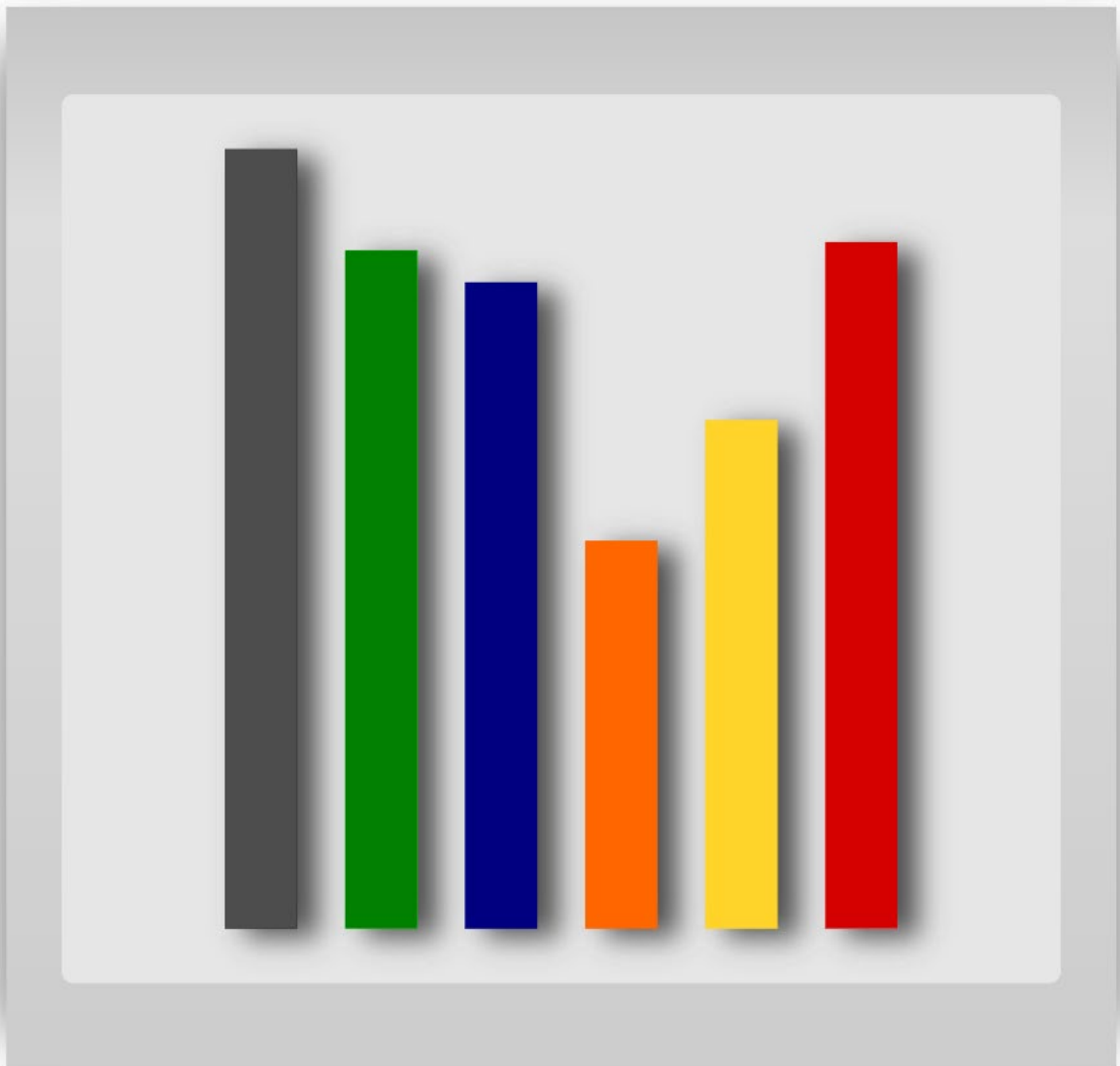




Mental Health Tribunal for Scotland

A year of telephone hearings: some findings from the year 2020 – 2021



Introduction

Moving at short notice from a system of hearings held in person to one based almost entirely on telephone gatherings was challenging. There was little time to set processes, draft and circulate guidance and advise all external parties of our new arrangements. Yet we managed the change, and the provision of hearings to those subject to compulsory care and treatment for mental disorder was maintained.

