

Judiciary
of Scotland



Legal Member

First-tier Tribunal
For Scotland





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A foreword from the President of Scottish Tribunals

Lady Wise



- The Scottish Tribunals, like the Scottish Courts, are subject to the rule of law. Those who sit as legal members of the devolved Tribunals are independent judicial office holders with all of the privileges and responsibilities that encompasses. Decision making must be impartial, rational and accurate. It is the duty of all those involved in the operation of the Tribunals to act ethically and adhere to standards of conduct that promote the rule of law.
- The business of the First-tier Tribunal is diverse and rewarding, from complex tax and social security benefits cases to highly sensitive applications in relation to educational provision for children with additional support needs, property related decisions and transport appeals. While the concentrated jurisdiction of each Chamber can be highly specialised, there is a common craft of administering justice in Tribunals that engenders a collaborative approach to the various processes. More members of the public come into contact with Tribunals than courts and so decision making in this context affects many lives.
- It is a real privilege to hold office as President of Scottish Tribunals and to observe the skill and dedication of the legal members. I hope that you will apply to join this committed group of people.

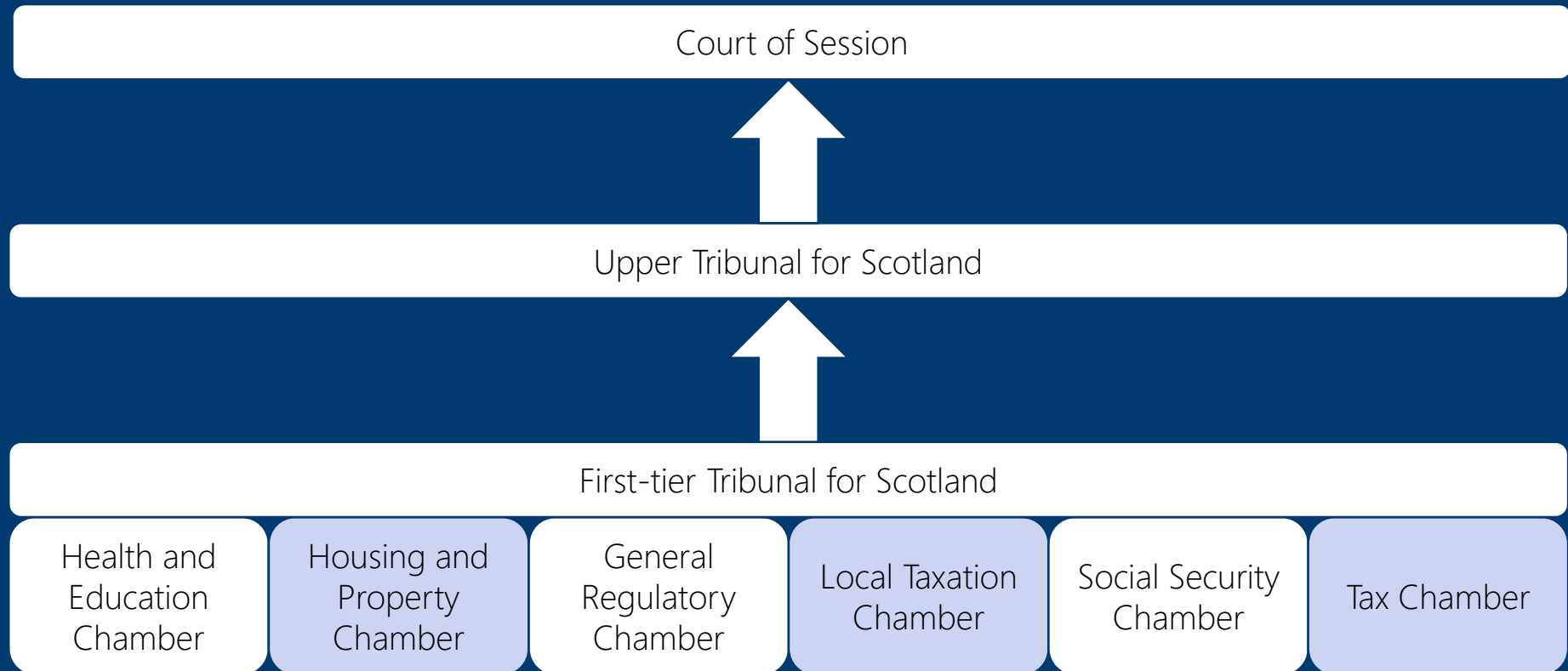
History of the Scottish Tribunals

The Tribunals (Scotland) Act 2014 (the 2014 Act) created a statutory framework for the Tribunals in Scotland. The Act created two new Tribunals, the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland, known collectively as the Scottish Tribunals. The First-tier Tribunal consists of a number of Chambers, each with its own jurisdiction and headed by a Chamber President.

The First-tier Tribunal for Scotland deals with first instance decisions. These are cases heard at a Tribunal for the first time.

The 2014 Act brings Tribunal appointments under the remit of the Judicial Appointments Board for Scotland (JABS) and transfers administrative support of Tribunals to the Scottish Courts and Tribunals Service (SCTS). Appeals from the First-tier Tribunal are heard in the Upper Tribunal. In certain circumstances, some matters can be appealed from the Upper Tribunal to the Court of Session.

Structure of the First-tier Tribunal for Scotland



Eligibility

Legal Members of the First-tier Tribunal are appointed by the Scottish Ministers. To be eligible for appointment you must:

- Have previous engagement in practice for a period of not less than 5 years as a solicitor or advocate in Scotland; and either:
 - i. Is practising as a solicitor or advocate; or
 - ii. Has had subsequent engagement in any of the following activities:
 - a. Exercising judicial functions in any court or tribunal;
 - b. Practice or employment as a lawyer of any kind; or
 - c. Teaching or researching law at or for an education institution.

