

## Service Users' and Carers' Group Minutes

1<sup>st</sup> April 2009

St. Andrew's House, Edinburgh

### **In attendance**

Dr Joe Morrow – President, Mental Health Tribunal (MHTS) – JM  
Adrian Martin – Deputy Head of Administration, MHTS – AM - Chair  
Mary Weir – NSF – MW  
Chris(tine) Evans – HUG – CE  
Alan Douglas – BFS – AD  
Arvind Salwan – MHTS - AS

Karen McLaughlan – MHTS - Minutes

### **Apologies**

Trish Martin  
Karen Martin

AM opened the meeting, welcomed attendees and acknowledged apologies. AM asked the group to confirm the previous minutes from the last meeting in Inverness. CE had attended the meeting and confirmed the minutes were a good and accurate record of the meeting and the group accepted the minutes.

MW asked if she could speak on a non-agenda item and asked JM to explain the conference in September. JM explained that the event would mainly be a training event for members with workshops, speakers and special events taking place throughout the day. There will be around 20 stalls available to groups who wish to come at a nil cost. JM asked if any group were interested in taking a stall to contact his PA<sup>1</sup> for further details. JM added that the timing coincided with the first reappointment event for members. JM explained his views on the change from the first five years as pivotal to the Tribunal and he is moving to emphasising care and treatment and a new Jurisprudence which details a new Scottish solution to care and treatment of people with mental illness. The newly formed training committee is currently trying to arrange for an international keynote speaker to attend to speak to the members. In response to MW, JM advised that there are no plans to advertise for new members. The Tribunal membership is currently one third over subscribed due to a mix of diminishing days available (caused by doubling up hearings and use of procedural hearings) and improvements in efficiency. It is expected that around 10% of the membership will fall out bringing the total number of members down. JM's wish to introduce a three year appointment for the second term is not legally possible and he envisages no recruitment for new members before 2010. Members will apply to have their appointments renewed and Dr Morrow will make his recommendations to Ministers based on the number of days sitting, participation in appraisals, participation in training events and number of complaints for each member.

JM is also introducing enhanced disclosure for the next 5 year period and members will meet the costs (£20.00) themselves. In response to AD who asked if diversity

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would be taken into consideration within the membership, JM added that he hopes to look at recruiting specific groups if possible and spoke about the involvement of user members for example. At the moment however, the Public Appointments office does not feel this is necessary. JM responded to a further question by AD and confirmed that all three types of Members would be subject to advanced disclosure. The group then entered into a general discussion on convictions and the prescriptive 'spent' periods involved and positive and negative discrimination in general. JM added that it would be possible to facilitate all female panels if requested but that the Tribunal is not under any obligation to do so.

AM moved back to the agenda and JM confirmed that the new Curator system is working well. He went to the Sheriff Court in Aberdeen personally to encourage solicitors to take up the role of Curators for the North. He found that the solicitors in Aberdeen mainly had concerns about their workload and felt they could not spare the time. JM will now write to the Faculty in Aberdeen.

**ACTION:** JM to feedback the response from the Faculty to the group

JM added that Curators are paid via MHTS at a similar rate as that of the Legal Aid Board, but within a much shorter timescale. He acknowledged that the main issue for many people is a difficulty in understanding the difference between lack of ability to instruct a solicitor and a lack of insight and he added that although a Curator is present, the patient's rights are still protected by way of S113 of the Act. Any representing solicitor and Curator must focus on the patient, it is not an either/or situation. AM added that a list of psychiatrists prepared to carry out independent medical reports is now available and has been seen to speed up the process of providing reports. In response to MW who asked how this is arranged, AM added that a representing solicitor or Curator may request the list if he/she intends to instruct an independent report. The system is still bedding in but is working well. MW asked if it would be possible for an English psychiatrist to be consulted if two Scottish psychiatrists disagreed with the definition of illness. JM acknowledged the serious question of conflict of interest and that there have been some reports criticising earlier reports but the actual number of cases where that has been the case is very low. The factual content is always more or less the same the name given to the diagnosis (bipolar or manic depression, for example) tending to be the only area where there is a difference. AM added that by and large both the RMO and AMO reports support each other.

JM added that he will be introducing his plans for moving the Tribunal forward this year. He intends to move the members to understanding the semi inquisitorial role of the tribunal and that the members have a lot of specialist understanding that they can take to hearings. He acknowledged that it will take a long time to develop but that he intended to take the initiative forward.

