

GUIDANCE FOR THE OBSERVATION OF TRIBUNAL HEARINGS IN THE FIRST-TIER TRIBUNAL HEALTH EDUCATION AND SOCIAL CARE CHAMBER (MENTAL HEALTH JURISDICTION)

Hearings in the Mental Health Tribunal are overwhelmingly held in private. This guidance sets out what to do if a person applies to observe a hearing.

1. The Tribunal Procedure Rules 2008

- (1) Rule 38(1) provides that all hearings must be held in private unless the tribunal considers that it is in the interests of justice for the hearing to be held in public.
- (2) Rule 14(7) also provides that, unless the tribunal gives a direction to the contrary, information about mental health cases and the names of any persons concerned in such cases must not be made public.
- (3) Where a hearing, or part of it, is to be held in private, the tribunal may determine who is permitted to attend the hearing or part of it (Rule 38(3))
- (4) Tribunal members should **not under any circumstances** bring an observer with them to a hearing without the prior agreement of the Deputy Chamber President.

2. Observations which must be facilitated

- (1) Judge or Member induction or training.
- (2) Appraisals.
- (3) If the presence of the observer causes a patient distress, the tribunal judge may agree that the observation should not take place.
- (4) When these observers attend: -
 - (a) The booking and listing team and the tribunal judge will be aware of the observer
 - (b) The presence of these observers at the hearing is not subject to the consent of the parties.
 - (c) The tribunal judge should agree with the observer an introduction and an unobtrusive place to sit.
 - (d) The observer takes no part in the hearing. They may see the reports and observe the deliberations of the panel. They can make notes for the purposes of the observation but these notes are confidential.

3 Observations which may be facilitated

- (1) It is impossible to attempt to list all the categories of persons who may wish to observe a tribunal hearing. Examples include professionals such a solicitor or barrister intending to undertake mental health work, nurses, doctors and social workers who wish to gain experience of giving evidence at hearings or those who are part of the judicial work shadowing scheme. Trainees who are involved with the clinical care of the patient are encouraged to observe so they will be more effective witnesses in the future. Legal representatives who are not representing on the day are also encouraged to observe to ensure

effective representation in the future. Patients frequently ask that a relative or friend be permitted to attend the hearing to give support.

(2) When these observers apply to attend: -

(a) All observation requests are to be decided by the tribunal hearing the application.

(b) The tribunal should always seek the views of the patient and other parties before making a decision to grant or refuse a request to observe a hearing.

(c) The panel must determine the application by applying the principles of the Rule 2 – the overriding objective. The principle of ensuring, so far as practicable, that the parties are able to participate fully in the proceedings will be of particular relevance. If the presence of an observer is likely to cause the patient discomfort or distress, this may be a reason to refuse the application. If the presence of an observer would intimidate the professional witnesses, this may also be a reason to refuse the request.

(d) The tribunal is also entitled to take into account practical matters such as whether having an observer or observers in a small room will have an adverse impact on the fairness or the smooth running of the hearing, the numbers of observers and the age of the patient.

(3) In the event that the application to observe is granted: -

(a) The reports and any other documents before the tribunal must not be disclosed to the observer.

(b) The tribunal judge shall advise the observer that the proceedings before the tribunal are confidential and that information about the proceedings and the names of any persons concerned in the proceedings must not be made public by the observer.

(c) The observer is not entitled to be present during the tribunal's deliberations.

(d) The observer takes no part in the hearing and must be seated somewhere unobtrusive. They can make notes for the purposes of the observation but these notes are confidential.

(4) There are procedures for determining in advance if a victim should be permitted to attend. No victim should be admitted on the day without a prior request having been granted. Victims can nearly always make their representations in respect of possible conditions by way of written submission (see Practice guidance on procedures concerning handling representations from victims in the First-tier Tribunal (Mental Health) HHJ Sycamore, Chamber President, 1 July 2011).

**HHJ Sycamore
Chamber President**

**Judge Johnston
Deputy Chamber President**

10 January 2019