



Mental Health Tribunal for Scotland

Members' Newsletter

January 2022

INSIDE

New members

Reflecting on member training 2021

The pull of nursing

Avoiding unlawful decisions when variation of orders is sought

Contents

	Page
Message from Laura J Dunlop QC	<u>3</u>
News	
➤ New MHTS members	<u>5</u>
➤ In person hearings	<u>5</u>
➤ Judicial Hub	<u>6</u>
➤ Directions- a reminder	<u>6</u>
➤ MHTS Members' Association meeting	<u>7</u>
➤ MHTS Members' Association	<u>7</u>
Articles	
➤ Reflecting on member training 2021	<u>8</u>
➤ Member training 2021 photos	<u>9</u>
➤ Avoiding unlawful decisions when variation of orders is sought	<u>10</u>
➤ The pull of nursing	<u>11</u>
Useful Information	
➤ Useful Information	<u>12</u>
➤ Clerks' Contact Details	<u>13</u>
➤ Useful Contacts	<u>14</u>
➤ Newsletter Contributions	<u>14</u>



Message from Laura J Dunlop QC

Dear Members,

If you are reading this for the first time as a new member of MHTS, welcome. We are delighted that you have become part of the Tribunal. The names of the 14 general, 13 legal and 12 medical members who joined us on 1 December 2021 are on page 5. The new member training course we had planned for January was meant to run shortly before our transfer into the First Tier Tribunal, of which more below. There is more of a gap than we had expected, but we are progressing with the various stages of organising mentors and arranging observation of hearings so that our new recruits can start sitting in early course under the current regime.

For some people, January is the worst month of the year. As I write this, it is nearly over. By the time members are reading the newsletter, it may be fully over. Much is being said about what 2022 may bring. For MHTS, I hope that we can soon start to return to where we were before Omicron forced us into reverse in December. That means that we will look to reintroduce the hearing preference form, whereby patients who are in one of the venues which is assessed for COVID safety can say whether they want to attend an in person hearing, or a telephone one, with their choice being arranged. We will aim to phase that along the same lines as the initiatives of last summer: busiest venues first. More information will be provided on our website as the weeks pass.

I hope, too, that we will soon be able to intimate a date for transfer of MHTS into the First Tier Tribunal for Scotland. Much progress has been made in recent months, but the transitional and consequential amendments to the 2003 Act, plus those required to effect the change in restricted patient appeals to include an appeal to the Upper Tribunal, are taking considerable time and energy. These are not straightforward drafting for our colleagues in the Scottish Government. We will not transfer in before June 2022, but it looks as though we should manage the move around then.

Particular related issues will arise, most notably the introduction of a retirement age for our members. That legislation is progressing through Westminster at present, with the chosen age being 75. That will undoubtedly affect some existing members. More information will be shared as soon as we have it. There will also be new terms and conditions for members; although they will be very similar to the current terms and conditions, the Scottish Government will issue them for consultation.

I want to turn now to say something about training, both in relation to new members and to our existing members. Both courses included a section on unconscious bias. The feedback forms were mostly very positive about these sessions, but I understand that some members disliked this training and some wondered about its relevance to MHTS. I would say only this. Our move into the First Tier Tribunal will make the Mental Health Chamber fully part of the judiciary – more clearly than is the case at present. Because of that, existing and new members have required to take the judicial oath. It may be that that was the most important bit of the induction training. And the most important bit of the most important bit may be the promise ‘to do right to all manner of people, according to the laws and usages of this realm, without fear or favour, affection or ill-will’. In looking at bias, we were I think covering factors to which we are all subject. I agree with the observation at one event that these are not flaws, but they are factors which we would try to prevent from influencing the outcomes of cases before the Tribunal. We were simply trying to think about where fear, favour, affection or ill-will could come from.

The other aspect of training which arose several times, and on which I think I need to provide greater clarity, was on the question of same panel requests. Such a request featured in the decision of the mock tribunal. Has the position changed in relation to the well-recognised principle that also operates in MHTS of offering ‘fresh pairs of eyes’ when people come back to hearings, especially if these take place in quick succession? The answer is that the position has not changed. The idea of an examination of issues by different members is important. It may on occasions require to yield to the idea of continuity – that one or more of the members of a particular tribunal should sit on the next hearing of the case. Situations where that is appropriate will, I think, tend to be obvious: where much evidence has been heard and it would not be fair to have it rehearsed again, or where there is a clear direction of travel and a continuation occurs for specific information or a particular report to be obtained are clear examples.

