

Patients' experiences of the First-tier Tribunal (Mental Health)

Report of a joint pilot project of the Administrative Justice
and Tribunals Council and the Care Quality Commission

March 2011

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Acknowledgement

We are very grateful to Hannah Slarks, trainee barrister, for carrying out the data analysis of the questionnaires and preparing the first draft of the report.

Foreword

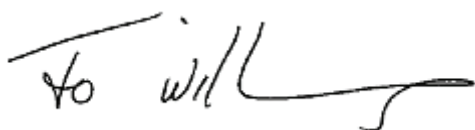
This report is the result of a collaboration between the Administrative Justice and Tribunals Council (AJTC) and the Care Quality Commission (CQC) to obtain information from people who use mental health services and patients detained under the Mental Health Act about their experiences of coming before the First-tier Tribunal (Mental Health).

Until now, the Tribunals Service's customer satisfaction surveys have largely excluded those who use the Mental Health Tribunal because of the practical difficulties in gaining access to detained patients. Instead, those undertaking the survey have in recent years resorted to obtaining views from other stakeholders in the tribunal process, mainly patients' legal representatives. This is not an adequate substitute to obtaining the first-hand views of patients themselves, which this survey has attempted to remedy.

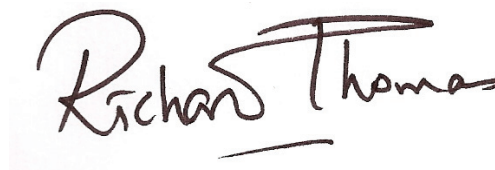
The AJTC is entitled by law to observe tribunal hearings but has no direct access to patients; CQC, while having access to patients, has no statutory right to attend hearings. It therefore made sense for both bodies to work together in order to obtain first-hand information from patients themselves about their experiences of the tribunal system.

We acknowledge that the Tribunals Service has made considerable efforts, particularly in the last 18 months or so, to improve the operation of the First-Tier Tribunal (Mental Health). Our aim in conducting this project has been to support those initiatives and to inform further developments by providing some input from patients themselves. We therefore hope that the tribunal judiciary and administrators will consider the report's findings and recommendations carefully and act on them accordingly. We also hope that the survey's methodology will form a blueprint for future exercises of this kind.

The Government has recently announced that the AJTC is to be abolished by the Public Bodies Bill, which was introduced in Parliament in October 2010. In the meantime, the AJTC is considering how its statutory functions might best be carried out in the future. In a tribunal jurisdiction that is concerned with the deprivation of an individual's liberty on the one hand and issues relating to public safety on the other, it is vitally important that there should continue to be some form of independent oversight of its operation. We will be considering further how this might best be achieved.



Jo Williams
CQC Chair



Richard Thomas
AJTC Chair

Key points in this report

- This report breaks new ground in accessing and communicating patients' direct views on the tribunal system.
- It is both possible and worthwhile collecting user feedback from detained patients about tribunals.
- Patients' experiences of tribunals were diverse, ranging from positive to strongly negative.
- Those who received a positive outcome were, not surprisingly, much more positive of the system than those who received a negative outcome.
- Patients are not always well placed to ensure their lawyers are providing a good standard of advice and representation.
- Delays are a substantial factor in many patients' negative experiences of tribunals.
- A large part of the distress caused by delays was due to a lack of information about timescales.
- The way pre-hearing medical examinations are carried out is very variable.
- Patients had positive experiences of some parts of the tribunal hearing, but there were concerns about the provision of information and access to reports.
- A significant minority said they were not given enough opportunity to be heard.
- Nearly all said they received a very rapid decision. However, follow-up information was lacking and patients felt poorly informed of any further right to appeal.

Summary

The First-tier Tribunal (Mental Health) is the primary mechanism in England for appeal against the use of the Mental Health Act's powers of detention, guardianship or supervised community treatment. It is an independent judicial body administered by the Tribunals Service and provides one of the key safeguards under the Act.

Before the Administrative Justice and Tribunals Council was established its predecessor, the Council on Tribunals, had raised serious concerns about the operation of the former Mental Health Review Tribunal (now the First-tier Tribunal (Mental Health)) because of poor quality administration. This was having a negative impact on patients' rights to a fair and speedy hearing. In 2006, a survey of tribunal members, Mental Health Act administrators and legal representatives found that the overall level of stakeholder satisfaction had dropped to 18%, compared to 87% across other government departments and agencies.

The Mental Health Tribunal Advisory Group was established to address some of the concerns and, although it has highlighted some important areas for improvement, there is still a significant gap in all of the attempts to improve tribunals – namely the voice and experience of patients.

The Administrative Justice and Tribunals Council (AJTC) and the Care Quality Commission (CQC) therefore carried out a joint project to give a voice for the first time to mental health service users who have applied to the tribunal, so that they can contribute to efforts to improve the operation of the tribunals that adjudicate on their detention, guardianship and supervised community treatment. The project was a small pilot study to capture the views of those with experience of the tribunal in two parts of the country.

Key findings

The findings of this pilot project reflect the views and experiences of those who kindly agreed to be interviewed and direct quotations are used to illustrate the points they wished to make. The data analysis and statistics quoted in the report were used as a means to identify trends and issues of importance to those who responded to specific questions, and are therefore not representative of the patient population as a whole. Unsurprisingly, the patients who received the outcome they desired gave far more positive answers about the tribunal process in general, while disappointed patients made more negative comments.

Support with applications and representation at the tribunal

Nearly all respondents knew they were entitled to have a lawyer to advise them and represent them at the tribunal hearing and generally had no problem finding one. Many are reliant on referrals to lawyers by the hospital. Although the vast majority rely on legal representation, it is not always possible for them to ensure that their lawyers are representing them properly. As the hospital managers are the opposing party in a

patient's appeal to the tribunal, it is important that patients are able to get independent advice about their choice of lawyer (for example, from an Independent Mental Health Advocate) and have access to lawyers who have been accredited as competent to provide representation at Mental Health Tribunals.

Delays

Delays in the process contributed to many of the respondents' negative experiences. Nearly half reported that they had been subject to delays of some degree, some experiencing significant distress and anxiety as a result. A significant cause for concern was a lack of information. Nearly half of the respondents had received little or no information about how long the tribunal process was likely to take. Of those who believed they had been subject to delays, a third had not received or understood any reasons for the delay. The Tribunals Service has already attempted to reduce delays, and the report suggests further measures to tackle the specific problems identified.

The pre-hearing medical examination

There were fewer responses about respondents' experiences of being interviewed by the medical member of the tribunal before the hearing. One reason was because many did not remember their pre-hearing medical examination and therefore could not comment on the process. Of those who did respond, more than a third said their medical examination occurred on the day of the hearing, which for some added to their anxiety, and around a third had their interviews between one and three days before the hearing.

Respondents gave very mixed reviews of the process. They described very different approaches to questioning from medical members, with some asking questions about all aspects of patients' lives and others focusing on only one or two issues, and many felt the interviews were too rushed.

It is essential that patients understand the reason for the pre-hearing medical examination, and that they are told that the panel will take the results into account at the hearing to decide whether they should be discharged from detention. Without this explanation, patients may wrongly expect the discussion to be confidential. A breach of this confidence could damage patients' trust in both doctors and the tribunal process.

The hearing

There were some positive experiences of the tribunal hearing itself. Nearly all respondents reported that the judge had introduced the panel and other people in the room, and most said that the judge had explained what would happen at the hearing at least in outline.

However, some respondents reported a number of specific problems with the actual hearing process, including a lack of explanation of the tribunal procedure in advance of the hearing and limited access to reports, which form an important part of the evidence upon which the tribunal bases its decision. Nearly a third believed they had never seen any of these reports. Some respondents also reported problems with the

hearing room itself, saying that the environment was intimidating because they felt crowded. They also reported a lack of private spaces in the waiting areas in which to speak with their lawyers or the people there to support them.

