

Tribunal Procedure Committee

Consultation on possible amendments to the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 regarding proposed changes to the way that the First-tier Tribunal lists hearings in relation to applications by patients detained under section 2 of the Mental Health Act 1983 (MHA)

June 21 2022

Introduction

1. The Tribunal Procedure Committee (TPC) is responsible for making Tribunal Procedure Rules for the First-tier Tribunal and the Upper Tribunal, each of which is divided into Chambers. The First-tier Tribunal replaced a number of tribunals in 2008 including the Health, Education and Social Care Chamber (HESC). The Mental Health Tribunal (MHT) falls within HESC. Further information on the Tribunals can be found on the HMCTS website:
<http://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about#ourtribunals>
2. Specifically, section 22(4) of the Tribunals, Courts and Enforcement Act 2007 requires that the TPC's rule-making powers be exercised with a view to securing: (a) that, in proceedings before the First-tier Tribunal and Upper Tribunal, justice is done; (b) that the tribunal system is accessible and fair; (c) that proceedings before the First-tier Tribunal or Upper Tribunal are handled quickly and efficiently, (d) that the rules are both simple and simply expressed; and (e) that the rules, where appropriate, confer on members of the First-tier Tribunal, or Upper Tribunal, responsibility for ensuring the proceedings before the tribunal are handled quickly and efficiently. Further information on the TPC can be found at our website:
<http://www.gov.uk/government/organisations/tribunal-procedure-committee>
3. The TPC also has due regard to the public-sector equality duty contained in section 149 of the Equality Act 2010 when making rules.
4. This consultation seeks further views on a proposal to change the timescale (set out in rule 37 of The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 ("the HESC Rules")) within which the MHT must list cases under s.2 of the MHA for hearing, from 7 to 10 days.

Background to the Proposed Changes

5. In 2020 the TPC carried out a Consultation on the change now proposed and its response (which includes the proposed change) is attached and should be read in conjunction with this document. It will be seen that the respondents to the Consultation were overwhelmingly in favour of the proposal.

6. Following that Consultation, the TPC decided: -

“Since the commencement of this consultation process the country has entered a period of lock down due to the coronavirus pandemic. As a result, the TPC made emergency changes to the Tribunal Procedure Rules on a temporary basis by the Tribunal Procedure (Coronavirus)(Amendment) Rules 2020, to allow cases to be dealt with across all jurisdictions during the pandemic. These amendments included, by paragraph 2(5), the change to rule 37 of the HESC Rules proposed in this consultation. That obviously could not have been foreseen when this consultation was launched. However, in this situation, the TPC considers it appropriate to delay making a decision on a permanent change so that the effects of the temporary change can be monitored and the results assessed before it makes a final decision. Accordingly, the TPC will return to this matter in due course”.

7. The temporary change to rule 37 will expire on 25 September 2022. The TPC has now been asked to implement the proposed rule change on a permanent basis by the Chamber President and Deputy Chamber President. The request is supported by the following information from the Deputy Chamber President: -

“Update

Before the Rules were amended temporarily during Covid (the Tribunal Procedure Coronavirus Amendment Rules, specifically Rule 5A(5)), and we were hearing cases in person, we achieved 73.1% of first listing of section 2 cases within 7 days. We very rarely list outside of 10 days and I am told there were only a few cases. We managed to list 99.9% of cases within 10 days.

When the Tribunal Procedure (Coronavirus) (Amendment) Rules 2020 extended our ability to list section 2 cases to 10 days we still listed 99.9% of cases within 10 days.

During 2020 to 2021 we only managed to list half of our cases within 7 days but this was due to the significant pressures of Covid, reverting to video hearings in all cases and pressures on staff.

During 2021 – 2022 despite being able to list within 10 days we worked hard to list within 7 days and achieved listing within 7 days in 84.8% of cases that year. There were times when the percentage dipped such as when we reintroduced PHEs as this had an effect on the listing of all cases. However, that was short lived and we still managed the 84.8 % listing within 7 days despite challenges. Again, listing section 2 cases within 10 days was 99.9%

I am aware the concern was that if the Rules were changed to allow 10 days to list that this would extend the listing even further. However, we have shown that this is not the case.

We are planning for a return to face-to-face hearings in the autumn in cases where the patient chooses this form of hearing. Although we will still aim to list section 2 cases within 7 days it would significantly assist if we had the Rules changed to allow listing within 10 days as requested in our previous paper.

I want to reassure you that our intention in requesting this change is that we want to ensure that patients' rights are protected, that there is no unnecessary distress to patients caused by the administrative process and to ensure that cases can be considered quickly and fairly. For a patient having the hearing cancelled that we have listed in 7 days as we have not been able to find a panel or we have enforced a date on the parties is distressing for patients. Having certainty about which date the Tribunal will hear your case is the best way to lessen the distress for patients who are asking for their liberty to be restored".

Consultation Question

8. Do you agree that the proposed change to rule 37 of the HESC Rules, to permit section 2 MHA cases to be listed within 10 days of the date on which the MHT receives the application notice, should be made permanent? If not, why not?
9. When responding, please keep in mind that the rules should be simple and easy to follow. They should not impose unnecessary requirements or unnecessarily repeat requirements that are contained elsewhere. The TPC must secure the objectives set out in section 22(4) of the TCEA and it aims to do so in a consistent manner across all jurisdictions. Where your views are based upon practical problems which do or could arise, the TPC would be assisted by reference to relevant evidence.
10. In general, the TPC regards consultation responses as public documents. They may be published by the TPC and referred to in its Reply to the Consultation.
11. If you would prefer your response to be kept confidential, you should be aware that information you provide, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 and the Data Protection Act 2018.
12. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, by itself, be regarded as binding on the TPC.

How to Respond

Please reply using the response questionnaire template.

Please send your response by **16 August 2022** to:

The Secretary, Tribunal Procedure Committee
Post point 10.18, 102 Petty France
London SW1H 9AJ

Email: tpcsecretariat@justice.gsi.gov.uk

Fax: 020 3334 2233

Extra copies of this consultation document can be obtained using the above contact details or online at: <http://www.justice.gov.uk/about/moj/advisory-groups/tribunal-procedure-committee/ts-committee-open-consultations>