

# Mental Health Tribunal for Scotland Members' Newsletter



## DECEMBER 2018

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## Message from Dr Joe Morrow CBE QC

Dear Members

Let me first of all take the opportunity to wish you season's greetings, health and happiness for 2019.

2018 has been a busy year for all of us in the Tribunal, as we have worked hard to prepare for the transfer into the First-Tier Tribunal for Scotland. Due to a number of technical difficulties, this has been delayed on more than one occasion, with a move now unlikely to take place until later in 2019. May I ask you to 'watch this space' for final details of the transfer date when available. I hope to be able to preside over the Tribunal during the transfer process.

In preparation for the transfer into the First-tier Tribunal, we have done considerable work with our partners, including the Scottish Government and the Judicial Office for Scotland, to share our understanding of the culture created around the activities of the Tribunal, and in particular our focus on the patient and the need to adhere to the section 1 principles of the 2003 Act. The transfer will also involve a considerable amount of operational activity to be able to incorporate the necessary changes to the Tribunal's case management activities and case management system. I would ask you to bear with us as we progress these changes. As soon as I have any direct information confirming the date of transfer, I will let you know, probably by email.

I am informed that a review procedure will be included in the regulations which will apply to the Mental Health Chamber of the First-tier Tribunal. The nature and details of the review and the composition of the panel is unknown to me at this stage. However when more details of the review process are available, the membership will be provided with the necessary assistance, and training, to deal with such cases.

During 2018, a number of legal, general and medical members were recruited. This has added to the resilience of the Tribunal membership, ensuring that we are able to hear cases throughout Scotland with three-member panels in some 80 locations. Our workload continues to grow, albeit at a slower rate than in previous years, with increasing numbers of cases coming before the Tribunal.

As you know, I have been excited about the research project being carried out by Napier University. This looks at users' attitudes to the Tribunal and tests whether the perception which we in the Tribunal have of our work and the operation of the 2003 Act bears true in the feelings and experiences of those who come before the Tribunal. This work is progressing, including a number of individual interviews, focus groups and consultation with people who are involved with the Tribunal. It is my sincere hope that Professor Jill Stavert and Professor Michael Brown will make a presentation at our all member Conference in November 2019, when all the membership will be able to hear and discuss the initial findings of the research project. I am pleased to say that the Lord President, Lord Carloway, has accepted an invitation to speak at the Conference, and we also await confirmation that a Minister of the Scottish Government will come to address the members. I am also attempting to include a mental health service user to narrate his/her story and share with us his/her perception and experience of what it is like to be a part of the mental health tribunal system. In the past, it has proved to be a most powerful part of any training event, when members heard directly from service users about how they perceive the system and how it affects them.

The Conference will take place on **Wednesday, 20 November 2019 in Glasgow**, so please be sure to mark this date as a priority in your diaries. It is the only opportunity for all Tribunal members to come together and be able to share their experiences and life within the Tribunal.

Again I would like to put on record my acknowledgement of the hard work and flexibility which you put into the Tribunal – and also the work of the administrative staff, who have worked tirelessly in 2018 to support the Tribunal and the individual members.

I would like to remind you of the issue of adjournments. As you are aware, we keep a note of all adjournments of hearings on the day and the reasons for those adjournments. I would encourage you to remain thoughtful in this regard and express clearly in the "Reasons for Adjournment" form why an adjournment was deemed necessary. One recurring reason has emerged, namely when local public holidays prevent the attendance of one or more parties. The Tribunal is not in a position to hold and take consideration of the dates of all local holidays in the various local authorities and Health Boards in Scotland. I am advised that it can happen that a tribunal convenes only to discover that, due to a local public holiday, the RMO or MHO has not appeared for the hearing. These situations should be carefully considered and the need for an adjournment assessed on the basis of the evidence before the Tribunal, with consideration being given as to whether further evidence can still be obtained on the day of the hearing. I appreciate that this can be a difficult situation, but it seems to me to be counter-intuitive to our patient-centred approach to put the patient through an unnecessary additional hearing.

