



Mental Health Tribunal for Scotland

Members' Newsletter

January 2021

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Allermuir Hill, the Pentlands

Message from Laura J Dunlop QC

Dear Members

Welcome to our first newsletter of 2021. As always, I am very grateful to everyone who has produced material for inclusion and to Jane Patrick and Yvonne Bastian for their editing and layout/design roles respectively.

In the President's office, we are still reflecting on our seven training days in the Autumn of 2020. On page 11, I have written about what we learned. As trailed at the training, templates for our decisions have now been circulated to legal members, and are in use. They are also on the Judicial Members' area of the MHTS website, at https://www.mhtscotland.gov.uk/mhts/Members_Area/Judicial_Members_Area

Several members asked if we could circulate decisions that are particularly well-written, as examples. A few members wanted to see ones we thought were below par. At the moment, we do not intend to circulate any from the latter category, but some of the former are likely to be distributed in due course.

Another issue we covered at training was the attendance at hearings of people who do not fit into either the party or relevant person category. This plainly includes observers and those who are present to contribute to the hearing in some way. Thoughts about how to determine who should be attending are on page 15.

Members will also be wondering if there is any news about the transfer of MHTS into the First-tier Tribunal for Scotland. I can confirm that there is an intention to transfer in to the FTT in November. I would also say that the position about older members is not yet clear, but that those who will be 75 or over should probably plan on the basis that they will not be transferring in to the FTT. The position in relation to those aged between 70 and 75 is still evolving.

Finally, and as some of you will know, we were sorry to say goodbye to Grace Lennox, our very able Senior Operations Manager, who left us just after Christmas to become a Reporter to Children's Hearings. For the next few months, her place will be taken by Hazel McKay, who has been seconded from the Glasgow Tribunals centre. We are very pleased to welcome Hazel back to MHTS, since she started her Tribunals work with us in the early years of our existence. That means she knows us, and what we do, very thoroughly.

There are other items in this newsletter for you to peruse or note. I hope you enjoy reading it.

With best wishes,

Laura

Laura J Dunlop QC, President

News

All Scotland Forum

I am pleased to hear that local members' forums are starting again, with WebEx being used as the platform. On an occasional basis, we can also host an evening event for members all round the country, with a speaker who will address issues of relevance to our work while, at the same time, we all consolidate our skills in participating in online events. I am delighted to say that, on Thursday 25 March 2021, Professor June Andrews will be our guest at such an event. I have known June for many years, almost since I started out at the Bar. She has had a varied career, across many different roles, and is a graduate in philosophy who is also qualified in nursing and law. Further details of the event will be circulated but, for now, you may want to put the date in your diary.

Laura J Dunlop QC
President



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

1. Three new sections of the Mental Health (Care and Treatment) (Scotland) Act 2003, sections 164A, 167A and 167B, came into force on 30 November 2020 by virtue of Section 26 of the Management of Offenders (Scotland) 2019¹. Taken together, these sections amend the 2003 Act to enable the Tribunal to determine, in certain circumstances, that the period during which the existence of a compulsion order must be disclosed shall end. The provisions do not apply to compulsion orders which have a restriction order added (CORO patients).
2. The purpose of these sections is to achieve equity in respect of disclosure of information between mentally disordered offenders and those in the criminal justice system; some offences need not be disclosed under the Rehabilitation of Offenders Act 1974, but this has not previously been the case for those who have been subject to compulsion orders. For mentally disordered offenders whom the Tribunal consider present continuing risk, the application must be refused and disclosure will thus continue until the compulsion order ceases to have effect.

¹ <https://www.legislation.gov.uk/asp/2019/14/section/26/data.pdf>

Members' Forums

Two forums held successful virtual meetings in December. These were Highland & Moray on 8 December and Tayside on 10 December. The Tayside forum welcomed not only the President to speak, but also members from outwith its normal geographical area due to the meeting being held virtually.

Members are encouraged to contact forum organisers, or myself, to suggest speakers or to volunteer to speak at a forum. Members can also claim CPD for attending a forum or forums!

The forum organisers are:

Moray & Highland

John Bamber

Contact: fqueen@scotcourtsribunals.gov.uk

Grampian

Derek Auchie

Tayside

David Gilling

Edinburgh

Joy Hosie

Glasgow

Maureen Reith

Ayrshire

Martin McAllister

Fiona Queen
PA to the President and Member Liaison Officer

Barnardo's Spirit of Christmas

MHTS, and the other tribunals at the Glasgow Tribunals Centre, took part in the Barnardo's Spirit of Christmas appeal, which was a bit different this year from any other – but very successful.

Hamilton managed to raise an incredible £940 through a PayPal Pool, which we used to buy 87 presents, and a further 65 presents were donated by individuals. This means that, thanks to us all at MHTS, 152 children got a present on Christmas Day.

