

PILOT PRACTICE DIRECTION: HEALTH, EDUCATION AND SOCIAL CARE CHAMBER OF THE FIRST-TIER TRIBUNAL (MENTAL HEALTH)

Background

1. During the Covid-19 pandemic, it may be necessary for tribunals to adjust their ways of working to limit the spread of the virus and manage their workloads appropriately. I have therefore decided to issue this Practice Direction on a pilot basis for a period of six months, although it may be reviewed within that period should it become inappropriate or unnecessary and may be revoked at any time.
2. The Lord Chancellor has approved the issue of this Practice Direction in accordance with s23 Tribunals, Courts and Enforcement Act 2007.

Interpretation

3. In this 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 so that a judge alone shall make every decision (including decisions that dispose of proceedings) unless the Chamber President, Deputy Chamber President or such other salaried judge as may be authorised by the Chamber President or Deputy Chamber President, considers it to be inappropriate in a particular case, in which event a two or three person Panel may make the decision.

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. During the Covid-19 pandemic it will not be 'practicable' under rule 34 of the 2008 Rules for any PHE examinations to take place, due to the health risk such examinations present.

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.

Sir Ernest Ryder

Senior President of Tribunals

19/03/2020