Since the last Newsletter our other long-term Legal Secretary, Valerie Mays, has left the Tribunal. She is now a Sheriff at Glasgow Sheriff Court. I am sure that you, with me, would wish to put on record our thanks for the immense contribution which she has made to the life and work of the Tribunal and to the support of the membership since she started working for the Tribunal in 2006. Over the years she has been involved in many aspects of the Tribunal's work, including liaising with the Scottish Government, representing the Tribunal in appeals, drafting the helpful Case Digest and making valuable contributions at members' training. We wish her well in her new role.

Jennifer Whyte has joined the Tribunal as Legal Secretary and has much to offer from her experience both within and outwith the legal field. She is already proving to be a valuable asset to the team in the President's Office.

One further staff change concerns the appointment on a permanent basis of Scott Blythe, who was temporarily seconded to the President's Office and who has now been ratified as Tribunal Liaison Officer. We welcome Scott in his new role. Among other things, he will promote good relations among the stakeholders engaged with the Tribunal.

Finally, as part of our preparation for the transfer into the First-tier Tribunal, the Appraisal Scheme has been re-branded as the "Reviewer Scheme". The process and the content will be very similar, although the paperwork will be somewhat different, but in essence the scheme has not been radically changed. The reviewing process will recommence in April 2019, and your full cooperation will be expected to assist the Reviewers to carry out their task in compliance with the rules laid down by the Reviewer Scheme.

Again, let me wish you all the very best seasonal greetings. I look forward to seeing you in 2019.

With best wishes,

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

# News

## Introducing Jennifer Whyte, New Legal Secretary



I am delighted to have been appointed as Legal Secretary to the Tribunal in September and have thoroughly enjoyed my first months in the President's Office. As well as getting to know the caseworkers, the In-house Conveners and some of the Tribunal members, I have had to hit the ground running, with an appeal before the Sheriff Principal in Edinburgh in my third week in post. All in all, it has been a busy few months, and I am very grateful to the casework teams, the In-house Conveners and the staff in the President's Office for making me so welcome and for keeping me right as I settle into my new role.

This is my third legal appointment since qualifying as a solicitor, after deciding on a change of career path in 2003. I graduated from Glasgow University in 1996, with an honours degree in psychology, beginning my career as a researcher in what was then known as the Greater Glasgow Community and Mental Health Care NHS Trust, based at Gartnavel Royal Hospital. Since then, I have worked in a variety of NHS and Local Authority posts, initially in research and evaluation roles, then moving on to develop an interest in policy and project management. My roles have generally had a focus on community care, mental health and learning disability. My last such post before returning to full time studies was an initiative jointly funded by NHS Fife and Fife Council to develop a strategy for delivering services to people living in Fife with complex care needs.

Latterly, I trained in and practised law within the Government Legal Service for Scotland, appearing for Scottish Ministers in courts around Scotland, then acting for the UK Government in a litigation team within the Office of the Advocate General.

# Recruitment

## General and Medical Member Reviewers

It is my intention to start a new tranche of reviews (appraisals) on 1 April 2019, following the agreed programme with the Judicial Office.

I am now inviting applications to become a reviewer from general and medical members. The advert and timetable are detailed below.

If you intend to apply for one of the positions, please note that the interview and training dates are fixed and not negotiable.

### Advert and Timetable

The Tribunal is looking to interview for 2 new general and 2 new medical member reviewers.

The purpose of this advert is to invite applications from any general and medical member who is interested in becoming a reviewer to submit a letter of application stating the skills, knowledge and values you would bring to the position. Applications should outline knowledge of performance review schemes and any skills as a human resource practitioner. It is expected that the time commitment will be in the region of 10 days per year. Successful candidates will be invited to interview on **Tuesday, 5 February 2019**, in Edinburgh.

Please note that mandatory reviewer training will take place on **Monday 25 February 2019**, in Edinburgh. If you are invited for interview, please ensure that you are also available to attend this mandatory training day. These dates are fixed and not negotiable.

