

Scottish Tribunals Conference

07th September 2021 09:00am to 13:00pm

By Webex

Introduction and Scene setting

Lord Woolman, President of the Scottish Tribunals, opened the Scottish Tribunals Conference with a warm welcome to all attendees.

He stated that the event had 4 goals:

1. To take stock of the way in which Tribunals in Scotland have responded to the pandemic.
2. To consider how best to shape future development.
3. To promote a distinctive profile.
4. To seek recognition for the (signal) contribution that Tribunals make to society.

Lord Woolman acknowledged the innovation and adaptability of all those who ensured the through-flow of Tribunal business during the pandemic, meaning that backlogs were kept to a minimum. Lord Woolman also described the context for the future development of the Tribunals, with the forthcoming expansion of the Social Security Chamber, the transfer of the Mental Health Tribunal for Scotland (MHTS) into a Mental Health Chamber and the formation of a Local Taxation Chamber. This would lead to a substantial increase in the business volumes of both the First-tier Tribunal for Scotland and the Upper Tribunal. In turn this would require more judiciary, staff and resources. This presented an opportunity to develop a high quality, modern and effective public service.

Opening keynote speech

The Lord President delivered a pre-recorded speech which can be viewed here: [Lord Carloway Tribunals Speech](#)

Lord Carloway stated that the 3 key areas in the justice system are essential, accessible and effective justice. The role of the tribunals will increase year on year. He recognised that the impacts of the pandemic for each chamber has been different. He concluded: "I hope that this is the start of a process in which we can all work together on developing, enhancing and promoting a Tribunal system of which we can be justly proud. The past eighteen months have demonstrated the resilience, adaptability and commitment of all those involved in the Tribunals. Those qualities stand us in good stead for the challenges ahead."

Lessons learned from the past 18 months (1)

Laura Dunlop QC, President of the Mental Health Tribunal for Scotland, stated that there have been over 7000 teleconference hearings during the last 18 months and shared 7 lessons learned throughout this time:

1. The public sector can move fast - It was decided on 18 March 2020 to commence holding all hearings by telephone, which commenced on 23 March.
2. Targeted resources can reduce backlogs.
3. Sudden change creates other shifts. Increase in workload - appeals against Short Term Detention Certificates (STDC) are up 22%.
4. Remote hearings can maintain patient attendance and participation.
5. It appears that the majority of patients in MHTS still prefer in person hearings.
6. Stopping in-person hearings was easier than restarting. MHTS have now resumed in-person hearings in Glasgow, Edinburgh and Dundee.
7. Remote hearings help us to dissolve geographical barriers but carry different costs.

It was stated that all three modes of hearing delivery will feature in the future. The goal is achieving fairness in individual cases, overall participation and deploying resources expeditiously and efficiently as best we can.

Simon Porter, chair of the Patients' Council at Royal Edinburgh hospital, illustrated that patients prefer in-person hearings due to lived experience. In mental health, the more severe the illness the greater the digital divide especially older members of society. It was noted that digital delivery works better in rural and remote locations and provides greater participation, taking people's disabilities into consideration.

Dr Ross Hamilton, medical member of MHTS, shared collated feedback from 18 medical members' reviews but firstly made 2 general observations;

1. A recent Mental Welfare Commission report indicates a significant increase in detentions during the pandemic. Going forward, workload for MHTS will inevitably increase.
2. Tribunal attendees in MHTS are amongst the most vulnerable and probably more sensitive to a change to remote hearings.

Dr Hamilton noted 5 key areas of concern around teleconferencing from the members' feedback. These are the effect of teleconferencing on fairness, participation, supporting a distressed patient, confidentiality, members' wellbeing and professional development. Positives are that there are individual patients who may prefer remote hearings, and some members gained confidence with continued use of teleconferencing.

Lessons learned from the past 18 months (1)

Judge Susan Walker, Vice President of the Employment Tribunals (Scotland), set the scene by sharing an overview of the Tribunal and the work that it does and then provided an account of how the jurisdiction had responded to the challenges of the pandemic. She praised the judiciary, administration and system users for adapting so quickly to new ways of working and continuing to administer justice in

challenging circumstances on a large scale. She summarised the lessons learned as follows:

1. It is possible to provide a fair hearing by video in any kind of case in the employment tribunal provided the parties have the necessary equipment and access to a reliable internet connection.
2. It was important to start small and keep things simple where possible.
3. Practice sessions for judges and users help to build confidence.
4. Specialist clerking support is essential and pre-hearing testing is crucial for all participants.
5. It is not possible to eliminate all technical issues in video hearings. Everyone has to be patient and you need to have strategies in place to deal with problems.

Video hearings are here to stay. The question will be to what extent? The Presidents in Scotland and England & Wales have issued a joint Roadmap which anticipates a default of in-person hearings for longer and more complex cases while shorter hearings, including preliminary hearings, would default to video. However, this was a judicial decision and the default could be overridden in any case if this was in the interests of justice. For some parties, a video hearing can provide better access to justice than attending in person. Hybrid hearings are likely to continue to be a common feature in employment tribunals.

