



Mental Health Tribunal for Scotland

Annual Report 2007

*First annual report of the
Mental Health Tribunal for Scotland*

President’s Foreword	04
Chapter One: Introduction	06
Introduction to the Mental Health Tribunal for Scotland	06
Purpose and Values	06
Impact of the Mental Health (Care and Treatment) (Scotland) Act 2003	07
Organisation Structure	07
Headquarters and Hearings Venues	08
Chapter Two: Processes	09
Hearings	09
Venues	10
Information Technology	13
Equal Opportunities and Dignity at Work	14
Reporting	15
Achievements	16
Caseload and Targets	16
Performance Indicators and Objectives	17
Statistics	18
Complaints	28
Chapter Three: Future Planning	30
Training	30
Areas for Development	31
Technical Investment	32
Partner Liaison	33
Feedback from Participants	34
Chapter Four: Corporate Structure and Governance	35
Corporate Structure	35
Corporate Governance	35
Chapter Five: Finance	36
Annex i: Operating Cost Statement for the year end 31st March 2007	37
Annex ii: Balance Sheet as at March 2007	38
Annex iii: Independent Auditor’s Statement	39
Annex iv: Auditor General S22 Report	40
Chief Executive’s Executive Summary	41

Welcome to the first Annual Report of the Mental Health Tribunal for Scotland (MHTS).

I'm delighted to outline the progress made by the Tribunal since it was created under the Mental Health (Care and Treatment) (Scotland) Act 2003. The Act was based on the innovative work of the Millan Committee and operates under the principles contained at the beginning of the legislation. This Report covers the first 18 months of the Tribunal's work and includes its first full operational year.

As the first of its kind in the world, the Tribunal is a "Scottish solution" to mental health law and marks a fundamental change in the way decisions are made about the long term compulsory care and treatment of people in Scotland who have a mental health disorder.

Central to this, is that for the first time, the Tribunal allows patients and their carers to be involved in the process of determining and providing care.

With an average of up to 100 hearings taking place every week, the Tribunal has already engaged international interest from countries such as Holland, Australia, the Republic of Ireland, Canada and also from England and Northern Ireland.

The decisions made by the Tribunal are extremely important as they can require people to accept medical treatment and can affect the liberty of an individual. For instance, the Tribunal is empowered to make a compulsory treatment order which can authorise the detention and treatment of a person in hospital for a period of six months.

In addition the Tribunal deals with applications relating to restricted patients who may have committed serious offences. Although a compulsion order and a restriction order is initially imposed by the criminal courts only the Tribunal can order the conditional discharge of a restricted patient or revoke such a patient's compulsion order or restriction order.

In such cases there are often issues of public safety which need to be considered and the Tribunal recognises the gravity of the decisions it requires to make. Our aim is to provide independent judicial decision making which is responsive, accessible, transparent, robust and efficient.

Our Annual Report describes:-

- the work carried out across Scotland;
- the recruitment and training of Tribunal Members;

- what we have put in place for arranging and conducting Hearings; and
- the financial and other resources deployed in the course of that work.

The early months of an innovative body like the Tribunal will always present challenges and it is a credit to the Members, the Tribunal staff, and those who have worked with us in the early stages that we have learned a great deal about how to operate our Tribunal efficiently and effectively in delivering our responsibilities.

At the same time, the Report describes one of the most progressive mental health legislations in the world which reflects a fairer, healthier and safer Scotland and shows how we continue to fulfil the valuable tasks as guardians and role models in this field for the next generation of Scots.

As Acting President, I have been engaged with professionals and carers and user groups as well as voluntary organisations to inform the thinking and strategy for our future work. The future of the Tribunal is about focussing and building on the success to date and continuing our role as world leaders in Scotland's progressive and smarter approach to the compulsory care of those with mental disorder.



Dr Joe Morrow, Acting President

This Report embodies the values of independence, professionalism and inclusivity which place the patient at the centre of our activities.

I trust you will find that the report demonstrates our Scottish solution is working and that it provides you with useful information.

Dr Joe Morrow
Acting President

Foreword

This is the first Annual Report of MHTS. The purpose of the report is to give an account of the functions of MHTS throughout the period of the first eighteen months of operation. Where possible, the information is broken down to take account of the first six months separately from the first full financial year of operation. Throughout this first eighteen months we have worked to evolve new processes and procedures and bed in sound working practices. We are proud of what we have achieved and, as a relatively new organisation, have worked efficiently and effectively and will continue to work on improving the way we meet our obligations to all our stakeholders.

Introduction to the MHTS

In March 2003, the Scottish Parliament passed a new law – the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the Act”), which came into effect in October 2005. It required a new Tribunal to be formed to take over the hearing of cases from the Sheriff Court which previously decided on the compulsory treatment of patients with mental health issues.

Led by a President, the Tribunal operates within formal Rules of Procedure enacted by the Scottish Ministers and marks a fundamental change in the way decisions are made on the care and treatment of

people with mental disorders.

The Act means there is no longer any need for Hearings to be held in a Sheriff Court. They now take place in hospitals and community settings across Scotland, allowing patients and their carers to be involved in the process of determining and providing care while taking account of their social needs, in so far as it is possible to do so.

Purpose and Values

MHTS is committed to providing a responsive and efficient service that allows for prompt and effective decisions to be made about the care of those affected by mental disorder across Scotland. Following the recommendations within the Millan Report, patients’ rights and care have now been put at the centre of the new Tribunal.

In order to achieve these aims, core values of professionalism, independence and inclusiveness are adopted in:

- handling cases sensitively and responsively;
- taking full account of the needs and rights of individuals;
- engaging with stakeholders;
- ensuring Hearings are fair and impartial;
- providing clear and timely information on MHTS processes; and
- maximising efficient and effective use of public resources.



Bothwell House

Impact of the Mental Health (Care and Treatment) (Scotland) Act 2003

The Act applies to people with a ‘mental disorder’; a term used to cover mental illness, personality disorders and learning disabilities. Throughout this document, people with mental disorders who are subject to an application or order are generally referred to as ‘patients’, although the term ‘service user’ is also in common use.

While Health Boards and Local Authorities previously had a duty to provide services for people suffering from mental disorders, the Act sets out additional duties, including an obligation to provide venues where Hearings can be held.

The Act sets out:

- when patients can be given treatment against their will;
- when patients can be taken into hospital against their will;
- what patients’ rights are; and
- which safeguards are there to make sure patients’ rights are protected.

Judicial

The President heads the Tribunal; a Non Departmental Public Body. Approximately 300 Tribunal Panel Members have been appointed by the Scottish Ministers. The Panel Members are responsible for the judicial functioning of the Tribunal Hearings.

Each case is heard by a Panel comprising three Members; a Legal Member who acts as Convener, a Medical Member who is a consultant psychiatrist and a General Member who has experience of working with, caring for or having been a patient. At the end of March 2007, MHTS had 94 Legal Members, 102 Medical Members and 135 General Members.

Administration

By the end of March, the Mental Health Tribunal for Scotland Administration (MHTSA), had a staff of 72 civil servants,

who are responsible for carrying out the administrative and corporate functions of the Tribunal.

Based both at MHTS headquarters in Hamilton and in locations close to frequently used venues, these members of staff are responsible for case management and scheduling Tribunal Hearings, as well as finance, communications and providing clerking support at Tribunal Hearings.

The Chief Executive and the management team are included within the MHTSA, as civil service members of the Scottish Executive.



Hearings

MHTSA arranges Hearings in relation to applications for compulsory treatment orders (CTOs), appeals against orders and references and reviews of some orders, either in the patient's hospital or in suitable accommodation within their local community.

Once the Tribunal has received and processed an application, a suitable time, date and location for a Hearing is arranged and each of the parties involved are informed.

People who would usually attend a Hearing include:

- The Patient.
- The Patient's Primary Carer.
- The Patient's Named Person.
- The Patient's Advocacy Worker.
- The Patient's Legal Representative.
- The Hearings Clerk.
- The Mental Health Officer (social worker – MHO).

- The Responsible Medical Officer (RMO) – the Patient's consultant psychiatrist.
- The Approved Medical Practitioner (AMP) or the Patient's GP – whoever provided the second medical report.
- A Venue Assistant who provides reception and conflict resolution services.

Any other person deemed by the Tribunal to have an interest in the case may also attend.

MHTSA has made strenuous efforts to accommodate the needs and availability of all those who are requested to attend Hearings. In many cases, however, the timescales specified in the Act leave little time between the receipt of the application and the last date by which the Hearing is required to be held. This can cause difficulties in accommodating the availability of all participants.

Throughout the first eighteen months of operation, we have worked to encourage MHOs to submit applications timeously

to assist us in accommodating specific availability issues. More recently, we implemented the use of a scheduling pro-forma which can be completed and submitted together with the application detailing availability. MHTSA works to accommodate all reasonable scheduling requests as often as possible.

Legal Representation

All patients have a right to legal representation in relation to proceedings before the Tribunal. MHTSA has prepared a booklet, published in the summer of 2007, which was issued direct to patients together with their notification of the relevant Tribunal Hearing date. Copies are also available from Health Boards and from various support groups. Amongst other things, the booklet sets out patients' rights to representation and how they can go about obtaining that representation. Legal Aid is available (without a means test) to all patients who have their cases heard by the Tribunal. Similarly, Named Persons can seek legal representation to help them make an application or put forward their views at a Hearing. They too are entitled to Legal Aid without a means test.