All applications will be anonymised prior to short listing for interview. If you wish to apply for the position of reviewer, your application should be sent to Fiona Queen at the President's Office by **Friday 11 January 2019**.

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

**Dr J J Morrow CBE QC**  
**President**



## Recruitment Medical Members – CORO/Forensic Hearings

Due to the retirement of a number of medical members, the Tribunal is seeking to appoint additional medical members for CORO/forensic panels.

If you are interested in the post please provide a note of interest and the reasons why you would like to undertake this role, noting any relevant experience, by **Friday 11 January 2019** (no more than 300 words). If a large interest is shown, then interviews will be undertaken.

Mandatory training will be provided prior to sitting as a forensic member, along with the observation of a CORO hearing.

The training day will be held in Edinburgh on **13 March 2019** (please note this date is fixed and you should ensure you are available to attend the training prior to applying).

Notes of interest should be emailed to Fiona Queen at [fqueen@scotcourtsribunals.gov.uk](mailto:fqueen@scotcourtsribunals.gov.uk) by **Friday, 11 January 2019**.



## Members' Conference – Date

The MHTS Members' Conference will take place on **Wednesday, 20 November 2019**, at the Doubletree by Hilton Glasgow Central.

This is a **mandatory** event for all members and will take the place of mandatory training in 2019.





# Tribunal Venue Update

## Argyll and Bute Hospital

The Tribunal suite within the hospital has moved to the **Comraich Centre**.

The Comraich Centre is still located within the grounds of Argyll and Bute Hospital and was previously known as Succoth Ward. It is a flat-roofed building situated on the right-hand side as you drive into the hospital grounds.

There is parking available outside the centre, with additional parking available within the main hospital grounds.

The Tribunal rooms are located along the corridor to the right-hand side of Reception. The Tribunal hearing room is the first door on the right past the set of double doors. The Clerk's room and the waiting room are the last two rooms on the left-hand side before the set of double doors.

## New Craigs Hospital

From 19 December 2018, the Tribunal room is moving from the Morlich Ward to **Flat 2 of the Rowans Building**, which is located within the grounds of New Craigs.

It is the first building on the right as you enter the first access road to New Craigs. Parking is available in the overspill car park (which is well signposted). Walk back along the path to The Rowans. Flat 2 has its own bell. The Tribunal suite is down the corridor and is the last door on the left.



# Scheduling Update

The scheduling team has noticed an increase in the number of members pulling out of hearings late on the day before due to a conflict of interest. Please would members check papers as soon as they are uploaded in their 'Received Documents' area of the members' website to avoid discovering that s/he is unable to sit at a hearing at the last minute.

**Please keep your availability updated on Webroster and, in particular, remove availability for a date when you are no longer available.**

Members are reminded that they should only pull out of a confirmed hearing date in exceptional circumstances.

## **General Member, Jenny Henderson Honoured at Second Alzheimer Scotland Centre for Policy and Practice Celebratory Lecture**



Jenny Henderson was presented with this year's honour award by Kathryn Wittneben, Vice Principal and Pro-Vice Chancellor (Advancement), University of the West of Scotland, for her inspiring contribution to dementia education, practice and research.



## Christmas gifts



All over the UK there are children who will wake up this Christmas morning with little to look forward to.

We at the Tribunal, together with our colleagues in the Glasgow Tribunal Centre, decided to make this a little better this Christmas and, instead of the usual generic office Secret Santa, bought a gift for a child supported by Barnardo's.

We contacted Barnardo's Children's Charity knowing they do wonderful things to support disadvantaged children. They supplied a list of ages and genders of different children whom they support. Volunteers within our Hamilton and Glasgow offices were given an age and gender, then they selected an appropriate gift and brought it in to be placed under our Barnardo's tree. These gifts will be distributed to children locally within the Lanarkshire area, making Christmas morning a little more exciting.

The response to this appeal was overwhelming with over 100 gifts being purchased, including extra gifts given by many volunteers.

A big thank you to all the staff for taking part and for their kind generosity. We hope to continue this for many years to come.

