

A Guide for Trainees: Attending a Mental Health Tribunal Hearing

BACKGROUND TO THE MENTAL HEALTH TRIBUNAL

A patient with a mental disorder who is presenting risks to themselves or others, and who is unwilling to be treated, can be detained in hospital for treatment using the Mental Health Act, often referred to as 'being sectioned' (due to sections of the MHA being relied upon to do this). Patients detained under the Mental Health Act have a right of application to the Tribunal (the full title is First Tier Tribunal - Mental Health).

The application means that the patient questions the need for continued detention; this is not an appeal against the original Mental Health Act Assessment decision. The time at which a patient can apply to the tribunal depends on the section. Patients who apply are entitled to free legal representation at their tribunal hearing. If patients don't apply then, from time to time, their cases are automatically referred to the tribunal.

PROCESS OF A TRIBUNAL HEARING

The tribunal is a panel that is made up of three people – a Judge (who chairs the hearing), a Tribunal Doctor who is a Consultant Psychiatrist, and a Specialist Lay Member who has knowledge of mental health care. The panel's powers depend on the section of the Mental Health Act that the patient is detained under. The panel comes to the hospital for a formal hearing with the patient, their legal representative and clinical team.



Before the hearing starts, the panel and (separately) the patient's legal representative will read the reports from the clinical team (a medical report, nursing report and a report from the care co-ordinator who is usually a social worker or community psychiatric nurse) and discusses issues such as order of evidence: an agitated patient may be encouraged to give their evidence first.

After the patient's legal representative says what the patient is requesting, the panel question the clinical team: i.e. the doctor, nurse and care-co-ordinator, and take notes. These questions cover the statutory criteria: these are the legal criteria on which the patient's detention under section is justified, and typical answers are shown below.

Statutory Criteria

- Q.** Is the patient suffering from a **mental disorder**?
- Q.** Is the patient's disorder of a **nature** that requires detention under the Mental Health Act?
- Q.** Is the patient's disorder of a **degree** that requires detention?
- Q.** What is the **appropriate treatment** for the patient? Is it available?
- Q.** What is the **risk** if the Section is lifted?
There are three categories of risk:
risk to the patient's **health**, risk to the patient's **safety**, and risk to **others** by the patient's actions

Responses likely to be given by clinical team

- A.** The actual diagnosis may not yet be confirmed; the two most common diagnoses for detained patients are paranoid schizophrenia and schizo-affective disorder
- A.** Nature includes diagnosis, pattern of illness i.e. relapsing and remitting, response to treatment, perpetuating factors, including compliance and insight
- A.** Current mental state also includes delusions, hallucinations, depression or mania, and negative symptoms such as self neglect
- A.** Includes medication, nursing care, occupational therapy, psychology, ward activities, input from other teams, accommodation, carers support AND follow up arrangements when the patient leaves hospital e.g. community mental health team or Crisis/Home Treatment team
- A.** Risk to health: mental (distress), non-compliance with medication; physical (self care, neglect of medical conditions) Risk to safety: self harm, suicide attempts, putting self in risky situations and vulnerability, retribution from others, road safety. Protection of others e.g. from physical assault by patient

The patient's legal representative questions the clinical team with an aim to show that the patient either does not meet the criteria above, or is willing to stay in hospital and take treatment as a voluntary patient or will accept treatment in the community, and that any risks can be managed.

Sometimes hearings do not proceed (the panel will adjourn) if there is missing information that would mean it would not be in the interests of justice for the patient to proceed.

THE PATIENT'S EVIDENCE

The patient may wish to give evidence first or wait to see what their clinical team say in order to respond to the clinical team's concerns with the help of their legal representative.

THE DECISION

The panel then discuss the evidence privately and decide their options, which are:

- Immediate discharge from section if the criteria are not met - the patient may leave immediately or may agree to stay voluntarily in hospital
- Discharge on a future date: section is to be lifted at a specified date in the future - usually a few days - to allow time for follow up arrangements to be made
- Detention continues with an unchanged treatment plan
- Detention continues with recommendations made to the clinical team regarding care such as considering a community treatment order or a move to another hospital nearer the patient's home
- In restricted (forensic) cases, conditional discharge or deferred conditional discharge

The patient, their representative and the clinical team are told the decision and a written version of the decision is sent to the hospital and to the patient's legal representative within a set time scale (a few days) as a record of the decision.

OTHER RELEVANT INFORMATION ABOUT EVIDENCE FOR TRIBUNAL HEARINGS

1. The practice direction specifies the contents of reports that must be provided by the clinical team:
<https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Practice+Directions/Tribunals/statements-in-mental-health-cases-hesc-28102013.pdf>
2. Readable information about the Mental Health Act: A Clinician's brief guide to the Mental Health Act, 4th Ed.
Tony Zigmond RCPsych publications
ISBN 978-1-909726-24-6
<http://www.rcpsych.ac.uk/usefulresources/publications/books/rcpp/9781909726246.aspx>
3. This guidance is for Detaining Authorities and advises on the experience and supervision of doctors who give evidence to the tribunal. The guidance is jointly written by the Royal College of Psychiatrists and the First Tier Tribunal - mental health
<http://www.rcpsych.ac.uk/pdf/Guidance%20for%20Detaining%20Authorities%20about%20medical%20evidence%20for%20First%20Tier%20Tribunal%20final.pdf>

PLEASE NOTE

- A.** Observers are not permitted to make notes at a tribunal hearing
- B.** To arrange observations Trainees who are part of the clinical team are encouraged to observe and providing the patient agrees this should not be a problem. However, there is a legal procedure that panels can insist upon so it is recommended that trainees wishing to observe do the following:
 - Send an email requesting observation giving details of the case: the name of the patient, the date of the hearing and stating why observation is being requested (e.g. for training purposes) to:
TSMH_Case_Progression@hmcts.gsi.gov.uk
 - Please give 3 working days notice to allow the request to be processed. As only one observer is allowed at any one time, check that other trainee members of the clinical team (student nurses etc.) are not requesting observation at the same time
 - On the day for the hearing, check that the patient's legal representative agrees with the observation and the tribunal panel are aware of the observation request