

Tribunal Experiences

First hand experiences of mental health tribunals in Scotland expressed by service users, their friends and relatives.

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Tribunal experiences questionnaires

Introduction

Mental Health Tribunals are new to Scotland. They were introduced in October 2005 as part of the Mental Health (Care and Treatment) Act 2003 as the locus for decision making about compulsory treatment. The Mental Health Tribunal considers all applications for long term (i.e. longer than 28 days) compulsory care and treatment and hears appeals. The new arrangements are intended to provide a responsive, accessible, independent and impartial decision-making service. Previously, only the Sheriff Court had the legal authority to detain a person for longer than 28 days, for reasons of their mental health. The introduction of a tribunal system was a response to calls from service-users and carers for a more participative approach to care and treatment decisions throughout the mental healthcare system. As well as being an operational response to the principle of participation which underpins the mental health act, hearings and deliberations are informed by all of the principles of the legislation.

Hearings should be less formal in their conduct, more conveniently located for all concerned and more focussed on the care and treatment needs of the service user than previously. Safeguards introduced by the Act are intended to ensure that the wishes and interests of service users are properly represented in the hearing. The panel itself should reflect a wider range of perspectives than was available in court proceedings.¹

The Mental Welfare Commission for Scotland is the body responsible for monitoring the workings of mental health law. We gather information about how the law is applied: by visiting individuals who are subject to compulsion; from formal records including Tribunal decisions; and from specific monitoring exercises involving visits and surveys. This examination of how service users and other lay people find the experience of attending a Tribunal belongs in this third category.

The Commission has a specific duty to promote best practice in the operation of the principles of the 2003 Act. During the course of our work we were aware of a number of concerns from service user and independent advocacy groups relating to the early operation of the Tribunal. As the Tribunal forms such an important part of the care and treatment system we thought it was appropriate to conduct a specific monitoring exercise, both in response to our own duties and also as a potential source of learning for Tribunal members and administrators.

¹ There are three groups of Tribunal members – legal, medical, and general. Each hearing has a panel of three members which includes one person from each group. The legal member chairs the hearing. Medical members are psychiatrists. General members are people with a special interest in mental health including psychiatric nurses, social workers, psychologists, service users and carers. None of the panel should have had any previous connection with the service user.

March 2009 has seen the publication of a Scottish Government funded research report on the first years of operation of the Mental Health Tribunal Service, including a detailed analysis of processes and costs². This is a valuable report which identifies some of the same issues referred to here. Participants in the Scottish Government study include a range of 'stakeholders' but no service users or other lay participants in the Tribunal process. We consider that our report complements the Scottish Government study by representing the views of service users and lay people about their experiences of the process.

This report presents feedback and suggestions from 101 people who have attended a Mental Health Tribunal hearing, almost all of them in the past 12 months. Service users and other lay people were asked to complete a questionnaire about their experience of attending hearings. Forty service users and 43 'lay' friends and family members returned questionnaires. We also met with a further 18 service users and recorded their responses to the same questions. They are referred to as 'interviewees' in the report to distinguish them from 'respondents' who returned questionnaires. We have used their fuller comments and suggestions to fill out our account of the more limited written questionnaire responses. We have also included three case examples from these interviews (page20) to illustrate the range of experiences described to us.

A more detailed account of how we gathered the information used in this report can be found on page 23. The questionnaires can be found at the end of the report.

We have chosen, for consistency, to use the term 'service user' throughout the report rather than 'patient', although both terms were used by respondents and interviewees. A short glossary can be found on page 26.

Extracts from our interview notes are enclosed in a border.

² The report can be found on the Scottish Government website at:
<http://www.scotland.gov.uk/Publications/2009/03/09142506/0>

How were people represented at the Tribunal?

Service users are entitled to be accompanied at a hearing by an independent advocate to support and speak for them if required. They may also be represented by a lawyer. The 'named person' is invited to attend the hearing and may also be represented by a lawyer.

