

Mental Health Tribunal for Scotland Members' Newsletter



APRIL 2018

INSIDE

**Petition by N for Judicial Review
The General Data Protection Regulation
Reflections on Induction Training
Learning Disability Workshop: Feedback Report**

The Newsletter is also available on the Tribunal's website under "News" in the public area and under "Newsletters" within the Judicial Members' Area

The online version has useful hyperlinks.

www.mhtscotland.gov.uk

Newsletter Contributions

Members who wish to contribute to the Newsletter can contact Yvonne Bastian at MHTSPresidentsOffice@scotcourtribunals.gov.uk

Contributions must be typed in Arial, font size 12, with justified margins, and with necessary references set out as footnotes.

The following timescales will apply for contributions*:

April edition: contributions by the end of February

August edition: contributions by the end of June

December edition: contributions by the end of October

***Contributions may require to be edited**

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Message from Dr Joe Morrow QC

Dear Member

I hope that this Newsletter finds you all well and, again, let me put on record my thanks for your hard work and contributions to the Mental Health Tribunal for Scotland.

It is only through the commitment and work of the members alongside collaboration with our administrative staff that we are best able to serve those patients who come before the Tribunal. I am constantly reminded of the gravity of the work we do and the responsibilities placed upon the Tribunal, which was constituted under an Act of the Scottish Parliament, in relation to detaining and compulsorily treating people who have a mental disorder and require care and treatment. As I have stated over the years this is, in my view, the highest possible State intervention by a judicial body in Scotland in the lives of individual citizens or other persons, and so the highest performance is necessary of all those involved in the process. The importance of the work should never be far from our deliberations and the day-to-day work of the Tribunal.

Many of you, like me, will be appreciating that the days are lengthening and the weather is gradually improving as we move into Spring. I wish to put on record the magnificent response of members and administrative staff during the recent bad spell of weather and I thank everyone who stepped up to meet the needs of the Tribunal and maintaining access to justice in a most difficult situation. We can have no control over the weather. The flexibility demonstrated by both Tribunal members and administrative staff meant that we were able to ensure that patients continued to receive the care and treatment which they required. I would particularly draw your attention to the resilience and innovative action by the administrative staff in ensuring that all hearings were either able to take place – for example by teleconferencing – or, wherever possible, adjourned to allow the weather situation to improve. The Administration worked closely with my office, in particular with the In-house Conveners, to provide the necessary judicial support to allow proceedings to continue. I would of course like to express my thanks to all Tribunal members for their responsiveness, flexibility and engagement during the period of inclement weather. To all concerned, please accept my appreciation and thanks for your work.

There are many ongoing changes within the mental health field, in particular the preparation through the Implementation Group for the move into the First-tier Tribunal for Scotland. I am told that this will take place in November this year. There are a number of matters which require to be resolved, but also many which have already been resolved, as part of what I aim to be a seamless transfer into the new system.

We are, for example, well on the way to completing the swearing-in of all Tribunal members and I have appreciated the cooperation which everyone has shown in this process.

The Scottish Government is presently consulting on the proposed amendments to the Tribunal's Rules of Procedure and other regulations relating to the transfer of the Tribunal into the First-tier Tribunal for Scotland. I would encourage members to look at the consultation document¹ and would invite you to provide a response – the closing date for responses is 20 May 2018. A substantial amount of work goes into such a consultation process and this will be enhanced by responses from those with a particular interest in the subject matter of the consultation. If you are working in the mental health field in the broadest sense, I would also ask you to draw the attention of your colleagues to the consultation. I have already arranged for all members to be provided with a link to the consultation, which has to be completed online (see page 19 of this Newsletter).

Another important date to note is the impending implementation of the General Data Protection Regulation. This new data protection legislation will come into force on 25 May 2018, and I refer you to Scott Blythe's article in this Newsletter on page 12. I would ask you to please bear in mind the implications of this for the Tribunal. I do not believe that this can be taken lightly or that public bodies can expect much latitude for breaches. It must, in my view, be an improving step to protect the data of individuals, which in our case can be highly sensitive data. Data protection must remain at the fore of all our agendas and our day-to-day activity.

A substantial piece of work was undertaken in the latter part of 2017 which came to fruition in March 2018, namely the recruitment and appointment of 51 new Tribunal members, which has now been officially announced. This is the first time that a refreshment of the general membership has taken place, with the recruitment of 14 new general members with a wide variety of backgrounds. We have also recruited 21 new medical members and 16 new legal members. There was a substantial interest in the recruitment and a high number of applications to become a member of the Tribunal, and the candidates who were selected for appointment were of the highest calibre. The three day mandatory induction training took place in March, and I draw your attention to the article on pages 13 by three of the new members, who have written about their experiences at the induction training for this Newsletter. My thanks go to all those who made the training happen and also to those who made the training 'real' thanks to their experience of being Tribunal members, advocates and users. The Tribunal's administrative staff gave excellent talks and insight on how the collaborative relationship between members and staff works at its best. All of the talks and presentations provided a framework for the new members to undertake their Tribunal hearing observations and eventually to hear cases of their own. I would commend the continued support of new members to you and I thank those who have volunteered as mentors, those who attended the training to share their views and insights and those who will sit with the new members in the future.

