



Tribunals Service

Mental Health

Mental Health Tribunal
Consultation on changes to the listing process
Summary of Consultation Responses

Introduction

1. In April we wrote to all Tribunal stakeholders asking for views on proposals to make changes to the Tribunal's listing process. For ease of reference the letter we sent out is at **Annex A**. The letter explained that in our view the current process used by the Tribunal to list appeals is cumbersome, time consuming and resource intensive and does not achieve the best outcome for Tribunal users. The objective of our new proposals is to tackle these issues, increase the performance of the Tribunal and reduce unnecessary delays for the Tribunal user.
2. We are very grateful to all those who took the time to write to us in response to this consultation and provide their views. The purpose of this note is to summarise the responses we have received and explain the next steps that we would like to take to make improvements to the listing process.

Summary of Responses

3. We received a total of 50 responses to the consultation.
 - 7 (14%) were received from members of the Tribunal
 - 24 (48%) were received from Mental Health Administrators (MHAs), including a response from the Institute of Mental Health Act Practitioners and NHS/Trust Legal Advisors
 - 16 (32%) were received from Legal Representatives including a comprehensive response from the Mental Health Lawyers Association
 - 3 responses were received from other interested parties and these included the Legal Services Commission and the Administrative Justice and Tribunals Council.
4. The large majority of respondents were very supportive of the objective of the proposed changes and many stakeholders acknowledged that there were problems with the current arrangements. However many also expressed concerns about the detail of various elements of the proposals and whether they would achieve the desired outcome.
5. Some respondents were content with the current arrangements and questioned the need for change while others felt that the arrangements in their particular area already mirrored these proposals in some respects so did not feel that they

would present a significant challenge to adopt. The following paragraphs summarise the responses received under the key areas of comment.

Availability

6. 68% of all respondents (43% of Members, 71% of MHAs, 81% of Representatives and 33% of others) commented about the proposals to obtain the availability of Representatives and Responsible Clinicians in advance of setting hearing dates.
7. The main issue raised by Legal Representatives and Mental Health Administrators was the difficulty they saw in providing “unavailable” dates and many questioned why the Tribunal would not be asking for “available” dates instead. The other major concern from both groups was the perceived difficulty of keeping dates available after they had been provided to the Tribunal and before the Tribunal was able to confirm the date for hearing.
8. Many Mental Health Administrators felt that both providing unavailable dates and keeping dates open would be unworkable, particularly when trying to ensure the attendance of responsible clinicians.
9. Representatives were also very concerned about this and a number made the point that there is a relatively small community of lawyers working in this area and it was very likely that they would have a number of cases being listed at the same time. There would be inevitable clashes and available dates would soon become unavailable.

Case Management and new forms/questionnaires

10. 32% of respondents commented on issues connected to the proposed questionnaires and forms. This included 29% of Members, 17% of MHAs and 63% of Reps.
11. The majority of respondees were very concerned about the proposal to impose a re-list date without further consultation with parties. It was considered unworkable and there was a widely held view that introducing such a measure would lead to an increase in adjournments
12. Many Representatives felt that the introduction of the forms created additional and unnecessary bureaucracy. Specific points made about the individual questions posed in the questionnaires included:
 - HQ2 Q1 – it was felt that there could be a problem in stating what the patient is seeking from the Tribunal in a jurisdiction where client instructions can change rapidly and it was also felt that in relevant cases, it is the Tribunal’s role to determine the lawfulness of the detention without the patient identifying any specific intentions.
 - Some felt there may be difficulty in (i) identifying areas of dispute if the Responsible Authority’s reports have not been received and (ii) deciding on whether to instruct independent experts for the same reason;
 - It was felt that the submission of expert reports and decisions on whether oral evidence should be given are dependent on seeing the RA’s reports (many placed great emphasis on the need to see RA reports before being able to complete the questionnaires);

