



Additional Support Needs
Tribunals for Scotland

**Annual Report of the President for the
Additional Support Needs Tribunals for Scotland**

2005/2006



Additional Support Needs
Tribunals for Scotland



Peter Peacock MSP
Minister for Education and Young People
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23 April 2006

To Peter Peacock MSP, Minister for Education and Young People

I am pleased to submit my first Annual Report as President of the Additional Support Needs Tribunals for Scotland for the year ending 31 March 2006.

Jessica M Burns

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President of the Additional Support Needs Tribunals for Scotland

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Note: In the statutory provisions relating to Additional Support Needs, the Tribunals as a decision-making body are referred to by the use of a capital "T" to differentiate it from the administrative organisation referred to with the use of a lower case "t" and singular, as "tribunal". For the purposes of this report, and to avoid any confusion, the administrative organisation is referred to as the Secretariat.

The abbreviation ASNTS is used throughout to refer to the Additional Support Needs Tribunals for Scotland.

President's Foreword

I am presenting this, my first Annual Report, under the terms of Paragraph 15(1) of Schedule 1 to the **Education (Additional Support for Learning) (Scotland) Act 2004** which provides that "The President must, in respect of each reporting year, prepare a written report as to the exercise of Tribunal functions during that year."

The Act itself came into force on 14 November 2005 and my own appointment was announced shortly before on 21 October 2005. Since Schedule 1 provides for a reporting year to be the "period beginning with the date on which the first President is appointed and ending with 31 March next following that date" this Report is necessarily concerned primarily with the background and establishment of the Additional Support Needs Tribunals for Scotland since it covers a reporting period of less than six months.

Background and Structure

The Tribunals' Secretariat was recruited from late 2004 and the Secretary, Gareth Allen, took up his post in January 2005. In the following months the seven other members of the Secretariat were recruited and trained. The administrative structure is set out in Appendix IV to this Report. The Secretariat, together with support from the Scottish Executive, proceeded to establish the Office of the President of the Additional Support Needs Tribunals for Scotland.

The establishment of a new form of Tribunal to deal with appeals arising from legislation which had yet to be implemented was a complex one. It was necessarily dependent on projections which were difficult to predict accurately, and the timescale which had to be met was ambitious. The Tribunal organisation is sponsored by the Support for Learning Division of the Scottish Executive Education Department and consequently there was no direct judicial oversight of the development of this body but considerable assistance was provided by the experienced Secretaries of the related jurisdictions in England, Special Educational Needs and Disability Tribunal (SENDIST) and from Special Educational Needs Tribunal for Wales (SENTW). There was a working assumption that the jurisdiction, and hence the caseload, of the ASNTS would be broadly equivalent to that of the jurisdictions in England and Wales but this has proved to be misleading. The scope of bringing a reference (as a first-tier appeal is called) to a Tribunal in Scotland is considerably more restricted and consequently the caseload of the Tribunals will be proportionately lower for four main reasons.

The first, and most significant, is that **Section 2 of the Act** provides for an appeal to a Tribunal in relation to co-ordinated support plans only and the numbers of children and young persons meeting the high specification set out in the Act is likely to be considerably less than those who had a Record of Needs under the previous legislation.

Secondly, the Act reflects the understandable concerns of consultees to the Bill that grievances relating to the implementation of a new approach to support for learning be capable of accessible and simple resolution. **Hence Section 15 of the Act** makes provision for education authorities to "make such arrangements as they consider appropriate for the provision of independent mediation services for the purposes of seeking to avoid or resolve disagreements between the authority and parents or young people". The expectation is that matters will only proceed to a hearing before a Tribunal where mediation is not attempted or does not succeed.