¹ Go to <https://consult.gov.scot/tribunals-and-administrative-justice/mental-health-tribunal/>

Turning now to the mandatory training for all Tribunal members, the training dates have been issued to members and we will primarily concentrate on the area of complex cases, but will also look at other issues of concern regarding the practical implications of the 2015 Act amendments to the 2003 Act. We also hope to be able to introduce a more general session to explore a variety of issues impacting on the Tribunal. Most of you have signed up to the training events, however those concerned please note that a small percentage of members still have not signed up for the mandatory training. This means that the more popular sessions might be full, meaning that members based in those areas (the Central belt) will have to travel to a more distant venue for the training. Can I therefore encourage you to respond to Fiona Queen as soon as possible. It creates considerable additional work for all concerned when members do not respond to training requests and require to be chased up. While I recognise that the consequences of failure to respond may not be intended, they should if possible be avoided.

I will be in a position in the August 2018 Newsletter to reflect back to members some of the information around the transfer into the new tribunal system in November but, as I said above, it is my intention to make sure that the transition is seamless and that our focus will remain, not on structural change, but on access to justice and the delivery of patient-focused decision-making under the 2003 Act.

With best wishes to all, and I look forward to seeing you as I move round the country visiting tribunals and other events.

With best wishes,

Dr Joe Morrow CBE QC
President

News

New Judicial Members

Fifty new panel members were appointed to the Mental Health Tribunal for Scotland by the Scottish Ministers on 1 March 2018 and one new member on 1 April 2018 as follows:

- 14 general members
- 16 legal members
- 21 medical members

| | | | <i>Member type</i> | | | | <i>Member type</i> |
|------|------------|------------------------|--------------------|------|-----------|--------------------|--------------------|
| Dr | Fayyaz | Ahmad | Medical | Mr | Richard | Leckerman | General |
| Dr | Waleed | Ahmed | Medical | Mrs | Kathleen | Liddell | General |
| Mrs | Elaine | Allan | General | Mr | Mike | Maas-Lowit | General |
| Ms | Lorna | Anderson | Legal | Ms | Hazel | MacDonald | General |
| Dr | Richard | Athawes | Medical | Miss | Jan | Marshall | Legal |
| Mr | Colin | Baptie | General | Dr | Daniel | Martin | Medical |
| Dr | Peter | Bennie | Medical | Mrs | Anne | Mathie | Legal |
| Dr | Karen | Blagden | Medical | Ms | Suzanne | McCrea | General |
| Dr | Alison | Blair | Medical | Dr | Anne | McFadyen | Medical |
| Dr | Aileen | Blower | Medical | Ms | Gaby | Miller | Legal |
| Dr | Eleanor | Brewster | Medical | Dr | Alison | Mitchell | Medical |
| Mr | Alistair | Brown | General | Mrs | Donna | Morgan | Legal |
| Dr | David | Brown | Medical | Mr | Graham | Paterson | General |
| Mr | Ian | Bryce | Legal | Mr | Des | Quinn | General |
| Dr | Rebecca | Carleton | Medical | Dr | Elizabeth | Quinn | Medical |
| Dr | Paul | Cavanagh | Medical | Dr | David | Reid | Medical |
| Dr | Maire | Cooney | Medical | Ms | Lindsey | Reynolds | Legal |
| Miss | Jacqueline | Doyle | Legal | Dr | Shilpa | Shivaprasad | Medical |
| Ms | Carole | Ferguson-Walker | Legal | Ms | Morag | Slessor | General |
| Mrs | Elizabeth | Gallagher | General | Mr | Greg | Smith | Legal |
| Dr | Rob | Gray | Medical | Mrs | Vicky | Soutar | General |
| Mr | Duncan | Hamilton | Legal | Mr | Alan | Strain | Legal |
| Dr | Alistair | Hay | Medical | Mr | Mark | Thorley | Legal |
| Mr | Gareth | Jones | Legal | Ms | Lynda | Towers | Legal |
| Dr | JD | Jurgens | Medical | Mr | Ray | Wilson | General |
| Ms | Karen | Kirk | Legal | | | | |

Ministerial Visit



The Ministerial visit to the Mental Health Tribunal for Scotland

(from left to right) Fiona Queen, Scott Blythe, Jane Patrick, Dr Joe Morrow CBE QC, Maureen Watt MSP Minister for Mental Health, Morag Jack, Heather Baillie and Geraldine Smith



Mandatory Member Training 2018

This year the mandatory training will cover work on the management of complex cases and the lessons to be learned from a number of cases involving multiple days and complex legal issues.