At the same time, it was obvious that such a change, even only of form, would have effects. We were concerned about potential decline in patient attendance, so we began counting that from the start (although it has always formed part of the record of each individual hearing). We also gathered feedback, in particular during a six week period in the summer when we asked that a form be completed for every telephone hearing. Outwith that period, forms were, and are, completed on an ad hoc basis as issues arise. There is a large log of those comments.

Added to the specific monitoring referred to above, we gather data each year on the numbers of applications. Our reporting year is to end March, so the data for the year to 31 March 2021 almost coincides with the year of lockdowns.

In this supplement, you will find:

- A comparison of numbers of applications received in the year to 31 March 2020 and those received in the year to 31 March 2021, grouped according to the relevant sections of the 2003 Act;
- A graph showing total application receipts for the past 10 years;
- A graph showing the extent to which telephone hearings allowed us to use both halves of a hearing day ('the multiple hearings' rate);
- Comparison of patient attendance between the year 23.3.20 to 19.3.21 and 25.3.19 to 20.3.20;
- A study, carried out by Jennifer Whyte, legal secretary, of information provided by a small number of patients who attended telephone hearings, identified by individual tribunals as possibly willing to be approached.

The President's office is small and we do not have a statistician in our team. The data we have gathered is therefore presented as is, without analysis, although certain objective features are obvious. In particular, the increase in numbers of applications in the year to 31 March 2021 is clear, as is the limited effect on patient attendance overall of the shift to telephone hearings. In relation to the study carried out by Jennifer, it is unfortunate that we were not able to recruit more patients to provide information, but I am very grateful to Jennifer for undertaking the work, since it did provide an indication of how a small group of people felt about these hearings. Reinforcing an impression gained from informal comments, it was apparent that, for some, the chance to attend by telephone rather than in person was actually welcome. All this information will be of use to us as we plan for the future, particularly how we can best offer choice of mode of hearing to patients.