Thirdly, **Section 16 of the Act** provides for a system of Dispute Resolution. The application of this is not set out in detail in the Act but in the related regulations, The Additional Support for Learning Dispute Resolution (Scotland) Regulations 2005, which also came into force on 14 November 2005, provide for a panel of independent adjudicators appointed by Scottish Ministers "for the purpose of assisting with the resolution of disputes between any education authority" and parents or young persons. The qualifications of such persons are identical to those for membership of the Tribunals and nine of those appointed as

independent adjudicators were also appointed to serve as Tribunal members. In general the powers of the independent adjudicators are restricted to issues which do not come within the jurisdiction of the Tribunal but it is possible that related grievances could be raised before both in connection with the same child or young person.

Lastly, the disability jurisdiction in respect of children under the **Disability Discrimination Act 1995** which was extended to SENDIST in September 2002 was specifically not extended to ASNTS on its inception but this decision will be reviewed in due course. The Sheriff Court retains the disability discrimination jurisdiction in relation to educational establishments but even if jurisdiction were extended this aspect is never likely to generate more than a modest number of cases, if the position in England is mirrored.

It is hardly surprising that the first few months of the existence of ASNTS have generated only two references, both of which were conceded without an oral hearing. It is now apparent that in view of the implementation period available to local authorities provided for by **Section 30(3) of the Act** ("The education authority must, before the end of the period of 2 years beginning with the commencement date, establish, in accordance with the arrangements made by them under section 6(1), whether the child or young person requires a co-ordinated support plan") relatively few co-ordinated support plans have yet been agreed and the possibility of resulting grievances, at this stage, is necessarily small. The process of agreeing Co-ordinated Support Plans is likely to accelerate in the lead into the new school year coupled with a growing awareness of the types of children who might benefit from the wider definition of additional support needs contained in the legislation. Nevertheless it is unlikely that the legislation, as currently implemented will generate the annual number of references estimated (300 references lodged resulting in 100 hearings per year) since it is understood that the caseload projection was largely based on the numbers of appeals coming before SENDIST and adjusted on a population ratio.

The timing of my appointment has meant that I have presided only over the latter stages of the implementation period. By late October the main building blocks of recruitment and appointment of conveners and members, preparation of Tribunal literature and website, specification and identification of appropriate accommodation and most of the work on the induction training programme and casework systems was largely accomplished. It is regrettable that I did not have the opportunity of taking a more active part in these aspects. The lack of active judicial guidance has undoubtedly impacted on some aspects of the implementation of the Tribunals despite the fact that the Secretariat did endeavour to seek appropriate guidance in order to meet the milestones set out in the implementation plan and it is a tribute to their efforts that almost all the timescales were met.

In retrospect, it is apparent that, although ultimately well-received, the extent of and timing of the induction training, in particular, was delivered well in advance of the need. A fuller report on this training appears at page 8. Another complicating issue was the amending of the original version of the Practice and Procedure Rules originally laid before the Scottish Parliament on 21 October 2005. In view of the timing of my appointment I was unable to comment on the

content of the Rules as laid. It was evident that these Rules closely followed those relating to SENDIST and their complexity remains somewhat at odds with the user-friendly philosophy of the legislation applicable to ASNTS. Within a few days of being laid the Subordinate Legislation Committee raised a number of issues relating to the Rules and this resulted in some renewed consultation including full and appropriate consultation with the Scottish Committee of the Council on Tribunals. Various amendments were made and the Rules were re-laid in their entirety, to avoid piecemeal amendments, on 1 March 2006. These came into force on 27 March. It is quite proper that the rules applying to the Tribunals be amended from time to time in order to meet the needs of the users and ensure that the Tribunals are best placed to meet the overriding objects of proportionate, efficient and user-friendly decision-making.

