



Mental Health Tribunal for Scotland

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# Members' Newsletter

## May 2026

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Refusals and revocations, Part 1

AI Articles

A Legal Walk through Paisley

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## Message from Laura J Dunlop KC



Dear Members,

Above is a photo from my Easter holiday in Italy. It topped publicity for a campaign to improve access to concerts for people who use wheelchairs. The image made me think about how we in the UK depict disability, and what we could change.

As I write this foreword, we await final news about our new website going live. There will be two stages: first will be the public-facing site and second will be the portal, the area to and from which papers for cases are transferred. During the period between these stages, the existing portal will continue to be used. A link on the new site will take you there. I do not yet have information on when stage 2 will be achieved.

This has been, and remains, a huge project. I am very grateful to all who have assisted; in light of our articles about AI (see below), I should add that only human intelligence has been utilised by those of us in MHTS who've worked on the site. Without diminishing the input of those in the digital area of SCTS and of the contractors, I'd like to pay particular tribute to Scott Blythe and Charlie Yarrow. Consistently throughout, Scott has contributed his extensive understanding of the old site, and he already appears to have mastered the new one. Charlie, who a few of you have met, became the SCTS project manager for our new site last summer. He has demonstrated consummate skill in that role, sprinkled with humour and grace (both necessary now and again).

The new site has much that you will recognise, but we have not simply 'lifted and shifted' from the old one. Everything that has been retained had to justify its place. There has been pruning and reworking. And we have a new tab, 'Hearings', since that is, after all, our core activity. Within that, we have prepared guidance for people on what to expect before, during and after a hearing. Jenna has styled and formatted that, adding some colours and images too. More consummate skill. Venues information has been audited and improved. This is an ongoing process, so please get in touch if you have suggestions about a venue, and even more so about corrections. And we have managed to hang on to the idea of having some images on the home page. You will recognise the Koi Carp, which featured in the last newsletter. Last month, Jane and I were able to go with Donny Lyons to the exhibition by Cosgrove Care at Eastwood Theatre, and see the marvellous art that is produced by people supported by that charity. In similar vein, art from Garvald Edinburgh and Crossreach is also on our new site. I hope you enjoy what you see when you first visit.

News and newsletters will of course continue to be available on the site. This one is another bumper edition. Eleanor McLaren has written an article on a legal walk through Paisley, which is about so much more than law. If you're interested in Paisley, snails, the duty of care or access to justice, I recommend it highly.

On a more directly tribunal-related basis, we have an article (first of two) by Lindsey Reynolds, one of our in-house conveners. Lindsey is going to write for the newsletter on a regular basis, highlighting decisions we've included in our MHTS decisions table. Incidentally, the table will be more prominent and easier to find on our new site. We make selections for it at the end of each month, but we can't read all 500 or so FFRs. So, if you produce an FFR that resolves a point of law, or has an unusual feature, please feel free to draw the case to our attention.

This being the May edition, we also highlight issues relating to Data Awareness. Scott has prepared an article with timely reminders about the duties on us all as members. Please do read what he has set out. Staying with technology, Kirsty and I have written pieces about AI, which appear on pages 18 and 19.

Finally, the number of visual hearings continues to rise. In March, it was just under 60%, though in April it dropped back slightly to 57.6%, as you will see from the graph on page 5. I remain very appreciative of the efforts made by members who travel to all parts of the land, and of our clerks who do the same. There is no doubt that this is a complicated landscape.

As you'll realise, there is much going on. I hope you enjoy reading about some of it, and thank everyone involved in putting the newsletter together; as usual, the bulk of this task falls to Jane and to Jenna, who are a great team.