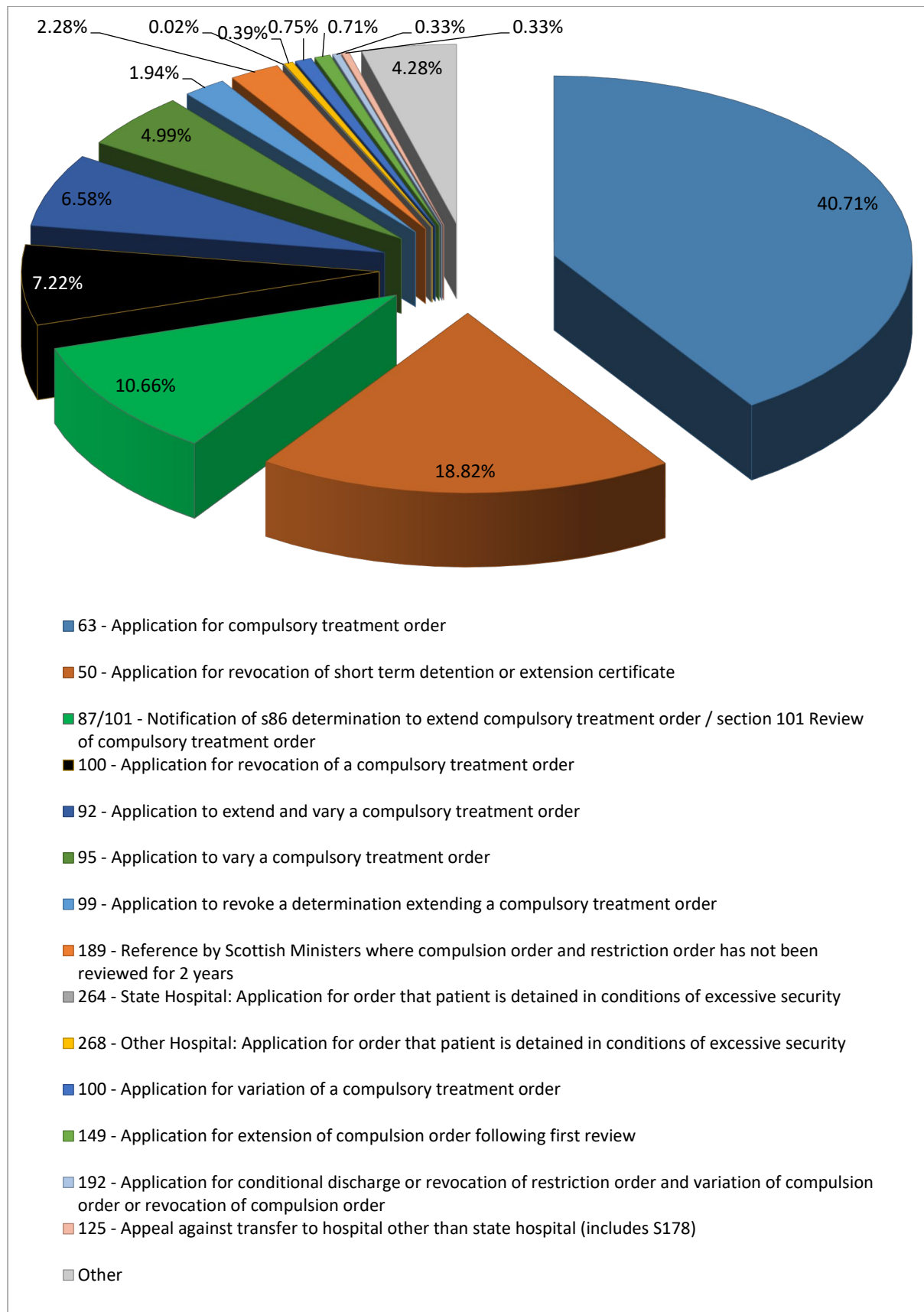
Finally, and also in relation to patient attendance, the Millan Committee carried out research on this topic as part of its work in the early 2000s. That revealed that, when hearings were held in the sheriff court, patient attendance was 28%.¹ It is of some comfort that, even when reduced to a telephone hearing, the proceedings of the Tribunal are producing a much better rate of patient participation than was experienced under the previous system.

¹ Millan Report (2001), chapter 9, para 15

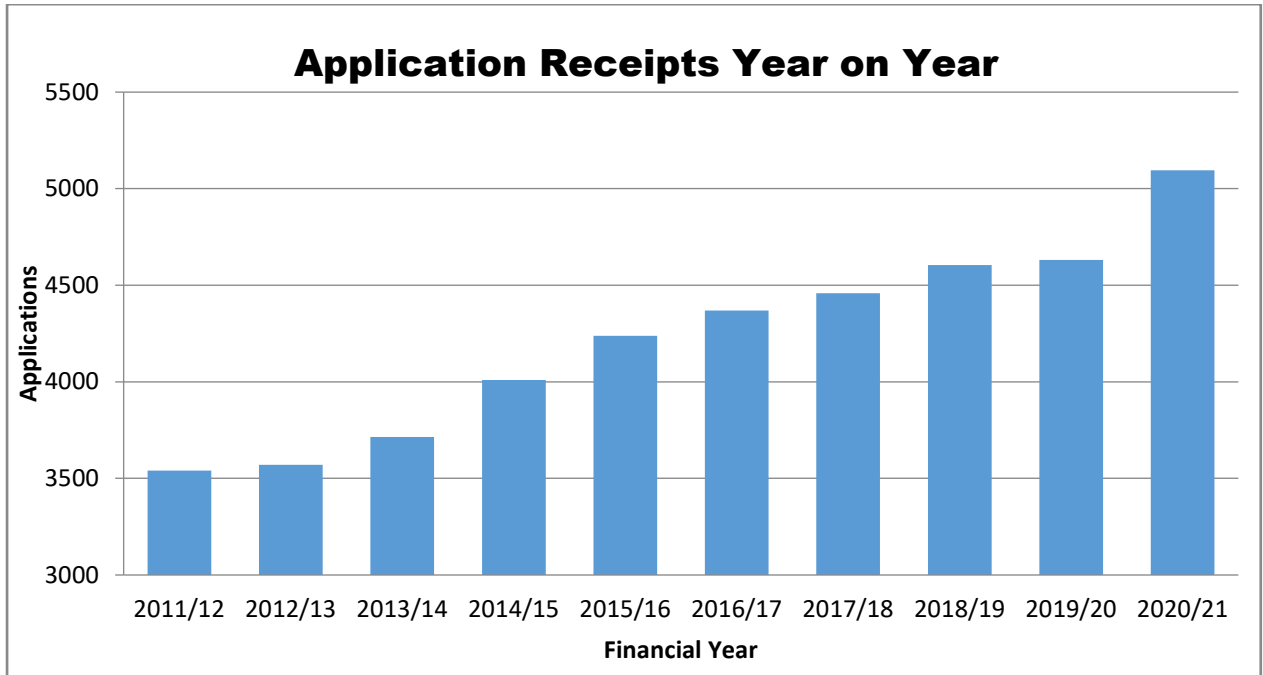
Year to Year Comparison for Application type from 2019/2020 to 2020/2021

