

THE SCOTTISH TRIBUNALS

Annual Report prepared by the President of the Scottish Tribunals

1 April 2018 - 31 March 2019



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Introduction

Rt. Hon. Lady Smith - President of Scottish Tribunals

Welcome to the second Scottish Tribunals Annual Report. The journey of reform brought about by [The Tribunals \(Scotland\) Act 2014](#) continues. I am very grateful to all the Chamber Presidents for their considerable efforts in ensuring their tribunals continue to play a vital role in the administration of justice in Scotland.

The Glasgow Tribunals Centre has been established and it now provides the nerve centre for the work of the Housing and Property Chamber, a chamber which has risen to the challenge of a very substantial increase in the number of applications, and of the Health and Education Chamber, which deals so successfully with a highly sensitive and vulnerable client base. Elsewhere, in Tribunal operations in Hamilton, Edinburgh and across the country, I know that tremendous effort has been put into developing, improving and delivering a high quality service. We are also establishing new jurisdictions and I have, for instance, been very impressed by the work that went into meeting a need for the rapid creation of a new Scottish Social Security tribunal.



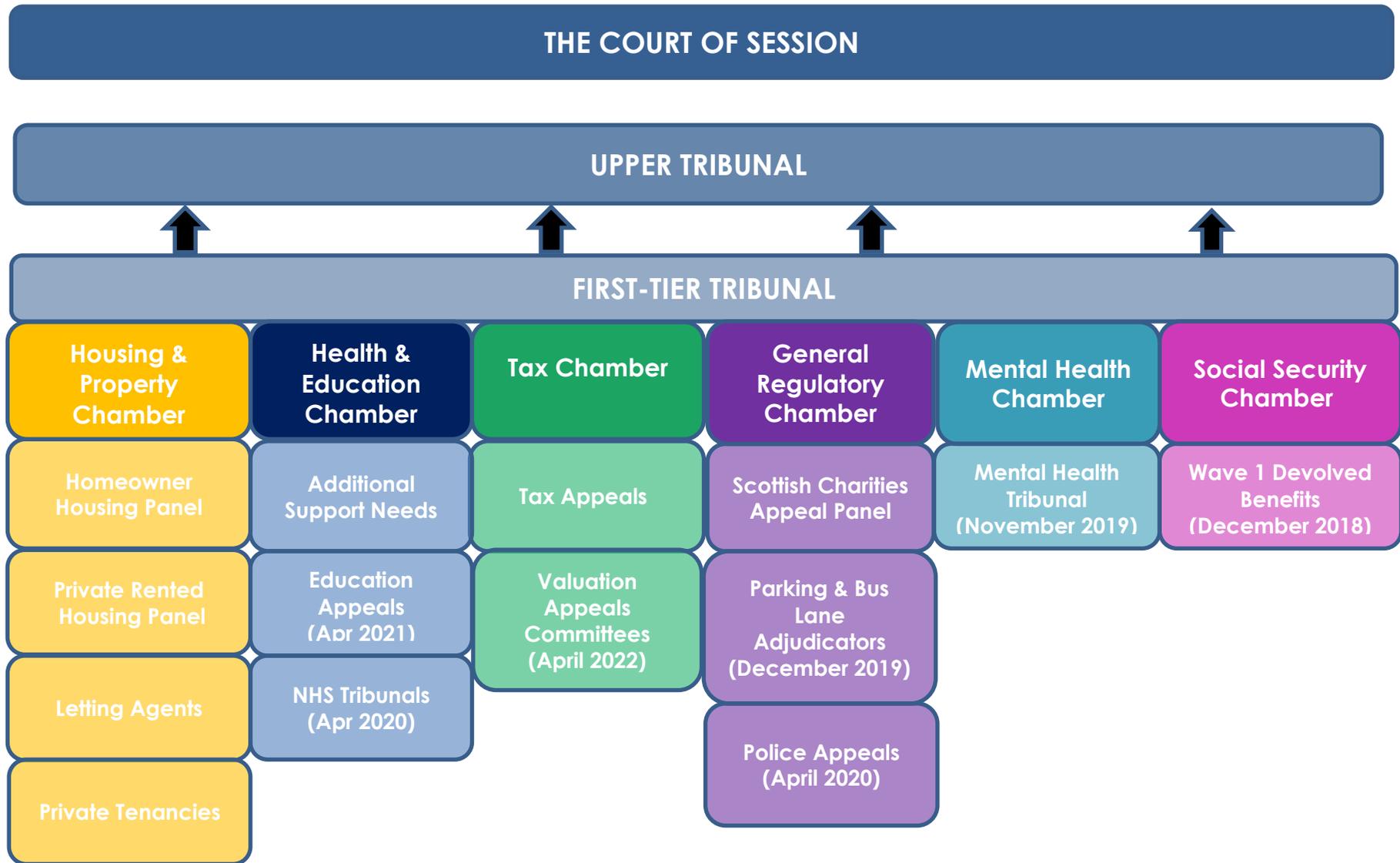
*Lady Smith
President of Scottish Tribunals*

The Scottish Tribunals continue to evolve, providing opportunities for innovation and improvement. It's not just a matter of transferring existing procedures and practices into a new statutory framework. We have the chance to shape the Scottish Tribunals for the future in a model of which we can be truly proud, pursuing new and more efficient ways of working where possible. For instance, are there new ways of working that should be adopted that will secure effective access to justice whilst delivering decisions more promptly and openly whilst maintaining essential fairness? Part of the new approach will have to embrace modern technology: to what extent can it enhance the delivery of tribunal justice in the modern world? How can the tribunals' judiciary be better supported so as to facilitate optimum performance of their role?

I know that Her Majesty's Courts and Tribunals Service (HMCTS) has an ambitious programme of modernisation for the reserved Tribunals. I am very pleased that there is ongoing liaison and collaboration between our two organisations to ensure that our respective programmes develop in a way that should not compromise any future changes in responsibilities, and that should, in particular, ensure that tribunal users in Scotland continue to receive a modern, digitally enabled service.

There are of course further changes that lie ahead. The most significant is the devolution of those reserved tribunals that operate in Scotland and which were identified by the Smith Commission for transfer to the Scottish judicial leadership and administration. We will, of course, do everything we can to make that transfer a smooth process for users, when it comes. Throughout all this, the delivery of a high quality service must continue.

2. Scottish Tribunals – Chamber Structure



3. The Year at a Glance

Upper Tribunal

The Upper Tribunal determines appeals from the First-tier Tribunal and first instance complex tax cases. The volume of appeals to the Upper Tribunal has, unsurprisingly, increased this year, given the expansion of the jurisdiction of the Housing and Property Chamber and following the transfer into the 2014 Act structure of the Additional Support Needs Tribunal and Scottish Charities Appeal Panel in early 2018. However, the stage has not yet been reached where divisions require to be introduced within the Upper Tribunal. The increase in appeals has also led to the need to increase the number of judicial members authorised to sit in the Upper Tribunal.

Further information on the Upper Tribunal can be found at Annex A.

First-tier Tribunal

Whilst no previously established tribunals have formally transferred into the 2014 Act structure in this reporting period, the First-tier Tribunal has expanded with the creation of the Social Security Chamber on 22nd November 2018 under the leadership of temporary Chamber President Anne Scott.

A report on the activity of each Chamber is included as an Annex to this report.

Glasgow Tribunals Centre

Having become operational in April 2018, the Glasgow Tribunals Centre represents a significant step forward in the provision of a high quality service to tribunal users in Scotland, providing access to justice in relation to a wide range of tribunal jurisdictions.



It provides tribunals' judiciary and staff a modern, well-equipped and flexible environment in which to carry out their vital work. There is also a real strength in the fact that this centre is shared between a number of tribunals from both the devolved and reserved jurisdictions; and that HMCTS and SCTS have come together to develop an environment that is mutually beneficial.

The opportunity to create this centre was presented by the termination of leases of other premises in Glasgow having coincided with consideration being given to developing operations in a way that looked ahead to the devolution of tribunals from HMCTS to SCTS. The synergy of combining with HMCTS in one location means that it has been possible to ensure much higher quality accommodation at a lower annual cost to the public purse that also future proofs against our needs for the next 25 years.

The road leading to this point was a bumpy one with challenges that included additional fire control measures, sub-contractors going into administration and the (in) famous "beast from the east" impacting on the rush to deliver the new centre. Despite all of this, all of those involved remained positive and maintained a marked can - do attitude for which I thank them.



Recruitment and Membership Changes

In the latter part of this year I have been involved in the recruitment of a Chamber President for the General Regulatory Chamber. The successful candidate is to be appointed from early May and I look forward very much to welcoming and working with that individual once appointed.

The Lord President has received notices of resignation from 4 tribunal members in this reporting year. I wish to reiterate my thanks to those members for their hard work and wish them well in their future endeavours.

Conduct Matters

The Lord President has the responsibility for making and maintaining appropriate arrangements for the determination of any matter concerning the conduct of ordinary and legal members of the Scottish Tribunals and the review of any such determination.

To this effect, any complaints received about the conduct of Tribunal members are considered by the Judicial Office for Scotland in accordance with the Complaints Against Members of the Scottish Tribunals Rules 2018.