The training will also deal with the practical effect of some of the amendments made by the Mental Health (Scotland) Act 2015, and members will have an opportunity to find out what happens after they have reached a decision and it is being implemented by the administrative staff at Hamilton.

Tribunal Venues

Parkhead Hospital

Parkhead Hospital is now closed. Patients have been transferred to Stobhill Hospital. Work is underway on a new Tribunal suite at Stobhill and we await a date of completion.

In the meantime, some triple hearing dates are being scheduled at Stobhill Hospital to accommodate the increase in the number of Tribunal hearings at this venue.

Royal Edinburgh Hospital

Members are reminded that Tribunal hearings are no longer held in the Andrew Duncan Clinic, but in the two Tribunal suites in the new Royal Edinburgh Building. The Tribunal has been advised by the hospital that Tribunal panel members continue to attend the Andrew Duncan Clinic for hearings and require to be redirected to the new Tribunal suites.



Members' Forums

Ayrshire Members' Forum

on

Wednesday, 30 May 2018 at 6 pm

The Long House, 130 Titchfield Street, Kilmarnock KA1 1PH

Speaker: Jenny Henderson on "Assisted Technology – friend or foe?"

Please contact Pauline Robertson to confirm attendance

Tayside Members' Forum

on

Tuesday, 29 May 2018 – 18:00 to 20:00

in the

Tribunal Suite, Murray Royal Hospital, Perth

Contact: David.Gilling@careinspectorate.com

David would be grateful for any suggestions of topics for discussion and volunteers for presentations on any relevant matter

Please send any questions on legal/procedural matters and agenda items to David in advance of the Forum

Mental Health Awareness Week 14 to 20 May 2018

Once again Tribunal administrative staff will undertake activities as part of Mental Health Awareness Week. The programme for this week will include:

- Yoga with Morag Jack, In-house Convener
- A breathing techniques session
- Adult colouring-in session
- Cake decorating with Susan Kelly, Caseworker
- A talk from Kirsten Naismith, Casework Team Leader, about a charity she works with “The Moira Anderson Foundation” which supports the lives and mental health of children and young people affected by sexual abuse
- Free fruit day
- Diane Wilkens, Finance Resource Officer, is walking the kilt walk (26 miles!) in aid of Alzheimer’s Scotland and The Moira Anderson Foundation
- Keep Fit Sessions
- Walking to a Clear Mind (walking group)

If you would like to contribute to this mental health awareness week, please contact Jenna Swan (01698 390038) or Leanne Jefferies (01698 390042).

Fund raising activities this year are all in aid of

Alzheimer’s Scotland and The Moira Anderson foundation.



UK Mental Disability Conference

on

Tuesday 26th and Wednesday 27th June 2018

in the

Law and Social Sciences Building, University of Nottingham

University Park Campus, Nottingham NG7 2RD

“The conference is a specific conference devoted to mental disability law including issues relating to mental health/psychosocial disability, learning disability, disabilities associated with old age and mental capacity”

Prof. Jill Stavert of Napier University is the representative for Scotland on the organising committee of the conference. Further details can be found on the website of the Institute of Mental Health, Nottingham at www.institutemh.org.uk.

Anyone interested in attending should please contact Karen.sugars@nottshc.nhs.uk .

Articles

PETITION by N for Judicial Review of a decision of the Mental Health Tribunal for Scotland

Sections 22, 23 and 24 of the Mental Health (Scotland) Act 2015 (**the 2015 Act**) came into force on 30 June 2017, making changes to the named person regime provided by the Mental Health (Care and Treatment) (Scotland) Act 2003 (**the 2003 Act**). Essentially section 251 of the 2003 Act (named person where no person nominated or nominated person declines to act) was repealed so that a person may only have a named person if one is nominated and the nominated person consents (please note that there are transitional provisions and also that section 253 of the 2003 Act has not been repealed and so default named persons for people under the age of 16 years are still provided for – see the relevant part of the article *The Mental Health (Scotland) Act 2015* at page 14 of the August 2017 edition of the Tribunal Members' Newsletter).

The Tribunal identified a class of individuals who are the nearest relatives of patients with long term incapacity to nominate a named person and who had long histories of proceedings concerning them before the Tribunal. In all of those proceedings, those individuals had previously been default named persons by virtue of section 251 of the 2003 Act and so were a party to those proceedings with access to all of the case papers, the right to be present throughout the entirety of the proceedings and the right to cross-examine witnesses. Once section 251 was repealed and those persons ceased to be default named persons, they found their position before the Tribunal significantly changed, as they were no longer default named persons and so were not a party to the proceedings and, as the patient to whom they were related was incapable of doing so, they could not be nominated named persons. It appeared to the Tribunal that this category of persons had a legitimate grievance about the legislative change and the Tribunal raised this matter with the Scottish Government. This petition was brought by a person who was in this class of individuals.