From the questionnaire survey

- Roughly half of the service users were represented both by a lawyer and by an independent advocate.
- About a quarter of service users had a lawyer but no independent advocate and a further 10 percent had an independent advocate but no lawyer.
- Six of the 40 service users who responded had neither a lawyer nor an independent advocate with them at the hearing.
- Of the 43 friends and relatives responding, 10 said there was no lawyer or independent advocate to represent the service user.
- All but four of the 43 friends and relatives who responded were the 'named person' for the service user and four of them were represented by a lawyer at the hearing.

| Type of respondent | Was the service user represented by a lawyer? | | | |
|--|---|----|-------------|------|
| | Yes | No | No response | %Yes |
| Service user | 30 | 9 | 1 | 75% |
| Friend or relative including named persons | 29 | 14 | 0 | 67% |

| Type of respondent | Did the service user have an independent advocate with them? | | | |
|--|--|----|-------------|------|
| | Yes | No | No response | %Yes |
| Service user | 23 | 16 | 1 | 58% |
| Friend or relative including named persons | 23 | 18 | 2 | 54% |

All questionnaire respondents were aware of the option of some sort of representation and all but one were actually represented.

However, in two of our interviews service users were told that they could not have an independent advocate. In one of these cases the person

said the staff told him that they would advocate for him. This man also said that a nurse nudged him to stop him speaking during the hearing.

The importance of representation was highlighted by two service users we met who had not had either a lawyer or an independent advocate and felt that they had no way of making their case to the panel.

Representation includes being empowered to represent oneself. In some cases the independent advocate helped the person to prepare a written statement for them to read to the panel.

One person who had such a statement felt disadvantaged when his lawyer decided that he should not read it out as planned but that it should be circulated to those present in writing.

How well prepared did people feel?

Service users

Most service users seemed to have been well prepared. Three quarters of service users responding directly answered 'Yes' to all three questions about their preparation for the hearing. Five people did not feel prepared *and* did not have a good understanding. Responses to individual questions are summarised below.

| Questions to service users | Response | | |
|--|----------|----|-------------|
| | Yes | No | No response |
| Did you feel you had a good understanding of the purpose of your Tribunal? | 31 | 7 | 1 |
| Did you feel prepared for your Tribunal? | 32 | 8 | 0 |
| Did someone explain to you what would happen at the Tribunal before it took place? | 35 | 5 | 0 |

One service user commented that the explanation of what would happen at the Tribunal only took place in the waiting room on the day.

Service users should be asked about their specific communication requirements, but only 11 of our respondents said this had been done. Also, 12

of them said they did not understand that they could have someone of their choice with them during their hearing.

Friends and relatives

Friends and relatives who responded to the survey were also mainly positive about their preparation for the hearing. Twenty-eight out of 43 answered 'Yes' to all three questions. Only two answered 'No' to all three questions.

| Questions to friends and family | | Response | | |
|---------------------------------|--|----------|----|-------------|
| | | Yes | No | No response |
| 1 | Did you feel you had a good understanding of the purpose of your Tribunal? | 39 | 4 | 0 |
| 2 | Did you feel prepared for your Tribunal? | 35 | 8 | 0 |
| 3 | Did someone explain to you what would happen at the Tribunal before it took place? | 36* | 6 | 1 |

* includes one respondent who had attended hearings before and said they did not need an explanation this time

Suggestions for change

Twelve service user and 18 friend and relative respondents said there was something they would want to change about the information and preparation for the hearing they attended. The issues raised are listed below with an indication of how many people raised each one and examples of comments made.

1. Not enough notice of the hearing (three service users, seven friends and relatives). This can lead to people being unable to attend or unable to read the papers in time.

Would have liked more than 24 hours notice, with time to read reports beforehand.

(service user questionnaire)

Myself and my son were only given notice of the meeting on the afternoon before.... The meeting was abandoned as three people were not informed and others did not turn up. A Tribunal was held this morning ... both myself and my son were not informed this was taking place. Communication between these professional bodies needs to be addressed.

(friend/relative questionnaire)

2. Documents not available in time to be read before the hearing (three service users, four friends and relatives)

*Would like to have received CTO pack before the Tribunal, to allow time to prepare. I did not receive the application papers at all.
(service user questionnaire)*

*This is the second Tribunal I have attended On both occasions, there was very little time to prepare, either for myself or the [service user] being represented. The papers sent out by the Tribunal admin team, being sent by [courier service] (who are closed over weekends) on a Friday, reached me luckily as I was home on Friday. The [independent] advocate did not receive hers on time and the solicitor only managed to pick his up on the Saturday morning. The Tribunal was held on the Monday morning.
(friend/relative questionnaire).*

3. Would like more information about what to expect (two service user, three friends and relatives)

*It would be appropriate to send an explanatory leaflet when the MHT issue the copy of the CTO and the Respondent Response Form. Although the clerk gave a succinct summary of the proceedings just before I entered the room, I had no idea of the composition of the Tribunal before then. A prior leaflet explaining the presence/function of the convener/medical and general members would have been useful.
(friend/relative questionnaire)*

I would have liked more time with my assigned MHO in the weeks prior to the tribunal. (service user questionnaire)

Interviews reinforced the point about papers not being made available beforehand, or well enough in advance.