| Section | 2019/2020 | | 2020/2021 | | Increase / Decrease in Volume on Previous Year | Percentage Increase / Decrease on Previous Year |
|--|-----------------|---------------------|-----------------|---------------------|--|---|
| | As a Percentage | Total Apps Received | As a Percentage | Total Apps Received | | |
| 63 - Application for compulsory treatment order | 40.00% | 1840 | 40.71% | 2074 | 234 | 12.72% |
| 50 - Application for revocation of short term detention or extension certificate | 17.09% | 786 | 18.82% | 959 | 173 | 22.01% |
| 87/101 - Notification of s86 determination to extend compulsory treatment order / section 101 Review of compulsory treatment order | 10.33% | 475 | 10.66% | 543 | 68 | 14.42% |
| 100 - Application for revocation of a compulsory treatment order | 7.54% | 347 | 7.22% | 368 | 21 | 6.05% |
| 92 - Application to extend and vary a compulsory treatment order | 6.63% | 305 | 6.58% | 335 | 30 | 9.84% |
| 95 - Application to vary a compulsory treatment order | 5.46% | 251 | 4.99% | 254 | 3 | 1.20% |
| 99 - Application to revoke a determination extending a compulsory treatment order | 2.07% | 95 | 1.94% | 99 | 4 | 4.21% |
| 189 - Reference by Scottish Ministers where compulsion order and restriction order has not been reviewed for 2 years | 2.41% | 111 | 2.28% | 116 | 5 | 4.50% |
| 264 - State Hospital: Application for order that patient is detained in conditions of excessive security | 0.41% | 19 | 0.02% | 1 | -18 | -94.74% |
| 268 - Other Hospital: Application for order that patient is detained in conditions of excessive security | 0.39% | 18 | 0.39% | 20 | 2 | 11.11% |
| 100 - Application for variation of a compulsory treatment order | 0.96% | 44 | 0.75% | 38 | -6 | -13.64% |
| 149 - Application for extension of compulsion order following first review | 0.98% | 45 | 0.71% | 36 | -9 | -20% |
| 192 - Application for conditional discharge or revocation of restriction order and variation of compulsion order or revocation of compulsion order | 0.39% | 18 | 0.33% | 17 | -1 | -5.56% |
| 125 - Appeal against transfer to hospital other than state hospital (includes S178) | 0.37% | 17 | 0.33% | 17 | 0 | 0% |
| All Other | 4.98% | 229 | 4.28% | 218 | -11 | -4.80% |
| Total | 100.00% | 4600 | 100.00% | 5095 | 495 | 10.76% |