On 20 December 2017, the Mental Health Tribunal for Scotland (**the Tribunal**) received an application for a compulsory treatment order (**CTO**) in respect of the patient (**P**). P is a teenager in respect of whom there have been proceedings before the Tribunal over a number of years. The Tribunal appointed a curator *ad litem* to P. On 4 January 2018, an *interim* hospital based CTO was made in respect of P to allow the curator *ad litem* to obtain an independent report. P's mother (**N**) attended the hearing in her capacity as welfare guardian. In previous proceedings before the Tribunal concerning P, N had been P's default named person by virtue of section 251 of the 2003 Act.. In these proceedings, as a result of the amendments made by the 2015 Act, N was no longer default named person and P was not capable of nominating a named person. N made representations to the Tribunal and indicated that she wished to seek legal advice about applying to be made a party in the proceedings. The hearing was adjourned until 31 January 2018.

On 10 January 2018, the solicitor for N made an incidental application to the Tribunal in terms of rule 43 of the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005 (**the Tribunal's Rules**), as amended, seeking (1) a copy of the paperwork to be provided to N in advance of the hearing on 31 January 2018; (2) to afford N the status of party for the purpose of the proceedings; and (3) to fix a procedural hearing on the application.

A procedural hearing took place on 29 January 2018 to determine the incidental application. N's solicitor advised that N, as welfare guardian, wished to instruct an independent psychiatric report on the necessity of the CTO and on whether any recorded matter might be appropriate. N's solicitor indicated that N wished access to the paperwork before the Tribunal to provide to the independent psychiatrist. N's solicitor requested that the Tribunal direct that N be treated as a party to the proceedings. Rule 48(5) of the Tribunal's Rules provides that "the Tribunal ... if satisfied that the person has an interest in the case, and that it is reasonable to do so, may grant the request and direct that the person shall be treated as a party...". The focus of N's solicitor's submission was directed to how N was being treated as a consequence of the legislative changes in respect of default named persons.

The Tribunal panel considered the incidental application. It noted the legislative changes made to the named person regime under the 2003 Act; considered that the incidental application sought to circumvent the legislative changes made to the named person regime; disagreed with N that in failing to provide that a person in the position of N should be named person under the 2003 Act that the Scottish Government had made an error; noted that the policy intention had been that a service user should have a named person only if the service user wished to have a named person; noted that the order appointing N as welfare guardian to P did not include any powers entitling the guardian to enter or participate in legal proceedings or to receive medical records; and refused the incidental application.

The case called again before the Tribunal on 31 January 2018 when a different Tribunal panel made a fresh *interim* CTO, which would expire at the end of 28 February 2018.

N sought judicial review of the Tribunal's decision to refuse her incidental application. The petition was served on the Tribunal on 21 February 2018. The Tribunal lodged answers on 23 February 2018 and the substantive hearing took place at the Court of Session on 27 February 2018.

The reason for the expedited hearing of the judicial review was that the second 28 day *interim* CTO was due to expire at the end of 28 February 2018 and so the CTO application required to be determined no later than 28 February 2018. Accordingly, once the application for the CTO had been determined, there would be no proceedings before the Tribunal and so the issue as to whether or not N should have been treated as a party would become academic rather than a practical live issue.

N's petition sought reduction of the Tribunal's decision of 29 January 2018 refusing her incidental application and an order ordaining the Tribunal to make an order in terms of rule 48 of the Tribunal's Rules treating the petitioner as a party. The petition also sought five declarators that the Tribunal's Rules and the 2003 Act breached the rights of N and P in terms of Articles 5, 6, 8 and 14 of the European Convention on Human Rights, and that the 2003 Act (as amended by the 2015 Act) is *ultra vires* (i.e. beyond the power of the Scottish Parliament to make) in so far as it does not deem that individuals in the position of N are to be named person.

The Lord Ordinary allowed argument at the hearing on 27 February to proceed in respect of only the first two orders sought (i.e. reduction of the Tribunal panel's decision of 29 January 2018 and an order ordaining the Tribunal to treat N as a party to the proceedings before it concerning P). That decision was made on the basis that the rights of N and P were adequately protected by the right for a person in the position of N to apply to the Tribunal under rule 48 of the Tribunal's Rules for a decision of the Tribunal to direct that the person be treated as a party. In short, the issue was restricted to whether the decision of the Tribunal panel in this specific case was correct, and did not go wider as to whether the 2003 Act or the Tribunal's Rules were deficient and so unlawful.

The Lord Ordinary was of the view that there was no clear problem with regard to the policy or its implementation in respect of repealing section 251 of the 2003 Act and so bringing an end to the existence of default named persons. The Lord Ordinary was clear that section 251 had provided a mechanism by which a certain category of people automatically became parties to proceedings before the Tribunal and that rule 48 of the Tribunal's Rules provides a discretionary power for the Tribunal to direct that a person be treated as a party to proceedings. Accordingly, the issue was whether that rule had been properly applied in the circumstances of this case.