RMOs and MHOs may also choose to have legal representation.

Outcome of Hearings

Where a Tribunal Panel is unable to make a final decision at a Hearing, the Panel may

grant an interim Compulsory Treatment Order (CTO) lasting up to 28 days. In all cases the decision to make an order, whether full or interim, will normally be communicated to participants on the day of the Hearing. In exceptional circumstances a decision may be reserved; but this happens rarely.

Where a Tribunal considers that a further interim order is necessary, it may grant such an order, but the total period of the interim orders cannot be more than 56 days.

Over the first six months of operation, 476 CTOs and 338 Interim CTOs were granted. In 2006/07, a further 1208 CTOs were granted together with 1063 Interim CTOs.

The Mental Welfare Commission for Scotland also has the power to revoke a CTO and any Interim CTO if not satisfied that the criteria for compulsory treatment (specified in S64(5)(a) to (d) of the Act) continue to be met in respect of the patient or that the order continues to be necessary.

Venues

Since inception, the Tribunal has successfully held Hearings at a range of community and hospital based venues across Scotland.

Establishment of video and teleconferencing facilities at nine venues has proved particularly useful for linking up with patients or doctors who live in the more remote parts of Scotland, as it removes the stress



Bothwell House

of unnecessary travel and upheaval. It also means that doctors working in remote locations are not away from their posts for longer than necessary.

Most staff are based at MHTS Head Office at Bothwell House in Hamilton. However, a number of Hearings Clerks are based in other Scottish Executive buildings in Edinburgh, Dundee, the Highlands and the Scottish Borders. All Hearings Clerks make regular visits to Bothwell House.

Under the terms of the Act, all Health Boards and Local Authorities in Scotland are obliged

to make arrangements for the provision and maintenance of accommodation for the holding of Tribunal Hearings. This refers to both hospital and community based venues. At the end of March 2007, the Tribunal had access to 87 venues across Scotland. Only 33 of these venues are hospital based (including Carstairs, the State Hospital). This allows the Tribunal to meet its obligation to hold the majority of Hearings at a location local to the patient. Around 70% of Hearings take place within 50 miles of the MHTS headquarters in Hamilton. The location and number largely reflects the density of population and position of suitable facilities across Scotland.



Cromarty Community Mental Health Office, Dumfries

Health Boards

- 01 Highland
- 02 Grampian
- 03 Tayside
- 04 Fife
- 05 Lothian
- 06 Borders
- 07 Forth Valley
- 08 Argyll and Clyde
- 09 Greater Glasgow
- 10 Lanarkshire
- 11 Ayrshire and Arran
- 12 Dumfries and Galloway
- 13 Orkney
- 14 Shetland
- 15 Western Isles



Health Boards across Scotland

MHTS has its own Hearings suite in its Bothwell House headquarters. The suite has a video conferencing unit which allows the Tribunal to link with remote sites and a hearing loop for those who use hearing aids.

Hearing accommodation ranges from bespoke suites, which are available at all times, to rooms used for other purposes which are available only on set days. Some venues are only available if the patient concerned is a resident at that facility, whilst others are available for all patients across a Health Board area.

The standard of accommodation can vary considerably, but the Tribunal maintains the view that it is important to bring the Hearing to the patient whenever possible. On occasion, this means that the venue may not be ideal, but

the Tribunal's priority is to put the needs of the patient first. However, all venues are subject to regular review and follow up checks where recommendations are made for improvements.

In addition, every effort is made to ensure that Hearings venues comply with the Disability Discrimination Act 2005, which contains guidelines on ensuring buildings are fully accessible for people with a disability.



Tribunal Suite, Royal Edinburgh Hospital

Information Technology

The team set up to lead the implementation of MHTS established an Information Technology and Communication plan, which set out how IT could be best used for the live operation of the Tribunal.

Utilising IT systems to ensure maximum efficiency of MHTS and its processes was a key requirement during the implementation and launch of the organisation.

The IT Strategy was based on the requirements of making best use of existing Scottish Executive IT resources and using shared central services where possible. In addition, the team focussed on creating dedicated systems to support the unique requirements of MHTSA.

Using secure web-based applications wherever possible, MHTSA uses the Scottish Executive SCOTS shared service and Help Desk infrastructure.





Dedicated Systems

The Mental Health Tribunal Implementation Project established the two main IT systems needed to support the Mental Health Tribunal operations:

- **Case Management System** – essential to support and guide case workers through the processes required by the Mental Health (Care and Treatment) (Scotland) Act 2003. The Case Management System (CMS) was developed as a bespoke system to meet the unique requirements of supporting the functions of the MHTS under the Act.
- **Scheduling System** – essential to support the coordination of venue,

Member and Clerk availability to arrange Hearings efficiently to meet the timetabling requirements of the Act.

Equal Opportunities and Dignity at Work

As an Agency of the Scottish Executive, MHTSA is an equal opportunity employer and is committed to treating every member of staff with dignity and respect.

All staff have equality of opportunity in their terms and conditions of employment and are able to work in an environment free from harassment, victimisation, discrimination and bullying.

MHTS is committed to treating all members of staff with respect regardless of sex, marital status, age, race, ethnic origin, sexual orientation, disability, religion or belief, social background, working pattern or any other irrelevant difference.

The Scottish Executive policy implemented by MHTSA sets out the responsibilities of both managers and staff to ensure everyone works in an environment free from harassment. It also details both the range of support options available to staff and the procedures which should be followed in the event of a complaint being made.

Reporting

The President is accountable to the Scottish Parliament for:

- presiding over the discharge of the Tribunal's functions;
- preparing a written report for each 12 month period as to the Tribunal's discharge of its functions during that period, for Scottish Ministers to lay before the Scottish Parliament;
- determining the times and places where the Tribunal sits;
- giving directions as to the practice and procedure to be followed by the Tribunal in relation to any matter; and
- giving directions and issuing guidance about the administration of the Tribunal in order to ensure that the functions of the Tribunal are discharged efficiently and effectively.

The President may also serve as a Convener of the Tribunal (including serving as a Convener in proceedings in relation to a patient who is subject to a Compulsion Order and a Restriction Order (CO or CORO)).

MHTS has developed a package of statistical reports on its activities which are published on a quarterly basis on the Tribunal's website.

These reports are part of the Tribunal's internal system of quality and performance control and will further assist in working with partners to improve the service, including earlier receipt of applications.

In addition, the statistical reports will inform interested stakeholders, including the Mental Welfare Commission for Scotland, of the Tribunal's activities and help assist partners, such as Local Authorities and NHS Boards, to monitor their own performance.

MHTS has consulted and will continue to consult, interested parties including the Mental Welfare Commission for Scotland, NHS Boards and Local Authorities, on the statistical information it gathers and publishes.

The Chief Executive is accountable to the President of the Tribunal and to Scottish Ministers for the efficient and effective provision of services provided by MHTSA and for the finances of the Tribunal.

Milestones

MHTS became fully operational at the beginning of October 2005, taking over functions previously carried out by the Courts. It is believed to be the first Tribunal of its kind in the world.

Procedures were devised to ensure patients had easy access to the rights afforded to them in the Act. It was important to make sure that decisions relating to patient care and treatment fully considered their right to be consulted and contribute to the decision making process.

A lot of work also went into the recruitment of Tribunal Members and Administration staff. Once settled, the teams were given budgets to furnish the Tribunal headquarters from scratch, which was achieved quickly and efficiently.

Once the Act came into force, staff readily responded to the operational requirements to process incoming work efficiently in accordance with statutory timescales.

At its inception, MHTSA anticipated between 2,500 and 3,000 Hearings annually. In the first six months of operation, 1,199 Hearings were held. A further 3,599 Hearings were held in 2006/07.

An extensive programme of training for Members and Sheriffs began in April 2005 and is ongoing. All 300 Members have now received a total of five days' training, together with selected Members taking part in specialist training such as Learning Disability and Restricted Patient cases.

A Public Relations firm has been engaged to ensure the Scottish media is kept up to speed with the work of the Tribunal.

The Administrative Justice and Tribunals Council has commented favourably on the work of the Tribunal.

