

**Extract from the Minutes of the Tribunal Procedure Committee (TPC) meeting held on  
Wednesday 4 October 2017**

**TPC members present**

(Mr Justice) Peter Roth (PR)  
Philip Brook Smith (PBS)  
Michael Reed (MJR)  
Simon Ennals (SE)  
Jane Shillaker (JS)  
Brian Thompson (BT)  
Jayam Dalal (JD)  
Christine Martin (CM)  
Donald Ferguson (DF)  
[...]

**Guests**

Louis Kopieczek (LK)  
[...]

**Apologies**

[...]

**Mental Health Tribunal Proposals for Reform**

SE reported that would Judge Hinchcliffe (Deputy Chamber President- FtT HESC) be attending the November TPC meeting to discuss proposed changes to the Mental Health Tribunal Rules in relation to ward visits and paper case determinations.

[...] said that a Mental Health Tribunal policy seminar event was being held in December with relevant organisations and interested parties invited. The objective of the seminar was to discuss/explore the reasons why appeals to the Mental Health Tribunal (from those sectioned under the Mental Health Act) had increased significantly over recent years and what was driving this increase. SE, JD and CM indicated that they would be interested attending the seminar. [...] agreed to send the event details to the TPC members.

**AP/65/17: To send meeting invitation/ details of the Mental Health Tribunal policy seminar to the interested TPC members. – [...]**

## **Extract from the Minutes of the TPC meeting held on Wednesday 1 November 2017**

### **TPC members present**

(Mr Justice) Peter Roth (PR)  
Philip Brook Smith (PBS)  
Michael Reed (MJR)  
Simon Ennals (SE)  
Jane Shillaker (JS)  
Brian Thompson (BT)  
Jayam Dalal (JD)  
Christine Martin (CM)  
Donald Ferguson (DF)  
[...]

### **Guests**

Judge Mark Hinchcliffe (MH) - (Deputy Chamber President- (First-tier Tribunal) Health Education and Social Care Chamber)  
Louis Kopieczek (LK)  
[...]

### **Apologies**

[...]

### **Mental Health Tribunal Proposals for Reform**

MH said he was grateful to the TPC for the opportunity to provide his personal views on proposals for changes to the Mental Health Tribunal (MHT) Rules in relation to ward visits and paper case determinations.

MH provided a summary for the work of the MHT and provided an overview of the most common types of applications and referrals that the MHT considered. These included: Section 2, Section 3, Section 37, Sections 47 & 48 and Community Treatment Orders (CTO).

The MHT determined applications from, and referrals in respect of, patients subject to compulsory measures under the Mental Health Act 1983 (the Act). The MHT only had jurisdiction in England although there were equivalent tribunals in Scotland and Wales. The MHT had the power to decide whether patients should:

- continue to be detained or be liable to be detained under the Mental Health Act 1983;
- continue to be liable to recall to hospital under a CTO or conditional discharge; and
- continue to remain subject to guardianship;

The MHT does not review other people's past decisions to detain patients or to make them subject to other forms of compulsory measures under the Act. The MHT decides whether, at the time of hearing, the patient concerned should remain subject to the relevant aspect of the Act. Appeals against the decisions of the MHT are made to the Administrative Appeals Chamber of the Upper Tribunal (UT).

MH said that the MHT has seen a significant increase in the number of applications and referrals received over the last few years and that the cost of running the MHT has continued to rise annually.

MH said that he considered the reform proposals to deal with more cases by way of a paper review and to dispense with the requirement that a patient requires a pre-hearing examination by a medical member prior to an oral hearing taking place would reduce expenditure in the MHT without impacting on the quality of service provided to an increasing number of users. He considered that were strong arguments for changes to the made to the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 specifically to Rule 34 (Medical examination of the patient), Rule 35 (restrictions on disposal of proceedings without hearing) and Rule 36 (Entitlement to attend a hearing).

MH summarised the breakdown of the applications and referrals detailed in table 1 (Flag 2) in relation to Rule 34 and the second table (breakdown of disposals from April 17 to September 17) for restricted cases.