While the Lord Ordinary accepted that both N and her solicitor had raised before the Tribunal panel on 29 January 2018 the change in the petitioner's treatment by the Tribunal arising from the legislative changes to the named person regime, his view was that the Tribunal panel attached undue weight to the legislative change to the named person regime and, in doing so, lost sight of the rule 48 test. The rule 48 test requires assessment of whether the person requesting leave to enter the proceedings before the Tribunal "has an interest in the case" and, if so, whether "it is reasonable" to grant the request for that person to enter the proceedings before the Tribunal. For that reason, the Lord Ordinary reduced the Tribunal's decision of 29 January 2018. The Lord Ordinary declined to order that the Tribunal exercise its judicial discretion under rule 48 to treat N as a party and, instead, remitted the incidental application to the Tribunal for consideration anew by a differently constituted Tribunal panel. The Lord Ordinary declined to issue a written judgment.

The incidental application was considered by a fresh Tribunal panel on the morning of 28 February 2018. That Tribunal panel directed that N be treated as a party to the proceedings. The case papers were couriered to N and the application for the CTO was finally determined at a hearing in the afternoon of 28 February 2018.

The Tribunal welcomed the judicial review, as it allowed the opportunity for the Court of Session to provide guidance. The guidance which has been given is that in considering an application under rule 48 for a person to be treated as a party to proceedings before the Tribunal, the Tribunal should not get bogged down in how a person's position has been changed by legislative changes to the named person regime but should focus on the test set out in rule 48(5), namely whether it is satisfied "...that the person has an interest in the case" and, if so, whether "... it is reasonable to ... grant the request and direct that the person shall be treated as a party".

While that guidance is welcome and it seems clear that a person such as N has an interest in the proceedings before the Tribunal and it is reasonable for that person to be treated as a party, difficulties remain to be grappled with by Tribunal panels in the future.

Tribunal members will recall that the report by the review group chaired by Professor Jim McManus on the Limited Review of the Mental Health (Care and Treatment) (Scotland) Act 2003 as presented to Scottish Ministers in March 2009 identified a number of problems with the named person regime, one of which was:

Named persons are full parties to the tribunal hearing and receive the full application relating to the patient, and it can be difficult for the patient to ask for some material to be withheld. The paperwork could contain sensitive information about the patient's history and background, including, in some cases, details of sexual history or criminal offences.

The tribunal rules of procedure do allow the tribunal to direct that information is withheld in certain circumstances. Rule 46 allows anyone with an interest to request that information is withheld. Sometimes a mental health officer may ask for information to be withheld if the service user has requested this. Rule 47 also allows the tribunal to withhold information from the parties if passing it on would cause serious harm to the service user or any other person.

However, despite this, we heard of occasions where the sharing of sensitive information had caused significant distress, both to service users and to named persons. It was suggested that this could be a breach of service users' right to privacy under Article 8 of the European Convention of Human Rights, particularly where the service user had not consented to the sharing of information because the law had automatically imposed the named person on him or her.

It may be that in future Tribunal panels will require to consider carefully not only whether a person "has an interest in the case" and whether "it is reasonable" to grant a request by that person to be treated as a party, all in terms of rule 48, but whether there is information in the papers before the Tribunal which the patient has not disclosed to the person seeking to become a party and which the Tribunal should take steps to prevent disclosing to that person in the event of that person being treated as a party.

Russell Hunter
Legal Secretary to the Tribunal

The General Data Protection Regulation

As many of you may already be aware we are about to see a fairly significant overhaul of the data protection laws across Europe with the General Data Protection Regulation (“the GDPR”) coming into force on 25 May 2018. It is anticipated that if an organisation is already compliant with current data protection legislation, then it should not be too big a jump to comply with the new legislation.

One of the ‘headline’ changes introduced by the GDPR, which has been widely reported, is the increase in the maximum financial penalty for breaches of data protection law (Article 83). The financial penalty will increase from a maximum of £500,000 under the Data Protection Act 1998 to a maximum of €20 million or 4% of an organisation’s global turnover, whichever is higher. This significant increase serves to highlight the importance of compliance with data protection legislation.

Reporting of personal data breaches will also be changing. Breaches will still be reported to the Information Commissioner’s Office (the ICO) but, after 25 May 2018, must be reported within 72 hours of discovery. GDPR will introduce an obligation to notify the ICO of certain data breaches. The GDPR states that a breach must be reported ‘...unless the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons’ (Article 33). Whether a breach falls under this exception will be judged on a case-by-case basis taking into account the circumstances of the breach.