A significant minority of respondents did not feel they were given sufficient opportunity to be heard. A third did not feel listened to and some claimed that the panel members seemed uninterested. Nearly half felt that the tribunal did not give equal importance to their views as compared with other witnesses.

Some respondents commented that the tribunal was too guided by the opinion of the medical professionals, particularly the responsible clinician. One respondent suggested that other witnesses should speak before the responsible clinician, so their evidence is not influenced by the doctor's testimony.

The report includes a number of recommendations to improve the processes, which in turn will improve patients' experiences of the tribunal.

The decision

Nearly all respondents received the decision of the tribunal very quickly at the end of the hearing. However, there were concerns about how the reasons for the decision were explained to patients after this stage. Nearly a quarter of respondents claimed they had never received a written copy of the decision. Where patients had received a written copy, there was considerable variation in how long they had to wait to receive it, with the majority waiting between two days and a month after the hearing. One in five respondents felt that they had not fully understood the tribunal's decision, yet nearly two-thirds said they had been offered no further explanations about the decision.

Respondents were also unclear about any further right to appeal. Nearly a quarter had been told about their right to make another application to the tribunal during their next period of detention, but many did not understand the difference between appeal to the Upper Tribunal or a further application to the Tribunals Service.

Other issues

Overall, when asked if the tribunal had been useful to them in any way, even if they were not discharged from detention, over half the respondents had positive comments to make. Some commented on the importance of being heard, which shows that the tribunal is an important safeguard for patients, not only as a means of challenging their detention, but also in finding out about and measuring their progress and in checking whether care plans are appropriate and meeting their needs. However, it is worrying that without the tribunal process, patients did not appear to have access to this information.

There were particular problems when patients suffered from unusual mental health conditions or multiple health problems, which were highlighted both by the patients themselves and nurses who had accompanied them to the tribunal. Some complained that the tribunal was not able to respond to their needs, which may indicate a particular training need for some members of the panel.

Recommendations

The recommendations in this report suggest ways in which procedures and processes might be changed. Some suggest new actions, while others have been included to highlight and add support for initiatives and processes that are already in place to improve practice or address people's needs. We hope that this joint project will be the first step in involving the people who use the service in improving the operation of the First-tier Tribunal (Mental Health).

1. Introduction

Each year, there are more than 45,000 detentions of men and women in hospital for assessment and treatment for mental disorder under the Mental Health Act 1983. At any point in time, around 16,000 people are being detained by NHS and independent hospitals and a further 4,000 people are on community treatment orders (CTOs) or are subject to guardianship powers. People whose rights are restricted in this way are particularly vulnerable. It is therefore vital that there are mechanisms to safeguard the rights of people who are subject to the powers of the Act.

The First-tier Tribunal (Mental Health) is the primary mechanism in England for appeal against the use of the Act's powers of detention, guardianship or supervised community treatment.¹ It is an independent judicial body administered by the Tribunals Service (an agency of the Ministry of Justice) and provides one of the key safeguards under the Act. In 2009/10, the Tribunals Service reported a sharp rise in the number of applications for an appeal, resulting in 25,051 cases dealt with, almost 5,000 more than in 2008/09. The introduction of CTOs in November 2008 accounted for a significant part of this increase.

People who exercise their right to apply to the tribunal place a great deal of hope in the process as a means of participating in their care and treatment and restoring their liberty. The tribunal system as a whole has been subject to a number of changes over the past decade. However, in the mental health field, these changes have taken place with little or no input from the people who use the service, and have not taken account of their experiences of a tribunal. It is important that people who have been deprived of their liberty should be treated with dignity and respect and have their rights protected by each part of the mental health and justice systems affecting them.

The Care Quality Commission (CQC) is responsible for monitoring how the Mental Health Act is used in England and for protecting the interests of people whose rights are restricted under the Act. It does this through its Mental Health Act Commissioners, who meet and ask people who are subject to the Act's powers about their experience.

The Administrative Justice and Tribunals Council (AJTC) is responsible for keeping under review the administrative justice system (mainly concerned with disputes between citizens and the state) to make it accessible, fair and efficient. It has a particular responsibility to keep under review, and report on, the constitution and working of tribunals, including the First-tier Tribunal (Mental Health). AJTC members have the right to observe tribunal hearings.

In this joint project, we have come together to give a voice to people who use mental health services, to improve the operation of the tribunals that adjudicate on their detention and treatment. The project was designed as a small illustrative pilot study to capture the views of those with experience of the tribunal. It represents, for the first time, an assessment of people's direct experiences of the Tribunals Service and the First-tier Tribunal on the basis of first-hand accounts. It sets out their views and comments on the tribunal's performance and procedures, identifying individual examples of what is happening in practice and making recommendations for improvement.

¹ This report relates to England only; the Mental Health Review Tribunal for Wales is a separate organisation, administered and funded by the National Assembly for Wales.

2. Background

In the 10 years or so before the AJTC was established in November 2007, its predecessor, the Council on Tribunals, paid particular attention to the operation of the Mental Health Review Tribunal (MHRT) in England, because of serious concerns about the poor quality of tribunal administration by the MHRT Secretariat (previously part of the Department of Health), which was having a negative impact on patients' rights to a fair and speedy hearing.² The Council's concerns arose not only from observations on visits to MHRT hearings, but from the fact that, unlike most other tribunals, the MHRT (now the First-tier Tribunal (Mental Health)) is concerned with issues that have a profound effect on individual rights – most notably the right to liberty of some of the most vulnerable members of society, and in some cases with serious implications for public safety.

Similar concerns were raised by the Mental Health Act Commission, the predecessor of the Care Quality Commission, which worked for many years to give detained patients and people using mental health services a meaningful role in critiquing and shaping the system to which they are subject.³

Some limited progress was made over the years, but many of the promised administrative improvements failed to materialise. In 2006, a survey of tribunal members, hospital Mental Health Act administrators and legal representatives found that the overall level of stakeholder satisfaction had dropped to 18%, compared to 87% across other government departments and agencies. It was acknowledged that the MHRT was, at that time, the poorest performing tribunal and urgent and specific action was needed to remedy the problems and achieve real and lasting improvements in the tribunal's administration.

In July 2007, the Council on Tribunals arranged a discussion among key stakeholders including those whose views had been reflected in the stakeholder satisfaction survey. The aim was to explore the key issues arising from the 2006 survey and to consider whether the action plan proposed by the Tribunals Service would provide adequate remedies to the MHRT's problems. This was helpful in encouraging all stakeholders to cooperate in putting forward constructive ideas for both short-term gain and long-term improvement.

The Mental Health Tribunal Advisory Group

As a result of that discussion, the Mental Health Tribunal Advisory Group was established in 2007 to provide a forum for stakeholders to exchange views and experiences with tribunal administrators and judiciary and to provide advice in taking forward its improvement plan. The AJTC has been the facilitator and independent chair of this Group. Members include the Tribunals Service Secretariat, senior judiciary and panel members, the Ministry of Justice, the Department of Health, the Mental Health

² See the Council on Tribunal's Special Report on MHRTs at [http://www.council-on-tribunals.gov.uk/docs/MHRT_Special_Report\(1\).pdf](http://www.council-on-tribunals.gov.uk/docs/MHRT_Special_Report(1).pdf).

³ See Mental Health Act Commission Eleventh Biennial Report (2006) and Twelfth Biennial Report (2008).

Lawyers Association, the Institute of Mental Health Act Practitioners, Mental Health Act administrators, the Law Society, the Legal Services Commission, the Care Quality Commission, the Royal College of Psychiatrists and MIND.