MH advocated that the procedural rules should be changed so that the default position is that all CTO referrals will be dealt with by way of a paper review unless the patient or his or her representative requests an oral hearing of the case in writing.

MH said that there had been a recent Upper Tribunal Judge where a MHT (FtT) sought to adopt a sensible, pragmatic and patient-friendly course of action in the unique circumstances in which MHT operates - but which turned out to be not specifically covered by the Rules. He would provide [...] with the other tribunal's judgement's case details. PR asked [...] to consider the judgment and provide any legal advice to the TPC.

PR thanked MH for clarifying the issues asked by the TPC. The TPC agreed that it was important to consider any further related issues raised by the recent Upper Tribunal judgment that MH had cited and that they would revisit the topic of 'Ward visits' at the December TPC meeting.

**AP/70/17: To obtain details of the UT case mentioned by Judge Hinchcliffe on mental health tribunal reforms. – TPC Secretariat**

**AP/71/17: To provide legal advice to the TPC in relation to the UT judgment on mental health tribunal reforms. - [...]**

**AP/72/17: To add the topic of Ward Visits (Mental Health Tribunal) to the December TPC agenda. – TPC Secretariat**

## **Extract from the Minutes of the TPC meeting held on Wednesday 6 December 2017**

### **TPC members present**

(Mr Justice) Peter Roth (PR)  
Philip Brook Smith (PBS)  
Michael Reed (MJR)  
Simon Ennals (SE)  
Jane Shillaker (JS)  
Donald Ferguson (DF)  
[...]

### **Guests**

Louis Kopieczek (LK)  
[...]

### **Apologies**

Jayam Dalal (JD)  
Christine Martin (CM)  
[...]

### **Mental Health Tribunal (MHT) Proposals for Reform**

PR thanked [...] for the legal advice he had provided to the TPC on the case “*YA v Central and NW London NHS Trust* [2015] UKUT 37 (AAC)”. PR said that Judge Hinchcliffe had mentioned the case at the TPC November meeting, suggesting that it was an important example where the First-tier Tribunal (FtT) considered that it had acted fairly and in accordance when the claimant’s wishes but on appeal the Upper Tribunal (UT) had adjudged that the FtT erred in law.

Following careful consideration of the facts and details of the UT decision summarised in the legal note, the TPC agreed that the case rather concerned the appointment and duties of a legal representative and did not really support the proposal for a new rule for mental health cases dealing with ward visits by a panel member to satisfy the tribunal panel member conducting a ward visit. It was agreed the outcome for forthcoming comparable cases, as the UT’s objection to the course of action taken by the FtT was not that it was not specifically authorised by the HESC tribunal procedure rules, but that the UT was unsure how the FtT had dealt with certain requirements under the Rules. The TPC considered that this issue/ uncertainty by parties could be resolved if in the future if the matter was covered by judicial guidance, i.e., by updating the existing tribunal guidance to better assist parties, rather than introducing a specific new rule.

**AP/80/17: To report back to Judge Hinchcliffe that the TPC had considered the “YA case” and had agreed that the existing MHT guidance should be updated rather than introducing a specific new tribunal procedure rule. – SE**

The TPC discussed the MHT reform proposal to abolish preliminary hearing examinations (PHE) in certain types of cases to enable the MHT to make more decisions on the papers. SE said that a majority of MHT judiciary considered there was a legitimate argument to remove the requirement that a patient must have a PHE in all Section 2 cases (unless the patient decided that they did not want to participate) and in any other cases in which the patient or their legal representatives requested one. The attendees also discussed the use of ‘Paper Reviews’ for decisions without a hearing. Judge Hinchcliffe had urged a change to

the current HESC tribunal procedure rules to introduce a new power to permit the Tribunal to dispose of a referral from the hospital or the Department of Health on the papers, with the option of a case being referred for a full oral hearing at the judge's discretion or at the request of a patient or their representative.