Glasgow Tribunal Centre also took 60 ages/genders and managed to get presents gifted for them all!!

To know that our efforts have helped to put a wee smile on the children's faces, and no doubt take a bit of pressure off parents, makes us all very proud.

Thank you so much to everyone who donated money, gifts, selection boxes and other extras to go in with the presents – it is very much appreciated.

A lot of work was put into organising this (with the most difficult task being buying gift bags to fit 87 different sized presents!) but it has been a pleasure to do this for the children, and without everyone's kindness and generosity it would not have been possible – so thank you.

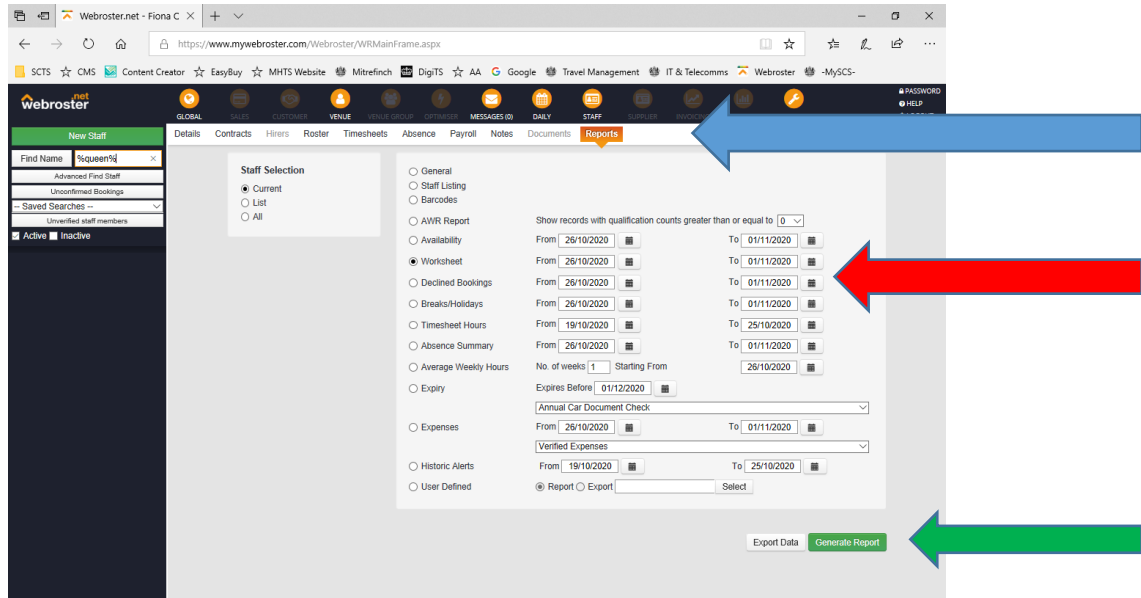
Organisers were: Gillian Hutton, Jenna Swan, Michelle McGrillen and Pamela Traynor