Would have liked to have seen reports earlier and in addition to this the independent psychiatrist report did not even turn up on the day.

Tribunal was adjourned because some documents had not been prepared in time. People attending had their time wasted.

Conduct of the hearing

What was the tribunal like for service users?

Almost all service users who responded felt that the surroundings at the Tribunal were pleasant and comfortable and that the staff made them feel welcome. All but three of them felt treated with respect.

On a more negative note, eight out of 40 respondents felt they could not take a break in the proceedings when they wanted.

Service users' responses to five questions focussing on whether they felt included in the Tribunal process and whether their own concerns were given priority are shown below:

| Questions to service users | | Response | | |
|----------------------------|--|----------|----|-------------|
| | | Yes | No | No response |
| 1 | Did the three panel members take care to ensure that you understood what was being said? | 28 | 10 | 2 |
| 2 | Did you feel the panel members treated you with respect? | 36 | 3 | 1 |
| 3 | Did the panel members take care to find out your views? | 34 | 5 | 1 |
| 4 | Did the Tribunal discuss what mattered most to you ? | 27 | 12 | 1 |
| 5 | Did the panel members ask about the types of care and treatment you think you need? | 22 | 16 | 2 |

While it is good to hear that almost all felt treated with respect, it is a concern that quite a high proportion (40%) said they were not asked about their own preferences for care and treatment.

The table above indicates there were more people satisfied with the way they were spoken to (questions 1-3) compared with the number satisfied with the attention paid to their concerns in the discussion (questions 4-5). Seventeen people answered 'yes' to all five questions and a further ten answered 'yes' to all but one question. Three people answered 'no' to all five questions.

Service users were evenly divided on whether they thought what was said about their current mental health was fair. Of the 39 who attended their Tribunal, 20 answered 'yes' to this question and 19 'no'.

What was the Tribunal like for friends and relatives?

In general, friends and relatives gave a positive account of their treatment by the Tribunal. All of them agreed that the staff made them feel welcome, All but one said they felt treated with respect, and all thought the surroundings were pleasant and comfortable.

Twenty-five people felt they could take a break when they needed and four felt they could not.

Friends and relatives tended to be more positive in response to questions about the *inclusiveness* of the proceedings, compared with service users. In both groups, more respondents felt respected and given a chance to speak compared with the number who felt that their concerns were actually part of the discussion. However only 7 out of 43 friends and relatives felt that their concerns were not addressed compared with 12 out of 40 service users.

| Questions to friends and relatives | | Response | | |
|------------------------------------|--|----------|----|-------------|
| | | Yes | No | No response |
| 1 | Did the three panel members take care to ensure that you understood what was being said? | 41 | 2 | - |
| 2 | Did you feel the panel members treated you with respect? | 42 | 1 | - |
| 3 | Did the panel members take care to find out your views? | 40 | 3 | - |
| 4 | Did the Tribunal discuss what was important to you ? | 36 | 7 | - |

Thirty-two out of 43 respondents answered 'yes' to all four questions.

How friends and relatives thought the person they were supporting was treated at the hearing

Overall, friends and relatives more often felt they had been treated well themselves compared with the person they were supporting. [In five of the responses the person being supported was not actually present at the hearing so the total of valid responses is 38.]

The largest number of positive answers (28 out of 38 cases) was in response to:

‘Tribunal staff made the person I was supporting feel welcome’.

The largest numbers of negative responses (15 out of 38) were to the statement:

‘The person I was supporting felt they could take a break if they needed’.

Responses to the other questions are shown below.

| Questions to friends and relatives about the person they were supporting | | Response | | |
|--|---|----------|----|-------------|
| | | Yes | No | No response |
| 1 | Did the three panel members take care to ensure that they understood what was being said? | 23 | 14 | 1 |
| 2 | Did you feel the panel members treated them with respect? | 25 | 12 | 1 |
| 3 | Did the panel members take care to find out their views? | 24 | 13 | 1 |
| 4 | Did the Tribunal discuss what was important to them (i.e. service user)? | 22 | 15 | 1 |

- 17 respondents (almost half) answered ‘yes’ to all four of the questions with a further seven people giving a positive answer to three of them.
- Eight respondents answered ‘no’ to all four with a further six respondents giving a negative answer to one or two of the questions.