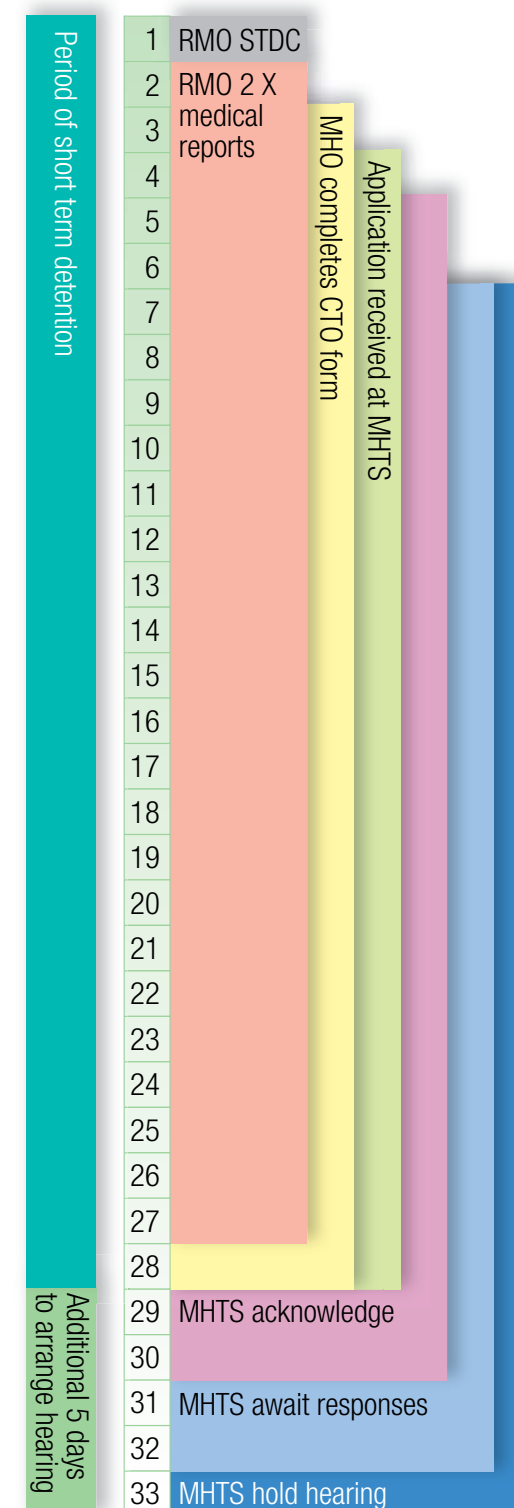
Caseload and Targets

Within the Tribunal's first eighteen months of operation, Compulsory Treatment Orders accounted for 85% of Hearings, and 70% of those applications gave MHTSA staff less than eight working days to organise and hold a Hearing. Around 20% had five working days or less in which to organise and hold Hearings, including issuing papers to Panel Members and notifying patients and other participants.

The Act sets tight timescales for the holding of Hearings when applications for CTOs are made. The Tribunal must hold a first Hearing within five working days of the expiry of a Short Term Detention Certificate (STDC). During its first eighteen months of operation, the Tribunal held over 99.5% of its CTO Hearings within the given timescales, which is inside the target of 99% that the Tribunal set itself.

When the second medical report is signed towards the end of initial detention, this leads to shorter timescales and increased pressure on the casework process. Late submission of applications means short notice for all those involved in the Hearing and almost invariably leads to the need for an interim order. This situation can be

CTO timeline



exacerbated by the limited availability of relevant persons and venues. The Tribunal Administration has worked hard to reduce the time it takes to process cases and book Hearings.

Performance Indicators and Objectives

In the early days of the operation of the Tribunal, emphasis was placed on ensuring the core functions of logging and processing cases and convening Hearings on time were met.

As time has progressed and statutory obligations have been met, MHTSA has developed key performance indicators as part of its commitment to provide a high quality service. This has allowed staff to review and analyse administrative efficiency and focus on better meeting the needs of patients and participants.

Throughout 2007-08, this will allow the Tribunal to place increasing emphasis on key areas of its own operations and to assist others in improving theirs.

Targets will be set in key areas.

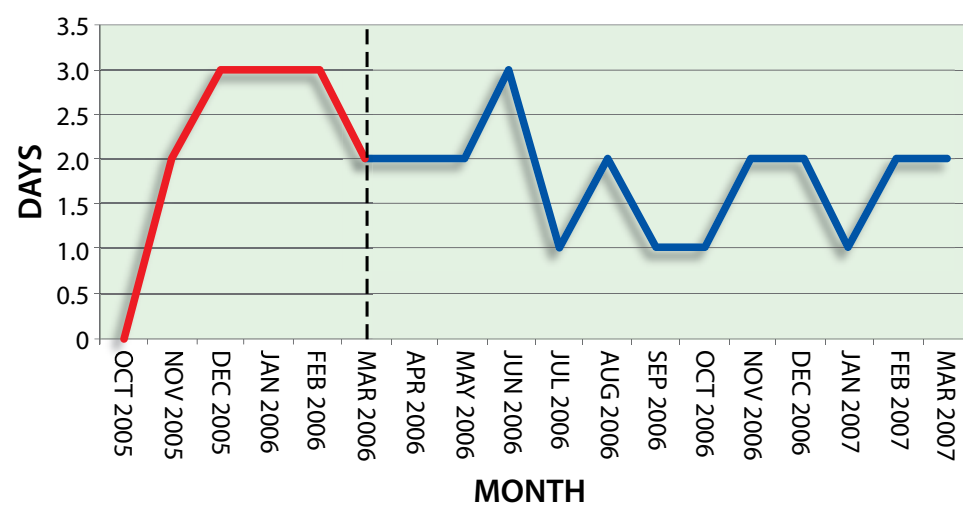
MHTS will:

- optimise the time taken to process CTO applications and give notice of Hearings;
- minimise the time between receipt of an application to revoke an order and the Hearing date;

- issue full findings and reasons as speedily as possible following a Hearing;
- improve the flow of information to internal and external stakeholders;
- work closely with patient groups; and
- provide a substantive response to complaints without undue delay.

Figure 1 illustrates the average time it takes from the point where an application is received to the issuing of letters to all involved, advising them of the date of the Hearing. The average time to issue a Hearing notice for a CTO Hearing has never exceeded the three day target the Tribunal set for itself, and since July 2006 it has remained inside two days.

Figure 1: CTO Application Received to Issue of Hearing Notice (Average) October 2005 to March 2007



Figures 2 and 3 illustrate just how quickly average cases pass through the case working system of MHTS.

Figure 2: Average Time to Complete All Work October 2005 – March 2006

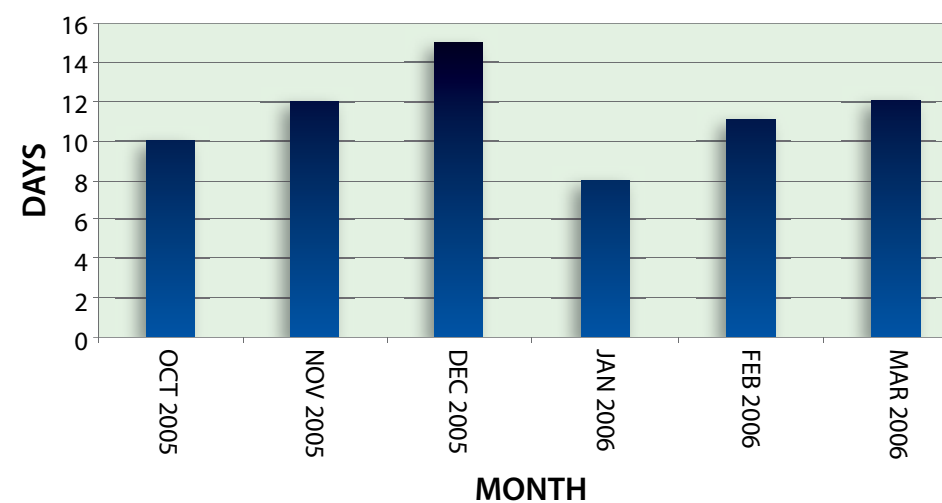


Figure 3: Average Time to Complete All Work April 2006 – March 2007

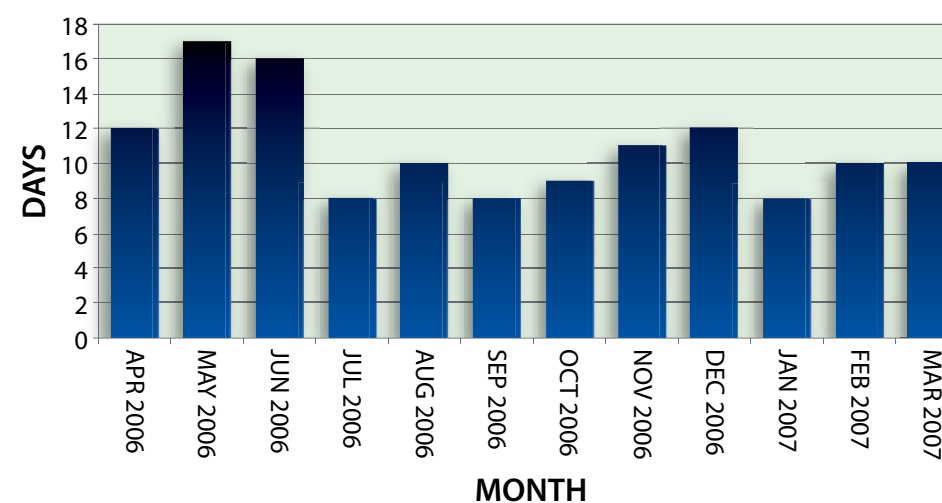


Figure 4: Application to Revoke CTO to 1st Hearing (Average)
October 2005 – March 2007