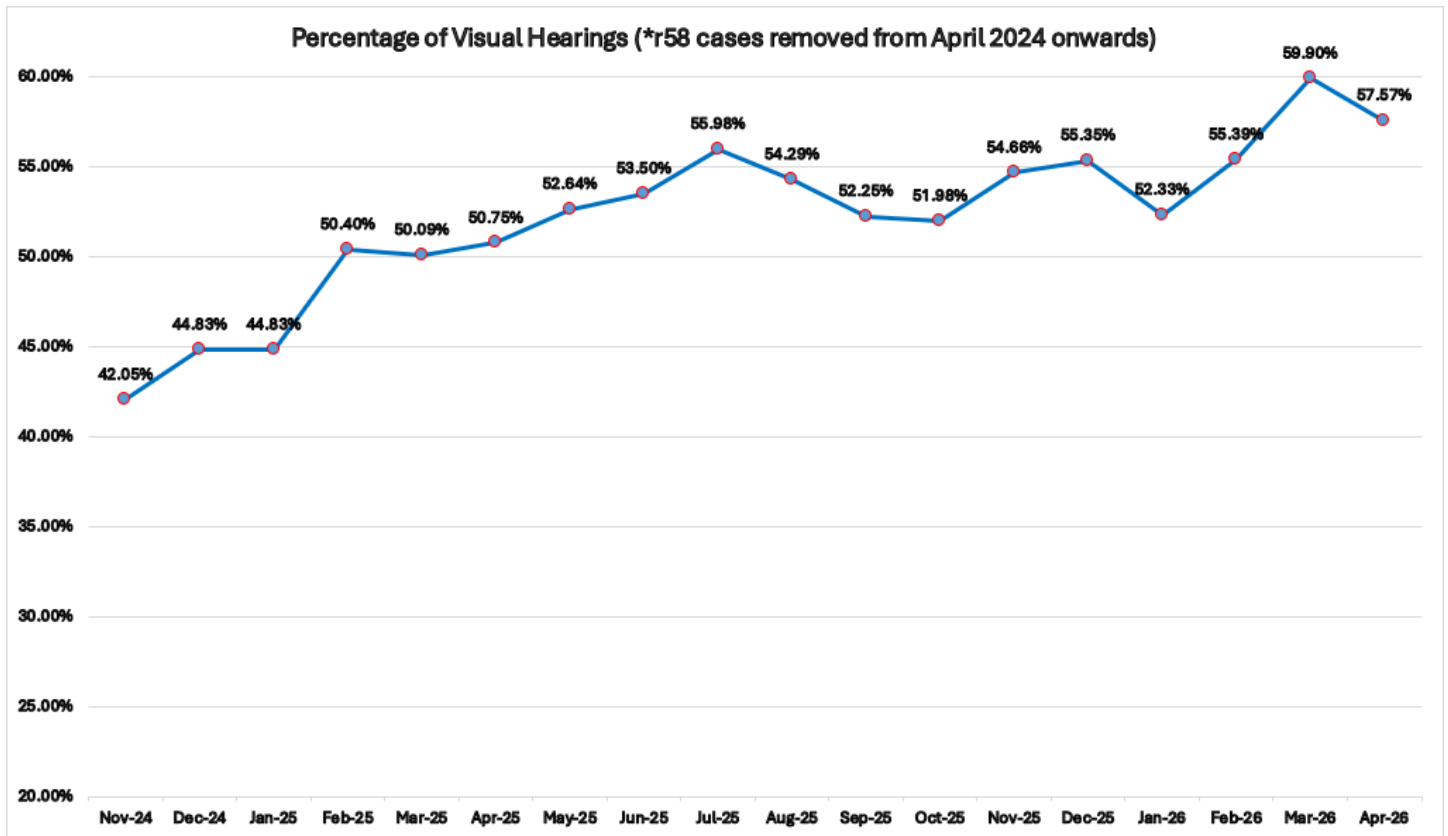
**Laura Dunlop KC  
President**

# News

## Visual Hearings at a glance

This is the latest version of the graph showing the number of visual hearings (either video conference or in-person) since November 2024.

As you will see, in March 2026, the Tribunal held the highest proportion of visual hearings since the pandemic, though this fell back again slightly in April. For the foreseeable future, all three types of hearing will continue to feature, but it is encouraging to see the reduction in our dependence on telephone hearings.



## Member Maternity Pay Eligibility

SCTS will pay statutory maternity pay (SMP) where Tribunal members meet the eligibility criteria. The HMRC eligibility criteria can be found here - [Maternity pay and leave: Eligibility - GOV.UK](#).

Any member wishing to claim SMP should notify the President's Office of their intention to do so and provide a copy of the MAT B1 form. Their eligibility for this pay will be assessed by the Finance Team.

## Last-minute availability changes

Please note that any changes in respect of your availability, including last-minute ones, are dealt with by the Scheduling team. In the event that you need to withdraw from a hearing at short notice, you should contact the Scheduling team via telephone during working hours or via email outwith working hours. Please mark your email as urgent and it will be dealt with by the first Scheduling team staff member who logs on the next day.

Tribunal working hours are Monday-Thursday 0830-1700 and Friday 0830-1630.

Please do not telephone clerks about such changes as they are unable to take the action required.



## Scheduling

The Scheduling team continues to have difficulty, at times, identifying members for short-notice hearings. Please would members do all they can to keep their availability on Webroster up to date and, if your availability changes at any time, please add or remove available days from Webroster as soon as possible.

The Scheduling team is grateful to all those who reply to the APBs (All Points Bulletins) for members to sit at short notice. Please note only those who are available to sit should reply to these APBs. While the team appreciates the consideration of those who reply to say they are unable to sit, this is unnecessary and adds to the already large volume of emails which the team receives.



## SUCAW & RMO/MHO Forums

On 13 April and 11 May 2026 the Service Users, Carers and Advocacy Workers Forum and the RMO/MHO Forum were held. Both were well attended and a number of different issues were discussed at each, including interpreters and the translation of documents, the role of advocacy after hearings and other practice points.

The notes of both these meetings are available in the Stakeholder Forums section of MHTS's website – [MHTS - Stakeholder Forums \(mhtscotland.gov.uk\)](https://mhtscotland.gov.uk).

The Solicitors and Curators Forum will take place on 11 June 2026 and the note of that meeting will be made available in the same section of the website.

# MHTS Members' Association

Currently there is NO COST to becoming a member of MHTSMA. All it takes is an email.

The Committee are meeting in June and are still considering the possibility of arranging a social event.

I would encourage members to contact Peter (or any member of the committee) if there are items they would wish MHTSMA to consider.

If any member is interested in joining MHTSMA, please can you contact Peter Bennie (secretary).

**Ruth Buchanan**  
**General member and chair of MHTS Members' Association**



## The Blistering Bravehearts

Shiona MacDonald was a medical member of the MHTS for many years. After her diagnosis with cancer she resigned as a member. She responded well to treatment and has now organised a team to walk the Lake District Mighty Hike Half Marathon on Saturday 6th June 2026 in aid of MacMillan Cancer Support. This team includes current medical member Becky Carleton.

Shiona has written a personal statement about why she wanted to organise a team to do the Mighty Hike as part of her fundraising page - [Will you donate to Shiona's Mighty Hike?](#)

Any support for this challenge will be much appreciated.



## Judicial Hub - Reminder

This is a reminder that tribunal members should sign up to and access the Judicial Hub on a regular basis to remain abreast of the latest news and learning opportunities [Judicial Hub: Log in to the site](#).

It also contains a Judicial Health and Wellbeing Hub which includes details of support services and relevant guidance and policy.

Information on the Hub is updated frequently and can be accessed from any computer or profile. If you do not yet have log-in details, or if your email address changes, please contact the Hub team at [Judicialhub@scotcourts.gov.uk](mailto:Judicialhub@scotcourts.gov.uk)

**Please ensure your email address on the Judicial Hub is up to date.**

## Refusals and revocations

### Part one: Evaluation of evidence

#### Introduction

I was recently lost for words. It happened around the festive period. We were sitting around making small talk over a tin of home baking when a distant relative, who had passing awareness of the Tribunal's work, informed me that all we do is 'rubber stamp' CTO applications. Allegedly they are never refused. Of course I came up with an array of sharp, witty, well-informed, polite but robust responses, but sadly not until 3 am. At the time, I only managed to mumble something about anxious scrutiny and judicial independence into a mince pie.

