



SENIOR PRESIDENT
OF TRIBUNALS

Amended Pilot Practice Direction: Health, Education and Social Care Chamber of the First- Tier Tribunal (Mental Health)

Background

1. On 19 March 2020, Sir Ernest Ryder, Senior President of Tribunals, issued a Pilot Practice Direction setting out how the Health, Education and Social Care Chamber of the First-tier Tribunal (Mental Health) might adjust its ways of working during the Covid-19 pandemic, to limit the spread of the virus and manage its workload appropriately. That Practice Direction is due to expire on 18 September 2020.
2. Having reviewed the Practice Direction, I have decided to extend it to 18 March 2021 and make the amendments at paragraphs 4 and 8. This is to ensure the continued efficient working of the Chamber and the delivery of justice, particularly in the event of any localised or national changes. For ease of reference, the full text of the Practice Direction as now amended, is set out below. The Practice Direction may be reviewed again prior to its expiry should it become inappropriate or unnecessary, and may be revoked at any time. The Lord Chancellor has approved the amendments in accordance with s23 Tribunals, Courts and Enforcement Act 2007.

Interpretation

3. In this Pilot Practice Direction:
 - (a) “the 2008 Order” means the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008;
 - (b) “the 2008 Rules” means the Tribunal Procedure (First-tier Tribunal)(Health, Education and Social Care Chamber) Rules 2008;
 - (c) “the Act” means the Mental Health Act 1983
 - (d) “the Composition Statement” means the Practice Statement entitled: ‘Composition of Tribunals in relation to matters that fall to be decided by the Health, Education and Social Care Chamber on or after 16 December 2015’ dated 18 December 2015.
 - (e) “mental health case” has the meaning given in rule 1(3) of the 2008 Rules;
 - (f) “registered medical practitioner” has the meaning given in paragraph 1(2) of the Qualifications for Appointment of Members of the First-tier Tribunal and Upper Tribunal Order 2008, as amended;

- (g) “Standard Composition Arrangements” means the composition arrangements set out in the Composition Statement.

Composition

4. While this Pilot Practice Direction remains in force, the provisions of the Composition Statement that apply to mental health cases shall be amended to include that a judge alone may make any decision (including decisions that dispose of proceedings) as directed by the Chamber President, Deputy Chamber President or an authorised salaried Judge in accordance with Amended Pilot Practice Direction: Panel Composition In The First-Tier Tribunal And The Upper Tribunal.

Disposal of proceedings without a hearing

5. In cases where:
- (a) a reference has been made under section 68 of the Mental Health Act 1983 (duty of managers of hospitals to refer cases to tribunal); and
 - (b) the patient is a community patient aged 18 or over

the Tribunal should suggest to the patient or their representative (as appropriate) that the proceedings are dealt with on the papers, unless, having regard to the overriding objective, it considers this to be inappropriate.

6. If the patient/their representative agrees in writing that they do not require a hearing, the Tribunal may determine the matter on the papers in accordance with Rule 35(3) of the 2008 Rules.

Pre-hearing Assessments

7. Rule 34 of the 2008 Rules requires that in certain circumstances, an appropriate member of the Tribunal must, so far as practicable, examine the patient in order to form an opinion of the patient's mental condition.
8. For the duration of this Pilot Practice Direction it shall be deemed not practicable under rule 34 of the 2008 Rules for any pre-hearing examinations to take place, unless the Chamber President, Deputy Chamber President or an authorised salaried Judge direct that in the exceptional circumstances of a particular case it shall be practicable for such a pre hearing examination to take place, having regard to the overriding objective and any health and safety concerns.. An ‘authorised salaried judge’ means either:
- a. a salaried, or former salaried, judge of the Health, Education and Social Care Chamber; or
 - b. a salaried, or former salaried, judge assigned to the Chamber
- who has been authorised by the Chamber President or Deputy Chamber President to exercise the functions in this paragraph.

Involvement of Non-Legal Members not on a panel

9. If the composition arrangements for a case are altered from what they would have been under the Standard Composition Arrangements, the tribunal may seek the advice of one or more non-legal members to assist with its decision-making, provided the advice is recorded and disclosed to the parties.

The Rt. Hon. Sir Keith Lindblom

Vice President of Tribunals and Acting Senior President of Tribunals

14 September 2020