The period in practice as a solicitor or advocate in Scotland of not less than five years can be continuous or cumulative.

The Judicial Appointments Board for Scotland (JABS) (the Board) is an independent non-departmental public body whose statutory role is to make recommendations to the Scottish Ministers for appointment for judicial offices under the provisions of the Judiciary and Courts (Scotland) Act 2008.

The Board's responsibilities under the 2008 Act are that:

- a) selection of an individual to be recommended for appointment must be solely on merit;
- b) the Board may select an individual only if it is satisfied that the individual is of good character; and
- c) in carrying out its functions, the Board must have regard to the need to encourage diversity in the range of individuals available for selection to be recommended for appointment to a judicial office. This is subject to the provisions a) and b) above.

Candidates will go through a holistic application process which tests the level of skill, experience and professionalism required to perform the duties of the office.

JABS encourages diversity and particularly welcomes applications from groups currently under-represented in the judiciary. The principles of fair and open competition will apply and recommendation for appointment will be made solely on merit.

Each applicant will be assessed against a set of skills and qualities which are necessary for the role:



Legal, Personal and Judicial Qualities

As well as the statutory eligibility, applicants are also required to demonstrate legal judicial and personal qualities:

Legal Knowledge

- Able to demonstrate competence in the law, knowledge of substantive and procedural law.
- Evidence of your willingness and ability to acquire new legal knowledge and skills

Applicants will possess the following qualities:

Working with others

- Able to work effectively as part of a team and be active in all communications, deliberations and decision making;
- Able to confront difficult issues openly and sensitively;
- Understands the importance of collaborative working and collective decision making with other tribunal members;
- Able to control difficult issues openly and sensitively; and
- Able to respond with care and compassion to those subject to tribunal proceedings, in particular where those proceedings involve vulnerable persons.

Exercising Judgment

- Remains impartial and open minded and is seen to be fair to all;
- Is able to analyse and assess complex evidence and arguments;
- Is able to reason clearly; and
- Is confident in judging and making independent decisions in the face of challenge.

Leadership and Management

- Manage cases and time effectively;
- Able to take responsibility for process and decisions, ensuring they are fair and ethical;
- Manage the hearing process effectively; and
- Is able to deliver work at speed and under pressure.

Communicating Effectively

- Establishes authority and inspires respect and confidence;
- Modifies communication style to meet the needs of different users;
- Listens with patience and respect; and
- Produces written work that is clear, concise and well reasoned.