In order to ensure my flabber is never again ghaisted on this subject, I have been analysing 'refused', 'revoked' and 'misconceived' decisions from 2025, on the anonymised '[Table of Decisions](#)' (available on our website).

Part one of this article will discuss two categories of cases where the decision rested on an evaluation of the evidence:

**Category one:** refused applications for a compulsory treatment order ('CTO'), and

**Category two:** revocations of CTOs and short-term detention certificates ('STDC's).

Part two of this article, 'Fatally Flawed' will not be an exploration of my distant relative's character failings, but will discuss CTOs and STDCs, either refused as misconceived or revoked, due to a procedural flaw.

I am obliged to those involved in drafting these decisions for their clarity of reasoning. There will inevitably be more decisions which have not been anonymised and uploaded.

#### Evaluation of evidence

The refused and revoked decisions considered can loosely be categorised into those which were decided on 'competing evidence,' and those which rested on 'sufficiency of evidence'. There will inevitably be a degree of overlap,<sup>1</sup> and the distinction is often a question of perception, based on the subtleties of how reasoning has been expressed.

#### *Competing evidence*

As members may recall, back in 2014 *BG v Mental Health Tribunal for Scotland*<sup>2</sup> concerned an appeal by a named person against a decision of the tribunal to grant a

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<sup>1</sup> See for example, HM 04848/25, 18th August 2025

<sup>2</sup> Edinburgh Sheriff Court, 1<sup>st</sup> August 2014, Case Number: B865/14 (unreported), appeal refused by the Inner House 2015 GWD 9–170, full decision available on our website

CTO in respect of his mother. The grounds of appeal concerned the manner in which the tribunal exercised discretion by attributing weight to the evidence before them. Sheriff Principal Stephen found that,

*“It does not follow from the Tribunal’s rejection of the appellant’s evidence that they failed to have regard to his evidence.”<sup>3</sup>*

In doing so she gave us some helpful reminders:

- (1) In determining the application, the Tribunal exercise a judicial function and the decision they make is a discretionary one.
- (2) The appeal court should not intervene unless it is satisfied that the judge exercised discretion on a wrong principle, or that the decision was so plainly wrong that they must have exercised discretion wrongly.
- (3) Accordingly, the Tribunal have a wide discretion in their approach to the evidence before them, subject always to the provisions of the 2003 Act and the practice and procedure rules.
- (4) The duty of the Tribunal in the exercise of its discretion is to evaluate all the evidence before it and give it such weight as it considers proper.<sup>4</sup>

### *Sufficiency of evidence*

Sufficiency of evidence is discretely different, and is explained clearly by Auchie and Carmichael:

*“Where the tribunal is considering whether or not to grant a CTO, the MHO will require to ensure that credible and reliable evidence is available that is sufficient to establish that, on the balance of probabilities, certain facts are established. These facts will be those that are key to each of the s. 64 (5) criteria, and these will vary according to the nature of the case.... So the tribunal takes the proven facts, adds any inferences that have been drawn from them, and the sum total is the material which the tribunal has available to it in order to allow it to consider whether the criteria have been met.”<sup>5</sup>*

### **Category one: Refused CTO applications**

In 2025, there were thirteen anonymised cases classified as, ‘Application for CTO – refused,’ where the decision rested on analysis of the evidence. All thirteen found the ‘necessity’ criterion was not met. Nine of these were in combination with ‘significantly impaired decision-making ability’ (“SIDMA”). One was in combination with ‘significant risk,’ which was expressed as: *“there was insufficient evidence of significant risk of harm to (the patient) if there was no CTO in place.”<sup>6</sup>*

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<sup>3</sup> Ibid, para 36

<sup>4</sup> Ibid, para 23/24 and 29

<sup>5</sup> Carmichael QC, A and Auchie, D: *The Scottish Mental Health Tribunal: Practice and Procedure* (2010) Dundee university Press, Para 5.127

<sup>6</sup> WH 03211/25, 5<sup>th</sup> August 2025

In category one, there was almost a 50:50 split between competing evidence and sufficiency of evidence cases.

### *Competing evidence*

The first set of seven decisions concern the exercise of discretion where the tribunal has considered what weight is to be given to the relevant considerations in the case.<sup>7</sup> There can be a misconception that competing evidence considerations will mainly arise in relation to a supportive independent psychiatric report. Yet only one third of the CTO refusals involved an independent psychiatric report at all. None of them relied exclusively on the views of an independent psychiatrist. One tribunal expressly attached little weight to the report due to concerns about its accuracy and scope.<sup>8</sup> In five of the seven cases, the tribunal preferred the evidence of the patient, at times fortified by the views of others.

Factors which the tribunal took into account when deciding which evidence deserved the greatest weight included: the length of time which had elapsed since the patient was examined,<sup>9</sup> the extent to which the patient was receiving any treatment which could only be provided in hospital,<sup>10</sup> the views of carers,<sup>11</sup> the willingness of the patient to accept treatment voluntarily,<sup>12</sup> and disagreement between professionals.<sup>13</sup>

#### **Competing evidence - examples**

##### JC 00751/25, 23<sup>rd</sup> May 2025

In this CTO application, both medical examinations were carried out on 2<sup>nd</sup> April 2025, and both doctors supported the hospital-based CTO. By the time of the hearing on 23<sup>rd</sup> May 2025, there was a divergence of opinions on the 'necessity' criterion. The RMO had not been able to examine the patient since 1<sup>st</sup> May 2025 and based her views on the discussions at an MDT meeting. The second medical report had been completed by the in-patient consultant who had reviewed the patient two days before the hearing. The RMO explained that the in-patient consultant had emailed to say he no longer believed the CTO to be necessary. The tribunal gave more weight to this view as it was based on a more recent assessment of the patient.

