



MENTAL HEALTH TRIBUNAL FOR SCOTLAND

Dr J J Morrow
President

Dr D Lyons
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20 August 2010

Dear Dr Lyons

MEMORANDUM OF UNDERSTANDING

I refer to your letter of 30 July 2010.

Please find enclosed the duly signed Memorandum of Understanding.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Russell G Hunter', written over a large, faint circular stamp or watermark.

Russell G Hunter
Solicitor
Legal Secretary to the Tribunal



MEMORANDUM OF UNDERSTANDING BETWEEN THE MENTAL WELFARE COMMISSION FOR SCOTLAND, THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND AND THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND ADMINISTRATION

Introduction

- The object of this Memorandum is to set out a framework for cooperation between the Mental Welfare Commission for Scotland (“the Commission”) and the Mental Health Tribunal for Scotland (“the Tribunal”).
- This Memorandum does not affect the statutory functions of the Commission or the Tribunal or amend any other policies or agreements relating to their activities.
- This Memorandum shall be reviewed from time to time (*at intervals of no longer than 3 years*), and may be amended if agreed by both the Commission and the Tribunal.

Functions of the Commission

- The broad statutory functions of the Commission are defined in sections 5 to 19 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”). The Commission also has functions under other provisions of the Act. Its functions include:
 - Monitoring the operation of the 2003 Act
 - Promoting good practice in the operation of the 2003 Act
 - Promoting the observance of the principles set out in section 1(3) of the 2003 Act by those discharging functions by virtue of the 2003 Act
 - Visiting people with mental disorder in a wide variety of settings
 - Investigating possible abuse, neglect, deficiencies in care or improper detention under the 2003 Act
 - Bringing concerns about care and treatment to the attention of the Scottish Ministers and other persons
 - Advising the Scottish Ministers and other persons
 - Publishing advice, guidance and statistical information about the 2003 Act
 - Referring patients to the Tribunal, if appropriate
 - Revoking orders authorising compulsory treatment, if appropriate
 - A safeguarding function in respect of consent to treatment and specific rights

- The Commission also has statutory functions under section 9 of the Adults with Incapacity (Scotland) Act 2000. These functions include:
 - Visiting persons subject to guardianship and intervention orders
 - Exercising protective functions in respect of the welfare of people subject to guardianship and intervention orders
 - Investigating circumstances in which the welfare or property of the adult may be at risk
 - Arranging independent opinions on safeguarded medical treatment

Functions of the Tribunal

The Tribunal is an independent body established by section 21 of, and schedule 2 to, the 2003 Act and is the principal forum for approving, granting and reviewing compulsory measures for the detention, care and treatment of people in Scotland who have a mental disorder. The Tribunal's judicial functions include:

- Deciding applications for revocation of short-term detention certificates
- Deciding applications for compulsory treatment orders and for the extension, variation or revocation of such orders
- Reviewing determinations to extend compulsory treatment orders and deciding applications to revoke such determinations
- Deciding applications for extension, variation or revocation of compulsion orders
- Reviewing determinations to extend compulsion orders and deciding applications to revoke such determinations
- Deciding applications and references in respect of compulsion and restriction orders
- Deciding applications for orders declaring that patients are detained in conditions of excessive security

The Mental Health Tribunal for Scotland Administration ("the Tribunal Administration") provides administrative support to the Tribunal and exercises certain functions delegated to it by the President of the Tribunal, including:

- The number of Tribunals required to effectively carry out the Tribunal's functions
- The time and place where each Tribunal shall sit
- The selection of a legal member to act as a convener of a Tribunal constituted under paragraph 7(1) of schedule 2 to the 2003 Act
- The selection of a medical and general member to sit on a Tribunal constituted under paragraph 7(1) of schedule 2 to the 2003 Act
- The selection of an office holder from paragraph 2 (a), (b) or (c) of schedule 2 to the Act to sit as sheriff convener of a shrieval panel constituted in terms of that paragraph
- Requesting accommodation for the holding of hearings from a Health Board, State Hospital's Board for Scotland, local authority, or other appropriate public body

- Providing information as specified by the Scottish Ministers to the Scottish Ministers, or such persons as the Scottish Ministers may specify, relating to the discharge of the Tribunal's functions and as the Scottish Ministers may direct.
- Payment of allowances and expenses, as determined by the President, to any person (other than a member of the Tribunal or a member of staff of the Tribunal) for the purpose of, or in connection with, the person's attendance at hearings of the Tribunal.
- Payment of amounts, as determined by the President, to any person (other than a member of the Tribunal or a member of the staff of the Tribunal) in connection with any report prepared in accordance with paragraph 10(2) of schedule 2 to the 2003 Act

Statutory relationship between the Commission and the Tribunal

- The Commission may refer patients to the Tribunal, if the Commission considers it appropriate to do so. This includes patients subject to most long-term orders. Where the patient has restricted status, the Commission may require the Scottish Ministers to make a reference to the Tribunal.
- The Commission has the power to revoke certain orders, including compulsory treatment orders, interim compulsory treatment orders and compulsion orders, but only if satisfied that the grounds are not met. The Commission will not normally exercise this power and would be likely to make reference to the Tribunal.
- The Tribunal will provide information to the Commission as outlined in the 2003 Act and regulations made thereunder. The Tribunal will send all decisions and accompanying applications and reports to the Commission as soon as reasonably practical in accordance with rule 72(5) of The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005 ("the Tribunal's Rules"). This ensures that the Commission can carry out its statutory duty of monitoring the operation of the 2003 Act.
- The Commission has the duty to monitor the operation of the 2003 Act and may identify improper detention. It also has the duty to promote the principles of the 2003 Act. This may result in the Commission bringing matters to the attention of the Tribunal. The Commission has no other statutory responsibilities in relation to the Tribunal.
- The Tribunal has no statutory responsibilities in respect of the MWCS other than the duty imposed by the Tribunal's Rules to send a copy of Tribunal decisions to the Commission.
- Except for rule 44 of the Tribunal's Rules, there is no direct provision for the Tribunal to refer matters to the Commission. Both organisations agree that such reference is proper where the Commission has functions that are appropriate to the individual matter being referred. For example, the Tribunal may refer to the Commission matters of apparent improper detention or deficiency of care and treatment.

