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President's address

ASNTS President **May Dunsmuir** welcomes you to the latest edition of the newsletter.



Photograph by David Murray

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Dear member,
I am delighted to be writing to you in this first edition of our new Members' Newsletter.

The Newsletter will be issued twice each year, in December and June. I am sure you will find the content of interest and hope you will contribute to future editions. I am grateful to Irene Stevens, Cameron Wright and Paul Putman, who make up the editorial committee, for their hard work in producing the Newsletter. You can read more about them

elsewhere in this edition.

I have now been in post for around 7 months. It has been a busy time and much of my activity has been reported to you via my two-monthly updates, some of which you can read more about below.

Member Committees

I am pleased to advise that our two new committees have met and their work for 2014/15 has now commenced. Derek Auchie is chair of the training committee alongside committee members Irene Stevens and Terry Carr. Joseph Hughes is chair of the member development committee, which will be responsible for carrying out member appraisals, the other committee members being Nicola Whitfield, Lesley Sargent, Rick Mill and Ian Morrison.

Member Development Scheme

You will shortly be provided with a copy of the new Member Development Scheme which will be piloted over the next 12 months. Member and committee views will influence the final scheme following the conclusion of the pilot in December 2015. You will see that the pilot scheme places an emphasis on member development and self-assessment, with the appraisal meeting forming only one part of the overall picture. We will always face challenges while sitting levels are low, however I am confident that, with your input and the efforts of the committee, we will find ways to overcome this.

You can read a short article on the committee by Joseph, on page **13**.

Member training

You have already been informed that our all member training day is scheduled to take place on 31 March 2015 at the Glasgow Central Hotel. The location is easily accessible by public transport and it has proved to be a good venue for training in previous years. I am pleased to note the level of member consultation which has already taken place in the development of the training for 2015. Your comments following the all-member event in 2014 and your comments to the committee have influenced the shape and design of this.

Once our all-member event has concluded, the committee will turn its mind to the delivery of two

evening training events, one for conveners and another for non-conveners members, to take place later in 2015 or in early 2016. I hope this will provide an opportunity for conveners and members to network and to share their experiences in an informal setting. You can read a short article on the committee by Derek, at page **10**.

Member re-appointment

A number of members will be due for re-appointment in October 2015. Those who are within this cycle will already have received forms for completion and return to the Secretary, Bernie Dougall. I am currently exploring the level and type of disclosure that we will have to complete and I will be in touch with you in due course.

Extending the rights of children with capacity to make a reference under the 2004 Act

I have been keeping you informed about the positive response to the consultation on extending the rights of children with capacity to make a reference to the Tribunal. I hope you will find the article on this, written by Dr Alasdair Allan, to be of interest (see pages **8-9**). I will continue to keep you informed of any potential legislative amendments.

Tribunal Forum

It is my intention to host a Tribunal Forum each year at Europa House. This will replace the former Tribunal User Group (TUG). Any member can attend the Forum and I hope that some of you will be able to do so. The first of these will take place in April 2015, and I will provide you with further details nearer to the time.

Children and Young People

I was told recently in a Tribunal hearing by the parent of a young person that the young person would like to speak last, as it was then more likely that we would listen. It is with this in mind that I list this section last, to emphasise our need to explore a range of ways in which we might hear and listen to the voice of the child or young person during the hearing process. I have shared with you some of the work of the office of the Scottish Children's Commissioner in this regard and our all-member training event will explore this further.

You will be aware that a child or young person has additional support needs¹ if the child or young person is looked after by a local authority². Despite this, I am not aware of any references or claims involving looked after children and I am concerned that the work of the Tribunal is unlikely to be well known here. It is with this in mind that during 2015 I intend to promote the work of the Tribunal with organisations who support looked after children and young people.

I hope you enjoy reading this Newsletter. Please continue to feel free to contact me or any of the committee chairs if you wish to share any information or ideas that will enhance the work of the Tribunal.

With my best wishes,

May

¹ subject to the provision of section 1B of the 2004 Act, as amended.

² within the meaning of section 17(6) of the Children (Scotland) Act 1995, as amended.



The Rt. Hon Lady Smith has become the first President of the Scottish Tribunals.

The first Commencement Order for the *Tribunals (Scotland) Act 2014*, published on Monday 14 July 2014, brings into force section 4(1),(2),(3), and (5) of the Act enabling the Lord President to make this appointment.