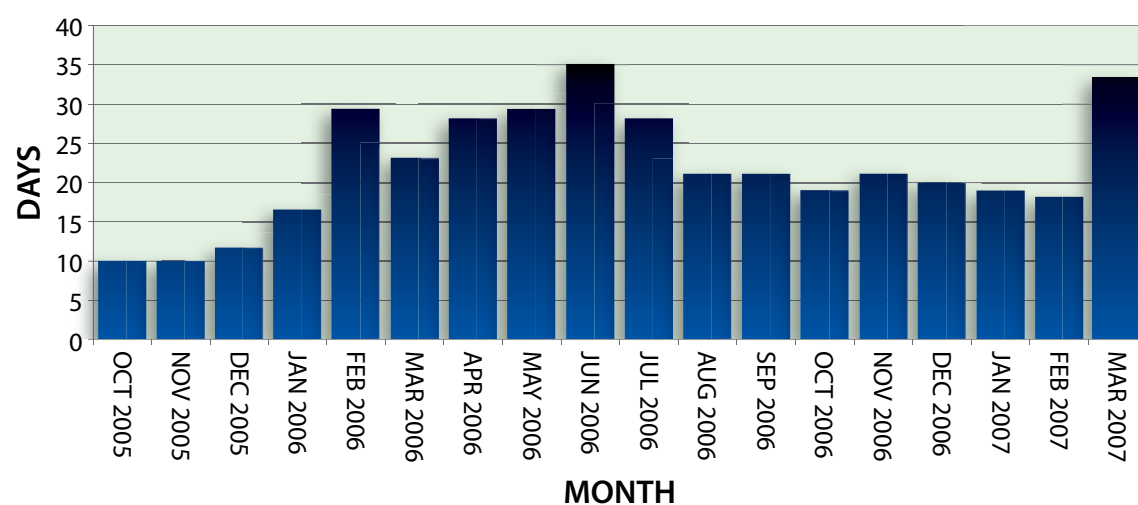


Figure 4 illustrates the time it takes to arrange a Hearing when an application to revoke a CTO is received. The timescale rose steadily during the early life of MHTS. This initial rise was largely due to the number and timing of CTO applications which, having statutory timescales, took

(and continue to take) precedence over other applications. Time taken fell steadily throughout most of 2006/07. There was a sudden rise in March 2007, which was due to parties not being available to attend Hearings. The Tribunal continues to focus on this area to ensure performance is improved.

Figure 5: Application to Revoke STDC to 1st Hearing (Average)
October 2005 – March 2007

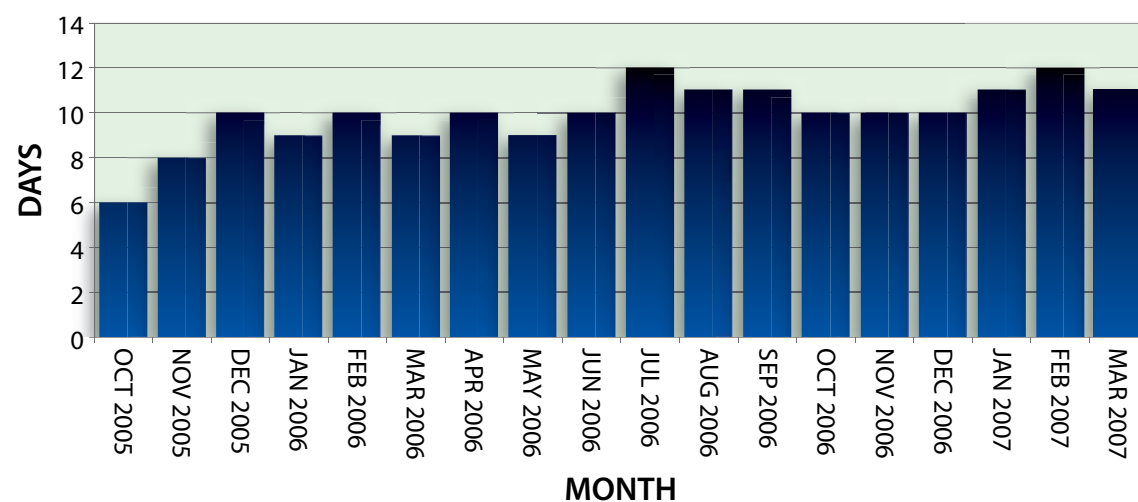


Figure 5 shows that the majority of Hearings held to determine an appeal against a Short Term Detention Certificate have been held within ten days. The figures remained the same during 2006-07.

The Tribunal set itself a target of seven days to establish a Hearing for appeals against Short Term Detention in 80% of cases. Across the first eighteen months' of operation, this target was achieved in 85.4% of cases.

The Tribunal aimed to issue the Record of Findings and Facts to parties in 80% of cases within ten days and in 98% of cases within 20 days. Unfortunately, the Tribunal was only able to issue 28.7% of Facts and Findings within ten days and 69.8% within 20 days. Although decisions from individual Hearings are routinely issued on the day of the Hearing, it is clearly important that parties receive the background to the decision as early as possible. The Tribunal will be seeking a significant improvement in its performance in 2007/08.

Figure 6: Hearing Date to Findings (Average)
October 2005 – March 2007

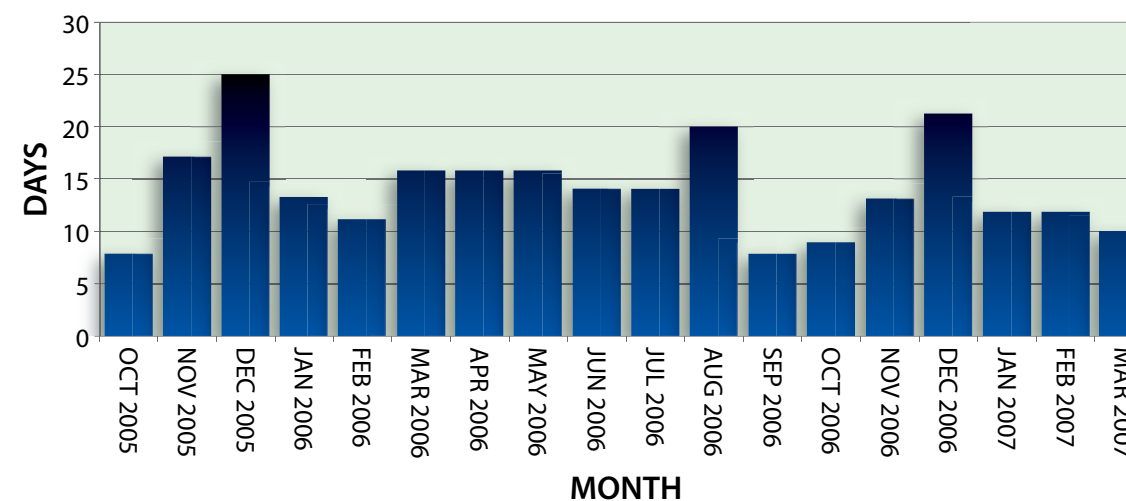


Figure 7: CTO Gap Between Application and Date Keyed (Average)
October 2005 – March 2006

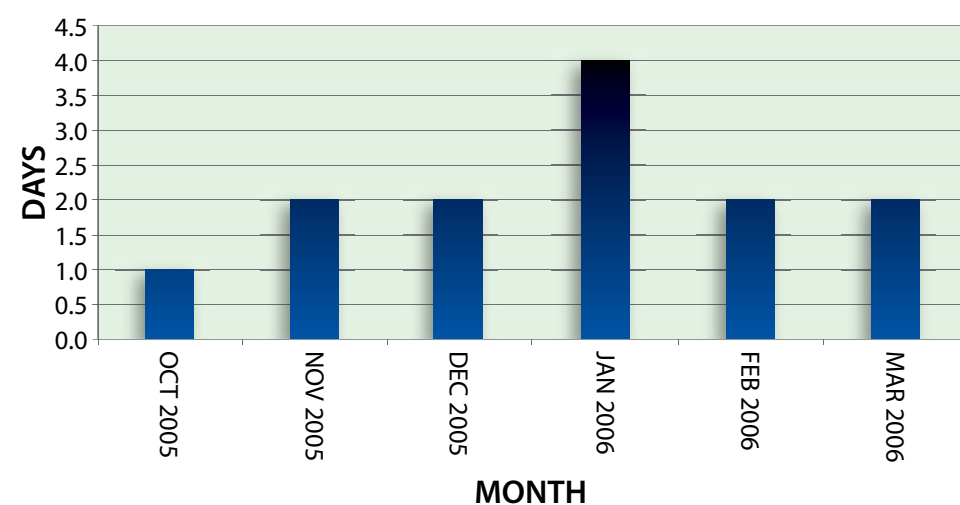
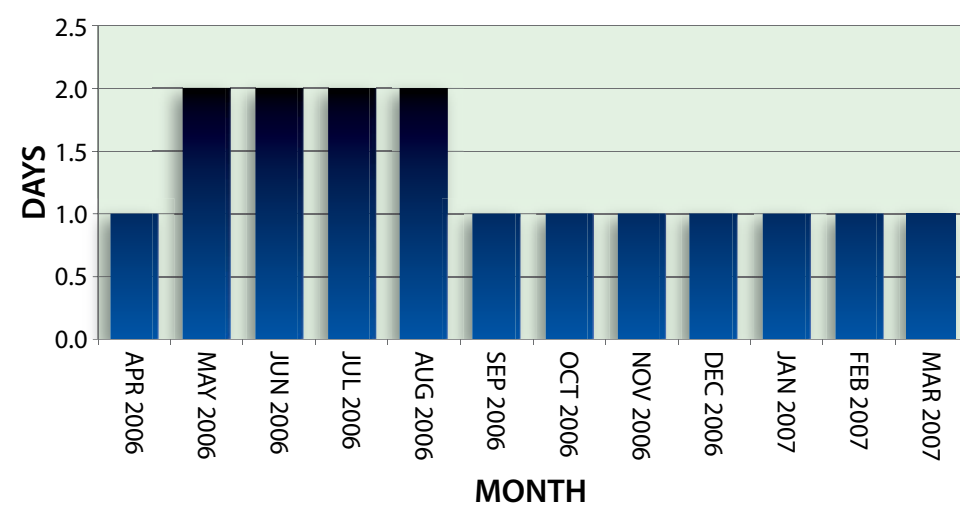


