

## **Video Hearing Guidance for Representatives in Mental Health Tribunals**

### **Introduction**

The Mental Health jurisdiction of the Health, Education and Social Care Chamber has had to change its way of working during the Coronavirus pandemic.

We are not holding any face-to-face hearings in person at present. Instead, we are using the Kinly Cloud Video Platform (CVP) to conduct video hearings over the internet. This is likely to continue in the medium term.

It has been a confusing time for some participants and there have been numerous questions about how to work the technology and how to achieve a fair hearing.

The success of what we are trying to achieve depends upon the co-operation of all parties.

### **1. Before the hearing**

There is a direction of the DCP, Judge Johnston, dated 25 March 2020 directing the RA to allow immediate access to the patient's medical and nursing notes without a written form of consent signed by the patient. This direction remains in force for the duration of the Pilot Practice Direction: Health, Education and Social Care Chamber of the First-Tier Tribunal (Mental Health).

The Tribunal have produced information for the following categories of patients;

- a) community patients
- b) patients with a learning disability
- c) CAMHS patients
- d) Adult patients

### **Preliminary Issues**

The representative should consider whether there are any preliminary issues for the Tribunal to consider.

If there is information that is not to be disclosed under Rule 14 the representative should ensure that the RA does not join the patient to the hearing until the matter has been determined. For any other issues the representative should submit a Case Management Request Form (CMR1) with draft directions putting the Tribunal on notice of the issue(s) and how they may be resolved. Submit your CMR1 as soon as possible.

### **2. Listing hearings**

The Chamber President and Deputy Chamber President have agreed that all Child and Adolescent Mental Health Services cases and all cases with language

interpreters and British Sign Language signers will be allocated a full day's hearing automatically while video hearings are in operation.

For all other hearings, if you think that a full day hearing is necessary you should submit a CMR1 with details of why a full day is needed.

### **3. PHEs**

Currently it is not practicable under rule 34 of the 2008 Rules for automatic 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.

If there are exceptional circumstances where a prehearing examination is to be requested, the representative should submit a CMR1 as soon as possible requesting this with full reasons. This will be determined by a salaried judge.

If a PHE is granted the case will usually be listed for a day with the PHE taking place at 9.30 and the hearing beginning at 11am.

### **4. Uncontested References where patients do not want to attend a hearing**

If your client is not contesting continuing detention (or a community treatment order) then the case can be decided by a single judge on the papers, without the need for a hearing. (Rule 2A The Tribunal Procedure (Coronavirus) (Amendment) Rules 2020). You will be sent a pro forma if the case is a reference where you can inform the Tribunal if your client consents to this.

### **5. Connecting to a video hearing**

**Make sure you are using Google Chrome as your browser if you are using windows. If you are using Mac use safari and do not download Google Chrome as it may cause problems.**

Copy and paste the link in the booking letter you have been sent into your browser.

When accessing the page clicking on the link above the conference alias should show as

HMCTS (the number of the room you have been sent)@meet.video.justice.gov.uk and type your name as you want it to be seen on screen in the hearing. Remember to use your title when logging in, so parties and the Tribunal understand your role. Use the format e.g. 'Dr [last name]' or 'Nurse [last name]'

Click "Settings". Check that the camera and microphone are selected to "default". You can also set your bandwidth if you scroll down the right-hand side of the page. It is recommended you set it to medium. Then click OK.

Then click Connect.

In the next window, select your role as Guest and click "Connect".

If the video hearing room is locked, you will be told that you are waiting for the conference host to join.

Wait for the Video Hearing Support or Judge to unlock the hearing room.

If you encounter difficulties in joining by video there is a dedicated telephone number for the room in the booking letter and you can call into the hearing. Using 141 before the phone number will avoid your personal number appearing in the conference.

Video Hearing Support are new to HMCTS and to mental health. They are there to ensure witnesses are connected.

Nearest relatives who have made applications and community patients will be joined free of charge by the video hearing support or staff from the Tribunal administration. They will receive a telephone call and then be taken to the virtual Tribunal room. Alternatively, if instructed to do so representatives may share the link in the booking letter with nearest relatives and community patients if they are able to, and would prefer to, join via video. Please make them aware that this will not be free and unless they have WiFi it will use a significant amount of data.

Please join a morning hearing at 10.15 am

Please join an afternoon hearing at 2pm

Please join an 11am hearing at 10.45 am

This will ensure any connectivity issues are dealt with before the hearing starts.

## **6. The hearing**

When you are in the video hearing room, in the centre bottom of the screen you will see three symbols microphone, video and disconnect.

During the hearing, use the microphone button to MUTE YOUR MICROPHONE. This minimises background noises and allows everyone to hear more clearly. You can unmute the microphone when it is your turn to speak.

If preliminary issues such as disputes around disclosure of evidence or attendance of witnesses are still outstanding on the day of the hearing then raise these issues with the Tribunal panel before the hearing. If you feel that such preliminary matters are best discussed in the absence of the patient and/or some, or all, of the witnesses then you may need to ask that they are excluded temporarily for discussions to take place.

If you become aware of any difficulties that may impact on the tribunal hearing, for example technical difficulties that may affect how or whether the patient or witnesses can join the hearing, or whether suitable arrangements can be made to ensure that the hearing is conducted in private, then you should raise these concerns as soon as possible with the Tribunal before the hearing in the hope that steps can then be taken to ensure that the hearing starts on time.

If you need to take a break during the hearing to discuss matters with your client please ask the Judge for time. You can mute your microphone, turn off your camera and communicate with your client via the telephone.

Make sure you are clear about the time you should return.

Video hearings are tiring and sometimes difficult for patients. Please consider carefully the written evidence in the case and agree with your client what is accepted. If you can define the issues at the outset the Tribunal can concentrate on the relevant material. Tribunals are often hearing from the patient first to ensure their effective participation.

### **7. At the end of the hearing**

The Tribunal will decide whether they announce the decision. This is entirely a matter for the Tribunal. This can be announced to a nurse and the representative and the patient if they want to return. You will be given a time to return if the Tribunal are going to announce the decision.

If the decision is not announced the Judge will email the representative and the MHAA after the hearing has finished with the decision. Do not under any circumstances disclose the email address of the Judge to the patient or other witness.

### **8. The written decision**

The timescales for the delivery of the decision to the parties are as set out in Rule 41(3) of the Tribunal Procedure Rules.

Judge Sarah Johnston  
Deputy Chamber President, HESC(Mental Health)