The Advisory Group has discussed the following issues, which form an important background to the findings of this report:

- **Listing of tribunal hearings:** The current process used by the Tribunals Service to list appeals is cumbersome, time-consuming and resource intensive, and does not achieve the best outcome for people using the Tribunal. The Tribunals Service has recently consulted on new proposals to tackle these issues.
- **Booking of panel members:** The MHRT tended to rely on last-minute booking of panel members, which often depended on individual members' availability rather than making appropriate use of the expertise and experience of all the members. New arrangements, piloted in the Northern region and extended across England, were designed to try to address this problem. These arrangements were subsequently reviewed and refined with the introduction of a new computerised system.
- **Electronic transfer of documents:** Ongoing efforts are being made to encourage doctors, administrators, legal representatives and tribunal members to use the secure email system for the electronic transfer of confidential reports and documents between hospitals, legal representatives and the tribunal. This will enable the tribunal process to be managed more efficiently.
- **Hearing rooms:** The Tribunals Service has pushed for improvements in the accommodation provided by NHS trusts and independent hospitals for hearing rooms, which as a minimum should be private, quiet, clean, adequately sized and furnished, with a separate waiting area and room for private discussion between patients and their legal representatives. It has now produced a specification setting out recommendations on this issue.
- **Clerking of tribunal hearings:** It is particularly important that mental health tribunals should have good clerking support as hearings take place in hospitals rather than in Tribunals Service hearing centres. The system of using agency tribunal assistants has often proved unsatisfactory, with many hearings left without any clerking assistance or with assistance of variable quality. This not only adds to the workload of hospital-based Mental Health Act administrators, but it also compromises the independence of the tribunal when its members also have to act as clerks. While reviewing the effectiveness of the agency contract, the Tribunals Service is also looking at the possibility of using employed clerks who provide clerking services for other tribunals.
- **Provision of good quality legally-aided representation for patients:** The Advisory Group has provided a forum for discussion of the impact of the new system of fixed fees for legal representation and the new contracting arrangements by the Legal Services Commission. There are particular concerns that some solicitors are withdrawing from this specialist area of work, and that cuts in legal aid funding are leading to a deterioration in the standard of representation at tribunal hearings. The involvement of the Legal Services Commission, the Mental Health Lawyers Association and the Law Society in the group's meetings has enabled these concerns to be aired fully.

The Advisory Group has welcomed and acknowledged the considerable efforts made by the Tribunals Service and judiciary, particularly in the last 18 months or so, to introduce a number of measures aimed at achieving improvements in the listing and booking processes, ensuring tribunal reports are accurate, appropriate and delivered on time, preventing unnecessary adjournments, sending out tribunal decisions promptly and generally reducing delays in the tribunal process.

The views of patients

A significant gap in all of these deliberations has been the voice and experience of patients themselves – the people who use the tribunal and the service directly.

Neither the Tribunals Service nor the Mental Health Tribunal Advisory Group could answer questions about how the tribunal process affects these people. For example, do they get sufficient support when appealing to the Tribunal? Do they know what to expect at the hearing? Do they feel that they have been listened to?

The customer satisfaction surveys carried out annually for the Tribunals Service in the first three years of its operation measured the satisfaction of people who used other tribunals (such as social security or employment tribunals), based on telephone interviews with people following their tribunal hearing.⁴ However, those who used the mental health tribunal were excluded from the surveys, because of the perceived difficulties in obtaining views from detained patients themselves. In an effort to compensate for this, the Tribunals Service has conducted limited surveys of patients' legal representatives over the past two years, both web-based and by telephone. The results have added little new information to the concerns raised previously by legal representatives, whose views are already represented on the Advisory Group by the Mental Health Lawyers Association and the Law Society.

This joint project by the AJTC and CQC aims to address this deficiency by allowing patients to speak for themselves, seeking their views and comments on the tribunal's performance and describing their experiences in applying to and appearing before a mental health tribunal.

The specific objectives were to:

- Better understand how the operation of the Tribunals Service directly affects patients bringing an application before the tribunal.
- Identify possible changes to administrative and/or judicial procedures (and, where relevant, legislation) with a view to better addressing the needs of people who use the service.

⁴ See http://www.tribunals.gov.uk/Tribunals/Documents/Publications/r744_finalReport.pdf for the report of the 2008-2009 Tribunals Service Customer Satisfaction Survey.

3. The interview process

Methodology

Helped by the views of the Mental Health Tribunals Advisory Group, we designed a set of questions to capture patients' experiences of the tribunal process (see the separate questionnaire on our websites). CQC's Mental Health Act Commissioners visited 16 hospitals in two pilot areas (Greater London and the East of England). They carried out structured interviews with 152 patients who were, or had been, detained in hospital. These patients volunteered to participate after the hospitals sent out a general invitation.

The patients interviewed had different routes into detention. Approximately a third were detained under Section 3 (admission for treatment) of the Mental Health Act 1983 (35.5%). Another third were restricted patients, detained under Section 37/41 (30.3%). The remainder had been admitted for assessment under Section 2 (5.3%), were on Hospital Orders under section 37 (13.2%), or transferred from prison (7.9%). Just one patient was on a Community Treatment Order (CTO). Clearly the sample was not representative of the general population of patients subject to Mental Health Act powers. In a few cases, the Section appealed against was not recorded. The patients also had different experiences of the tribunal process. Less than a quarter of patients had received the outcome they wanted at their tribunal hearing (23.4%).

The interviews were flexible. This meant that although many of the questions asked for 'yes' or 'no' answers, interviewers also recorded narrative answers. At the analysis stage, these narratives were sometimes 'coded' into categories of response in order to track trends. In other cases, they were subjected to qualitative analysis.

Limitations

The project was designed as a small-scale pilot. It was not intended to be statistically significant or representative of the population of detained patients. It is therefore important to acknowledge the project's limitations.

Two particular problems affected the process. First, some patients had limited memories of the tribunal and/or they had difficulty in communicating those memories. These problems were caused both by the mental health conditions of a few patients at the time of the interview and the fact that some were attempting to recall events that occurred some considerable time before the interview. Most patients failed to answer at least one of the questions. Although the patients had volunteered or agreed to be interviewed, around 5% were totally unresponsive to the interview process. In a couple of cases, few or no answers were given and the interviews were terminated. Consequently, analysis of the results focused on the patients who had answered a specific question, rather than the total number of patients asked.

Second, as this was a pilot study, it revealed problems with questions that would need to be addressed in any further work. We did not subject the questions to any cognitive testing and, once interviews were underway, the phrasing of one or two questions

caused some ambiguity. Some questions that had been included did not provide as much useful information as had been hoped, whereas others that had been omitted may have been more informative. For example, the questionnaire did not invite the interviewer to comment on the subject's memory or communication skills. This information would have been useful in understanding their answers or failure to answer.

This report

This report has been sensitive to these limitations where they appeared to affect the reliability of the findings and these issues have been flagged up throughout. The statistics and conclusions produced should not be read as a perfect description or measure of patients' experiences. Instead, they indicate possible trends and suggest aspects of the tribunal process that require closer attention. In many cases, they pave the way for more targeted ongoing research. In some instances, they highlight possible approaches to improving the system. In these cases, the report has provided policy recommendations.

We recognise that some of the recommendations flowing from the report's findings may already either be in place or in the pipeline. The recommendations may either suggest new actions or ways in which procedures and processes might be changed, or they have been included to highlight and add support for initiatives and processes that are already in use to improve practice or address people's needs.

Most importantly, the project aimed to allow those patients who so generously agreed to be interviewed to speak for themselves. The report therefore quotes directly from patients' responses to the questions and provides illustrations, in order to highlight their particular views and comments in describing their own experiences.

4. Findings

Patients had wide-ranging experiences of the tribunal, ranging from positive to strongly negative. When examined as a whole, one unsurprising trend emerged: the patients who received the outcome they wanted gave far more positive answers about the tribunal process in general, while disappointed patients made more negative comments. This may be an inevitable result of asking interview questions about process when a patient's key concern is naturally one of substance – usually to be discharged from detention. Despite this, patients from both groups provided useful comments about the process and a number of specific trends could be identified. Together, these findings begin to paint a picture of a range of experiences of the system.

