



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. On 14 September 2020, that Pilot Practice Direction was amended and extended to 18 March 2021.
2. Having reviewed that amended Pilot Practice Direction, I have decided to extend it to 18 September 2021 and amend its terms. 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 made in response to the pandemic. 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 Rules” means the Tribunal Procedure (First-tier Tribunal)(Health, Education and Social Care Chamber) Rules 2008;
 - (b) “the Act” means the Mental Health Act 1983;
 - (c) “authorised salaried judge” means a salaried, or former salaried, judge of the Health, Education and Social Care Chamber, or a salaried, or former salaried, judge assigned to the Chamber;
 - (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) “panel” means the tribunal members hearing a matter pursuant to the Standard Composition Arrangements;
 - (g) “section 2 case” means proceedings under section 66(1)(a) of the Act;
 - (h) “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.

Disposal of proceedings on the papers

5. The tribunal shall observe the requirements of rule 5A and rule 35 in cases where an application is made for determination on the papers.

Pre-hearing examinations: practicability

6. 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.
7. For the duration of this Pilot Practice Direction:
 - (a) A face-to-face pre-hearing examination may only take place if the Chamber President, the Deputy Chamber President or an authorised salaried judge directs that a face-to-face pre-hearing examination is practicable;
 - (b) A remote pre-hearing examination may take place if any judge or tribunal directs that a remote pre-hearing examination is practicable.
8. When deciding whether conducting a pre-hearing examination is practicable under paragraph 7, judicial office holders should consider the overriding objective, any health and safety risks, any technological constraints, and the resources available to the Mental Health jurisdiction, as well as any other matters that they consider to be relevant.

Pre-hearing examinations: section 2 cases

9. Rule 34 requires that a pre-hearing examination must be carried out in section 2 cases, if practicable, unless the tribunal is satisfied that the patient does not want such an examination.
10. In a section 2 case, the patient (or their representative on their behalf) should be asked to indicate to the tribunal whether they want a pre-hearing examination. If the patient wants a pre-hearing examination, a decision should be made as to its practicability in accordance with paragraphs 7 and 8.

Involvement of Non-Legal Members not on a panel

11. 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

Senior President of Tribunals

18th March 2021