**Pamela Traynor  
Caseworker**

## Grampian Members' Forum

**Date:** Thursday, 7 March 2019  
**Venue:** Tribunal Suite 1, Bennachie Building, Royal Cornhill Hospital  
**Time:** 6 pm

Tea and Coffee will be served.

Dr Morrow will be attending to take any questions.

Please advise the Forum organiser, Paula Fogiel, directly if you are planning to attend.

All welcome.



## Glasgow and Ayr Members' Forum

**WHAT? – Mental Health Tribunal Experience – Focus Group**

**WHEN? – Thursday 24 January 2019 – 6 for 6.30 pm**

**WHERE? – 1051 Great Western Road, Glasgow (entrance to Gartnavel Hospital)**

The next meeting (details above) will take the form of a focus group for the research project currently being led by Professor Jill Stavert which is researching 'The Views and Experiences of Patients, Named Persons, Practitioners and Tribunal Members'.

The format will involve a short talk about the project followed by an open discussion about the extent to which members feel the 2003 Act's, and other human rights' principles, are applied in the Tribunal's procedures and decisions and to identify any obstacles to this.

The project team recognises that the Tribunal has a particular role to play and cannot be held responsible for things that happen outside its remit!

Members taking part would have to formally consent to participating and their contributions would be kept anonymous.

A participant information sheet which provides more information about the scope and purpose of the project was attached to the email sent to members about this meeting.

As usual there will be an opportunity for members to engage in lively debate as well as to network and interact over the buffet.

The restaurant is on the left at the traffic lights as you turn into Gartnavel Hospital (opposite Jury's Hotel).

We will also have an opportunity to give an update on progress with membership of the MHTS Association and collect subscriptions from anyone wishing to join up.

**We will need to give numbers to the restaurant in advance so please indicate your attendance to David Preston**

# Articles

## Curator *ad litem* in the Mental Health Tribunal for Scotland

This month the President has issued revised Guidance to curators *ad litem* (“curators”), which you will find after this article. It is important that members have an understanding of what the Tribunal’s expectations are from curators. Some of the issues which have arisen in cases where a curator has been appointed come to the attention of the President’s Office through Legal Case Management meetings and enquiries from both members and caseworkers.

Currently there are 70 curators on the Tribunal’s list of curators. Many of the curators are solicitors who regularly appear on behalf of patients, but the roles are quite separate. The role of curator is independent of the appointing body and is set out in a decision of the Inner House: “...the position of a curator *ad litem*... is of a special and restricted character. His duty is to protect and safeguard the interests of the *incapax* so far as affected by a particular ... litigation”, per Lord Hunter in *Drummond’s Trs v Peel Trs* 1929 S.C. 484 at p504. The curator does not represent the patient.

Rule 55 of the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005 as amended sets out the circumstances where a curator may be appointed:

55.—(1) Where the circumstances in paragraph (2) apply, a curator *ad litem* may be appointed by the Tribunal or a Convener.

(2) Those circumstances are—

(a) that the patient does not have the capacity to instruct a solicitor to represent the patient’s interests in proceedings before the Tribunal;

(aa) an application or appeal has been initiated by virtue of a provision giving a listed initiator authority to act;

(b) that where the Tribunal or a Convener has made a decision not to disclose a document or report or part of it to the patient under rule 47, and the patient does not have a representative to represent their interests; or

(c) that the patient has been excluded from any hearing or part of it under rule 68 or 69 and the patient does not have a representative to represent their interests.

In subsections 2(b) and (c), “representative” is not restricted to legal representation. By far the most common circumstance for appointment of a curator is where the patient lacks capacity. To date in 2018, 1071 curator appointments have been made. The figure represents approximately 25% of the caseload (the total number of applications received from January being 4,167). The majority of these appointments are dealt with in-house before the hearing. However, on the day of the hearing the issue of whether a curator is necessary can be a live one. It is important for the tribunal to bear in mind the terms of Rule 55 if considering appointment of a curator. Some patients choose not to attend a hearing or to arrange representation. If that is the case, it is not a reason to appoint a curator. Patient participation includes exercising the right not to attend the hearing.