Comments and suggestions for change

Some comments were concerned with the style of the hearing. Three referred specifically to formality, for example:

*...Very formal across boardroom-style table and microphones....
(friend/relative questionnaire)*

It is worth noting that amongst a group of four people we interviewed who had experienced hearings in the same place, the two who were unhappy with the outcome complained about the formality of the setting whereas the two who

were pleased with the panels' decisions (*and who knew in advance that this would be favourable to them*) were able to ignore this formality.

Four service users said they were not able to fully understand the language used or the 'legalities'.

*Application was withdrawn due to conflict of views from solicitor and [independent] advocacy - I didn't understand the legal implications.
(service user questionnaire)*

*I would have preferred simple, understandable language to be used.
(service user questionnaire)*

The use of legal language can be both intimidating and misleading for lay people, as pointed out by one interviewee:

B said there was an 'unpleasant atmosphere' at his Tribunal and it was very formal.... When he read the words 'Determination of Compulsory Order' on the top of the documents he understood that to mean that the panel was 'determined' to detain him and that his case was effectively decided in advance. He was clearly angry about this and thought the wording should be changed so as not to be misleading.

For one relative, the oral presentation of clinical evidence was an issue:

*The information about the psychiatric history of the [service user] should be given to the three members before the meeting and not read out then as it is disturbing for the [service user] and relative who has already read it.
(friend/relative questionnaire)*

One service user would have preferred that at least one of the panel members had been female.

There were no comments on questionnaires about physical comfort at the hearing.

In interviews we heard from one person who found the room was too hot and there was no drinking water provided (it had not been ordered in advance and was therefore not available).

Three service users and five friends/relatives expressed concerns about the scope and emphasis of the discussion in the hearing. Some felt that relevant treatment matters were not being addressed:

*The matter of CBT has been pending for 2 years but was not discussed.
(friend/relative questionnaire)*

*Did not discuss treatment and care as such, only the types of order held under.
(friend/relative questionnaire)*

*The diagnosis ... was often factually incorrect. ... adverse side effects of the drug-based treatment. Worries about Clozapine at my current state of health.
(service user questionnaire)*

Another cause for concern was the limitations of the clinical evidence presented:

*[change wanted] To look into the past of the person I was supporting and not go with what they have in their notes, which to my knowledge they haven't got the correct script.
(friend/relative questionnaire)*

*I was surprised that the tribunal felt able to reach a decision based on clinical evidence presented in very general terms.
(friend/relative questionnaire)*

*There seems to be no flexibility in definitions of mental health to take account of how the environmental conditions of a psychiatric secure ward can affect a [service user's] already fragile state of mind, ... the response is a continual ... '[the service user] does not accept the need to be in hospital'.
(friend/relative questionnaire)*

Four service users and one friend/relative were left feeling that their own views and concerns had not been properly included.

*A little fairness instead of doctors telling me what is necessary.
(service user questionnaire)*

*As primary carer I was not asked at all for my views. Apart from introductions, I was not given any opportunity to speak. I find this unacceptable.
(friend/relative questionnaire)*

The one doctor got asked all the questions as if he was the only person in the room ... the panel should not have agreed with the doctor at

*everything he said because I have not been with the doctor that long for the doctor to know me that good.
(service user questionnaire)*

This perception that the Tribunal decision was a foregone conclusion also came over strongly in interviews.

... the panel 'listened to me and ignored me'

the Tribunal should be 'more accountable and should bring things more out into the open. Doctors have too much power. Too much emphasis is placed on past events by Doctors and social workers.'

Eleven respondents said they had been asked about communication requirements in advance and 27 said they got the communication support they needed. However we did not ask people what support (if any) they did need so this is a little difficult to interpret.

Interviews allowed service users to tell us more about how they felt at the hearing and the kinds of pressure they felt under. Two people spoke about the pressure of being the last to speak – feeling the weight of evidence pile up against them before they had the chance to make their own case. Another spoke about the pressure applied before the hearing:

He recently met with the consultant psychiatrist prior to the Tribunal. Felt under pressure to accept conditions prior to the Tribunal, including that I had to agree to have 'support' when living in the community. Told that detention would continue unless I agreed to do so and comply with this. Felt blackmailed.