With the coming into force of the Order and by virtue of the power conferred on the Lord President by section 4 (2) of the Act, Lord Gill has formally assigned Lady Smith to the Office of President of the Scottish Tribunals, to whom he may delegate various functions.

Lady Smith has extensive experience of sitting in tribunals and working with tribunal judges and members. She was a judge of the Employment Appeal Tribunal for eight years and she chairs the Scottish Tribunals Forum and the Reserved Tribunals Group. She also represents the interests of the Lord President, in relation to tribunals where the relevant law has not been devolved to the Scottish Parliament, on the Tribunals Judicial Executive Board chaired by the Senior President of Tribunals (currently Lord Justice Sullivan).

If you would like to find out a bit more about Lady Smith, a short biography is available on the Scottish Judiciary website: [http://www.scotland-judiciary.org.uk/34/500/The-Right-Hon-Lady-Smith-\(Anne-Smith\)](http://www.scotland-judiciary.org.uk/34/500/The-Right-Hon-Lady-Smith-(Anne-Smith))



Law Society of Scotland makes changes to Vulnerable Clients Guidance to include children and their capacity to instruct a solicitor.

The Law Society of Scotland (“the Society”) issued Guidance in relation to Vulnerable Clients and also Continuing and Welfare Powers of Attorney in 2013.

Following representations to the Society by the President, the Vulnerable Clients Guidance will be adjusted from 1 December 2014 to confirm that it applies whenever a client or prospective client of whatever age may lack full capacity, whether having attained the age of legal capacity or not.



Paragraph 3 of the original Guidance has been updated to delete references to specific reports but continues to state both the scope and purpose of the Guidance.

The categories of situations set out in paragraph 20 of the Guidance have been well received by the legal profession and two further situations have been added focusing on issues that may be relevant to young people.

The Vulnerable Clients Guidance can be found on the Society website: <http://www.lawscot.org.uk/rules-and-guidance/section-b/rule-b1-standards-of-conduct/guidance/b15-vulnerable-clients-guidance/>



Disclaimer:

The Additional Support Needs Tribunals (ASNTS) seeks to ensure that the information published in the Newsletter is up to date and accurate, however, the information on the Newsletter does not constitute legal or professional advice and the ASNTS cannot accept any liability for actions arising from its use.

The views of individual authors are theirs alone and are not intended to reflect the views of the ASNTS.

The faces behind the names behind the emails!

Meet the **casework staff and editorial team** of the Additional Support Needs Tribunal



Bernadette Dougall

Bernie joined the Mental Health Tribunal Administration in 2006 and spent most of her time in Hearings Operations as a Team Leader before moving to the Council Tax Reduction Review Panel as Team Leader in November 2013. She was appointed Secretary of ASNTS in August of this year and, although admitting that she has a lot to learn, she is looking forward to providing an efficient and effective administration of ASNTS. In her spare time she enjoys reading, spending time with family, friends and little dog.



Hugh Delaney

Hugh is the Senior Case Officer and has been with the Tribunal since its inception in 2005. Prior to joining the Scottish Government in 2001 he was a Relief Manager for William Hill covering branches in the east end of Glasgow for 8 years. He has also been, in no particular order, a grounds man, bingo caller, barman and lifeguard during two successful seasons in a holiday park in 1986. Today he enjoys horse racing, football and the occasional round of golf.



Cameron Wright

Cameron is both a case officer for the Tribunal as well the President's PA. He is also involved in several long term projects for the Tribunal; which includes amongst other items website development. He joined the Tribunal Service in 2013, from the Public Pension Agency. In his spare time he enjoys history and archaeology (which he studied at Glasgow University), travel, world cinema as well as cooking and going for long walks with his dog, Brae.



Irene Stevens

Irene is a registered social worker. Most of her work experience has been with looked after and accommodated children. When she worked at Strathclyde University, she edited the Scottish Journal of Residential Child Care from 2004-2011 and still sits on their editorial and review committee. Her doctorate focused on autism, and she is a team leader with National Autistic Society Accreditation Service. Her hobbies include choral singing (reasonably ok) and resisting chocolate (not very successfully).



Paul Putman

Having recently joined the Tribunal Service from the Department for Work and Pensions where he worked for 15 years. Having made good his escape, he is now a case officer for ASNTS and the Council Tax Reduction Review Panel. He is thoroughly enjoying the new job and Paul hopes to develop his career further within the Tribunal Service. He enjoys reading, football and spending time with his two young children.