##### WR 01869/25, 2<sup>nd</sup> June 2025

The tribunal accepted that there had been a change in the patient's circumstances since admission, at which point the patient's care at home had broken down. The MHO and RMO favoured a cautious approach towards discharge. The tribunal preferred the evidence of the patient's parents/ welfare guardian/ primary carer to the effect that the patient was not receiving any active treatment different to that which could be provided in the community, apart from occasional

<sup>7</sup> See *G v G* [1985] UKHL 13 (25<sup>th</sup> April 1985)

<sup>8</sup> VB 05376/25, 20th October 2025

<sup>9</sup> JC 00751/25, 23rd May 2025 and HM 04848/25, 18th August 2025

<sup>10</sup> WR 01869/25, 2nd June 2025

<sup>11</sup> WR 01869/25, 2nd June 2025 and TS 05170/25, 25th September 2025

<sup>12</sup> DG 02727/25, 17th July 2025, HM 04848/25, 18th August 2025, TS 05170/25, 25th September 2025 and GF 05284/25, 25th September 2025

<sup>13</sup> TS 05170/25, 25th September 2025 and JC 00751/25, 23rd May 2025

'as required' medication. There were no ongoing assessments. In all the circumstances the tribunal did not consider it to be necessary for the patient to be detained in hospital, given there was a less restrictive option available of a return home.

DG 02727/25, 17<sup>th</sup> July 2025

In DG, on the criteria of 'SIDMA' and 'necessity,' the tribunal preferred the evidence of an independent report, taken alongside the patient's oral evidence, to that of the MHO and RMO. The tribunal concluded the patient's mental health had improved to the extent that his insight into his illness was much better, he was compliant with medication and saw the necessity of continuing it. In doing so, the tribunal noted the evidence of the MHO and RMO, "*did not appear to substantially relate SIDMA to any aspect of the patient's present mental state.*"

HM 04848/25, 18<sup>th</sup> August 2025

There is an overlap here between competing evidence and sufficiency of evidence. A stand-in MHO supported the application but had not managed to meet with the patient. A stand-in RMO confirmed he did not know the patient well. The tribunal commented: "*On repeated questioning... in respect of significantly impaired decision making (the RMO) kept referring to historical matters.*" The tribunal preferred the evidence of the patient, supported by her advocacy statement, an independent psychiatric report, and by the views of the named person. The tribunal accepted the patient would remain in hospital and comply with the care plan on an informal basis.

TS 05170/25, 25<sup>th</sup> September 2025

The MHO had initially supported the application for a CTO. However, the patient's mental health had improved since admission and the MHO lodged a supplementary report indicating the 'SIDMA' and 'necessity' criteria were no longer met. The RMO disagreed. The tribunal preferred the evidence of the MHO, supported by that of the patient and named person.

GF 05284/25, 25<sup>th</sup> September 2025

The tribunal noted the patient had previously been treated on an informal basis for some time without asking, or trying, to leave hospital. The patient had been compliant with treatment and confirmed he would remain in hospital on an informal basis. This was not disputed. Accordingly, the tribunal preferred the evidence of the patient in respect of 'SIDMA' and 'necessity,' and concluded although the patient's decision making was impaired, it was not significantly impaired.

VB 07689/20, 25<sup>th</sup> November 2025

This CTO application was refused on the basis of detailed analysis of the patient's evidence. The tribunal found she was actively and positively engaging in discussions around her care plan. The RMO's evidence on SIDMA and necessity relied on the fact the patient had disagreed with him about a recent increase in the dosage of her antipsychotic medication. The RMO acknowledged the patient had accepted the higher dose. The tribunal did not consider that reticence, and differences of opinion with her RMO, amounted to SIDMA. It appeared to the tribunal the patient was now making well informed, well researched and considered decisions. The order was therefore not necessary.

### *Sufficiency of evidence*

The remaining six refused CTOs rested primarily on sufficiency of evidence. Some of the evidence can be summarised as 'hypothetical,' e.g. lacking robust historic evidence to demonstrate the patient would not comply on a voluntary basis.<sup>14</sup> There was also an evidential gap where a patient's mental health fluctuated or had improved and/ or there was insufficient evidence in support of the criteria as at the date of the hearing.<sup>15</sup>

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<sup>14</sup> DK 01498 /25, 21st May 2025, WH 03211/25, 5th August 2025 and LC 05356/25, 3rd September 2025

<sup>15</sup> SMC 05908/25, 19th October 2025 and VB 05376/25, 20th October 2025

## Sufficiency of evidence examples

### TM 09631/25, 27<sup>th</sup> January 2025

The patient did not attend the hearing but was represented and lodged a supportive independent report. The tribunal considered that the SIDMA and necessity tests were not met in terms of the evidence from the MHO and RMO, who were taking a cautious approach. The majority decision states:

*“The MHO wants a safety net. The RMO looks for continuity rather than improvement. They understandably want the comfort of a few months to ensure the patient’s good intentions survive periods of stress in the community. The consistent evidence is that not all of the statutory criteria are met.”*

### DK 01498 /25, 21<sup>st</sup> May 2025

A majority tribunal refused the CTO application on the basis of insufficient evidence in relation to ‘SIDMA’ and ‘necessity.’ The majority took into account that the patient had not tried to abscond from the ward. He had sufficient insight to believe that he was still too unwell to leave hospital, and wished to remain there on a voluntary basis. There was insufficient evidence led to predict that the patient would be unlikely to accept treatment on a voluntary basis, due in part to the gaps in the patient’s medical records history. The general member was satisfied by the evidence presented and dissented.

### WH 03211/25, 5<sup>th</sup> August 2025

An unusual feature of this CTO application was the MHO only seeking measure ‘f.’ to allow access to the patient’s home by professionals. The patient had no objection to this measure. The RMO said that measure ‘b’ was not necessary. The tribunal stated, *“There was insufficient evidence of significant risk of harm to (the patient) if there was no CTO in place.”* The Tribunal also considered that the CTO was neither necessary nor the least restrictive alternative as the patient permitted professionals access to his home.