It is worth remembering that the curator is not the representative of the patient, but is appointed to represent the patient's interest in general, which is a significant difference between the role of solicitor and curator. The appointment of a curator does not impinge on a patient's right to attend a hearing and give a view on the application. The curator may find himself presenting an entirely contrary view to the patient.

The first duty of a curator is to satisfy him/herself that the patient lacks capacity. Due to the fluctuating nature of symptoms of some mental illnesses, there may be a change in the patient's capacity which leads a curator to seek discharge of the appointment. There is an ongoing obligation on the curator, throughout the period of office, to keep the patient's capacity under assessment.

It is a matter for each curator how they approach their enquiries. The curator is under an obligation to incur only reasonable expenses and fees. At the hearing the curator may express a preliminary view on the application, but it is not unusual for the curator to hear all the evidence before coming to a final view.

Ideally a curator will have been appointed to allow sufficient time to prepare and be in a position to proceed at the hearing. In some instances the timescales may be short and a curator may not have time to undertake his or her duties. It is always helpful to consider whether time can be made available on the day for the curator to interview the patient and form a view on the patient's capacity. Where a curator is seeking an adjournment, it is for the curator to satisfy the tribunal that it is necessary. If there are enquiries to be made, the tribunal should explore what the enquiries are and why the curator believes these are required. Sometimes the reasons advanced for an adjournment might not be sufficient to merit not dealing with the application on the day. It may well be that, having listened to the evidence, the curator will be able to come to a view. If a curator is asking for time to instruct an independent medical report, the tribunal should explore the reason for the request.

There have been a number of decisions in the last few months where the tribunal has indicated in the decision that it is bound to accede to such a request. This is incorrect, and in some cases the instruction of a further medical report has been detrimental to the patient through further medical examination and a second tribunal hearing. In conclusion it is worth remembering that the role of the curator is to protect and safeguard the interests of the patient, but it is for the tribunal to make a decision based on the evidence.

**Morag Jack**  
**In-house Convener**



# GUIDANCE TO CURATORS AD LITEM

1. This Guidance refers where a curator *ad litem* is appointed by the Mental Health Tribunal for Scotland (“the Tribunal”) or a Convener in terms of rule 55 of the Mental Health Tribunal for Scotland (Practice and Procedure) (No.2) Rules 2005 (“the Rules”).
2. The curator *ad litem* is appointed in a personal capacity and should appear personally before the Tribunal unless there are exceptional circumstances which prevent this.
3. The appointment of a curator *ad litem* will be made on a case by case basis from the List of Curators *ad litem* maintained by the Tribunal. Inclusion in the List of Curators *ad litem* maintained by the Tribunal does not guarantee that a curator *ad litem* will be appointed with any particular frequency.

## Section 1 principles and the overriding objective

4. While a curator *ad litem* is not subject to a statutory duty to have regard to the principles specified in section 1 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) when discharging any function under the 2003 Act, good practice suggests that the principles should be taken into account by a curator *ad litem* when representing the interests of a patient in proceedings before the Tribunal. Likewise good practice suggests that a curator *ad litem* should have regard to the overriding objective of the Rules (under which a curator *ad litem* is appointed) as stated in rule 4, namely to “secure that proceedings before the Tribunal are handled as fairly, expeditiously and efficiently as possible”.
5. It is recognised that there can be a tension between the role of a curator *ad litem* and the principle of patient participation in Tribunal proceedings. On occasion the patient may attend and wish to make representations at a hearing when a curator *ad litem* has been appointed. Good practice would suggest that such a situation is handled sensitively to ensure that the patient is allowed to participate as fully as possible.

## Timescales

6. The expectation of the Tribunal is that a curator *ad litem* will only accept an appointment where he or she is available to act expeditiously in discharging the duties of the curator *ad litem* and is available to attend the hearing.
7. In particular, where a curator *ad litem* is appointed by the Tribunal, or a Convener, the curator *ad litem* should visit the patient within 4 calendar days of the appointment. It is expected that in accepting the appointment the curator can meet this timescale in the interests of both the patient and the efficiency of Tribunal proceedings.