Role of a Legal Member

Depending on the type of case or Chamber, Legal Members may sit alone or as part of a panel. Members will be required to:

- Communicate effectively with all parties;
- Lead and chair relevant proceedings and provide advice to other members on legal issues arising, ensuring proceedings are fair and efficiently managed;
- Actively manage cases and promote the efficient dispatch of business;
- Weigh up potentially conflicting evidence and support the other members to reach an independent and reasoned decision;
- Work collaboratively with other members of the Tribunal and facilitate collective decision making, draft any written decision & statement of reasons, ensure the law is appropriately applied and all relevant issues are covered in the decision;
- Be courteous and considerate to all Tribunal users and staff and sensitive to people from different backgrounds;
- ensure parties can effectively present their case and have it considered fairly, including parties who are not represented;
- Ensure that decisions, directions and any other orders of the Tribunal are made efficiently, effectively and fairly, and notified timeously;
- Engage constructively in any involvement with the Head of the Scottish Tribunals (the Lord President), the President of Scottish Tribunals, Chamber Presidents, other members of the Scottish Tribunals and all Scottish Courts and Tribunal Service staff supporting the Tribunals;
- Travel throughout Scotland, as required; and
- Carry out all other tasks that may reasonably be required

General Regulatory Chamber (GRC)

The General Regulatory Chamber was established in 2018, and is based in George House, Edinburgh. The Chamber President is Alexander Green.

The Chamber has two jurisdictions: the Scottish Charity Appeals Panel and Transport Appeals. The Chamber will be expanding to include Police Appeals and Shark Fin appeals.

The Scottish Charity Appeals Panel

The Scottish Charity Appeals Panel hears appeals against decisions made by the Office of the Scottish Charity Regulator; the body which regulates charitable activity in Scotland. It has 6 Legal Members (including the Chamber President) and 7 Non-Legal Members.

Transport Appeals

The Transport Appeals Panel has 9 Legal members (including the Chamber President)

Transport Appeals currently consider appeals from the following areas:

- Parking Penalty Charge Notices;
- Bus Lane Enforcement Charge Notices;
- Vehicle removals;
- Local Emission Zone enforcement;
- Workplace Parking Licensing Schemes.

The respondents are several Scottish local authorities participating in Decriminalised Parking Enforcement. Historically, parking enforcement was a matter for the criminal law. However, Decriminalised Parking Enforcement is a regime which enables a local authority to administer its own parking penalties. In areas with Decriminalised Parking Enforcement, stationary traffic offences cease to be criminal offences enforced by the police and instead become civil penalties enforced by the local authority. There are currently 21 Scottish local authorities operating Decriminalised Parking Enforcement. Three Scottish local authorities issue and enforce charges for bus lane contraventions. One Scottish local authority (Glasgow) operates Low Emission Zone enforcement. Three more Scottish local authorities (Aberdeen, Dundee and Edinburgh) will be operating Low Emission Zone enforcement in 2024.

Health and Education Chamber (HEC)

The Health and Education Chamber was established in 2018, and is based in the Glasgow Tribunals Centre, Glasgow. The Chamber President is May Dunsmuir.

The Chamber currently has one jurisdiction, Additional Support Needs. The Additional Support Needs jurisdiction decides different types of cases in relation to school education. Applications are made under the Education (Additional Support for Learning) (Scotland) Act 2024 (*references*) and the Equality Act 2010 (*claims*). Applications can be raised by a parent, young person (aged 16 years and above) or a child (up to and including the age of 15 years).

References (respondents are education authorities)

References relate to the child or young person's additional support needs in school education. The majority are for those who are neurodivergent (autism and/or ADHD) and/or who have complex and enduring health conditions. The types of references are:

- In relation to the only statutory education plan in Scotland, the co-ordinated support plan;
- Placing requests (the majority for special schools);
- Transitions (e.g. from secondary school to post school destinations);
- The child's ability to exercise a right under the 2004 Act (testing their capacity and the impact on their wellbeing).