Exchange of information

1. Information about identifiable individuals

- The Commission will give the Tribunal appropriate information about an individual, when the Commission makes a formal referral to Tribunal
- The Tribunal will give the Commission appropriate information about an individual
 - When it makes a determination.
 - When it refers a matter to the Commission
 - When the Commission requires information in pursuance of its statutory functions

2. Aggregated anonymised information

- Where practicable, the Commission will give the Tribunal aggregated anonymised information when:
 - The Tribunal requires this to monitor and audit its performance
 - The Tribunal requires it to plan its service
- The Tribunal will give the Commission aggregated, anonymised information when:
 - The Commission requires this to monitor the operation of the 2003 Act

3. Publication of statistical reports

- The Tribunal and then Commission will work together to produce a coherent set of statistical reports (agreeing titles, definitions and timescales).
- The Commission will not seek to produce reports that are already available from the Tribunal, but rather use the Tribunal's material appropriately acknowledged.
- The Tribunal will conduct its own analysis of statistical returns, for management and planning purposes. The Tribunal may decide to report to the Commission items giving indications of unusual care performance which may be of interest to the Commission.

Publication of Information

The Commission and the Tribunal will seek to minimise duplication of published information. When it is appropriate to do so, each body will check the accuracy of its information with the other before publishing it.

The Commission will publish information in respect of:

- The performance of its own statutory functions

- Statistical information on the operation of the 2003 Act
- Its views on the operation of the 2003 Act in respect of individual people, including the observance of the principles

The Tribunal will publish information in respect of:

- The performance of its statutory functions
- Volumes of applications and outcomes
- The quality of its own work and that of others in terms of the timing and turnaround of applications
- Information on the trends of volume and quality of applications and references

Where requests for information are received by the Commission for information that has been provided by the Tribunal, the Commission will consult the Tribunal before deciding whether to release the information. .

Data Protection Act 1998

The Commission and the Tribunal shall exchange personal data only in accordance with the Data Protection Act 1998.

Reference procedures

- Where the Commission wishes to refer a case to Tribunal it will do so to the Tribunal Administration which will, without delay, draw the making of the reference to the attention of the President of the Tribunal.
- Where the Commission has referred a case to Tribunal it will normally seek to be represented as a party at hearings.
- Where the Tribunal refers a matter to the Commission this should be by letter to the Director of the Commission. .
- Commissioners and Commission staff may from time to time request to attend Tribunal hearings for training and information gathering purposes. Such a request will made in writing to the President of the Tribunal giving at least five days notice of any specific hearing for which permission to attend is sought. Attendance will only be allowed if: accommodation permits; there are no other 'observers' present; and the convener of the hearing and other participants raise no objections.

Dispute resolution

- Wherever possible any disputes should be resolved locally on a case by case basis, between officials, if necessary by reference to each organisation's line management.
- If officials are unable to reach agreement disputes should be referred to the Director of the Commission and the President of the Tribunal.
- If disputes remain unresolved they will be referred to the Primary and Community Care Directorate of the Scottish Government.

Complaints

1. Complaints about the standard of care:

- Where the Tribunal receives complaints about care delivery standards from patients/service users, their carers or representatives, the Tribunal will seek the consent of the author of the letter to copy it 'for information' to the Administration Manager of the Commission. The Tribunal will advise complainants to use local complaints procedures. This does not preclude the option for the Tribunal to refer the matters complained of to the Commission.
- Complaints about standard of care received by the Commission will not be copied to the Tribunal unless they have a possible bearing on a case yet to be heard; or on the administration or the conduct of a case.

2. Complaints about the Tribunal

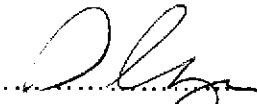
- The subject matter of complaints received by Tribunal or the Tribunal Administration will not usually be referred to the Commission unless they refer to: breaches of confidentiality; or significant breaches of the 2003 Act, the Tribunal's Rules or where the Commission has received a copy of the complaint and has requested a copy of the response.
- Where breaches of confidentiality are identified either internally or externally (even if a complaint is not made) the Tribunal will immediately inform the Commission by letter and provide details of any mitigating action.
- Complaints received by the Commission about the Tribunal Administration's will be referred to the Tribunal Administration's Head of Administration and the President of the Tribunal. The Tribunal Administration will send a copy of the response to the Commission.

Meetings

Representatives from the Commission and the Tribunal shall meet at least every six months, to discuss issues affecting the interaction between the Commission and the Tribunal and other issues of mutual interest.

More frequent meetings will be held between appropriate officials to discuss matters of common interest e.g. the production of statistical reports.

Signed:

For the Commission.....
Director

For the Tribunal.....
President

For the Tribunal Administration.....
Head of Administration