
DATE: 23rd November 2016

Submission of: THE ROYAL COLLEGE OF PSYCHIATRISTS

Submission to: Transforming our justice system: panel composition in tribunals

The Royal College of Psychiatrists is the professional medical body responsible for supporting psychiatrists throughout their careers, from training through to retirement, and in setting and raising standards of psychiatry in the United Kingdom.

The College aims to improve the outcomes of people with mental illness, and the mental health of individuals, their families and communities. In order to achieve this, the College sets standards and promotes excellence in psychiatry; leads, represents and supports psychiatrists; improves the scientific understanding of mental illness; works with and advocates for patients, carers and their organisations. Nationally and internationally, the College has a vital role in representing the expertise of the psychiatric profession to governments and other agencies.

We are pleased to respond to this consultation. Our response was approved by Dr Adrian James, College Registrar.

For further information please contact the Policy Unit on 0203 701 2541 or e-mail helen.phillips@rcpsych.ac.uk

Royal College of Psychiatrists

Response to: Transforming our justice system: panel composition in tribunals

The Royal College of Psychiatrists is extremely concerned about the proposals to amend the composition of tribunals to consist of a single member, and to involve non-legal members only on a case by case basis.

It is our strong view that there is a need for a medical professional in any tribunal where medico-legal decisions are made and it should never be presumed that only one person is required on a tribunal panel.

This key concern, and our detailed comments, applies specifically to First Tier Tribunals (Mental Health).

However, it is also relevant to Social Security and Child Support Tribunals, as, in any tribunal where medical evidence is presented or considered, it is vital that there is a medical member on the panel. As many of these tribunals involve people with mental health problems, the medical member will have important knowledge of mental as well as physical health conditions, and the links between them. We would refer the MoJ to the Disability Benefits Consortium's response where the issues in relation to these tribunals are set out in greater detail.

First Tier Tribunals (Mental Health)

The ability to apply to a First Tier Tribunal (Mental Health) is an important safeguard protecting the fundamental rights of a group of vulnerable and often disempowered people who are subject to detention in hospital for assessment / and or treatment of mental disorder or subject to compulsory powers in the community. Any detention in hospital for mental disorder can only occur if there is objective medical evidence of a disorder of a nature and /or degree that warrants detention.

In order to make this determination, the expert involvement of a properly qualified medical professional is essential in **every** case, rather than on a case by case basis, as proposed. Mental health tribunals involve medical as much as legal considerations.

A presumption that there should be only one person on each panel would either mean that they would need to prove every time that they need the additional support of a medical expert, or that decisions could be made without a proper understanding of the medical issues involved.

As well as the power to detain, the Mental Health Act 1983 confers powers to treat mental disorder in the absence of consent, if medically necessary and if proportionate to any potential harms. A suitably qualified medical professional is the only member of the tribunal with a full and expert understanding of these issues, in terms of both their treatment and their safety needs. Without provision

for such expertise, there is a significant risk of decisions being made that do not adequately address whether a patient may be a danger to themselves or others.

It is the responsibility of the detaining authority to prove that the patient continues to meet the criteria for detention. One of the protections afforded by the Tribunal is that the evidence provided by the detaining authority is carefully scrutinised and on occasions robustly challenged during the course of a hearing.

The Medical member has a unique and vital role in explaining and sometimes adding to the clinical information available to the tribunal and can take a lead in testing the accuracy and robustness of the evidence provided by the detaining authority. This includes:

- leading in reviewing the clinical information provided by the Responsible Clinician and in identifying any gaps in the evidence which can then be taken up when questioning the Responsible Clinician during the hearing;
- bringing useful information to the attention of Tribunal members by undertaking a pre- hearing examination of the patient, including discussing the case with ward staff and reviewing the case notes; this information may be more up to date than that contained in the report. . Useful information will also be obtained through their examination of the patient during the course of the hearing.
- explaining the meaning and significance of complex medical information (in relation to mental but also physical conditions) to the non-medical members;
- highlighting and explaining the significance of any abnormalities (or not) in the mental state of the patient seen during the hearing, thus adding to the evidence available to the tribunal;
- acting as a decision maker in this complex area where multiple factors need to be carefully scrutinised. Such factors include current clinical state, any associated risks, the adequacy of the current care plan and provision of aftercare.

We do not think such important and often highly nuanced considerations can be carried out as a “paper exercise” or by the provision of remote advice. Indeed, a considerable amount of information will be gleaned in the hearing itself through skilled questioning by the medical member. We therefore view the presence of a medical member at every tribunal as an essential component of a fair and just hearing.

Due to the serious and complex nature of the matters considered by the tribunal, which affect the safety both of patients and the general public, and the fundamental rights of some of the most vulnerable people in society, we strongly advise that the current composition of the Tribunal should be maintained.