

## **Professional Reference Group**

### **Minutes**

**3<sup>rd</sup> March 2009**

**Victoria Quay, Edinburgh**

#### **In attendance**

Dr Joe Morrow – President, Mental Health Tribunal for Scotland (MHTS) (JM)  
Adrian Martin – Chair – MHTS (AM)  
Stuart Lennox – ASDW (SL)  
Joanna Keating – SG, Solicitor, Mental Health Branch 3 (JK)  
Russell Hunter – Solicitor – MHTS (RH)  
Linda Reid – Social Work Advisor to the SG Mental Health Division (LR)  
Karen McLaughlan – Minutes – MHTS (KMCL)

#### **Apologies**

Donald Lyons – Mental Welfare Commission  
Dr James Hendry – Royal College  
Denise Coia – SG - Principal Medical Officer  
Dr Margaret Morrison – SG - Principal Medication Officer (Forensic Psychiatry)

AM welcomed attendees and acknowledged apologies. AM introduced the previous minutes which were agreed by the attendees. AM moved on to introduce the President (JM).

JM spoke about his vision and explained that he intended to keep the vision simple and intended to involve everyone working with the Tribunal. The first part of his vision is to aim to have a case come before a full tribunal once only – where it would be appropriate to do so - with all procedural matters having been taken care of in advance of the full hearing. He confirmed that the new Curator system is now in place and running smoothly. JM also confirmed that two in-house Convenors have been selected following an application and interview process. They will be responsible for holding procedural hearings and making legal decisions, such as appointment of Curators. The impact has been positive so far. JM meets with the Chief Executive to discuss strategic issues every two weeks, he also meets with the senior management team (B3 level) to discuss broader legal issues every two weeks with the in-house Convenors meet with the junior management team (B1) to discuss day to day issues as they arise. JM now intends to build on these regular meetings by introducing a system of legal case management teams in the Administration comprising: CORO, North, East and West. The intention is to align the legal secretary to the CORO and West teams and one of the in house convenors to each of the North and East teams. The teams and the lawyers assigned to them will meet regularly, probably fortnightly, with the intention of allowing legal oversight of – and input to – the management of cases. JM noted that this is all moving forward, along with extra member training and he hopes to be at the stage of one substantive hearing per case, where appropriate, by the end of the year.

JM also advised that he intends to continue his work in his ambassadorial role for the Tribunal and has already met with MHOs and other representatives from 22 Local Authorities across the country to discuss his proposals. Few critical questions are now being raised with JM and reactions are generally very positive. JM has also met

with representatives from Learning Disability Groups who also feel the changes are moving in the right direction. Overall the response has been positive and the group readily agreed that this is the case. Discussion took place around the improvements and the need to ensure the patient remains at the centre of all the processes. Members of the group agreed that the steps proposed are positive and welcomed the changes.

JM moved on to discuss the second area of his vision whereby he intends to ensure that the 'Care & Treatment' element of the Act, as well as the need to protect human rights are all at the forefront of what the Tribunal does. The group agreed with him that the Tribunal's jurisprudence is about Care *and* the Law. JM added that the intention is to avoid an unnecessarily legalistic approach being taken. The group were again pleased to hear this.

JM spoke about the Members of the Tribunal and informed the group that up to 94% of the Members would be up for renewal next year. Initially on advice from the public appointments office, the system for appointments was set at five years with renewal for a further five years. This is not the line JM wishes to adopt however, and he aims to have members appointed for a fixed period of five years, in line with the legislation. The group spoke about membership of the Tribunal in general and JM confirmed that he anticipated that, natural wastage and existing Members who do not wish to renew their membership would effect a needed reduction in the number of Members.

JM moved on to speak about the active training programme and the newly formed training committee who, as well as preparing training sessions for Members, have also started work on the Tribunal's first ever Conference. JM also spoke briefly about the work of the appraisals' committee and he feels that if there are any issues at present they are around a reduction in work. Due to his proposed renewal steps and foreseen reduction in membership, it would ultimately mean more work for the remaining fewer Members. The group held a general discussion around the breakdown of membership. JM advised the group that although we are running at around 50% of doubled up hearings, geographical breakdowns and venue locations means that we have now more or less reached our maximum level. The use of doubled up hearings means that currently there are fewer Members working but they are working full days, hearing a case in the morning and another in the afternoon. JM said there are currently a large number of people on waiting lists to join the Tribunal but due to the current high level of membership, he is looking at scrapping the current waiting list and replacing it with job adverts as and when required.