Articles 13 and 14 list information which must now be provided to a data subject when processing his or her data. This is commonly known as a privacy notice. Matters which must be covered in the privacy notice include: the identity and contact details of the data controller, the purposes of the processing for which the personal data are intended and the existence of certain rights which the data subject has. There are up to 13 separate points which may need to be covered in the privacy notice. Article 12(1), however, states that the privacy notice must be concise in nature. This may prove a challenge if all the points set out in Articles 13 and 14 are expected to be covered.

The impending introduction of the GDPR serves as a stark reminder of the importance of protecting the data which we work with on a daily basis.

The Guide to the GDPR can be downloaded from the website of the Information Commissioner’s Office².

Scott Blythe
Tribunal Liaison Officer

² Guide to the GDPR: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr>

Reflections on Induction Training

As a lay member, a lawyer and a psychiatrist, we came to this three-day training session with our own anxieties, but with a lot in common, too. Although each of us has a wealth of working experience, we were all conscious of the gaps in our knowledge and hoping that these would be addressed. We knew that we had a lot to learn, and it felt like the first day at school – although many years later on. What type of people would we be with, what would the trainers be like – and had we made the right decision?

Day one started with an enthusiastic welcome from Dr Morrow, followed by sessions on the law. Our legal member found it fantastic to read legislation (the 2003 Act) which begins with a statement of principles. This holistic and aspirational approach to mental health has been embraced by MHTS, and the commitment of everyone involved was evident.

Role play and a worked example of a series of real tribunal hearings took up parts of days one and two. We all found the opportunity to work through case studies with our fellow 'newbie' Tribunal members to be particularly helpful and insightful. The training was very helpful in getting the psychiatrists in the room to focus on the conditions for detention under the Act, rather than on the details of diagnosis and management, which come more easily to them.

The third day, with lots of practical advice and reassurance on availability and expenses, was good. Everyone we met from the MHTS team was very approachable and helpful: we were reassured that there was excellent support available to us when it came time to be released into the big wide world of mental health tribunals.

The session on "What I wish I had known before I started", presented by three current members of MHTS, was reassuring – particularly when they all correctly identified our mounting anxiety about our own first Tribunals, and assured us that they had felt the same way. The training closed with a session by Jo McFarlane, which fitted perfectly with the patient-focused approach of all of the training, and we left with some further encouragement from Dr Morrow.

One of the genuine highlights of the training was meeting the other attendees. They were an interesting and engaging group, and over the three days conversations covered mental health, the NHS, crime, politics (especially Brexit), music, food, and football. Is it true that the most vocal and opinionated group in a room will always be the lawyers? The psychiatrists and the lay members gave them a run for their money.

In summary, the training was excellent, and we thoroughly enjoyed it. It was organised, well thought out and ably presented, conveying the clear ethos of MHTS. We left the event enthusiastic about what is to come next, and with our trepidation (at least partly) alleviated.

In line with the process for writing up decisions of MHTS hearings, this report has been compiled by Ian Bryce (legal member), Peter Bennie (medical member) and Elizabeth Gallagher (lay member).

Learning Disability Workshop

Feedback Report for Mental Health Tribunal for Scotland

This is an article provided by the SCLD and The Advocacy Project after delivering the Learning Disability workshop at last year's member training. It reflects their views on the training and the feedback they received during and after the workshops.

Introduction

The Scottish Commission for Learning Disability (SCLD) and The Advocacy Project (TAP) worked together to develop a two hour workshop, delivering five sessions in different locations across the country to members of the Mental Health Tribunal for Scotland.

The aim of the training was to “Look at ways to improve the experience for people with learning disabilities who are involved with the Mental Health Tribunal for Scotland (MHTS)”

Discussion Points

There was a lot of debate and discussion at most of the sessions about the definition of learning disability used by the Scottish Government in the learning disability strategy for Scotland ‘The Keys to Life’. Some tribunal members found the definition proved to be unclear. Some preferred a more clinical definition and suggested IQ as a more accurate measure. Both SCLD and The Advocacy Project prefer the social model of disability which is in line with the learning disability strategy. Anyone who would like know more about the social model of disability can find information here:

<https://www.scope.org.uk/about-us/our-brand/social-model-of-disability>

A lot of the discussion during the workshops focussed on use of language, both in documentation and during the tribunal itself. Some participants found it more difficult than others to modify their language to make it easier to understand. Some delegates had concerns that some words are used as part of a legal process and therefore cannot be changed. One example is the word ‘tribunal’ which, it was felt by some members, could not be changed to the word ‘meeting’ which would be more easily understood by someone with learning disability who has no prior experience of the system. Where legal terms or technical words have to be used, e.g. as a legal requirement, an explanation of the terms could be provided alongside its use either written in an accessible format or verbally. It was suggested that there could be pre prepared documents detailing the meaning of complicated terms to aid this. Another alternative could be to make use of the person's supporters if they have any. Not everyone will have requested or been referred for the support of an independent advocate with training and experience in the mental health tribunal system. So if the supporter is not an advocate, it is worth bearing in mind that the supporter may not have knowledge of the mental health tribunal system and some of the terms may be unfamiliar to them too.