A Short Natter To Staff

Each issue we speak to a member of staff about the work they do within the Tribunal. For this issue, **Paul** discusses what it was like editing this newsletter.

I don't know about you, but when I was younger I had a tendency to think I had “plenty of time” to meet a deadline.

To me most deadlines seemed so far in the future I could convince myself that hover boards and self tying shoelaces would be invented before *that* particular deadline came around. Why, if I started right now I could be finished weeks before the deadline. Easy. So why start now? What's the rush?

Having no real creative background or previous experience in this area, the challenge of working on this newsletter was terrifying at first but it has been an absolute pleasure and a real eye opener into the work required to take an idea and turn it into something tangible. Our thoughts going into the process were to make both an informative paper for members (particular thanks goes to Irene who has put up with many a random pdf design being sent to her for comment) and a readable one as well (the success/or failure of this rest between the two of us!).

I'm very proud of what we have produced and look forward to improving it over the issues to come. Because both the best and worst thing about a newsletter is that it is constantly evolving and can always be better.

I hope you enjoy reading the contributions and in doing so are inspired to contribute to future issues yourself. Without your contributions the newsletter would be empty so we will always be extremely grateful for all submissions. If you would like to contribute something to the newsletter you will find our contact details on the back page.

Just, please, don't leave it to the last minute.

Extending rights to children with capacity to make a reference.

Dr Alasdair Allan, Minister for Learning, Science and Scotland's Languages, provides an update on the consultation process involved.

The Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”) is key to ensuring children and young people make the most of the educational opportunities available to them.



The 2004 Act is the framework for the provision of support for learning in Scotland and is key to delivering our ambition that all children and young people access the learning opportunities which are available to them, so that they can realise their full potential, in learning, in work, and in life. However, in respect of rights, a situation currently exists that allows a child with capacity to bring a disability discrimination case to the Additional Support Needs Tribunals for Scotland but does not allow them to bring an additional support for learning reference before the Tribunal.

Currently, in terms of additional support for learning, parents of children with additional support needs hold certain rights on behalf of their children. Young people with capacity hold rights on their own behalf, however where a young person does not have capacity, the parent holds the rights. Under the Equality Act 2010, as of 18 March 2011, a child with capacity can bring a disability discrimination case in relation to schools to the Tribunal.

Children and Young People (Scotland) Act 2014 received Royal Assent on 27 March 2014

The Scottish Government has made clear its commitment to recognising, respecting and promoting children's rights in Scotland. A commitment was made by former Minister for Children and Early Years, Adam Ingram MSP, to the Education Committee in February 2010 to consider children's rights in the context of the Additional Support Needs Tribunals for Scotland. In addition, the Children and Young People (Scotland) Act 2014, places a duty on Scottish Ministers to keep under consideration whether there are steps which could be taken to secure better or further effect in Scotland of the UN Convention on the Rights of the Child.

As a result, on 20 December 2013, a public consultation was issued to seek views on extending the rights currently afforded to parents and young persons under the 2004 Act to children. The consultation sought views on two options: (a) extending the “appeal rights” currently afforded to parents and to young people to children where children are deemed to have capacity to exercise

these rights, and (b) on the principle of extending various other rights under the 2004 Act to children who are deemed to have capacity.

59 responses were received from a broad range of stakeholders. Feedback indicated that there was majority support for the general principle of extending rights currently afforded

to parents and young people under the Act to children, with the exception of the right to make a placing request. A majority of consultees, however, urged Scottish Ministers to show caution in taking a blanket approach to extending all rights to children. Placing requests, for example, may be an area where it is not appropriate for children, regardless of capacity, to hold rights. Feedback from the consultation indicates that there is potential for a child to request to go to a school in a different local authority area, or a different country all together, which of course could place an unreasonable financial burden on parents.

It is clear that those who responded to the consultation are in agreement that children with additional support needs, who have capacity to do so, should have their own rights under the legislation, however, I am also aware that the legislation is extremely complex and that if these rights are to be extended then it is vital that we ensure that children who are affected by this change are aware of their rights and supported to take them up.

Having reflected on the results of the consultation, I have asked officials to work closely with key stakeholders to consider and understand the implications of making such a change before any decision is made on future legislative amendments. I am confident that those working in this field are the most appropriate people to inform how we continue to deliver, together, to support our ambitions that every child has access to the additional support they need to reach their full potential.

