



PUBLIC PETITION NO.

PE01449

Name of petitioner

Dr John Wallace Hinton on behalf of Accountability Scotland

Petition title

Maintenance of a Scottish Council for Administrative Justice

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to preserve an independent Scottish Administrative Justice Council when the UK AJTC system is abolished, ensuring the new body has a critical user-interface to enable base-roots input from the public and that it has complete independence from political or civil service influence.

Action taken to resolve issues of concern before submitting the petition

Accountability Scotland was formed in the Autumn of 2011 at the time when the Scottish Government consultation on replacement of the AJTC was taking place, so we had no knowledge of this until after the December deadline.

We have examined the information from the UK Public Administration Select Committee (8 March 2012, see summary in press release Appendix 4: "PASC CHALLENGES GOVERNMENT OVER PLANS TO ABOLISH ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL (AJTC)").

We have studied the consultation response of CONSUMER FOCUS SCOTLAND (2011, see appendix 3).

No action has been possible apart from contacting a number of interested MSPs and legal experts in the field of Administrative Justice. Fiona McLeod MSP had sufficient concern to table a related question to be put to the SPCB (due to her illness this has been delayed). Roseanna Cunningham MSP responded via her officials who outlined the current decision-making delay. Jamie Hepburn MSP stated that he would take into account our concerns in the debate on the issue in Parliament. Support also comes from internationally respected specialists in Administrative Justice: Professor Adler, Professor Mullen and Richard Henderson (Chair of the Scottish Committee of AJTC).

Because of the need to ensure that a body exists that has oversight of the administrative justice of the operations of the Scottish Public Services Ombudsman (SPSO), we have established what existing bodies can ensure accountability of the SPSO. We have discovered that only the AJTC has a clear brief to examine the fairness of the SPSO's systems. The AJTC is the only independent body that can report to Parliament on this and other matters of Administrative Justice.

Accountability Scotland has been in contact with Prof Adler of Edinburgh University who is a senior AJTC member. Both he and Richard Henderson are hopeful about the outcome of this petition. In particular we have discussed in detail with Professor Tom

Mullen of Glasgow University and he strongly supports this petition.

We wrote to Roseanna Cunningham MSP in March 2012 asking for the retention of a Scottish Administrative Justice body and we await a clear response.

Petition background information

The remit of the AJTC, specifies Administrative Justice in these terms: “Administrative Justice’ includes the procedures used by public authorities for making decisions in relation to individual people, the law that regulates decision-making, and the systems (such as the various tribunals and ombudsmen) that enable people to challenge these decisions. The statutory functions of the AJTC include keeping the system under review and considering ways to make the system accessible, fair and efficient.”

The Scottish Committee of the Administrative Justice & Tribunals Council (AJTC) is expecting to be abolished soon. This move by the Scottish Government results from the decision of the UK Government to abolish the whole Council. Oversight of tribunals is catered for by the proposed new Scottish system but it does not cover the vast range of areas where oversight of Administrative Justice is required (For some examples of non-tribunal actions of the Scottish Committee of the AJTC see Appendix 1.) We believe that an independent bastion of Scottish Administrative Justice should continue.

So the Scottish Government’s proposal to abolish the Scottish Committee of the AJTC is driven from London and it leaves a gap. The question is how to plug it. This petition focuses on what we in Scotland must not lose in any changes to this independent body which oversees and reports to the Scottish Parliament - not just on the operation of Tribunals but the wider Administrative Justice field.

We have been unable to discover why a Scottish alternative to the AJTC has been proposed in which Administrative Justice in the broad sense is not included. Is the AJTC thought to be too expensive? Is the current system not fit for purpose? If it is fit for purpose, why change it? Are those who are currently in post not doing their job diligently? If they are, then why dismiss them? The separation of the Tribunals oversight aspect seems now to be fixed, so that leaves a general Administrative Justice gap which this petition addresses.

As Professor Mullen points out to us, there is a serious need for an Administrative Justice oversight policy: it is necessary to maintain an oversight of official administrative systems – to identify weaknesses. Also there is a need to help Government Departments with policy. Furthermore, the new Scottish Government proposals have no provision for Administrative Justice oversight of the courts.

Regarding oversight of the SPSO operations, the AJTC can currently report on mal-administration by the Ombudsman in regard to his systems. We currently have examples where the SPSO has decided to exclude the School Inspectorate from his investigation remit and disallows both teachers and concerned members of the public from complaining about the Inspectorate. If the AJTC goes, who will deal with this?

A new Scottish Administrative Justice Council would and could advise on the set-up and functioning of the proposed New System of Tribunal Supervision.

The creation of a Scottish Council for Administrative Justice would accord with the recommendations of the Crerar Review: The Report of the Independent Review of Regulation, Audit, Inspection and Complaints Handling of Public Services in Scotland. This gives recommendations on processing citizens’ complaints: specification of the oversight policy (not audit & inspection, but including listening to an individual person’s complaints).

The proposed new system would result in the loss of sufficient policy development capacity in government. Therefore Scotland would then need an Administrative Justice body to deal with the list of issues concerning policy and implementation. This is in accord with the Government’s code of conduct on Consultations, and this body should report to Parliament.

In Professor Mullen's view it is not a problem to implement an Administrative Justice System: the question is, can the Scottish Government spare half a million pounds to operate it?

The arguments for the retention of the AJTC as a whole are summarised in the important document (Appendix 4: Public Administration Select Committee Announcement, 8 March 2012). Our particular concern is with its Scottish Committee and specifically with 'Administrative Justice'. We emphasize the latter because the number of administrative justice hearings in a year so greatly exceeds the number of criminal justice hearings and they affect everybody every day.

The AJTC consists to a large extent of highly qualified academics in the field of Administrative Justice, and most importantly it is separate from the Civil Service and independent of Government and Civil Service control. It has an important role in overseeing the functioning of other bodies, such as the Scottish Public Services Ombudsman, regulators, quangos, Government and local government bureaucracies. Therefore the number of highly qualified experts in Administrative Justice within an oversight body in Scotland needs to be maintained. (Under the new proposals for a general Scottish Civil Justice Council it would be reduced to only a couple within a larger body which has no guarantee of independence from Civil Service influence. Furthermore this body is exclusively concerned with tribunals.)

We are particularly concerned with the potential loss of direct input from the public to the AJTC. A user-interface is critical, but it is not included in the new proposals on oversight of Tribunals. The public input aspect needs to be boosted, not lost, and this applies to the Administrative Justice Council proposed in this petition.

Acceptance of this petition now is critical, since the first consideration of proposals on the future of the AJTC in Scotland has just started in the Scottish Parliament, with the current Scottish Civil Justice Council and Criminal Legal Assistance Bill.

This UK PASC report (summarised in Appendix 4) applies to the UK AJTC, but it is crucial to our Scottish case and we ask for the Petitions Committee to read this summary and follow it up as necessary. Please note especially the last paragraph: "The AJTC should be part of the machinery to help government get decisions 'right first time'. Instead, over half a million decisions have to be reviewed each year, at great cost and considerable injustice and inconvenience to citizens. If the AJTC is abolished, what will take its place, and how will Government do better?"

The Scottish Government is proposing a system for oversight of tribunals, only, so a general Administrative Justice Council is now needed.

Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/administrativejustice>

Related information for petition

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NO

How many signatures have you collected so far?

10

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