Some work could be done prior to the tribunal to learn about a person's communication needs and to ensure they are prepared for the tribunal. Tribunal members identified that in order for them to be prepared properly some work would need to be done prior to the person attending the tribunal. Information would need to be provided by other professionals before arrangements for the tribunal are made. If a person uses communication tools these could be included in the tribunal, this may require having the person accompanied by someone who can support the use of the tools during the tribunal. A lot of the amendments suggested require additional time.

Comments delegates wrote:

- "From an administration point of view, more could be done in relation to the documentation we send out to patients with LD. This could depend on receiving information from MHO/RMO/Advocacy etc. beforehand"
- "Influence the writing up of decisions in a more easy to read accessible way"
- "More consideration of language & communication"
- "Pay more attention to patient's understanding"
- "Think ahead and keep it simple"

Further Learning Points

Participants were asked to complete short pre and post workshop evaluation for each session. These indicated that overall participants' knowledge of learning disability and communication support had increased as a result of taking part in the workshop. People were asked to provide specific comments about how they will use the learning and any additional training needs they had identified as a result of taking part in the session.

Some people identified that they would like further training on communication tools and accessible communication. Relevant training courses are provided by many organisations. More information on some of the tools and training discussed during the workshops can be found here:

<http://www.healthelanarkshire.co.uk/>

<https://nhsforthvalley.com/publications/patient-information-leaflets/learning-disability/>

<http://www.talkingmats.com/training/>

<http://www.saifscotland.org.uk/training/#sthash.CR2V62AK.dpbs>

Further Information and Feedback

Advocacy workers at The Advocacy Project were asked to complete a survey about their experiences of supporting people with learning disabilities to attend Mental Health Tribunals. Many advocates reported that in their experience many clients with learning disability chose not to attend their mental health tribunal.

Advocates who responded reported that on the whole when their clients did attend their tribunal the panel were respectful, tried when possible to conduct the proceedings in an informal manner and present as friendly and open. Some examples of good practice highlighted including additional breaks in the proceedings and time out if needed and also allowing the advocate to explain anything the person did not understand. Some reported a use of simple, direct language used in an inclusive manner and addressing the person directly.

Other practice observed by advocates included: not allowing extra time, no comfort breaks or timeout, not checking the persons understanding during the proceedings and the use of jargon and very complex language. Sometimes the person was not being included meaningfully and the members spoke to the supporter rather than the person directly. None of the advocates who responded had ever seen the use of communication tools during a tribunal but would welcome this to aid the persons understanding.

Some suggestions for possible improvements were:

- Simplifying language where possible and no jargon
- Easy read information explaining the format of hearing etc.
- Easy to read letters and reports
- Ensuring the person understands the tribunal decision at the end of proceedings
- Less formal seating arrangements
- More time, comfort breaks and time out
- Use of communication support tools within the tribunal setting

The SCLD and The Advocacy Project would like to thank the members who took part in the sessions, we gained insight and learning from the discussions from your perspective. Thank you for contributing and sharing during the workshops.

Useful Information

Legal Update

❖ The 2003 Act and amendments

Members can access the *Mental Health (Care and Treatment) (Scotland) Act 2003* and links to amending legislation (including the *Mental Health (Scotland) Act 2015*) on the Tribunal's website under "**Legislation and Caselaw**".

❖ The Mental Health (Scotland) Act 2015

See the revised version of this article by Russell Hunter, Legal Secretary to the Tribunal, on key provisions of the 2015 Act at page 14 of the **August 2017 Newsletter** and on the Tribunal's website under "**Legislation and Caselaw**".

❖ Statutory Instruments

Over 90 statutory instruments have been made since the 2003 Act was passed. A comprehensive list of all statutory instruments affecting our jurisdiction can be found on the Tribunal's website under "**Legislation and Caselaw**"– listed chronologically, alphabetically and by subject matter. This is a valuable resource and members are encouraged to utilise it.

Members may wish to note that Tribunal clerks have been issued with electronic copies of all statutory instruments, for ease of access by members to this secondary legislation at venues which have no internet connection.

❖ Recent case law

To note the recent judgment of Sheriff Principal Lewis dated 31 August 2017 in the case of *R v Mental Health Tribunal for Scotland* (unreported) which can be found on the "**Legislation and Caselaw**" page of the Tribunal's website. This decision highlights the importance of the Tribunal stating in its written decision why it has preferred the evidence of a witness (or witnesses) over the evidence of another witness (or other witnesses).

