GUIDANCE TO TRIBUNAL MEMBERS NO. 1/2026

Mental Health Tribunals involving patients with an intellectual (learning) disability, autism spectrum disorder or other neurodivergence

Purpose of this Guidance

1. This guidance applies to any hearings involving a person who has an intellectual disability, autism spectrum disorder or any other form of neurodivergence and is subject to proceedings under the Mental Health (Care and Treatment) Act 2003.
2. The purpose of this guidance is to provide a framework aimed at ensuring that such patients are able to participate as fully as they wish at tribunal hearings and that the stress of such proceedings is minimised as much as is possible.

Meanings

3. In this guidance, these words have the following meanings:

the 2005 Rules	all rule references are to the Mental Health Tribunal for Scotland (Practice and Procedure) (No 2) Rules 2005

Before the Hearing

General

4. It is worth bearing in mind that:
    - a tribunal hearing is a very complex communication environment
    - each patient's ability to understand information and to communicate will vary, and
    - as with many patients who attend tribunal hearings, there will be some systemic anxiety which may manifest in different ways, including poorer ability to listen, maintain focus, process language and answer questions.

Preparation at home

5. To ensure a hearing remains patient-centred, planning is essential. This planning should start when members prepare for the hearing and read the tribunal papers.
6. As with all tribunal cases, enabling the patient's communication at the hearing is a key consideration. Communication of such patients is likely to be more complex and unique. Members should ascertain a patient's best means of communication from the tribunal papers.
7. There are various communications aids or augmentative and alternative ('AAC') devices which may be used to supplement or replace typical speech and writing when these methods are impaired. AAC can be used for both expression and

comprehension. AAC systems are divided broadly into two main types – unaided and aided communication.

8. Unaided communication does not require additional equipment and includes unconscious communication, such as body language or deliberate communication, like gesturing. Other examples of unaided systems include vocalisations and signing systems such as British Sign Language ('BSL'), Makaton (a combination of speech, signs and symbols - About Makaton), and Signalong.

9. Aided communication uses equipment which can be paper based or electronic, such as a tablet. These include a communication board or book; social stories; symbols; and PECS (picture exchange communication system -The Picture Exchange Communication System (PECS).

10. The following documents should provide some helpful information about the patient's communication – the application; the care plan or CPA document; a speech and language therapist's report; a Behaviour Management Plan or Positive Behaviour Support Plan ('PBS'), including a 'Traffic Light document'; any Communication Guidelines; a person-centred activity plan; or report from another professional, such as a psychologist or occupational therapist. If members notice a reference to such a document in the papers but it is not included in the papers, they should contact the caseworker by email asking for a copy of this document to be obtained and uploaded for the members.

11. The tribunal papers may show that the patient would benefit from the support of a relative or carer during the hearing. This supporter may also be able to assist the patient with their communication.

Pre-hearing discussion

12. Practical arrangements for the patient's participation in the hearing should be considered by members and discussed in the tribunal's pre-hearing discussion. This should include the following:

Who needs to be present in the hearing and when

13. It is important to identify at the pre-hearing stage exactly who the parties, relevant persons, witnesses and attendees are. Be aware that the more people at the hearing, the higher levels of stress the patient will experience. Too many people at the hearing may make understanding more difficult. The tribunal has a duty to mitigate the effects of this and to discharge its function in the manner that best secures, amongst other things, meaningful patient participation.

14. During the pre-hearing stage, members should decide who should be present and when, with the aiming of keeping the number of people in the hearing at any one time to a minimum. Parties have a right to be present throughout a hearing whereas a witness who is not a party can be asked to leave after giving evidence. Rule 63(7) provides the power for the tribunal to exclude from the hearing any person who is to appear as a witness in the case until such time as they give evidence, if they consider that it is fair in all the circumstances to do so.

15. It is likely to be unhelpful for a patient to have people attending the hearing by various different means, for example a witness attending by telephone or video-conference. For any participant wishing not to attend by the same means as the patient, consideration should be given to any impact this may have on the patient's ability to participate.

16. It is expected that a nurse escort will attend a hearing with a patient who is in hospital at the time of their hearing. Please see https://www.mhtscotland.gov.uk/mhts/files/202401GuidanceEscortnurses1.pdf.

How the tribunal should manage hearing to maximise patient's participation

17. Consider how best the tribunal may work as a team to maximise the communication for the patient and ensure the patient remains at the centre of the decision-making process. For example, should one member only communicate directly with the patient? Are you able to pre-agree in advance any questions for the patient?

18. Bear in mind the tribunal's ability to be flexible in how the hearing is conducted, in terms of rule 63(2) of the 2005 Rules. For example, the requirement under rule 63(1) to explain the manner and order of proceedings and the proposed procedure may need to be modified, perhaps extensively, if that best meets the needs of the patient. The hearing could be broken down into different stages and a simple explanation provided at the start of each stage.

19. One of the members should take responsibility for remaining alert throughout the hearing to the patient's need for a break, as described in paragraph 34 below.

Meeting the patient and any carers or supporters before the start of the hearing

20. If the hearing is in-person, and the patient is in attendance, the convener should introduce themselves to the patient in the waiting area before the hearing starts. The patient may also want to meet the other tribunal members and/or see the hearing room before the start of the hearing and, if this is the case, the convener or the clerk will bring the patient into the hearing room. If the patient wishes to be accompanied they should be allowed to bring the person of their choice.