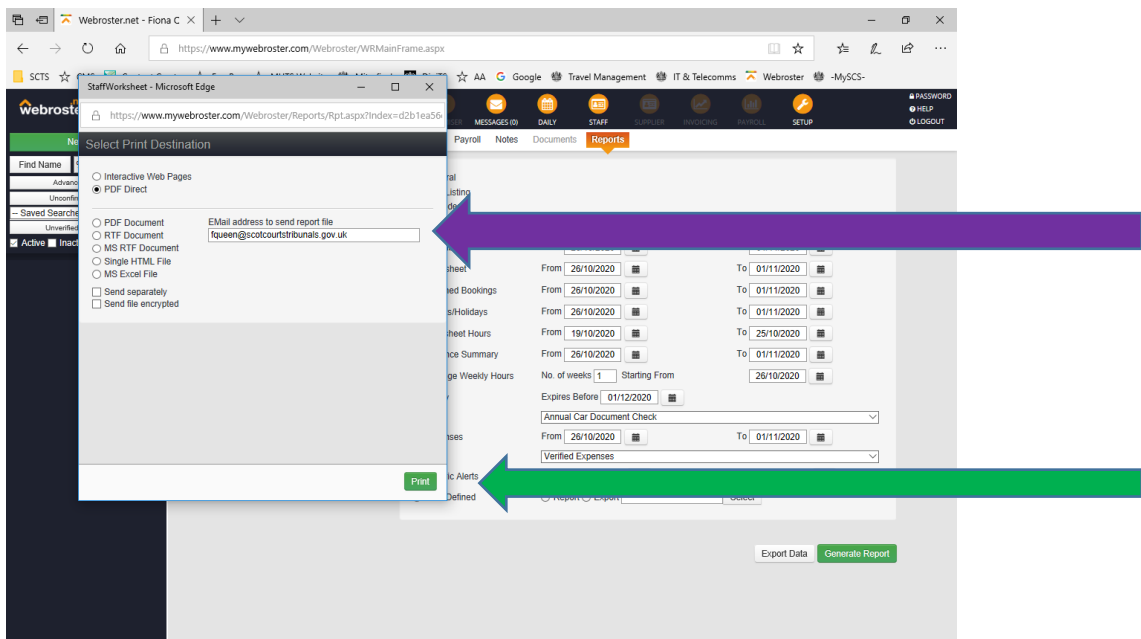
Webroster: How to run a sittings report

Members often contact the Tribunal enquiring on the number of sitting days they have had over a specific period of time. This is normally required for review purposes. Members are advised they can run a report directly from Webroster with this information. Details are as follows:

Click on **'Reports'** tab found on the white ribbon at the top of the Webroster page (please note screen shot below). Shade the **'Worksheet'** dial and input dates. Click the green **'Generate Report'** button at the bottom of the page (this will produce a new screen).



In the new screen, **input your email address** and shade either the **'PDF Direct'** or **'PDF Document'** dial and then click the green **'Print'** button. 'PDF Direct' will produce a report which will pop up immediately on your screen. 'PDF Document' produces a pdf report which will be emailed to you.



Scheduling reminder

Members are asked to ensure that their listed conflicts of interest in the Notes section of Webroster are kept up to date and to advise the Scheduling team of any changes, for example starting locum work in an area. This will assist in preventing conflicts of interest and last minute panel member changes.



Contact Tracing



In support of the Government's Test and Protect initiative to control the transmission of COVID-19, a contact tracing process for all SCTS buildings was introduced on Monday 19 October.

SCTS will ask all users including staff, judiciary and contractors to record their contact tracing details whenever they enter any of its buildings. If requested to by the NHS SCTS will pass the contact details directly to them.

To make this easy for you and to protect your personal data SCTS will use a QR-based platform, devised by SAFE2GO - a Scottish company involved in developing digital solutions for use in the NHS to collect details. These details will only be supplied to support the test, trace, isolate strategy and information will be deleted after 21 days of it being collected.

The process is similar to what you might encounter when visiting some commercial premises and your details are held on a secure GDPR-compliant cloud-based system. If SCTS receives a request from the NHS for details of attendees at any of its buildings in relation to a COVID-19 infection, it can then request a report to be sent directly from the system to the NHS. At no point will the SCTS have access to those details.

Highland Wedding Covid Style by Fiona Curtis (née Sutherland)

Anyone who has worked with me over the last year may have heard me talking with anticipation about my elopement style wedding in the Faroe Islands booked for September 2020. However, the Covid-19 pandemic had other plans for me and my now husband, Tony Curtis, an Allied Health Professional from Warwickshire.

Post lockdown, Tony and I pressed on with our wedding plans, but the Faroese airline cancelled our flights due to Covid-19 just eight weeks before our wedding date. A flurry of Scottish wedding planning ensued. Wedding reception venues and hotels were surprised by our emails and phone enquiries and were often not able or unsure how to accommodate us, or even decided to close for the rest of the season after we spoke to them! Undeterred, we pressed on with our plans, securing a celebrant to marry us and the paperwork for our outdoor wedding in the majestic landscape of Assynt in the North West Highlands. With just three weeks to go before our wedding, things were not looking good. We had no wedding reception, no bridal flowers, no wedding cake and we ended up buying two different flights on the same departure date for Tony's family due to earlier booked flights being cancelled.

Fortune favours the brave, and, within just a few days, we managed to find a superb reception venue, an award-winning florist and we had the (wrong!) wedding cake. Miraculously, we ended up with the most wonderful Covid regulated wedding. With just seven in our wedding party, we had the most intimate ceremony and reception possible. No amount of Faroe Islands could have made our wedding day any more special.



The intrepid couple – Mr and Mrs Curtis



Covid Cake Topper!

The Many Faces of Dementia:

Online course delivered by the University College of London

This course was brought to the Tribunal's attention by general member, Brian Dewar. It is delivered by the University College London and has been set up for learning over a 4 week period, but the course can be accessed in full via the link below in order for individuals to undertake it at their own pace (the course is only available until the middle of February). I have completed the course and found it to be extremely interesting and delivered in an easy to understand manner.

Content is presented in both readable and video format, with each week's course taking approximately one hour to complete. If you read purely the dialogue without watching the videos it takes slightly less time, however I would recommend watching the videos as, at times, there is dialogue from both clinicians and patients on the one video clip and it is difficult to differentiate who is speaking from only the readable format. The videos also give a human touch as they give some insight into the lives of carers and patients living with dementia.

