

MENTAL HEALTH TRIBUNAL for SCOTLAND

GUIDANCE to TRIBUNAL MEMBERS No. 1/2022

Guidance on the Status of an Approved Medical Practitioner

As you are aware, some duties set out in the Mental Health (Care and Treatment)(Scotland) Act 2003 must be performed by a psychiatrist who holds the status of an Approved Medical Practitioner. This status is defined at section 22 of the 2003 Act. Section 22 is in the following terms:

22 Approved medical practitioners

(1) Subject to subsection (3) below, the persons mentioned in subsection (2) below shall each compile and maintain a list of medical practitioners who—

- (a) have such qualifications and experience, and have undertaken such training, as may be specified in directions given by the Scottish Ministers; and
- (b) are approved for the purposes of this paragraph by the Board concerned as having special experience in the diagnosis and treatment of mental disorder.

(2) Those persons are—

- (a) a Health Board; and
- (b) the State Hospitals Board for Scotland.

(3) A list compiled by a Health Board under subsection (1) above shall be compiled for its area.

(4) A medical practitioner included for the time being in any list maintained under subsection (1) above is referred to in this Act as an “approved medical practitioner”.

As you are also likely to have found, there is from time to time an administrative error or time lag in adding an AMP’s name to a particular health board’s list.

It has recently been argued that if the individual’s name is not on a health board’s list on a particular date, even if that individual is trained and otherwise qualified as an AMP, they cannot undertake any of the tasks which the 2003 Act requires to be done by an AMP. In short, for any period of time that an AMP’s name is not available publically on a health board’s list of AMPs, that person cannot hold AMP status for any of the purposes set out in the 2003 Act.

This gap may occur when a trained and qualified AMP moves to a new post in a different health board area and there is a delay in updating the list, or their name may be omitted from a list due to a simple administrative error.

In short, it is the President's view that the inclusion of a name on a health board list at any given moment is not determinative of whether an individual is qualified to act as an AMP in terms of the 2003 Act. If a practitioner satisfies the terms of section 22(1) of the 2003 Act, anything that they do in discharging functions under the Act cannot be considered ultra vires. What matters is approval, not listing. Had appearance on the list been intended to be a necessary part of 'approval' then the reference would be to a 'listed' medical practitioner.

To be listed, a practitioner has to be approved. This will occur if they fulfil the requirements of section 22(1)(a) and are approved under section 22(1)(b). Approval has to precede (and therefore exist independently of) inclusion on a health board's list. Otherwise, a practitioner would not be entitled to be on the list until they had been approved, but could not be described as 'approved' until they had appeared on the list - a circular position.

The maintenance of lists by each health board (and the aggregate list held by Scottish Government, but updated infrequently) is an administrative exercise which is in itself under review. It is, however, unsatisfactory that the name of an individual practitioner does not appear on the list concerned. If there is evidence that the name of a particular doctor does not appear on the relevant list, a tribunal may wish to make enquiries as to their status. In that enquiry, the completion of the box on the application form which asks the medical practitioner to fill in the name of the Health Board by which they are approved will be a factor. If a practitioner does appear to satisfy the provisions of section 22(1), the President is of the view that they should be regarded as an AMP and that no application should be invalidated or treated as misconceived due to an error or delay in a health board's listing of AMP names.

In issuing this guidance, the Tribunal recognises that an argument to the contrary may be stated. If that occurs, it is for an individual tribunal to resolve the question, which is a matter of statutory interpretation.

A handwritten signature in black ink, reading "Laura J. Dunlop." The signature is fluid and cursive, with a large initial 'L' and a distinct 'J'.

Laura J Dunlop QC
President

May 2022