

# Mental Health Tribunal for Scotland Members' Newsletter



## APRIL 2019

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Dr James A T Dyer, OBE, FRCPsych, FRSA

Directions

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## Message from Dr Joe Morrow CBE QC

Dear Members

I hope that this Newsletter finds you well. Thank you for the contribution you make to the life of the Tribunal. Our workload continues to increase, and the issues around scheduling and the provision of a seamless service are becoming more complex in consequence. There is a lot of activity for us to respond to at this time, including a number of legislative reviews. This is all welcome, as it helps to ensure that we are in a position to provide the best possible service to all those who require compulsory treatment. Your contribution and the experience you bring are key to the successful operation of the Tribunal.

Many of us have been part of the Tribunal since its inception in 2005 and are used to certain ways of working. This will not always be the best way, as the law and practice need to move forward. For a considerable period I have been of the view that a radical review of all mental health legislation in Scotland is needed, to provide us with a comprehensive model which is up to date and responsive to human rights for persons in Scotland with a mental disorder.

Let me address a number of issues which will affect you in the forthcoming months, in the hope that the information can help you in your work for the Tribunal.

On 20 November 2019, the 4 to 5 yearly All Members' Conference will take place. You will, I am sure, have reserved this date in your diary, as it is one of the most significant events in our cycle of Tribunal member training. Members often discuss with me how they never get to meet members of their own category – for example legal/medical/general members are keen to come together with other legal/medical/general members. This Conference allows for networking across the entire Tribunal membership of around 350 members. I would ask you to please sign up for the Conference at the earliest possible date after the invite has been sent to you, so that we can do the necessary planning. Fiona Queen, Members' Liaison Officer, does a first-class job trying to coordinate all the members and their needs. It would be of assistance to Fiona and the others involved if you could sign up promptly.

The Conference itself has been structured with three keynote speakers in the morning: the Cabinet Secretary for Justice, the Lord President of the Court of Session and Jonny Benjamin MBE, a mental health services user who published a book called "On the bridge". Jonny will speak about his experiences of mental illness and what he found helpful in terms of the support provided by mental health services and others.

In the afternoon, there will be a feedback session from the Edinburgh Napier University project on user involvement. The literature review is now complete and will be published shortly. The project is in the process of setting up focus groups and interview groups with users and other stakeholders of the Tribunal to gather their views of participating in the Tribunal process. Understanding what Tribunal users think of the Mental Health Tribunal is of critical importance to our work. This session will be of significance to all members. Findings, when available, will allow us to reassess practice and re-shape our work going forward.

Finally there will be a series of 6 to 8 workshops which will deal with a variety of subjects, from the legal ethics of detention to modern care in dementia. Not everyone will be able to go to every session, therefore if you have a preference for a particular session, please ensure you sign up for it as early as possible.

Members will wish to note that our Appraisal Scheme has been refreshed and is now known as the "Member Review Scheme." This brings it into alignment with all other chambers of the First-tier Tribunal for Scotland of which we will eventually become part. The new scheme was officially launched on 1 April 2019 and the Tribunal has recruited and trained five new reviewers to assist in this process. The review scheme has added much to improve the process, which was in need of refreshment, without making radical changes to the nature and purpose of the reviews. I would ask you to participate fully in the scheme, as it is an essential tool not only for identifying training needs, but also for the purpose of recommendations for member reappointments.

It is very rarely that there is a need for me to mention hearings for CORO patients, and I would simply wish to report that we have recently trained a further 14 medical members who are now ready to sit on CORO hearings. The need for this came about through the resignation, due to retirement and other reasons, of a number of medical members. Those of us who sit on CORO hearings may therefore see a few new faces around the Tribunal table.

On 6 March 2019, the Tribunal had a visit from the Minister for Community Safety, Ash Denham MSP, who showed great insight into the work which we do and the culture within which the Tribunal operates. We appreciated the Minister's support and that she was able to clear space in her very busy diary to visit the Tribunal and find out more about us.

Turning now to the matter of tribunal reform, I have very little to report at this time, as I have no firm date for the Tribunal's transfer-in to the First-tier Tribunal for Scotland. I am afraid we can only 'watch this space'. As soon as I have some concrete information that can be shared, I will let you know.