Support with applications and representation at the tribunal

Patients do not appear to be tackling the tribunal process alone. A large majority of respondents had help with their application.⁵ Of these, more than two thirds received help from a solicitor.⁶ Less than one in 10 had help from nursing staff⁷ and a minority of respondents had support from an advocacy service.⁸

Nearly all respondents knew they were entitled to have a lawyer to advise them and represent them at the tribunal hearing⁹ and a large majority had no problem finding one.¹⁰ Almost a third of respondents had used the same lawyer at previous tribunals. Of those who found lawyers for the first time, the most common source was through information provided by the hospital or hospital staff.¹¹ Many respondents said that their lawyer had been 'recommended' by the hospital or hospital staff and they had accepted the hospital's recommendation without questioning it. Others had selected a lawyer from a notice board or list provided by the hospital. The second most common source was a recommendation from another patient.¹²

On average, respondents met with their lawyers two to three times.¹³

Although respondents were receiving support, the survey did not allow us to assess the adequacy of the support. Most patients were satisfied with their lawyer's preparation and performance.¹⁴

"The lawyer was very supportive. She asked all the questions on my behalf at the hearing. She was very good."

⁵ 85% of patients who responded

⁶ 67.5% of patients who responded

⁷ 8.3% of patients who responded

⁸ 4.2% of patients who responded

⁹ 96.5% of patients who responded

¹⁰ 80% of patients who responded

¹¹ 41% of patients who responded

¹² 19% of patients who responded

¹³ The average was 2.56 times

¹⁴ 86% of patients who responded

However, there are a few important reservations. Firstly, several respondents felt that their lawyers could not prepare properly because they did not have access to the necessary reports in advance of the hearing or at all.

“They were very professional and did their best, but they were not given the reports in sufficient time.”

“They only seem to prepare on the day, or the day before.”

Secondly, in a few cases, lawyers appear to have fought for an outcome the patient did not want, contrary to the patient’s instructions, or had failed to obtain proper instructions.

“He had a different agenda to me. I wasn't contesting my detention, but he was.”

“He hadn’t taken any proper instructions about my situation or taken a statement of my views.”

Finally, a few respondents were critical of their lawyer’s performance and felt let down by them.

“She should have had an experienced colleague to help her as she was a trainee and so was very weak. I ended up defending myself. Plus she had no access to the reports prior to the hearing.”

“He was prepared, but he did not use the prepared notes. My solicitor left me to advocate on my own account. He left me in a state of despair because he did not use the prepared notes and he buckled in front of the panel and remained silent for the most part. He did not advocate for me.”

Discussion

For this group of respondents at least, the data suggests that although the vast majority rely on legal representation, many are not well placed to ensure that their lawyers are representing them properly. This is particularly significant when so many are reliant on referrals to lawyers by the hospital. As the hospital managers are usually the opposing party in a patient’s application to the tribunal, it is important that patients are able to get independent advice about their choice of lawyer (for example, from an Independent Mental Health Advocate) and have access to lawyers who have been accredited as competent to provide representation at Mental Health Tribunals.

While hospital staff (particularly nursing staff who are in day-to-day contact with patients) should help patients to apply to the tribunal and to find a lawyer, they should not be involved in 'recommending' particular lawyers to patients, as this could give the appearance of bias. Similarly, the Law Society has advised that lawyers should not seek referrals by approaching patients on hospital wards without prior appointments or otherwise 'tout for business' without a referral.

Patients may also feel that they are in a difficult position when commenting on their lawyer's performance or reporting poor practice. Other people present at tribunal hearings, in particular the tribunal panel, should be encouraged to recognise and report poor or inadequate standards of representation or inappropriate behaviour.

Recommendations

1. **Referral to lawyers by hospitals:** Hospital managers should ensure that staff are aware that it is inappropriate to recommend lawyers to patients. While hospital staff should help patients to apply to the tribunal and to find a lawyer, referrals should be made by providing patients with a list of local lawyers who have a Legal Services Commission (LSC) contract for mental health work, preferably those who are members of the Law Society's Mental Health Tribunal Panel, to enable them to choose a lawyer who has been accredited as providing a competent standard of representation. Patients should be encouraged to seek further advice and support in this process through the Independent Mental Health Advocacy Service.
2. **Accreditation of lawyers:** The Legal Services Commission should accelerate its work to require all legal representatives appearing before the tribunal under an LSC contract to be accredited as members of the Law Society's Mental Health Tribunal Panel.
3. **Quality checking of lawyers by tribunal panels:** Members of the tribunal panel should be trained to recognise and understand the risk to patients from poor representation at a hearing and be encouraged to report poor practice. Where they see a lawyer acting inappropriately, they should raise this with the lawyer during the hearing. Where necessary, poor or inadequate standards of representation or inappropriate behaviour by a legal representative should be reported to the Deputy Chamber President or a salaried judge. In certain cases, it may be appropriate to raise the matter with the regulatory body responsible for the accreditation or conduct of the lawyer (for example, the Solicitors Regulatory Authority or the Bar Standards Board).

Delays

Delays seemed to be a substantial factor in many of the respondents' negative experiences. Nearly half reported that they had been subject to delays¹⁵, some experiencing significant distress and anxiety as a result. One patient, who had finally been discharged after months of adjournments, suggested they ought to be compensated for their extra months of detention.

¹⁵ 40% of patients who responded

“There should be a legal structure put in place where a patient kept in hospital beyond a reasonable length of time should be given an apology or compensation.”

Some respondents also reported specific problems with the tribunal’s administration, which may have contributed to the delay.

“They sent me three letters about my forthcoming appeal after the appeal itself. There were lots of administrative errors.”

A significant element of the distress and frustration caused by delays seemed to flow from a lack of information. Respondents were poorly informed about how long the tribunal process was supposed to take. Nearly half had received no information on this.¹⁶ Of those who believed they had been subject to delays, a third had not received or understood any reasons for the delay.¹⁷

“I had no access to any information or timescales.”

Those respondents who did know the reasons for delays listed several causes. Firstly, there appeared to be a frequent problem with the availability of necessary personnel, either from the tribunal judiciary or the hospital staff.

“They said it would take few months, but it took two years. I didn't really receive any reason for the delay. Every time the hearing came up they postponed, as the doctor was not well or someone else on the panel could not attend. As I'm on a 37/41, I should have a tribunal as soon as I come in or am recalled, but that never happens.”

Secondly, it seemed that an initial postponement could lead to further delays because the reports completed for the original tribunal date become out-of-date and need to be re-written. Thirdly, and perhaps most worryingly, some respondents reported delays in their discharge because the hospital failed to provide the care plan that the patients needed in order to meet the tribunal’s conditions for conditional discharge.

“The tribunal should have more power to enforce conditions, since if these aren't met, discharge can't take place. Delays in the conditions being met are often down to the authority concerned.”

Discussion

Delays in the tribunal process can be caused by a number of factors, and it is not appropriate to attribute blame to any one person or agency. The Tribunals Service has taken a number of steps to try to minimise delay, for example by improving booking procedures, using case management powers to issue directions requiring reports to be

¹⁶ 45% of patients who responded

¹⁷ 33% of patients who responded

produced on time and by trying to avoid unnecessary adjournments. Predicted timescales for different types of applications appear on the Tribunal's website, but patients may not have access to this. Although some delays are inevitable, the following recommendations are aimed at encouraging the improvements and processes already adopted, and to suggest further measures to tackle the specific problems identified.