Also arising from training, members will recall that Karla Benske, who delivered the unconscious bias training in Autumn 2021, began her sessions with a flip chart and pen, recording some ground rules for communication between us all that afternoon. I photographed both sets of suggestions. The majority of points arose in both exercises. The common elements were: confidentiality, respect, honesty, objectivity, kindness, being non-judgemental and acknowledging the other person’s reality. Those seem to me to form a Charter well-suited for use beyond that one session.

Finally, recent weeks have seen great fluctuation in numbers of applications dealt with by those who work in operations. There is a difference of 100 between the busiest and quietest weeks. Most of this will be due to the festive season, but it leads to periods of unrelenting pressure on individuals in our various teams. One week in January, 151 hearings were scheduled to take place, this probably being an all-time record high for the Tribunal. That all these cases are processed and hearings held is a huge tribute to the dedication and hard work of people on the operational side, and thanks are due for such effort. I am also grateful to members for their continuing commitment during times which have been characterised by uncertainty.

I am, too, most appreciative of all the support from everyone in the PO. As always, this newsletter has been put together by Jane Patrick as editor and Jenna Swan as publisher. I am very grateful to them for all their work on it.

Laura J Dunlop QC, President

News

New MHTS members

Welcome to the 39 new members who were appointed to the MHTS by the Scottish Ministers on 1 December 2021:

General Members

Heather Caldwell
Carolanne Connolly-Brown
Mig Coupe
Joan Docherty
Isabella Donnelly
Kate Fearnley
Colin Fraser
Andrew Holden
Gerry McKelvie
Lynne Rollo
Tracey Singh
Yvonne Stewart
Rona Sweeney
Louise Wilson

Legal Members

Waqgas Ashraf
Sandra Biggar
Emma Doyle
Linda Fowler
Collette Gallagher
Claire Gilmore
Dr Kirsty Hood QC
Eleanor McLaren
Jacqueline McRae
Chris Paterson
Alan Rodger
Gerard Sinclair
Serena Sutherland

Medical Members

Dr Caroline Bather
Dr Juliette Fowler
Dr Julia Gray
Dr Morag Henderson
Dr Laxmi Kathuria
Dr Ishbel Maciver
Dr Debbie Mason
Dr Seonaid McCallum
Dr Norman Nuttall
Dr Lovely Rajan
Dr Rajdeep Routh
Dr Gordon Wilkinson



In person hearings

Firstly, we are pleased to report that acoustic panels have now been installed in the hearing room at the Royal Edinburgh hospital. Early reports (before the retreat from in person hearings in December) were positive about the effect on the sound quality in the room. Combined with the repair of the malfunctioning door closer (intimated in my December bulletin) real improvement seems to have taken place at this venue.

Secondly, some members have queried why they are asked to conduct a second (telephone) hearing from a hearing room, when they could do this from home. There are two main reasons for this. First, that split in physical arrangements would mean that the journey from home to venue, or vice versa, would take place in between the two hearings set down for the day. Some members have travelled from quite far and, for a hearing which takes longer than expected in the morning, the travel time could interfere with arrangements for the afternoon, and with preparation and discussion of the morning decision. Second, for that to happen results in a tripling of cost for the participation of members. If the teleconference unit in the suite is used, that is one call. If each member dials in to the teleconference separately, the cost (paid by MHTS) is multiplied by three. I understand the preference for remaining at home, or returning home, but the arrangement for conducting two in person hearings from a suite was what applied before the pandemic. With such a high volume of hearings to be accommodated, some general rules are required.

Judicial Hub

This is a reminder that all tribunal members are advised to access the Judicial Hub on a regular basis to remain abreast of the latest news and learning opportunities [Judicial Hub: Log in to the site](#)

Hub Content

The Hub's news section is updated throughout the week and provides articles on recruitment; welfare resources; changes in legislation; publications; events; and guidance relevant to all judicial office holders.

Judicial Communications also provides a guide which includes sections on social media, security and community engagement.

The Hub hosts a Tribunals section which includes relevant information for each chamber, such as guidance on claiming expenses.

The platform provides essential information about judicial training, and offers useful advice from all of the units within the Judicial Office for Scotland.

Information on the Hub is updated frequently and can be accessed from any computer or profile. If you do not yet have log-in details, or if your email address changes, please contact the Hub team at Judicialhub@scotcourts.gov.uk.

