

GUIDANCE to TRIBUNAL ADMINISTRATION No. 5/2008
[REVISED DECEMBER 2020 – adjusted FEBRUARY 2021 and
NOVEMBER 2024]

ATTENDANCE of STAFF and OTHERS at TRIBUNAL HEARINGS

*Rule 66 of the Mental Health Tribunal for Scotland
(Practice and Procedure) (No. 2) Rules 2005 (SSI 2005/519)*

Purpose of this Guidance

1. The purpose of this Guidance is to make provision for the regulation of attendance by observers at Tribunal hearings and to explain how requests to attend a Tribunal hearing as an observer are dealt with administratively.
2. This guidance applies to all those seeking to observe a hearing, without differentiation according to occupation or any other factor. Where a person in training has been involved in providing a service to a patient, and that person is being supported by a more senior colleague, neither of these individuals will require to seek prior approval from the President to attend the hearing. This applies whichever person is to provide oral evidence or representation at the hearing. Consent must, however, be sought from the convener and from the patient at the time of the hearing.

Relevant Rules and Underlying Principles

2. Rule 66(1) of the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005 (“the Rules”) provides that Tribunal hearings shall be held in private. In terms of Rule 66(2) of the Rules only the patient can apply to have a Tribunal hearing held in public.
3. Rule 66(6) states that the following persons shall be entitled to attend a hearing, even although it may be held in private –
 - (i) the President;
 - (ii) any member of the Tribunal, or a member of the staff of the Tribunal, with the agreement of the Convener; and
 - (iii) an interpreter or other person giving other necessary assistance to a person entitled to attend the hearing.
4. Rule 66 makes no provision for the attendance of any other person.
5. Given the terms of Rule 66, observers are to be allowed to attend Tribunal hearings only if:
 - (i) their purpose in attending is legitimate and relevant; and
 - (ii) such attendance is not likely to interfere with or to prejudice,
 - (a) the rights or welfare of the patient,
 - (b) the integrity of the proceedings, or
 - (c) the interests of justice.

6. Only those persons who are able to demonstrate a legitimate and relevant training, educational or similar purpose will be allowed to attend Tribunal hearings for observation purposes.

7. An observer at a hearing may not participate in the proceedings in any manner and shall treat all information disclosed in the tribunal hearing as confidential.

8. Permission will not be granted:

- (i) for any person under 18 years of age to observe a hearing; or
- (ii) for the observation of a hearing in respect of a child or adolescent patient.

Tribunal Members including Reviewers

9. No Tribunal Member, other than a member sitting on the hearing, a Tribunal member who is reviewing another Tribunal member as part of the Member Review Scheme (“a Reviewer”) or a recently appointed Tribunal member undergoing training, is allowed to attend a Tribunal hearing without the prior, written, approval of the President.

Members of Scottish Courts and Tribunals Service (SCTS) Staff

10. The attendance of any non-MHTS member of SCTS staff requires the approval of the Convener.

Other Persons

11. The attendance of any person, other than a Tribunal Member or member of SCTS staff attending in accordance with paragraph 9 or 10, requires the prior, written approval of the President.

Hearing observation requests

12. All hearing observation requests shall be made via email to the Personal Assistant to the President, at: mhtspresidentsoffice@scotcourtribunals.gov.uk . Such requests require to be made at least two working days prior to the date of the hearing and shall include the following information:

- the date, time and venue of the hearing;
- casework reference number pertaining to the hearing;
- the observer's name, job title and business address;
- the reason for the request; and
- who the observer is working with / being mentored by.

Consent of the convener and the patient

13. Notwithstanding an observation request having been granted by the President's Office, the attendance (and continuing attendance) of any person at a Tribunal hearing, including a Reviewer or a recently appointed Tribunal member, is subject to the consent of both the Convener of the Tribunal hearing and the patient.

Note of Attendance; number of attendances

14. The Tribunal Administration shall record electronically the attendance of an observer at any hearing. An individual will not normally be permitted to observe more than four hearings in any 12 month period.

Laura Dunlop KC
President
November 2024