One group we met felt that there should be an independent jury at the Tribunal – reflecting their strong feeling that the panel itself is not impartial.

And finally, from an interviewee with a fairly lengthy experience of detention...

He much prefers the tribunal to the Sheriff court because it is more private – extra people can only attend with his permission whereas in the court the public can be present. He was grateful to Tony Blair for bringing in the Human Rights Act.

What did people feel about the outcome?

Over 90% of respondents were clear about what was decided and satisfied with the time taken by the panel to decide their case. Only one friend or relative felt unclear about what was decided at the Tribunal, and none felt that the panel members didn't take long enough to come to a decision.

One suggestion made was for an audio recording of the proceedings to be given to the service user. It was thought this would be helpful for everyone and not simply those unable to attend the hearing.

We found that most respondents were unclear about how to appeal or complain about the outcome of their hearing. Fewer than half of both groups of respondents said they were told who to contact if they had a complaint, and just over half of both groups said they were told how to make an appeal. Fifteen out of 40 service users (38%) and 14 out of 43 friends and relatives (33%) said they were not told either of these things. .

| Questions to service users | | Response | | |
|----------------------------|---|----------|----|-------------|
| | | Yes | No | No response |
| 1 | Did you feel that the panel members took enough time to decide about your case? | 30 | 7 | 3 |
| 2 | Are you clear about what was decided? | 31 | 6 | 3 |
| 3 | Have you been told how to make an appeal? | 22 | 17 | 1 |
| 4 | Have you been told who to contact if you have any complaints about your Tribunal? | 19 | 20 | 1 |

| Questions to friends and relatives | | Response | | |
|------------------------------------|---|----------|----|-------------|
| | | Yes | No | No response |
| 1 | Did you feel that the panel members took enough time to reach a decision? | 42 | 0 | 1 |
| 2 | Are you clear about what was decided? | 41 | 1 | 1 |
| 3 | Have you been told how your relative or friend can appeal? | 23 | 16 | 3 |
| 4 | Have you been told who to contact if you have any complaint about the Tribunal hearing? | 16 | 24 | 3 |

Our interviews uncovered some concerns about how decisions were implemented and about appeals. We heard from one person who was unhappy that all recorded matters had not been acted on by his care team. This was echoed by another interviewee who thought the Tribunal should have more power to oversee the delivery of what was 'promised in care plans'. His care plan included support towards gaining employment.

Another was angry that some decisions were postponed to a later Tribunal because the independent medical report was not ready.

Conclusions and recommendations

Overall, the majority of responses to our questionnaire were positive but written comments and face to face interviews uncovered some important issues which we believe need attention.

We found that the vast majority (94%) of service users and friends and relatives who returned our questionnaires felt that the panel treated them with respect. A somewhat smaller proportion (74%) thought that the panel took care to find out service users' views. But 93% of friends and relatives thought that care was taken to find out their views, as distinct from those of the person they were supporting.

Nevertheless, questionnaire and interview responses taken together convey a strong sense that for many people the hearing represented a foregone conclusion – whether or not the outcome was the one the service user wanted. Although most people said they were asked for their views, there were fewer who felt that their views were actually included in the discussion (or, by implication, had any influence on the outcome).

Where friends and relatives have criticisms these are more likely to be about the scope and content of the discussion than about the way they were personally treated. They were also more critical of the way the service user was treated than of their own treatment. A substantial minority of all survey respondents (30%) felt that panel members did not take care to ensure that the service user understood what was being said. We also found that 35% thought that the panel did not discuss what was important to the service user. A much smaller proportion (16%) of friends and relatives felt their own issues were not addressed.

The use of language obscure to them, the formality of the occasion and having to wait until the end to make their own statement were all factors which had contributed to an intimidating and stressful experience for some service users. It was these factors, coupled with the sense that what they said made no difference to the outcome, which provoked the strongest reactions in interviews.

A large minority of service user respondents (40%) felt that their own concerns about care and treatment were not discussed. Some friends and relatives commented that the scope of the discussion of the service user's needs was too narrow, and one commented that care and treatment were not discussed at all, only the issue of compulsion. This perceived lack of attention to care and treatment is also evident in comments made by service users in some interviews that their care plans were not being implemented. We are concerned that if care plans are neglected or if service users are not informed about and confident of

them, then this can engender feelings of helplessness in service users, which could be detrimental to their eventual recovery.