“A majority of consultees, however, urged Scottish Ministers to show caution in taking a blanket approach to extending all rights to children.”

A full outline of the consultation report can be found by visiting the Scottish Government website.

<http://www.scotland.gov.uk/Publications/2013/12/7035>



Training committee for ASNTS membership

Derek Auchie discusses developing and delivering effective training for members and convenors



Following a recruitment exercise carried out among the ASNTS membership, Tribunal President May Dunsmuir recently announced the launch of a Tribunal training committee.

The committee is multidisciplinary and consists of an experienced clerk and caseworker (Hugh Delaney), two members (Irene Stevens and Terry Carr) and a convener (Derek Auchie, also committee chair). The Committee met for the first time on 6 October 2014, when, among other

matters discussed, the following remit was agreed:

To develop and deliver training for members, designed to enhance their effectiveness in Tribunal activities.

The first task for the committee is to organise the 2015 annual one day Members' Training Event. This will be held in the Grand Central Hotel, Glasgow on 31 March 2015.

“Being a Tribunal member is challenging, given the complexity of the legislation and the sensitivity of the issues which routinely arise in References and Claims. Every case is unique.

The emphasis will be on small group work, based around particular practical issues faced by Tribunal members, including problem-solving activities.

The importance of focussed and practical training was emphasised by Derek Auchie:

“Being a Tribunal member is challenging, given the complexity of the legislation and the sensitivity of the issues which routinely arise in References and Claims. Every case is unique. Opportunities to enhance skills and keep up to date with changes in law and practice, as well as to hear about the ideas and experiences of colleagues, are critical to the success of the Tribunal.

As a priority, the committee is keen to develop a training programme which focusses on practical and procedural issues such as: how to handle case conferencing; how to take the views of the child; using Members' expertise; taking oral evidence effectively; deliberations; decision writing; questioning by Tribunal members; uniformity of hearing format and many other such issues.”

The committee are delighted that Katie Brown, Head of Participation and Education from the office of the Scottish Children's Commissioner, will be addressing the training participants on 31 March 2015.

The committee has been in touch with all Tribunal members, encouraging the sharing of training need ideas, and a number of excellent suggestions have already been made. May Dunsmuir has reflected on the mechanics of a viable training body:

“Training devised by members, for members, in response to ideas and views expressed by members is more likely to be successful than training devised in any other environment. I wish the committee every success and they will receive my full support and encouragement in delivering effective and enjoyable provision.”

The training agenda is an on-going one, with the 31 March 2015 event being only the beginning.

Following the annual training event, the committee will turn its attention to organising evening training sessions for conveners and members. The committee will also consider induction training for new members.

Another area being explored is the possibility of piloting an online idea-sharing facility to promote regular dialogue and discussion on Tribunal issues among members.

*Members are encouraged to be in touch with Derek (d.auchie@abdn.ac.uk) or with Cameron Wright (who will be assisting with the administration of the work of the committee: ASNTS.Admin@scotland.gsi.gov.uk) **at any time** with any ideas, thoughts or comments on member training. In particular, any thoughts regarding how to obtain the views of children would be most appreciated.*



The need for short summaries to help aid understanding of Tribunal appeal cases

Derek Auchie discusses the proposal for a case digest for the Tribunal, which will be available in Spring 2015. A hard copy will be sent to every Tribunal member.

One of the challenges facing all Tribunal members is the complexity of the law and how to apply the various statutory tests to the facts of a particular case.

Whether it is a placing request reference, a case about a co-ordinated support plan (CSP) or a disability discrimination claim, It is important that each Tribunal panel takes an approach to such matters which is consistent with other panels. This helps to ensure equality and fairness, instils confidence in the operation of the Tribunal, and reduces the risk of appeals.

The judgements of the Court of Session (the body which currently considers appeals against Tribunal decisions) can help here. They are binding on Tribunal panels (they must be applied, we have no choice). This does not mean that a particular decision requires to be taken in any future case: it is the reasoning that is binding (usually the interpretation of the statutory test in question) not the outcome. This is in recognition of the important principle that each case depends on its own facts. There have been 14 appeal cases so far, dealing with a mixture of placing request, CSP and disability discrimination issues.