There are questions at the end of each week along with recommendations for additional reading. During week one's course there is a link to the Alzheimer's website advising on the use of language to describe people living with dementia.

Each week covers a different area of dementia:

Week 1: Familial Alzheimer's disease (fAD)

Week 2: Behavioural variant frontotemporal dementia (bvFTD)

Week 3: Dementia with Lewy bodies (DLB)

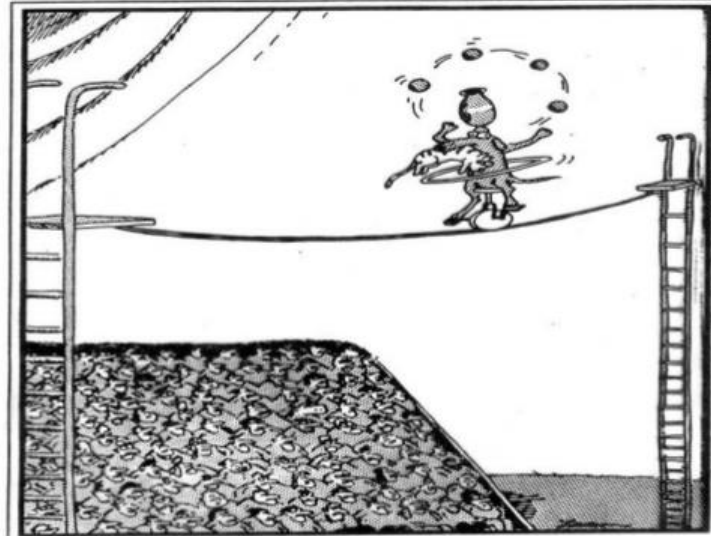
Week 4: Posterior cortical atrophy (PCA)

<https://www.futurelearn.com/courses/faces-of-dementia>

Fiona Queen
PA to the President and Member Liaison Officer

Articles

Training 2020



High above the hushed crowd, Rex tried to remain focused. Still, he couldn't shake one nagging thought: He was an old dog and this was a new trick.

from The Far Side by Gary Larsen

In Lockdown 1, it seemed likely we would not manage any training days in 2020. We had already made a plan, however, which helped when summer came and the idea that we might manage some training after all, using WebEx, started to crystallise. So we resurrected our Mock Tribunal script, contacted Chris at Tapestry Films (they deserve a further plug) and the rest, as they say, is history. (It probably will be, since reference to it is likely to appear in the records of MHTS, destined at some point to enter the National Archives of Scotland, but that's a project truly on the back burner just now).

We received some email and verbal feedback, but the greatest volume of comments is contained in the feedback forms. There was some unhappiness about the first event, and I accept completely that aspects of it were not good, mainly due to my lack of understanding about the second page of attendees; the difficulty in concentrating on what people were saying while watching the chat and hand-raising; and the use of Cisco Meeting for the breakout sessions in the afternoon rather than, as for the second and subsequent events, the full WebEx platform, split into rooms.

I am aware that only around a third of those who attended one of the seven days filled in a form; if you did, many thanks for setting down your views. We can't really make assumptions about what everyone else thought – I hope it was along the same lines as the forms we did get, which were very positive. For example, 84% of forms gave a 4 or 5 rating for the Mock Tribunal exercise, 78% did so for the patient experience section and 72% for the afternoon session. In the comment sections – what people liked and what they would change – some very worthwhile suggestions were made, and are likely to feature in future training, and/or influence our practice in other ways. The consolidated version I have is anonymised, so anything I quote is unattributed from my perspective.

To everyone who suggested seeing more of the Mock Tribunal, let me say that your wish will be granted: there are more clips to use and it is very likely they will feature in 2021.

Online training seems here to stay, probably with in-person events too, so I hope there will be something for everyone, at least as far as format is concerned. One beauty of feedback related to an online event is that there were no comments about the food. (When we return to in-person events, you are of course free to include remarks about the coffee or the lunch). Full marks for wit to the member who said that what they liked most about the day was the catering and, to another member, there are unlikely to be expenses available to improve the quality of background bookcases or fund a conservatory. More seriously, there was one comment which identified what I hope is isolated practice in teleconferencing (discussing and giving the decision without adjournment). I have also mentioned that elsewhere, since it needs to be discouraged.

In closing, I am going to feature what, for me, were standout comments, each for a different reason. I hope you find them as thought-provoking and insightful as I do.

- [T]he sheer variety of comments and differing perspectives served to underline just how diverse we are and, in so doing, highlighted our strength as a Tribunal. Whilst I shared many concerns about the lack of patient focus, I also became aware of issues I had not personally acknowledged. It was thus relevant and highly informative.
- It was not too daunting to contribute.
- It comfortingly reminded me I am part of an organisation and team at a time when visual presence and lack of physical contact makes that reality feel remote and distanced.