Figure 8: CTO Gap Between Application and Date Keyed (Average)
April 2006 – March 2007

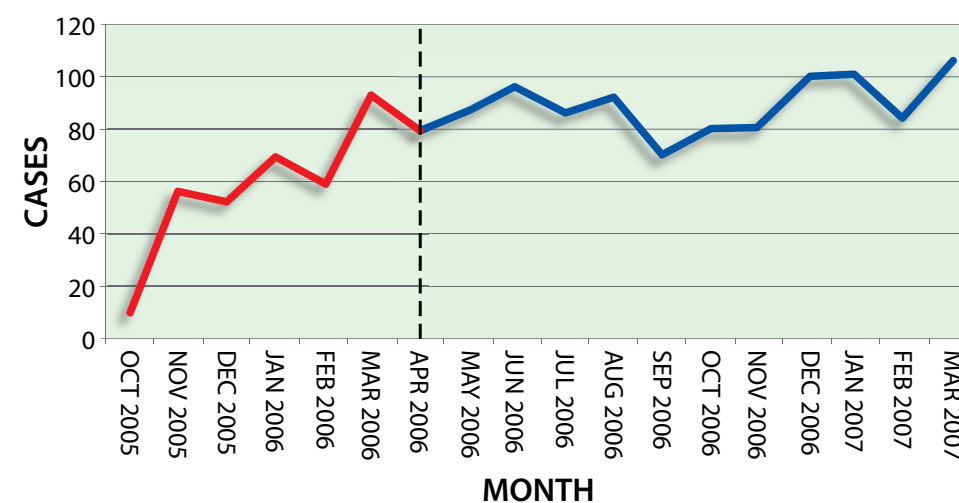


These charts illustrate the time it takes for MHTS to process applications from the date the application was signed to the date keyed on the Case Management System (CMS); these figures are demi-quartile. Although the Act allows for 14 days for MHO activities, the average time nationally to complete applications, is around two days.

Interim CTOs are an important safeguard for patients to ensure they have sufficient time to prepare and make representation before any final order is made.

However, Interim CTOs can add to the overall period of detention and it is important that the right balance is struck.

Figure 9: Interim CTOs
October 2005 to March 2007



Recognising this, a project commenced in 2006-07 to seek to identify common reasons for these occurrences and to

find ways of improving processes so that avoidable Interim CTOs are reduced while retaining vital patient safeguards.

Volumes

The following charts illustrate the volumes of work that the Tribunal dealt with between 2005 and 2007.

Figure 10 illustrates the flow of applications into the Tribunal from October 2005. The flow has been volatile at times and has remained difficult to predict on a week by week basis, but the level of volatility has reduced a little as time has progressed. Whilst monthly activity is reasonably smooth, the graph illustrates volatility in various weeks within the monthly breakdown.

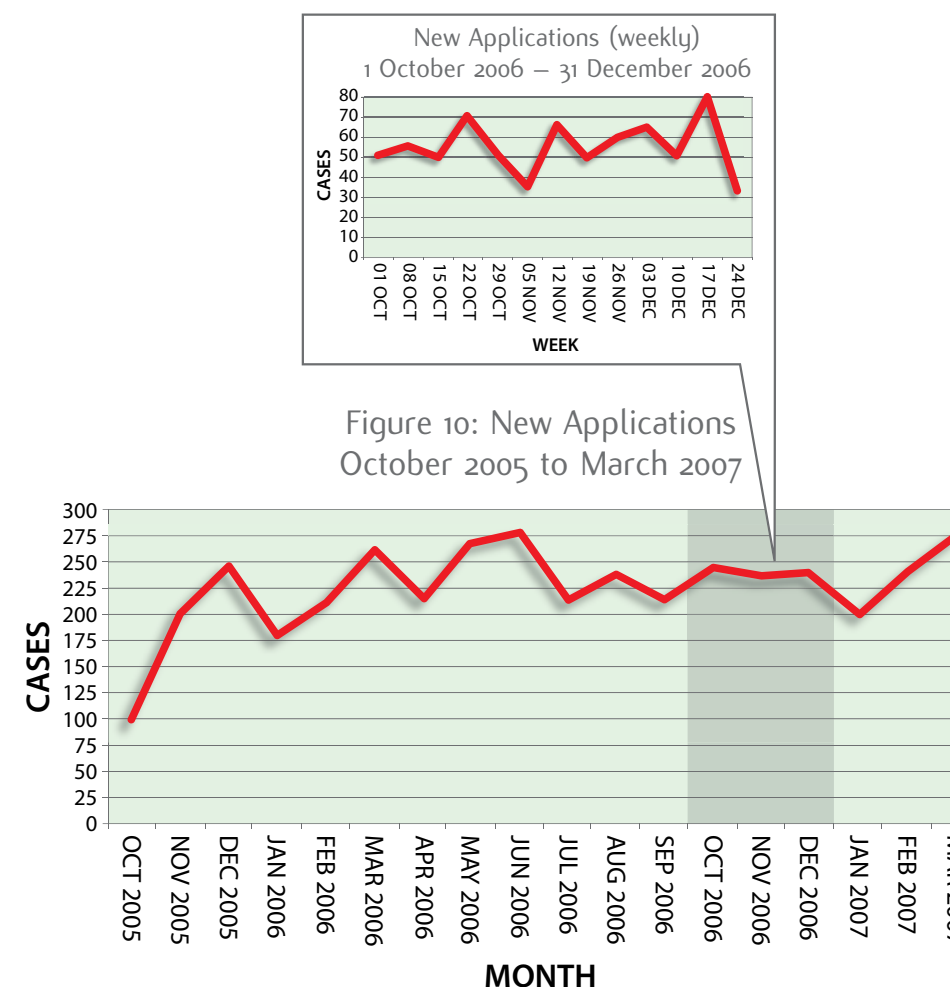
As expected, there has been a slow but steady increase in the number of Hearings held, since the start of operations in October 2005.

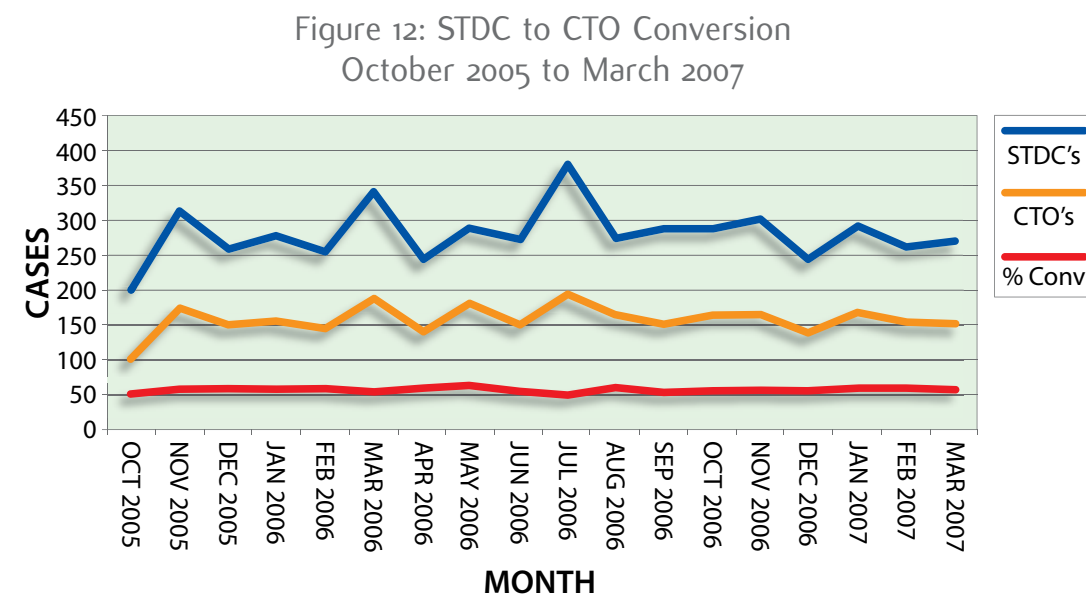
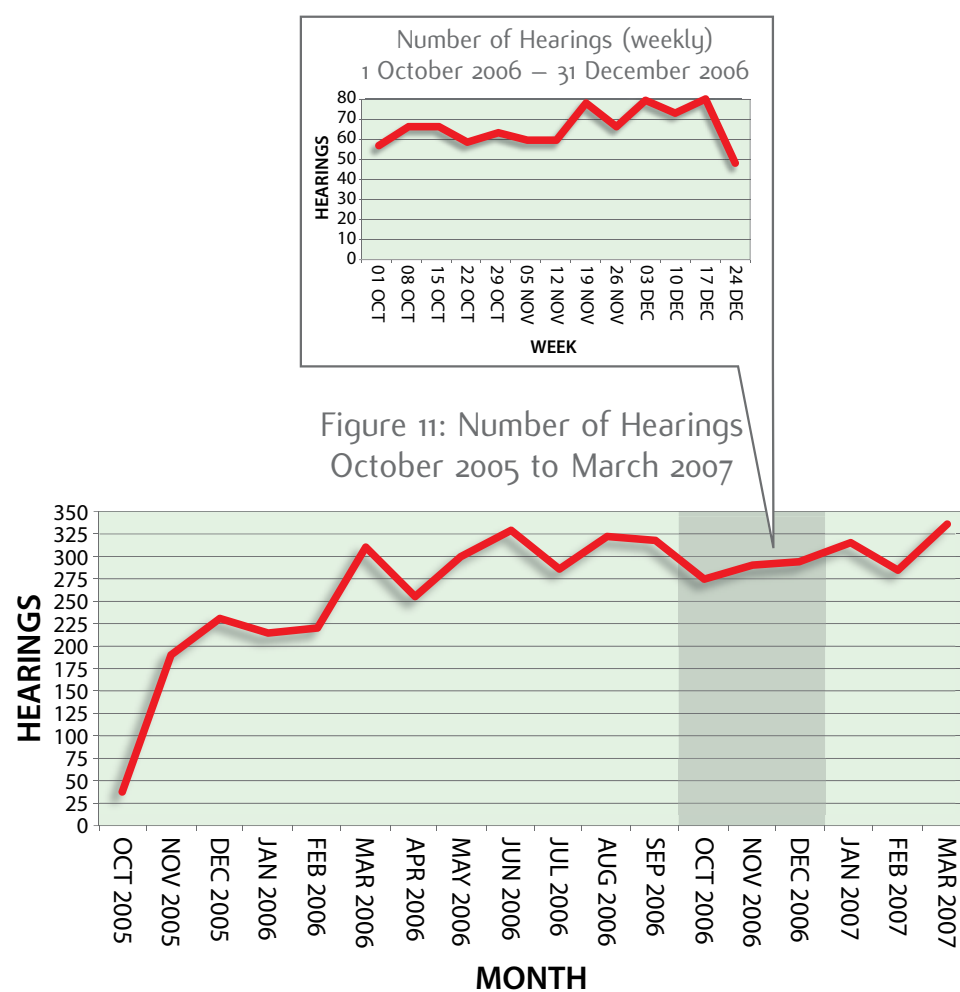
The number of Hearings, as opposed to cases, has risen as some of the initial cases went on to have second and third Hearings. MHTS is now operating at expected levels, but levels will increase when the statutory provisions relating to two year civil review cases come into force in October 2007.

