

## **GUIDANCE FOR THE OBSERVATION OF TRIBUNAL HEARINGS**

The purpose of this guidance is to set down the terms and conditions for the observation of tribunal hearings, which are usually held in private, and for the appropriate handling of confidential reports and other documentary evidence.

### **The Tribunal Procedure Rules 2008**

1. Rule 38(1) provides that all hearings must be held in private unless the tribunal considers that it is in the interests of justice for the hearing to be held in public. Rule 14(7) also provides that, unless the tribunal gives a direction to the contrary, information about mental health cases and the names of any persons concerned in such cases must not be made public. Where a hearing, or part of it, is to be held in private, the tribunal may determine who is permitted to attend the hearing or part of it (Rule 38(3)).
2. Except in relation to judge or member induction or training, appraisals, or observations by the Administrative Justice and Tribunals Council (AJTC), the strong presumption in all cases is in favour of privacy and confidentiality, and individual tribunals should not exercise powers to hold proceedings in public, or disclose any information about mental health cases to others outside the jurisdiction (*including to judges in other jurisdictions*), without first consulting the Deputy Chamber President or, in his absence, the Principal Salaried Judge. Additionally, save as above, the views of the patient and/or the patient's representative must be sought before any disclosure of relevant confidential information takes place, and any objections from the patient and/or the patient's representative must be respected.

### **Categories of observers**

#### **Judge or Member Induction or Training**

3. Following appointment as a judge or member of the tribunal, it is a term and condition of a person's appointment that, unless they have adequate relevant previous experience, they should observe a number of tribunal hearings as part of their induction or training before they are entitled to sit. These observations have to be facilitated and, subject to the tribunal judge and the booking and listing team being made aware in advance, the following guidelines apply:-
  - 3.1 The presence of the observer at the hearing is not subject to the consent of the patient, witnesses, individual tribunal members, or any other party. However, if the presence of the observer causes a patient to feel particular discomfort or distress, the observer and the tribunal judge (having consulted colleagues) may agree that the observation should not take place, or should be abandoned.
  - 3.2 The observer is entitled to receive copies of the reports or other documents before the tribunal, either in advance of, or at, the hearing, on the strict understanding that the contents must not be made public under any circumstances.
  - 3.3 The tribunal judge should agree with the observer as to how the observer will be introduced to the parties.

- 3.4 The observer should sit where the tribunal judge (having consulted colleagues) feels it is appropriate, and should adopt as passive a role as is possible having regard to the lay-out of the hearing room and the proximity of the parties.
- 3.5 The observer must not intervene in any way during the hearing.
- 3.6 The observer is entitled to make such notes as are appropriate for the purposes of the observation. Such notes must be maintained as strictly confidential and (except in general terms for the purposes of a report to the AJTC, such that the patient cannot be identified) must not be made public under any circumstances.
- 3.7 The observer is entitled to be present during the tribunal's deliberations, but shall take no part whatsoever in the deliberations.

### **Appraisers**

4. Appraisals have to be facilitated although the tribunal judge and the booking and listing team must be made aware in advance. In the sense that an appraiser is an observer, the role and functions of an appraiser attending the hearing to appraise one of the members are set out in the Appraisal Guide for Members - 1 October 2008, at paragraph 16.2 onwards. The guidance set out at paragraphs 3.1 to 3.7 above also applies, as appropriate.

### **Members of the Administrative Justice & Tribunals Council**

5. A member of the Council has the right to attend and observe the proceedings of a tribunal in such capacity although the tribunal judge must be made aware in advance. The guidance set out at paragraphs 3.1 to 3.7 above also applies, as appropriate.

### **Other persons seeking to observe a tribunal hearing**

6. It is impossible to attempt to list all the categories of persons wishing to observe a tribunal hearing. Examples may include persons selected by the Ministry of Justice to participate in a judicial work-shadowing scheme, or a solicitor or barrister wishing to undertake mental health work and needing to gain experience. All observation requests not covered by paragraphs 3, 4, and 5 above should be, in the first instance, forwarded, in advance, to the Deputy Chamber President or, in his absence, the Principal Salaried Judge for a preliminary decision. If a representative, hospital staff member or other involved professional appears at a hearing with a student or observer without having sought advance permission, the tribunal must deal with any application under Rules 14 and 38 on its merits. However, in all such cases, it must be recognised that such observers are unlikely to be members of the jurisdiction and, therefore, the rules referred to in paragraph 1, and the guidance in paragraph 2 above, will apply.
7. If asked in advance, the Deputy Chamber President or, in his absence, the Principal Salaried Judge, may indicate that he has no objection to the presence of the particular observer for the reasons given in support of the request, but, even so, the patient, witnesses, tribunal members and other parties must be asked for their views before the tribunal hearing the case makes a direction under Rule 38(3) permitting the presence of the observer.

8. In the event that permission for observation is granted, the following guidance shall apply:-
- 8.1. The reports and any other documents before the Tribunal must not be disclosed at any time to the observer.
  - 8.2. The tribunal judge shall advise the observer in private that the proceedings before the tribunal are confidential and that information about the proceedings and the names of any persons concerned in the proceedings must not, under any circumstances, be made public by the observer.
  - 8.3. The tribunal judge should agree with the observer as to how the observer will be introduced to the parties.
  - 8.4. The observer should sit where the tribunal judge (having consulted with colleagues) feels it is appropriate and should adopt as passive a role as is possible having regard to the lay-out of the hearing room and the proximity of the parties.
  - 8.5. The observer shall not intervene in any way during the hearing.
  - 8.6. The observer should not take any notes during the hearing.
  - 8.7. The observer is not entitled to be present during the tribunal's deliberations and should withdraw, along with the parties, from the hearing room at such times when the tribunal is deliberating.

**H.H. Judge P. Sycamore**  
**Chamber President**

**Judge M. Hinchliffe**  
**Deputy Chamber President**

**Judge J. Wright**  
**Principal Salaried Judge**

**5/11/09**