### LC 05356/25, 3<sup>rd</sup> September 2025

The tribunal were explicit that *“The two medical reports state and the MHO said that a hospital-based CTO is necessary. However, there was insufficient, reliable and credible evidence of precisely why the patient could not be treated as an informal patient.... The MHO accepted that no part of the patient’s treatment could not be replicated on an informal basis.”*

### SMc 05908/25, 19<sup>th</sup> October 2025

It appears from the decision there was written, but no oral evidence from the RMO, and the patient had not been seen by the community RMO since her discharge from hospital nineteen days prior to the hearing. The MHO explained the patient’s mental health fluctuates, but it was accepted at the time of the hearing she was making appropriate decisions. Accordingly, the tribunal stated: *“We did understand this, but we do need to be satisfied that at the time of granting the order the criteria are met.”*

### VB 05376/25, 20<sup>th</sup> October 2025

The tribunal expressed concern about the lack of any recent, up-to-date assessment of the patient, who had been moved to a medical ward, in particular in relation to ‘SIDMA’ and ‘necessity’. The RMO had not assessed the patient in thirty-eight days. The tribunal commented, *“We accept that responsibility for the patient’s psychiatric assessment rests with Liaison Psychiatry whilst she is on a medical ward, but there was no compelling, detailed or reliable evidence before us arising from any assessment or evaluation of the patient’s mental state since she has been on the medical ward.”* An independent psychiatric report had been lodged, but the tribunal gave reasons for placing little weight on its findings, in terms of its accuracy and scope.

## Category two: Revocations

The next set of eleven cases concern revocations: four revoked CTOs and seven revoked STDCs. Nine of the revocations were prompted by the patient's own application. One was in the context of a review of a CTO extension. One was a refused application to extend and vary a CTO. In reviewing these cases collectively, caution is required by the subtle drafting differences in the criteria for STDCs and CTOs, in relation to treatment, significant risk and necessity.

Necessity was a feature in all cases, combined with SIDMA in three CTO cases. In two interesting STDC cases<sup>16</sup> 'mental disorder' was the only criterion found to be met at all, and in both the precise diagnosis was ambiguous. This is perhaps not surprising in the context of short-term detention, where there is a degree of urgency and it may involve a first presentation to services.

Improvement in the patient's mental health since admission was a common feature, either expressed or implied, in all seven revoked STDCs. The Mental Welfare Commission for Scotland has referred to STDCs as a 'gateway order.'<sup>17</sup> Using a 2006-2018 dataset, they found that overall, 39% of STDCs were revoked, 22% lapsed and 39% were extended.

Across the sample, there was approximately a 50:50 split between competing evidence and sufficiency of evidence. In two cases (one CTO, one STDC) a patient's views were fortified by the named person and an independent psychiatrist.<sup>18</sup>

### Competing evidence

#### *BMcN 08375/25, 22<sup>nd</sup> December 2025 (application to extend and vary CTO refused, CTO revoked)*

The patient had an established diagnosis. He'd had five admissions in twenty years, mostly on a voluntary basis. The penultimate admission was in 2012. On SIDMA and necessity, the tribunal preferred the patient's evidence, supported by the named person, to the RMO's. The tribunal noted the patient had sought out medication when unwell, had a constructive dialog with his RMO, and had managed without formal intervention over a thirteen-year period.

#### *DP 10997/25, 14th February 2025 (STDC revoked)*

This case was unusual as the tribunal found that the only STDC criterion which was met, was 'mental disorder,' and they were not able to determine the diagnosis. The RMO did not have the benefit of the patient's medical notes but understood she had been given mental health treatment in a hospital abroad in the past. The decision describes the evidence as 'thin', 'brief' and 'lacking evidence or backing' for statements about risk. The tribunal preferred the patient's evidence: "*The patient gave clear evidence to the tribunal explaining what had happened in the past and her plans for the future. There was not the sort of evidence one would expect from someone whose decision making was significantly impaired.*"

#### *PW 04349/25, 19th August 2025 (STDC revoked)*

The patient's mental health had improved since admission. The main issue in dispute was the appropriate pace of discharge. The tribunal accepted the decision was finely balanced. The medical member dissented. The majority preferred the patient's evidence, finding, "*The patient gave his*

<sup>16</sup> DP 10997/25, 14th February 2025, and IS 03841/25, 5th August 2025

<sup>17</sup> Mental Welfare Commission for Scotland, *Research Brief: How long do short term detentions last and how do they end?* July 2021

<sup>18</sup> JC 06304/25, 6th October 2025, and JM 08723/25, 13th December 2025

*evidence in a straightforward, coherent manner. He understood that he had been unwell and was insightful in his understanding of the fact that treatment had helped him become well. He appeared genuine in his intention to maintain compliance with medication because he accepted that it had helped him recover and felt much better than he had on admission. He was able to describe his symptoms and accept that they were symptoms of illness.”*

JC 06304/25, 6th October 2025 (STDC revoked)

The RMO did not attend or arrange cover for this hearing. The MHO accepted the patient's mental health had improved and ongoing hospital treatment was detrimental to him. All of this meant the tribunal had to weigh the written evidence of the RMO against the oral evidence of the patient, the named person (who were both represented) as well as the views of an independent psychiatrist who attended and gave oral evidence to supplement the written report. The tribunal concluded the STDC was no longer necessary.

JM 08723/25, 13th December 2025 (STDC revoked)

In this case, the patient had very good support from his mother/named person in the community. The tribunal preferred the evidence of the patient, supported by the named person and an independent psychiatrist, to that of the RMO, in relation to the criteria of significant risk and necessity. This case highlights the practical effect of the differences between a STDC and CTO in terms of the reference point of 'significant risk.' For a CTO the test is 'without treatment,' whereas for a STDC it is 'if the patient were not detained.' In this case -

*“The tribunal did not accept the oral evidence of (the RMO) and documentary evidence of (the MHO) that if (the patient) was not provided with such medical treatment compulsorily in hospital there would be a significant risk to his own health, safety and welfare, or the safety of others. The medical evidence as regards significant risk to own health, safety and welfare if he was not detained was challenged by contrary medical evidence from the author of the independent report who felt that (the patient) could be adequately treated in the community at this time with support from his mother and Community Mental Health Team such that risks could be mitigated. Along with the oral evidence of the Named Person the tribunal unanimously preferred this evidence.”*

### **Sufficiency of evidence**

JL 10810/25, 13th February 2025 (CTO revoked)

The patient sought revocation of the CTO. The patient's application was ultimately supported by both the RMO and MHO who agreed that the 'SIDMA' and necessity criteria were no longer met.