MW asked if it would be possible to access independent advice without contacting a lawyer. AM confirmed that if a patient wanted access to independent psychiatrist they could contact the Tribunal. The list is actually split into those who would only be

willing to provide reports through lawyers and those who would be willing to do so without going through a lawyer. AM confirmed however, that the Tribunal cannot give advice and the group entered into a discussion on how this would be inappropriate. JM, in response to AD, confirmed that it would be up to the lawyers or people commissioning the report to obtain details on any particular interest, such as eating disorders or dementia, however the bulk of the reports relate to general psychiatry. In essence we have specialist trained panel members already due to the training courses attended. However, JM added that using only specialist trained panel members for specialist cases could compartmentalise the members.

AM moved on to the next topic of a shortage of MHOs. JM has spoken with the Directors of Social Work around the issues of recruiting social workers. In less populous areas of the Country MHOs are often expected to take on extra duties, budgets also affect the numbers of MHOs available. It may be possible to implement an accreditation for MHOs. CE noted that MHOs are paid at different rates, depending on where they are based, JM acknowledged that this is the case and will go back to the specific Directors to discuss this issue. CE added that there is a legal responsibility to appoint MHOs and asked the group in general if they knew who she (representing the Highland User Group) could raise the general concerns with. JM suggested that it might be appropriate to speak with the local convenor and MSP. JM added that he was not aware of any incidents of failure or lack of performance from MHOs in the Highlands (Murray, Grampian and Highlands mix) despite the lack of numbers and different rates of pay and duties. The group discussed issues around MHOs attending hearings and with JM adding that he is happy to assist but it is not really appropriate for him to speak to social work convenors personally. AS added that he was recently involved in a new initiative launched at Parliament called Social Work Changes Lives which aims to be more proactive. JM suggested to CE that she could also contact the MWCS.

MW noted that the tribunal needs to be satisfied that all other possible avenues have been exhausted before taking the decision to compulsory detain a patient. CE added that earlier intervention by the MHO might prevent more patients requiring compulsion and currently MHO involvement is limited. The group spoke about specific groups where this is the case and specifically about deaf people with mental health issues. JM and AM added that unless cases come before the Tribunal, it is not really within our remit to speak on issues, especially events that occurred prior to Tribunal involvement. JM added that he is happy to issue guidance to members reminding them to make sure that all pre-tribunal issues have been dealt with in advance of the hearing.

<p><b>ACTION:</b> JM to issue guidance to members JM to feed back response from Directors to the group</p>
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In response to CE who asked about the Tribunal and the use of translators and specifically who has responsibility for appointing a translator, JM said that the hospital is obliged to provide a translator for patients. He noted however there are issues around translators for named persons and the Tribunal itself in terms of how many translators do we need and how to ensure they are impartial. JM intends to

look at the issues around translators in the Autumn. He is considering legally changing the status to show the interpreter has a duty to interpret everything faithfully and accurately for the Tribunal. The group discussed who could be a translator and possible accreditation for the role.

AM moved on to the HAVOC leaflet, he explained the history behind the leaflet and the history of HAVOC. When the proposed leaflet came to MHTS its legal status was questioned and in order for the Tribunal to produce the leaflet it would need to be much more detailed and would as a result be too long to meet its original purpose. The group agreed it would be a good idea to have a quick read guide on what happens following a hearing and that it is not the remit of the Tribunal to provide the leaflet as there is already an obligation on the MHO and RMO's to explain what happens next to the patient. JM asked the group if they would be happy with him redirecting the leaflet to the MWCS and the group agreed. The leaflet will also be removed from future agendas.

AM moved on to matters arising and spoke about stakeholder communications. It is hoped that moving meetings around the country will help facilitate smaller group involvement. He asked the group for their views on holding a full day event with the Service Users' and Carers' Group, the Professional Reference Group meeting in the morning and afternoon respectively, followed by a further meeting in the evening with other professionals, such as RMOs, MHOs and solicitors for example. The group felt this would be a good idea. AD asked if the dates could be fixed and JM noted that the recent dates for group meetings had to be changed due to changes in his diary and apologised to the group. He is keen to have a fixed programme of events and intends to be at all meetings as he acknowledges the meetings are where we get our feedback and best input. JM hopes to increase the number of consultations across the country throughout the year. He added that there are no boundaries to groups attending the meetings and someone in Dumfries would be more than welcome to attend a meeting of their respective group in the Highlands for example. The last meeting of the group in Inverness highlighted local issues and it is these that he is keen to be informed of. JM further acknowledged that the feedback from the Service Users' and Carers' Group is useful in forming training needs and helps improve planning. He is not keen to bring in external consultancies but may do once or twice per year if required. The group discussed the usefulness of understanding both global and local issues and the use of organisational consultation. The group felt that this would be a good move as representatives from national groups could attend their local meetings and address both global and local issues. There was general agreement that the previous meeting in Inverness was successful in doing just that.