21. The convener should ascertain at this stage how the patient wishes to be addressed during the hearing and their preferred pronoun.

22. The convener or the clerk should be open to hearing practical advice or suggestions in relation to the patient's participation in the hearing and/or communication with them from family members, other supporters of the patient or professionals.

The patient and the hearing room

23. The members should consider how best the hearing room should be set up for the patient and, if necessary, alter the seating arrangements to assist the patient. For example, the patient may wish to sit near the exit or at least be sure where the exit is.

24. The patient may find it helpful to choose where they would like to sit in advance of the hearing starting. If this is the case the clerk should take a note of this and ensure that the tribunal are aware. It may be helpful for the patient to enter the hearing room and take their seat before other participants.

25. The patient may prefer to be in the hearing room before the tribunal members attend. If so, the clerk will inform the tribunal members once the patient is settled in the hearing room before the tribunal members and other participants enter the hearing room.

26. The patient may require the hearing room to be a space with as little sensory overload as possible. Members should ensure that distractions are minimised and any background noise is as low possible.

During the Hearing

Starting on time

27. Generally, the hearing should commence on time, or as close to the start time as possible to minimise any stress caused by waiting. There may be occasions where this is not appropriate, for example if the patient is attending but is delayed.

Communication with the patient

28. Speak directly to the patient and not to their carers or relatives instead. Bear in mind unconscious bias and take care not to make wrong assumptions about a person's ability to communicate. Assume the patient has the ability to understand unless told otherwise.

29. Be aware that there may be disparity between a patient's receptive and expressive communication i.e. between their ability to understand what is said and their ability to talk and communicate their thoughts and wishes.

30. Effective communication will require patience, clear language, visual support and attention to non-verbal cues to ensure understanding and inclusion. Anxiety about the hearing may detrimentally affect the patient's ability to listen, focus, process and answer.

31. **Do:**

- use a calm tone
- try to maintain eye contact
- pay attention to body language, facial expressions and gestures
- use simple, everyday words
- use short sentences
- ask open-ended questions. If appropriate or necessary, check understanding by repeating or summarising what the patient has said.

- be patient - allow the patient plenty of time to hear, process, understand and, if appropriate, to reply; avoid rushing or finishing sentences for the patient
- repeat questions, if necessary
- allow the patient as much time as needed to speak without interruption
- allow the patient to communicate with the use of communication aids or with the assistance of their relative, carer or supporter.

32. **Don't:**

- be afraid to ask the patient to repeat what they have said
- pretend to understand
- use legal terms, acronyms or abbreviations.

33. The Appendix contains links to further helpful advice and tips about communication.

Planned and regular breaks

34. Do not rely on a patient to ask for a break or say that they need one. A patient is likely to struggle to ask for a break. There may be specific factors that impact the patient's concentration. Therefore planned, regular breaks are beneficial.

35. It is also important to state at the start of the proceedings that breaks will be provided where necessary. Members should be alert to the need for breaks through verbal and nonverbal communication.

36. It may also be helpful to state to the patient that breaks will be taken after certain evidence has been heard.

37. It is important when planned breaks are agreed that these take place at the agreed time.

38. If the patient has traffic light cards or similar to highlight to the tribunal that they are becoming anxious and/or a break in proceedings is needed, the members will be content for these to be used by the patient, or by anyone supporting them.

Use of Sensory Items

39. A patient may best be able to participate when making use of sensory aids such as fidget toys. The use of sensory items can improve concentration and some patients find these helpful. A patient should be made aware that they are free to use sensory items throughout the hearing if they have some with them.

Use of Written Evidence

40. Bear in mind that the purpose of the hearing is not to rehearse evidence which is already before the tribunal in written form. Where information is already produced within written documentation submitted to the tribunal it does not require to be repeated in detail. Ensure the oral evidence is focussed and relevant.

The Views of the patient

41. In discharging duties under the 2003 Act, the tribunal should have regard to the views of the patient. Patients have the right to be heard directly, or through a representative or an appropriate body in any judicial proceedings affecting them. It is good practice to ask a patient when and how they wish to give their views.

42. There may be limited circumstances where it is not possible to obtain the views of a patient, or they may not wish to express a view. But hearing the patient is important, and tribunals should make every effort to do so, in whatever way works best. They should try to overcome communication barriers, taking all necessary steps to obtain the patient's views in a way that is appropriate to their understanding, wellbeing, choice and needs. Involvement of advocacy may be crucial in this respect. In some situations, the views of the patient will be conveyed by an advocacy worker rather than the patient.

After the Hearing

The decision

43. Wherever possible, the content of the written decision should be appropriate to the level of understanding of the patient, so that they have the opportunity to consider it as fully as possible. The use of plain English is recommended - Plain English free guides.

Laura Dunlop KC
President

APPENDIX

The Scottish Assembly in association with the Scottish Government has created a short film of top ten tips for professionals who are supporting those with a learning disability or autism spectrum disorder, ‘Top Ten Tips’

Your guide to communicating with people with a learning disability | Mencap