The demands of my Presidency in the past few months have undoubtedly been lessened by the fact that I have considerable experience of Tribunal jurisdictions in general and retain my primary appointment as a member of the Tribunals Judiciary holding the post of Regional Chairman in the Appeals Tribunal for Social Security and Child Support which, from 1 April 2006, comes under the administration of the Tribunals Service in the Department for Constitutional Affairs. I could not have accepted the appointment as President of ASNTS without the support and encouragement of the President of this jurisdiction, His Honour Judge Michael Harris. I have also received considerable help and advice from many other judicial colleagues for which I am grateful. My relevant judicial experience and continuing access to current developments relating to other Tribunal systems has enabled me to have a clear vision as to how the ASNTS should fulfil the overriding objectives set out in **Regulation 3 of the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006** and, with the able support of the Secretariat and those appointed to serve on the Tribunals, I hope that once the Tribunals become more active in the exercise of their jurisdiction, it can be demonstrated that these objectives can be fully met.

Appointment Process

It is appropriate in this, my first Report, to make mention of the appointment process which was all but complete by the date on which I took up my post.

While the **Education (Additional Support for Learning) (Scotland) Act 2004** (“the 2004 Act”), makes provision for the establishment of a new forum for appeals, the Tribunals, the Additional Support Needs Tribunals for Scotland, the **Additional Support Needs Tribunals for Scotland (Appointment of President, Conveners and Members and Disqualification) Regulations 2005** set out the requirements in relation to those who will serve on these Tribunals. The President and conveners are to be persons legally qualified in one of the UK jurisdictions and be of at least 7 years’ standing and the members require to have knowledge and experience of children and young people with additional support needs.

There is specific provision that the Tribunals’ exercise of their statutory functions, decisions and dealings with its users and the public cannot be influenced by Scottish Executive or local authority policy. The Secretariat however, remains sponsored by the Support for Learning Division of the Scottish Executive Education Department and relationship between the two is defined in a Management Statement, which delineates responsibilities and accountability, including setting the annual budget.

1. Advertising

The appointments were widely advertised within Scotland. Avenues included: The Times Educational Supplement, The Scotsman, The Herald and their respective Sunday papers and professional legal journals. The advertisement was also included in Moving Forward, a newsletter (circulation of around 10,000) which is produced by Children in Scotland on behalf of the Scottish Executive. Advertisements were also placed on the Tribunals’ website and public appointments website. A total of 168 applications were received for the post of member; 80 applications were received for the post of convener and 18 for the post of President.

2. Sift, Interview and Appointments

Sift exercises for all posts were carried out prior to interview. Interviews were held and appointments made by October 2005. 26 members were interviewed and 15 appointed; 17 conveners were interviewed and 7 appointed and for the post of President 5 were interviewed and 1 appointed. The President and conveners are all either solicitors or advocates admitted in Scotland. A Scottish Executive news release, dated 21 October 2005, provided the biographical details of the President.

3. Terms and Conditions of Appointment

All appointments, including that of the President, are part-time and fee-paid. In accordance with guidance given to Scottish Ministers, although clearly judicial in nature, the appointments are regarded as public appointments and made by Scottish Ministers of the sponsoring department. The public appointment status accorded to the posts has resulted in some appointments having been made for different periods of either 3 years or 5 years.

Each post has agreed terms and conditions of appointment. These include conditions on duration of appointment; qualification/disqualification for appointment, removal from office; training and sittings, performance; fees and expenses; confidentiality; conduct and conflict of interests.

Appointments have all been subject to a disclosure check by the Scottish Criminal Record Office. In addition all references have been pursued and confirmed.

The President has taken steps to ensure that decisions taken by the Additional Support Needs Tribunals will conform to the same rules of natural justice and fair hearing applicable to all judicial hearings. Induction Training for members included guidance on the circumstances in which they should disclose potential conflicts of interest and decline to sit on particular cases. The obligation remains with the member to disclose any appearance of bias which might taint the integrity of the Tribunal’s decision.

4. Regulation of Process

Although stated to be public appointments, in conformity to appointments to other devolved Tribunals, these appointments are not regulated in terms of the **Public Appointments and Public Bodies etc. (Scotland) Act 2003**. However, Ministers’ policy is that the “spirit” of the Commissioner for Public Appointments’ Code of Practice should be applied to unregulated appointments. Throughout the appointment process the Executive worked closely with Public Appointments Team to ensure equality of treatment and consistency of approach. In addition, a professional recruitment consultant was employed to manage the recruitment exercise, to provide rigour and transparency.