Valerie MacGregor
Head of Judicial Communications



Directions – a reminder

The PO often receives queries from caseworkers about Directions. The most common of these are 'who do I intimate this to?' or 'what is the address of the person who has been directed to submit a report/attend the next hearing?' Caseworkers have to intimate directions made by tribunals on the person who has been directed to do something. So, for example, if the tribunal directs a social worker to provide a report or to attend the next hearing, the caseworker will need to send the Direction to this social worker. The caseworker is unable to do so unless the necessary information, i.e. the name and address of the social worker, is contained in the Direction. When making a Direction members should ensure that they have all necessary information so that, as well as being clear and specific about what is required, the Direction can be intimated correctly. This may mean members have to ask parties or witnesses at hearings for this information. It is worth bearing in mind that if these persons are unable to provide this information then a caseworker, too, will have difficulty ascertaining it.

MHTS Members' Association Meeting

The Members' Association is pleased to invite all tribunal members to a virtual open meeting of the MHTS Members Association on Thursday 17 February at 6.30 pm.

Speaker: Pamela Charlwood, Chair of the Mental Health Tribunal Members' Association (MHTMA) in England, who will talk about their Association and the benefits of having a members' association. All welcome.

Email:



MHTS Members' Association

The Members' Association held its AGM on 27th October 2021. Joyce Mouriki stood down as chair and Lesley Ward as secretary although both are staying on as committee members. The current office bearers are Ruth Buchanan vice chair, Brian Dewar secretary and Caroline Ritchie is continuing as treasurer. Additional current committee members are now Peter Bennie, Mary Jo Furlong, Joyce Mouriki, Lesley Ward and Leonard Wallace. Many thanks to everyone on the committee (including past members) and members of the Association who attended the AGM and also attended the Committee meeting in November.

If anyone would like to join the Association or become a committee member please get in touch – we would be keen to hear from you!

The Association held a further meeting on 24th November and following this we wrote to and received responses from the President's Office regarding the timescale for the move to the First Tier Tribunal and the appropriateness of the Royal Edinburgh Tribunal Suite venue.

The Committee have agreed to look at ways of raising the profile of the Association, to revisit the priorities identified by members in the survey completed earlier this year and to consider inviting speakers to some Association meetings in the future. We have been in contact with the chair of MHTMA (English Mental Health Tribunal Association Members Association) to arrange a speaker for our next meeting – please see above. We would also hope to invite the President to a future meeting.

It was agreed that future Association meetings should continue in the immediate future online, given this allows members from across Scotland to attend and that the next meeting (early in 2022) would be an open meeting, allowing all MHTS members to attend.

If you are interested in attending the next Association meeting please can you get in touch with Brian so we can send you a link to join when we have finalised the details!

Ruth Buchanan
General member and vice chair of MHTS Members Association

Reflecting on member training 2021

Unlike 2020, our 2021 programme offered hybrid training. Not simultaneous hybrid events, but sequential hybrid. I think this is an important distinction, and return to it below.

We have feedback forms on the training from about 36% of members. If you filled in a form and returned it, thank you. The percentage is slightly higher than last year, probably because of the two in person events. Many more forms came from those than from the virtual days, no doubt for several reasons. As I write this summary, I am looking at the analysis of the forms from 2020. The comparison is interesting. For 2021, the proportion of people scoring the mock tribunal sessions either 4 or 5 was 70% (both part 3 and part 4). The corresponding percentage last year (parts 1 and 2) was 84%. For 2021, the conflict of interest session was scored 4 or 5 by 70% of respondents, and the unconscious bias session scored 4 or 5 for 86% of respondents. To repeat what I said when disseminating results from 2020 training feedback, we can't really make assumptions about what the other 64% of you thought. If that includes you, I hope you got something useful from the day.

Some free text comments were that it would have been good to have watched a film of the members' discussion before the decision was reached. That film does exist – it is part 5 of the mock tribunal. Any member still feeling that they would like to watch it should please email Fiona Queen to ask for the link.

The remaining free text comments have all been considered. I have seen 'you said we did' on the websites of other organisations, so here are some like claims for MHTS. After the first training day, several members commented that they would have preferred to have refreshed their memories about Eleanor Hamilton's situation. We therefore sent out a background paper on the case to all those attending training days 2 to 7. The sound quality of the playback of Euan Mackenzie's talk was commented on adversely by several members in their feedback on the video events. Because of Euan's torn calf muscle, the original plan for recording and replaying this talk was not feasible. Two other options were considered and rejected, for reasons that are beside the point. I accept completely that the improvement we identified in time for training day 7 should have been thought of before and I take responsibility for that.

Members also mentioned the idea of breakout groups on WebEx; this was something we did to some extent in 2020 but not at all in 2021. We note the desire for smaller groups and will try to include those in future if we can.