Laura J Dunlop QC
President

Decision of the Upper Tribunal and the importance of participation

This short article is intended to bring your attention to a recent decision of the Upper Tribunal in a case which has direct application for MHTS Hearings.

By way of background, an appellant who represented himself before the FtT Housing and Property Chamber repeatedly interrupted proceedings. He was eventually excluded from participating in the hearing, partly to allow the other party to make representations without interruption and also to allow the proceedings to continue. His appeal against this decision was successful: he should not have been excluded and should have been permitted, indeed supported to participate or to have adequate representation.

In the decision, the UT noted considerable sympathy for the chair of the FtT. Interruptions from a party litigant clearly made proceedings extremely difficult. In the circumstances, it seems like a course of action which was taken to allow the hearing to proceed. Against that however, the appellant was described as having poor mental health, and being unable to prevent himself from interrupting the hearing. It was concluded that the exclusion of a party from their own hearing is a very significant step indeed and that, before taking such an extreme decision, other options could have been considered. The options include things that we are more than familiar with in our own jurisdiction, including rest breaks for the individual during proceedings, reviewing the situation and ensuring that adequate representation is secured.

The FtT's overriding objective is similar to our own (Rule 4) but is aimed at preventing people from actively attempting to frustrate proceedings, whereas in MHTS cases (and indeed in this particular case) the individual was making no such attempt. The effect was disruptive, but there was no underlying attempt to frustrate the process. The adequacy of representation available to the individual was not considered. This is a difficult area, and one with direct relevance in our own proceedings. Whilst some patients will instruct a solicitor, and we would expect to see a curator *ad litem* at a hearing when a patient does not have capacity to instruct, there are many hearings where a patient represents themselves. Although they have capacity to do so, they may not be well enough to do so effectively. The FtT in this case obviously found it difficult to balance the need to deal with the matter and the inability of the individual to represent himself. It is difficult not to have some sympathy with their position; they did not have any power to require that the patient be represented by a solicitor, nor were they able (as we are in MHTS hearings) to direct that a curator be appointed.

Whilst the decision in this case to exclude the appellant was ultimately found to be incorrect in legal terms, it is not difficult to understand why it was taken, or how difficult the hearing must have been for all participants. It is perhaps a less common scenario in other chambers; in general, MHTS members are experienced in dealing with this type of situation and have various strategies for getting through evidence and reaching a decision even in a difficult hearing.

Again, generally speaking, patients are very rarely excluded from MHTS hearings, although the power to remove someone from a hearing does exist (Rule 69). Members do an excellent job of applying the overriding objective whilst avoiding the exclusion of a party. In our rules, as in those of the Housing and Property Chamber, reference is made to measures alternative to exclusion. Conveners can expect proceedings to be relatively free from interruptions and can make that clear to parties. Breaks can be arranged, particularly when things become heated or contentious. Patients who disrupt proceedings but who are represented can be encouraged to seek a short break to discuss the situation with their solicitor.

As noted, Rule 69 does give some powers to exclude anyone disrupting a hearing, making it difficult to present evidence, or whose conduct interferes with the administration of justice. In exercising this significant power in respect of a party to a hearing, the tribunal is obliged to have regard to whether the person will be adequately represented. Rule 69 sets out a range of measures to ensure that such representation can be secured.

The message from this UT decision is that the person who is the subject of the decision must be able to participate adequately in the process of reaching that decision. It reinforces that we must continue to get this right. The step of excluding a party from their own hearing is one of utmost significance and we should continue to use every power available to us, together with members' skills and experience in dealing with difficult hearings, to ensure that we maintain our good practice here. Rule 69 gives a strong framework for achieving the right balance of securing the overriding objective in rule 4 and ensuring adequate participation and representation of patients and other parties to hearings. The full decision of the UT can be found at:

<https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2020ut037.pdf?sfvrsn=0>

Jennifer Whyte
Solicitor
Legal Secretary to the Tribunal

Observers and other attendees at Tribunal hearings

The starting point for answering the question of who can attend a tribunal hearing is Rule 66(1) of the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005 (“the 2005 Rules”). It states that, subject to a request by a patient and subsequent order by the Tribunal for a hearing to be held in public, hearings shall be held in private. ‘Private’ in this context means that the public are excluded. It follows that only those who are entitled to attend or who have permission to observe the hearing may attend it.

Generally those entitled to attend a hearing are parties and other relevant persons (those who have been sent notice of the case by the Tribunal and who have sent a notice of response although, in practice, the Tribunal receives few notices of response and does not insist on them), and those specified in Rule 66(6) of the 2005 Rules. The 2005 Rules provide who should receive such notice in respect of different applications, appeals, references and reviews.