These decisions are detailed. Reading all of them, and understanding the issues raised is not a palatable prospect, and expecting each Tribunal member to undertake such a task would be unreasonable, and involve a duplication of effort. For this reason, the President has appointed convenor Derek Auchie to prepare a Case Digest, which will provide short summaries of each decision and main learning points arising. This will offer all Tribunal members a single place in which to find all of the authoritative (usually binding) points the appeal court has decided.

Although most of the appeal questions arise out of interpretation of the statutory tests, there have been some procedural points the Court of Session has been asked to consider. These points will be highlighted in the Case Digest too.

Most decisions of the Tribunal are not appealed (these are known as 'first instance' decisions). However, some interesting points of law and/or procedure do often arise at first instance. Some of these decisions will be summarised in the Case Digest. The summaries in the Digest will be carefully anonymised in order to preserve the privacy of the parties, witnesses and Tribunal members.

Derek Auchie would like to receive suggestions of cases for inclusion from any Tribunal member. Simply e-mail Derek with a note of the name of the case or a description from which the case can be identified: d.auchie@abdn.ac.uk.

The work of the Member Development Committee — Joseph Hughes, the Chair of the Member Development Committee, explains the role of the member development committee for 2015.

I am the first Chair of the new Member Development Committee.

The other committee members are Richard Mill, Ian Morrison, Lesley Sargent and Nicola Whitfield.



The President will oversee the work of the Committee and provide guidance and support throughout.

The Committee joined some Tribunal members of Private Rented Housing Panel [PRHP] for a joint Appraisal Training Programme on 31 October 2014 in Europa House. The Presidents of both jurisdictions attended the opening session of the training day. They both confirmed their commitment to the professional development of their Tribunal members. Heather Bailie facilitated the training. She has extensive experience in a number of jurisdictions and is currently one of the In-house Convener's of the Mental Health Tribunal for Scotland [MHTS]. Heather takes the lead in member training

and appraisal within MHTS. The Committee thank Heather for providing such an excellent training event and for her insight and guidance.

Our President will soon formally launch the **Member Development Scheme**. This will replace the former Appraisal Scheme. A copy of the new Scheme will shortly be provided to you. In broad terms the Scheme seeks to provide a mechanism for member review and development. It seeks, at all times, to assist the members to carry out their judicial responsibilities to an accepted and consistent standard. The Scheme will help to maintain public confidence in judicial performance through regular member review.

The Scheme is intended to *support* member development through self-assessment supported by an appraisal process. The Scheme is aligned to a robust competency framework which will cover four areas: critical analysis and decision making, working with others, written and oral communication and knowledge and skills. It is only right that the Scheme seeks to align itself, wherever possible, with the aims and values of our specialist tribunal.

The Committee will seek to liaise closely with the Member Training Committee to ensure that members' needs are best served wherever possible.

The President has decided to pilot the Scheme for one year. Accordingly it will apply to those members who are due for re-appointment in 2015. The first year will be a busy one for the Committee as approximately 20 tribunal members are due for re-appointment.

(continued overleaf)

The Committee will have met to discuss and review the draft Scheme before it is sent to you.

“As far as possible the allocation will be member type specific, however, in the first pilot year given the number to be completed, there may have to be some flexibility.

The Scheme will be administered by our Secretary, Bernie Dougall. She will allocate the members to be appraised under the Scheme to the appraisers and she will send out self-assessment papers to the members in advance of any appraisal meeting. The appraiser will then liaise with the member on the date for the meeting and explain the process. It may not be always possible to observe a live hearing and the appraiser will discuss how best to proceed. This may result in a stand-alone meeting in person or perhaps by conference call. As far as possible the allocation will be member type specific, however, in the first pilot year given the number to be completed, there may have to be some flexibility. We will of course review this as we approach our second year of operation.

It is a great privilege to serve on this Tribunal. Let us work together to become the very best we can be.

I welcome and encourage feedback to the Scheme especially during our first pilot year. Please email me directly at jch999law@hotmail.com. Your support and commitment is vital to the success of the Scheme.

The future of ASNTS - The Scottish Courts and Tribunals Service

Martin McKenna provides information about the merging of the SCS and STS



The Tribunals (Scotland) 2014 Act, which received Royal Assent in May 2014, creates a new structure for devolved Tribunals in Scotland. The Act makes the Lord President the Head of the Scottish Tribunals and Lady Smith has now been appointed as the President of the Scottish Tribunals. Over time, the Tribunals currently supported by the Scottish Tribunals Service (STS) will be brought under their judicial leadership as they each move into the new chambers structure.