Recommendations

4. **Information regarding delays:** The Tribunals Service should inform patients of the predicted timescale of the tribunal process when acknowledging the patient's application. If possible, it should write to patients again when it learns of any delays. This information should be simple, clear and include reasons for any delays.
5. **Management information:** The Tribunals Service should continue to adopt suitable Key Performance Indicators to ensure that it collects reliable information on the time taken to complete the tribunal process from receipt of application to a decision being issued, so that it can identify and address possible causes of delay.
6. **Cycle of delay:** Responsible clinicians and other professionals who have provided reports to the tribunal should consider at the point of adjournment, or where there has been a delay in listing the hearing, whether the resulting delay will require a report to be updated. Tribunal judges should continue to make use of their case management powers to ensure up-to-date reports are delivered in time for the rescheduled hearing.
7. **Care plans and conditions:** The Care Quality Commission should actively monitor the provision of care plans that are necessary for patients to meet tribunals' conditions for discharge. This should be incorporated into the routine checks conducted by Mental Health Act Commissioners visiting hospitals.

The pre-hearing medical examination

Respondents were invited to comment on their experience of being interviewed by the medical member of the tribunal before the hearing, including what information they had been given about the purpose of this medical examination and whether its role in the tribunal process had been explained to them. We received fewer responses to this section of the questionnaire. This is likely to have been for two reasons: first, the drafting of one of the questions in this section was problematic and was misunderstood by some interviewers. Second, several interviewers reported that many of the patients did not remember their pre-hearing medical examination and therefore could not comment on the process. This may be at least partly explained by the fact that when recalling events in the past, the heightened experience of the tribunal hearing stayed with the patients more vividly than a pre-hearing conversation with the medical member.

Of those who responded, more than a third reported that their medical examination occurred on the day of the hearing.¹⁸ Around a third had their interviews between one and three days before the hearing.¹⁹

"I would have preferred to see them the day before. It would have been less stressful that way."

"I didn't know he was coming. He just knocked on my door. There was no information given."

Those respondents who did remember the pre-hearing examination gave very mixed reviews of the process. They described very different approaches to questioning from medical members, with some asking questions about all aspects of the patient's lives and others focusing on only one or two issues. Many felt the interviews were too cursory.

"He didn't seem to know how to manage the interview. He had poor eye contact and asked very minimal questions."

"The doctor didn't ask me much. Just my date of birth, index offence and section. He just said, "We'll see what we can do tomorrow." I would have expected him to ask about what my family thought of my release and what I expected as an outcome of the tribunal. It quite surprised me."

"The doctor did not ask any questions. He just confirmed I'd been taking my medication."

"The doctor was pleasant. He asked me questions about how I was feeling and the treatment I had. He listened to my views."

"I felt listened to and the doctor was pleasant. He was going through my notes and asking my opinion on things that had been happening. I found this useful."

A quarter of respondents said that the medical member of the tribunal panel had not explained that the results of the interview were going to be shared with the panel.²⁰ While some respondents appeared to understand the purpose of the examination, others felt bemused by the process or thought that they should have been given a clearer explanation.

"It was a stressful experience as the doctor may hold the key to your future."

"It was just more questions and answers which were totally unrelated. It would be good if they could explain what's going on. Also, it would be good if they could show a bit more interest in your life outside the Tribunal."

¹⁸ 37.5% of those who responded gave this answer

¹⁹ 35.8% of those who responded gave this answer

²⁰ 24.7% of those who responded

“I was pleased he came for a chat but I found the questions intimidating, tricky and not sensitive. Was he a policeman in disguise?”

“He was nice enough. But he made me feel like they are big giant people and I’m just a little nobody.”

Discussion

It is essential that patients receive an explanation of the purpose of the pre-hearing medical examination and that they are told that the panel will take the results into account at the tribunal hearing to decide whether they should be discharged from detention. Without this explanation, patients will expect the discussion to be confidential, which of course it is not. A breach of this confidence could damage patients’ trust in both doctors and the tribunal process.

Given the variety of comments made by respondents about the interview process, efforts should be made to ensure greater consistency in practice among medical members.

Recommendations

8. **Training for medical members:** Medical members should receive regular training on how to conduct pre-hearing examinations in a manner that allows them to gather all relevant information and for the patient to feel that their voice is being heard. A pro-forma or interview checklist may also be helpful to provide greater consistency in practice.
9. **Explanations of the purpose of the pre-hearing interview:** Hospital staff should explain to patients before the medical member arrives that he or she will be coming and the purpose of their visit. On arrival, all medical members should explain clearly to the patient the purpose of the pre-hearing interview and its relevance to the tribunal hearing. They should take all reasonable steps to ensure the patient understands this information. The Tribunals Service should produce a leaflet explaining the medical examination and its role in the tribunal process for medical members to give to patients at the examination.
10. **Timing of the medical examination:** The pre-hearing examination by the medical member of the tribunal should take place a day or two before the hearing to avoid adding to the patient’s stress on the day of the hearing. Patients should be given adequate notice of the time of the pre-hearing examination.

The hearing

Respondents reported positive experiences of some elements of the tribunal hearing. Nearly all respondents reported that the judge had introduced the panel²¹ and other people in the room.²² Most respondents reported that the judge had explained what would happen at least in outline.²³

However, they also reported a number of specific problems with the hearing process.

Echoing their comments about delays, respondents expressed concern about the **provision of information**. A quarter of respondents felt they had received no substantial information explaining the content and process of the hearing in advance.²⁴ Those who had received information overwhelmingly reported receiving it from their own solicitor.²⁵ About a quarter of respondents felt they did not need information because they had been to tribunals before.²⁶

Many respondents complained about their limited **access to reports**, which form an important part of the evidence on which the tribunal bases its decision. Nearly a third believed they had never seen any of these reports.²⁷ Of those that reported having seen them, 6% complained they had not seen all of them and 8% complained that they did not see them until the day of the tribunal hearing. We did not ask when the reports were received, so it may be that many respondents received the reports at the last minute, but only a small number commented on it. A few commented specifically that they received the reports too late to put together a proper response.

The majority of respondents did not have a problem with the **venue** of their tribunal hearing.²⁸ However, a significant minority reported problems with the hearing room itself.²⁹ Respondents complained that when the room was too small, the hearing was more intimidating because they felt crowded. This was a particular problem at Rampton Secure Hospital, where some respondents felt the room had been too hot. Some patients complained about the lack of private spaces in the waiting areas in which to speak with their lawyers or the people there to support them.

A significant minority of respondents did not feel they were given sufficient **opportunity to be heard**. A third did not feel listened to³⁰ and nearly half did not feel that the tribunal gave equal importance to their view.³¹ Sometimes this sentiment may have been a direct result of the fact that they did not receive the outcome they had hoped for. As one respondent commented, "I know I wasn't listened to, because I'm still here." However, there were a number of useful comments about the process and conduct of the hearing.

²¹ 98.4% of those who responded

²² 91.8% of those who responded

²³ 88% of those who responded

²⁴ 23.6% of those who responded

²⁵ 82% of those who responded

²⁶ 23.4% of those who responded

²⁷ 30.9% of those who responded

²⁸ 83.3% of those who responded

²⁹ 16.7% of those who responded

³⁰ 33.6% of those who responded

³¹ 46.3% of those who responded

- Some respondents commented that they should not have to wait until the end of the hearing to speak.³² They felt that at that stage, the panel's mind was made up. It seemed that many would be more comfortable if they could speak at the beginning to explain their position and at the end to respond to what had been said about them. A few patients did not think they should have to wait to speak at all, but should be able to respond immediately to comments made about them. They might be more comfortable waiting if the tribunal started by hearing the patient's position.

"They listened to everyone else first, so they made their mind up about you before you spoke."

"I wanted to speak during the hearing, but I was told it was not my turn. I wanted to speak when people were saying things I disagreed with. I couldn't challenge them at the time."

"I was told to be quiet and wait till it was my turn to speak. The solicitor was also told to wait their turn. It was not nice, not being able to respond to what people are saying about you at the time."

"I could only make comments via my barrister. I didn't feel I was part of the tribunal. I was in the room but not part of it. I felt dismissed when I wanted to ask questions. I felt let down. The judge was a strong character to all sides."