Rule 66(6) states that, even although the hearing is held in private, (a) the President, (b) any member of the Tribunal, or member of staff of the Tribunal, with the agreement of the convener, and (d) an interpreter or other person giving other necessary assistance to a person entitled to attend the hearing, shall be entitled to attend a hearing too (the provision formerly head c) has been repealed). Obviously the last of these, i.e. the “other person giving other necessary assistance to a person entitled to attend the hearing” could cover quite a variety of people. Taken with the ability of the Tribunal to conduct the hearing in the manner it considers to be just, in terms of Rule 63(2)(b)(i), this gives the Tribunal a fairly wide discretion as to who should be permitted to attend the hearing for the purpose of providing assistance to another and, in particular, a patient.

As arose in the mock tribunal case used for last year’s training, when the patient’s neighbour arrived at a hearing, there may be cases in which a tribunal has to decide if a person who unexpectedly attends a hearing should remain throughout. This could be a relative (who is not a primary carer), a friend, or an advocacy worker who has had only limited or no contact with the patient. It will be a matter for the tribunal hearing the case to consider, having regard to the facts and circumstances of each case and, in particular, the views and wishes of the patient, if such a person should be permitted to attend all or part of the hearing. If the person is attending in an essentially supportive capacity which will assist the patient’s participation in the hearing then a tribunal should think carefully before preventing such a person from attending. It is good practice to seek submissions from parties and relevant persons, as well as asking the person themselves to explain what they can contribute, before taking a decision not to permit attendance.

Observers fall within a different category to those who are entitled to attend the hearing. As you are aware, with effect from 1 January 2021, there has been a change to the Tribunal’s system for authorising the attendance of an observer at a hearing. Those who seek permission to be an observer are usually those in training for a profession which will require them to attend hearings in an occupational capacity. The effect of the change is to treat everyone equally and the revised Guidance will apply to everyone, no matter their occupation or status within a profession.

The Tribunal now requires anyone who wishes to attend a hearing as an observer – that is, a person who has had no part in providing services to the patient – to seek permission in advance from the President's Office. The only exception will be where a person not yet fully qualified is a member of the team which has been working with the patient, and is attending with their supervising practitioner, in which case neither is really an observer as such, and permission is not required. The revised Guidance is contained in https://www.mhtscotland.gov.uk/mhts/Contact_Us/Observation_Requests

Once an observer has received permission from the President's Office to attend a hearing, then s/he should be allowed to attend the hearing, subject to the consent of both the convener of the hearing and the patient – see paragraph 13 of the Guidance. Asking the patient for such consent, particularly at a teleconference hearing, requires to be carefully handled at the start of a hearing. More difficult is what to do if the patient is not present at the hearing and so is unavailable to consent (or not). Should the observer attend the hearing in these circumstances?

Once again, the tribunal should consider if it is able to reach a view on this matter having regard to all the circumstances of the case before it. In doing so, it is worth bearing in mind the purpose for which observers are granted permission to attend hearings. If there is a representative at the hearing on behalf of the patient, for example a solicitor or curator *ad litem*, then his or her view on this matter could be sought. If not, might the named person be able to assist with regard to whether the patient would be likely to object to an observer? Even the nature of the application and the patient's position on it may be relevant, for example an unopposed variation of a hospital-based compulsory treatment order to a community-based one. Finally, there may occasionally be a hearing where the patient is not present, there is no one who can give a view on what they would say about the presence of the observer and the material is particularly sensitive or challenging. In such circumstances, members may decide that it is not appropriate for an observer to be privy to the evidence to be led, and consent can be withheld.

Jane Patrick
In-house convener

Journey of an Application

Applications must be made in writing to the MHTS and are submitted either by letter, by proforma or on forms created by the Mental Welfare Commission (MWC). Proformas and forms are available on the [MHTS website](#) and from the [Scottish Government website](#) for applicants to download and use.

All applications must be checked by a casework team leader when they are received to ensure they are valid and contain the relevant information as stated in the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005 (“the Rules”). The Rules impose obligations on the applicant to provide specific information and the Administration to perform certain duties when processing applications. The casework team leaders log each application on their individual team logs and check them to ensure that all pages of the application have been submitted, along with any supplementary documentation which may be required dependent on the type of application, before being issued to the caseworker for processing. The team leaders also check if the patient has a case history on our Case Management System (CMS) and, if so, they use this to check that the details, such as the patient’s name; date of birth; CHI number; named person status etc. held from previous applications, match the details on this application. Discrepancies with these details would be questioned and amended pages requested as necessary.