However, this creates an inconsistency where the Lord President will lead the judiciary, but the administrative body which support the Tribunals – the STS - works for Government Ministers. Therefore, to allow the Lord President to be supported by one body in his role as Head of the Scottish Tribunals and to create a fully independent administration, it was decided to merge the Scottish Court Service (SCS) and the STS.

The Courts Reform (Scotland) Act 2014 received Royal Assent on 11 November 2014, and this Act includes the provision for the STS administration to merge with the SCS to form one larger corporate body - the Scottish Courts and Tribunals Service (SCTS).

The SCTS will commence on 1 April 2015 and will be headed by the current SCS Chief Executive, Eric McQueen. STS will be known as Tribunals

Scottish Tribunals Service

Supporting Scotland's Tribunals

Operations within the structure of SCTS to ensure Tribunals retain their own operational identity. The current interim Chief Executive of STS, Martin McKenna, will become the Director of Tribunal Operations and he will join the SCTS senior operational team.

Both the Scottish Government and the SCS recognise the importance of keeping the administrative support to Tribunals focused on the specific needs of the Tribunals and their users. The merger will support the continued development of a modern, efficient and user-focused Tribunal system. There are key benefits for the STS in being part of a larger organisation including more opportunities for career development and progression for staff, and greater resilience for operational services and benefits to users from a simpler courts and tribunals landscape. The current operating centres for Tribunals' staff (in Edinburgh, Glasgow and Hamilton) will remain distinct from court operations. STS staff will continue their current work to maintain effective administrative support tailored to the needs of Tribunals users. Tribunal members, stakeholders and users should see no impact on how service is delivered.

Tribunal hearings will continue to be located to meet the needs of individual jurisdictions and their users. There will be some changes to letters and emails to reflect the new organisation (such as SCTS logo and new staff email addresses), but impact will be minimal and more information on any changes to current arrangements will be provided nearer the merger date.

A view from a representative.

Iain Nisbet provides some background information on a case which raises some interesting issues

M. v. Fife Council 2014 GWD 32-630

This is a recently reported disability discrimination case which, for technical reasons, fell within the jurisdiction of the Sheriff Court rather than the Additional Support Needs Tribunals for Scotland (“the Tribunal”). It is nonetheless relevant both to references in terms of the post-school transition duties as well as disability claims heard by the Tribunal.



M was a disabled pupil at a residential independent school. He has an autism spectrum disorder and dyspraxia. In particular, he experiences severe social anxiety. He had been placed at the school following a successful placing request appeal. During his 6th year (2012-13) a transition process to E College was attempted, including trial placements at two separate courses. By early May 2013, it had been concluded by both the school, and the college that M was not ready for a transition to college. They recommended that he remain at school for a seventh year, warning that otherwise, M might descend into depression. The authority had some other transition ideas, but these were only at an “embryonic” stage.

M's mother applied to Fife Council for funding for a seventh year at school. This application was refused, on the grounds that, having reached the age of 18 (in June 2013), the Council owed no further duties to the pursuer in terms of the Education (Additional Support for Learning) (Scotland) Act 2004.

Having taken the decision to refuse any further funding, the Sheriff found that “from that moment on nothing was done to assist the pursuer's transition from school to adult life. He was in effect abandoned.”

The Council had not appreciated the nature of their responsibilities to the pupil in terms of the Equality Act 2010, their public sector equality duties and the Code of Practice (“Supporting Children's Learning”). They failed to “take specific and pro-active action to assist the pursuer”.

The Council's practice of refusing funding for a seventh year amounted to a PCP (“provision, criterion or practice”) for the purposes of the 2010 Act. Notwithstanding that there was no written policy to that effect, it was clear from the evidence that such a policy was in operation. It was clear that the PCP put disabled pupils at a “substantial disadvantage” in comparison to non-disabled pupils.

It was also clear that the Council having failed to carry out an equality impact assessment of that PCP and having failed to undertake any assessment on the reasonableness of the proposed extra year could not argue any justification of the PCP. “..the defenders” commented the Sheriff,

“simply looked for a way to avoid the pursuer's mother's request for funding and ignored their statutory duties to the pursuer.