Claims (responsible bodies are education authorities, independent or grant-aided schools)

Claims are made in respect of disability discrimination in school education. A number of these are made by children. The common types of discrimination argued are:

- Discrimination arising from disability;
- Indirect discrimination;
- Direct discrimination;
- Duty to make reasonable adjustments.

In this Chamber, Legal Members judicially manage their cases from allocation to the hearing or towards settlement. They decide which hearing type is suitable (in-person, remote or hybrid). A great deal of work then begins in the background, whether it is an in-person hearing in a sensory hearing suite, or online.

The child or young person is kept at the centre of all judicial processes, which are tailored to their needs.

Housing and Property Chamber (HPC)

The Housing and Property Chamber (HPC) was established in 2016, and is based in the Glasgow Tribunals Centre. The Chamber President is Aileen Devanny.

The work of the HPC is varied with over 50 different types of applications which can be considered by the Chamber. Most applications are determined by a Tribunal comprising a legal member and an ordinary specialist member. The some of the main categories of application received by HPC are as described below

Private rented sector applications

The private rented sector jurisdiction deals with a wide range of private rented tenancy issues, and since its introduction, it has been by far the biggest jurisdiction in terms of case volumes. The three biggest categories of PRS application in terms of volume are Eviction, Civil proceedings and Tenancy deposit applications.

Repairing standard applications

Private rented sector tenants and Third parties (i.e. local authorities) can apply to the HPC to seek to compel their landlord to carry out necessary repairs to ensure that their property meets the statutory "repairing standard".

Landlord (Right of entry) applications

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

Rent assessment applications

Both landlords and tenants can appeal against rents registered by Rent Officers in relation to regulated tenancies, and seek a determination of a fair rent for their property.

Local Taxation Chamber (LTC)

The Local Taxation Chamber is based in Bothwell House, Hamilton. The Chamber President is Jacqui Taylor.

The Local Taxation Chamber consists of the Chamber President, legal members, ordinary members with surveyor rating experience and ordinary members with valuation experience.

Most hearings are by video conference, however in-person hearings can be arranged on request. Non List council tax appeals, council tax reduction appeals and invalid council tax banding appeals are determined by a legal member sitting alone. All other appeals are heard by one legal member together with one or two ordinary members.

The functions of the Valuation Appeal Panels and Council Tax Reduction Review Panel were transferred to the Local Taxation Chamber of the First-tier Tribunal on 1st April 2023. The Local Taxation Chamber hears six types of appeals.

Non Domestic Rates Appeals

The Scottish Assessors are responsible for maintaining the non- domestic valuation roll and provide rateable values to the local authority. The Chamber hears appeals regarding entries made by Assessors to the valuation roll in respect of non-domestic properties.

Appeals against Council Tax Banding

The Scottish Assessors are responsible for maintaining the council tax valuation list, which contains information relating to each domestic property in a Local Authority area and for the issue of council tax completion notices for new domestic dwellings. The Chamber hears appeals regarding entries made by Assessors to the valuation list of domestic properties.

Non List Council Tax Appeals

The Chamber hears other council tax appeals such as the calculation of council tax liability, exemptions and discounts.

Water Charges Appeals

The Chamber hears appeals against a Local Authority decision that water charges are payable or the calculation of water charges liability.

Council Tax Reduction Appeals

The Chamber hears Council Tax Reduction appeals, but only after the Local Authority have reviewed their initial decision.

Civil Penalties

The Chamber hears appeals against the amount of a civil penalty imposed for failure to comply with Assessor information notices, failure to comply with Local Authority information notices and failure to notify changes in circumstances to the Local Authority.

Social Security Chamber (SSC)

The Social Security Chamber was established in 2018. The principal office is in Glasgow Tribunals Centre. The Chamber President is Andrew Veitch.

The Chamber hears appeals in relation to non-disability and disability cases including:

- Best Start Grant;
- Pregnancy and Baby Payment;
- Early Learning Payment, School Age Payment;
- Funeral Support Payment, Young Carer Grant;
- Winter Heating Assistance for Children and Young People;
- Scottish Child Payment;
- Child Disability Payment; and
- Adult Disability Payment.