More generally. I am struck by the existence of polar opposite reactions to the same constituent parts of the training. I see this as reflective of the diversity of the membership. Indeed, that diversity is a strength when it comes to decision making, which is what we are for. I will say more about the specific topic of unconscious bias elsewhere in this newsletter, as there are a couple of aspects to cover specifically.

In relation to the mock tribunal, I mention again our gratitude to Tapestry, who made the films. Many forms recorded appreciation of the actors. The cast are now enjoying a well-earned rest from having to watch themselves, and from hearing their performance evaluated by colleagues. Theirs was a major positive contribution to the work of the Tribunal. I cannot thank them enough.

The backroom effort in putting on the seven days fell mainly to Fiona and Scott. Much happens in advance, by way of ascertaining who's attending when and where, assembling and sending out materials and assisting with individual queries and problems. The pandemic has meant that they have both had to move from the seven training days to the running of our new members' training on WebEx, with hardly a break. The skills required are those of meticulous organisation and the nerve needed is that of a high wire artiste. Fortunately, they both possess both. The deck which Scott had to operate in Dundee is shown in a photo - even with an advance trip to familiarise himself, it still presented challenges on the day. Because we have other photos from Dundee, we have included a selection of those too.

Lastly, the feedback forms from the days in Stirling and Dundee displayed a favourable response to one factor beyond all others: the value of getting together in person. As one member put it, what they liked most about the day was 'seeing old mates'. So, for 2022, I hope very much that we can maintain the principle of hybrid training – not that some people attend the same event in person and others by video, but that some events are in person and others are on a video platform. But as members appreciate, quite how it looks is not entirely within our control.

Laura Dunlop QC
President

Member Training 2021

A few photos from 10 November 2021 – The Steeple Church, Dundee



Avoiding unlawful decisions when variation of orders is sought

Two hearings in December involved mishaps in the calculation of periods of time for interim orders in the context of applications for variation of CTOs. It may therefore be of assistance to recap on how to apply the relevant provisions of the Act.

A CTO, like a person, has a birthday. So an Order originally made on the 15th of a month will, in subsequent years, expire at the last moment of the 14th of that month. The analogy is incomplete, because in its first year, the Order will expire after 6 months, if not renewed (a half birthday, in effect). The RMO may renew the Order for 6 months and, thereafter, renewal is annual on the 15th/14th model above.

While a CTO is in place, variation may be sought, on its own or in conjunction with extension of the Order. Variation alone is dealt with by section 95. Variation with extension, which arises when the RMO wishes the CTO to be renewed but not with its current measures, is dealt with by section 92. If the variation is from a community-based order to a hospital-based one, because the patient's condition has deteriorated, the patient may already be in hospital, on either a short-term detention certificate or a section 114 certificate. Pending the final determination of the application under section 92 or 95, it may be necessary to authorise detention on an interim basis, under section 105 or section 106. In some situations the Order will need to be extended as well. Failure to follow the requirements of the legislation may lead to lapse of an Order, unlawful detention or both.

There are two key numbers to bear in mind. Firstly, interim orders can only be in force for a continuous period of 56 days (section 107). Secondly, an interim order can only be granted for a maximum of 28 days at a time (section 105(2); section 106(2)).

It may be that the 56-day period has already started to run before the application comes before a tribunal. Applications are sometimes lodged close to the expiry of a CTO, or of a short-term detention certificate or section 114 certificate granted while a CTO is in force. If there is insufficient time for a hearing, an in house convener may have granted a short interim extension or variation to maintain the order and/or authorise detention until the hearing. Any such interlocutor will be included in the papers for members. Members will also appreciate from the 'birthday' analogy that it is possible to identify the date on which the CTO was due to lapse and count how many days have passed since then, to find when day 56 would be.

In the first of the hearings referred to at the outset, the initial interim extension was in house, and extended the Order with effect from midnight 11/12 October, when it would otherwise have expired. Further interim extensions were made by tribunals but, on 1 December, which was already day 51, a further 14 day interim order was made. The CTO therefore lapsed at the last moment of 6 December and no further determination could be made. In the second hearing, an interim variation of a CTO was granted for a single period of 56 days. This was contrary to section 106(2) of the Act, which only allows variation for 28 days at a time. When this came to light, further variation on an interim basis was made in house.

Neither of these cases involved interim variation to authorise detention, which would have been a more serious problem, but they do demonstrate valuable points about interim orders.

Laura Dunlop QC
President

The pull of nursing

Hello everyone, I had been speaking with some fellow members recently about how my oldest son had recently graduated with honours in mental health nursing.

