

A REPORT BY THE AUDITOR GENERAL FOR SCOTLAND UNDER SECTION 22(3) OF
THE PUBLIC FINANCE AND ACCOUNTABILITY (SCOTLAND) ACT 2000

**THE 2008/09 AUDIT OF THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND
ADMINISTRATION**

1. I have received the audited accounts of the Mental Health Tribunal for Scotland Administration (MHTSA) for the year ended 31 March 2009. The auditor has given a clear audit certificate on the accounts. However I have decided to report to Parliament on the costs associated with the resignation of the former President of the Mental Health Tribunal for Scotland.
2. I submit these accounts and the auditor's report in terms of sub-section 22(4) of the Public Finance and Accountability (Scotland) Act 2000, together with this report which I have prepared under sub-section 22(3) of the Act.

Background

3. MHTSA was an executive agency of the Scottish Government, which supported the work of the separate Mental Health Tribunal for Scotland (the Tribunal). From April 2009 MHTSA ceased to exist as an agency and its functions and staff were transferred to a new delivery unit within the Justice and Communities portfolio of the Scottish Government.^{1 2}
4. Both MHTSA and the Tribunal were created under the Mental Health (Care and Treatment) (Scotland) Act 2003 (the 2003 Act).
 - The 397 members of the Tribunal are publicly appointed people with a medical, legal or general background, who must decide about the compulsory care and treatment of people with mental disorders.
 - MHTSA's role was to help manage and progress the administrative casework associated with the Tribunal hearings.
5. Both bodies commenced operations in 2005. Although they are separate legal entities MHTSA accounted for the Tribunal's costs. In 2008/09 MHTSA's annual operating costs (including the Tribunal's costs) were some £10.5 million.

The resignation of the former President of the Tribunal

6. The remuneration report in MHTSA's accounts for 2008/09 shows that the former President of the Tribunal resigned from her post as President with effect from October 2008. An Acting President was appointed and paid from 21 November 2007 in the absence of the former President from that time.
7. Although the former President was absent from her duties as President from November 2007 she continued to receive her remuneration as President until her resignation took effect in October 2008. Based on the information in the accounts the remuneration during the 11 months absence was between £146,000 and £153,000. In addition, the accounts show that MHTSA has made a provision of £297,000 in

¹ This structural change was part of the Scottish Government's wider programme of reform which aims to reduce the number of public bodies by 25% by April 2011.

² I reported to Parliament in 2007 on the need for MHTSA to improve its governance arrangements (*The 2006/07 Audit of the Mental Health Tribunal for Scotland Administration*, SE/ 2007/234, October 2007). Later monitoring showed that MHTSA had addressed adequately the issues highlighted in my report.

respect of the estimated future costs of the former President's pension. This cost arises from the total period of her service prior to her resignation (three years and eight months). Pro rata, some £78,000 of this cost accrued during the absence period.

8. MHTSA was responsible for paying all Tribunal members' remuneration. However under the 2003 Act the appointment of all Tribunal members including the President is a responsibility of Scottish Ministers. In recognition of this responsibility, MHTSA secured specific approval from the Scottish Government health directorates to continue payment to the former President during her period of absence.

Conclusion

9. The remuneration paid to the former President during her absence was significant. I am therefore drawing these costs to the Parliament's attention.
10. The information in this report has been provided in accordance with legal obligations. These include the need to process personal information relating to the former President in accordance with her legal rights under the Data Protection Act 1998.



ROBERT W BLACK
Auditor General for Scotland

7 December 2009