



TRIBUNALS
JUDICIARY

JUDGE MARK HINCHLIFFE

DEPUTY CHAMBER PRESIDENT
FIRST TIER TRIBUNAL (HEALTH EDUCATION AND SOCIAL CARE)
MENTAL HEALTH

17 April 2015

Dear Mental Health Act Administrator,

Re: Failure to submit reports to the tribunal on time

I am writing to explain the new procedure that the Mental Health Tribunal is going to follow in relation to statements and reports for the tribunal, and your duties in relation to compliance. To assist with this, we are introducing a new HQ1 form, and it will be compulsory to use the new HQ1 from 5th May 2015.

The tribunal is looking to reduce the time it spends chasing after the Responsible Authority's written evidence (i.e. reports and 'Statement of Information') whilst, at the same time, adopting an efficient slimmed-down procedure that provides an effective sanction for non-compliance and which is more immediate, proportionate and focussed than immediately summoning witnesses, Chief Executives or Medical Directors. For this reason, the tribunal expects this approach to have your support.

The Case Notification Letter (CNL1) will contain a direction requiring you to identify the Responsible Authority's witnesses in the new HQ1. We have amended the HQ1 to include spaces for you, on behalf of the Responsible Authority, to provide us with the names and addresses (postal and email) of all the individuals identified by you, on behalf of the Responsible Authority, as required to provide the 'Statement of Information', and the required reports. The report-writers you must identify include the authors of any 'out-of-area' social circumstances report – which, of course, it is still your responsibility to obtain and submit. We have also added a further requirement to advise the tribunal if the identity or contact details of the persons responsible for giving the written evidence changes before the evidence is filed.

The new HQ1 directs the MHA Administrator to certify that the information provided is correct and can be relied upon by the tribunal for service of all directions and summonses.

It will, of course, still be the job of the Responsible Authority or MHA Administrator to obtain and submit the reports etc within the 3 week period required by law, and hopefully, we will get all the reports and the Statement of Information in on time. But if we don't, we will then send a formal direction to the late report-writer, as identified by you, and addressed to them personally. Please note that if the required contact information is not provided on the new HQ1, we will have no alternative but to send our directions and summonses to the Chief Executive or Medical Director.

If you wish to avoid directions and summonses being sent personally to your Chief Executive or Medical Directors, you will see how important it is that you provide us, on the new HQ1, with the required details of the persons you have identified as being responsible for providing the Statement of Information and all the Reports.

The legal duty to provide reports etc is placed firmly at the door of the Responsible Authority, but we recognise that some MHA Administrators find it difficult to enforce compliance, so this system should make your lives easier.

So long as we have the accurate identity and contact details of all report-writers at an early stage, we can then (if necessary) enforce compliance speedily and directly.

Our intention is to send a specific direction to the identified person who has failed to submit their report or statement, requiring that their written evidence be submitted within 7 days, with a warning that if this direction is not complied with, we will consider referring the person to the Upper Tribunal for consideration of a penalty.

Rule 13 states that if a party provides an email address, that person must accept delivery of documents by that method - so we will generally use the secure email address provided by you, on behalf of the Responsible Authority. If there is then a failure to comply with that personal 7 day direction (after a failure to submit reports within the 3 week time limit set down in the Rules), the tribunal will consider making a referral to the Upper Tribunal for that tribunal (which has the powers of the High Court) to consider imposing a personal penalty against the person in default.

I need to stress that, if a referral is made, the Upper Tribunal has power to punish what amounts, in effect, to a contempt of court.

In CB v Suffolk CC [2011] AACR 22, a fine of £500, with imprisonment in default, was imposed for failure to comply. The tribunal will keep records of witnesses who have failed to comply so that, if relevant, we can consider the witness's previous record of non-compliance when considering making a referral.

The new HQ1 will be available on our HMCTS Form Finder page:
<http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>
(Form/leaflet number: HQ1; or select 'Mental Health Tribunal' from 'Available types')

I attach a copy for you which you should save as a template and re-use in all cases.

The new HQ1 **must** be used from 5th May 2015 and if you use the old form after that date, we will not accept it. If you have any questions, please email the Reports Team who will be happy to assist – mhtreports@hmcts.gsi.gov.uk

Yours faithfully,



Deputy Chamber President