In the period from 1 April 2018 – 31 March 2019 the following number of complaints were received and concluded:

Rule	Outcome	Total
8	Dismissed by Judicial Office	2
11	Dismissed by President of Scottish Tribunals	0
18	Withdrawn by complainer	1

In the period from 1 April 2018 – 31 March 2019 the following number of complaints were received under the Mental Health Tribunal Scotland's (MHTS) Interim Complaints Procedure¹.

Rule	Outcome	Total
5(3)	Dismissed by Judicial Office	3
5(5)	Complaints submitted to President of MHTS for consideration.	3

¹ Whilst MHTS have not formally transferred into the 2014 act structure, they have developed an interim procedure whereby they are following a similar set of complaints rules.

Welfare

Following the introduction of the new Judicial Health and Welfare Policy last year, tribunal members have been supported by the Judicial Office in a wide variety of welfare matters including the organisation of workplace assessments and the subsequent provision of specialist equipment and occupational health referrals.



The Judicial Welfare and Support Committee, under the new leadership of Lord Mulholland, will continue to consider the welfare needs of the Scottish judiciary and make recommendations for change where necessary.

Training

The new Head of Tribunal Training, at the Judicial Institute, carried out an extensive scoping exercise which resulted in the development of a tribunal training proposal. This was subsequently agreed in principle with

the Chamber Presidents and approved by the Lord President.

Each Chamber President continues to run specialist training for their tribunals. However, this is supported by a light-touch system of quality assurance. This training model strengthens and supports the existing tribunal training which is currently being delivered.

One of the key developments has been the creation of a Judicial Education for Tribunals (JET) working group which is responsible for providing oversight and governance for tribunal training. This working group is chaired by Anne Scott, President of the Tax Chamber and Temporary Chamber President of the Social Security Chamber, with representatives from all the Chambers of the First-tier Tribunal (Ft-T) for Scotland, a member of the Mental Health Tribunal for Scotland and representatives from the Judicial Institute for Scotland.

The Judicial Institute also designed and delivered a “train the trainer” course for members of Scottish Tribunals who undertake training.

This course was well received by all participants and provided support and guidance on undertaking learning needs analysis, design and delivery of training. In terms of future priorities, we will be working together to fully implement the quality assurance framework, embed the JET group, design and deliver tribunal craft core training and develop the Judicial Hub as a key source of learning and support materials for members of Scottish tribunals.



Efficient Disposal of Business

My responsibility for the efficient disposal of business could not be fulfilled without the continued support of the Chamber Presidents.

Chamber	President
Housing and Property	Aileen Devanny
Tax	Anne Scott
Health and Education	May Dunsmuir
General Regulatory	TBC
Social Security	Anne Scott

Thanks are also due to the Tribunals Operations Division of the Scottish Courts and Tribunals Service led by Martin McKenna. The dedicated and consistent support they provide to the Scottish Tribunals and their members is essential to the efficient disposal of business and essential to user satisfaction and the maintenance of public confidence in the tribunals.

Review

The Review scheme introduced in 2016 ensures the continuous professional development of members continues to operate well within the Scottish Tribunals.

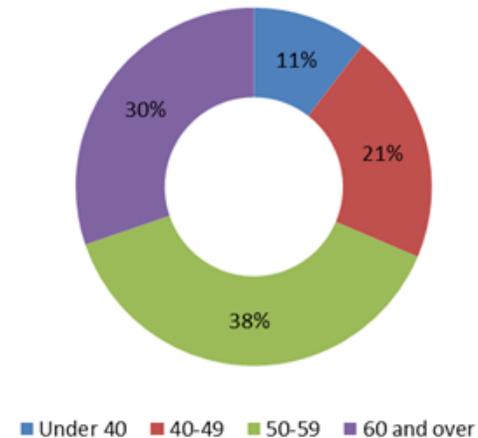
Whilst it has not yet transferred into the 2014 Act system, we are pleased to note that the MHTS is adopting the scheme from 1 April 2019 and I thank the President, Dr Morrow for his eagerness to do so in order ease the transition into the Scottish Tribunals which is due to take place at the end of this year.

Assignment

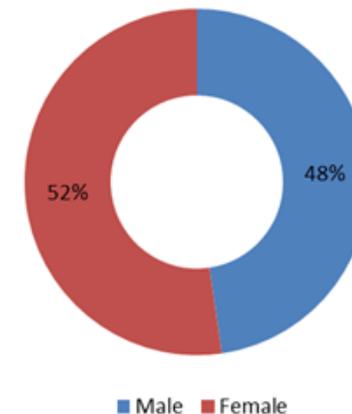
As required by the 2014 Act, my Assignment Policy is continually kept under review in order to maintain a clear balance between assignment and recruitment. Whilst assignment may make it possible for the required member numbers to be fulfilled, appointment of new members is also desirable to update particular expertise, maintain a reasonable age profile and to enhance diversity.

These diagrams show the profile of tribunal members as at 31 March 2019.

Members Age Profile



Members Gender Profile



Judicial Engagement

Engaging with the tribunal's judiciary both devolved and reserved, is essential to my role. Part of my engagement includes membership of the following forums.

Scottish Tribunals Forum & Reserved Tribunals Group

I chair the Scottish Tribunals Forum and the Reserved Tribunals Group. They meet twice yearly to discuss with each other and, as appropriate, with other interested parties matters of common concern in relation to the operation of all tribunals in Scotland both the devolved and reserved. We encourage attendees to present on any topics which may be of particular interest and this year enjoyed an excellent presentation by Shona Simon, President of Employment Tribunals (Scotland) on "Judicial Leadership Functions: Equal Treatment in accordance with the Equality Act 2010."

Tribunals Judicial Executive Board (TJEB)

I continue to represent the Scottish Tribunals at the meetings of TJEB which is the Senior President of Tribunals

discussion and decision making forum. The objective of the TJEB is to provide leadership, strategic direction and support to the reserved tribunals judiciary, both generally and in the specific context of courts and tribunals reform, devolution and wider change initiatives affecting tribunals and their judicial office holders.

Administrative Justice Council

The Administrative Justice Council is the successor body to the Administrative Justice Forum. Chaired by the Senior President of Tribunals, Sir Ernest Ryder, the newly formed Council comprises of key stakeholders in the administrative justice system and will identify opportunities, weaknesses and challenges in the system of administrative justice across the United Kingdom, frame and commission relevant research, and recommend practical solutions to strengthen the system. As a member of the Council I have attended two meetings in this reporting year the minutes of which are published [here](#).

4. The Year Ahead

Transfer of remaining devolved tribunals

The remainder of the devolved tribunals are scheduled to transfer into the 2014 Act structure on the following dates:

Tribunal	Proposed Transfer Date
Mental Health Tribunal	November 2019
Parking and Bus Lane Adjudicators	December 2019
Police Appeals Tribunal	April 2020
NHS Tribunals	April 2021
Education Appeals Committees	April 2021
Valuation Appeals Committees	April 2022

Further Social Security Cases

Case volumes within the Social Security Chamber are small at present but it is anticipated that volumes will increase very substantially when Social Security Scotland

starts to deliver disability assistance benefits. To ensure there are sufficient judicial and other members to manage these appeals, I will, later this year, run an exercise to seek expressions of interest in being assigned to sit in the Social Security Chamber from members of Scottish Tribunals. If necessary, I will consider other options, including the making of a request to the Judicial Appointments Board for Scotland to run an external recruitment exercise.

Devolution of Reserved Tribunals

Work continues in relation to the devolution of reserved tribunals operating in Scotland. It is now anticipated that the first tranche of tribunals to transfer in, consisting of the employment, tax, social security and child support jurisdictions will now be not before 2022.

Annex A: Upper Tribunal for Scotland

Upper Tribunal for Scotland



As new jurisdictions move into the First-tier Tribunal rights to appeal from First-tier Tribunal decisions, on a point of law, to the Upper Tribunal arise.

This year has seen an increase in the number of appeals to the Upper Tribunal, most notably from the First-tier Tribunal (Housing & Property Chamber).

Consequently, there has been a need to increase capacity in terms of the members available to handle these appeals. The current membership of the Upper Tribunal to which these cases are allocated is as follows:

Appeal Type	Upper Tribunal Members
Housing & Property	7 Sheriffs
Tax	1 Court of Session Judge 2 Legal Members
Social Security	1 Court of Session Judge
General Regulatory	1 Court of Session Judge
Health & Education	1 Court of Session Judge to be confirmed

Despite the increase, volumes remain low but appeals are expected to increase significantly as new tribunals transfer in and workload of existing tribunals expands. Accordingly, an Upper Tribunal Project Board has been established, to ensure that the Upper Tribunal can respond efficiently to appeals generated by an expanding an expanding First-tier Tribunal for Scotland.

Annex B: Housing & Property Chamber

The Chamber Jurisdictions

The Housing and Property Chamber (HPC) has a very wide jurisdiction, covering 51 different application types. These involve the application of over 12 different statutes. The law relating to private tenancies is particularly complex, being contained in numerous statutes and having evolved through case law. Cases involving property factors often raise complex issues of property and other law, including the law of agency and consumer law.



*Aileen Devanny,
Chamber President*

There are six main categories of application within the Chamber's jurisdiction, as described below.