This led to a request for a photo of us together in uniform. I was eventually persuaded (he needed more persuasion than me!).

Many members will know me as I have been fortunate to have been a general member since 2005, and a reviewer since 2020. Even further back, I qualified as a mental health nurse in 1986. Needless to say, I am very proud that my son took his own path into the profession in spite of a very candid discussion around the demands that would be placed on him.

Even the photo, which shows all too clearly what 35 years as a nurse can do to you, did not dissuade him!

I am sure he will enjoy providing care as much as I have done in my own career.

I would also like to say hello to all the new and not so new members and hopefully we can see each other soon as restrictions are lifted.



Stephen McGinness RMN, BSc, MSc.
General member

Useful Information

Mental Welfare Commission Publications

- **Appeals against detention in conditions of excessive security, Good Practice Guidance, December 2021**

https://www.mwcscot.org.uk/sites/default/files/2021-12/ExcessiveSecurityAppeals_GoodPracticeGuidance_December2021.pdf

Mental Welfare Commission links

- **Significant rise in numbers of people being detained for mental health treatment in Scotland, 30 September 2021**

<https://www.mwcscot.org.uk/news/significant-rise-numbers-people-being-detained-mental-health-treatment-scotland>

Other MHTS information

- **MHTS Annual report 2020-2021**

https://www.mhtscotland.gov.uk/mhts/Annual_Reports/Annual_Reports_main

- **MHTS Caselaw – Tribunal decisions**

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

- **MHTS Website - News**

<https://www.mhtscotland.gov.uk/mhts/News/News>

***Please note that links to Informative Publications are included for information only. Any views expressed in these publications are those of the authors and not those of the MHTS.**

Clerks' Contact Details

Allan	Jean	07917 898792	<p>Please email clerks on the following generic email address and not on their individual email address:</p> <p>MHTSHearingsOps@scotcourttribunals.gov.uk</p> <p>Post hearing paperwork to be uploaded to:</p> <p style="text-align: center;">MHTS_FFR_Order</p> <p style="text-align: center;">on members' website</p> <p>Hearing Team Leaders:</p> <p>Team 1: Gordon Hope – 01698 292005</p> <p>GHope@scotcourttribunals.gov.uk</p> <p>Team 2: Leanne Paterson (temp)– 01692 292007</p> <p>lpaterson@scotcourttribunals.gov.uk</p> <p>Team 3: Jeanette Thomson – 01698 390004</p> <p>jthomson3@scotcourttribunals.gov.uk</p>
Armstrong	Grant	07917 898818	
Barclay	David	07917 898806	
Barnes	Gemma	07423 779555	
Bruce	Ian	07876 884046	
Colquhoun	Michael	07825 009020	
Cowie	Paul	07917 898801	
Ferguson	Elaine	07917 898813	
Finlayson	Claudia	07423770707	
Higgins	Margaret	07884 655912	
Hussain	Hanaf	07919199538	
Kilpatrick	Hannah	07884 664658	
Lithgow	Anne	07917 898823	
McLagan	Stuart	07584 158127	
Miller	Mandy	07770 645654	
Mooney	Audrey	07876 884044	
Paterson	Chris	07715 463790	
Paterson	Ellen	07423 779977	
Paterson	Kerri	07525257314	
Paterson	Leanne	07471 350730	
Richardson	Callum	07884 655908	
Shearer	Jennifer	07423 778698	
Singh	Tajinder	07423778767	
Sinnett	Stephanie	07786 028852	
Zachary	Margaret	07917 898796	

Useful Contacts

Scheduling Team

(including re-setting Webroster and MHTS Website passwords)

schedulingmhts@scotcourttribunals.gov.uk

❖ Telephone: 01698 390034

e-Expenses Helpdesk

webrosterexpenses@scotcourttribunals.gov.uk

❖ Telephone: 01698 390090

Finance Team

opsfinancetribunals@scotcourttribunals.gov.uk

❖ Telephone: 01698 390054

President's Office

mhtspresidentsoffice@scotcourttribunals.gov.uk

Fiona Queen, PA to President and Member Liaison Officer

❖ Telephone: 01698 390033

Jenna Swan, President's Office Secretary

❖ Telephone: 01698 390001

Newsletter Contributions

The Tribunal welcomes contributions to the Newsletter from all members.

Members who wish to contribute to the Newsletter should contact Jenna Swan at MHTSPresidentsOffice@scotcourttribunals.gov.uk

The following timescales will apply for contributions*:

January edition: contributions by the end of November

May edition: contributions by the end of March

September edition: contributions by the end of July

***Contributions may require to be edited**