8. If, after visiting the patient, the curator *ad litem* is of the view that the patient is capable of instructing a solicitor to represent his/her interests in proceedings before the Tribunal, the curator *ad litem* should contact the Tribunal by email immediately and inform the Tribunal that the appointment of a curator *ad litem* is not necessary, to enable the appointment to be revoked by the Tribunal.

9. If, at any time during the proceedings before the Tribunal, the curator *ad litem* reaches the view that the patient is no longer incapable of instructing a solicitor, the curator *ad litem* should inform the Tribunal that the appointment is no longer necessary in order that the appointment can be revoked by the Tribunal.

10. Where a date has been set for a Tribunal hearing and the curator *ad litem* is of the view that it will not be possible to complete the necessary investigation by the date of the hearing, the curator *ad litem* should contact the Tribunal by email at least 7 calendar days before the date of the hearing, stating the reasons that he/she has been unable to complete these investigations, to enable the Tribunal to determine whether the hearing should proceed.

11. Any written report prepared by the curator *ad litem* should be submitted to the Tribunal in advance of the hearing. Where it is not possible to do so, the curator *ad litem* should provide a paper copy of his/her report on the day of the hearing.

## **Remuneration**

12. The curator *ad litem* will be remunerated in accordance with the Tribunal's Scale of Fees for Curators *ad litem* applicable at the date of appointment. The curator should submit a professional account for payment of fees and outlays to the Tribunal as soon as possible after the conclusion of the proceedings.

13. The Tribunal's prior approval in writing should be obtained before the curator incurs expenditure of an exceptional nature.

14. In the event of any dispute in relation to a professional account submitted the curator or the Tribunal may refer the account to the Auditor of Court for taxation.

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

## Compulsory powers to treat addiction?

As an addiction specialist I am familiar with the outcome from criminal courts of drug testing and treatment orders. These have been shown in varying degrees to be effective in changing criminal behaviour to the benefit of the community. Public and personal health issues also show improvements but, as secondary concerns, should we be using the criminal courts to effect change in public or personal health?

Is there a role for the Mental Health (Care and Treatment) (Scotland) Act 2003 (the MHA) and by extension the MHTS in the treatment of addiction for the benefit of personal health?

The primary diagnostic system used in Scotland is the ICD-10 – substance categories F10 – F19, with subsets F1x.1 to F1x.9 for the separate clinical conditions. Taking these subsets in turn, the MHA is clear that an exclusion from the meaning of “mental disorder” is “dependence on, or use of, alcohol or drugs”, (section 328(2)(e)). As such, in the context of the said exclusion, F1x.0 Acute Intoxication, F1x.1 Harmful use and F1x.2 Dependence syndrome are excluded as mental disorders for which the MHA could be used.

The diagnostic categories F1x.31 Withdrawal state, with convulsions; and F1x.4 Withdrawal state with delirium are managed outside the MHA, where they are considered physical health emergencies under which treatment would be given under common law to ensure “the preservation of the life of the adult or the prevention of serious deterioration in the adult's medical condition”.

There are a group of subcategories F1x.7 to F1x.9 which are “catch all” categories and which are not used frequently.

What happens in clinical practice for the diagnostic categories F1x.5 Psychotic disorder and F1x.6 Amnesic syndrome? Here there is often a clear clinical condition that meets all the criteria for EDC/STDC/CTOs. However, although the aetiology is understood to have been “use of alcohol or drugs”, the custom and practice is to present the case as requiring assessment as to other possible causes. Most F1x.5 states are self-limiting and rarely require any subsequent extensions under the MHA, but, when necessary, extensions are requested on the basis that real world cases are rarely purely down to the sole use of substances alone and as such fall under other ICD codes e.g., F20.9 Schizophrenia, unspecified. In F1x.6 (usually F10.6 – alcohol, also known as Korsakov's syndrome) the diagnosis can shift to other aetiologies such as brain injuries and/or dementing processes and as such MHA extensions may be sought e.g., F03 Dementia.

