

The AJTC's Stakeholder Advisory Group on the Mental Health Review Tribunal

In the 10 years or so before the AJTC was established, its predecessor, the Council on Tribunals paid particular attention to the operation of the Mental Health Review Tribunal (MHRT) in England, because of serious concerns about the poor quality of tribunal administration which was having a negative impact on patients' rights to a fair and speedy hearing. The Council's concerns arose, not only from observations on our visits to MHRT hearings, but from the fact that, unlike most other tribunals, the MHRT deals with issues which have profound effects on individual rights - most notably the right to liberty of some of the most vulnerable members of society, and in some cases with serious implications for public safety.

In June 2000 the Council published a Special Report on the operation of MHRTs¹. The key recommendations made in the Report included:

- The Mental Health Review Tribunal should be headed by a national President, appointed by the Lord Chancellor;
- Every tribunal hearing should be properly supported by a tribunal clerk;
- Proper planning and management information systems should be put in place for the new Tribunal;
- There should be a robust and comprehensive training policy for all tribunal Chairmen and members;
- Good quality legally-aided representation at hearings should be more widely available to mental health patients;
- The need for a review of tribunal accommodation, with a view to securing greater consistency and an improvement in standards.

Over the years, some progress was made in implementing one or two of these recommendations, but the administrative improvements regularly promised by the MHRT Secretariat failed to materialise. Indeed, stakeholder satisfaction surveys of tribunal members, mental health act administrators and legal representatives conducted in 2005 and 2006, along with information Council members continued to pick up at visits to observe tribunal hearings, indicated the opposite – that in fact there had been further deterioration in levels of service. When the 2006 survey found that the overall level of stakeholder satisfaction had dropped to 18%, as compared to 87% across other government departments and agencies, the Council decided 'enough was enough'!

In July 2007, the Council convened a round-table discussion, bringing together representatives from the key stakeholder groups whose views had been reflected in the survey, senior members of the MHRT judiciary, together with the Deputy Chief Executive and Chief Operating Officer of the Tribunals Service, which had taken over responsibility for MHRT administration the previous year. The aim of the meeting was to explore the key issues arising from the stakeholder satisfaction survey and to consider whether the Secretariat's proposed action plan fully addressed and provided adequate remedies to the MHRT's problems.

There were, of course, concerns that this meeting would end up as yet another

¹ [http://www.council-on-tribunals.gov.uk/docs/MHRT_Special_Report\(1\).pdf](http://www.council-on-tribunals.gov.uk/docs/MHRT_Special_Report(1).pdf)

'moaning session' with little productive outcome. Far from it! Perhaps due to the skilful chairing of Lord Newton and the frank admission by Jeanne Spinks, TS Deputy Chief Executive that the MHRT was (at that time) the "worst performing tribunal, whose performance needed to be turned around quickly", all participants got involved in suggesting constructive ideas for both short-term gain and long-term improvement. It was heartening to see such a clear demonstration of everyone's commitment to improve the workings of the MHRT, not only to salvage the tribunal's damaged reputation but most importantly to protect the rights of patients.

The forum proved to be so useful that the TS asked the Council to establish a working group to advise it on taking forward the MHRT improvement plan. The MHRT Advisory Group was born, chaired and hosted by the Council on Tribunals, with the majority of participants at the round-table discussion keen to take part. At its second meeting, after the Council on Tribunals had become the AJTC, it was proposed that the Advisory Group should replace, and take over the role of, the previous MHRT National Stakeholders Group, which was failing to attract sufficient numbers of stakeholders to its meetings. The AJTC is pleased to continue in its role as facilitator and independent chair of this new active and committed MHRT Stakeholder Group. Membership now includes representatives of the MHRT Secretariat, senior judiciary and panel members, the Ministry of Justice Mental Health Unit, Mental Health Lawyers Association, Institute of Mental Health Act Practitioners, MHA Administrators, Legal Services Commission, Mental Health Act Commission and Mind. We are seeking to involve the NHS Confederation, the Royal College of Psychiatrists and service user representatives in future meetings.

There is still a great deal to be done to improve the operation of the MHRT – now (since T-Day 3 November 2008) the First-tier Tribunal (Mental Health), part of the Health, Education and Social Care Chamber. A start has been made with the relocation of the tribunal out of London to the TS Administrative Support Centre in Leicester and with the recruitment and training of a full complement of dedicated administrative staff. But there are a number of outstanding matters that the Stakeholder Group is continuing to pursue, in particular:

- **Electronic transfer of documents:** Encouraging the use - by doctors, administrators, legal representatives and MHRT members – of the MHRT's secure email system for the electronic transfer of confidential reports and documents between hospitals, lawyers and the tribunal. Only by increased use of electronic transfer, of which security and confidentiality is guaranteed, can applications be dealt with efficiently, reports obtained and dispatched in time to tribunal members and decisions issued in a timely fashion.
- **Hearing rooms:** Pushing for improvements in hearing room accommodation provided by NHS Trusts and independent hospitals, which as a minimum should be private, quiet, clean, adequately sized and furnished, with a separate waiting area and room for private discussion between patients and their legal representatives. The AJTC Chairman wrote to the Secretary of State for Health asking for guidance on this matter to be issued to NHS Trusts, while the TS has appointed a designated staff member to conduct a review of hearing accommodation, with a view to producing a specification of necessary requirements.
- **Booking of panel members:** The MHRT still tends to rely on last-minute booking of panel members, which depends on individual members' availability rather than making appropriate use of the expertise and experience of all the members. The new MHRT database being introduced in phases during

2008/09 has been designed to address this problem.

- **Clerking of tribunal hearings:** The current system of using agency tribunal assistants is proving unworkable, with many hearings left without any clerking assistance. This not only adds to the workload of hospital-based MHA administrators, it can also compromise the independence of the tribunal when members also have to act as clerks. While reviewing the effectiveness of the agency contract, the TS is also looking at the possibility of using employed clerks who provide clerking services for other tribunals.

- **Provision of good quality legally-aided representation for patients:** The Stakeholder Group has provided a forum for discussion of the impact of the new system of fixed fees for legal representatives at the MHRT [Add reference to articles by Richard Charlton and Sheila Carrick]. There are particular concerns that this is leading not only to the withdrawal of some solicitors from this specialist area of work, but also to a deterioration in the standard of representation at MHRT hearings. The involvement of the Legal Services Commission has enabled the Group to discuss these concerns fully. We will continue to monitor the situation carefully.

The AJTC is keen to hear from anyone who has experience of the MHRT, in whatever role, who may have comments or concerns on any of the above matters, or indeed on any issues affecting the operation of the tribunal. We will be sure to use the MHRT Stakeholder Group to pass on your views.

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