Q&A / Discussion Panel

The following issues were raised with answers and discussions being delivered by; Laura Dunlop QC, Judge Susan Walker, Aileen Devanny, President of the Housing and Property Chamber and Anne Scott, President of the Social Security Chamber

1. Q - Do phone conferences mean shorter hearings?
A - It was noted that video conference and Telephone hearings can take a bit longer due to checking throughout the duration including comfort breaks – it can be tiring. It has been noticed that more respondents participated in Telephone Conference than previously, high as 12%. Evidence taking is not different than face-to-face just requires members to take more directive approach. Most of the business is teleconference. User feedback has yielded positive results from teleconference hearings. Wellbeing has been preserved. Stress generally comes from domestic situations like childcare and working from home. Before commencement of teleconferencing and video conference, guidance was issued for testing and providing reassurance. Responsibility was removed from legal member and now carried out by clerk. It is a bigger task to manage remote hearings. It was also noted that the Social Security Chamber, pre-pandemic, readily utilised teleconferencing which was very successful. It took away the need for travel. There is a concern of wellbeing as people feel isolated and fatigued due to hearing cases from home. Selective of focussed discussion, chance for missing points due to fatigue.

2. Q - Any evidence from other stakeholders, any views from those acting as responsible medical officers (RMOs) or mental health officers (MHOs) in MHTS cases? Pros and cons of remote hearings?
A - Endorse the points of shared tasks, drop-in at various points but hard to replicate collegiality. 40 new members in the new year, it will be difficult for them to form working relationships without in-person hearings. More relatives participating due to digital hearings. Responsible Medical Officers/Mental Health Officers – convenience of remote hearings. RH: half of the RMO feedback was more focussed around patient perception but readily adapted for their own use. .
3. Q - It was raised that large digital submission and lengthy email chains can cause concerns.
A - It was agreed that guidance is important and to bookmark things and discount anything else. It was also identified that the issue with large bundles are being submitted from unrepresented parties and that the clerk will screen share at the instruction of the panel, identifying which documents parties are referring to.
4. Parties requesting reasonable adjustments, to improve the experience of vulnerable parties. Adjustments can be made at the request of the patient. Always allow professionals to dial-in – now allow this to the patient. Patient choice should be respected.
5. Q -Judicial mediation in Employment cases has been a surprise success - why?
A -It is possible for rapport to be established on video, and there is a reduction in anxiety and an increase in convenience for parties. The settlement rate seems to be as good as in person mediations.
6. Q -Given that remote hearings are here to stay; what enhancements would you like to see?
A -It was suggested that possibly more feedback from parties to gauge their views on improvement and provide better instructions to parties. Provide them with a venue if technical help isn't available or working correctly. It was agreed that IT support is crucial. It was discussed that suites on NHS premises and technical liaison with NHS (using MS teams rather than WebEx) is a concern of limited resource and different platforms. There is a risk of internet connection issues and we do have iPads available for parties to utilise, using the venues' internet connections.

Managing the variety of parties

May Dunsmuir, President of the Health and Education Chamber (HEC), discussed the rise in the number of unrepresented parties since 2018, which has led to far more complex case management issues. During the hearing, the legal member has a greater role to play when applying the tribunal's overriding objective, which is enabling the tribunal, with the assistance of parties, to deal with cases fairly and justly. The same overriding objective applies to most tribunals. It is important to

strike a balance when dealing with unrepresented parties to ensure that the parties are on an equal footing. When dealing with vulnerable parties: which include children and young people; effective participation begins at the beginning – long before the hearing. We must understand the impact of any health condition on their ability to effectively participate, ensure that younger parties are recognised as having full and equal rights, ensure that parents are not deferred to when present and to take steps to overcome anything which compromises the ability of a vulnerable party to participate effectively.

Jane Laverick, HEC tribunal member (special education) discussed the bespoke approach taken in a case before the HEC. The panel created a social story to aid the young party to understand tribunal proceedings. A detailed schedule was shared denoting regular breaks and the use of stop/go cards. They recognised different needs of the child and their parents but preserved a child centred approach. If the decision isn't clear and how it's weighed the evidence then justice cannot seem to have been done.

Raising the profile of Tribunals and Tribunals Judiciary

Alex Green, President of the General Regulatory Chamber, presented a paper raising the internal and external profile of Scottish Tribunals and judiciary. The paper can be accessed by this link: [Alex Green Paper](#)

It was noted that over a period of years, tribunals have expanded, absorbing the work previously carried out in courts. This expansion will continue, which equates to a higher profile. It was noted how the administration of justice in Scotland was recovering from the Covid pandemic. Mr Green shared various statistics, showcasing the sharp increase in tribunal workloads over the years. There is more expansion on the horizon which will further increase our profile. We all have an important part to play in these expansions.

Mr Green shared his views that Tribunals judiciary could aid in the recovery of judicial business by sitting in Sheriff courts and through reciprocal sitting could increase judicial learning and raise the profile of Tribunals generally.

Reference was made to society becoming more complex and that affordable access to justice to is key in continuing to raise our external profile.

Closing Keynote Speech

A recording of Lord Hodge's speech can be found on this link: [Lord Hodge Tribunals Speech](#)

Lord Hodge, Deputy President of the Supreme Court of the United Kingdom, spoke of the rapid change to digital solutions. The Supreme Court heard a case by remote means immediately after lockdown measures were imposed. Commendation was given to working collaboratively to achieve solutions during testing times.

Lord Hodge discussed online courts and online dispute resolution mechanisms.

Q&A session

Q: Do you have tips for writing clear, short judgements were sought.

A: It was invaluable to set out your structure before you start with a blank sheet of paper include matters you have to cover.

Issues surrounding social media presence were discussed. Lord Hodge noted that judicial entities should utilise social media to broadcast key areas of business for transparency.

Conclusion

Lord Woolman thanked the speakers, contributors and everyone attending the conference. One final thought: the word “tribunals” derives from the Tribunes of ancient Rome, who had the same important role - to uphold the rights of individuals.