There is no statutory requirement for members to be drawn from discrete areas of interest relating to additional support needs so long as those appointed meet the requirements of “knowledge and experience of children or young persons with additional support needs within the meaning of the Act”. At the time of appointment the specific backgrounds from which the fifteen members have been drawn are as follows:

- Three were employed by local authorities, two as educational psychologists and one as a manager of children’s services.
- Four were independent consultants with local authority educational management and/or teaching backgrounds.
- Two were recently retired local authority managers with relevant teaching backgrounds.
- Two were employed at universities, one as a senior lecturer in additional support needs and the other as Director of Post Graduate programmes in Inclusion. Both had relevant practical teaching experience.
- One member has recently retired as senior lecturer of educational studies.
- Three members were employed respectively as: learning support teacher for an independent school; speech and language therapist; and self-employed trainer/voluntary sector manager in the area of additional support needs.

Induction Training

The induction training programme for members and conveners of the Additional Support Needs Tribunals for Scotland consisted of nine full days of training which was devised and co-ordinated with the assistance of Carole Comben, an external consultant with extensive training experience in related fields. All elements of the training programme were directly linked to a competency framework for conveners and members of the ASNTS. The training programme began in December 2005, with five days residential training (split over two weeks) at the Stirling Management Centre, Bridge of Allan. The first residential component involved members and conveners and staff from the Secretariat.

During the residential training members and conveners took part in group working activities related to **the Education (Additional Support for Learning) (Scotland) Act 2004**, the rules of the ASNTS, judicial and communication skills, and heard presentations on children's needs, assessment, mediation, and the code of practice.

Conveners, members and Secretariat also observed a simulated Tribunal hearing delivered by colleagues from the Special Educational Needs Tribunals for Wales. Significant input was also provided by trainers from the Judicial Studies Board who delivered modules on generic skills such as "Chairing a Tribunal Hearing", "Working Together", "Structures for Decision Making & Writing", "Equal Treatment" and "Questioning Techniques".

The residential training was then followed by the opportunity for members and conveners to visit and see 'practice in operation within two specialised units, and see product in operation both based in mainstream schools. This provided members and conveners with the opportunity to meet and talk with teachers and pupils within the units and also see examples of coursework and specialised equipment. Thanks go to Joan Haston, Head of the Visually Impaired Unit within Uddingston Grammar and Adele Kytzia, Principle Teacher, Columba Base within St Cuthbert's High School for making these visits possible. For those ASNTS members who were already aware of the workings of such specialised units due to past experience, an observation of an Appeals Service Tribunal hearing was arranged.

The final three days of training took place within the ASNTS Secretariat headquarters in Europa Building, Glasgow. These training days were largely tailored in response to the feedback received from members and conveners during the residential block of training and allowed for further small group work and scenario-based activities around the Tribunal rules and other key issues such as communication with and the rights of children and young people. External input was provided by Call Centre on communication with children and young people with additional support needs, and by Kathleen Marshall, Scotland's Commissioner for Children and Young People, on the rights of Children and Young People.

Building on earlier work during the residential days, Alan Gamble, District Chairman of Appeals Tribunal, provided a valuable presentation on understanding

evidence and recording findings in fact in judicial decision-making. Conveners and members were also informed of the role of the Scottish Committee for the Council on Tribunals through a presentation by Audrey Watson from the Scottish Committee.

In addition, this phase of training permitted an introduction to the resources available through the members' area of the ASNTS website, and the Learning and Teaching Scotland website demonstrated by Pat Campbell, both underlining the importance of self-learning in this field.

Those completing evaluation forms assessed that the overall aim of the training, to provide them with the basic knowledge and skills needed in their role as a Tribunal convener or member, had been substantially (81%) or fully (19%) achieved. This quality of training would not have been made possible without the enthusiastic commitment of all those appointed to serve on the Tribunals, excellent contributions from those indicated above and the organisational support from the Secretariat.