The chart also shows the volatility that exists in the number of Hearings that are held from week to week. This volatility impinges on the ability of the Tribunal to control some of its staffing costs.

In its early days of operation, the Tribunal attempted to avoid the holding of “doubled up Hearings” (two Hearings taking place on the same day using the same venue and Panel). As time has progressed and the Tribunal has gained experience, more Hearings have been doubled up. The Tribunal has now set itself a target of 35% of all Hearings to be doubled up. Across the whole period of this report an average of 16% of Hearings were doubled up.

Whilst the length of Hearings varies considerably, the average time is 90 minutes (for the period April 2006 to March 2007). Few take more than three and a half hours. The Tribunal always seeks to complete full documentation on the day of the Hearing. The average duration of a Hearing, where a final decision is made, is two hours and twelve minutes.





Out of the 366 appeals against Short Term Detention Orders made in the eighteen month period, 81 have been upheld.

On average, around 56% of patients subject to initial detention go on to be detained for a lengthier period. Administratively, it is difficult to predict at an early stage who will and who will not need a Hearing convened to determine an application for a CTO.

The Tribunal set itself a target of seven days or less for the issuing of Hearing notices for 95% of applications (excluding forensic and excessive security cases and CTOs). This target proved to be overly ambitious; the Tribunal issued Hearing notices in under seven days in 66.5% of cases. There are a number of reasons why the performance indicator was missed; the most common being the need to ensure that as many parties to a case as possible can attend a Hearing, which can involve working with the diaries of a number of individuals. Where a statutory timescale does not exist, the

Tribunal will seek dates for Hearings which allow for the greatest possible attendance of parties. To do otherwise risks the holding of a further Hearing.

Complaints

MHTSA implemented an official complaint recording procedure on 12 December 2005. A copy of the complaints procedure can be found on the MHTS website at www.mhtscot.gov.uk.

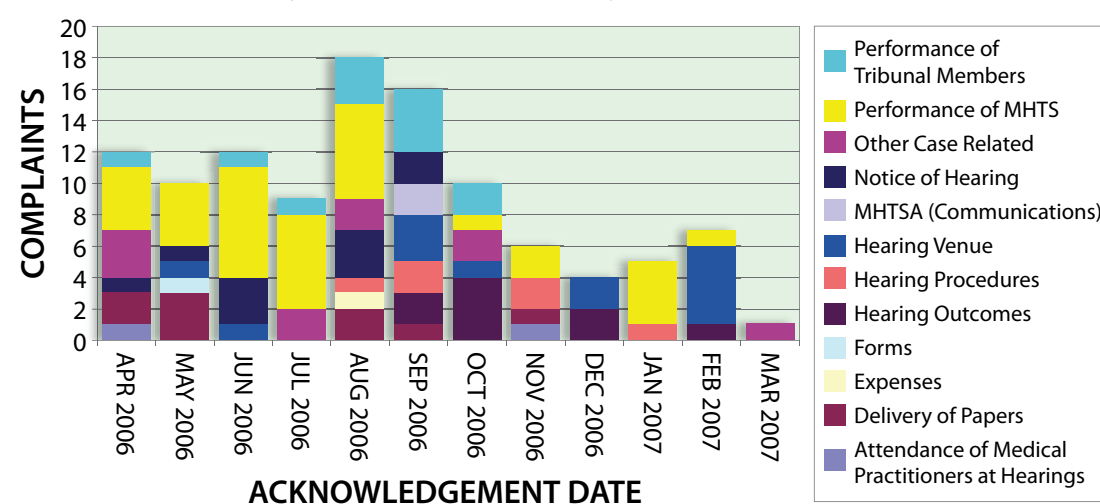
During the period 12 December 2005 to 31 March 2006, 48 complaints were recorded. Two of these complaints were referred to the Mental Welfare Commission for Scotland and a further two were referred, in part, to the British Medical Association.

Complaints peaked in March 2006 with 22 complaints being received in that month. Since then, the number of complaints has continued to reduce. The very significant

time pressures for CTO Hearings specified in the Act were not widely recognised prior to October 2005. This led to complaints

from people who have felt their wishes were being ignored or they had been given limited time to rearrange their schedules.

Figure 13: Reasons for Complaint
April 2006 – March 2007

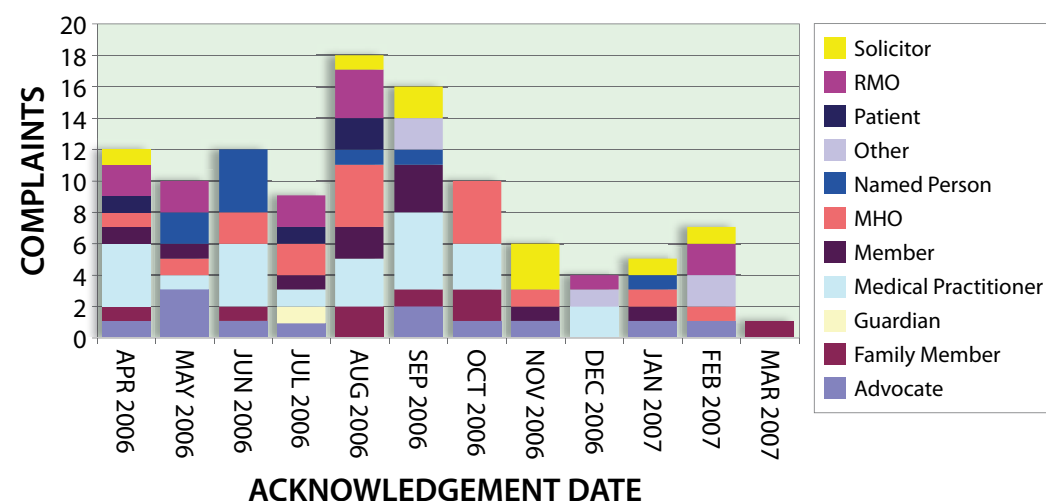


Four complaints have been received directly from patients during the period April 06 – March 07, and two of those complaints were passed to the Mental Welfare Commission.

When the Tribunal established its complaints procedure, it also put in place a target to issue a substantive response to individual complaints within 20 working days. Statistical returns show that the Tribunal has only achieved its target in 60.4% of cases. Whilst the Tribunal Administration believes

that some of the 40% of cases outwith the time limit have occurred as a result of inaccurate recording, there are a significant number of cases where the Tribunal has been unable to meet the deadline it imposed on itself. Many of the cases concern complex legal matters or have required input from other parties before a final response could be prepared. This in turn meant significant delays in responding to some complainants, but complainants were able to receive a more comprehensive response to the issues raised.

Figure 14: Source of Complaint
April 2006 – March 2007



Training

Members

Formal induction training for all new Legal, Medical and General Members is ongoing following each recruitment campaign.

To date, 84 Tribunal Members have undertaken a two day training programme relating to patients with a Learning Disability, part of which involved a mock Tribunal where the ‘patient’ was played by a person with a genuine learning disability. Seen as very successful by Members, The Scottish Consortium of Learning Disabilities and People First, it is intended to run this course again in 2008 with a view to training the remaining Members.