I would draw your attention to the article at page [15](#) of this Newsletter on the new Review Scheme, and also to the Data Awareness Refresher at page [17](#), which I would commend to you. Whilst we all may feel that we are saturated with this subject, this Refresher concerns an area of our practice in which we must be constantly vigilant.

One growing problem amongst the membership is the response to the requests for availability every two months by the Scheduling Team. The Scheduling Team have a heavy workload and the complex task of allocating members to enable a reasonably trouble free scheduling of all the hearings throughout our venues in Scotland. I would ask those members who do not respond either to advise Scheduling that they do not intend to respond to the requests for availability and do not wish to be allocated; or to make the necessary and timely response to the requests by the Scheduling Team. I should make it clear that those members who do not respond will not be allocated hearings during the period for which they have failed to respond and provided no availability. It would be unfair to the Scheduling Team and to the scheduling system to allocate hearings to these members and would cause a considerable amount of extra work for the Team. If you feel that you fall into this category, the solution lies in your own hands.

I would also draw your attention to the case of *MH*, which was an appeal to the Inner House of the Court of Session. The judgment has been published in relation to a motion for anonymity (see the link at page [21](#) of this Newsletter). I would commend this judgment to you for consideration, as it sets down some parameters in relation to anonymity orders in appeals from decisions of the Tribunal.

Let me thank you again for your hard work and contribution to the Tribunal. Our training activities are now complete for the year. I shall however look forward to seeing you on 20 November 2019 at the Conference or during my visits to tribunals in the forthcoming months.

With best wishes,

**Dr Joe Morrow CBE QC**  
**President**

# News

## **Dr James A T Dyer, OBE, FRCPsych, FRSA (Jim Dyer)**

**(Consultant Psychiatrist and former Director  
of the Mental Welfare Commission for Scotland)**



Dr Jim Dyer was born in Arbroath on 31 December 1946 and died in Edinburgh on 24 January 2019 aged 72 years.

Jim Dyer was one of the most influential psychiatrists of his generation and led the Mental Welfare Commission for Scotland for many years, keeping the focus of the Commission always on the care of those with mental disorder who had been detained. He was a quiet, gentle and firm man who never lost sight of what was important in the care of patients. He brought a sense of gravitas as well as professional insight to the work he carried out and raised an awareness of mental health issues in Scotland. He had a focussed interest in mental health law and significantly influenced the formation and practice of mental health law in Scotland.

Dr James A T Dyer, OBE (for services to mental health in Scotland), Fellow of the Royal College of Psychiatrists, Fellow of the Royal Society of Arts, shaped the practice of most of Scotland's mental health law in force. Born in Arbroath, a son of the manse, with his sister Christine, he would comment on the dutiful way his mother faithfully fulfilled the role of a Minister's wife while at the same time caring for her family. His father was a traditional Minister of the Church of Scotland and would observe the Sabbath as part of his Christian life. He would, for example, refrain from watching television on a Sunday, regarding which Jim Dyer would comment, with a glint in his eye: "Well, that lasted until they began broadcasting "Dr Finlay's Casebook"."

Jim Dyer was educated at Bo'ness Academy, and spent his last two years of high school at Robert Gordon's College, Aberdeen. He went on to read Medicine at Aberdeen University, graduating in 1970. He was made a Member of the Royal College of Psychiatrists in 1975 and a Fellow in 1992.

He was keenly interested in community and rehabilitative psychiatry and the legislative framework created to protect the rights of patients who were detained. He worked as a Registrar in Psychiatry at the Royal Edinburgh Hospital (1972 to 1977), then served for a time as Scientific Officer with the Medical Research Council, studying parasuicide and suicide. Upon his return to the Royal Edinburgh Hospital, he took up post as a Consultant in General and Rehabilitation Psychiatry, and at the same time was an Honorary Senior Lecturer in psychiatry at the University of Edinburgh (1981 to 1991).

In his research he produced papers, articles and chapters for books on the subjects of suicide and parasuicide, schizophrenia, psychiatric services and mental health legislative issues. He worked to shape mental health law and the nature of the provision of mental health care and treatment in Scotland and was a Member of the Millan Committee, whose report led to the enactment of the Mental Health (Care and Treatment) (Scotland) Act 2003, which is still in force today.