- *Private rented sector applications*

On 1 December 2017, the jurisdiction of the Sheriff Court in relation to civil cases arising from private sector tenancies was transferred to the Chamber. A new private residential tenancy regime was introduced on the same date, and the Chamber provides the dispute resolution mechanism for issues arising from these new tenancies. The private rented sector jurisdiction deals with a wide range of private rented tenancy issues, and, since its introduction, it has become by far the biggest jurisdiction in terms of case volumes.

- it includes applications relating eviction and recovery of possession
- payment orders (in some instances with no monetary upper limit)
- orders for payment of monetary sanctions relating to failure to comply with tenancy

deposit regulations or failure to provide required information

- drawing up the terms of a tenancy
- provision of a written tenancy agreement
- landlord registration appeals
- letting agent registration appeals
- requirements for disabled adaptations for private rented properties
- wrongful termination orders
- recovery of illegal premiums and loans
- appeals against rent penalty notices issued by a local authority

- ***Repairing Standard applications***

Under the Housing (Scotland) Act 2006, private rented sector tenants can apply to the tribunal to seek to compel their landlord to carry out necessary repairs to ensure that their property meets the statutory “repairing standard”, which has been extended to include the tolerable standard test and now applies to holiday lets of over 31 days’ duration. Third parties (i.e. local authorities) can also make applications, in the same way

as the tenant. The tribunal can decide to proceed with these applications even if the application is withdrawn or the tenancy is terminated.

- ***Landlord (Right of entry) applications***

Private landlords can apply for assistance in exercising their right of entry to tenanted property to view the state and condition of the property and/or to carry out works to meet the requirements of the repairing standard under the 2006 Act.

- ***Rent assessment applications***

Under the Rent (Scotland) Act 1984, both landlords and tenants can appeal against rents registered by Rent Officers in relation to regulated tenancies, and seek a determination of a fair rent for their property.

Under the Housing (Scotland) Act 1988, the tribunal can consider, in relation to assured and short assured tenancies:

- a) Appeals by tenants against the level of rents set by landlords and to decide a market rent for such properties in accordance with that Act, and
- (b) Appeals by landlords or tenants where the other party has proposed a review of the terms of the tenancy.

Under the Private Housing (Tenancies) (Scotland) Act 2016, the tribunal can consider appeals against the level of rent set by the rent officer in relation to a private residential tenancy.

- **Homeowner (Property Factor) applications**

Under the Property Factors (Scotland) Act 2011, homeowners can bring an application concerning a dispute with their property factor under either or both of two possible grounds:

1. that the property factor has failed to carry out its duties as a property factor in relation to the management or maintenance of land
2. that the property factor has failed to comply with

the statutory code of conduct for property factors.

- **Letting agent applications**

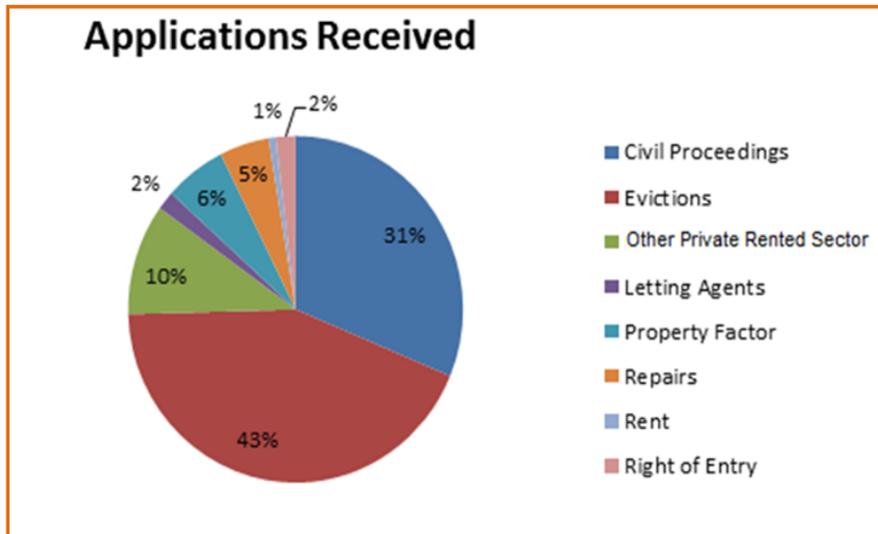
On 31 January 2018, the registration of letting agents became compulsory, and compliance with a statutory code of practice for all registered letting agents became mandatory. From that date, tenants, landlords and Scottish Ministers have been able to apply to the Chamber in relation to letting agent code of practice disputes.

- **Case volumes during the year**

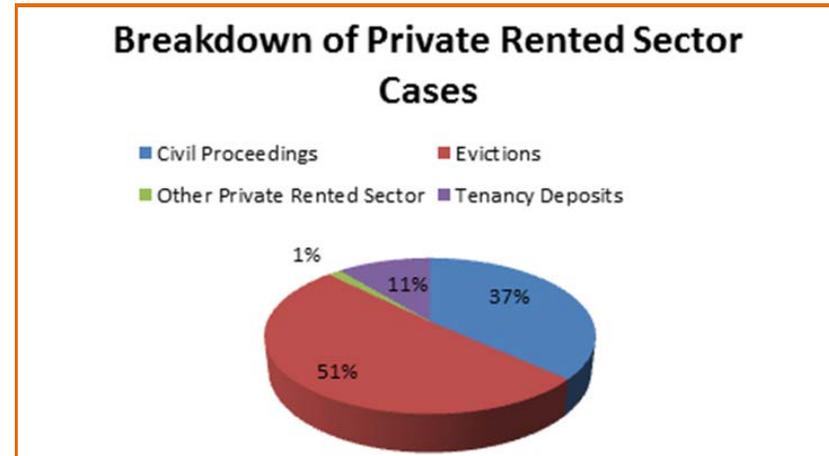
During the year, the Chamber received 3781 applications across 10 jurisdictions, and 3196 applications were closed during the year. A breakdown of the categories of application received is shown in the chart below.

The vast majority (85%) of applications received fell within the new private rented sector jurisdiction. Almost half (43%) of all applications received were for eviction, while a further 31% were applications for civil

proceedings in relation to private tenancies. The third biggest category of applications overall (9%.) were applications for an order for payment of a sanction where the landlord has failed to comply with the duty to pay a tenancy deposit into an approved scheme.



Private rented sector applications



Half of private rented sector applications concerned eviction, while 37% were for civil proceedings in relation to private tenancies. Most of these applications were for payment orders. These typically accompany an eviction application and usually concern rent arrears and/or damage to rented property, although applications by tenants seeking damages have also been received.

While the majority of both evictions and civil proceedings cases continue to concern assured/short assured tenancies, there were also fairly significant volumes of applications relating to the new private residential tenancy. The new tenancy was introduced

on 1 December 2017, and the Chamber is now starting to see applications involving these tenancies coming through. They accounted for 23% of eviction applications and 22% of civil proceedings. Over time, these proportions are expected to rise further, as more short assured/assured tenancies come to an end, to be replaced by private residential tenancies.

The highest proportion of other private rented sector applications received, totalling 353 or 11%, were applications for an order for payment of a sanction where the landlord has failed to comply with the duty to pay a tenancy deposit into an approved scheme. Prior to the transfer of this jurisdiction to the Chamber, there were few such reported cases in the sheriff court, and it was recently reported that the introduction of a fee-free and specialist process within the Chamber 'has led to a dramatic increase in the number of deposit protection cases'.²

The remaining 1% of applications in the private rented sector category were small in number (39), covering a range of issues. These included applications to draw up the terms of a tenancy; for damages for unlawful eviction and/or for a wrongful termination order; for declarator of the type of the tenancy; and landlord registration appeals.

Other categories of application

There were 225 property factor applications, representing 6% of all applications received. This was a 15% increase on the property factor applications during the previous year. During the year, a total of 10 groups of multiple applications from different homeowners within a development or tenement were received. Most of these involved between 2 and 12 applications, but there was also one group of 19 applications and another group of 44 applications. Where such multiple applications are received, they are dealt with together at the same time by the same tribunal, where possible.

² <https://www.scottishhousingnews.com/article/judging-by-the-scottish-case-a-specialist-housing-court-in-england-will-see-a-wave-of-deposit-protection-cases>

A total of 181 repairs applications were received, representing 5% of all applications. The level of applications was 20% lower than in the previous year. The proportion of repairs applications which came from third parties rose to 25%, from 17% in 2017-18. Most of the third-party applications came from a small number of local authorities which have been particularly proactive. Only 66 letting agent applications were received, significantly below the projected figure of 240 cases per annum. However, this is not surprising in the first year of operation of the jurisdiction, as the code of practice is not retrospective and a letting agent must attempt to resolve the dispute before it can be the subject of an application to the tribunal. This has had an impact on when applications are first eligible for consideration by the tribunal. It is likely that applications will start to rise, as all letting agents have been required to be registered since 1 October 2018, and awareness of the code of practice is likely to grow among landlords and tenants. This was previously experienced in relation to property

factor cases, following the introduction of that jurisdiction.

There were 71 landlord (right of entry) applications, an increase of 16% on the previous year. As in previous years, only a small number (26) of rent assessment applications were received.