JR 11053/25, 15th April 2025 (application to revoke CTO granted)

The patient represented himself in this application, the solicitor having withdrawn. The tribunal expressed concern about the sufficiency of evidence on 'SIDMA' and necessity, and about past determinations to extend the CTO:

*“It was disappointing to note that the patient had not been reviewed by a psychiatrist in over three years and this did raise questions about the various extensions of the order over recent years. These must have been done based on historical information and not on any up-to-date assessment. We note that the patient is highly resistant to engagement with services, and it is clear from his evidence that he remains suspicious and distrusting of them, however, we do not believe that enough has been done to engage him. The fact that both RMO and MHO have seen so little of the patient over the last three years means that there is no clear picture of what the patient may be gaining from treatment in the wider sense.”*

BA 02520/25, 25th September 2025 (two year review, CTO revoked)

The patient attended but did not give evidence. Factors that the tribunal weighed up included: the last period of non-compliance was a year prior to the hearing, measure (f) had not been utilised in over two and a half years. the last incident of aggression was six years ago, and the patient had a proactive and supportive family. The tribunal concluded: *“There would be no difference in the practical care the patient is receiving should she be an informal patient.”*

DK 01601/25, 29th May 2025 (STDC revoked)

The tribunal accepted the RMO and MHO were reliable and credible witnesses. But they found 'necessity' was not met, commenting *“The positive aspects of their evidence supporting the*

*patient's improvements, combined with the very genuine and frank presentation of the patient gave rise to the view that the criteria for detention were no longer fully met."*

AM 03622/25, 25th July 2025 (STDC revoked)

AM was admitted to a medical ward following her refusal to take insulin, resulting in ketoacidosis. She accepted her admission had been necessary but asserted she was willing to stay voluntarily. The tribunal accepted the risks involved were very concerning but there was insufficient evidence to link the risks, or the treatment being provided, to mental illness. The tribunal was therefore not satisfied that detention was necessary or the least restrictive alternative.

IS 03841/25, 5th August 2025 (STDC revoked)

The patient was admitted in the context of concerns about the state of his home. The tribunal accepted he had a mental illness. The tribunal did not accept they had sufficient evidence in support of the remaining criteria. The AMP expressed that the patient's decision making ability about medical treatment was "*only slightly impaired.*" The MHO did not tie the significant risk to any specific medical treatment, only to the condition of the patient's home.

## Conclusion

Having analysed these cases, hopefully we are all now better equipped to talk our way out of similarly dusty conversational corners. I also hope that this analysis has provided a helpful refresher on the broad range of questions we should be asking ourselves every time we evaluate and weigh evidence and explain our reasoning, bearing in mind the obligation we share to, '*exercise judicial functions on the basis of the judge's own assessment of the facts of the case, in accordance with a conscientious understanding of the law.*'<sup>19</sup>

In Part two, I will be reviewing the more technical reasons for revocations/ refusals. Until then, I'll just have to avoid family gatherings.

**Lindsey Reynolds**  
**Legal Member**

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<sup>19</sup> *Guidance to Judicial Office Holders on Judicial Ethics in Scotland* (2023) para 4.3

# Data Security Awareness

Please read, this is an important reminder of the care that should be taken when dealing with sensitive information in relation to Tribunal work.

When accessing case papers via the website, only download files to your device when necessary and retain them for the minimum time required. Where possible, open and print documents directly from the website rather than saving them locally. If files must be stored on your device, keep them only for the duration needed to complete the hearing and written decision. Saving files consistently in a single folder is advised, as it enables regular and thorough deletion of outdated material—an essential practice for reducing data security risks.

If using an employer-issued device (e.g. NHS), files must be saved only to the device's local drive and not to shared servers. Any retained documents intended for future reference, such as previous decisions, must be anonymised to remove patient identifiers.

Only use devices with appropriate encryption when accessing MHTS case materials. If you are unsure whether a device meets the required standard, please seek advice. In addition, ensure all devices have up-to-date antivirus protection and that operating systems, browsers, and relevant software (including Adobe applications) are kept current.

Please note that you will never be asked via email to provide login credentials for MHTS-related systems. Refer to the guidance on phishing emails on the next page for further information.

Use of USB storage should be minimal. Where required, only encrypted USB devices must be used to ensure data protection standards equivalent to your primary device.

If you have any questions regarding encryption, data security, or handling procedures, please contact me by email at [sblythe@scotcourtribunals.gov.uk](mailto:sblythe@scotcourtribunals.gov.uk),

## Good Practice

- Do – ensure your device has the appropriate encryption
- Do – routinely check your device for saved files that are no longer required
- Do – take the appropriate level of care when in possession of confidential data in a public setting
- Do – report any losses of data immediately to the President’s Office in Hamilton
- Do not – store or save any confidential files on a shared server

**Documents on the website** – these should be removed from your account automatically after the hearing has taken place. We know this process is not happening as it should for many users, so a manual sweep is taking place twice a month to remove any out of date tribunal papers. The area of the new website for sending and receiving documents will be ready later in the year. This will see the end of this issue as a new process for removing old papers will be installed on the site.

**Phishing/nefarious emails** – a phishing email is a fraudulent email that is sent to users in an attempt to acquire sensitive information from them, or indeed to hack into their device by getting you to click on what seems like a legitimate link. Things you should look out for include: repeated strange phrasing, grammar or spelling; legitimate looking links for you to click on, you can hover your mouse over these links (without clicking) to see the fully expanded link which will likely look odd; have you received the email at an unusual time, through the night for instance? does the email contain a sense of urgency in asking you to act on something quickly? Always be mindful of these points when reading through your emails on a daily or weekly basis.