JK asked if there were any plans to double up CORO hearings, JM advised that it was subject to on-going discussion at present. Previously where a patient was subject to two separate applications two separate hearings were held. JM was comfortable with the two applications being dealt with at the same hearing, but that was not necessarily the view of all those involved. JM informed the group that the CORO casework team within the Administration had recently taken part in an excellence programme looking at ways to improve the way they worked. The team are now highly specialised and work well as a unit. JM hopes that it would be possible to hold procedural hearings for CORO cases between three to eight weeks in advance of the actual hearing. JM added that he is also looking at the use of

Sheriffs' time. We need 300 days for Shrieval time and explained why this is the case to the group. He intends to meet with the Sheriffs Principal to discuss time allocation further.

The group entered into a discussion on the use of doubled up hearings and the savings it effects. JM added that he hopes the use of procedural hearings will reduce the need for substantive hearings to be adjourned and, along with doubled up hearings, should result in overall reductions in use of resources for the Tribunal across the board.

JM moved on to speak about the third area of his vision whereby he is considering the use of regional centres. This is very much in the consideration stage at the moment and no conclusion has been reached.

JM expressed an interest in extending the jurisdiction of the Tribunal and confirmed that he will be setting up a small internal working party to look at this possibility. LR suggested involving ADSW and JM agreed that it might be useful, but only following initial work carried out internally by a small in-house team. JM went on to speak further about his ambassadorial role and informed the group that he will be attending the 31<sup>st</sup> International Congress on Law and Mental Health Conference at the New York University Law School at the end of June. He will be speaking on 'A New Jurisprudence in Mental Health Law, a Scottish Solution'. JM is keen to advance his ambassadorial role and informed the group that if they were aware of any groups that would like to meet with him to let his PA<sup>1</sup> know as he is happy to do so.

JM moved on to speak about Judicial Excellence. The Tribunal is working towards this by way of on-going Members' training and appraisals. The low number of appeals against decisions of the tribunals confirms the successes achieved to date. The only types of cases currently going to appeal are based around legal issues that have to be clarified and the group moved on to discuss issues around the tests for necessity to detain.

LR asked for further information on Curators and if they are now doing what was intended for them to do initially and not automatically oppose the application. JM explained the initial scepticism over whether the appointment of Curators would work and concerns around their level of independence. He confirmed that Curators are now fulfilling their role properly and that the new system is working well. Discussion took place around Curators and how it differs from the service user's ability to appoint a solicitor. JM confirmed he had previously written to MHO's and RMO's to clarify the difference. LR suggested that SL put something through ASDW to advise MHO's and RMO's to use the correct language when highlighting the patient's ability to instruct a solicitor versus their decision that a Curator should be appointed. There was general agreement within the group that the more information the MHO could provide the better. JM added that we are still looking for Curators in Aberdeen and plans to go to visit the area soon and possibly speak to the local solicitors to highlight the need and seek solutions. AM added that the administration can now provide lists for psychiatrists who are willing to carry out independent reports with fees now set at the same rate as the Procurator Fiscals Office. The group discussed the benefits of

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this new option in obtaining independent medical reports and were glad to hear that fees have now been set.

The group also spoke of misconceived cases and largely disapproved of the use of 'misconceived' status. JM along with the group felt it would be more productive where possible to rectify the issues that lead to misconceived cases. JM closed by summing up his vision and the group agreed that they were pleased to hear of the developments and new directions taken.

JM informed the group that as of the 1<sup>st</sup> of April the Administration will no longer be an Executive Agency. The Administration will be part of the SG while the Tribunal will remain a separate independent body.

LR asked if there were any plans to allow trainee MHO's to attend hearings as either a party to the case and able to give evidence or just as an observer. RH noted that, as observers, the panel would have to ask all parties if they objected to the trainee MHO's attendance. SL suggested that there may be legality issues with trainee MHO's giving evidence at the hearings and the group agreed that the full MHO would always be the applicant; JM added that he does not have a problem with trainee MHO's attending and giving evidence. LR suggested a note to MHO's via the newsletter might be useful. JM felt that an instruction from him would not be appropriate, he feels a guidance note to Members would be a more suitable course of action. JM added that he is currently looking at ways to provide practice notes to others, such as MHO's and RMO's, which are currently only available to Members.

AM moved on to discuss the next agenda item. He explained the history of the HAVOC leaflet and added that due to the need to produce a more in-depth version, it would be difficult for the Tribunal to amend the document as the leaflet does not belong to the Tribunal. It was hoped that the Mental Welfare Commission may be willing to work with HAVOC on the leaflet. JM agrees that it might be more appropriate for the Commission and will speak with them when they meet on the 5<sup>th</sup> of March. JM added that there would be no issue with the Tribunal distributing the approved text, if approved by the Commission.

**ACTION:** JM to speak to the Commission  
Leaflet to be removed from future  
agenda's

AM asked if there were any further questions on the issue of procedural hearings which was discussed earlier. JM added that the matter was currently with RH and that there was nothing much else he could say at this stage.