Case management discussions and hearings

The majority of private rented sector cases were disposed of at case management discussion by a legal member sitting alone, without the need for a further hearing. In some eviction applications, for example, the tribunal has no discretion where the application is brought on grounds where it is mandatory to grant an order. In some cases, case management discussions have been conducted by teleconference, and this generally appears to be working well. This can be more convenient for the parties, while making efficient use of judicial and tribunal resources. The Chamber currently holds hearings at 71 venues throughout Scotland.

Where possible, applications which are linked - most commonly an eviction application accompanied by an application for a payment order - are conjoined and heard on the same day by the same tribunal member(s). Other examples include a repairs application brought by a tenant coupled with an application by the landlord against a letting agent; and eviction and payment applications by a landlord coupled with a repairs application by the tenant. As outlined earlier, the tribunal has also experienced a number of group applications being brought by homeowners in the property factoring jurisdiction.

Hearings (and inspections in repairing standard and rent assessment cases) are fixed as a matter of course in the other jurisdictions, which was the practice for property factor and repairs cases prior to the establishment of the Chamber. These cases can be more complex and take longer to complete than most PRS cases, and generally remain with the same tribunal members throughout the process. Failure to comply with a tribunal's order in these cases result in referrals to the police for prosecution even

after the case is closed by the tribunal, and also involves reporting of the tribunal's decision to the registration authorities.

All Chamber decisions and statements of reasons for those decisions are published on the Chamber website and are therefore publicly available. All forthcoming hearings are also advertised due to the interest which surrounds some cases, and members of the press and observers can and do attend.

Members and training

As at the end of March 2019, there were 116 tribunal members within the Chamber. Of these, 64 are legal members, and the remaining 52 are ordinary members. These are either qualified surveyors (who sit on repairs, rent assessment and



property factors cases) or members with knowledge and experience of housing issues (who deal with applications relating to private rented sector issues, property factors, right of entry, and letting agents). This year again saw a sizeable investment of time and resources by the Chamber in providing members' training.

During the year, a total of 7 days of training was delivered.

These included:

- Refresher training for legal members on the private rented sector
- Letting agent training for legal and housing members
- Training for reviewers - legal, surveyor and housing members
- Property factor training for legal, surveyor and housing members

Feedback from members on the training has been very positive. Further training sessions for members across various jurisdictions are planned for 2019-20.

Current and future challenges

The introduction of the new private rented sector (PRS) jurisdiction has continued to present significant challenges. In the first year of operation, the Chamber received over 3 times the number of applications originally projected.

The high volumes of PRS applications has had a significant impact on the availability of resources within the Chamber, including caseworkers, hearing clerks and other staff, hearing venues and tribunal members. This regrettably led to delays in the processing of applications during the year, and in January 2019, a stakeholder communication was issued by the Chamber explaining the reasons behind the delays. Measures have now been put in place to reduce delays, including bringing in legal members more regularly to assist with the initial sifting of applications. There has also been a significant increase in staffing, and there are now 67 permanent SCTS administration staff allocated to the Chamber. This has brought challenges in terms of training staff and bringing them up to speed with new

jurisdictions and processes. The signs are, however, that the timescales for processing of PRS applications are starting to come down, and this should improve further over time.

A number of legislative difficulties were also identified, including areas where the legislation was not clear and some where the tribunal did not appear to have powers equivalent to those previously available to sheriffs. In some cases, the Chamber was unable to take applications forward as a result of these difficulties - it is not uncommon, for example, for an applicant to be unable to trace the respondent's current address and the relevant rules of procedure did not allow for that.

As a result of the concerns raised, a number of amendments to the Chamber rules came into force during February and March 2019. The main changes introduced were:

- Allowing service by advertisement on the Chamber website as an equivalent to walls of court service

- Allowing the Chamber to serve formal documentation where the respondent moves during the course of the proceedings and provides no contact details
- The introduction of a process to amend applications mid proceedings e.g. to increase the sum claimed in payment actions
- Permitting the tribunal to regulate its own procedure. This allows a tribunal to order a delay in execution of an order at any time before it is executed for diligence; and makes further provision for the management of group applications
- Allowing the tribunal to award interest on orders for payment
- Providing for applications for time to pay directions and time to pay orders to allow instalment payments by a debtor.

Following these changes, new application forms have been prepared and changes to case management

procedures undertaken. Guidance has been issued to parties and to tribunal members, and the Chamber website has been updated to reflect the changes. While it is too early at this stage to judge the impact of the changes, it is hoped that they will address some of the major issues which have arisen to date.

Legislative changes to the repairing standard jurisdiction were also introduced on 1 March 2019. New regulations amended the Housing (Scotland) Act 2006 to:

- allow applications relating to holiday lets over 31 days to be made to the Chamber
- extend the repairing standard to state clearly that the house must meet the tolerable standard
- apply new Scottish Government guidance for fire detection which a tribunal must have regard to in determining whether a house meet the repairing standard
- apply various other new guidance from Scottish Ministers which a tribunal must have regard to in

determining whether a house meet the repairing standard

Notable appeal judgements by the Upper Tribunal

A number of appeals relating to decisions made by the Chamber were heard by the Upper Tribunal for Scotland. Most of these concerned decisions made in property factor cases.

One such appeal in *Provan Properties (Scotland) Limited v Crossan (2019) UT 12* concerned the meaning of the term 'property factor' as defined in section 2 of the Property Factors (Scotland) Act 2011. The tribunal had found that the appellant, a developer which constructed the building within which the homeowner's property was situated, was a property factor in terms of section 2 of the 2011 Act. Due to difficulties in marketing the development, the appellant still owned most of the other flats in the building, and it was responsible for repairs and maintenance of the common parts of the building. The appellant argued that the tribunal had misled itself in finding that it was acting in the course of

business in managing the common parts of the building. It submitted that there was no business relationship between the parties, but only a private relationship arising from their shared interest in the same property.

The Upper Tribunal found that, while the management of the development may not have been an integral part of the appellant's business, it had been its regular practice for some years to carry out that work. The concepts of 'business relationship' and 'private relationship' were not mentioned in the 2011 Act, and the Act did not require a property factor to be remunerated. In terms of section 2(1) (c) it was enough that the management was done as part of the person's business and that the owners of the adjoining or neighbouring properties were required under their title deeds to pay for the cost of management. The Upper Tribunal therefore refused the appeal.

Another notable Upper Tribunal decision in *Friel v Lafferty (2019) UT 8* concerned an appeal by a property factor against a decision that it had failed to carry out its

property factor's duties because it had charged a homeowner for work done to property which was not commonly owned. The Deed of Conditions was silent on ownership of balconies within the development, and the First-tier Tribunal had determined that these were owned by individual owners and were not therefore 'common parts'. The appellant argued that the tribunal did not have jurisdiction to determine the ownership of heritable property. The Upper Tribunal dismissed this ground of appeal, finding that the tribunal has power to determine on the facts before it the ownership of heritable property, including determining whether the property has common parts.

Annex C: Tax Chamber

Twelve new appeals were received in relation to Land and Buildings Transaction Tax, two of which were subsequently withdrawn by the applicants. Four of the

remaining new appeals were dismissed. Revenue Scotland are due to respond to three others in April 2019 and two have been sisted pending the outcome of two appeals that are currently before the Upper Tribunal. The remaining new appeal is awaiting a response from the appellant.



*Anne Scott,
Chamber President*

Of the extant appeals received in the period covered by the last Annual Report, the two Land and Building

Transaction Tax appeals that were sisted remain sisted also pending the outcome of the same Upper Tribunal decisions. There was one oral hearing and the appeal was dismissed. Two appeals on the papers were granted.

Five new appeals were received in relation to Scottish Landfill Tax. All are substantive appeals and will proceed to oral hearings, the first of which is listed for 4 days in the summer. One Case Management Hearing has proceeded and another is scheduled.

In conjunction with the Judicial Institute for Scotland a joint training session with the Pensions Appeal Tribunal, Lands Tribunal and Scottish Land Court was held in November 2018 and the evaluations all commended it.

Annex D: Health & Education Chamber

Applications in relation to Additional Support Needs cases are, together with its disability discrimination jurisdiction are presently the only jurisdictions in the Health and Education Chamber.

Additional Support Needs

[A reference to the ASN jurisdiction under the 2004 Act](#)

The Additional Support Needs (ASN) jurisdiction hears references from parents and young people³ against decisions of education authorities regarding the provision of educational support, under the *Education (Additional Support for Learning) (Scotland) Act 2004*. Since 11 January 2018, children aged between 12 and 15 years who have capacity to make a reference and where their wellbeing will not be adversely affected by doing so, have been able to make two types of references:

³ Young people are those aged 16 years and above, who remain within school education - the upper age limit (previously 17 years), was removed by the *Education (Scotland) Act 2016*.

- i. A reference in relation to a co-ordinated support plan (CSP).
- ii. A reference appealing the education authority's assessment of the child's capacity or wellbeing (which is undertaken when the child seeks to exercise one of the rights available under the 2004 Act).

Children⁴ have no right to make a placing request.

Capacity and Wellbeing

There is no presumption of capacity in the 2004 Act. There are two statutory tests relating to the child's capacity and wellbeing which the child must overcome before (s)he can exercise a right under the 2004 Act. President's guidance sets out how an ASN tribunal will approach these tests⁵. There is provision within the Rules

⁴ Children are those aged up to and including the age of 15 years.