Tribunal User Groups

The Tribunal User Group (TUG) was established to offer an informal forum for our stakeholders to be informed about and to become involved with the development of the Additional Support Needs Tribunals. Three separate inaugural meetings were held to allow a choice of venue for representative groups (Edinburgh or Glasgow), and to enable organisations working with parents of children and young people with additional support needs and education authorities a full opportunity to explore issues in connection with the new jurisdiction. A separate meeting was held for representatives from local authorities and health boards. Future meetings will bring all users together.

It is recognised that the Tribunal must promote a positive working relationship with a good level of transparency from the outset and the establishment of user groups will assist in developing how effectively the Tribunals work. There is a need for feedback from all users in order to review procedures and improve service.

A more detailed report has been prepared summarising the issues raised at the inaugural meetings and this has been sent to all attendees. This has also been published on the website at www.asntscotland.gov.uk.

Website

The Tribunal has a website at www.asntscotland.gov.uk, providing a range of information about the Tribunals and their operation, together with a secure area for the use of Tribunal members and conveners.

The ASNTS website received public recognition from fellow professionals, when it came second in the March poll of members of the Guild of Accessible Web Designers for site of the month.

A secure area for members and conveners of the ASNTS has also been developed within the website. This enables them to manage their availability, share information and receive information from the ASNTS Secretariat.

An E-bulletin is now being issued to all Tribunal members and conveners on a monthly basis to keep them fully informed on any developments relating to this jurisdiction. Future plans for the website include creating a specific area with information for young people and the option to make a reference on-line to the Tribunal.

Publications

The Secretariat has produced five key publications:

- A Guide for Parents.
- A Guide for Education Authorities.
- A Guide for Young People.
- A National Introductory Leaflet.
- A Reference Form for making a reference to the Tribunals.

All the publications meet the Clear English Standard of the Plain Language Commission. The national leaflet has also been translated into 7 languages, and is available, on request, in audio, Braille and large print formats. All the publications are available in PDF format on the Tribunal's website at www.asntscotland.gov.uk.

The Secretariat is grateful to those organisations and individuals who offered comments and suggestions in respect to the publications. The initial distribution of the publications covered a wide range of organisations, with specific publications being targeted to particular potential Tribunal users. This distribution included:

Directors of Education
Lead Education Officers
Specialist Independent Schools
Primary Schools
Secondary Schools
Nursery Schools
Directors of Social Work
Health Boards
GP Surgeries

Voluntary and other organisations working with parents of children and young people with additional support needs, and with children and young people themselves.

In the coming year it is planned to review and update the Guide for Parents and education authorities.

Following the initial distribution, there have been 214 requests for additional copies of various publications. Copies were also made available at the Tribunal User Group events and the reception to launch the Tribunals.

Publication	Initial distribution	Additional copies requested
Young Persons guide	8,332	430
Parents Guide	12,650	1,572
Reference Form	12,650	326
National Flyer	127,542	3,864
Education Authority Guide	5,560	352
Total	166,734	6,544

Outreach

During the establishment phase the Secretary, Gareth Allen, and members of the Secretariat, engaged in valuable work making contact with others involved in aspects of implementing the new approach to support for learning. This has undoubtedly assisted in raising the profile of the Tribunals and has aided aspects of induction training.

Since that time the President, some conveners and several members, have continued these connections by attending conferences and giving talks where they can inform others about the role of the Tribunals and in turn receive and feedback information on the wider implementation of the Act. Recognition and encouragement of this outreach role has resulted in the setting up of a register of such contacts. In due course it may be that this can provide a valuable resource for the Tribunals and inform future training.

The Future

The last few months have been exciting and demanding for me personally as President of the ASNTS. Ultimately Tribunals can only be judged by their performance and in view of the modest caseload, it is too early to assess just how effective the Tribunals will be in fulfilling the statutory intentions.