**Privacy** - Reminder to everyone that when taking part in a hearing by teleconference that you should ensure you participate in hearings from a room where you are alone (and will not be overheard). More generally, we are all spending more time with laptops open, accessing sensitive personal data in our own homes. At all times, we must remain attentive to the need to protect the security of this information.

**Scott Blythe**  
**Tribunal Liaison Officer**

## AI Rest My Case

\* this is an AI generated title.

Some of us will already be aware that unrepresented parties are increasingly relying on Artificial Intelligence to produce written arguments for court and tribunal hearings. This matter has now been addressed in a recent decision from Kirkcaldy Sheriff Court: [Your Home Partners v Kellichan and Hood \[2026\] SC KDY 34](#). The case is primarily concerned with jurisdiction in tenancy related disputes, but it also deals with the improper use of AI in written submissions.

There was considerable back and forth between the claimant and the sheriff clerk concerning the claimant's assertion that the sheriff court had jurisdiction to hear the claim. Having had the claim rejected for a second time, the claimant then lodged very detailed further submissions arguing, by reference to multiple FTT determinations, that the Sheriff's interpretation of the law was incorrect. The claimant also lodged purported extracts from court rules and legislation. It soon transpired that neither the FTT cases nor the quoted extracts existed. The Sheriff considered whether contempt proceedings were required on the basis that lodging false legal references has the potential to obstruct justice. Ultimately, the sheriff was satisfied that the claimant had not knowingly attempted to mislead the court. There was recklessness in failing to verify the AI generated references before lodging submissions but they had withdrawn them upon learning that they were false.

It would seem that it is only a matter of time before someone is found to be in contempt for lodging AI generated material. In the PO we have some first-hand experience of having to deal with party litigants insistent on submitting voluminous yet misinformed arguments about why a decision was wrong. Unfortunately we have also received from a solicitor a list of authorities for a Sheriff Principal appeal with cases we struggled to locate, most astonishingly J v Mental Health Tribunal for Scotland [2002] CSIH 42.

**Kirsty Watson**  
**Legal Secretary**

## Having mAI say

\*this is my own pun

What follows is a human-generated reflection on AI – the story so far.

Kirsty has set out the issues that may arise if unrepresented parties use AI in preparing arguments. I can share some experience of using AI in specific tasks undertaken in the PO. Firstly, having prepared guidance for young people on what to expect at a hearing, which guidance had been read and commented on by some actual young people, as well as by the IHCs, I took up the suggestion of Microsoft Copilot to have the text rewritten in language suitable for a 13-year-old. It removed the reference we had made to bringing a toy or other item and inserted a reference to the State Hospital. So the advice we are given about always having ‘a human in the loop’ is well-founded. The strangest experience (so far) occurred when I asked Copilot to prepare something, using an abbreviation in my request. It decided that I was referring to the West Texas Hill Country Distillers Club. This was very far from the actual subject matter. I suppose it was another form of hallucination.

So far as concerns the work of sitting on mental health tribunals, the most important point is that the sensitivity of the information we are handling about people means that **nothing relating to a specific patient can be put into an AI tool.**

I cannot see the need for any member to use AI in their tribunal work. As has been emphasised elsewhere, those who take judicial decisions need to engage with the evidence and the arguments before them, and that has not changed. If any member considers that they need to use AI, or that there would be a benefit to a patient were they to do so, please contact the PO so that we can discuss any such use. As will be apparent from what Kirsty and I have said, there are a number of risks alongside perceived benefits.

**Laura Dunlop  
President**

# A Legal Walk through Paisley and the legacy of Donoghue v Stevenson



Statue of May Donoghue

Last autumn, I was pleased to take part in the augural Paisley Legal Walk on a mild Tuesday evening in late September.

A quick recap on Paisley. Close to but proudly separate from Glasgow. Global centre of the textile industry, at one time producing 90% of the world's threads, and home of the distinctive Paisley pattern. The company Brown & Polson of cornflour fame was founded in Paisley and originally produced starch for weaving. Radicalism amongst Paisley weavers in the 19th century prompted the then Prime Minister Disraeli to remark "Keep your eye on Paisley."

Advertised as "Looms, Brooms and Tombs," the Legal Walk through Paisley's history covered the town's connections to weaving, witchcraft and her famous folk. Paisley saw the last mass execution for witchcraft in 1697, at a site near Maxwellton Cross, close to the present-day Royal Alexandra Hospital. Founding father of the United States, John Witherspoon was a minister in Paisley. James Goodfellow, the engineer who patented a cash machine using chip and PIN technology was a Paisley buddy. I left knowing much more about the town than I ever expected, and I speak as someone who stayed there for 20 years.

Notably from a legal perspective, it is also the place where May Donoghue famously sat down at Wellmeadow Café and found a decomposing snail at the bottom of the opaque bottle of ginger beer which a friend had bought for her. She suffered a severe case of gastroenteritis and later sued Stevenson, the Paisley-based manufacturer. As countless law students around the world know, the case was ultimately heard in the House of Lords in 1932 with Lord Atkin issuing the leading judgement including the line "Who, then, in Law, is my neighbour?"

Whilst much is known and discussed about the effect of the case, much less is known about May Donoghue herself. There is only one surviving picture of her, taken with her twin granddaughters on their christening day. That was used as the inspiration for a bronze statue (pictured) entitled "Dear Duty" by Mandy McIntosh which commemorates her. The statue sits in Wellmeadow Street opposite the site of the café which has since been demolished. It is one of only a handful of statues across

Scotland to non-Royal women. Mrs Donoghue is depicted holding a baby granddaughter on each hip, which the sculptor intended to symbolise the scales of justice. On the plinth below, the spirals represent the snail and the plaque includes the following words:

“A working-class single parent, Donoghue had to publicly declare her poverty to proceed with her complaint. Her lawyer worked for no fee. She was laughed at and called a liar; many people didn’t believe that a snail had been in the bottle, but she persisted.”