He was Director of the Mental Welfare Commission for Scotland from 1993 to 2003, having joined in 1991 as HM Medical Commissioner, and he increased the reputation of that national body, fiercely preserving its independence from Government and policy makers.

From 2005 to 2016, he continued to make his mark and his influence was visible as a medical member of the new judicial body created under the 2003 Act, namely the Mental Health Tribunal for Scotland. He was a valued member of the Tribunal and sat on numerous hearings involving the detention of persons with mental disorder.

He was also the first Scottish Parliamentary Standards Commissioner – a newly created part-time post which he held from 2003 to 2009. His time as Commissioner was marked by his independence and the further investigation of complaints which were raised with him against MSPs.

He had a keen engagement with and interest in a number of the major issues that are currently under debate – he was a Founder Member of the Medical Campaign against Nuclear Weapons; a Member of Dignity in Dying UK; a Member of Doctors for Assisted Suicide, Scotland; and a Member of the Scottish Parliament Cross-Party Group on End of Life Choices.

His personal interests ranged from current affairs to reading, photography, opera, and to cultural and other trips to various parts of Europe. Above all, he enjoyed the company of like-minded people who wished to wrestle with the intellectual and ethical challenges of a modern Scotland.

He married Lorna Townson in 1969, that marriage being dissolved in 1994, and they had two sons, Paul and Euan, and a daughter, Rowan. In 1994, he married again, to Suzanne Whitaker, whereby he gained a stepson, Christopher, and two stepdaughters, Sophie and Emily. He had one granddaughter, Elka, who was born in 2010.

Dr Jim Dyer died, after a lengthy time, of the effects of prostate cancer and, wholly in character, he had prepared for that death.

**Dr Joe Morrow CBE QC**  
**President of the Mental Health Tribunal for Scotland**

## **Louise Brown, Former Legal Member**

It is with sadness that we inform that Louise Brown, a legal member of the tribunal since its inception and until her retirement in January 2018, has passed away.

Our thoughts and condolences are with her family.

## **Scottish Government Review of Mental Health Legislation**

The Scottish Government has announced that support for people with mental health conditions is to be strengthened through an independent review of the Mental Health Act.

The review aims to improve the rights and protections of those living with mental illness and remove barriers to those caring for their health and welfare.

The review will examine developments in mental health law and practice on compulsory detention and on care and treatment since the current legislation came into force in 2005.

A review group will also make recommendations that reflect people's social, economic and cultural rights and will consider the future shape of incapacity, mental health and adult support and protection legislation.

This follows on from work already underway to review incapacity law and practice, and a review of learning disability and autism.

Announcing the review during a Parliamentary statement, Minister for Mental Health Clare Haughey said:

“The Scottish Government is absolutely committed to bringing change to people's lives and ensuring that mental health is given parity with physical health.

This review of the Mental Health Act will take this a step further, reaffirming our commitment to creating a modern, inclusive Scotland which protects and respects human rights.

The time is right to examine these issues so that our laws fully reflect our ambitions and the needs of those our laws are intended to support.

As part of the review we want to gather views from as wide a range of people as possible and I am determined to ensure that the views of service users, those with lived experience and those that care for them are front and centre so they can help shape the future direction of our legislation.”



**\*\*SAVE THE DATE\*\***

## **MHTS Members' Conference**

is being held on

**Wednesday 20 November 2019**

in

## **The Doubletree by Hilton Hotel Glasgow Central**

Fiona Queen will be contacting members in May inviting them to register to attend this year's **mandatory training event** which will be in the form of an All Members' Conference.

Keynote speakers include The Rt. Hon Lord Carloway Lord President and Humza Yousaf MSP, Cabinet Secretary for Justice.

The programme of the day's event will be published in due course.

## Ministerial Visit to MHTS



Visit to MHTS on 6 March 2019  
by Ash Denham MSP Minister for Community Safety



## MHTS Reference Groups

The MHTS Service Users' and Carers' Group, the Professional Reference Group and the Advocacy Reference Group meet at locations across the country throughout the year to share information and good practice. Similarly, the MHTS RMO/MHO Forum meets twice a year in Hamilton.

