Mental Health Tribunal for Scotland

Reflections on 20 years of the MHTS

This supplement is produced to acknowledge the MHTS reaching its 20th anniversary. We would like to record our grateful thanks to the very many who have contributed to the Tribunal's work during this period; we are sorry that individual replies to everyone have not been possible.

At this time we also remember and pay tribute to those who worked with or for the Tribunal and are now sadly deceased.

We asked for reflections from those involved in the Tribunal's work, including those with first-hand experience of Tribunal hearings, whether in a personal or professional capacity. What follows is a small sample of some of the reflections received, giving valuable and thought-provoking insight into different perspectives and also pertinent reminders of important aspects of our work.

I’ve attended many mental health tribunals over the past 4 years, and my experiences have been a mixture of positives and negatives - which I think often comes down to having the right representation. When I had someone who took the time to understand my situation and spoke up for me, I felt more supported and more able to engage with the process.

At times it felt daunting, but overall, I do believe tribunals play an important role. They offer a space where patients are offered a place to be and can be heard, and where decisions about care are not just made behind closed doors and a panel with no personal conflict can come to a conclusion. However I feel some tribunals I have went to have went on for several hours for reasons such as delays in getting the right notes, these situations are already a heightening time and adding longer waits to these make the experience harder. Some of my tribunals lasted the full day sometimes with positive outcomes but other times not so much. This can make it more disheartening the longer it goes on.

I also have took part in both phone call tribunals and face to face tribunals. I don’t think phone calls are the best way to gather the information required for completing a tribunal. I think being in person is more suitable. Overall, some of the tribunals I have been to, I feel have been positive and resulted in change in my care, and others I feel they were rather pointless. However, I do believe that while it’s not a perfect system always it is a vital and necessary part of being treated under the mental health act. It gives people a voice and it gives people a chance to ensure their human rights are not being breached in the process of them being treated.

A Patient

~~~~~~

I have given some thought to this as it's not an easy subject for me, but would share the following thoughts in regard to the setting up of the Tribunal and commencement of implementation of the 2003 Act.

I suspect that many of our current Members will not have experienced any hearings under the 1984 Act, when parties had to attend at the Sheriff Court. Those that have may well, with the passage of years, have forgotten how it used to be.

On the occasion of my stepson's first episode of illness when aged 21 at University, he was subject to an application under section 18 for the equivalent of a CTO. There was of course no inpatient Advocacy service at that time. Again those who have only known the 2003 Act, with its statutory requirement for the provision of Advocacy Services, may find it hard to imagine how alone and in the dark the patient often felt when dealing with paperwork relating to their detention. As my husband was away on business, I accompanied my stepson to Court in order to ask for an adjournment to allow him to instruct a solicitor as he wished to oppose the application. Whilst waiting to be called in to Court, we were surrounded by what felt like mayhem with crowds of criminals/victims/police coming and going to and from other Courts. When we finally made it to the courtroom, the MHO had not arrived and we all had to troop out again. When we re-started 10 minutes later we had to endure the Sheriff - sitting up on his bench in his black gown and wig - spending the first 3 or 4 minutes
~~~~~~

berating the MHO for not arriving promptly. When I asked for permission to make my request on the patient's behalf, I felt utterly intimidated as the Sheriff looked at me with complete disdain, although my request was granted.

I would therefore hope that all tribunal members might pause for a moment (a) to recognise the tremendous amount of time, energy and effort which the Millan Committee put into their task of reviewing the 1984 Act, and (b) to seek to ensure that the commitment of public resources to implementing a more compassionate and respectful system is never wasted - and that members in every hearing take a moment to consider whether they are doing everything they can to ensure that the principles underpinning the Act are being respected in practice, and not just mentioned as a final paragraph in the FFR.

A Named Person

~~~~~

I want to focus on a positive of the tribunals since their inception and praise those members of tribunals who manage to strike a balance between managing a legal process and showing care and compassion to patients and others in a situation in which that is difficult and sometimes distressing. Feedback from patients and families is often that the experience wasn’t as bad as they had expected or that one or more of the panel members had been particularly kind or understanding and that they had appreciated the opportunity to be listened to.

Mental Health Officer

~~~~~

In my view, in many ways the new MHTS is more straight forward and efficient, compared to the previous system of involving the sheriff court.

