

MHTS Professional Reference Group Meeting
7 February 2018
Salutation Hotel, Perth

Attendees:

<i>Morag Jack</i>	<i>MHTS, President's Office</i>
<i>Valerie Mays</i>	<i>MHTS President's Office</i>
<i>Scott Blythe</i>	<i>SCTS President's Office</i>
<i>Mary Chatham</i>	<i>SCTS</i>
<i>Agnes Ferrie</i>	<i>SCTS</i>
<i>Julie MacDonald</i>	<i>SCTS</i>
<i>Paula Stevenson</i>	<i>Scottish Government</i>
<i>Claire Lamza</i>	<i>Mental Welfare Commission</i>
<i>Jude Halford</i>	<i>Royal College of Psychiatrists in Scotland (RCP)</i>
<i>Alison Fairlie</i>	<i>Perth and Kinross Council (PKC)</i>
<i>Lorna Davage</i>	<i>PKC</i>
<i>Ray Wilson</i>	<i>PKC</i>
<i>Gary Miller</i>	<i>PKC</i>
<i>Martin Preuss</i>	<i>PKC</i>
<i>Ian Wilie</i>	<i>PKC</i>

Welcome and Introduction

Valerie welcomed everyone to the meeting. She explained that these meetings enabled the Tribunal to come out to local areas and hear about local matters. They provide the Tribunal with feedback from mental health professionals which is used to inform and improve practice within the Tribunal.

1. Local Matters

- The consultation on the NHS Tayside Mental Health and Learning Disability Services Redesign Transformation Programme has been completed. The service at Murray Royal Hospital is being transferred to Carseview Hospital. The transfer of patients has commenced. Carseview Hospital does not have a dedicated Tribunal suite. The waiting area is open-plan and lacks privacy. The discussion centered on the impact on Perth patients having their tribunals held in Carseview. Particular concerns related to the travel and lack of parking at Carseview.

Valerie confirmed there was a specific standard set for MHTS venues and the accommodation that should be provided. There is a Memorandum of Understanding between the Tribunal and Health Boards which covers the provision of tribunal venues. This issue will be raised with Health Boards. Mary Chatham undertook to raise the concerns with MHTS Operations Managers.

Action: Valerie Mays and Mary Chatham

- Morag referred to the issue about notification of hearings which was raised by advocacy during the Service Users and Carers Group meeting. She explained that an Advocacy worker found that applications sometimes failed to include Advocacy details. Valerie explained that Advocacy workers were advised that they should be proactive about notifying their involvement, particularly to MHOs, or, if it was after an application had been made, to MHTS administration. The use of generic email addresses by advocacy organisations is to be looked at. Ian advised that Perth and Kinross Council (PKC) is now using some generic email addresses for notifying Advocacy. Mary will share Advocacy email addresses with PKC via Ian.

Action: Mary Chatham

- Lorna raised an issue about the Tribunal's use of out of date email addresses. Applications are submitted with a **nhs.net** email address but this email address is not being used by MHTS when responding.

Mary suggested that the MHTS database may need to be updated. She undertook to investigate.

Action: Mary Chatham

- Mary discussed the high volume of incomplete or erroneous applications that are being submitted to MHTS. Caseworkers were having to go back and get further information, e.g. boxes shaded which should not be and vice versa, named person's details omitted. Morag explained that the President had been raising awareness of the issue at Members' 2017 Training events. Caseworkers were being used as a "checking service", which is not their role. Mary advised that MHTS did not want incompetent applications going before a Tribunal. However it is the responsibility of those submitting applications to ensure that the applications are accurate and that all relevant sections of the application have been completed.

Ian asked to be given further information on what PKC was doing well and not so well. He would then be able to have a standing agenda item for his team meetings.

Jude canvassed whether the high percentage of errors was suggestive of a system error. Mary explained that in part caseworkers are identifying issues earlier in the process rather than at hearings. Jude suggested it would be helpful to let the RCP know of any recurrent problems. One option might be for the College to set up a checklist for RMO applications. She explained that currently there is a lack of administrative support for many RMOs.

Mary agreed to provide Jude with a list of the most common errors that are being identified by MHTS.

Action: Mary Chatham

The absence of postcodes is a recurrent omission which was flagged up to the attendees. Morag emphasised that the postcode is essential to avoid data breaches due to papers being sent to a wrong address.

Scott explained that a postcode is a mandatory field on the MHTS case management system, and without it the case could not be progressed

There is a new General Data Protection Regulation from the EU which comes into effect on 25 May 2018. Under the new Regulations, fines which can be imposed in respect of a data breach will be higher.

2. Items Received for Discussion

Attendees were encouraged to send in any issues in advance of the meeting.

3. Patient Participation

Jude tabled the concerns the RCP members have regarding changes in statutory provisions concerning named persons. She felt it would be helpful to know where to go for advice about these concerns. She listed a few examples: Short-term detention where there is no named person; need for a written mandate. Valerie advised that protection of patient information was the thinking behind the legislative changes. Valerie offered to take feedback to the Scottish Government policy team.