Dates of forthcoming meetings\*:

- Professional Reference Group            9 May 2019 in Inverness
- Service Users' and Carers' Group       9 May 2019 in Inverness
- RMO/MHO Forum                            17 June 2019 in Hamilton
- Advocacy Reference Group                24 October 2019 in Edinburgh

\*Further details and Notes from previous meetings of the groups are available on the MHTS website at:

[https://www.mhtscotland.gov.uk/mhts/Reference\\_Groups\\_and\\_Forums/Reference\\_Groups\\_and\\_Forums](https://www.mhtscotland.gov.uk/mhts/Reference_Groups_and_Forums/Reference_Groups_and_Forums)

# Tribunal Venue Update

## Riverview Resource Centre

The Tribunal suite at Dumbarton Joint Hospital has moved from the Riverview Resource Centre to the Bruce Centre, which is located within the grounds of Dumbarton Joint Hospital.

The Bruce Centre is the building to the right of the Riverview Resource Centre.

There is ample parking available directly outside the venue.



## Scheduling Team

Members are requested to ensure that any email correspondence is sent to the Scheduling Team Mailbox: [Schedulingmhts@scotcourtribunals.gov.uk](mailto:Schedulingmhts@scotcourtribunals.gov.uk) and not to the personal email addresses of members of the Scheduling Team.



## Webroster

It would be appreciated if members could ensure that Webroster is kept up to date with availability and any changes in conflicts of interest on a regular basis.

Please ensure when adding your availability onto Webroster that you enter the 'Shift' as **Day**. If this is not selected, your availability will appear as a 'Minute' and the schedulers will be unable to allocate you dates.

As a reminder:

- Select on Webroster the **Week** you are available
- Select **New**
- At **Shift**, select the down arrow and select **Day**
- Tick the **days of the week** which apply

**If your availability changes at any time, please add or remove your days from Webroster as soon as possible (please note this includes unavailability on Tribunal member training days).**

# Articles

## Directions

As I've settled into my new post, I've been able to meet and talk with members, RMOs, MHOs and some service user and carer groups. A few training needs and suggestions have been fed back to me during my first months in the President's office. As we have our Conference in November 2019, there will be no formal training events running through the year. So, I will take up the suggestions from members via a short article in each newsletter this year, covering a different area of work. I hope that it will be of assistance.

In this edition of the newsletter, I would like to offer some (hopefully constructive) thoughts on the matter of Directions, to ensure that we protect the Tribunal's reputation and operational effectiveness.

### What are Directions?

The Tribunal is empowered by Rule 49(1) of the Mental Health Tribunal for Scotland (Practice and Procedure) (No.2) Rules 2005 to "...give such directions as the Tribunal considers necessary or desirable to further the overriding objective in the conduct of a case."

On the face of it, that's quite a wide power. It needs to be exercised with caution, however. Directions that can't be followed, enforced, understood or reported on won't be effective, and may damage the reputation of the Tribunal as a judicial body.

Rule 49 (1)(a) to (g) sets out examples of the type of thing that may be the subject of a direction. The examples do not provide an exhaustive list, but if you are thinking of giving a direction and it does not seem to be at least aligned with the particular matters specified in that rule, then please do take this as a cue to consider whether a direction is appropriate.

### What is the effect of a direction?

A direction should be made when there is no other way of securing compliance. This is partly because the only available sanction for failure to comply with a direction is that given in rule 51: the relevant person may be excluded from taking any further part in the proceedings. Tread carefully, because in some cases that may be more of a reward than a threat. Please do consider very carefully whether a direction, which ostensibly compels people to comply, is necessary, given the very limited recourse you will have if compliance is not forthcoming.

### Best Practice

The main things to consider when making a direction are the following:

- **What** – what is the thing that is to be done?
- **Who** – who is being directed to do this thing?
- **When** – when must that thing be done by?

Beyond that, think about some of the practicalities. First, consider whether it can realistically be achieved? That is not to say that you shouldn't make challenging directions; that may be entirely appropriate. There's no real purpose to making a direction that serves only to make a point, though. There are other ways of doing that.

Directions, although perhaps difficult to achieve, should be capable of being complied with. Consider next how it will be reported on or how the casework team will know it has been complied with. This should involve some thought as to the timescales likely to be involved. Think about how the people who could (in practical terms) comply with the direction are likely to know of it being made (assuming, of course, that they aren't present at the hearing). Specify clearly who is being directed and include a title and address if it is someone other than a party so that the caseworker can send the direction to that person.