If there are any discrepancies with any of the details provided on an application, but which do not affect the validity of the application, then the team leader would request amended page(s) from the applicant. Team leaders do not hold back applications for the amendments to be received; the application is allocated to the caseworker to process with the errors highlighted and if/when the amendments are received, the caseworker will attach the amended page(s) to the case and they are distributed to the panel and parties as part of the case papers (hence the reason you may find that your paperwork has several ‘amended pages’ attached).

The table below shows the number of applications/notifications received and checked in November 2020, the amount of applications for which amendments/additional information had to be requested by the team leaders after the initial checks, and the number of applications returned as invalid (**stats taken from the team logs**).

Team	Number of Applications/ Notifications Received	Number of Applications requiring Amendments	Number of Applications Returned as Invalid
Team 1	207	39	4
Team 2	200	68	2
Team 3	210	28	1
Total	617	135	7

As you will note, a fairly high proportion of applications required amendment or additional information. A few applications were returned as invalid, the reasons for these including the examination dates being outside the statutory period (3 applications); an appeal being submitted within three months of a tribunal panel reviewing an Order; a section 95 application being submitted for a patient on an interim CTO; and no notice of transfer being given for a section 125 appeal.

As there are so many different types of applications, team leaders have access to the 'Guidance of Checking Applications' Standard Operating Procedure to assist them. This guidance gives them detailed information such as the format in which the application should be submitted (e.g pro-forma or MWC form); the relevant Rule(s) and section(s) of the Act; details of the statutory time restrictions and/or key performance indicators (KPIs) which must be adhered to when scheduling the hearing; and guidelines on the patient's right of appeal. It also details a list of 'additional checks' which have to be carried out, e.g. what sections of the application must be completed and what documents should accompany the application (as stated in the tribunal's Provision of Documents Guidance). If the team leader identifies any issues with an application, especially if they deem the application invalid, they inform the applicant immediately to give them the opportunity to rectify it, as this may have legal implications on the detention of the patient.

Caseworkers register the application on CMS, linking the application to the patient's history if applicable, inputting the information noted on the application, such as the patients' details; the RMO & MHO details; details of any other relevant person; Order start & expiry dates and examination dates etc. It is imperative that the information entered into the system is correct, especially the contact details, as this is where the addresses for the letters are generated from. When registering the application, the caseworker will double check that all the relevant information had been provided. It is very common for named persons to be noted on applications but no nomination and acceptance forms provided, so caseworkers need to request these before they can add the named person to the case.

Once the application is registered and the relevant paperwork is attached to CMS, the caseworker will then send a booking form to our Scheduling Department for the hearing to be scheduled. The Scheduling team book the panel members, the venue/telephone conference line and arrange for any security to attend the hearing. Caseworkers always attempt to schedule the hearing around the applicants' availability, if this can be obtained.

Once the date, time and panel have been booked, the booking form is then passed back to casework for the application to be intimated. Invites and case papers to the parties are sent out either by post (to individuals who do not have a secure email address) or by secure email and are uploaded for the panel via the members' website. Once the hearing has been intimated, if anyone wishes the date of this to be changed, the request is submitted to the President's Office. If this is granted, the caseworker then needs to obtain further availability from all parties and relevant parties and start the whole process again from the booking form stage, creating additional work.

Team leaders and caseworkers do their utmost to ensure that all applications contain all the necessary information and have been processed correctly, however it is not their role to read through the full contents of an application. If, therefore, you notice any discrepancies with any application, please contact the Tribunal Administration as soon as possible to give us the opportunity to rectify this in advance of the hearing.

Gillian Hutton
Improvement and Learning Officer

Non-disclosure of documents: change in practice

Members will be used to seeing a Rule 46A interlocutor (non-disclosure of a document) as part of the papers for a case. A recent change in Tribunal practice means that there may be fewer of those, but more Rule 47 interlocutors (withholding documents or reports from disclosure at initiative of the Tribunal in exceptional circumstances) issued.

The Tribunal has the power under both rules 46A and 47 of the Mental Health Tribunal for Scotland (Practice and Procedure) (no. 2) Rules 2005 to withhold all or part of a document from a party or parties. Rule 46A applies where a request is made by the person sending the document to the Tribunal. Rule 47 applies where the Tribunal has a document and considers not disclosing it on its own initiative.

Under Rule 46A, a request for non-disclosure of any document, or part of a document, should be made in writing when the document is sent to the Tribunal. For a request for non-disclosure to be considered, the person making the request must state the words or passages which they do not wish to be disclosed, and give reasons for the request.

Rule 47 allows the Tribunal to decide on its own initiative that a document or report should not be disclosed. Such a decision will be taken under Rule 47 on the basis that disclosure may cause serious harm to the patient or any other person such that it would be wrong to disclose it to the patient or another person, but in all the circumstances it would nevertheless not be unfair if the document or report were to be considered by the Tribunal.