- One in 10 respondents commented that the tribunal was too guided by the opinion of the medical professionals.³³ One respondent suggested that other witnesses should speak before the doctor (the responsible clinician), so their evidence is not influenced by the doctor's testimony.

"It felt like everybody's opinion was taken but then the doctor says something and everyone else follows. The hospital carries all the weight in a hearing. The doctor seems to hold the power and all the other professionals would just agree."

"Witnesses shouldn't give evidence after hearing the doctors. They should give their own opinions."

"I feel that whatever the Doctor says, the tribunal will go along with. It can't make an independent decision to discharge. It was a waste of time and very stressful and I won't do it again."

- Some patients felt the environment was intimidating, or that the panel members had a disinterested manner.

"I felt like I was an annoyance to the proceedings."

³² 7.5% of those who responded

³³ 9.7% of those who responded

“I felt a bit intimidated. There's a lot of big egos. They come from a different walk of life to me. It doesn't feel like an equal thing.”

“The focus was on what my barrister was saying, not on me. The judge used long words, quoting the Mental Health Act. It was hard to understand him.”

Discussion

We should not assume that patients will be well-informed about the tribunal process, either through their previous experience of tribunals or by their own solicitor. Regular efforts should be made both before and at the hearing to ensure that patients understand what is likely to happen at each stage.

Appearing before the tribunal, coupled with the importance of the issues to be decided by the panel, is very stressful to patients. Although the tribunal is a judicial process that must follow the Tribunal Rules, members of the panel should try to put patients at ease. In particular, wherever possible, patients should be able to see the reports provided for the tribunal in good time to be able to discuss them with their legal representative. This requires greater efforts by responsible clinicians and other professionals to deliver their reports on time and in accordance with the Tribunal Rules and Practice Direction, taking account of the additional guidance on report writing issued by the Tribunals Service.³⁴

Recommendations

11. **Information regarding the hearing:** Hospital staff have a duty (under the Mental Health Act s.132) to ensure that detained patients are informed, both verbally and in writing, of their legal position and their rights of appeal to the tribunal, both on admission and renewal of detention. We recommend this information should include details of what will happen at the tribunal hearing. Managers should ensure that this information is repeated at the time patients apply to the tribunal and in the days before the hearing takes place.
12. **Access to reports:** Responsible clinicians and other professionals providing reports to the tribunal should ensure that reports are provided in good time before the hearing, in compliance with the Tribunal Rules and Practice Direction. The Tribunals Service should ensure that copies of reports are sent to the patient and their lawyer as soon as they are available, and wherever possible, in good time before the hearing.
13. **Venue:** Hospitals should ensure that rooms designated to be used for tribunal hearings comply with the specification issued by the Tribunals Service. Rooms should be large enough to accommodate all those attending without becoming overcrowded. They should be sound-proof to ensure privacy and be properly heated and air-conditioned. All waiting areas should include private areas in which patients can speak with their advisers.

³⁴ Tribunals Service-Mental Health *Reports for Mental Health Tribunals*, available in hard copy and online at: <http://www.mhrt.org.uk/Documents/Forms/ReportsGuidanceBooklet.pdf>

14. **Opportunity for patients to speak:** Tribunal judges should invite patients to make a brief statement both at the beginning and end of the hearing. If the hearing continues for a long period, the judge should check at regular intervals how the patient is feeling and allow breaks when necessary.
15. **Order of proceedings:** Tribunal judges should explain the normal order of proceedings of asking the responsible clinician to give evidence first about why they think the grounds for detention are met. Patients should then be offered the opportunity to discuss the order of proceedings with their legal representative, and where possible, allowed to give their evidence first if they request it.
16. **Treating patients appropriately:** All panel members should receive regular training in communicating with patients and putting them at ease.

The decision

It was encouraging to hear that nearly all respondents received the decision of the tribunal very quickly on the day of the hearing.³⁵ Of these, the majority received the decision verbally directly from the tribunal judge.³⁶

However, there were concerns about how information was provided after this stage. Nearly a quarter of respondents claimed they had never received a written copy of the decision.³⁷ One respondent reported that they received the decision in illegible handwriting. Where patients had received a typed written copy, there was substantial variation in how long they had had to wait, although the majority waited between two days and a month after the hearing.³⁸ One in five respondents felt that they had not fully understood the tribunal's decision³⁹, yet nearly two thirds of respondents said they had been offered no further explanations of the decision.⁴⁰ Of those who were offered further explanations, most had relied on their solicitors.

Respondents were also unclear about any further **right to appeal**. Nearly a quarter had been told about their right to make another application to the tribunal during their next period of detention.⁴¹ A further quarter said they had heard about appeal rights⁴², but did not distinguish clearly between appeal to the Upper Tribunal or a further application to the First-tier Tribunal. Only one in 20 respondents clearly stated that they had received information about the right to appeal to the Upper Tribunal on a point of law.⁴³

³⁵ 96.8% of those who responded

³⁶ 78.4% of those who responded

³⁷ 23% of those who responded

³⁸ 68% of those who responded

³⁹ 19.4% of those who responded

⁴⁰ 63.8% of those who responded

⁴¹ 23% of those who responded

⁴² 27.5% of those who responded

⁴³ 5% of those who responded

Discussion

It is reassuring that, in most cases, patients do not have to wait long to hear the tribunal's decision, which is generally announced to the patient at the end of the hearing. In recent months, the Tribunals Service has made considerable efforts to send out decision letters promptly. However, it is also important that patients receive appropriate help to be able to understand the reasons for the tribunal's decision, both in the way this is explained verbally by the judge, and as set out in the written version of the decision.

Respondents' lack of knowledge about appealing to the Upper Tribunal is not surprising since this right of appeal was only introduced in October 2007 and comparatively few patients would be likely to have a legal basis to challenge the decision of the First-tier Tribunal on a point of law. However, information should be given to patients about any onward right of appeal so that they can discuss with their lawyer what might be appropriate in their particular case. We are pleased that this information has recently been included in the written notice of the tribunal's decision.

Recommendations

17. **Written copies of the decision:** The Tribunals Service should send all patients and/or their legal representative a written copy of the decision as soon as possible after the hearing in clear typed form. Hospital staff should make sure the written decision is delivered to patients who remain detained, and that they have access to a secure place to store such confidential documents.
18. **Further explanations of the decision:** When a decision is announced at the conclusion of the hearing, the tribunal judge should always ask the patient if they understand the decision and if they have any specific questions. Legal aid fees should include provision for legal representatives to spend time with patients after the hearing to explain the tribunal's decision and the reasons for it, and to discuss future options.
19. **Right to appeal:** The Tribunals Service should ensure that all patients are informed of their right to appeal to the Upper Tribunal on a point of law.

Usefulness of the tribunal experience

Respondents were asked a general question as to whether the tribunal had been useful to them in any way, even if they had not achieved their desired outcome (in most cases, to be discharged from detention). It is heartening that over half of respondents had positive comments to make, even though they may have been critical of some elements of the process.⁴⁴ Some made general comments, such as "It was important to be heard" or "It got me thinking about my future", while others were more specific, commenting that the tribunal's decision had given them new insight into their

⁴⁴ 57% of those who responded said the process had been useful to them in some way.

progress, their care plan, the reasons for their detention and what they needed to do to progress.⁴⁵ This is a significant achievement for the tribunal system. However, it is worrying that some respondents' comments suggested that without the tribunal process, they did not have access to this information.

"It helped me to talk about things that I hadn't talked about before. It gave me that chance to put my point across and challenge information that was not correct, through my solicitor."

"It made sure my treatment would continue and that release would be through the hospital route, not the prison system. It was a day out and it gave me a road map."

"It told me what I need to do to progress. It gave me a structured/organised future. It gave me guidelines about what I can and can't do."

"It gave me an idea of what was needed to get discharged. I have to look at my drinking history."