AM moved on to the use of video conferencing. LR asked if the facility could be used for procedural hearings. AM explained that we are currently carrying out a review of which venues have the facility, which could accommodate it and where it would not be an option. Use of video conferencing is covered in the rules and the review would look at issues around using the equipment. JM agreed to speak with JK regarding tidying up any unclear rules around the use of the facility. The group agreed that the use of the facility can be beneficial when the parties may have

difficulty in getting to a venue and it might be more time efficient if they could link up by video to a hearing. JM added that the use of both procedural hearings and video conferencing is being pushed forward. He added that it does not mean we will never go to island venues. Following discussion around the use of the facility, JM asked for feedback at this stage on the use of video conferencing for procedural hearings.

**ACTION:** Any feedback to KMCL before the next meeting of the group

AM moved on to the next topic of expected feedback from the Royal College, JM confirmed that no feedback has been received to date in terms of supporting documentation to be sent with applications. He added that he can tell the Members what to look for and cannot instruct the Royal College on what they should be providing.

AM moved on to recording of notifications. The Act only states that they should be sent to the Tribunal, it does not say that every one should be recorded. Around 58% of Short Term Detentions (STD) do not lead to full orders or further applications and recording all notifications is very time consuming for Administration staff. Thought is currently being given to recording receipt of a STD and keeping all notifications in a filing system and only processing those that lead to a full application. He added that we might be in breach of Data Protection to keep records in cases where we hear nothing else about an individual. The group discussed the practicalities of holding the STD certificates and how they could be retrieved if an application followed. AM suggested keeping the STD certificates in a day file storage system for a maximum of five weeks and retrieving them as needed. He added that the Commission also receives copies of STD certificates and record the statistics themselves so the information would not be completely lost. JM noted that we need to float the idea and look for feedback.

**ACTION:** AM to produce draft proposal for next meeting  
Any intermediate feedback to be provided to AM or KMCL before next meeting

AM moved on to ask if there was any other business.

AM introduced the proposed draft guide for Named Persons. The group discussed the number of guides currently available, although they agreed the purpose of the guide is more to advise of what will happen and shall be more specific to the actual tribunal.

**ACTION:** KMCL to forward a copy of the guide to the group  
**DONE 4<sup>th</sup> March 09**

AM informed the group that we now had agreement to deliver and transfer papers to the Commission, Curators and representing solicitors electronically. Electronic delivery of applications to the Tribunal remains low in most areas however. SL added that the facility is not available at the moment in Glasgow but is on their agenda.

AM spoke about attendance at both the Professional Reference and Service Users' and Carers' Group meetings. There has been thought to holding full day events across the Country with the Service Users' and Carers' Group meeting in the morning, the Professional Reference Group meeting in the afternoon, followed by an early evening meeting for solicitors and other bodies who are interested in the Tribunal. LR noted that in terms of the Professional Reference Group especially, diaries fill up quickly and it is more helpful to tie the dates down as early as possible. JM added that the static group continues to have a function but also agrees to moving around the Country and inviting various groups to other meetings. LR suggested that attendance may be dropping due to the resolution of issues and people may not be attending as there are few issues remaining.

JM wanted to speak on two important issues.

ONE: Recently a patient came to a hearing in handcuffs, he wants to make it clear that the Tribunal will not be holding hearings if the patient remains handcuffed. We are currently looking at other ways of dealing with these types of cases and meetings are due to take place with high level representatives to discuss this issue. JM will be instructing panel members that no hearing will take place where someone is handcuffed.

TWO: Venue reviews. There will likely be some negative feedback as some venues that do not meet the required standard may not be used for hearings. Use of venues in hospitals for other meetings while hearings have to be heard on the ward is also not acceptable. JM will call cases back to Hamilton if the venue is inappropriate as this is the only facility available to the Tribunal if suitable venues cannot be provided. The group discussed the use and quality of venues. JM confirmed that his new instruction comes from himself and not from staff. Following discussion on the original spec for venues, agreement was reached on acceptable standards and the purpose of the surveys is to determine if the venue is still up to standard with JM noting that the quality of some venues has already declined.

LR raised issues around recording ethnicity information. SL added that it is up to people to define their ethnicity. LR agreed and confirmed that the MHO Newsletter contains an article on ethnicity which points out that it should be recorded. AM added that in some cases ethnicity is not recorded on the Tribunal's case management system (CMS). It is a separate function on CMS and it requires an additional step to record the information. The group noted that the Commission's forms sometimes does not have a facility to record the information, such as in CORO cases. RH added that forms do not always give full options, in some cases forms are scored and amended. The group entered into a discussion about the forms and where the jurisdiction should lie. JM wants to raise a business case to change the spec. of the forms and feels that we should not remain bound by forms made when

the systems were set up and further discussion took place around the forms and the CMS.

**ACTION:** while attending a forms meeting, JK was asked to take issues forward and to confirm that JM wants forms brought into jurisdiction of MHTS  
JM to discuss with Commission at planned meeting on 5<sup>th</sup> March