My reflection here is as an RMO, presenting cases to the MHTS. Even though the applications for CTO are made by the MHO, very often the RMOs were asked to present the case first and explain how all the criteria for the detention were met. Almost always (whenever it was possible), I tried to explain to the patient that whatever information I share at the MHTS meeting was not my personal view but my professional opinion to facilitate the best care possible for them. I found it tricky that since the RMO/MHO have to give a lot of details, in front of the patient (sometimes, as if they are not there - I try to look at them and try to involve them too but that is also tricky due to the formalities involved in the process), the MHTS process can impact the doctor-patient relationship. Giving such detailed evidence in front of the patients and family, can create an emotionally charged as well as stressful situation for both the patients as well as the staff; patients going through such process lack insight into why they needed to be detained in the first place and occasionally their family member who also feel that, they ought to support the patient by supporting patient's view. When the patient has a lawyer to argue the case against detention, then the situation can become trickier with further discussions from both sides. I do not see a solution to this other than presenting the case in a kind and compassionate manner as possible and also to be able to offer continued support to the patients and family.

I am very grateful to the Mental Health Tribunal team members, who usually have a great understanding of the situation/background of the patient in that particular case. Majority of the MHT members are very helpful and emotionally intelligent to deal with such difficult situations. I do not mean that whatever the RMO/MHO put in the application form should be accepted as such without further scrutiny. In my view, as part of the introduction from the legal member, in addition to informing the patients and family that the MHTS is independent of the NHS function/HB and the MHT is held to make a decision on the application after hearing the evidence from all parties, taking a bit more time to explain why a MHT was required in terms of legality/ Human Rights, and that the RMO/MHO are required to provide such details to the MHT as part of their role, depending on how receptive the patient and family are, may be helpful. This would have been explained to the patient by patients' lawyers too prior to the tribunal, however, may be helpful to hear at the time of the tribunal again, from the legal member as the chair. Just a thought.

Responsible Medical Officer and Medical Member

~~~~~

DO WE STILL REFLECT ON THE PRINCIPLES OF THE ACT?

Memories may mislead, particularly when they go back twenty years, but am I right that in tribunals we do not now reflect as much on the principles of the Act as we did at its beginning? I remember delight - not too strong a word I think - at the incorporation of the principles into the new Act. In some cases these simply enshrined what we all know to be good practice, for example, respect for patients and their wishes, support for carers, non discrimination. But in addition the Act also set out as principles - not just assumed good practice - that treatment should provide maximum benefit, that any restriction on a patient should be the minimum necessary, that local authorities have a duty to provide services for people with a mental illness.

Twenty years on what impact do these principles have, and do will still refer to them in tribunal discussions? It is almost routine for FFRs to refer to a tribunal decision as the least restrictive possible but far less common are references to maximum benefit or to service providers' obligations. When such matters are raised in tribunal discussions we are sometimes reminded that this is not a case conference. That is indeed true but I would like to suggest that when making our decisions we reflect more on these excellent principles - as I think we did in our early days - and make appropriate reference to them in FFRs.

General Member

~~~~~

We're having to change tack a little in light of the current headwinds against human rights-based approaches and are now trying to practice 'realistic advocacy', which is our cut-price, local version of American Legal Realism.

This means that we are forced to accept that we will be in a state of late-stage legislative limbo in mental health for the next few years, at least until the new act is eventually passed; even then, we doubt that there is either the political will, the professional or public support, or the money available to radically restructure the mental health landscape in the way envisaged by UNCRPD and hoped for by patients.

So, we're not really expecting much to meaningfully change any time soon - at least the Tribunal gives patients a forum to express their disgruntlement about their lack of autonomy, dignity and equality etc., to raise any concerns about potentially degrading treatment and is a legal check to untrammelled medical power.

Congratulations on your 20th anniversary of providing access to justice for patients!

A patients' organisation

~~~~~

Despite my experience as a tribunal member, the tribunal I remember most (and was most probably most apprehensive about) was the first tribunal I appeared before as a Named Person. Despite it now being approximately fifteen years ago, I remember clearly who the convenor was, the last-minute changes in arrangements due to my friend having been transferred to a different hospital and indeed a discussion whether the tribunal would be able to go ahead as planned. I remember feeling awkward about whether to acknowledge the tribunal members and appreciative that the convenor spoke directly to my friend at the start of the hearing. I was supportive of the CTO application (and had already had that discussion with my friend and her lawyer). Although it was an in-person hearing, the RMO gave evidence by telephone. The RMO's evidence was not that clear and at points was factually inaccurate. At one point I intervened to say that resulting in the convenor, quite correctly, advising me I would have my chance to give evidence! Two things that stood out for me (and my friend) were my friend feeling she had been listened to (despite the CTO being granted) and a recorded matter being made that my friend did have an advance statement and the RMO was to read it and discuss it with her.

A General Member and a Named Person

~~~~~~

Thank you for the email and it's worthy of recognition. I am one of perhaps a small subset of RMOs that have worked both north and south of the border, so I hope that some comparative feedback might be helpful.

