

MENTAL HEALTH TRIBUNAL for SCOTLAND
GUIDANCE to TRIBUNAL MEMBERS No. 3/2009 (revised May 25)
TRAINEE SOLICITORS ACTING AS A 'REPRESENTATIVE'

Purpose of this Guidance

1. The purpose of this guidance is to provide clarification to tribunal members on the status and designation of a trainee solicitor acting as a representative in tribunal proceedings.

Representation

2. A “relevant person” who initiates proceedings before the Tribunal or who wishes to take part in such proceeding has a right, if they wish, to representation at the tribunal hearing. Rule 54(3) of The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005 (“the Rules”) provides:

“(3) At any hearing a relevant person may conduct the relevant person’s own case (with assistance from any person if the relevant person wishes) or may be represented by any person whether or not legally qualified.”

3. Rule 2 (1) of the Rules provides that a “relevant person” means:

“any party and any other person who sends a notice of response under Part II, IV or V of these Rules indicating a wish to make representations or to lead or produce evidence”

and “party” means:

“(a) the person who initiated the proceedings before the Tribunal except a person who initiated them by virtue of a provision giving a listed initiator authority to act;

(b) the patient to whom the proceedings relate;

(c) the named person of the patient to whom the proceedings relate;

(d) any person whose decision (which shall include any direction or order, determination or grant of a certificate, but does not include a decision by a court) is the subject of the proceedings before the Tribunal;

(e) any person added as a party under rule 48;

(f) the Scottish Ministers in any proceedings which relate to a relevant patient;

(g) the relevant Health Board in any proceedings under sections 264 to 271 of the Act; and

(h) the patient's responsible medical officer in any proceedings in relation to an application under section 164A of the Act.

4. Rule 54(3) of the Rules provides that the relevant person's representative does not require to be legally qualified. Accordingly it is competent for someone undertaking a traineeship to appear for a relevant person as a representative.
5. Trainees can apply to The Law Society of Scotland to be admitted to the roll of solicitors at three stages:
 - Between months 3 to 11 of the traineeship at the discretion of their supervising solicitors;
 - After one year of the traineeship; or
 - At the end of the traineeship.

Once admitted, trainees can then apply for a restricted practising certificate which is restricted until the traineeship has been formally discharged.

6. There are differences between the areas of work that can be carried out by a trainee who is not admitted to the Roll and does not hold a restricted practising certificate, and a trainee who has been admitted to the Roll and does hold a restricted practising certificate. The Law Society of Scotland Guidance is as follows:

Non-admitted:

As a trainee there is a limited range of functions which you can perform. You cannot represent a client in the Criminal Courts, and in Civil cases you can only appear as an "authorised lay representative" in a Small Claim or Summary Cause. You can sit with Counsel in any Court including the High Court and the Court of Session. You cannot grant Legal Advice & Assistance as you are not yet a solicitor. Any business card which is printed should have the description "Trainee Solicitor" after your name.

Admitted and holding a (restricted) practising certificate:

After three months of your traineeship you are entitled to seek admission as a solicitor.

You can appear on behalf of clients in any matter in the Sheriff or Justice of the Peace Courts, although it is unwise to appear in a Solemn case in the Sheriff Court at such an early stage in your career. You can also grant Legal Advice and Assistance, but you cannot be the nominated solicitor on a Legal Aid Certificate - either Civil or Criminal.

You can sign any document which requires to be signed by a solicitor. In particular, you can sign Court (and similar) documents, designating yourself as

“Solicitor”. However, in order to ensure that clients, in particular, understand that you are still training, we would ask that you continue to identify yourself as a “Trainee Solicitor” in all correspondence and on business cards.

7. Specific reference to Mental Health Tribunals is made by The Law Society of Scotland:

Adults with Incapacity (AWI) cases and proceedings before the Mental Health Tribunal for Scotland (MHTS) can be complex, nuanced and require an approach which reflects the seriousness of these proceedings. Training managers should also ensure that when dealing with these matters trainee solicitors are appreciative of the needs, complexity, and vulnerability of clients with mental health and disability issues as well as legal matters.

Trainee solicitors are not normally permitted to observe more than four hearings at the MHTS in a 12 month period. We would recommend to training managers that trainees should observe in the MHTS prior to appearance regardless of whether they meet, or have met, the wider sitting in requirements for admission as a solicitor. We would recommend training managers consider specialist preparation and training in these areas.

And separately:

We think that a trainee without a practising certificate should not seek to represent a patient at a mental health tribunal unless they have the appropriate knowledge and experience.

Guidance

8. To assist tribunal members, I provide the following guidance:
 - i. Tribunals should ensure they are clear regarding the status and designation of the relevant person’s representative;
 - ii. Tribunals should record in the determination, for the avoidance of doubt, whether the relevant person has been represented by a lay representative (which would include a first year trainee who has not been admitted to the Roll) or by a solicitor (which would include a person who has been admitted as a solicitor in terms of Part 6 of the Admission Regulations and has been issued with a restricted practising certificate).

Laura Dunlop KC
President

Revised May 2025