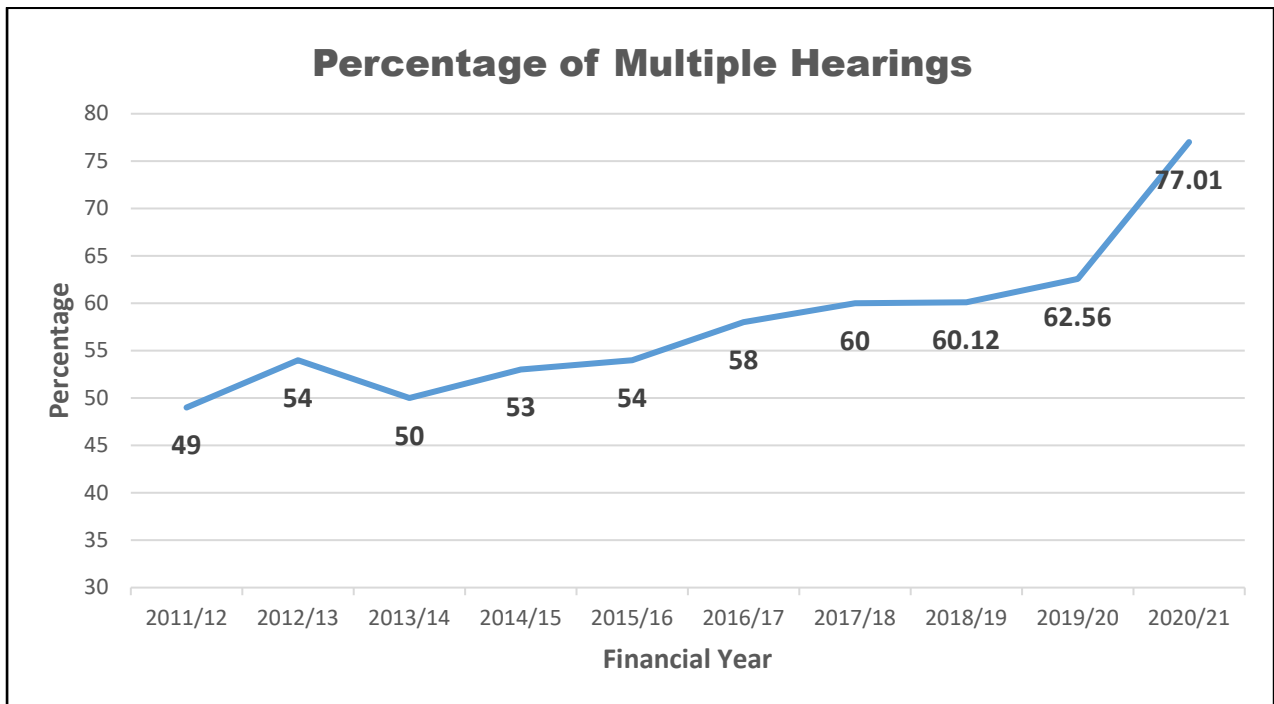
Type of Applications Received 2020/2021



Application Receipts for the Previous Ten Years



Percentage of hearings held as a multiple (double) hearing



Year to Year Comparison for Patient Attendance 2019/2020 to 2020/2021

| 2020- 2021 | | | |
|--------------------------|----------|------------------------------|------------|
| Month | Hearings | Hearings Attended by Patient | Percentage |
| (partial month) Mar-2020 | 127 | 47 | 37.01% |
| Apr-2020 | 385 | 188 | 48.83% |
| May-2020 | 351 | 192 | 54.70% |
| Jun-2020 | 460 | 234 | 50.87% |
| Jul-2020 | 503 | 262 | 52.09% |
| Aug-2020 | 445 | 233 | 52.36% |
| Sep-2020 | 453 | 232 | 51.21% |
| Oct-2020 | 445 | 257 | 57.75% |
| Nov-2020 | 444 | 246 | 55.41% |
| Dec-2020 | 441 | 237 | 53.74% |
| Jan-2021 | 409 | 211 | 51.59% |
| Feb-2021 | 443 | 234 | 52.82% |
| (partial month) Mar-2021 | 294 | 179 | 60.88% |
| Total | 5200 | 2752 | 52.92% |