⁵ President's Guidance 02/2018: Capacity and Wellbeing.

of Procedure⁶ for a legal member to hear an appeal against the decision of the education authority on its assessment of the child's capacity or wellbeing, which provides for the efficient hearing of the reference. There is also provision for the reference to be decided on the written evidence.

When assessing capacity, a tribunal or a legal member will assess the child's level of maturity and current understanding in relation to the specific right the child seeks to exercise. Sufficient maturity and understanding is not age specific and capacity is not a static concept. A child may lack capacity to exercise certain rights, but have capacity to exercise others. Capacity will be measured in relation to the particular child and the exercise of the particular right at the particular time. There is no single formulation to assess a child's capacity against the range of rights available within the 2004 Act.

⁶ The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366).

Since the new rights were introduced in January 2018, 3 CSP references involving a child aged 12 to 15 years, have been made to the ASN jurisdiction.

Since 2010, the ASNTS/ASN has had the jurisdiction to hear *claims* from parents, children and young people⁷ against responsible bodies⁸ regarding disability discrimination in school education, under the *Equality Act 2010*.

⁷ Where the child or young person has the capacity to make the claim - there are no comparable 'capacity and wellbeing' tests in the 2010 Act.

⁸ This includes a school managed by an education authority, an independent school and a grant-aided school

Our people

Mrs May Dunsmuir is President of the Health and Education Chamber. Mrs Dunsmuir was appointed as President of the Additional Support Needs Tribunals (ASNTS) on 12 May 2014, and became President of the Health and Education Chamber on 12 January 2018.



May Dunsmuir,
Chamber President

The President, [together with 17 legal members and 21 ordinary members](#), serve within the Chamber.

Judicial and Administrative Support

Mr Derek P. Auchie was appointed as the Chamber's In-house Convener in January 2018.



He determines permissions to appeal and review applications, pre-allocation interlocutory work and is the lead convener for judicial training (induction and all-member). He also assists the President in monitoring the progress of ongoing cases and with practice developments.

The Scottish Courts and Tribunals Service (SCTS) administration team has this year comprised a Senior Operations Manager, an Operations Manager and an Acting Senior Case Officer. The team is also supported by case officers. The team provides administrative support to the President and Tribunal members, to ensure that every case is provided with a high level of service and attention. A Learning and Improvement Officer has been assigned to the Chamber from SCTS to design, support and deliver training to the administrative staff. She has been working closely with the team over the past year to develop a suite of training materials to standardise casework and hearing procedures. An SCTS Operational Support Officer works with the team to produce the newsletter, statistics, website updates, case

management system (CMS) changes and reporting information.

The President has a PA/Member Liaison Officer who is responsible for a range of matters, which include supporting the President, managing her diary, liaison with tribunal membership, member record keeping and preparation of member training events.

Chamber Membership

The Chamber has a rich blend of members, from a range of legal and specialist backgrounds. A number of members have experience of caring for children with additional support needs and some have experience of having additional support needs in school education.

The membership is made up of:

17 legal members (some are judges in other Chambers and reserved tribunals), with the following experiences:

- solicitor
- advocate
- sheriff
- children's reporter
- academic

8 education members, with experiences in:

- primary and secondary school education
- higher education
- additional support needs education

3 social work members, with experiences in:

- local authority/children and families/child protection
- special school

9 health members, with experiences in:

- child and adolescent psychiatry
- forensic psychiatry
- child psychology
- child and paediatric speech and language therapy
- physiotherapy
- pharmacy
- occupational therapy

Member Development

The President provides a peer led model of training and development to support the members. This includes:

1. Member review

The member review committee is led by a legal member, who supports the 3 committee members. The President intends to develop the committee over the next reporting year by increasing its numbers and developing further training, learning from completed reviews, and to reflect the growing membership. Findings from member reviews influence the training programme for the year.

2. Mentoring

Members who were appointed in 2015 and 2018 have mentors drawn from within the membership. The President invited mentors to have a refresher session with their mentees in the next reporting year, as she considers this to be one of the Chamber's most valuable peer led support and learning tools. From time to time the

President invites specific mentors to engage with their mentee, for a focused development purpose.

3. All-members' training

Each year the members meet for an all-member training event. These are of unique value, providing an opportunity for learning and sharing, offering insight and perspectives into various tribunal experiences.

4. Legal and Ordinary member training

Each year the legal members attend an evening training event, and occasionally a convener focused training day. Ordinary members attend an evening training event once every two years, although this can be increased when necessary.

5. Judicial Handbook

The Judicial Handbook is the Chamber's resource repository. Every member has an electronic and hard copy of this.

6. Case Digest

The Case Digest is the only literature the Chamber has which offers a comprehensive assessment of the law in ASN jurisdiction cases. Derek Auchie, the author, will update this by 2020, to include developing case law from within and outwith our own Chamber; our new legislative appeal and review processes; and the range of international obligations to which we must have regard.

7. Judicial Decision Writing Toolkit

This is being developed on the body of case law the Chamber generates and with an international review of processes and decisions. The legal members attended training on decision writing in October 2018, by way of introduction to the path that lies ahead. This will be introduced in the summer of 2019.

8. Communication

The first edition of the Chamber Newsletter, 'The Bulletin' was published in November 2018 and the second will be

issued in the summer of 2019. Two editions will be published each year.

Member Training

An update from the Lead Trainer, Mr Derek Auchie.

Following the induction training for new members, completed by March 2018, two training events were held in the reporting year, - legal member training in October 2018 and the all members' conference in March 2019.

The legal member training was extended from the customary evening event to a whole day event. This allowed us to concentrate on Tribunal Craft and Decision Writing. As a group, we examined the crucial question of good decision writing. We gathered detailed views on this subject from all of those attending. We also debated the advantages and disadvantages (as well as the form of) letters to children (whether as parties or participants providing a view). All of this discussion will feed into the Judicial Decision Writing

Toolkit, presently under preparation and due for publication in summer 2019.

At the all members' conference in March 2019, we concentrated on claims under the Equality Act 2010 (which are increasing in number and complexity) and cases where a child is a party. A mock hearing (but based on real claims) was compiled, creating a realistic document 'bundle'. This bundle was the basis for a discussion of the issues, a mock conference call activity and then part of a mock hearing. Some of our members were allocated roles (as tribunal members, witnesses and a supporter) and two external lawyers attended for each of the parties. We were very lucky also to have in attendance a 14 year old schoolgirl, who played the part of the claimant, and did so perfectly.

Members of staff from the SCTS administration attended and participated in all of the training events held this year. Staff value the opportunity and feedback shows that they benefit greatly from working with the members during the event. Members have also said that having

staff participate during the training brings new perspectives to their learning.



Feedback was noted and gathered from these exercises and will feed into future training and policy development. Also, we trialled electronic feedback for the first time, using Survey Monkey, and the quality and depth of member comments suggest that this medium leads to a richness of data which was more challenging to achieve from paper feedback collected at the end of an event. The HEC has participated in the Judicial Education and Training Committee (JET), and ran the electronic feedback at the All Members' Conference as a pilot for that Committee.

In a further innovation, the President introduced self-directed reflective learning by asking all members to confirm that they had reviewed and considered the

content of the President's Guidance on both *conference calls* and the *views of the child*.

Looking ahead to the coming year, we have evening training events in the autumn planned for both legal and ordinary members, and the agenda is already taking shape for those. The 2020 all members' conference has been fixed for Thursday 19 March, and planning has started on the programme for this event.

Members' feedback from all training events has been very positive. The peer led model of training which has now been in place for over 4 years appears to be working well in practice.

Judicial Decision Writing Toolkit

The President decided to introduce a Judicial Decision Writing Toolkit in 2019, to provide support and guidance to Chamber members and to introduce elements of consistency in drafting.

The content and quality of written decisions is crucial both to hearing participants and to the Chamber's

public reputation and standing. Each decision produced is carefully reviewed by the President prior to authorising its publication. This process, as well as fostering a wider recognition of the role which published decisions play among the Chamber stakeholders, has led to the conclusion that a detailed guide to decision writing would be a useful tool.

This guide will be in the form of a 'Toolkit', so called since it will provide practical tips and examples on how to write a concise, tightly worded and informative decision. The Toolkit, in its fully developed form, will include sample decisions to illustrate the guidance in action. This resource will draw upon the collective experience of decision writing as well as published literature (domestic and international) on this subject. The idea is to produce a resource which will be used each time a decision is being crafted.

The first edition of the Toolkit is due to be published in the summer of 2019, and it will be discussed with members during training in the forthcoming year.

The Bulletin

An update from the Editor,

Mrs Deirdre Hanlon

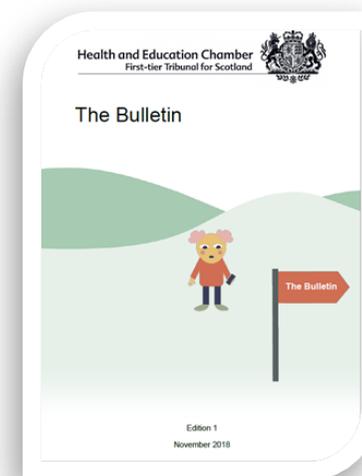
The challenge of editing the first newsletter for the Health and Education Chamber (HEC) has been a welcome one for me. From my own experience as convener for the ASN jurisdiction, I am aware that we often deal with complex issues considered against a legal framework requiring specialist knowledge. The role of Editor presented a real opportunity for me to develop and continue to broaden my own understanding of the application of the law within the HEC, enabling me to share this with fellow members.