SE agreed to redraft the mental health consultation document and circulate the revised paper to attendees and any other relevant parties for their comments, prior to the matter being revisited at the February 2018 TPC meeting (with a view to signing off the TPC consultation).

**AP/81/17: To circulate the latest version of the draft TPC MHT consultation paper to TPC members and attendees for comment. – SE**

**AP/82/17: To circulate the TPC MHT consultation paper prior to the February TPC meeting. - TPC Secretariat**

## **Extract from the Minutes of the TPC meeting held on Wednesday 8 February 2018**

### **TPC members present**

(Mr Justice) Peter Roth (PR)  
Philip Brook Smith (PBS)  
Jane Shillaker (JS)  
Donald Ferguson (DF)  
Christine Martin (CM)  
[...]

### **Guests**

Louis Kopieczek (LK)  
[...]

### **Apologies**

Simon Ennals (SE)  
Jayam Dalal (JD)  
[...]

### **Mental Health Tribunal (MHT) Proposals for Reform**

PBS said he had sent the link to the TPC members in relation to the TPC consultation in June 2013 regarding the proposal to amend Rule 34 of the Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber (HESC)) Rules 2008 (medical examination of the patient in mental health cases) and the TPC response to the consultation on proposed amendments to the HESC Rules. PBS said that he had found it useful to look back at TPC materials from 2013/14 when considering the SE's draft consultation paper.

[...] said that he had arranged a meeting on the 26 January between SE and Judge Hinchcliffe to discuss the MHT draft consultation paper in relation to which category of cases would be paper cases by default and panel composition. SE accepted Judge Hinchcliffe's recommendation to remove the bullet point that was included in paragraph 1.3 (page 3) in relation to panel composition because the matter was outside of the remit of the TPC. PR said that paragraph 1.3 could be redrafted to better explain the position on pre- hearing examinations. PBS said that the inclusion for paragraph 2.5 in relation to the 'dual role' in which medical members find themselves, could also be reviewed by SE as this matter had been addressed in the 2013 TPC consultation, and in the TPC's response to it.

[...] said that he had obtained SE's agreement to postpone signing off the TPC consultation paper until the 07 March TPC meeting, as SE would be available to share his observations/ answer any questions.

PR and PBS said that they had some suggestions for revisions to the latest version of the MHT consultation paper and would share them with SE. PR asked the attendees to send their comments for any further revisions to the draft consultation paper to SE.

**AP/06/18: To send any comments to SE for revisions to the MHT draft consultation paper. – TPC Members**

## **Extract from the Minutes of the TPC meeting held on Wednesday 7 March 2018**

### **TPC members present**

(Mr Justice) Peter Roth (PR)  
Philip Brook Smith (PBS)  
Jane Shillaker (JS)  
Donald Ferguson (DF)  
Christine Martin (CM)  
Simon Ennals (SE)  
Jayam Dalal (JD)  
[...]

### **Guests**

[...]

### **Apologies**

Louis Kopieczek (LK)  
[...]

### **Mental Health Tribunal (MHT) Proposals for Reform**

SE thanked the TPC members for their suggested revisions to the draft MHT consultation paper that had been circulated prior to TPC meeting held on the 07 February 2018. SE said that following his meeting with Judge Hinchcliffe on the 26 January, he had removed the reference (paragraph 1.3, third bullet-point) in relation to which category of cases would be paper cases by default and panel composition. SE added that he had not received any suggested amendments to the draft TPC consultation paper from PR and PBS. PBS said he had sent the suggested amendments to SE following the February TPC meeting.

SE agreed to type the remaining suggested amendments to the draft MHT consultation paper at the meeting to obtain sign-off and to avoid any further delay.

The TPC agreed that that the upcoming consultation should run for 12 weeks. [...] confirmed that he would seek clearance from the MoJ web team to publish the consultation once SE had sent him the final consultation paper. [...] added that the MoJ web team would usually take 5-10 working days to post the consultation paper and related documents on GOV.UK. and the launch date could possibly be around week commencing the 19 March 2018.