"Afterwards, a plan of action was formed, which helped things progress."

Others had mixed feelings, or had found the experience more generally negative, perhaps because of the way their particular case was handled.

"It was unhelpful because it mostly emphasised the past. However, it was useful in that it clarified what I have to do to move forward."

"It was soul-destroying, as you are left with the result and nobody there to share it with – no sympathy or opportunity to explore anything."

"It was pointless as there was no adequate preparation. For example, not having my rights explained from the start and the lack any individual orientation."

Discussion

These comments indicate that the tribunal is an important safeguard for patients, not only as a means of challenging their detention, but also in finding out about and measuring their progress and in checking whether care plans are appropriate and meeting their needs. That aspect of the tribunal experience should be recognised as an important part of the mental health system, and the tribunal's reasons and recommendations should be taken into account in planning for patients' future care and after-care needs.

⁴⁵ 9.2% of those who responded

Recommendations

20. **Tribunal decisions:** When declining to discharge from detention, tribunals should record in their reasons any plans the panel was told about concerning future leave arrangements, transfer to lesser security etc. The Tribunals Service should ensure that the decision from a previous tribunal is made available to the panel before the next hearing in every case.
21. **Tribunal's power to recommend:** Tribunals should be more proactive in making extra-statutory recommendations, particularly in relation to the patient's future care and after-care needs, in order to assist both patients and clinicians to identify ways of making progress in the future.
22. **Information on patients' care:** All hospitals should ensure patients understand their care plan. The Care Quality Commission should monitor actively whether patients are properly informed about their care plans.

Additional issues raised by patients

a) Automatic referrals

Nearly one in five respondents had come before the tribunal as a result of an automatic referral.⁴⁶ A few of these respondents were frustrated with having to go through a process that they felt to be disruptive to their care. One felt that the automatic referral had led to them being discharged before they were ready to leave, causing a relapse. However, another recognised the need for automatic referrals in order to protect patients' rights.

"The hearing opened up a can of worms. I am now dealing with it all having been re-sectioned. It put me back six to twelve months. I lost all hope."

"I am being processed through the system. I have been here for five years. This was a pointless exercise. Given that this was a mandatory review, it's unsurprising that I feel like this."

"Automatic referral to the tribunal is not always helpful if the patient already knows and understands their rights. That said, the care team at the hospital can sometimes dissuade people from making voluntary applications or even apply pressure for patients to withdraw. So, sometimes automatic referrals are helpful."

b) The tribunal's capacity to deal with patients' particular conditions

There were particular problems with respondents who suffered from **unusual mental health conditions** or **multiple health problems**, such as deafness, Huntington's

⁴⁶ 17.5% of those who responded

disease or learning difficulties. These problems were highlighted both by the patients themselves and nurses who had accompanied them to the tribunal. Some complained that the tribunal was not able to respond to their needs.

- One nurse suggested that deaf interpreters arranged through the Tribunals Service may not have the necessary expertise to deal with patients with mental health problems or learning disabilities.

“I only understood bits of what they were saying. The judge did not give me enough time.” (comment from a deaf patient)

“The hospital uses deaf interpreters for their professionals, who are experienced in language adjustment for patients with learning disabilities or psychiatric illness. The tribunal office provides interpreters for the patients, but these interpreters do not have additional training to deal with their mental health issues – this could put patients at a disadvantage.” (comment from the nurse of a deaf patient)

- Another nurse felt that panel members had not been trained to facilitate communication with people with learning difficulties or explain their points in an accessible manner.
- Respondents with advanced Huntington’s disease appeared to have had very little ability to communicate with the Tribunal and no extra provision was made to deal with this. Some of the Huntington’s cases raised serious questions about whether failures of the process to cater for patients’ particular needs may lead to injustice.

“Her sister helped but the communication difficulties were too much for the tribunal.” (comment from the nurse of a patient with Huntington’s disease)

- Two patients with borderline personality disorders felt that their particular condition had not been understood by the tribunal, leading to incorrect decisions being made.

“The medical member didn't listen to me. I have a borderline personality disorder. I am highly functioning, and because of that, he didn't hear that beneath the surface, I'm very vulnerable. The tribunal ended up taking me off section against my wishes. They did this based on assumptions about me, based on the fact that they didn't understand my condition.” (comment by a patient with a borderline personality disorder)

Recommendations

23. **Training in relation to patients with multiple or unusual conditions:** All panel members should receive training on how to address the specific needs of patients with multiple or unusual conditions. Standard training should cover conditions that panel members are likely to encounter regularly, such as learning difficulties. A special briefing process should be introduced to prepare panel members before hearings whenever patients have relevant conditions that fall outside the standard training. This process should include sending the panel members written information on the needs of patients with that condition and the contact details of an expert willing to answer panel members' questions.
24. **Facilities and experts for patient's multiple or unusual conditions:** The Tribunals Service must ensure that all interpreters and experts supporting the tribunal are properly trained and equipped to deal with the patient's specific needs in a mental health context.
25. **Lawyers for patients with multiple or unusual conditions:** The Law Society's Accreditation Panel list should highlight details of lawyers with experience of specific, multiple or unusual conditions. The Panel list should routinely be provided to patients with these conditions when they are looking for a lawyer.

5. Conclusion

This study has broken new ground in accessing patients' experiences of the Tribunal Service (Mental Health). Although it was a limited pilot, it provides new insights into existing problems and highlights some problems that had not been identified before. It places a spotlight on important issues such as providing information and the ability of tribunals to respond to multiple and unusual conditions.

The project is also a testament to the ability of detained patients to be active and valuable participants in shaping the system to which they are subject. Its most important conclusion is that it is both possible and worthwhile to collect feedback from detained patients about the tribunal system. This conclusion should pave the way for future research and surveys of the people who use tribunals and stakeholders.

It is possible that many of the limitations of this pilot could be overcome if regular, structured customer satisfaction interviews were conducted shortly after tribunal hearings. This would address the problem of time-lapse between the hearing and the feedback process. It would also allow researchers to refine the research methodology and improve the questionnaire. Analysis of results would need to remain sensitive to the way in which patients' conditions affect their perceptions, recall and communication skills. However, this project has shown that these unavoidable limitations do not prevent patient feedback from being useful and important. It is unacceptable that this kind of research has been conducted routinely for other tribunals, but that nobody has regularly and systematically monitored the experiences of detained mental health patients.

Recommendation

26. **Future research:** the Tribunals Service should continue to carry out Customer Satisfaction Surveys, which should be extended to collecting information directly from detained and community patients. This research should be sensitive to the needs of these service users, drawing upon the support and expertise of the Care Quality Commission.

6. Summary of recommendations

We have produced recommendations within the report that are addressed to a range of organisations and individuals who have a variety of duties and responsibilities in relation to the Mental Health Tribunal, including:

- Hospital managers and staff.
- The Tribunals Service.
- The tribunal judiciary and members.
- Responsible clinicians.
- Other health and social care professionals.
- The Care Quality Commission.
- The Legal Services Commission.
- The Law Society's Mental Health Tribunal Accreditation Panel.

The following are the recommendations listed by the area covered in this report. The recommendations themselves suggest new actions or ways in which procedures and processes might be changed, or they have been included to highlight and add support for initiatives and processes that are already in use to improve practice or address people's needs. We hope that this project will be the first step in involving the people who use the service in improving the operation of the Tribunals Service and the First-tier Tribunal (Mental Health).