For our first edition, I set out to include thought provoking content and invite discussion and debate. It was also essential that the Bulletin acted as a communication and learning resource for all HEC members.



My enthusiasm to produce our first newsletter was exceeded by the enthusiasm of all those who contributed to it. I am grateful to everyone both inside and outside the HEC who took time to produce such a broad range of articles and commentaries. The final version of the newsletter was only possible with the support and input of SCTS staff, who do such a brilliant job of producing the end result.

I hope going forward to provide the Chamber with a newsletter that is diverse in content and reflects all of our membership, especially as the HEC expands to include other jurisdictions. With this in mind, I will be in touch with members who are keen to be involved in sharing their knowledge and expertise.



Case law developments

An important decision dealing with the not uncommon situation of school exclusion of children with additional support needs was published in 2018. In such cases, the education authority usually relies (at least in part) on some form of alleged physical aggression, or even violence, to justify the exclusion(s). It was thought that regulations under the Equality Act 2010 excluded conditions which carried a '*tendency to physical abuse of other persons*' from the protection of the Act. However, this exclusion has been thrown into doubt by the Upper Tribunal (UT) in England and Wales in *C & C v The Governing Body of a School (SEN)* [2018] UKUT 269.

In that case, the UT concludes that in relation to children, this provision in the regulations is incompatible with the European Convention on Human Rights (ECHR), Article 2, Protocol 1, which provides a right to education.

The full impact of this case will develop over time. Although not binding on the HEC, it is persuasive and will have to be considered by any tribunal faced with a

challenge under the 2010 Act to a decision to exclude a child (at least in part) for reasons of physical aggression or violence. Much will depend on the circumstances of the case, but this authority marks an important milestone in dealing with exclusions of children with additional support needs. No doubt there will be further developments in this area.

Children and young people

The President continues to consult with children and young people on how their access to the tribunal may be improved. Their views have helped to shape and influence a number of new tribunal processes which have been introduced to support children, some of whom themselves may be a party, to voice their views, give their evidence and participate in their hearings.

The principle of learning from children was applied directly in the all member training in March 2019 when we were fortunate to be able to rely on the excellent acting skills of a 14 year old schoolgirl. She played the part of a child party making an Equality Act claim. She

attended the mock hearing and gave her views, but not her evidence. This demonstration led to a debate among members on how to consider and engage with a child during a hearing, and this exercise will, in turn, lead to the issuing of new Guidance from the President.

In October 2018, the SCTS asked the children who had participated in the *needs to learn* website testing to assist with a staff training programme. This was to improve staff communication with children who come into contact with the ASN jurisdiction. A 'mock' telephone test was arranged and a child was given a short script to make a telephone call to the casework team about making a reference. Staff were made aware that they would have to respond to 'mock' telephone calls from children as part of their training, but were not made aware of when this would happen, or told in advance that the call was a 'mock' call. The staff and child involved gained a lot from the experience. The child got to practice her acting skills, with some 'off script' moments, and staff enjoyed having their skills tested. They reflected on feedback from the child on

how they felt the call worked and how they could put any learning points into practice going forward.

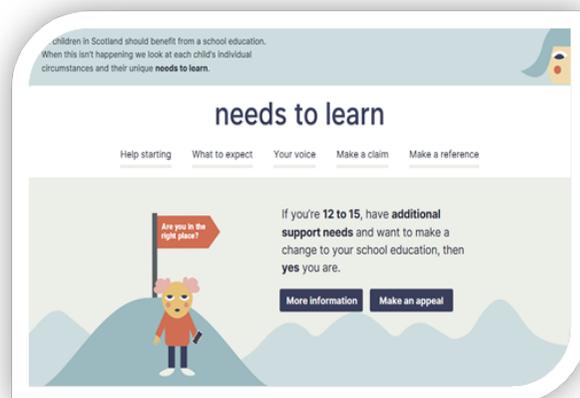
Staff of the SCTS agree that we learn best when we learn directly from children.

The President remains committed to child-led training and this will continue to be developed across a range of the work of the Chamber and the SCTS.

Needs to learn

After launching the '*needs to learn*' section on the Chamber's main website in February 2018, a review of the site has been undertaken to ensure that the Chamber continues to provide all information in an appropriate format for children aged 12 to 15 years. This has led to the development and inclusion of a child friendly version of the Chamber privacy notice, which advises children aged 12 to 15 years how the SCTS processes their information. Similarly, a child friendly complaints procedure is being developed by SCTS with a view to explaining in clear terms how children aged 12 to 15 years can make a complaint to the SCTS regarding

administrative matters. The guidance prepared by SCTS will signpost children to the children's complaint guidance prepared by the Judicial Office, should they wish to make a judicial complaint.



Tribunal hearing suites

The new Glasgow Tribunals Centre (GTC) opened for business in March 2018. This is the first cohesive and collaborative Tribunals Centre in Scotland.

There are facilities to hold hearings from a range of devolved and reserved tribunals, which include health and education, housing and property and tax, social security, employment, asylum and immigration and criminal injuries.



In order to meet the needs of children, young people and adults with additional support needs, new hearing suites have been created on the 6th floor of the GTC. These were designed following detailed consultation with children and young people who had additional support needs including care experience. They had experience of a number of different hearing environments, including children's hearings and the sheriff court. They designed the 3 component concept for the hearing rooms:

- An area with a round table with equal height chairs which look the same, where the tribunal members, parties and their representatives, the child and the witness will sit during the hearing of evidence.
- An area with two small sofas, where the child and the tribunal members can sit, if the child would prefer to give their views or evidence there.
- A break out area, with a screen, a beanbag and small fridge, where the child can take a break from the hearing, whilst still remaining in the room, with access to fresh water and snacks.



The GTC also has one hearing room which has the facility for 1:1 evidence, where a child can give their evidence to one questioner, who will have an agreed list of questions. During this experience the questioner and the convener of the hearing (the legal member) will have a live hearing link. The tribunal members and the parties will be able to see and hear the child and the questioner. The child will be aware that others are observing but will not see or hear them. The 1:1 evidence room is softy furnished with two armchairs and tactile features. The GTC also has a sensory room where children can go to rest or de-stress.

These 3 components will feature in a hearing room in the Inverness Justice Centre.

Letter to the Child

The President has recently introduced the concept of writing a letter to the child explaining the tribunal's decision, where the child is a party or where the child has been involved in the hearing. She intends to explore this further in the next reporting period.

The President issued a letter to a child party in a claim in 2018. This was a succinct one page summary of the decision, why it was taken and the extent to which the child had informed the process. The child was supported by the new children's service, *My Rights, My Say*, which reported that this was well received by the child, who felt that it helped her to feel valued. *My Rights, My Say* have encouraged the use of child letters.

Social story – coming to a tribunal hearing at the GTC

Work is commencing on the development and design of a "social story", which provides photographic imagery to help the child prepare to attend a tribunal hearing. This will be led by members of the Chamber with experience in this field.

Tribunal processes and procedures

Permission to Appeal and Review

Permission to appeal

The appeal process involves the appellant first seeking permission to appeal. This request is dealt with initially by the Chamber's In-house Convener (IHC) (or by the President in any cases which involved the IHC as legal member). In some cases, an appeal application will raise issues which are best dealt with as a review; here, the IHC will direct that a review takes place.

In the UT decision refusing permission to appeal⁹, Lady Smith held that the tribunal's concluding comments (setting out concerns of the tribunal on certain matters) did not undermine the main reasoning of its decision; the correct test had been applied by the tribunal. For this reason, permission to appeal was refused.

⁹ UTS/AP/18/0020, 9th October 2018,

Request for review

A review application, unlike an appeal, involves a request that the original tribunal looks again at its decision. The test here is not a point (error) of law, but instead whether the *interests of justice* mean that the decision should be changed.

Following a review, the original tribunal may issue a fresh, changed decision. Where it does so, that decision could be appealed.

The new appeal and review processes have now become embedded. In this reporting period 1 application for permission to appeal was lodged and 2 applications requesting a review of the tribunal's decision.

The request for permission to appeal was refused at HEC level. This led to a decision from the Upper Tribunal, a decision of Lady Smith, also refusing permission to appeal.

Both requests for review were refused.

Topical Matters

Co-ordinated Support Plan (CSP)

The CSP is a statutory education plan¹⁰, which specifies the child's additional support needs, their educational objectives and how, when and who will provide the additional support in order to meet those objectives. The statutory provisions are complex and there appears to be a lack of clarity and understanding in relation to these. Some education authorities use local non-statutory plans in preference to CSPs; however, where the statutory tests are met, an education authority has a legal obligation to provide a CSP. Failure to provide an adequate CSP could amount to a failure to make reasonable adjustments in respect of a child's education, which amounts to discrimination on the grounds of disability¹¹.

¹⁰ Section 2, 2004 Act.

¹¹ *City of Edinburgh v R* [2018] CSIH 20.