Finally, think about what you will do if the direction is simply not complied with. Understandably, this will depend on the reasons given for non-compliance, but before directing that something be done, take a moment to consider how you will deal with the consequences of it not being done.

Also, it's a good idea to limit the amount of text in a direction. It should be a relatively short, sharp instruction to a defined person or body, with a timescale. If you find that you have to narrate a series of complex events or permutations, please consider whether it is properly the subject of a direction. If it is inevitable that you are going to have to write a few paragraphs, find a way of making the **What, Who and When** parts stand out unmistakably. People unfortunately tend not to read things very carefully.

### **What to avoid**

There are a few words and phrases which appear quite often in directions and which, in my view, would be best avoided. Here is a short list of some of the ones that I would hope not to see again...

- "It would assist the tribunal..." – I'm sure it would, but it is a patient-centred process. Also, is the tribunal directing that something be done or just commenting that it would be helpful?
- "We request the attendance of person x ..." – This is a direction, not a request. "Require" might be a better word than "request". In this situation, perhaps a citation will be appropriate. There are specific sanctions in respect of failure to comply with a citation.
- "Person x is to endeavour to..." – How will you know if she did or did not comply with that direction? If you think at the point when you're making the direction that compliance may be impossible, then consider whether or not it is appropriate to make a direction at all.
- "Every effort is to be made to... / by..." – Here, it is the making of the effort that allows the subject to say they complied with the direction, rather than achieving the thing they were making that effort towards. How will you and the casework team be able to tell whether it has been complied with?

Similarly, there are a few situations which seem to give rise to directions being revoked and remade. If these situations can be avoided, so much the better:

- Directing that something be done which is unnecessary or redundant (for example, providing a party with documents that they should already have in their possession).
- Giving too short a timescale to achieve something (particularly if that is the scheduling of a hearing).
- Asking for the same panel to hear a case when there is no technical requirement for this (please see Guidance Note 1/2009 if you are thinking of making a same panel direction, as this should be a fairly unusual event).
- Directing that something be done which is out-with the remit and vires of the tribunal. This comes back to looking at the statutory provisions, considering the type of thing you wish to make directions on, and looking at whether you have any remit to actually require this to be done.

### **In summary**

Directions are in effect orders made by a judicial decision maker. Think of them as an instruction (or very short series of instructions). They should be clear, specific and capable of being complied with. It is unlikely that anyone involved in hearings would not wish to comply with the Tribunal's direction, so make it at least feasible that they may do so.

Ultimately, if directions are made which are not complied with (or worse, are not capable of being complied with), the Tribunal's reputation is at risk, and the effect of making directions becomes diminished over time.

Please use this power carefully and infrequently and pay close attention to the drafting of the direction itself.

**Jennifer Whyte**  
**Solicitor**  
**Legal Secretary to the Tribunal**

## Member Review Scheme

Under section 34(2) and (4) of the Tribunals (Scotland) Act 2014, the Lord President has power to make arrangements for the professional development review of the ordinary and legal members of the Scottish Tribunals. He has delegated this function to the President of Scottish Tribunals, Lady Smith, who has issued relevant guidance.

Why is this relevant to MHTS members when the MHTS hasn't transferred into the 2014 Act structure yet? Whilst the MHTS has not yet transferred into the 2014 Act system, the President is keen on early adoption of the relevant policies to ease the transition and has worked with the Judicial Office to do so. To this end, we are pleased to note that the review scheme is being adopted by the MHTS from 1 April 2019.

The review of members is a key part of ensuring there is continuous professional development. It is an important tool to ensure judicial standards are maintained and public confidence remains high regarding the decisions of the Scottish Tribunals.

So how will the scheme work? Each member will be reviewed against the competencies set out for the tribunal 12 months after appointment and every 3 years thereafter. Prior to the review meeting, the reviewer will ask the member to complete a pro-forma self-assessment and case analysis which will then - along with any other relevant documentation - form the basis of discussion. The reviewer may also observe a tribunal hearing in which the member is sitting. Following the review meeting a report will be sent to the member, who will then have the opportunity to record any comments before a copy of the report is sent to the Chamber President.