| 2019 -2020 | | | |
|--------------------------|----------|------------------------------|------------|
| Month | Hearings | Hearings Attended by Patient | Percentage |
| (partial month) Mar-2019 | 135 | 88 | 65.19% |
| Apr-2019 | 403 | 225 | 55.83% |
| May-2019 | 403 | 227 | 56.33% |
| Jun-2019 | 425 | 231 | 54.35% |
| Jul-2019 | 418 | 234 | 55.98% |
| Aug-2019 | 403 | 237 | 58.81% |
| Sep-2019 | 395 | 228 | 57.72% |
| Oct-2019 | 449 | 249 | 55.46% |
| Nov-2019 | 412 | 219 | 53.16% |
| Dec-2019 | 381 | 211 | 55.38% |
| Jan-2020 | 434 | 231 | 53.23% |
| Feb-2020 | 396 | 212 | 53.54% |
| (partial month) Mar-2020 | 305 | 155 | 50.82% |
| Total | 4959 | 2747 | 55.39% |

Telephone hearings of the Mental Health Tribunal: patient feedback study

Purpose

The purpose of the study was to gather feedback from patients who have had a mental health tribunal hearing conducted by dial-in telephone conference. The aim was to find out whether the experience was positive or negative, where the experience could be improved and for those who have had previous hearings conducted in person, how their experience compared to that.

Methodology

Participants were identified by hearing conveners in the member feedback forms as being likely to wish to give feedback, and as having capacity to do so. All of those identified were sent a questionnaire and a telephone number, with a letter explaining the purpose of the contact. Participants were invited to give feedback by phoning to participate in a semi-structured interview or by completing a form. They were advised that the conversation or written response could not extend to any consideration of the outcome of the hearing and that it was limited to their experience of the hearing itself. A copy of the form is shown at Appendix 2.

Participants

As noted, the sample was identified by the conveners of telephone hearings and, as such, cannot be described as a representative sample of the whole population of those who had telephone hearings since the beginning of the current pandemic. However, given the nature of the population, many of whom are extremely unwell and who would be distressed by or unable to participate in any follow up, this was an appropriate approach to sampling. Beyond that, those responding represent a self-selecting sample and might be expected to have particularly strong views to express.

95 patients were invited to participate. A total of 13 participants responded; 12 returned a completed form and one participant chose to provide feedback by telephone. This represents a return of 12.35% of the sample.

Findings

Given the response rate and the fact that the request to participate went to only a subset of the population of patients who have had telephone hearings, no statistically valid data has been gathered. However, the comments made are informative and can be used to identify areas for improvement, as well as to highlight aspects of the new arrangement which are working well, for at least some of the cohort, albeit on an anecdotal rather than statistical basis. The full data set is shown at Appendix 1. Responses shown in black are considered to be 'reliable' information. Those shown in red are thought to be less reliable, generally because they are inconsistent with a respondent's other comments. As the study did not capture information on age, gender, nature of mental disorder (e.g. learning disability or mental ill health) or ethnicity, there is no way of knowing how representative the sample distribution is of the wider patient population.

Analysis and discussion

All but two of those who responded stated that they found the instructions easy to follow and that it was easy to join the conference. One respondent noted that it is “easy now, but was extremely hard / impossible before.”

To the second question, as to whether anything should have been better, eight participants responded with comments. One stated that it would be better if the panel could ensure that the patient knows exactly when he or she is to talk. One said that it was hard to hear the RMO and MHO. Although one further respondent indicated ‘no’ on the form, they went on to say that the line was crackling and it was difficult to hear what was said at times. One stated that it seemed like the clarity was ‘ok’ but noted that they are hard of hearing. One patient said that using headphones would have assisted and another said that an agenda would have been helpful. One respondent said yes to the question, but did not give any specific comment. Overall, the issues suggested by these responses are about clarity and audibility, and understanding of the process. It is likely that those who did not understand what would happen or when to speak had not attended a previous hearing. The same issue may have arisen in a venue based hearing.

In summary, the tribunal conveners should take time to explain proceedings, particularly to those who are appearing for the first time, and should ensure that all parties can hear clearly, perhaps checking at intervals that there are no sound issues for any participant.

In response to the third question regarding previous hearings attended, five participants indicated that they had previously attended hearings at a venue. Three had previously attended a hearing by phone (but it isn’t possible to tell if they have also had an in-person hearing, or if their only previous experience was of a phone hearing). Three participants indicated with free-text comments that they had not previously had any tribunal hearing. Two participants did not complete that question, presumably because they have not had a previous hearing, and there was no option to select for that situation.