Small groups of our Legal Members were also offered the opportunity to visit the Low Secure Forensic Psychiatric Unit at the Murray Royal Hospital in Perth. A presentation by a Senior Forensic Psychiatrist was followed by a tour of the facility meeting patients and staff. Well received by the Tribunal Conveners, we intend to arrange further visits in 2008 for the remaining Legal Members.

A programme of three-day continuation training events has been delivered to Tribunal Members in various locations throughout Scotland, providing an opportunity to discuss issues and share best practice ideas and solutions across all disciplines. The course also involved a ‘mock Tribunal’ incorporating difficult

issues of law and practice which have arisen during Tribunals. All groups were required to write determinations following their respective ‘Hearings’ and to discuss all issues raised at a general plenary session.

A number of one day topic based sessions are due to be held in 2008.

Staff

Initial induction for all new staff is carried out at Bothwell House before ‘on the job’ training within their respective teams. Following this, all new staff also take part in a centralised induction event for all new civil servants.

The Scottish Executive’s Corporate Services Mobile Learning Centre has been to Bothwell House on two occasions over 2006/07. The Learning Centre comprises laptops and a broad range of computer and CD-Rom based courses. 20 Administrative staff have completed up to 26 courses ranging from IT packages through general management skills to assertiveness training. The learning centre will return to offer further opportunities.

MHTSA is looking at the potential for adapting the SVQ level 2 in Business Administration towards its operations and procedures with a view to offering a formal qualification in addition to transferable skills for all staff. A steering group of volunteers from each team will be sought with a view to tailoring

the provisions within the course to suit MHTS needs.

The Institute of Directors (IoD) were approached to provide a training programme for all line managers within the Tribunal Administration. Following discussion between the IoD and senior management, two courses were devised and run side by side, the Leadership Development Programme (LDP) for senior management and the Development Programme (DP) for two groups of line managers. These courses were delivered to all three groups by way of monthly, one day interactive seminars from April to November 2007.

Areas For Improvement – Objectives

The Tribunal will seek to build upon its solid start by continuing to meet its obligations to hold Hearings within prescribed timescales. By increasing the use of modern technology and working with others, the Tribunal will seek to reduce the time it takes to turn applications around. In consequence, this will allow more time for others to make their applications and to prepare for Hearings.

The Tribunal will seek to work with MHOs and RMOs to examine the pattern of applications across the country and look for opportunities to speed up the process of making and servicing applications.

In 2006/07, the Tribunal introduced a

pilot exercise to allow the electronic transmission of applications between RMOs, MHOs and the Tribunal. Indications are that this system can be operated successfully and the Tribunal will aim to introduce it across the country during 08. Electronic applications have proved to be more reliable and have the potential to allow a further two days for processing and notification, which benefits all involved and reduces mailing costs for Health Boards and Local Authorities.

The Tribunal has also sought to improve methods of sending papers to Tribunal Members. The short timescales often involved have meant that courier costs have been high. During 2006-07, the Tribunal has experimented with the electronic distribution of papers to Members and, with confidentiality safeguards in place, has introduced the system to all Members with E-mail facilities during 2007-08. Electronic delivery will reduce, if not completely remove, the need for the use of commercial delivery services. Electronic delivery will also ensure immediate delivery and reduce the inconvenience caused to Panel Members who will no longer need to physically collect their papers from main post offices, thereby helping reduce their carbon footprints in line with MHTS policy.

MHTS will continue to build upon its valuable relationships with NHS Boards, Local Authorities, professional bodies and carers. In 2006/07, reference

groups for professionals, users and carers were introduced. The group meetings now take place quarterly where possible. The Tribunal intends to develop these relationships further and, where practical, hold their meetings in different locations around the country.

The Tribunal is committed to working to reduce the number of occasions on which Hearings are adjourned or Interim CTOs are granted. In the second half of 2006/07, the number of Interim CTOs began to regularly outstrip the number of full Orders. This places a burden on all those involved in Hearings as well as increasing the direct costs of running the Tribunal. During 2007/08, the Tribunal will seek to address some of the issues which give rise to unnecessary Interim CTOs, in particular the late submission of applications.

Security

MHTS awarded a temporary contract for security services to Group 4 Securicor. During 2006/07 this contract was fully tested and the Tribunal's needs reviewed. The need for a permanent security contract was confirmed. A long term revised contract will be let during 2007/08.

Technical Investment

Having successfully implemented the key systems and infrastructure to support Tribunal operations, work is underway to reduce costs and improve efficiency.

The Tribunal is working to expand the use of electronic communications by:

- updating the appearance and usability of the Tribunal website, www.mhtscot.gov.uk;
- distributing Hearing papers to Panel Members electronically, which offers significant savings in both cost and time; and
- working with service providers and solicitors to make greater use of electronic correspondence and increasing the numbers of applications submitted electronically to the Tribunal, particularly where the resulting cases must have a Hearing within a short time period.

The Tribunal Administration's use of electronic scanning will be expanded to reduce the volume of paper records and thus environmental impact.

Website

The Tribunal's dedicated website can be found at www.mhtscot.gov.uk. The site has been developed continually throughout 2007 and further development is planned for 2008. During 2007, the site has been restructured and several new sections have been introduced to take account of users' varying needs.

Future Statistics

The Tribunal intends to publish a range of statistical material on its website to inform anyone with an interest in the work of the Tribunal of the volumes and spread of work. It will also help Local Authorities and Health Boards to compare figures for their areas with those of others and devise ways in which they may make improvements to their own systems.

A catalogue of reports has already been produced and will be published on the Tribunal's website.

Working With Stakeholders

The Tribunal Administration meets regularly on an individual basis with various stakeholder groups, e.g. The Association of Directors of Social Work (ADSW), the Royal College of Psychiatrists, Advocacy groups, etc.

The Chief Executive established the Professional Reference Group (PRG) as a forum for the identification of issues recognised by professionals interfacing with the Tribunal Administration and/or attending Hearings. The Group allows the various bodies noted below to meet collectively with the Tribunal Administration, and its key purpose is to review and discuss issues arising, identify root causes and propose remedial actions.

The PRG is chaired by the Chief Executive of the Tribunal Administration and comprises representatives from:

- The Tribunal Administration (MHTSA);
- Mental Welfare Commission for Scotland;
- Royal College of Psychiatrists;
- Mental Health Division of the Scottish Executive;
- Association of Directors of Social Work (ADSW);
- Social Work and Psychiatric Advisors to the Scottish Executive;
- Nurse Representative; and
- Medical Records Officer.

Where the changes required to remove problems or facilitate improvement lie within the authority of the Tribunal Administration, the advice of this body will be taken seriously and, where practically and financially viable, implemented. Where the action required lies elsewhere, this body may act as a key communicator and lobby for change.

At the end of 2006/07 the Chief Executive established a similar Group for Patients, Carers and Advocacy organisations. This group will develop its role during 2007/08 with several meetings of the Service Users' and Carers' Group having already taken place. The group provided a lot of feedback into the recently published Guide for Service Users.

Feedback from Participants

The Professional Reference Group and the Users' and Carers' Group provide valuable feedback on the experiences of various participants of Hearings and Tribunal procedures. The groups have had the opportunity to scrutinise the work of the Tribunal and make recommendations for the improvement of its services. They have also proved to be a forum where people's expectations of the Tribunal experience could be aired. Some early experiences suggested that the approach of individual Tribunals might have been too legalistic, but this was largely explained by Members of the Tribunal finding their feet in the early

Hearings coupled with the unrealistic expectations of some participants who felt that a case conference-like approach would be adopted. As the year has progressed, anecdotal feedback on the atmosphere of individual Hearings has improved and complaints have diminished.

The Tribunal supported work done by the Health Board in Eastern Glasgow looking at patients' experience of the Tribunal process. It has further plans to support the Mental Welfare Commission for Scotland in its proposal to conduct a country wide survey of Patients' and Named Persons' experiences of Tribunal Hearings in 2007/08.

Corporate Structure

Certain functions of the Minister for Health have been delegated to the Tribunal Administration, namely finance and human resources, and an Executive Agency has been established for the delivery of these services. The work of the Tribunal is funded by the Scottish Ministers from the Health Budget.

Corporate Governance

The Tribunal has experienced some difficulty in establishing the framework agreement which governs the relationship between the Tribunal and the Scottish Executive (recently renamed Scottish Government). This difficulty has led in turn to a delay in the establishment of a non-executive Board for the Tribunal. The lack of such a Board and its supporting committees has been highlighted by Audit Scotland. The Tribunal has now taken steps to move to the establishment of a non-executive Board in respect of the Executive Agency during 2007/08 with an advertisement going out for members early in 2008.

A full financial report is annexed to this report, together with an independent auditor's statement on the summary financial statements of MHTSA. There follows a report from Audit Scotland highlighting some weaknesses in the governance of the Tribunal, which are now being addressed.

MHTS paid 87% of all invoices received within the terms of the payment policy. This was achieved using brand new finance systems.

The Tribunal achieved its objective of containing administrative costs (which were not directly related to applications or Hearings) within 20% of total Tribunal costs. This achievement was acknowledged by Audit Scotland.

Corporate Structure

MHTSA is an Executive Agency of the Scottish Executive Health Department (SEHD) established to support the work of MHTS (the Tribunal). MHTSA has delegated authorities from the SEHD in respect of some aspects of its operation; namely finance, human resources and organisational delegations within the spending, policy and legal framework established by Ministers. The work of the Tribunal is funded by the Scottish Ministers, from the Health Budget through the SEHD, and all funds are provided to and managed by MHTSA.