Recent mental health legislation

A hyperlinked list of the recent secondary legislation can be accessed on the Tribunal's website and includes links to useful information and to guidance issued by the Scottish Government in relation to the new legislation and the implementation of the Mental Health (Scotland) Act 2015:

https://www.mhtscotland.gov.uk/mhts/Legislation_and_Caselaw

or directly at

https://www.mhtscotland.gov.uk/mhts/files/Recent_Mental_Health_Legislation_30June2017

New President's Practice Guidance

This was emailed to members on 7 March 2018.

GUIDANCE to TRIBUNAL MEMBERS NO. 1/2018 RESERVING INTIMATION OF THE DECISION OF THE TRIBUNAL

Purpose of this Guidance

1. The purpose of this guidance is to remind members that a decision of the Tribunal may be reserved at the end of a hearing and to detail the process which should be followed when intimation of a Tribunal's decision is reserved.

Reserving intimation of a decision

2. Rule 72(1) of the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005 provides:

“A decision of the Tribunal may be given at the end of the hearing or reserved.”

3. There may be circumstances where the Tribunal reaches a decision but considers it appropriate to reserve intimation of it. For example, where a patient has been brought from a hospital to a community venue and the Tribunal is concerned that the mental state of the patient may deteriorate on hearing the Tribunal's decision or where the Tribunal considers that there may be a risk to a person's safety or welfare as a result of the Tribunal intimating its decision.
4. Where a Tribunal reserves intimating its decision, it should state to the parties at the conclusion of the hearing that it has reserved its decision, that notice of the Tribunal's decision will be sent to the appropriate Medical Records department later the same day and that notice of the Tribunal's decision and the document containing the Tribunal's findings-in-fact and reasons will be sent to the parties by first-class post as soon as possible.
5. Clerks have been instructed that, when intimation of a Tribunal's decision is reserved, notice of the Tribunal's decision must be provided to the appropriate Medical Records department on the same day. Notice of the Tribunal's decision and the document containing the Tribunal's findings-in-fact and reasons will be sent by first-class post to the parties in accordance with the Tribunal's usual procedure.

Dr J J Morrow CBE QC
President

All practice directions and guidance which have been issued by the President to Tribunal members and to the Administration are available in the Judicial Members' area of the Tribunal's website at:

https://www.mhtscotland.gov.uk/mhts/Members_Area/President_s_Guidance_and_Directions

Recent informative publications (links to these articles are available on the MHTS website)

- ❖ Scottish Government: Tribunals (Scotland) Act 2014 – Consultation on Draft Regulations:
https://consult.gov.scot/tribunals-and-administrative-justice/mental-health-tribunal/user_uploads/sct0118740306-1_tribunal_p6-1.pdf
- ❖ Adults with Incapacity (Scotland) Act 2000 Proposals for Reform:
https://consult.gov.scot/health-and-social-care/adults-with-incapacity-reform/user_uploads/153750_sct1217567598-1_awi-reform-consultation_p6.pdf

Mental Welfare Commission Publications

- ❖ Good Practice Guide, Consent to Treatment: A guide for mental health practitioners, Reviewed January 2017
https://www.mwcscot.org.uk/media/392186/consent_to_treatment_2018.pdf
- ❖ Visit and Monitoring Report, The Right to Advocacy, March 2018
https://www.mwcscot.org.uk/media/395529/the_right_to_advocacy_march_2018.pdf
- ❖ Advice Note, Can a Power of Attorney authorise significant restrictions of liberty? March 2018
https://www.mwcscot.org.uk/media/395908/poa_restrictions_liberty.pdf



Bits and Bobs

Uploading Decisions via Tribunal's Website

In the event that members take a decision away from a hearing to complete, instructions on how to upload and send documents to other members of the Tribunal and to the Administration are given in:

https://www.mhtscotland.gov.uk/mhts/files/members_area_files/Sending_Paperwork_via_Website_to_MHTS_Administration.pdf

and

https://www.mhtscotland.gov.uk/mhts/files/members_area_files/Sending_Paperwork_via_Website_to_Tribunal_Members.pdf .

These documents are available on the Tribunal's website on the main page of the Judicial Members' Area, and can be accessed using the following link:

https://www.mhtscotland.gov.uk/mhts/Members_Area/Judicial_Members_Area

Useful Contacts

Scheduling Team

(including re-setting Webroster and Website passwords)

schedulingmhts@scotcourtribunals.gov.uk

❖ Telephone: 01698 390073

e-Expenses Helpdesk

webrosterexpenses@scotcourtribunals.gov.uk

❖ Telephone: 01698 390090

Finance Team

opsfinancetribunals@scotcourtribunals.gov.uk

❖ Telephone: 01698 390032

President's Office

mhtspresidentsoffice@scotcourtribunals.gov.uk

Fiona Queen, PA to President and Member Liaison Officer

❖ Telephone: 01698 390033

Yvonne Bastian, President's Office Secretary

❖ Telephone: 01698 390001