Overall, I think that the tribunals held in Scotland are more patient-centred. The experience of those in Devon were that the hearings were often quite adversarial in nature, and it very much felt like the RMO pitted against the combined forces of the patient and their solicitor. At times it could feel like an interrogation of the RMO and felt like something had been placed into the therapeutic relationship, such that there was a "winner" and a "loser".

With their overall longer duration in England it was daunting. I certainly knew of RMOs who would be very reluctant to do inpatient work due to the stress of tribunals and this ultimately did not serve patients well.

In Scotland, the feeling in tribunals is one of a more balanced process. I think that the MHTS recognise that after the tribunal is over that the patient and RMO still need to work together, and the process supports that work rather than diminishing it. I feel that in Scotland the hearing usually ends with the patient and I on good terms.

I rate the MHTS panels highly, and I have seen some exceptional examples of patient engagement, or putting the patient or carer needs at the heart of the process. This includes sometimes just efficiently getting through a distressing process. In my almost 5 years back in Scotland, with working full time as an inpatient consultant I have had a fair number of tribunals, and I have never once seen respect for the patient waver, even in hearings where the patient and family were not present.

Thinking towards the future....my usual viewpoint is that every contact with a patient should be an opportunity to further recovery. I do wonder whether there is more that could be done to make a tribunal feel like a positive experience for a patient, even if the outcome goes against the one they had hoped for.

If it's helpful to expand on any of this, I'm happy to. Otherwise, the short version is that I think the MHTS do valuable work in what I know have been challenging circumstances. Congratulations on 20 years!

Responsible Medical Officer

~~~~~~

We do feel that the work of MHTS should be celebrated. In an unintentional way you are mirroring the stigma that surrounds mental disorder with your statement that 20-years of MHTS should not be celebrated. If someone had appendicitis and this was treated by a care team, we would not hesitate to celebrate that intervention and so we should with the work of the Tribunal. It is essential that there is a well-run, well-trained body that treats patients, carers and those professionally involved with courtesy and respect, and comes to decisions logically based on the legislation in a consistent manner. Mental health legislation is there to assist people and to help them get better. The World Health Organisation is clear that we all have the right to health, including mental health. The Tribunal's work is an important part of this.

Medical Director

~~~~~~

I started as a caseworker in August of 2006. Working with MHTS for almost 20 years, has been a pleasure. I have made some life-long friendships along the way, and I know a lot of others have too! It has been a pleasure to share so many celebrations with colleagues including birthdays, weddings, babies, but also to have the support of each other through more difficult times.

The team throughout the years has changed, but has always remained resilient and positive through all sorts of challenges. The various weather events – the snow of 2010, where those who could, walked for miles to make sure we could still provide a service to those who needed it. The pandemic, which changed so much for everyone. In the early days, we worked in a paper filled office, creating folders, hole punching and queuing to do photocopying and printing. You could hardly see the caseworkers behind the piles of CTO’s to be processed! Thank goodness for digital processing, the hand-held hole punches still haunt me! I am proud to be part of the team and am glad we are reflecting on the past 20 years.

