

**Mental Health Tribunal response to Covid - 19 emergency- update April 2021**

***Summary:***

***All hearings continue as remote until September 2021 when this will be reviewed***

***Pre- Hearing Examinations are done only at patient’s representative’s request* and *not routinely for Section 2 cases. PHEs are done remotely.***

**This message to the Royal College of Psychiatrists’ is from Deputy Chamber President Sarah Johnston and Chief Medical Member Dr Joan Rutherford.**

**Background**

The Mental Health Tribunal are aware of the continuing pressure on clinical teams during the pandemic, and the ongoing need to limit the spread of infection.

On 19 March 2020, Sir Ernest Ryder, Senior President of Tribunals, issued a Pilot Practice Direction setting out how the First-tier Tribunal and Upper Tribunal might adjust their ways of working during the immediate Covid-19 crisis. This was amended and extended to 18 March 2021. The current Senior President of Tribunals the Rt Hon. Sir Keith Lindblom has extended this to 18 September 2021 (1).

Although it was necessary to have Judge-alone hearings in the initial stages of the Covid-19 crisis, full panel hearings resumed in June 2020.

**Current Situation**

* There is no backlog of cases.
* There have been no appeals based solely on the fact of hearings not being done by a Tribunal Panel visiting the hospital.
* All hearings continue to be done remotely using Cloud Video Platform. This is to avoid the spread of infection as Tribunal members may travel up to ten hospitals within a week.
* Pre-hearings examinations, when requested, are being done remotely using Microsoft Teams; this is due to current lack of capacity of CVP and was designed to mirror the system prior to the pandemic. This is a pilot system and is under review.
* In general, two hearings are booked per day – as was previously the aim when hearings were held in hospitals: start times are 10.30 am and 2.15pm.
* Some hearings are booked for the whole day: these include all hearings requiring interpreters, all cases of a patient aged 18 and under, and cases which are likely to extend over 3 hours such as when complex issues are challenged/expert witnesses attend. A request for a whole day hearing can be made for patients who require additional breaks such as those with learning Disability or Autism Spectrum Disorder
* Tribunal members sit nationally

**How clinical teams can help hearings proceed efficiently for the patient and reduce their own time at a hearing:**

1. **For Pre-hearing Examination:** for this to be done using MS teams, the MHA administration and ward staff need to be sure there is a working system - email address and knowledge of MS teams - that the staff on duty can use when the PHE is arranged.

1. **Submit written reports for Section 2 hearings at least the day before the hearing is scheduled.** This means the Medical member undertaking a pre-hearing examination will be informed, and the patient’s representative can take instructions. Adjournments, which also use up clinical time, can be avoided.
2. **If the patient requires more than half a day for a hearing –** please request a whole day hearing on form MH1
3. **Do suggest any reasonable adjustments** in the reports
4. **Check the patient has a representative**. If not, the Detaining Authorities’ MHA administration must be informed as soon as possible, and an assessment made of the patient’s capacity as necessary. Form MH3 Rule 11(7) must be sent to the Tribunal Administration.
5. **Do log on in good time for the hearing –** this means that technological glitches can be sorted out.
6. **Do encourage your organisation to invest in technology** that will enable hearings to proceed with as little technological interruptions as possible.
7. **Do suggest a** **pre-hearing discussion is held** – between the panel, the RC and the patient’s representative, to decide the order of evidence and confirm which of the statutory criteria are being challenged. This will focus the hearing.
8. **Please advise the panel if you think that the patient will be unable to stay in the room for the hearing or needs to give their evidence first.**
9. **Do tell the panel whether the patient is able to remain in hospital as a voluntary patient.** The tribunal members are sitting nationally, so may not be aware of the policies of your Unit.
10. **Do emphasise any limitations of your evidence.** The tribunal is aware that patients are being moved from ward to ward and hospital to hospital more frequently, and that S17 leave is limited by Covid restrictions.
11. **Please focus on the statutory criteria**
12. **You may wish to suggest that any discharge is delayed for follow -up by Home treatment or Community team to be arranged.** The tribunal is aware that community resources are limited and there may not be face-to face contacts. So pro-active personal visits to contact a less compliant patient are not possible during this emergency.
13. **Do give your evidence by from a private area where you cannot be overheard.** Do check that your background does not reveal confidential information about patients or personal information about you.

 ***Please bear with us whilst we continue to ensure patients have fair mental health tribunal hearings***

Reference

1. <https://intranet.judiciary.uk/wp-content/uploads/2021/03/Amended-Mental-Health-Practice-Direction-March-2021.pdf>

April 15th 2021