Support with applications (see pages 14-16)

1. **Referral to lawyers by hospitals:** Hospital managers should ensure that staff are aware that it is inappropriate to recommend lawyers to patients. While hospital staff should help patients to apply to the tribunal and to find a lawyer, referrals should be made by providing patients with a list of local lawyers who have a Legal Services Commission (LSC) contract for mental health work, preferably those who are members of the Law Society's Mental Health Tribunal Panel, to enable them to choose a lawyer who has been accredited as providing a competent standard of representation. Patients should be encouraged to seek further advice and support in this process through the Independent Mental Health Advocacy Service.
2. **Accreditation of lawyers:** The Legal Services Commission should accelerate its work to require all legal representatives appearing before the tribunal under an LSC contract to be accredited as members of the Law Society's Mental Health Tribunal Panel.
3. **Quality checking of lawyers by tribunal panels:** Members of the tribunal panel should be trained to recognise and understand the risk to patients from poor representation at a hearing and be encouraged to report poor practice. Where they see a lawyer acting inappropriately, they should raise this with the lawyer during

the hearing. Where necessary, poor or inadequate standards of representation or inappropriate behaviour by a legal representative should be reported to the Deputy Chamber President or a salaried judge. In certain cases, it may be appropriate to raise the matter with the regulatory body responsible for the accreditation or conduct of the lawyer (for example, the Solicitors Regulatory Authority or the Bar Standards Board).

Delays (see pages 16–18)

4. **Information regarding delays:** The Tribunals Service should inform patients of the predicted timescale of the tribunal process when acknowledging the patient's application. If possible, it should write to patients again when it learns of any delays. This information should be simple, clear and include reasons for any delays.
5. **Management information:** The Tribunals Service should continue to adopt suitable Key Performance Indicators to ensure that it collects reliable information on the time taken to complete the tribunal process from receipt of application to a decision being issued, so that it can identify and address possible causes of delay.
6. **Cycle of delay:** Responsible clinicians and other professionals who have provided reports to the tribunal should consider at the point of adjournment, or where there has been a delay in listing the hearing, whether the resulting delay will require a report to be updated. Tribunal judges should continue to make use of their case management powers to ensure up-to-date reports are delivered in time for the rescheduled hearing.
7. **Care plans and conditions:** The Care Quality Commission should actively monitor the provision of care plans that are necessary for patients to meet tribunals' conditions for discharge. This should be incorporated into the routine checks conducted by Mental Health Act Commissioners visiting hospitals.

The pre-hearing medical examination (see pages 18–20)

8. **Training for medical members:** Medical members should receive regular training on how to conduct pre-hearing examinations in a manner that allows them to gather all relevant information and for the patient to feel that their voice is being heard. A pro-forma or interview checklist may also be helpful to provide greater consistency in practice.
9. **Explanations of the purpose of the pre-hearing interview:** Hospital staff should explain to patients before the medical member arrives that he or she will be coming and the purpose of their visit. On arrival, all medical members should explain clearly to the patient the purpose of the pre-hearing interview and its relevance to the tribunal hearing. They should take all reasonable steps to ensure the patient understands this information. The Tribunals Service should produce a leaflet explaining the medical examination and its role in the tribunal process for medical members to give to patients at the examination.

10. **Timing of the medical examination:** The pre-hearing examination by the medical member of the tribunal should take place a day or two before the hearing to avoid adding to the patient's stress on the day of the hearing. Patients should be given adequate notice of the time of the pre-hearing examination.

The hearing (see pages 21-24)

11. **Information regarding the hearing:** Hospital staff have a duty (under the Mental Health Act s.132) to ensure that detained patients are informed, both verbally and in writing, of their legal position and their rights of appeal to the tribunal, both on admission and renewal of detention. We recommend this information should include details of what will happen at the tribunal hearing. Managers should ensure that this information is repeated at the time patients apply to the tribunal and in the days before the hearing takes place.
12. **Access to reports:** Responsible clinicians and other professionals providing reports to the tribunal should ensure that reports are provided in good time before the hearing, in compliance with the Tribunal Rules and Practice Direction. The Tribunals Service should ensure that copies of reports are sent to the patient and their lawyer as soon as they are available, and wherever possible, in good time before the hearing.
13. **Venue:** Hospitals should ensure that tribunal hearing rooms comply with the specification issued by the Tribunals Service. Rooms should be large enough to accommodate all those attending without becoming overcrowded. They should be sound-proof to ensure privacy and be properly heated and air-conditioned. All waiting areas should include private areas in which patients can speak with their advisers.
14. **Opportunity for patients to speak:** Tribunal judges should invite patients to make a brief statement both at the beginning and end of the hearing. If the hearing continues for a long period, the judge should check at regular intervals how the patient is feeling and allow breaks when necessary.
15. **Order of proceedings:** Tribunal judges should explain the normal order of proceedings of asking the responsible clinician to give evidence first about why they think the grounds for detention are met. Patients should then be offered the opportunity to discuss the order of proceedings with their legal representative, and where possible, be allowed to give their evidence first if this is requested.
16. **Treating patients appropriately:** All panel members should receive regular training in communicating with patients and putting them at ease.

The decision (see pages 24-25)

17. **Written copies of the decision:** The Tribunals Service should send all patients and/or their legal representative a written copy of the decision as soon as possible after the hearing in clear typed form. Hospital staff should make sure the written decision is delivered to patients who remain detained, and that they have access to a secure place to store such confidential documents.
18. **Further explanations of the decision:** When a decision is announced at the conclusion of the hearing, the tribunal judge should always ask the patient if they understand the decision and if they have any specific questions. Legal aid fees should include provision for legal representatives to spend time with patients after the hearing to explain the tribunal's decision and the reasons for it, and to discuss future options.
19. **Right to appeal:** The Tribunals Service should ensure that all patients are informed of their right to appeal to the Upper Tribunal on a point of law.

Usefulness of the tribunal experience (see pages 25-27)

20. **Tribunal decisions:** When declining to discharge from detention, tribunals should record in their reasons any plans the panel was told about concerning future leave arrangements, transfer to lesser security etc. The Tribunals Service should ensure that the decision from a previous tribunal is made available to the panel before the next hearing in every case.
21. **Tribunal's power to recommend:** Tribunals should be more proactive in making extra-statutory recommendations, particularly in relation to the patient's future care and after-care needs, in order to assist both patients and clinicians to identify ways of making progress in the future.
22. **Information on patients' care:** All hospitals should ensure patients understand their care plan. The Care Quality Commission should monitor actively whether patients are properly informed about their care plans.

Additional issues raised by patients (see pages 27-29)

23. **Training in relation to patients with multiple or unusual conditions:** All panel members should receive training on how to address the specific needs of patients with multiple or unusual conditions. Standard training should cover conditions that panel members are likely to encounter regularly, such as learning difficulties. A special briefing process should be introduced to prepare panel members before hearings whenever patients have relevant conditions that fall outside the standard training. This process should include sending the panel members written information on the needs of patients with that condition and the contact details of an expert willing to answer panel members' questions.

24. **Facilities and experts for patient's multiple or unusual conditions:** The Tribunals Service must ensure that all interpreters and experts supporting the tribunal are properly trained and equipped to deal with the patient's specific needs in a mental health context.
25. **Lawyers for patients with multiple or unusual conditions:** The Law Society's Accreditation Panel list should highlight details of lawyers with experience of specific, multiple or unusual conditions. The Panel list should routinely be provided to patients with these conditions when they are looking for a lawyer.

Conclusion (see page 30)

26. **Future research:** The Tribunals Service should continue to carry out Customer Satisfaction Surveys, which should be extended to collecting information directly from detained and community patients. This research should be sensitive to the needs of these service users, drawing upon the support and expertise of the Care Quality Commission.

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Care Quality Commission

Phone: 03000 616161

Email: enquiries@cqc.org.uk

Web: www.cqc.org.uk

Care Quality Commission
National Correspondence
Citygate
Gallowgate
Newcastle upon Tyne
NE1 4PA

Please contact us if you would like a summary of this document in another format or language.

Administrative Justice and Tribunals Council

Phone: 020 7855 5200

Fax: 020 7855 5201

Email: enquiries@ajtc.gsi.gov.uk

Web: www.ajtc.gov.uk

81 Chancery Lane
London
WC2A 1BQ