It is slightly more difficult to analyse responses to question four, around whether phone hearings were “better, worse or much the same”. Some of the responses are inconsistent with the same respondents’ previous and subsequent answers. What can be said is that three respondents replied that their phone hearing was worse, three that it was better and one that it was much the same. Four did not respond to this question, possibly because they had not had any previous hearing, although that data is not captured on the form. One other respondent selected more than one option (both ‘better’ and ‘much the same’). In summary, this question has not elicited much information beyond the fact that a sub-set of the sample found a phone hearing to be better, and others did not. If the study was to be repeated, it may be helpful to capture data around age, gender and nature of the disorder, so as to analyse any particular pattern here.

In response to question five, when asked if they would prefer to attend in person or by telephone in future, three respondents indicated that they would prefer a telephone hearing (but as noted above, one of the responses seems inconsistent with others from that respondent and may be an error). Eight indicated a preference to attend an in-person hearing at a venue, and two responded by selecting both options. In summary, this question gave a slightly clearer indication here that most of those responding would prefer an in-person hearing in future. Again, correlating that to age, gender and other characteristics would be helpful in any future study.

In the free-text portion of the questionnaire, a few comments were made which related entirely to the patient's situation, for example a comment about being prescribed the wrong medication, and a disagreement with the outcome. These have been disregarded as beyond the scope of the exercise. Comments included the statement that it is easier to talk and connect in person, and that at least an in-person hearing would get the patient out of the ward. A few comments were made about clarity and about understanding the process. There is no particularly consistent theme in the free-text comments, although a few do reinforce the importance of conveners taking time to explain proceedings and ensuring that participants can hear clearly throughout. One participant did note that they felt more confident with a phone hearing, and one was surprised by how well they were able to cope with that format. The relative anonymity of phone hearings was mentioned by one participant as a positive factor.

Conclusions

The limited data available largely correlates with what has been heard anecdotally from a range of participants, including parties to hearings and Tribunal members. The telephone format hearings allow the tribunal to continue to hear applications. Some patients do not like the format, others are content with it, or even prefer it. Reasons for not liking it seem to relate to audibility and ability to participate fully, including the lack of non-verbal aspects of communication. For those who do like or prefer the telephone format, anonymity and increased confidence seem to be relevant factors. For the most part, people with experience of both formats seem to prefer an in-person hearing, although the study did not explore in detail the full reasons for this. One respondent's comment about being able to leave the ward for an in-person hearing suggests that preferences may not be formed entirely by the accessibility of the technology, the experience of the hearing or the ability to participate in a phone hearing.

Consistently, the findings of the study and other evidence (for example feedback forms from tribunal members and also the contents of an appeal against a decision of one tribunal) suggest that it is the ability to hear and to participate in proceedings, as well as the perception of being able to do so, together with a proper understanding of how the hearing will proceed, which will make the experience positive. This is likely to be true of in-person hearings to some extent, but seems to be amplified when the hearings are conducted by telephone.

There is nothing to suggest that telephone hearings are not appropriate; they appear to be an effective means of facilitating time-critical decision making. The role of the convener in explaining and conducting the hearing is critical to the success of the hearing, perhaps more so than when the participants are gathered in a tribunal venue.

Full Data Set

| Respondent: | 1 | 2 | 3 | 4 |
|---|------------------|------------------|--|---|
| Q1. Was it easy or hard to follow the instructions and to join the telephone hearing? | Easy | Easy | Easy | Easy |
| Q2. Is there anything you think should have been better? | Nil | No | To ensure patient knows exactly when to talk. | The line at times was crackling so it was difficult to hear at times. |
| Q3. Have you had a hearing before, if yes, was it by telephone or at a venue? | Attended venue | Attended venue | Telephone | N/A |
| Q4. If you attended in person, was your experience of the telephone hearing better, worse or much the same? | Better | Worse | N/A | N/A |
| Q5. If you had to attend another hearing, would you prefer telephone or attend in person? | Attend in person | Attend in person | Both options selected. | Both options selected. |
| Q6. Is there anything else you'd like to say about your experience of a telephone hearing? (Free Text) | Nil | Nil | On the phone, the patient might feel more confident but in person might have more of the ability to put his or her point across. | I do have a hearing issue so the loop system for hearing might have been better or an increase in volume. |