Being well prepared and knowing what to expect is an important part of the tribunal experience. Although some respondents were unhappy about lack of advance notice of the tribunal, with in some cases only 24 hours to read papers, a high proportion (80%) of all questionnaire respondents said they felt prepared for the tribunal and 84% said they had a good understanding of its purpose. Only 11 people (13%) said they had not had someone explain the proceedings to them in advance.

Effective legal representation and independent advocacy is the prescribed means of ensuring that service users' views are heard. Good representation by a lawyer and independent advocate was very important to the people we interviewed. It could make the difference between understanding the proceedings or not. Having a lawyer argue your case was highly valued by those who had that experience.

Feeling able to take a break during the hearing (whether to speak to a representative, to smoke, or just to have a rest from the proceedings) may not be an issue when the hearing is relatively short. This was the aspect we asked about that attracted the largest number of negative responses from friends and relatives: 29% of all respondents felt that the service user did not feel able to take a break when needed.

A very small number of service users, friends and relatives (8%) were not clear about what was decided at the hearing. We are concerned though to find that 40% of all respondents said they had not been told how the service user could appeal. An even larger proportion (53%) said they had not been told who to contact to make a complaint. We accept that they may have been given the information and not taken in but it does seem from our findings as though more attention should be paid to this.

We have reported here on the first hand experiences of 101 people attending mental health tribunals. We were asked, in interviews, whether there was any point in this exercise. This underlined for us the powerlessness experienced by people subject to compulsory measures and the importance of taking some trouble to hear what they have to say about procedures designed, to a large extent, to make them feel that they also have human rights.

Recommendation 1: The Tribunal should consider whether the format and style of proceedings could be adapted to convey the Tribunal's independence from mental health services more explicitly.

Recommendation 2: Priority should be given by the Tribunal to ensuring that the language used in documents and in discussion is clear and unambiguous from the point of view of lay people attending. Where the use of language with a particular legal connotation (such as 'determination') is unavoidable, Tribunal Chairmen should go out of their way to ensure that the meaning is clear to service users.

Recommendation 3: The Tribunal should consider whether service users and carers can make their statements about their perception of care and treatment needs earlier in proceedings.

Recommendation 4: The care and treatment proposed for the service user, and not simply the issues of detention and compulsion, should be a central focus of the discussion in the hearing. Service users' views about their care plans should be sought.

Recommendation 5: Panel chairs should ensure that service users, friends and relatives are offered a break at reasonable intervals during the hearing. Proceedings should be suspended during the breaks.

Recommendation 6: Service users and people who support and represent them need time to prepare for hearings in order to participate fully. The Tribunal should ensure that papers are received in a timely way.

Recommendation 7: Service users need to be made aware of their rights to appeal against a Tribunal decision and to complain about any aspect of the proceedings. This information should be given out orally and in writing and Tribunal members or staff should check that service users, their friends and relatives understand it, as far as possible.

Case Examples

Case Example 1

Preparation for Tribunal

A meets with his independent advocate prior to the tribunal, to prepare as he put it: - "for the good, the bad or the ugly - hopefully the good!" The independent advocate writes down notes of what the service user wants to say, which are typed up to be submitted to the tribunal. They have joint meetings with A's lawyer who submits his own report to the tribunal. A felt there was sometimes not enough time for him to read the reports being submitted to the tribunal. Some reports arrive on the morning of the tribunal. There was something in the notes with which A was in disagreement and which his lawyer wanted removed. A appreciated the fact that the 'judge' deferred his last tribunal until this could be sorted out

Conduct of Tribunal

A's tribunals are busy as there are many people in attendance. A has on occasion agreed to allow people who are training to sit in and observe his tribunal. A finds it hard to follow what is going on when there are so many people talking. A strongly objected to the recommendation of the consultant psychiatrist that A had to have "support".

Result

A felt very unhappy, that he has been kept on a restriction order. In relation to dealing with his consultant psychiatrist A felt it was just "the same shit, different day" and "I just feel I am not getting anywhere".

His independent advocacy worker who was present explained that A felt that despite the process nothing was moving forward. He wanted to leave the past behind. A wanted the time he had been on a Restriction Order to be reviewed. A talked about going to a higher authority to "the European Court of Human Rights"

Case Example 2

Preparation

B struggles with paperwork and reports as he cannot read. Help from independent advocacy is important and writing things down in advance of the tribunal for advocate to read out to the panel. He had needed his solicitor to explain some of the reports.

