarding the future, RA highlighted the need for public sector ombudsmen, particularly in Scotland, to meet international standards, such as the Venice Principles. It was noted that whilst the Public Services Ombudsmen in Northern Ireland and Wales both had own initiative powers, in Scotland (and England) the ombudsman does not have such powers, creating inconsistency across the UK. Three sets of powers were listed as being essential for an effective public services ombudsman: the power to investigate complaints; to set and monitor complaint handling standards and to investigate issues in the public interest without the need for a complaint.

4) Complaints Standards Framework - Andrew Medlock, Parliamentary and Health Service Ombudsman

Andrew Medlock (AM), Deputy Director, Parliamentary and Health Services Ombudsman (PHSO) in England, gave some background on the Complaints Standards Framework developed by the PHSO. The PHSO had a three-year strategy and one of the objectives was how they could work better with frontline teams. The aim was to have a single vision of what a complaint looked like. They wanted to ensure that public bodies understood that complaints handling was a complex skill, a profession within itself and as such staff should be supported through training and accreditation. This work linked into the PHSO's wider strategic objectives and supported the vision of a future Public Services Ombudsman in England to have a complaints standards authority power.

AM set out the vision of the framework in the [slides](#). They had received resounding support and

good feedback from government departments, the NHS and advocacy agencies. A first draft of the framework for consultation had been circulated to the Council as a paper. They also wanted to explore how it could transfer into a public services framework for all public sector workers and feed into a wider accreditation programme.

The Council was asked to consider how they could help support the framework.

5) Ombudsman and Tribunals Familiarisation – Naomi Creutzfeldt, Westminster University and Donal Galligan, Ombudsman Association

Naomi Creutzfeldt (NC) and Donal Galligan (DG) updated the Council on the familiarisation workshop held on 10th October 2019 which brought together ombudsman schemes, tribunals, academics and the advice sector. The next step was for the working group meeting to meet on 10th February 2020. The group would be taking forward pilots between the First-tier SEND Tribunal and Local Government and Social Care Ombudsman along with the Housing Ombudsman and the First-tier Property Chamber. The working group were keen to engage with other jurisdictions including the devolved nations. Attendees were invited to contact DG or NC if they were interested in joining the group.

Action: Members from the devolved nations to contact DG or MC if they would like to join the working group.

6) Social Security Scotland

a) Principles into practice: embedding dignity and respect in a Scottish social security, system – Professor Gráinne McKeever – Ulster University

Gráinne McKeever (GM) gave some background to the Social Security (Scotland) Act (2018) and its vision of social security for Scotland (slides [here](#)). She explained that the Act was guided by eight principles, which set out social security as a human right, as an investment in the people of Scotland, as a poverty prevention tool, and as an efficient, effective public service. She referred to principle D of the Act which related to respect for the dignity of individuals and ensuring that should have sufficient income to live on and also about how they are treated by the system and those they came into contact with.

Another key principle brought into force was on co-production, whereby the Scottish public were to be consulted on how they wanted the social security system to operate. Experience panels were further introduced as a method of involving users in the development of the new system.

GM spoke about the Social Security Charter which set out the expectations of the new system together with a framework developed to enable the measurement of performance. She also set out the scrutiny of social security legislation which would be carried out by the Scottish Parliament and the Social Security Committee, but there was a need for further independent scrutiny, which the newly created Scottish Commission on Social Security would provide. Decision-making and the appeals process were also outlined.

Feedback had highlighted that co-production, experience panels and the Charter were impressive and effective. It has been noted that the protection of dignity has been hindered by the Act not allowing alterations to benefit conditions, sanctions or levels.

b) Social Security Scotland – Our Charter and Client Experience - Miriam Craven, Social Security Scotland

Miriam Craven, Deputy Director, Social Security Scotland gave some background on Social Security Scotland and its aims (slides [here](#)). Implementation had began three years ago with the overarching idea of creating a national organisation with a local aspect. The key element to achieving this was collaboration with both the Scottish people and those already working in and around the benefits system. The executive agency had been operating for a year and a half and they were strategically based in Dundee; staff now worked across 32 local authorities.

There was a huge emphasis on assisting applicants and soft skills training for staff. With a focus on getting applications right the first time in the following ways: claimants were offered face-to-face pre-claim support; claimants were invited to be accompanied on all visits/meetings and offered a transcript of each meeting or telephone conversation; and any redeterminations were handled by a separate remit in the organisation. Claimants were also contacted if more information was required for their application. MC reported that the organisation took responsibility for the collation and delivery of the appeals court bundle to the tribunal. Clients were also encouraged to decide how they wished to engage with the organisation (most had opted for online engagement).

Attendees discussed issues arising from the presentation, including the provision of independent legal advice, engagement with DWP, and mechanisms of learning through feedback and training alterations. MC welcomed members to visit their offices to learn more about their work.

7) Wales - Sarah Nason, Bangor University

a) Welsh Justice Commission Report and Recommendations

Sarah Nason (SN), Lecturer at Bangor University, reported that last October's Commission on Justice in Wales Report comprised seventy-eight headline recommendations, including six for administrative justice. Sarah had recently chaired a meeting on the recommendations with a number of Welsh academics and AJC Academic Panel members. Their research update had been circulated as a paper.

For administrative law, the main focus of the report was that substantive administrative law is developing distinctively in Wales, but that innovative policy and legal frameworks on rights future generations and sustainability is not aligned and integrated with the justice system.

SN went through the recommendations and provided a summary for each. She would publish a report giving more detailed steps on how the recommendations could be taken forward and where there were any challenges

Action: SN to circulate final report to Council.

c) Interactive Mapping in Wales

SN introduced her mapping administrative justice project which could eventually be used as a tool for those working in the sector (and eventually the public). A number of workshops had been held with a range of stakeholders. The project focused on the areas of social housing, homelessness and

secondary education, but had been built in a way that made it flexible for additional sectors to be subsequently added. Briefly, the user inputs their query, and they were offered a list of the most common redress mechanisms. Users were also prompted to take independent legal advice. This work would continue over the coming months, after which a link to the project would be circulated with a request for feedback. Discussions included who would be responsible for updating the map after the project had been completed.

A website version was being created and she would send the link to members to test and provide feedback.

Action: SN to circulate link to the website version of the mapping tool.

8) Progress to date/Priorities 2019/2020

The SPT directed members to the published annual report, the Business Plan for 2020-2023 and the draft Work Prioritisation Criteria (in the papers). Amendments to the draft Business Plan or Work Prioritisation Criteria text should be directed to HB.

Dates for the diary: Next full Council meeting - 10 July 2020; and the Academic Panel AJC End of Year Conference – 24th April 2020.

The SPT thanked all attendees and closed the meeting.

Actions: HB to make agreed amendments to the Work Prioritisation Criteria and re-circulate to members; and attendees to contact HB for Miriam Craven's contact details.