Annex i

Financial Results

The Mental Health Tribunal for Scotland Administration Operating Cost Statement for the year ended 31st March 2007

2006 (six months) £'000		2007 £'000
<u>2,098</u>	Tribunal costs	<u>5,400</u>
	Administrative Costs	
1,105	Staff	1,854
52	Depreciation	99
<u>1,193</u>	Other costs	<u>1,042</u>
<u>2,350</u>		<u>2,995</u>
<u>4,448</u>	Net Operating Cost	<u>8,395</u>

Note:-

The financial allocation provided to MHTSA for 2006/07 was £7,500k (2005/06 - £4,320k), giving rise to an overspend of £895k (2005/06 - £128k).

The major portion of expenditure (around 80%) relates to the costs of organising and holding the Hearings, i.e. fees and expenses incurred by the Tribunal Members attending the Hearings and their internal administration costs. If a Hearing must be held, the cost of that Hearing is generally predictable; it is the number of Hearings anticipated to be held over the year which is not. The Tribunal cannot refuse to hold a Hearing once an application or appeal has been received. In setting the annual funding allocation, the annual number of Hearings can only be estimated.

Annex ii

**The Mental Health Tribunal for Scotland Administration
Balance Sheet**
As at 31st March 2007

2006 (six months) £'000		2007 £'000
	Fixed assets	
313	Tangible fixed assets	495
5	Intangible assets	4
<u>318</u>		<u>499</u>
	Current assets	
27	Debtors	41
	Creditors	
(462)	Amounts due within 12 months	(639)
0	Amounts due after more than one year	(64)
<u>(462)</u>	Total Creditors	<u>(703)</u>
<u>(435)</u>	Net current liabilities	<u>(662)</u>
<u>(117)</u>	Total assets less current liabilities	<u>(163)</u>
<u>(117)</u>	Taxpayers' equity – General Fund	<u>(163)</u>

Annex iii

**Independent auditor's statement on the summary
financial statements of the MHTSA**

I have examined the summary financial statements which comprise the Operating Cost Statement and the Balance Sheet.

This report is made in accordance with the Public Finance and Accountability (Scotland) Act 2000 and for no other purpose. In accordance with paragraph 123 of the Code of Audit Practice approved by the Auditor General for Scotland, I do not undertake to have responsibilities to officers, in their individual capacities, or to third parties.

Respective responsibilities of the MHTSA and Auditor

The Mental Health Tribunal for Scotland (MHTSA) is responsible for preparing the summary financial statement in accordance with guidance issued by the Scottish Executive Health Department. My responsibility is to report my opinion on whether the summary financial statement is consistent with the audited financial statements of MHTSA. I also read the other information contained in the Annual Report and consider the implications for my report if I become aware of any apparent misstatements or material inconsistencies with the summary financial statement.

Basis of opinion

I conducted my work having regard to Bulletin 1999/6, "The auditor's statement on the summary financial statement issued by the Auditing Practices Board for use in the United Kingdom. My report on MHTSA's full annual financial statements describes the basis of my audit opinion on those financial statements.

Opinion

In my opinion the summary financial statement is consistent with the audited financial statements and Annual Report of the Mental Health Tribunal for Scotland for the year ended 31st March 2007. I have not considered the effects of any events between the date on which I signed my report on the full financial statements and the date of this statement.

28th September 2007

David McConnell
Assistant Director of Audit (Health)
Audit Scotland
7th Floor, Plaza Tower
East Kilbride
G74 1LW

Annex iv

A REPORT BY THE AUDITOR GENERAL FOR SCOTLAND UNDER SECTION 22(3)
OF THE PUBLIC FINANCE AND ACCOUNTABILITY (SCOTLAND) ACT 2000

THE 2006/07 AUDIT OF THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND ADMINISTRATION

1. I have received the audited accounts of the Mental Health Tribunal for Scotland Administration (MHTSA) for the year ended 31 March 2007. The auditor has given a clear audit certificate on the accounts. However I have decided to report to Parliament on the need for MHTSA to improve to meet good governance standards.
2. I submit these accounts and the auditor's report in terms of sub-section 22(4) of the Public Finance and Accountability (Scotland) Act 2000, together with this report which I have prepared under sub-section 22(3) of the Act.
3. MHTSA is an executive agency of the Scottish Government. It administers and supports the judicial work of the Mental Health Tribunal for Scotland. Both bodies were created under the Mental Health (Care and Treatment) (Scotland) Act 2003. MHTSA was established during 2005/06, and became fully operational in October 2005. It now employs some 80 staff with annual operating costs of some £8.4 million in 2006/07.
4. The 2005/06 audit of MHTSA included a review of its governance and accountability framework. This review concluded in August 2006 that appropriate governance¹ was not in place for MHTSA and it needed to be developed as a priority.
5. In August 2007, the auditor completed follow-up work on governance as part of the 2006/07 audit. The overall conclusion was that although MHTSA had made progress in some areas, there remained a need to improve to meet good governance standards.
 - The framework document setting out the responsibilities and accountabilities of the agency had not been finalised and remained in draft form only.
 - The auditor recommended MHTSA should consider options including permanent recruitment to strengthen its financial management and leadership.
 - Throughout the financial year 2006/07 and as at August 2007 there was no formal Board in place to direct and control the agency.
 - No independent non-executive directors had been appointed to the Agency, and no audit committee to provide assurance on risk management, governance and internal control was in place.
6. The MHTSA Chief Executive and Accountable Officer has agreed with the auditor actions to respond to these other findings. The intention was that the framework document for the Agency would be agreed as final by 30 September 2007; that a review of options for recruiting additional financial expertise would be completed by the same date; that the MHTSA Board will be in place by 31 December 2007; and that an audit committee will be established by 31 January 2008. I have asked the auditor to inform me of the progress towards these important commitments early next year.


ROBERT W BLACK
Auditor General for Scotland

25 October 2007

¹ As defined by the Scottish Public Finance Manual and by the HM Treasury Code of Good Practice Relating to Corporate Governance in Central Government Departments.

The Mental Health Tribunal for Scotland Administration (MHTSA) provides the staff and resources to carry out the administrative functions of the Tribunal as delegated by the President. The core function of MHTSA is to provide case management and hearing support to ensure that the Tribunal can, through Panels sitting across Scotland, determine the applications and referrals made to it under the Mental Health (Care and Treatment) (Scotland) Act 2003.

As Chief Executive, my job is to run the MHTS Administration and ensure it provides an efficient, effective, fair and professional service – in support of the President's obligations under the Act. I am accountable to the Tribunal President and to Scottish Ministers for the provision of these services. Additionally, I am responsible for all the finances of the Tribunal and accountable for the appropriate and efficient use of public funds.

In order to achieve a high standard of service, the MHTSA works closely with a broad range of stakeholders to ensure that the administrative processes not only comply with the requirements of legislation but also provide a responsive and robust service to the people of Scotland.

For MHTSA, work began well before



Patricia Lewis – Chief Executive

October 2005. During the preceding six months, the organisation headquarters in Hamilton were made ready and more than 65 administrative staff and 300 Tribunal Members were recruited and trained. The IT systems which support the case management and scheduling processes were designed, built and tested. Finally, more than 100 Tribunal Hearing venues were identified and visited at Health Boards and Local Authorities across Scotland.

It was an enormous undertaking to put such a significant and complex system and organisation in place and I am proud of the team that achieved it.

By 5 October 2005, all the necessary elements were in place to successfully process the first application, which was received that day, and to hold the first Hearing only seven days later.

By March 2006, the Tribunal was processing 372 cases and holding more than 260 Hearings per month, and this had risen to 280 per month by March 2007.

For a period following the Tribunal's inception a number of questions around the relationship of governance provisions for an Executive Agency with the President's statutory obligations remained unresolved. This caused a delay in the implementation of a board and other governance structures. In 2007 a Section 22 report was issued by Audit Scotland which was largely related to this "missing" governance. I am happy to report that, as of 2008, a board is now in place and the other issues raised in the Section 22 report addressed. Although MHTSA accepted and addressed the issues raised by Audit Scotland as an important aspect of assurance and governance, the issue has always been one of risk rather than an actual failure to govern the Agency or deliver a high level of service.

MHTSA has overspent its allocated budget in the 18 months covered by this annual report. It is always challenging


to anticipate the behaviours and need for service in response to new statute. We are working closely with the Health Directorates Finance team to ensure that future allocations, while setting challenging targets for efficiencies, recognise the reality of the costs of the Tribunal and its statutory obligations.

MHTSA has grown since its inception and has successfully supported the Tribunal through its first 18 months. We are able to turn cases around quickly and accurately and meet the differing needs of the range of interests that the Tribunal supports. I am particularly pleased with the high quality of staff that we have attracted and what they have achieved in a short period of time. The challenge for the future is to continue to improve and refine the services to best meet the needs of our stakeholders and the people of Scotland

We are proud to belong to this progressive and important organisation which contributes to a fairer, healthier and safer Scotland and we look forward to the challenges of the future with commitment and enthusiasm.



Patricia Lewis
Chief Executive



Mental Health Tribunal for Scotland
First Floor
Bothwell House
Hamilton Business Park
Caird Park
Hamilton
ML3 0QA