Appeals relate to decisions on benefit entitlement made by Social Security Scotland. In all types of hearings it is normal for a Presenting Officer from Social Security Scotland to attend. Scotland has historically had the highest rate of representation in the UK by the Citizen's Advice Bureau, Welfare Rights and other similar organisations. This appears to be continuing in the Chamber.

Since 2023 the Chamber has seen a significant rise in the number of appeals, particularly in respect of Adult Disability Payment (ADP) and Child Disability Payment (CDP).

The majority of hearings continue to be by telephone however facilities exist for Video link hearings and in-person hearings. The Social Security Chamber has venues throughout Scotland and where an appellant indicates that they would prefer an in-person hearing this will be facilitated wherever possible.

A Social Security Chamber tribunal is composed of a legal convener, a medically qualified member and a disability qualified member for ADP and CDP appeals. In respect of most other benefits, these will be heard by a convener sitting alone.

Remuneration

Fees and Expenses

Fees for Legal Members of the First-tier Tribunal for Scotland vary between Chambers. Travel and subsistence expenses will also be met.

There is no requirement for applicants to reside in Scotland. It should be noted, however, that for members that are located outside of Scotland expenses will not be reimbursed for travel outside of Scotland.

Time Commitment

The time commitment is expected to be in the order of 10 to 30 days per year, depending on the volume of work of the Tribunal. Sittings need not always be on a full day basis, and where possible half day sittings can be accommodated, although in some Chambers, like the Health and Education Chamber, hearings can be expected to last on average 2 to 3 days. In addition, it is anticipated that there will be in the order of two days of mandatory training per year plus any Chamber specific additional training.

Period of appointment

By virtue of paragraph 4 of schedule 7 of the 2014 Act you will be automatically reappointed for periods of five years, unless one of the conditions listed in paragraph 4(3) of Schedule 7 applies. You may decline automatic reappointment by providing one month's written notice to the Lord President that you do not wish to continue in post at the expiry of your current period in office.

Pursuant to section 26 of the Judicial Pensions and Retirement Act 1993, as amended by paragraph 25 of Schedule 1 of the Public Service Pensions and Judicial Offices Act 2022, you are required to vacate your office on the day on which you attain the age of 75.

The first few months of appointment

Measures are in place during the early stages of a new Legal Members appointment. They are intended to provide support and reassurance to any new member and to accord with best practice. Whilst the training methods vary between Chambers, the following are examples of what a new member could expect on appointment:

- Induction training
- Meeting operational and support staff from within the Chamber
- Sitting-in days in order to familiarise themselves with the judicial environment, to observe the work undertaken, and to have the opportunity to discuss how best to approach, and organise for, the challenges ahead
- Training with the Tribunal administration on familiarising with software used by members.
- Training on relevant legislation
- Lectures
- Peer presentations
- Mentors/Peer groups
- Site Visits i.e. specialist schools to observe how additional support for learning is delivered

A message from Legal Member Denise Smith - SSC & LTC



I began my legal career as a trainee in a mid-sized law firm in Glasgow where I dealt with largely private client work. Although I enjoyed elements of this, I wanted to pursue litigation and one year post-qualified, moved to an out-of-town firm with several offices.

Working in a branch office, I was responsible for a varied legal aid and private caseload including family, housing, benefits, employment, debt and crime. I appeared regularly at the Sheriff Court and various Tribunals, as well as the Licensing and Criminal Injuries Boards. During this time, I was very much learning on the job and benefitted from time in court watching other cases, as well as conducting my own. At this stage in my career, I was lucky to practice in a Sheriff Court where there was a collegiate atmosphere among practitioners and a supportive judiciary.

Having studied child law as part of my Honours degree and found family law cases particularly rewarding in practice, I wanted to specialise further in this field and having spent several years in a firm where local agency Sheriff Court work was a large part of my caseload, I moved back into the city, joining a big multi-service firm as an associate in its family law team. Working in a corporate environment provided a very different experience of legal practice and I particularly enjoyed the support of Professional Support Lawyers. During this time, I undertook training in collaborative family law.