AM introduced the draft Named Person and Carers Booklet. MW asked if it could even be done in one leaflet and informed the group that User Carers Involvement Group have a very good leaflet and it might be useful to have a look at it. MW suggested that Carla Nuttal, could assist with our leaflet and might also be willing to attend the next meeting of the group in Dumfries.

**ACTION:** Karen to make contact with Carla and obtain a copy of the leaflet for the group

AM asked the group if they had any views on the use of video conferencing which is currently used mainly for specialist cases and for victims who wish to give evidence. It would be possible to extend the use of the facility to doctors who may suffer an adverse impact on their patient care for example, if they have to travel to a hearing when they could use a video link closer to their work area. JM added that in the case of the Highlands and Islands, this does not mean we will never hold hearings locally. AM added that a hearing is due to take place in Stornoway for a patient currently in the community. The group spoke about the usefulness of the facility and that it might be possible for example, to have either a full panel or a panel member from another area link up via video to a hearing somewhere else in the country. JM noted that it might result in quicker disposal of cases if the facility can be used for procedural matters or cases where an adjournment may be required. AM added that there could be savings across the board, not just in terms the number of hearings required per case and travelling costs/disruption for all parties, but also the facility could be shared with others, thereby sharing the costs. The group wholly felt that it would be a good idea to run a pilot to see if the use of the facility would work. JM added that there would always be a proviso that the patient could chose to opt out and that it would only ever be used to better serve the patients needs. If a trial showed that not to be the case he would not support it. MW asked if JM would be happy with providing a piece on this topic for the next NSF newsletter and JM advised her to put her request in writing to his PA, Anne Kippen.

**ACTION:** MW to write to Anne Kippen requesting a piece on the use of video conferencing facilities

AM moved on to explain to the group that there are plans to stop processing Short Term Detention Certificates (STDCs). 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 STDCs 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 STDC 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 STDC and how they could be retrieved if an application followed. AM suggested keeping the STDC 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 STDCs and record the statistics themselves so the information would not be lost. JM noted that we need to float the idea and look for feedback. CE had some concerns that some MHOs may not be informing the Tribunal for STDCs. JM added that if MHOs fail to do so, they are in breach of a statutory obligation.

AM informed the group that the report on the review of the Act is now available from the SG. He spoke briefly on the recommendations and the group discussed the report in general.

JM spoke about the SG's policy on reducing the number of SG Agencies. Previously the Tribunal had two parts, namely the Agency and NDPB. The Agency no longer exists and the Tribunal's administration is provided by an operating unit of the Scottish Government Justice Directorate, which is made up of the same staff who previously carried out the work. The Activities of the administration continue to be delegated to the administration by the President. JM informed the group of the minor job title changes and the agreed budget which will be moved to the Justice Directorate from the Health Directorate.

JM moved on to speak about his work in reducing the number of substantive hearings per case to one - where it would be appropriate to do so - with all procedural matters having been taken care of in advance of the full hearing. JM also confirmed that two newly appointed in-house Convenors who are responsible for holding procedural hearings and making legal decisions, such as appointment of Curators. The impact has been positive so far. JM added that the new Curator system is working well.

AM asked if there was any other business and CE asked for an update on the use of electronic communications. AM responded to say that there is currently no news due to ongoing low response rates, the Tribunal has pulled back somewhat. MHOs can still send their applications to the Tribunal using the secure email link and the Tribunal now sends papers electronically to all but six panel members, all Curators and some solicitors. This has effected savings both in terms of time and costs to the Tribunal. He acknowledged that Greater Glasgow and Clyde are almost ready to go live and hoped that it would encourage other Health Boards to take part.

MW asked to what extent panel members keep to the front of their minds that before granting an order, they must be confident that all other avenues have been considered first. She added that this was the feeling during consultations pre the Millan Report. JM informed the group that all decisions he had seen and at all tribunals he has attended, this question is always addressed, he acknowledged that the level to which it is considered may vary however. The group discussed the necessary test which should be applied to establish if the granting of an order in the last option and is therefore, necessary. JM agreed that recorded matters can feed into is 'all this necessary' and a small working party made up of members are looking at recorded matters to ensure everything has been considered. The group were pleased to hear this. He further asked MW to put her question to him in writing and he would be happy to address it further for inclusion in the next newsletter.

**ACTION:** MW to write to JM

There was no other business and AM closed the meeting and thanked everyone for attending.