This artwork commemorates that Donoghue stood her ground to achieve justice. Her case went on to ensure the welfare of others through establishing The Duty of Care as a principle in law. The Duty of Care underpins the ethos of the NHS and other social care provisions. “Dear Duty” is dedicated to May Donoghue, to those who need care and those who provide it.

Throughout the UK, Legal Walks raise money for the Access to Justice Foundation which supports the delivery of free legal advice to projects and communities most in need. A cause which May Donoghue herself would heartily commend to us. This year’s Paisley Legal Walk takes place on 29th September 2026 for anyone interested.

Meantime for anyone who finds themselves near Paisley, the statue sits across the road from the Paisley Campus of the University of the West of Scotland, in the shadow of the former Coats Memorial Church (now an events venue). There are plenty of independent cafés nearby as well as an enticing-looking second-hand bookshop.

**Eleanor McLaren**  
**Legal Member**

# Useful Information

## MHTS

- MHTS News  
[MHTS - News \(mhtscotland.gov.uk\)](https://www.mhtscotland.gov.uk/news)
- MHTS Guidance on the Provision of documents in Tribunal applications (This guidance sets out the documents which will form the Tribunal papers in each type of application, review, etc, under the relevant sections of the 2003 Act. **(It was updated again in March 2026)**)  
[MHTS - Guidance \(mhtscotland.gov.uk\)](https://www.mhtscotland.gov.uk/guidance)
- MHTS Caselaw and Decisions  
(scroll to the bottom of the page to find MHTS decisions table. The search function is helpful to find decisions under specific sections of the Act)  
[https://www.mhtscotland.gov.uk/mhts/Legislation\\_and\\_Caselaw/Legislation\\_and\\_Caselaw](https://www.mhtscotland.gov.uk/mhts/Legislation_and_Caselaw/Legislation_and_Caselaw)

## MWC Publications

- Advocacy: working with independent advocates; Good practice guide April 2026  
[Advocacy: working with independent advocates](#)
- Medical treatment under Part 16 of the 2003 Act; Good practice guide May 2026 – includes information on advance statements, named persons and medical treatment for individuals under the age of 16  
[MedicalTreatmentUnderPart16MHA\\_2026.pdf](#)

## OTHER

- Decision of Upper Tribunal in case of City of Edinburgh Council and SP FTS/HEC/AR/25/0204 – considers claim made in ASN Tribunal under UNCRC  
[Decision \(Appeal\) \[AP\]](#)

**\*Please note that links to informative publications are included for information only. Any views expressed in these publications are those of the author(s) and not those of the MHTS.**

## Clerks' Contact Details

<b>Team 1</b>		<p>Please email clerks on the following generic email address and not on their individual email address:</p> <p><a href="mailto:MHTSHearingsOps@scotcourtribunals.gov.uk">MHTSHearingsOps@scotcourtribunals.gov.uk</a></p> <p>Post hearing paperwork to be uploaded to:</p> <p style="text-align: center;"><b>MHTS_Order_FFR2</b></p> <p style="text-align: center;">on members' website</p> <p><b>Hearing Team Leaders:</b></p> <p>Team 1: Gordon Hope – ☎ 01698 390094</p> <p>Team 2: Sandra Devlin – ☎ 01698 390013</p> <p>Team 3: Jeanette Thomson – ☎ 01698 391088</p>
Alan Swan	07386687134	
Jean Allan	07721590926	
Paul Cowie	07721590370	
Gemma Barnes	07423779555	
Tajinder Singh	07919199569	
Stuart McLagan	07584158127	
Hanaf Hussain	07919199538	
Eilidh Ferguson	07386687126	
Holly Stewart	07386687178	
<b>Team 2</b>		
Megan Oxley	07345267864	
Jennifer Shearer	07345161682	
David Barclay	07917898806	
Hannah Mc Crae	07353893058	
Mandy Miller	07385950477	
Chris Paterson	07386687161	
Stephannie Kydd	07393797845	
Muriel Walker	07387258578	
Cari Carruthers	07386687105	
<b>Team 3</b>		
Grant Armstrong	07721592267	
Ian Bruce	07733794798	
Felicia Oyewusi	07386687125	
Elaine Ferguson	07917898813	
Ellen Paterson	07423779977	
Callum Richardson	07884655908	
Margaret Higgins	07386687163	
Catriona Gilhooley	07353893085	
Eileen Mitchell	07386687156	
Iain Nicol	07999764565	

## Useful Contacts

### Scheduling Team

**(including re-setting Webroster passwords)**

✉ [schedulingmhts@scotcourtribunals.gov.uk](mailto:schedulingmhts@scotcourtribunals.gov.uk)

❖ Telephone ☎: 01698 390034

### e-Expenses Helpdesk

✉ [webrosterexpenses@scotcourtribunals.gov.uk](mailto:webrosterexpenses@scotcourtribunals.gov.uk)

### Finance Team

✉ [opsfinancetribunals@scotcourtribunals.gov.uk](mailto:opsfinancetribunals@scotcourtribunals.gov.uk)

❖ Telephone ☎: 01698 390 016

### President's Office

**(including re-setting Website passwords)**

✉ [mhtspresidentsoffice@scotcourtribunals.gov.uk](mailto:mhtspresidentsoffice@scotcourtribunals.gov.uk)

**Fiona Queen, Executive Assistant to President and Member Liaison Officer**

❖ Telephone ☎: 01698 390033

**Jenna Swan, President's Office Secretary**

❖ Telephone ☎: 01698 390001

## Newsletter Contributions

The Tribunal welcomes contributions to the Newsletter from all members.

Members who wish to contribute to the Newsletter should contact Jenna Swan at [MHTSPresidentsOffice@scotcourtribunals.gov.uk](mailto:MHTSPresidentsOffice@scotcourtribunals.gov.uk)

The following timescales will apply for contributions\*:

**January edition:** contributions by the end of November

**May edition:** contributions by the end of March

**September edition:** contributions by the end of July

**\*Contributions may require to be edited**