Colleague in Tribunal Operations

~~~~~~

I will never forget the first Mental Health Tribunal I attended, 18 years ago. I had completed an Honours degree in psychology 3 months before and was eager to commence my career journey within mental health when I was offered a position as a forensic advocacy worker. I did not quite know at that stage what I wanted to be when I “grew up” and had never even heard of the Mental Health Tribunal before undertaking an advocacy role. The Tribunal took place in a medium secure psychiatric hospital, and I was supporting a patient who was subject to a CORO and had a two-year review scheduled. He wanted to leave hospital, but we had met on several occasions, and his expectations had been managed. We had spent hours together carefully preparing and checking an advocacy statement that ran to 8 lines, and which he wished me to read out on his behalf at the hearing. When I entered the room, I was faced by three tribunal members, including a Sheriff. I clutched my piece of paper throughout the entirety of the hearing, terrified of being asked to read it out but feeling equally terrified that I would be overlooked.

Fast forward 8 years, and I would move along the table, and appear for the first time as a solicitor, specialising in mental health law. My dreams of being a forensic psychologist had been left behind; having worked in advocacy for 8 years, I felt a strong sense that I wished to be part of a system that would allow me to promote and represent the rights of some of the most vulnerable individuals in our society. The skills I had developed as an advocacy worker, and whilst completing my legal traineeship under the inimitable Anne Bolger, helped me to feel confident and empowered acting as a legal representative and Curator ad Litem before the Tribunal.

Fast forward a further 9 years and I applied, with the relentless encouragement of Tom Shaw and low expectations, to be appointed as a legal member to the Tribunal. I did not expect to be selected from the large number of competent applicants. I did not feel in any way on par with the skill and abilities of the legal, general and medical members I had appeared before over the years. It was with great pride, and astonishment, that I was appointed to the Tribunal and moved to the “other side” of the table, 18 years on. For my first hearing as Convener, the nerves I felt those 18 years before returned.

I will never however forget how I felt as a young advocacy worker, 18 years ago, clutching my advocacy statement with sweaty palms and butterflies in my stomach, scared to speak but equally scared to be silenced. That experience carries with me to each hearing I convene, and I am grateful to the Tribunal for continuing to give me the opportunity to safeguard the rights of vulnerable individuals, who are subject to measures under the Mental Health Act in Scotland.

Former advocacy worker, solicitor for patients
and family members and current convener
~~~~~~

In terms of Patients' Advocacy Service feedback, there have been clear developments in the functionality in the MHTS system over the years, having more options to attend has been a positive development. Some panels seem to be less formal than others which is well received by our patients. We are grateful for the inclusion of independent advocacy for those in The State Hospital and feel there is good communication with invites and notification where necessary.

Service Manager
Patients' Advocacy Service

~~~~~~

‘The places in which we are seen and heard are holy places. They remind us of our value as human beings. They give us strength to go on’. *Rachel Naomi Remen*

How might we feel - each of us - if we were the patient at our own tribunal - most likely experiencing one of the most vulnerable, confusing, upsetting times of our life? Sitting in this peculiar ‘judicial-type’ setting - the weight of some rather obscure legislation hovering to secure removal of our rights to freedom, to choose where we dwell (and who with), how often we see our loved ones, and what hefty psychoactive substances we are required to ingest?

Many of us will have experienced feeling ‘unseen’ or ‘unheard’, even in the normal unfolding of life and relationships. We will know how painful this can be - and hopefully we all know the validating, enabling experience so beautifully expressed by Rachel Naomi Remen.

As years have moved on in tribunal experience, when the patient is present, I have found it increasingly difficult to embrace a process which seems to so comfortably talk about them as if they weren’t there. Not infrequently, I now find myself apologising directly to that person, and thanking them for ‘bearing with us’. For is this not what we’re doing - together bearing the weight of an important process … which really is not ‘normal’? At what other times would we talk about someone whilst they’re present? Would this not be considered impolite, belittling, dismissive - and therefore cruel?

As tribunal members, of course we all have different styles. Over 20 years I’ve found that many are overtly respectful and inclusive of the patient - for example by acknowledging their central position from the outset; openly acknowledging the potentially stressful experience of hearing things they may not agree with; inviting them to request breaks whenever they might wish; even inviting questions from them first, should they wish, on conclusion of the specialists’ evidence.

However, at times it seems that tribunals are handled only as a judicial ‘process’ - sometimes with an excessive revisiting of historic evidence previously shared in documentary form - which is potentially painful and embarrassing for the patient to hear, particularly in the presence of strangers. It would appear that the legislative task is ‘primary’. Perhaps this might be the case more simply so when the patient is absent, but when that person is present - surely not?

As tribunal members we represent significant authority - the impact of which is inherently influential, particularly when the ‘subject’ of that process is vulnerable or mentally fragile. For this reason, the words we say automatically carry greater
~~~~~~

weight. So, if our attitude towards the people who are central to the entire process helps them to feel seen, heard, and valued - and so reminded of their value as human beings and given strength to go on - perhaps then, despite the tragedy and disempowerment of significant mental illness, the ‘gift’ within our handling of our authority may be cause for some small celebration?

‘There but for the grace of God go (we)’ *John Bradford*

General member