Prior to 5 October 2020, when the Tribunal received an application which revealed that information had not been provided to a patient, for example a CTO application which had not been intimated to the patient by the MHO in terms of section 60(2) (where one of the medical reports states the view that the giving of notice would be likely to cause significant harm to the patient or any other person) or a determination to extend a CTO which had not been intimated to the patient in terms of section 87(3) (where the RMO considers that there would be a risk of significant harm to the patient or to others), it was the Tribunal's practice to revert to the applicant asking if they wished to make an application for non-disclosure under Rule 46A.

Since 5 October, the Tribunal has stopped reverting to MHOs and RMOs in this way. Instead, those who submit applications have been advised that the Tribunal expects that, if non-disclosure is sought by them under Rule 46A, an application to that effect is included as part of submission of the application to the Tribunal. When a document submitted to the Tribunal reveals that information has not been provided to a patient as detailed above and no non-disclosure request is made, the caseworker will ask an IHC to consider if the submitted document should be withheld under Rule 47 from the patient or another person. Before reaching a decision, the IHC may – but need not – appoint a person of skill to assess and report on the potential for serious harm. With or without such a report, the IHC will reach a decision on the question of disclosure. If a document is to be wholly or partly withheld, a curator may be appointed (if there is not already a curator in place). The Tribunal is obliged to notify the representative of the patient or other person to whom the document is not to be disclosed that such a decision has been made, and the reasons for it.

Jane Patrick
In-house convener

Legal Update

- The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2020 (SSI 2020/246)
<https://www.legislation.gov.uk/ssi/2020/246/made/data.pdf>
- The Management of Offenders (Scotland) Act 2019
<https://www.legislation.gov.uk/asp/2019/14/section/26/data.pdf>
- Decision Notice of Sheriff Iain Fleming in the case of Eric Hamilton and The Glasgow Housing Association Limited, Yourplace Property Management Limited, [2020] UT37
<https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2020ut037.pdf?sfvrsn=0>



Informative Publications

- Scottish Human Rights Commission (SHRC): COVID-19, Social Care and Human Rights: Impact Monitoring Report, October 2020
<https://www.scottishhumanrights.com/media/2102/covid-19-social-care-monitoring-report-vfinal.pdf>
- Scottish Government: Coronavirus (COVID-19): mental health – transition and recovery plan, 8 October 2020
<https://www.gov.scot/publications/mental-health-scotlands-transition-recovery/>
- Scottish Government: Coronavirus (COVID-19): mental health – transition and recovery plan – summary, 8 October 2020
<https://www.gov.scot/publications/mental-health-scotlands-transition-recovery-summary/>
- SCTS: Annual Report and Accounts 2019-20
<http://www.scotcourts.gov.uk/docs/default-source/aboutscs/reports-and-data/reports-data/scts-annual-report-amp-accounts-2019-20.pdf?sfvrsn=2>
- Scottish Mental Health Law Review: Interim Report – December 2020
<https://cms.mentalhealthlawreview.scot/wp-content/uploads/2020/12/Scottish-Mental-Health-Law-Review-Interim-Report-December-2020.pdf>
- Scottish Drugs Forum (SDF): Moving Beyond ‘People First’ Language – A glossary of contested terms in substance use
<http://www.sdf.org.uk/wp-content/uploads/2020/10/Moving-Beyond-People-First-Language.pdf>
- Equality and Human Rights Commission: How coronavirus has affected equality and human rights, October 2020
https://www.equalityhumanrights.com/sites/default/files/equality_and_human_rights_commission_how_coronavirus_has_affected_equality_and_human_rights_2020.pdf

Mental Welfare Commission for Scotland Publications

- MWC: Characteristics of young people detained under the Mental Health Act in Scotland 2015-2019, Statistical Monitoring, 15 October 2020
https://www.mwcscot.org.uk/sites/default/files/2020-10/YoungPeopleDetainedUnderMHA_October2020.pdf
- MWC – Annual report 2019-20
https://www.mwcscot.org.uk/sites/default/files/2020-11/MentalWelfareCommission_AnnualReport_2019-20.pdf
- MWC – Advice Notes – COVID-19 FAQs for practitioners (version 21, 23 December 2020)
<https://www.mwcscot.org.uk/sites/default/files/2020-12/Covid-19%20advice%20note%20v21%2021%20Dec%202020.pdf>
- MWC – The use of the Mental Health (Care and Treatment) (Scotland) Act 2003 during Covid-19, Statistical Monitoring, December 2020
https://www.mwcscot.org.uk/sites/default/files/2020-12/Detentions%20during%20COVID%20report_17122020.pdf

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.

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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@scotcourttribunals.gov.uk

The following timescales will apply for contributions*:

May edition: contributions by the end of March

September edition: contributions by the end of July

January edition: contributions by the end of November

***Contributions may require to be edited**