The scheme that has been developed is designed to encourage self-analysis and reflection on each member's judicial function with the ethos behind the scheme being a supportive one. It must however, be highlighted that the review process is not the only chance that members have to discuss development needs or other related matters. Members are encouraged to discuss any issues that arise or questions in relation to any aspect of their role with the Chamber President at the earliest opportunity.

The full review guidance and accompanying documents can be found on the Judicial Hub.

**Judicial Office for Scotland**

## **Mental Health (Care and Treatment) (Scotland) Act 2003 – Training requirements for approved medical practitioners.**

As of 31 December 2019, update training will be mandatory for section 22 approved medical practitioners (AMPs). In terms of section 22, Health Boards are required to compile and maintain a list of all AMPs. The Scottish Government, Mental Health Directorate, has set out its expectations in relation to the mandatory and elective requirements of the training. NHS Education for Scotland (NES) took over responsibility from Scottish Government for delivery of all AMP training with effect from 12 September 2017. NES set up a training faculty to deliver the training to ensure that training remains relevant and up-to-date. The expectation is that training will evolve to address statutory and practice changes as they occur. NES will have responsibility for delivery of training going forward to ensure that all AMPs have an opportunity to access the mandatory training within the specified time.

On 22 March 2019, NES held a Faculty training day. The President's Office received an invitation to participate in the day. Morag Jack, In-house Convener, attended on behalf of Dr Morrow and gave a presentation: "Giving Evidence at a Mental Health Tribunal". The presentation provided a useful opportunity for AMPs and RMOs to reflect on their own experiences of giving evidence. One theme that arose was the impact which hearing their evidence may have on the patient and the therapeutic relationship between the patient and the RMO. One RMO explained that he would prepare a patient for what he/she might hear, by sitting down and setting out the evidence that he proposed to give to the tribunal. There was a frustration expressed by another RMO about being asked to repeat sensitive evidence which might be contained in the written reports.

These are points that are often raised by RMOs and worth highlighting to the membership in considering our approach to taking evidence in hearings.

**Morag Jack  
In-house Convener**



## Data Awareness Refresher

As we are nearing a year since some major changes took place with regard to data protection legislation with the implementation of the General Data Protection Legislation (**the GDPR**), now seems like a good time to provide a refresher on things we should consider when handling sensitive data.

The data which the Tribunal processes falls into one of the 'special categories' of data listed in Article 9(1) of the GDPR – namely data concerning health. Special categories of data are given further protections with regard to the processing of this type of data. The Tribunal is able to process this data as it meets one of the exceptions set out in Article 9(2).

You will probably be aware the potential financial penalty for breaches of data protection law increased considerably from a maximum of £500,000 under the Data Protection Act 1998, up to a maximum of €20 million or 4% of an organisation's global turnover, whichever is higher, under the GDPR. This adds further importance to the reporting of a data breach, including a loss of data.

The GDPR introduced an obligation to notify the Information Commissioner's Office (**the ICO**) of certain data breaches, which was not the case under the previous legislation. These breaches must be reported within 72 hours of discovery. 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*'. This has to be judged on a case by case basis, taking into account the circumstances around the breach. With the short timescales for reporting breaches to the ICO, it is important to bear in mind that losses of data must be reported to the Tribunal's Administration timeously to allow the reporting process to begin. This will allow sufficient time to investigate the incident and for a decision to be taken as to whether or not the breach must be reported to the ICO.

As the law on data protection evolves, so does the technology we use to access and protect the data. It is important that the device you use to access any confidential papers related to MHTS cases is fitted with the appropriate level of security. Before you use a device to access Tribunal paperwork, it must have an appropriate form of encryption software on it. If you renew or change your device, you must be sure to update the device with appropriate encryption software. If you are unsure about anything regarding encryption you can contact Scott Blythe in the President's Office for more information on the different options available to you depending on the device that you have. You should also ensure that the device has up to date anti-virus software on it, and be sure to keep other software on the device up to date – this includes the operating system, internet browsers and Adobe software. Ensuring that all these are up to date will provide your device with the most secure level of protection available at all times.