Child's Plan

The Child's Plan is not an education document and is not intended to replace the CSP. Some education authorities are citing the existence of a Child's Plan as a reason to refuse a request for a CSP. A CSP exists as a free-standing document which is imported into the Child's Plan.

Placing Requests

The overwhelming majority of placing request references relate to special schools. A placing request can be made for a school in the current or another education authority. This can have significant implications for education authorities where one is closing special schools and the other is maintaining or growing such provision. On occasion, a placing request has been consolidated with a disability discrimination claim; for example, where it is alleged that the education authority's policy on mainstreaming amounts to discrimination.

Special Schools

In considering some placing requests, the status of a 'special unit' located within a school run by an education authority may arise. Such units (or 'bases') are designed to provide an environment suitable for all or (more often) part of the education of children with additional support needs. Some of these units qualify as 'special schools' under the relevant legislation.¹²

President's Highlights

This year has been varied and interesting, and has included engagement or involvement in a number of activities, a flavour of which are provided.

Autonomy, Rights and Children with Special Needs: A New Paradigm?

I serve on the advisory board of joint work between the University of Edinburgh, Centre for Research in Education, Inclusion and Diversity and the University of Manchester considering the range of children with additional support needs (in Scotland) and special

¹² Education (Additional Support for Learning) (Scotland) Act 2004, section 29(1).

educational needs (England) and the impact on their education; how their needs are met within this context and the differences between the two jurisdictions; This work has concluded with a report: *Autonomy, Rights and Children with Special Needs: A New Paradigm?*¹³

Scottish Parliament

I recently gave evidence to the Scottish Parliament's Education and Skills Committee¹⁴ on the implementation of the *Education (Additional Support Needs) (Scotland) Act 2004*; and the progress being made by the Chamber in improving access to justice for children and young people who are parties or who are the subject of applications before the jurisdiction. I spoke of the need to improve understanding and implementation of the CSP, which is the only statutory education plan which exists in Scotland. The Committee has since written to the Cabinet Secretary for Education to recommend that

the CSP be a focus when considering how the 2004 Act is being implemented across Scotland.

Judicial Appointments Board: Diversity Steering Group

I continue to serve on the Diversity Steering Group of the Judicial Appointments Board for Scotland, expanding on the opportunities for lawyers to develop within tribunals' judiciary.

SCTS: Estates, Health and Safety, Fire and Security Committee

I continue to serve on the Scottish Courts and Tribunals Service, Estates Committee, providing a tribunal perspective, and supporting the development of the Glasgow Tribunals Centre and other builds.

HUB for S.U.C.C.E.S.S

I serve on the advisory board of the HUB for S.U.C.C.E.S.S in 2018; a new project developed by local authority, higher and further education establishments in Edinburgh, to support care experienced young people into and to remain in further and higher education. I

¹³ <https://www.ed.ac.uk/education/rke/centres-groups/creid/projects/autonomy-rights-sen-asn-children>

¹⁴ <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/education-committee.aspx>

provide a focus on the importance of school education as a first step towards that goal.

Scotland, England, Wales and Northern Ireland Jurisdictions

I attended the annual inter-jurisdictional meeting of Scotland, England, Wales and Northern Ireland comparable jurisdictions, which met this year in Northern Ireland. This is always a very valuable learning and sharing experience and offers a great deal of insight into developments across borders within the UK reserved and devolved jurisdictions.

Tribunal (Additional Support Needs) Forum

The annual Tribunal Forum was held in June 2018 and was very well attended, as always. Representatives from local authorities, schools, lawyers, parents, health, education and advocacy attended. Future Tribunal Forum event dates are advertised on our website. The Forum provides a unique opportunity to share Chamber/Tribunal developments, to share information and to respond to stakeholder enquiries.

Activity in the reporting period

During the reporting period of 1 April 2018 to 31 March 2019, the ASN jurisdiction received **113 references and claims**. This is an increase of 13 on the 2017/18 reporting period. The references and claims received are broken down as follows:

Placing Requests

71 placing request references were made, representing a decrease of 3 compared to the previous reporting year. 17 educational authorities were the subject of these references.

Of these:

- 6 references were decided at an oral hearing, where the decision of the education authority was upheld
- 2 references were decided at an oral hearing, where the applicants reference was allowed
- 1 reference was dismissed as it was deemed not competent

- 30 references were withdrawn following an agreement between the parties
- 4 references were withdrawn following a change of mind by the appellant
- 7 references were withdrawn for other reasons
- 21 received during this reporting period have yet to be concluded

22 were for independent schools

49 were for education authority special schools or bases/units within mainstream schools

50 involved children or young people with a diagnosis of autism

3 involved a looked after child or young person

Transitions

1 transition reference was made, which is the same as the previous reporting year. This reference was withdrawn following a change of mind by the appellant.

Co-ordinated Support Plans (CSP)

24 CSP references were made, an increase of 11 compared to the previous year. 14 education authorities were the subject of these references.

- 8 references related to the contents of the CSP
- 5 references related to a deemed refusal of a CSP
- 2 references related to a failure to review the CSP
- 7 references related to a decision that a CSP was not required
- 2 references related to timescale in issuing the CSP

Of these:

- 1 reference was decided at a paper hearing, where the decision of the education authority was upheld
- 1 reference was decided at an oral hearing, where the applicants reference was allowed
- 11 were withdrawn
- 11 references remain outstanding

16 involved children or young people with a diagnosis of autism

4 involved a looked after child or young person

Disability Discrimination Claims

During this reporting period, 17 claims were made, representing an increase of 6 compared to the previous year. The local authority was named as the responsible body in all 17 claims.

- 1 claim was made on admission, exclusion and another issue to do with education
- 7 claims were made on exclusion and another issue to do with education
- 9 claims were made on the matter of another issue to do with education

Of these:

- 2 claims were decided at an oral hearing, where the tribunal refused the claim
- 1 claim was decided at a paper hearing, where the tribunal allowed the claim

- 6 were withdrawn following an agreement between the parties
- 8 claims remain outstanding

11 involved children or young people with a diagnosis of autism

2 involved children or young people with a diagnosis of dyslexia

1 involved a child or young person with a diagnosis of hearing impairment

1 involved a child or young person with a diagnosis of social, emotional or behavioural difficulty

1 involved a child or young person with another specific learning difficulty

1 involved a child or young person with another moderate learning difficulty

None were known to have involved a looked after child or young person

Previously Outstanding References and Claims

The previous reporting year consists of the period of 1 April 2017 to 11 January 2018 for the Additional Support Needs Tribunals for Scotland (ASNTS), followed by the

period of 12 January 2018 to 31 March 2018 for the Health and Education Chamber. Of the applications received during the previous reporting year, there were 34 applications outstanding with no outcomes by the end of that year. The outcomes for these cases are listed below:

Outcome	References	Claims	Total
Decided Allowed (Paper Hearing)	0	1	1
Decided Allowed (Oral Hearing)	3	1	4
Decided Refused (Oral Hearing)	4	1	5
Dismissed No Jurisdiction	1	0	1
Dismissed For Want of Prosecution	1	0	1
Withdrawn			
Agreement (Mediation)	1	0	1
Withdrawn	7	3	10
Withdrawn Other	0	0	0
Withdrawn Changed Mind	1	0	1
Decided Refused (Paper Hearing)	0	0	0
Dismissed Not Competent	0	0	0
Outstanding**	8	2	10
TOTAL	26	8	34