He was told about his latest tribunal on the same day. Staff in the hospital told him nothing about what to expect at the first tribunal he attended and B feels this is wrong.

His independent advocate, who was present, confirmed that he had gone along with high expectations expecting to be discharged. He had given up smoking and prepared himself to make a good impression. When the tribunal decided not to discharge him he was bitterly disappointed and immediately started smoking again. Some preparation from staff about what was likely to happen at the tribunal might have made him less disappointed and disillusioned. B says that the ward staff are not familiar with the workings of the tribunal and are therefore not able to prepare people – this could be overcome by letting them attend some hearings. Also the psychiatrist and others who do attend sometimes don't have the time available to talk to service users in advance and make them aware of possible outcomes.

Conduct of Tribunal

B's solicitor prevented the independent advocate from presenting B's views orally in the tribunal as he had done on the first occasion. They only found out once they were already inside the tribunal that he had decided this was not appropriate and handed out the transcript instead. B was disappointed about this The independent advocate did not think the tribunal members were aware that this was an issue.

B felt that the tribunal did not listen to him but to the staff. He felt a bit left out when they were discussing legal points amongst themselves and it was hard to follow what they were talking about. He felt he was 'decently treated' but at the same time he was dissatisfied. He felt that what was said about his mental health at the tribunal was not fair. He admits that his views are very influenced by his dissatisfaction with the outcome.

The result

B wants to be discharged but has not been willing to receive support services outside the hospital. It was agreed at the tribunal (as a way round this) that a visit be arranged to a person who is being supported outside the hospital.... B is very dissatisfied that nothing has come of this. Also the tribunal has agreed that he needs psychology input and requested a psychologist's report for the tribunal. This was done but since then every one of his appointments has been cancelled. He feels that the MH services are not keeping their side of the bargain – they say "we'll help you if you help us" so he cooperates with the treatment plan but they don't provide the care and treatment agreed to. B has no faith in the tribunal because in his experience what they decide is not put into practice. 'They don't follow through on things they say they are going to do.' 'Nothing much has changed in my circumstances' (as a result of the tribunal). 'Staff were to start coming to meet me but they haven't'. 'It makes me not want to listen'.

B did not fully understand the decision of the tribunal at the time but the MHO explained it to him directly after.

Case Example 3

Preparation

C felt he was very well prepared for his tribunal and wanted to attend. His lawyer explained what would happen and that he was up to date with all the procedures. He said in fact he had to pull her back a bit because she was so keen. The ward nurses were also very good at explaining everything

Conduct of Tribunal

He said the tribunal was very quick. There was no break because it only lasted 25 minutes. Everyone had a chance to have their say. C said he was also in the huge room with the huge table but didn't feel intimidated because he had so many people sitting with him who outnumbered the panel. He said it was a positive experience because he knew he was getting out. People told him this before the tribunal. Everyone was very helpful and he was informed about everything at every stage.

The Result

C said it was a quick decision and he was given a conditional discharge which means he has to attend the hospital day centre 6 days a week and take his medication. C said that everything depends on the psychiatrist.

C would change the length of time it takes to get a tribunal. He said he spent a year in limbo living out of hospital four nights and in four nights. He said he also knows other people who are in this position e.g. one man who has been waiting 14 months for his tribunal.

C also felt it was not helpful to get "masses of reams of paper all about my life, about my past, the offences that brought me into hospital" which he said was upsetting to read. A nurse asked him if he wanted to talk about it. He didn't want to talk about it, and shredded the information in the end.

How the monitoring was carried out

Before starting on this monitoring exercise, the Mental Welfare Commission invited a number of organisations to join a steering group. This helped us to devise the most practical and relevant ways to approach service users and their friends and relatives. The following organisations were represented in the steering group:

The Scottish Independent Advocacy Alliance
VOX (Voices Of eXperience)
NSF Scotland (The National Schizophrenia Fellowship)
The Mental Health Tribunal for Scotland
The Scottish Government

We also met with a group of mental health tribunal panel members to hear their views about our proposed monitoring.