- Do – ensure your device has the appropriate encryption software installed on it
- Do – take the appropriate level of care when in possession of confidential data in a public setting
- Do – report any losses of data immediately to headquarters in Hamilton
- Do not – retain any unnecessary data relating to the Tribunal on your device

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

## Philip's Story

I found out about Advocacy Highland from the hospital staff. I think they have an obligation to let patients know about this service especially if they are detained. I was sectioned at the time and being injected against my will. The nurse told me I can appeal my section and an independent advocate would be able to help me. My nurse offered to contact them on my behalf.

The advocate came to see me and I was able to talk to someone independent about my situation. I had a solicitor on board to lodge my appeal which was to be heard at a tribunal. Although I could have spoken for myself, advocacy was very useful.

The day before the tribunal hearing I wasn't feeling good and on top of it all, I knew I was going to be injected in the evening. I was very anxious and didn't know what condition I would be in the morning: would I be able to express myself and say what I wanted to say? I worried I would be heavily sedated by the medication and would feel incapacitated to have my words heard. My advocate suggested she could help me to prepare ahead by writing down what I wanted to say and if I was unable to speak she would speak for me. This was very reassuring to know that in case of all eventuality my voice would have been heard.

On the day of the tribunal my solicitor and my advocate worked together with me, as a team, to achieve the optimal result under the prevailing circumstances. I felt I got the best out of that I could.

I would recommend advocacy to anybody. I know some people out there who feel lost in dealing with the mental health process and advocacy is their only beacon of hope.

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# **The MHTS: The views and experiences of Patients, Named Persons, Practitioners and Tribunal members project.**

## **Can you help us?**

Many of you will already be aware of the project that is currently undertaking a comprehensive review of how effectively stakeholders feel the Mental Health Tribunal for Scotland (MHTS) performs as a guarantor of the principles of the Mental Health (Care and Treatment) (Scotland) Act 2003 and human rights standards in Scotland. The findings will provide an indication of how well the MHTS has been performing in these areas and how well it is placed to meet this guarantor role going forward. This is particularly pertinent given developments in international human rights standards – notably the European Convention on Human Rights and UN Convention on the Rights of Persons with Disabilities – which are demanding greater assurances of patient autonomy and even stricter scrutiny of any limitation of this. It is also important in light of the proposed MHTS move to the Scottish Tribunals system and, of course, now the recently announced review of the 2003 Act. We have good reason to believe that the project will be of interest both within and outside Scotland.

The project is independent and runs from October 2017 to the end of September 2020. It is funded by the Nuffield Foundation. Being independent means that the project team decides from whom and how information is collected and what is reported. The project team is led by me as Principal Investigator and includes my colleague Professor Michael Brown and a Research Assistant (currently Ini Enang, who is providing maternity cover for Aisha Macgregor). We are supported by a project Scottish Advisory Board of key stakeholder representatives and we are appointing an international advisory group.

So far, we have undertaken a review of international literature on the topic which is shortly to be published in *Health and Social Care in the Community*\*. We are in the process of setting up an online blog which will provide information about the project and updates. We are currently in the information gathering phase which will run for most of this year, more of which and how you might become involved in the following paragraph. The final report containing the project findings and recommendations will be public and published in autumn 2020. There will also be at least one information event.

The information collection phase involves holding one-to-one interviews with patients and named persons and focus groups of MHTS panel members and health and social care professionals. 'Health and social care professionals' is widely interpreted to include MHOs, RMOs, lawyers, curators and independent advocates. We are extremely grateful to the patients, named persons and members of MHTS panel members' forums who have already participated or have offered to participate to date.

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\* Please note a link to this article can be found in "[Informative Publications](#)" at page 22 .

If you have not taken part so far and would like to participate in a focus group or interview, we will be delighted to hear from you! However, please do not be offended if we cannot take up your offer. This will simply be because we must ensure that we obtain a representative view from across Scotland and your particular category of participants has already been filled.

For more information about taking part in the project or to offer to take part please contact:

**Ini Enang** at [i.enang@napier.ac.uk](mailto:i.enang@napier.ac.uk)

or

**Jill Stavert** at [j.stavert@napier.ac.uk](mailto:j.stavert@napier.ac.uk)

Last but not least, we would like to thank Dr Morrow and staff at the MHTS for their considerable support in assisting recruitment to the project and for which we are most grateful. We look forward to discussing the project at the MHTS Annual Conference in November this year 2019.