| Respondent: | 5 | 6 | 7 | 8 |
|---|--|---|---|---|
| Q1. Was it easy or hard to follow the instructions and to join the telephone hearing? | Easy | Easy | Easy now, in the past extremely hard, impossible. | Easy |
| Q2. Is there anything you think should have been better? | No | I found it difficult to hear what was said by the RMO and MHO | I think everything was ok in terms of clarity, I'm a little hard of hearing myself. | Yes but it was fairly satisfactory. |
| Q3. Have you had a hearing before, if yes, was it by telephone or at a venue? | Attended venue | No response (may indicate that the patient has not previously attended a hearing) | Attended venue. | No |
| Q4. If you attended in person, was your experience of the telephone hearing better, worse or much the same? | Selected both 'better' and 'much the same' options | No response / N/A | Better | Worse |
| Q5. If you had to attend another hearing, would you prefer telephone or attend in person? | Attend in person. | Telephone. | Telephone | Attend in person |
| Q6. Is there anything else you'd like to say about your experience of a telephone hearing? (Free Text) | More anonymous | Nil | I was amazed I handled it better than a physical tribunal venue. I see this as a sign of greater experience, flexibility and maturity. I enjoyed the whole thing. Only drawback was my inability to speak with clarity. I was not understood. Solutions – to see my friend [illegible] and learn to speak with better clarity [Further personal information given, not relevant to the question] | Much prefer meeting when at least you can get off the ward. |

| Respondent: | 9 | 10 | 11 | 12 | 13 |
|--|-----------|--|--|---|---|
| Q1. Was it easy or hard to follow the instructions and to join the telephone hearing? | Easy | Hard. I was not instructed about the way it should be heard. | Easy | Hard | Easy |
| Q2. Is there anything you think should have been better? | Nil | Yes. It was really not professional, it would have helped me a lot if people introduced themselves. [Would have] liked an agenda. | I think it would have been better to have had a group video call since such a high percentage of communication is non-verbal. | Headphones | Nothing |
| Q3. Have you had a hearing before, if yes, was it by telephone or at a venue? | Telephone | No | No response (may indicate that the patient has not previously attended a hearing) | Telephone | Attended venue |
| Q4. If you attended in person, was your experience of the telephone hearing better, worse or much the same? | Better | "I like face to face better" (but has not previously had a hearing, so there is not a comparison.) | Nil | Much the same | Worse |
| Q5. If you had to attend another hearing, would you prefer telephone or attend in person? | Telephone | Attend in person | Attend in person. (May not be a comparison, as previous response might indicate that this was the patient's first experience of a hearing). | Attend in person. | Attend in person |
| Q6. Is there anything else you'd like to say about your experience of a telephone hearing? (Free Text) | Nil | I think people should be instructed before the tribunal. | Nil | Response not relevant to the study – personal information about medication. | It is easier to talk and connect. Wish they had given me a chance. |



Mental Health Tribunal for Scotland

Feedback following tribunal hearing held via tele-conference (Please circle answer or comment accordingly)

If you have attended more than one telephone hearing, please answer for any one or all of them as you wish.

1. Was it easy or hard to follow the instructions and join the telephone hearing?
i) Easy ii) Hard

2. Is there anything you think should have been better, such as ability to hear / people introducing themselves / explaining what was going to happen?

3. Have you had a tribunal hearing before? If yes – was it by telephone, or did you attend a tribunal venue in person?
i) Telephone ii) Attended tribunal hearing venue

4. If you attended a tribunal hearing venue, was your experience of a hearing by telephone better, worse or much the same?
i) Better ii) Worse iii) Much the same

5. If you had to attend another hearing, and you had a choice, would you prefer a telephone hearing, or attend in person?
i) Telephone ii) Attend in person

6. Is there anything else you'd like to say about your experience of a telephone hearing? Please continue on the reverse if necessary.

Name (optional): _____

Your comments will be taken into account whether or not you provide your name.