Having covered the clinical conditions, it would seem on this interpretation that there is no role for the MHA or the MHTS.

However, I recently attended a Scottish Health Action on Alcohol Problems (SHAAP) meeting on 26 October 2018 to launch their new report “Dying for a drink” and felt the need to revisit the accepted wisdom of “choice” in Dependence syndrome, and by extension capacity and significant impaired decision making (SIDM). My assumption is that the exclusion in the MHA of the dependence on alcohol or drugs, as opposed to the use of it, is the result of our society's judgment that use and/or continued use is an expression of choice.

In the New Zealand jurisdiction, a new Act “Substance Addiction (Compulsory Assessment and Treatment) Act 2017” (Ref: 1) came into force on 21 February 2018 accompanied by a “Guideline on Assessing Capacity to Make Decisions about Treatment for Severe Substance Addiction” (Ref: 2). Further detail is available on the internet. From my perspective, in essence in New Zealand there has been a shift in understanding as to the nature of addiction and the patient’s subsequent SIDM relative to their illness while under the continued use of the substance (even when not intoxicated or in withdrawal).

Specific examples of this shift include being aware of: -

- superficial or apparently facile answers;
- factually incorrect answers;
- positive assurances of willingness to change behaviours and engage in treatment in the face of repeated evidence to the contrary in the recent past;
- lack of awareness of short-term consequences;
- unrealistic expectations of particular treatment options;
- lack of recognition of the extent of the impact of substance use on family and/or self-care and wellbeing;
- incongruent affect.

This list is typical of those seen in clinical practice with a severe addiction, and could be seen as a function of their SIDM relative to their addiction. Should we be revisiting our exclusion of “dependence on ... alcohol or drugs”?

However, in the Guideline the caveat remains, “a person cannot be considered to lack capacity because they are considered to be making an ‘unwise or imprudent’ decision about accepting the need for treatment for severe substance addiction. The test of impaired capacity is that the person genuinely does not understand or acknowledge the risks or seriousness of the situation, or the improbability of their preferred course being effective.” Not unlike, but different from section 328(2)(g) of the MHA which states that “a person is not mentally disordered by reason only of ... acting as no prudent person would act”.

Seen as “the option of last resort”, the powers in the New Zealand 2017 Act (once all the principles/criteria are met not dissimilar to the MHA) seem to be designed with the goal of helping attain abstinence for long enough to ensure that a true capacity assessment can be made independent of the effects caused by enduring alcohol or drug neurophysiological changes. The maximum period of compulsory treatment is 112 days.

**Malcolm Bruce,  
Medical Member**

Refs: (1) & (2) available at: <https://www.health.govt.nz/our-work/mental-health-and-addictions/preparing-commencement-substance-addiction-compulsory-assessment-and-treatment-act-2017/substance-addiction-compulsory-assessment-and-treatment-act-2017-resources>

## Reflection from New Member Training

Members appointed to the Tribunal in 2018 attended a training day in November which was presented by Heather Baillie and Morag Jack under the banner – Thinking and Acting Judicially. This was the final day of the 2018 programme of training for the new members, which started with a three day induction course in March. New members have also participated in the mandatory training which has been delivered to the whole membership throughout the year.

Dr Morrow delivered an interesting and informative talk at the start of the day which set the scene for a full day, which included sessions on decision writing and the essential elements of the FFR, conflict of interest and perception of bias and an overview of the Statement of Judicial Principles. There were sessions for members to participate in small group work during the day. The feedback from the day was extremely positive with members enjoying the opportunity to discuss and reflect on their experiences since joining the Tribunal and to put their knowledge and skills into practice. Collectively the new members bring a wealth of experience and enthusiasm to the Tribunal membership.

One suggestion which was well received and worth sharing with the whole membership as a practice to take forward: at the end of the hearing day, take the time to reflect on the day's proceedings as a panel. It is a great opportunity for members to raise anything that might have arisen during the day and also good practice for our ongoing self-review and tribunal craft.