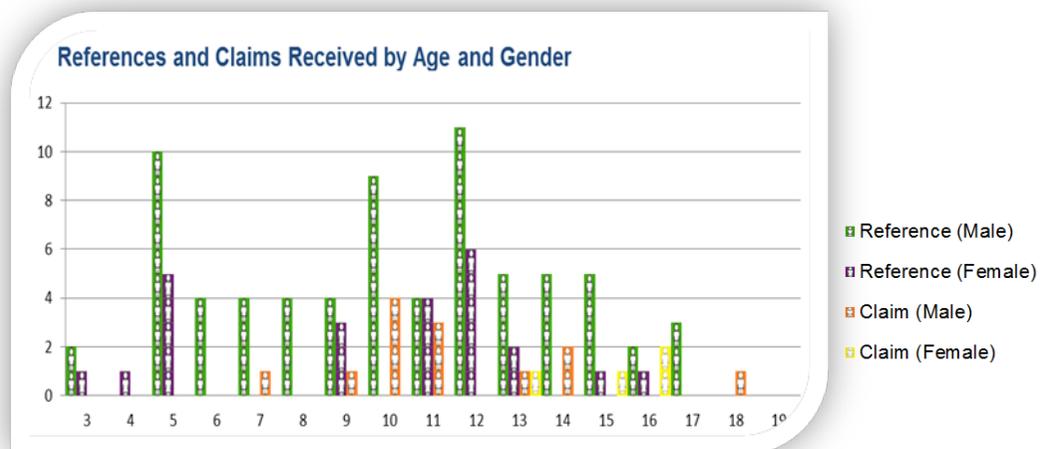
**decided in the current reporting year

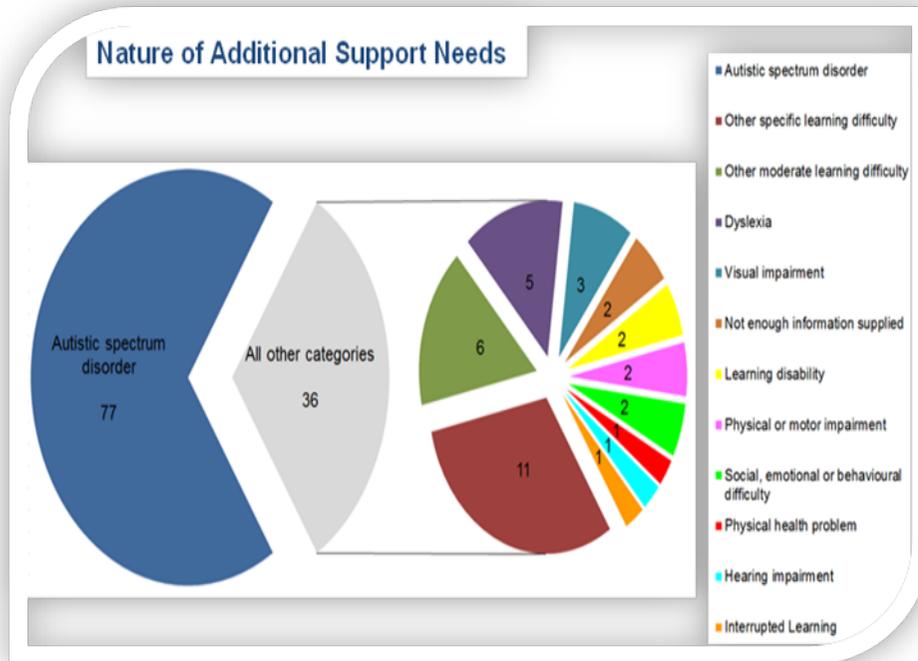
Patterns

This reporting year has seen the highest volume recorded for the jurisdiction. The figure below illustrates ASNTS/ASN jurisdiction volume over a 3 year period.

	2016/17	2017/18	2018/19
Placing Request	53	74	71
CSP	11	13	24
Transition	0	2	1
Claim	9	11	17
Total	73	100	113

The majority of applications made to the ASN jurisdiction continue to be for boys, and for children with autistic spectrum disorder.





experienced children, to raise the profile and improve understanding of the ASN jurisdiction.

The ASNTS/ASN jurisdiction received 100 references and claims between 1 April 2017 to 31 March 2018; **1** of which involved a looked after child. In the current reporting period, **7** cases involved a looked after child.

A child or young person has additional support needs if the child or young person is looked after by a local authority¹⁵; however, few references or claims are made by, or in respect of, looked after children or young people. The President introduced recording of looked after statistics in 2015 and continues to engage with care experienced children, schools, education authorities and organisations who represent or support care

Contact Us

HEChamberPresident@scotcourtribunals.gov.uk
0141 302 5863

www.healthandeducationchamber.scot

Additional Support Needs
We consider two types of appeals – references, regarding the provision of educational support under the 2004 Act; and claims, in respect of disability discrimination in school education, under the 2010 Act.

Additional Support Needs

Needs to Learn
If you're 12 to 15, have **additional support needs** and want to make a change to your school education, then **yes** you are.

Needs to Learn

www.needstolearn.scot

All children in Scotland should benefit from a school education. When this isn't happening we look at each child's individual circumstances and their unique **needs to learn**.

¹⁵ Section 1(A), 2004 Act

Annex E: General Regulatory Chamber

Scottish Charity Appeals Panel

The Scottish Charities Appeal Panel remains the only jurisdiction to have transferred into the General Regulatory Chamber to date.

The tribunal hears appeals against decisions made by the Office of the Scottish Charity Regulator; the body which regulates charitable activity in Scotland.

The volume of cases is low, with 3 being heard in the reporting period.

Parking & Bus Lane Adjudicators

Parking and Bus Lane Adjudicators (PBLA) consider appeals in three areas: vehicle removal, penalty charge notices and bus lane contraventions.

Work is continuing on the transfer of PBLA with a new transfer date of December 2019.

Police Appeals Tribunal

The Police Appeals Tribunal considers appeals against dismissal or demotion in rank following the conclusion of proceedings relating to misconduct or unsatisfactory performance. Work is continuing on the transfer of the Police Appeals Tribunal with an expected transfer date of April 2020.

Annex F: Social Security Chamber

Social Security Chamber

The Chamber came into being on 22 November 2018. Anne Scott, the President of the Tax Chamber has been assigned as the Temporary President of the Chamber. Two legal members of the Tax Chamber have also been assigned to the Social Security Chamber until the “wave 2” benefits come online.

The Chamber hears appeals from decisions by Social Security Scotland, an executive agency of Scottish Government, about certain devolved social security benefits. Ultimately there will be 11 devolved benefits but Best Start Grant Pregnancy and Baby Payment is the first appealable benefit. The other “wave 1” benefit that will be appealable is Funeral Expense Assistance which is expected to be launched in summer 2019.

Currently the case load is light and as at the end of March 2019, six appeals had been lodged.

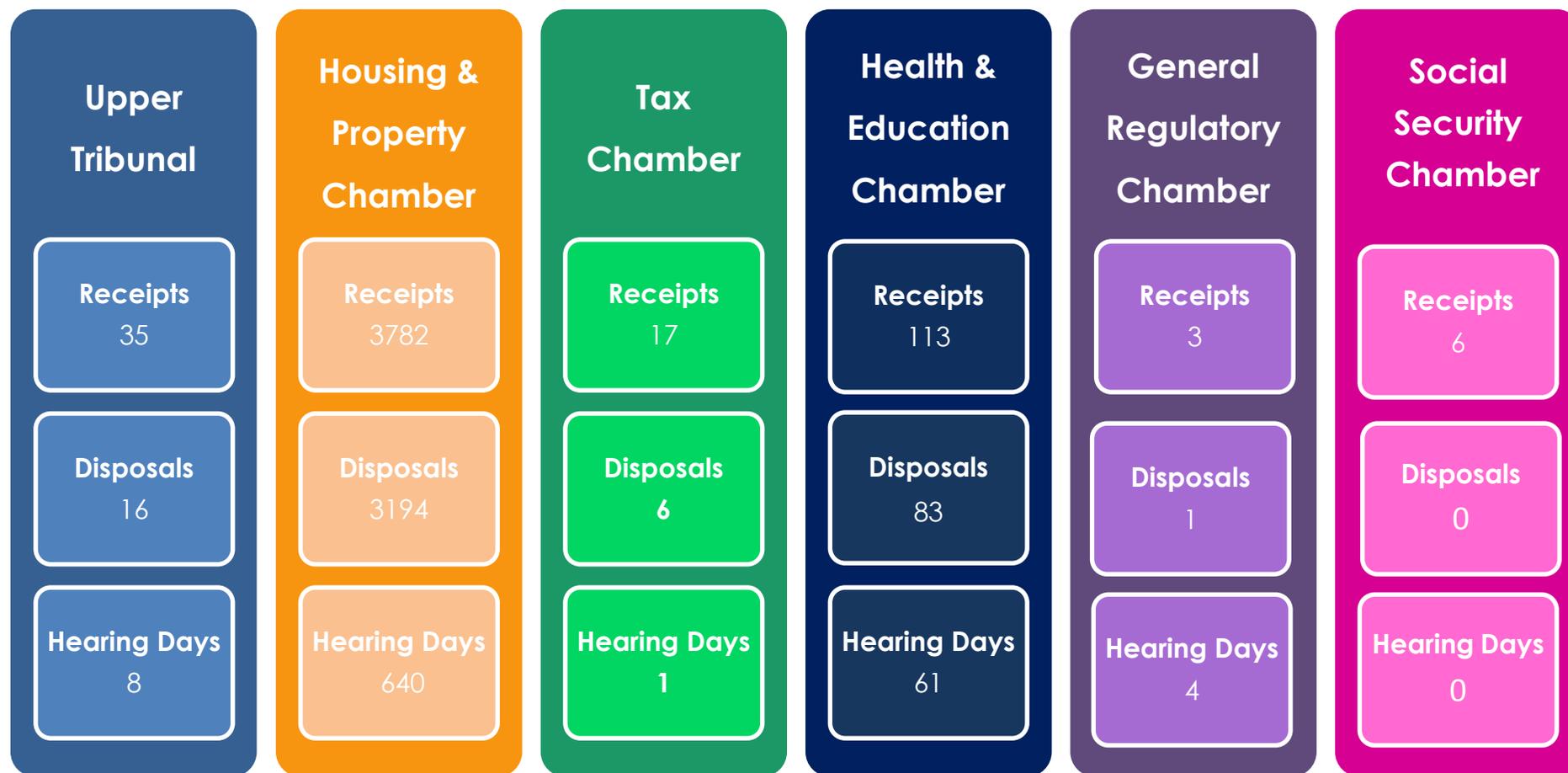
They have yet to be heard. It is not anticipated that there will be a heavy workload in 2019.

The website www.socialsecuritychamber.scot has been launched and, although further changes are in train, it has been the subject of favourable comment.



Annex G: Tribunal Statistics

This table provides detail on the receipts, disposals and hearing days for each chamber for the reporting period.



Judicial Office
for Scotland



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July 2019