Whether the very modest number of cases coming to the Tribunal at present, and in all likelihood in future, can continue to justify a Secretariat of eight persons is a matter for Ministers and requires to be addressed within the next few months when case loads can be more accurately projected. It may be that Ministers will review the extent of the Tribunals' jurisdiction and this might impact on future caseloads. During the initial implementation period the notional allocation of presidential input of one day each week was insufficient and my actual time allocation has exceeded, on average, two days each week. Now that this phase has been completed it is possible that my own current commitment of one day each week may also require to be considered.

Whatever direction the future takes, I wish to take this opportunity to formally thank my fellow jurisdictional Presidents for their support and interest, Rosemary, Lady Hughes, the President of SENDIST, and Rhiannon Walker, President of SENTW, together with Kevin Mulaney, the Secretary of SENDIST and Huw Maguire of SENTW who have all given generously of their time and expertise and have been of great assistance to the Scottish Executive, the ASNTS Secretariat and myself. A valuable jurisdictional forum was convened in Glasgow in February of this year to cement these ties and share good practice. It is hoped that this close contact can continue with mutual benefit.

It is also appropriate for me to record my thanks for the helpful and encouraging support of members of the Support for Learning Division of the Scottish Executive but particularly Andrew Mott, who undertook much of the painstaking preliminary legislative and regulatory work and also Mike Gibson, Head of Division, who, whilst respecting the independent nature of the ASNTS, has continued to offer considerable assistance in ensuring that the Tribunals are kept appropriately informed of Support for Learning developments.

I have no doubt that the ethos of the new legislation in this field is welcome and overdue. I also recognise the undoubted ability of education authorities to meet most extensive and complex additional needs through the medium of co-ordinated support plans without parents and young people having to have recourse to a Tribunal's intervention. The volume of references will doubtless be one indicator of the level of satisfaction with the new scheme as it rolls out over the next two years. Whilst the conveners and members who have been intensively trained may be disappointed that they have not yet had an opportunity to practice their skills at this early stage, I am confident that those appointed and trained to sit on the Tribunals will be able to fulfil their roles entirely competently and within the spirit of the legislation.

Finally, the establishment of the Additional Support Needs Tribunals for Scotland would not have been possible without the skills and commitment of all the members of the Secretariat, who, under the direction of Gareth Allen, have risen admirably to the challenges of the past few months.

Jessica M Burns
President

Appendices

I Caseload

To the year ending 31 March 2006 two references have been received, both competent in terms of section 18(5) of the Education (Additional Support for Learning) (Scotland) Act 2004, failure to comply with a request to assess whether a child requires a co-ordinated support plan. In both instances, the authority did not resist the references. In such circumstances, the Tribunals have the power to arrive at decision without holding an oral hearing. The Tribunals in question both decided to exercise this power and the references were upheld.

It is not possible to publish these decisions at this stage without compromising personal information of the parties. When a more substantial caseload is available, anonymised decisions will be published on the website.

The telephone helpline has received 83 calls in the reporting year. The majority of the calls have been requests for publications but a small number of callers have sought general advice on making a reference to the Tribunal.

II Expenditure

From 1 April 2005 to 31 March 2006:*

Expenditure	Amount (£)
Tribunal members recruitment	71,581
Tribunal members fees (training)	45,948
Tribunal members fees (including President's fees)	12,845
Tribunal members expenses	3,585
Tribunal members training costs	18,684
Tribunal Secretariat headquarter costs	50,790
Tribunal Secretariat staff salaries**	151,243
Tribunal Secretariat staff expenses	12,035
Tribunal Secretariat training costs	2,089
Office costs***	59,788
Tribunal Secretariat establishment projects****	143,507
Total	572,095

* Figures remain provisional pending formal audit accreditation.

** This figure also includes costs for a temporary member of staff.

*** This expenditure heading includes costs for hospitality (including our TUG and launch events), stationery, office machinery, postage, minor purchases, office machinery and ICT.