- Some Reps asked whether RAs would also be required to complete HQ2 given that in detained cases the burden of proof lies on them;
 - HQ2 Q7 – it was felt that this question cannot be answered at time of submission (if the Rep knows that the application will be withdrawn they would say so);
 - HQ2 Q8 & Q9 can only be answered as events unfold;
 - HQ2 Q10 information should be provided at the point of application;
 - it was suggested by the MHLA that HQ2 Q6 is both a very useful question and one which makes much of the rest of the questionnaire otiose;
 - It was asked whether the HQ2 form would be sent to the MHU as this may impact on what information Reps are prepared to share on these forms;
 - It was also asked if a Rep is instructed by a client not to submit the information requested in these forms (such as the contents of an independent report) how can they square their commitment to confidentiality with their need to comply with Tribunal directions?
13. Some MHAs were concerned that additional forms may just ‘get lost in the system’ leading to more administrative delays and confusion. There was also concern about the perceived ability of Representatives to state whether they intend to commission independent reports until they have seen the RA’s report.
14. The introduction of the forms was supported by some Tribunal members who felt that questionnaires brought the Tribunal into line with the Civil Courts.

Method of Communication

15. 8% of all respondents (14% of Members, 4% of MHAs, 13% of Reps) commented on communication issues.
16. A number of Representatives commented on the difficulty and perceived lack of fairness of the Tribunal requiring specific forms of communication i.e. special delivery or CJSM. Amongst Mental Health Administrators and Representatives there was widespread support for telephone case management and the proposal for faster methods of communicating withdrawals/postponements and cancellations.

Witnesses

17. 8% of all respondents (14% of Members, 4% of MHAs, 13% of Reps) commented on witnesses.
18. Representatives and Mental Health Administrators asked for clarification on what was meant by priority being given to witnesses when listing hearings without agreed dates and many commented on the problem of identifying witnesses (especially expert ones) at the stage when the HQ1 is submitted (still less establishing their availability).

Patient Competence

19. 8% of all respondents (8% of MHAs, 13% of Reps) commented on this issue.

20. Representatives wanted clarification about who should carry out this assessment and when, and Mental Health Administrators were concerned about whether the RA will be able to submit an assessment within the prescribed timeframe.

Withdrawn Applications

21. 8% of all respondents (8% of MHAs, 13% of Reps) commented on withdrawals.
22. The comments centred on the difficulty of knowing that an application will be withdrawn in this jurisdiction and the best method of notifying the Tribunal of a withdrawal.

General Issues

23. 60% of all respondents (29% of Members, 71% of MHAs, 50% of Reps and 100% of Others) made comments that could not be fitted into the previous categories. These included the following issues:
- A number of MHAs and Representatives were content with the current process and thought it works well
 - Concerns were expressed by Representatives that there may be additional administrative burdens (without financial recompense) as a result of the changes;
 - There were concerns about the perceived general inflexibility of the proposed procedures;
 - The proposals were welcomed by some Representatives as a more transparent listing process
 - Overuse of panels on a single day (i.e. concern that more than two hearings may be listed);
 - Concern that single caseworkers were not overseeing the end-to-end process;
 - The difficulty of producing independent reports within the proposed time-frame;
 - The problems of producing 'skeleton arguments' in mental health jurisdictions;
 - The timeliness of reports being produced;
 - There were concerns that the Tribunal's efforts to streamline their own administrative processes could mean far more work for MHAs;
 - The need to reduce the time-lag between asking for availability and setting the hearing date;
 - Whether the clinical teams would have access to the Reps forms;
 - The need to focus on better Tribunal performance in terms of reports;

- The need for the Tribunal to employ sanctions against parties that do not approach the process with sufficient regard;
- Concerns about the growth of an adversarial approach to Mental Health Tribunals.
- Members and other interested parties expressed general support for the changes but emphasised the need to monitor results.

Next Steps

24. We remain committed to making improvements to the listing system to enable us achieve our stated aims of increasing the Tribunal's performance and more importantly improving the service that we provide to Tribunal users. However we recognise that some elements of the proposed new arrangements have caused concern and we would welcome an opportunity to discuss these in more detail with key stakeholders before deciding how to proceed.
25. We therefore propose to arrange a workshop to discuss the issues raised by the consultation and we will be contacting the organisations representing the Mental Health Lawyers and the Mental Health Administrators to agree a suitable date and venue.
26. Following the meeting, and in the light of the discussions we have and the responses received to this consultation we will write to all stakeholders summarising our intended changes and provide an indicative timetable.

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