“While the Sheriff made some criticisms of the approach adopted by the school, he found that, “[t]hese failings however do not excuse the defenders failure to meet their statutory obligations to the pursuer.”

It was the defenders' inaction that [left] the pursuer in the position he found himself as at May/June 2013, namely limbo.” The Council had thereby indirectly discriminated against the pursuer.

While the Sheriff made some criticisms of the approach adopted by the school, he found that, “[t]hese failings however do not excuse the defenders failure to meet their statutory obligations to the pursuer.”

The Sheriff also found that the Council had directly discriminated against the pursuer because of his age. The Sheriff awarded the pursuer £43,410 in respect of the additional school fees incurred, and £2,500 in respect of injury to M's feelings.

Fife Council have lodged an appeal to the Court of Session.



Tribunal news and administration

Some dates to note in the calendar and some practical points for Tribunal members and convenors

Member Training Event—31 March 2015



As mentioned in Derek Auchie's article (page **10**), the annual one day Members' Training Event will be held in the Grand Central Hotel, Glasgow. Further details regarding the training shall be communicated to all closer to the date.

For further information on the Grand Central Hotel please visit their website: <http://www.thegrandcentralhotel.co.uk/>



Tribunal Forum—22 April 2015

As referred to in the President's address (page 3), any member is welcome to attend the Forum. This will likely take place in Glasgow, with further details to be supplied closer to the time.

Members and convenors can help the Tribunal's Administration greatly by being aware of some simple points. Here are a few important ones.

Fixing Tribunal Hearings

As members will be aware from the Presidents recent updates, education officers, Let's Talk ASN and other advocacy providers have been informed of the Tribunal's intention to invite convenors to fix hearing dates at the stage of the case conference call. It is hoped that this will encourage parties to liaise with one another and to have their diaries to hand to allow dates to be fixed as soon as possible.

Members Fees Guidance— The Secretary would like to remind members of the expenses members can claim for Tribunal work:

- ***Day Subsistence - Over 5 hours meal allowance*** - If you travel more than 5 miles from your home and spend more than 5 hours at your tribunal venue you may be entitled to claim up to £4.90 for a meal allowance. You can only be reimbursed if you provide the original receipt(s) with your claim form.
- ***Day Subsistence - Over 10 hours meal allowance*** - If you travel more than 5 miles from your home and spend more than 10 hours at your tribunal venue you may be entitled to claim up to £10.70 for a meal allowance. You can only be reimbursed if you provide the original receipt(s) with your claim form.
- ***Meals Allowance Elsewhere*** – You can claim this if you stay overnight in a hotel and your meals are not included in the cost of the room. You can be reimbursed up to a total of £23.50 in receipted expenses. This allowance cannot be paid together with the day subsistence allowances mentioned above.
- ***Personal Incidental Expenses*** – This can be used to claim up to £5 on ad hoc receipted expenses incurred whilst staying elsewhere. This is the only other expense that can be claimed with the Meals Allowance Elsewhere.
- ***Bed and Breakfast Elsewhere*** – The receipted cost of an overnight stay in a hotel can be reimbursed up to a maximum of £75 per night. If members are unable to source accommodation within this price range, they should seek approval prior to confirming a booking that exceeds this limit. Alternatively, if you wish to use a more expensive hotel, this is allowable but the Scottish Government will only reimburse the cost up to £75.
- ***Receipted Expenditure*** – Costs associated with Bus/Rail/Taxi travel and ad hoc expenses such as postage can only be reimbursed if original receipts are submitted together with the expense claim. If you are unable to produce a receipt, please let us know the reason why when you submit your claim.
- ***Alcoholic Drinks*** – Please note that the Scottish Government will not reimburse the cost of alcoholic drinks.

Europa Building
450 Argyll Street
Glasgow



Additional Support Needs
Tribunals for Scotland

Useful links:

Phone: 0141 242 0138

Fax: 0141 242 0141

Email: asnts.admin@scotland.gsi.gov.uk

<http://www.legislation.gov.uk>

[http://www.scotcourts.gov.uk/search-judgments/
court-of-session](http://www.scotcourts.gov.uk/search-judgments/court-of-session)

<http://www.equalityhumanrights.com/>

<http://www.sccyp.org.uk/>

Tribunal Decision
Database QR Code



**Our next edition will be issued in
June 2015**

Contributions:

If there are any contributions you wish to make to future editions, please contact the editorial team using the e-mail address opposite.