In 2012, I took a career break and returned to University on a part-time basis to pursue post-graduate study in the field of mediation and conflict resolution. The reflective nature of mediation and topics such as exploring emotions were new and at times challenging for me as a litigator. Through a combination of academic study and 'learning by doing', I further developed negotiation and communication skills. I particularly enjoyed studying alongside those with very different professional backgrounds.

In 2013, a colleague suggested that I apply for the role of fee-paid Tribunal Judge of the First-tier Tribunal (Social Entitlement Chamber). I was attracted by the valuable work carried out in this jurisdiction and liked the idea of the informality of the Tribunal setting. In 2020, I was appointed as a legal member of the Social Security Chamber in the First-tier Tribunal for Scotland.

Sitting as a legal member is the most rewarding and challenging role of my professional career to date. I quickly had to navigate a steep learning curve in a complex area of law and develop a good understanding of the procedural rules, as well as ethical considerations and good practice. Making decisions which have a significant impact on the lives of others is a big responsibility, but colleagues are always available for support.

The job offers variety – no hearing is ever the same! The work is collaborative and multi-disciplinary: it is invigorating to learn from other members, who each bring their own expertise. What is most important for me, however, is the ability to shape appellants' experience of a Tribunal by bringing humanity to, and a commitment to enabling their full participation in, the hearing.

I would encourage anyone who has a commitment to fairness and justice, and is interested in using their knowledge and skills to work with others in this way, to consider applying to be a Tribunal member.



A message from Legal Member Derek P Auchie – HEC, GRC & SSC



I started my legal career in a broad based traineeship, but with a particular focus on civil litigation in a medium sized firm. I then worked for two other firms (one larger, the other very small) as I developed my career as a civil and criminal litigation lawyer.

I did not have aspirations to join the bench. However, an advertisement for a new tribunal called the Mental Health Tribunal for Scotland caught my eye. I had some experience of representing patients in the Sheriff Court however I thought I would be too young to be appointed. I was wrong.

I was appointed at a time when I had moved into academia: I was by then a full time lecturer. Since then, I have gradually expanded my tribunal work - I now sit in four jurisdictions while carrying out some (but much less) academic work. I also do some in-house work for one tribunal Chamber.

In my judicial role I make decisions about school education for vulnerable pupils, whether someone is entitled to certain benefits and parking contraventions – sometimes all in a single week! This shows the variety of the available work (and I certainly don't sit in every Chamber). One of the main benefits of tribunal work is its flexibility: I can control my diary with ease. If I want to take less tribunal work over a period of time, I can do that. If I am more available, this usually leads to being allocated more work.

Another plus is that the work involves handling cases at hearings on a regular basis. In some jurisdictions, I get to do case management work too. This makes things interesting: you feel like you are always actually delivering justice. Real and substantial issues of law arise in Tribunal cases, as do complex factual and procedural questions. This makes the task of Tribunal judging practically important.

Finally, in most of my judicial hearings, I sit with other members, not lawyers. The multi-disciplinary judicial decision making model is a strong one. I find that working as part of a judicial team is highly enjoyable and it brings different perspectives (specialisms) and approaches to doing justice in individual cases.

I would encourage anyone with an interest in applying the law to facts in real cases, making a difference to the Scottish public, and doing so in a highly enjoyable environment to apply to be a Tribunal member. I can assure you of one thing: you won't find it dull.



Useful Links

Each Chamber has its own website which provides more information on the appeal types considered by each chamber. The websites include their own useful links such as links to relevant legislation or advice bodies.

Tribunal decisions and forthcoming hearings are also published on the individual websites.

- General Regulatory Chamber

www.generalregulatorychamber.scot

- Health and Education Chamber

www.healthandeducationchamber.scot

- Housing and Property Chamber

www.housingandpropertychamber.scot

- Local Taxation Chamber

www.localtaxationchamber.scot

- Social Security Chamber

www.socialsecuritychamber.scot

- Tribunals (Scotland) Act 2014

[Tribunals \(Scotland\) Act 2014 \(legislation.gov.uk\)](http://legislation.gov.uk)

- Scottish Tribunals Annual Report – 2023/24

[Scottish Tribunals Annual Report](#)



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