**Morag Jack**  
**In-house Convener**

# 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 \(As enacted\)](#)".

### ❖ 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. 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.



## 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)

## Recent and/or informative publications

- ❖ MHTS Annual Report 2017–2018  
[https://www.mhtscotland.gov.uk/mhts/files/Annual\\_Report\\_2017\\_2018.pdf](https://www.mhtscotland.gov.uk/mhts/files/Annual_Report_2017_2018.pdf)
- ❖ Statement of Principles of Judicial Ethics for the Scottish Judiciary  
<http://www.scotland-judiciary.org.uk/Upload/Documents/StatementofPrinciplesofJudicialEthicsrevisedDecember2016.pdf>
- ❖ Audit Scotland Report: Children and young people's mental health  
<http://www.audit-scotland.gov.uk/report/children-and-young-peoples-mental-health>
- ❖ Scottish Government Mental health strategy 2017-2027 – first progress report  
<https://www.gov.scot/publications/mental-health-strategy-2017-2027-1st-progress-report/>

## Mental Welfare Commission Publications

- ❖ Visit and Monitoring Report: Our visits to adults on guardianship 2017–2018, October 2018  
[https://www.mwscot.org.uk/media/433412/10.09.2018\\_our\\_visits\\_to\\_adults\\_on\\_guardianship\\_2017-18\\_0609.pdf](https://www.mwscot.org.uk/media/433412/10.09.2018_our_visits_to_adults_on_guardianship_2017-18_0609.pdf)
- ❖ Visit and Monitoring Report: Recommendations and outcomes from our local visits 2017, October 2018  
[https://www.mwscot.org.uk/media/433492/proofed\\_recommendations\\_report\\_2017\\_post\\_august\\_board\\_.pdf](https://www.mwscot.org.uk/media/433492/proofed_recommendations_report_2017_post_august_board_.pdf)
- ❖ Good Practice Guide: Working with an interpreter, Revised February 2018  
[https://www.mwscot.org.uk/media/127976/interpreters\\_toolkit\\_feb2018.pdf](https://www.mwscot.org.uk/media/127976/interpreters_toolkit_feb2018.pdf)
- ❖ .Good Practice Guide: Carers & confidentiality, December 2018  
[https://www.mwscot.org.uk/media/434881/2018\\_update\\_carers\\_confidentiality\\_final\\_draft\\_16\\_oct\\_2018.pdf](https://www.mwscot.org.uk/media/434881/2018_update_carers_confidentiality_final_draft_16_oct_2018.pdf)

**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**



# MHTS Office Hours

## Christmas and New Year

### Administration

The Administration will be open as normal over the festive period as follows:

Monday	24 December	from 9 am to 5 pm
Thursday	27 December	from 9 am to 5 pm
Friday	28 December	from 9 am to 4.30 pm
Monday	31 December	from 9 am to 5 pm
Thursday	3 January	from 9 am to 5 pm
Friday	4 January	from 9 am to 4.30 pm

### President's Office

The President's Office is closed as follows:

from 12:30 pm on 24 December 2018 to 9:00 am on 3 January 2019.

An In-house Convener will be available on the following days:

Thursday	27 December	from 9 am to 5 pm
Friday	28 December	from 9 am to 4:30 pm
Monday	31 December	from 9 am to 5 pm
Thursday	3 January	from 9 am to 5 pm
Friday	4 January	from 9 am to 4.30 pm

The In-house Convener can be contacted by telephone on **01698 390025**.

# Useful Contacts

## **Scheduling Team**

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

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

❖ Telephone: 01698 390073

## **e-Expenses Helpdesk**

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

❖ Telephone: 01698 390090

## **Finance Team**

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

❖ Telephone: 01698 390054

## **President's Office**

[mhtspresidentsoffice@scotcourttribunals.gov.uk](mailto:mhtspresidentsoffice@scotcourttribunals.gov.uk)

**Fiona Queen, PA to President and Member Liaison Officer**

❖ Telephone: 01698 390033

**Yvonne Bastian, President's Office Secretary**

❖ Telephone: 01698 390001