**** This expenditure heading includes costs for production and distribution of ASNTS publications, publication translations, website design and support and case management system design.

III Tribunal Membership

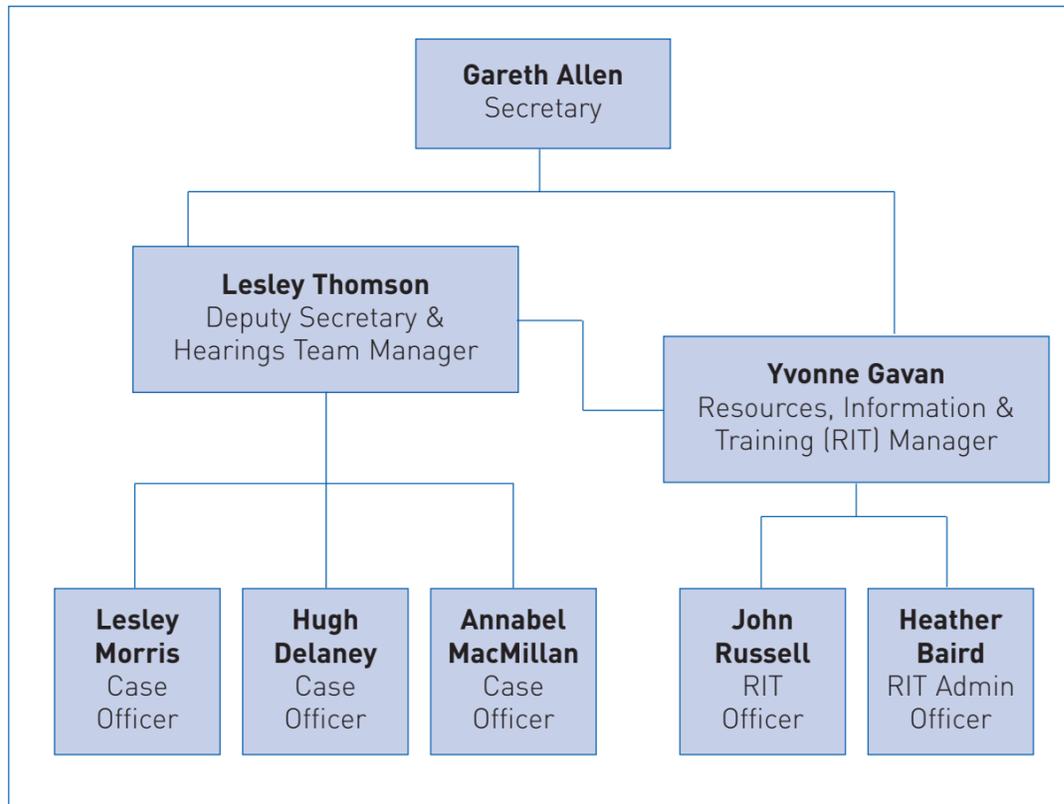
Conveners

Lynda Brabender
 Jessica Burns (President)
 Joseph Hughes
 Morag Jack
 George Jamieson
 Alan Miller
 Richard Scott
 Isobel Wylie

Members

Stuart Beck
 Alison Closs
 Janice Duguid
 Jimmy Hawthorn
 Hilda Henderson
 Richard Hendry
 Carol Hewitt
 Barbara Hookey
 Morag Jenkinson
 Linda Jones
 Dorothy McDonald
 Elizabeth Murray
 Nicola Robinson
 Eleanor Spalding
 John Young

IV Tribunal Secretariat



The Tribunal Secretariat



From left to right:
 Annabel MacMillan (Case Officer), Lesley Morris (Case Officer), Lesley Thomson (Deputy Secretary), Gareth Allen (Secretary),
 Yvonne Gavan (Information, Resources & Training Manager), Hugh Delaney (Case Officer), John Russell (Information, Resources
 & Training Officer).