

## The Scottish Government's Proposal for a New Tribunal System for Scotland

### Response from the ADSW Mental Health Subgroup

**Question 1:** Should the distinctive tribunals system be capable of reconsidering decisions and hearing appeals and, if so, what grounds of appeal from the First tier Tribunal to the Upper tier should be allowed?

**Comments:**

The proposed procedure allowing reconsideration of decisions and how appeals will operate within the proposed system is unclear. There is a suggestion that the rules of procedure can be amended as required but the drivers for change are unclear as to whether this may be in response to organisational efficiencies or improving the service to the patient/service user which may not be compliant with existing mental health and human rights related legislation.

**Question 2:** Which functions of judicial leadership in the tribunals system should be exercised by the Lord President, the President of Scottish Tribunals and the Chamber Presidents, respectively?

**Comments:**

There are concerns that the expertise, flexibility, and sensitivity which exists within the current MHTS system may be significantly diluted within an integrated system without the creation of a specific mental health chamber.

**Question 3:** Should any restrictions be placed on the ability of an appointed member to sit and hear cases in a chamber other than the chamber of their primary assignment? If so, what restrictions?

**Comments:**

The complexity and vulnerability of adults with mental disorder, particularly when considered against the powers at a tribunal's disposal in relation to the deprivation of liberty would suggest the restriction to primary assignment would be more in keeping with the Millan principles.

**Question 4:** Is this the most appropriate option for judicial remuneration and if not, what other options are there to remunerate fairly the judicial members of the Scottish tribunal system?

**Comments:**

There are concerns that a remuneration system which compromises that in existence within the MHTS could in fact compromise the functionality of MHTS processes.

**Question 5:** How should procedural rules for the new tribunal system be made?

**Comments:**

The proposed procedure allowing reconsideration of decisions and how appeals will operate within the proposed system is unclear. There is a suggestion that the rules of procedure can be amended as required but the drivers for change are unclear as to whether this may be in response to organisational efficiencies or improving the service to the patient/service user which may not be compliant with existing mental health and human rights related legislation.

**Question 6:** What issues/opportunities do the proposed changes raise for people with protected characteristics (e.g. age, disability, gender reassignment, race, religion or belief, sex and sexual orientation) and what action could be taken to mitigate the impact of any negative issues or to capitalise upon opportunities?

**Comments:**

There are clearly undeniable organisational and structural efficiencies within the proposed reform of the tribunals system by bringing separate tribunals into a unified structure which should facilitate cross fertilisation of ideas and expertise.

This however must be balanced with the protection of the rights of individuals with mental health problems in the context of the Millan principles which underpin the existing specialist MHTS which is rights based, recovery focussed and patient/service user centred. Patient/service user participation and involvement facilitated with appropriate specialist representation as appropriate, remain a key component in the decision making process of the current MHTS in dealing with the potential deprivation of liberty and delivery of appropriate care and treatment.

The MHTS has made significant progress in the flexibility it offers in the use of specialised venues which are accessible to the patient/service user and named person and conducive to the continuation of treatment without interruption. The MHTS has demonstrated sensitivity to the needs of the mental health population and has striven to be more inquisitorial rather than adversarial in its processes, securing and respecting specialist representation and building on the specialist knowledge on mental disorder and related legislation. The existing MHTS provides stringent recruitment and selection processes for panel members and the ongoing provision of relevant specialist training.

There are concerns that an integrated tribunal system may carry with it the potential to overlook the complexity and vulnerability of adults with mental disorder particularly when considered against the powers at tribunal's disposal in relation to the deprivation of liberty

There are concerns that without the creation of a mental health chamber within the proposed structure, many of the distinct attributes and ongoing benefits and developments of the existing MHTS may be diluted to the detriment of the patient/ service user.

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