Action: Valerie Mays

Jude acknowledged that the removal of the default named person was welcomed, but had concerns about the requirement for a written mandate, which was not in keeping with patients' rights.

Ray highlighted the difficulty in getting a written nomination docketed with acceptance from someone who lived a long distance away or abroad.

4. Mental Health (Scotland) Act 2015

Valerie explained that the definition of "party" in section 2(1) of the Tribunal's Rules has been amended. She set out the definition of listed initiator: "the person who initiated the proceedings before the Tribunal except a person who initiated them by virtue of a provision giving a listed initiator authority to act". Valerie explained that only someone with the status of "party" is entitled to receive papers, however others may be entitled to attend the hearing and give their views on the application. Morag gave an example where a former default named person was allowed a copy of the papers by virtue of a power in a Guardianship order. People who hold a power of attorney or are welfare guardians are entitled to attend a hearing and make representations. The Tribunal will look at each case on its own facts. Guardianship order powers are a relevant fact to be taken into account.

Attendees were aware that the Conflict of Interest Regulations had been amended. The relevant regulations are now the Mental Health (Conflict of Interest) (Scotland) Regulations 2017. There was concern about how these regulations would operate in practice. If any particular difficulties arose in connection with the Regulations then this could be fed back through the PRG, and Valerie indicated that she could pass on the concerns to the relevant policy team within the Scottish Government.

Action: Valerie Mays

Jude pointed out that some doctors provided personal contact details on application submissions, but did not want that information shared with patients. Mary suggested that it would be possible to use the case management system to record which information was not for disclosure. Personal information which is held on the database is not shared.

RMO availability for hearings was discussed. If an RMO puts in a request for a hearing date to be changed, it will be considered in the President's Office and a judicial decision made on the request. Jude pointed out that RMOs do not always have a substitute who can attend on their behalf. Valerie suggested that part-time RMOs could provide their working pattern to the Tribunal to assist in the scheduling of hearings. Mary confirmed that a record of working days is kept on the database. The group noted that it is difficult to challenge the evidence if the RMO is not available either in person or by telephone. If the RMO cannot attend and no alternative arrangements have been made, then this may result in the hearing being adjourned if the patient or the patient's representative wishes to question the RMO.

A case was discussed in which there was no named person as the patient was an adult who lacked the capacity to nominate a named person and was incapable in relation to whether to initiate an application or appeal in their own case. The requirements which need to be met before a person can be a listed initiator and initiate an application to the Tribunal were discussed. It was noted that any application etc. from a listed initiator required to be accompanied by a report from an approved medical practitioner (AMP) stating that, in the view of that practitioner, the patient is incapable of bringing an application. The AMP could be the patient's RMO. Valerie advised that the use of listed initiator provisions should be raised with the individual's professional body.

Valerie referred to Sections 9 and 10 of the 2015 Act (in force since 30 June 2017). They make changes to the suspension of detention regimes in respect of compulsory treatment orders and compulsion orders under sections 127 and 224 of the 2003 Act respectively.

For a patient subject to a CTO, the maximum period of suspension of detention is reduced from 9 months in a rolling 12 month period to 200 days within any period of 12 months (whenever counted from). There had been a few enquiries from tribunals. RMOs were not happy with these difficult calculations. Valerie suggested calculating the maximum period, by taking the starting point as the date on which the latest certificate was granted then counting back over the preceding 12 month period including any other certificates granted during the

period. She pointed out that, even if the 200 day limit has been exceeded, the CTO will not cease to have effect unless there has been an unauthorised absence for three months (see section 304 of the 2003 Act).

5. Tribunal Practice Issues

Paula advised that she had recently joined the Scottish Government Tribunals and Administrative Justice Policy team. She provided an overview of her role and remit. She had created a whole new team which dealt with MHTS, ASNTS etc. The Tribunals (Scotland) Act 2014 established the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland, bringing all of the Scottish tribunals under one roof. The Housing and Property Chamber (HPC), Health and Education Chamber (HEC) ASN, Tax and SCAP had all transferred into the new structure. There was a complicated list of regulations required for the transfer.

Work was ongoing with MHTS. The team was working on six sets of regulations including how the panel was set up, members etc. for MHTS. Later this month they would be going out to consultation. After the consultation they will be looking at what people are saying and consider if the regulations need to be tweaked. Dr Morrow and Lady Smith will look at them. When everyone is happy with them they will be put before Parliament with a view to coming into force by November 2018. From the group's point of view there should not be any significant changes. The changes are mainly around how members are paid, how tribunals are set up etc. so that tribunals will work on a more consistent basis. There will be changes to documentation for the First-tier Tribunal. Documents will be likely to be headed up along the lines – First-tier Tribunal for Scotland (Mental Health Chamber).

6. Victim Notification Scheme

Scott Blythe gave a presentation on the Victim Notification Scheme. A copy of the presentation will be made available on the MHTS website. Scott agreed to prepare a presentation for PKC.

Action: Scott Blythe

7. AOCB

Attendees were reminded that items for discussion could be sent by email and will be kept for the next meeting. The Tribunal welcomes the opportunity to discuss matters relating to mental health legislation or tribunal practice with professionals in these meetings.