We recognised at the outset that people attending Tribunals would not be an easy group to engage in a survey. The Tribunal has the power to curtail their freedom, or that of a friend or relative. They will have strong feelings about this and about their situation in general which may make them unreceptive to requests for interviews or to complete questionnaires. The relatively small sample size that we have achieved for this survey reflects this difficulty. We also had to accept that the views they gave about the conduct of the Tribunal would be coloured by the decision made by the panel.

In spite of these considerations, we agreed that it was essential to devise the best method we could to at least give people the chance to express their views. Following limited consultation with independent advocates and service user led groups we decided to supplement the survey with face to face group interviews with service users, friends and relatives. The people who gave their views in these interviews all had first hand experience of Tribunals, though not necessarily during the survey period. In this report we have indicated where we are referring to comments from interviews as distinct from results from the survey.

Questionnaire survey

We designed and printed questionnaires for people to complete themselves. Through our contacts with independent advocacy organisations we were able to pilot the questionnaires and to get a better understanding of how the survey would be received by service users. With the help of the Tribunal administration, the questionnaires were distributed to Tribunal clerks throughout Scotland together with a request to give a questionnaire to each individual service user when they came for a hearing and to any lay people attending with them.

It seems that some Tribunal clerks were more successful at this than others: we heard from independent advocacy organisations that the handing out of questionnaires was happening routinely in some areas but not in others.

Independent advocates were not included in the survey although we recognised that some might have a role to play in supporting people to complete the questionnaire. With this in mind, the Scottish Independent Advocacy Alliance agreed to publicise the survey to their members. The questionnaires came with a return envelope and a request to complete and return them within two weeks of their Tribunal. The survey period was September – December 2008.

The main considerations in devising a method were

- The questionnaire should be available to everyone attending Tribunals as service users or lay people
- People should have the chance to give their views as soon as possible after the Tribunal while the details were fresh in their minds
- The questionnaire should be as straightforward and brief as possible
- No personal identifying information should be asked for.

The questionnaire asked about representation at the hearing and then covered three main topics:

- How well prepared for the hearing people felt
- Their views about the process and conduct of the hearing, and whether they felt properly included in the discussion
- Their understanding of the outcome of the hearing.

For each topic people were asked some specific questions with Yes/No answers and then an open-ended question about anything they would have liked to change.

Questionnaires designed for friends and relatives included questions both about their own experience and about how they felt the person they were supporting was treated at the hearing. In reporting the responses, we distinguish between service users who responded *directly* and those we know about *indirectly* from friends and relatives.

Small group interviews

We also contacted service user-lead groups asking them to invite any of their members with recent Tribunal experience to take part in a small group interview. A number of groups were interested and willing to help but it proved too difficult for some of them to recruit people to take part.

Independent advocacy groups reported that it was difficult to identify people who had attended a Tribunal, and when they did, the people concerned were not usually prepared to talk about it. In some cases arrangements to meet people were cancelled, or the numbers attending were reduced, for unavoidable reasons. One difficulty in arranging groups was that individual independent advocacy organisations thought we would be better off trying to arrange groups through collective advocacy organisations and vice versa. We had greater success in arranging groups to coincide with the regular meetings of existing service user groups rather than organising freestanding discussions. We also had more success in arranging groups in Tayside and Edinburgh than in Greater Glasgow and the West of Scotland. It seems clear that in some parts of the country, particularly those with high levels of detention, the capacity of independent advocacy (and other service user supporting organisations) to help with exercises such as this is very limited.

There were eight interviews involving 18 service users who had attended a Tribunal. At these meetings there was usually an independent advocacy worker or other support person present. Someone representing the MWC would explain the purpose of the exercise and take notes of what was said. Service users took it in turns to recount their experiences, prompted where appropriate by questions from the questionnaire. The notes were typed up and the information coded using the same categories used for comments made in the questionnaire responses.

Glossary

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| CTO | Compulsory treatment order. CTOs were introduced under the Mental Health (Care and Treatment) (Scotland) Act (2003) the order allows people with mental health problems to receive compulsory treatment either in hospital or in the community for periods of longer than 28 days. If a CTO is granted, it can last for up to six months initially. It can then be extended for a further six months, then for periods of 12 months at a time. |
| Independent advocate | Independent advocates give support and help to enable service users to express their own views about their care and treatment. |
| MHT | Mental Health Tribunal |
| Named person | Someone who will look after the service user's interests if he or she has to be treated under the Act. They are sent the full application form and are invited to attend any hearings. The named person is nominated by the service user. If they do not nominate someone then the law prescribes a default named person. |