**Professor Jill Stavert  
Centre for Mental Health and Capacity Law  
School of Health and Social Care  
Edinburgh Napier University**

# 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 "[Latest available \(Revised\)](#)" version of the 2003 Act which is published on the [www.legislation.gov.uk](http://www.legislation.gov.uk) website now incorporates all changes to the 2003 Act to date. Any section of the 2003 Act containing future outstanding changes which still have to be incorporated will be highlighted in red with a reference to the relevant legislation effecting the change. The original version of the Act as enacted can also be viewed on the UK legislation website by clicking on "[Original \(As enacted\)](#)".

### ❖ The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005

Westlaw has kindly given its permission for the MHTS to share the following consolidated version of the Tribunal's Rules with members:

[SSI 2005/519](#) Law in force as at 20 March 2019 (Westlaw)

Members may download and print a copy **for internal use only** (not for circulation).

### ❖ 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.

If a venue has no internet access, 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.

### ❖ Case law

Appeal *MH v Mental Health Tribunal for Scotland* – Inner House Judgment of 15 March 2019 on an unopposed motion by the Appellant for an anonymity order

<http://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2019csih14.pdf?sfvrsn=0>

# President's Practice Guidance

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](https://www.mhtscotland.gov.uk/mhts/Members_Area/President_s_Guidance_and_Directions)

## Informative publications

- ❖ Mental Health Law in Scotland: A Guide to Named Persons – Scottish Government published January 2019  
<https://www2.gov.scot/Resource/0054/00545108.pdf>
- ❖ Are mental health tribunals operating in accordance with international human rights standards? A systematic review of international literature – Aisha Macgregor, Michael Brown and Jill Stavert  
[https://onlinelibrary.wiley.com/doi/epdf/10.1111/hsc.12749?author\\_access\\_token=1MyIrx2N0yFCyfp6q5SfEota6bR2k8jH0KrdpFOxC64U2c7tLaCKkSbh9\\_S94hJOmw\\_lyUhM98jzOzDxpNLgFMIABuSStO6zZoY61Bb4VY9PK\\_HZ4ypmWIE8Qa-G9KRB](https://onlinelibrary.wiley.com/doi/epdf/10.1111/hsc.12749?author_access_token=1MyIrx2N0yFCyfp6q5SfEota6bR2k8jH0KrdpFOxC64U2c7tLaCKkSbh9_S94hJOmw_lyUhM98jzOzDxpNLgFMIABuSStO6zZoY61Bb4VY9PK_HZ4ypmWIE8Qa-G9KRB)
- ❖ Restricted/Prohibited Items List for Patients and their Visitors – The State Hospital  
<https://www.tsh.scot.nhs.uk/Official%20Visitors/Docs/Restricted%20Prohibited%20Items%20-%20May%2018.pdf>

## Mental Welfare Commission Publications

- ❖ Good Practice Guide: Alcohol-related brain damage (ARBD)  
[https://www.mwscot.org.uk/media/438968/arbd\\_gpg.pdf](https://www.mwscot.org.uk/media/438968/arbd_gpg.pdf)
- ❖ Advice Note: Can a Power of Attorney authorise significant restrictions of liberty?  
[https://www.mwscot.org.uk/media/395908/poa\\_restrictions\\_liberty.pdf](https://www.mwscot.org.uk/media/395908/poa_restrictions_liberty.pdf)

## Casenotes

Members should note that, at hearings, clerks will always have access to casenotes for a case. Casenotes can provide useful background information about a case, including details of any contact made with the Tribunal by a party, for example to give a reason for being unable to attend the hearing.

**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](http://www.mhtscotland.gov.uk)**

### **Newsletter Contributions**

The Tribunal welcomes contributions to the Newsletter from all members. Members who wish to contribute to the Newsletter should contact Yvonne Bastian at [MHTSPresidentsOffice@scotcourtribunals.gov.uk](mailto: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**

# Useful Contacts

## **Scheduling Team**

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

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

❖ Telephone: 01698 390073

## **e-Expenses Helpdesk**

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

❖ Telephone: 01698 390090

## **Finance Team**

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

❖ Telephone: 01698 390054

## **President's Office**

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