



Guidance for the observation of tribunal hearings

First-tier Tribunal – Health, Education and Social Care Chamber (Mental Health)

This guidance deals with the observation of mental health tribunal hearings, which are usually held in private, and it explains procedures for the appropriate handling of confidential reports and other documentary evidence.

The Tribunal Procedure Rules 2008

1. Rule 38(1) provides that all hearings must be held in private unless the tribunal considers that it is in the interests of justice for the hearing to be held in public. Rule 14(7) also provides that, unless the tribunal gives a direction to the contrary, information about mental health cases and the names of any persons concerned in such cases must not be made public.
2. Except in relation to the induction or training of judicial office holders in the mental health jurisdiction, appraisals, or work shadowing approved by the Judicial Office, Chamber President or Deputy Chamber President, the strong presumption in all cases is in favour of privacy and confidentiality.
3. Individual tribunals should not exercise powers to hold proceedings in public, or disclose any information about mental health cases to others outside the jurisdiction (including to judges in other jurisdictions), without first consulting the Chamber President or Deputy Chamber President's office.
4. Additionally, except in relation to the induction or training of judicial office holders in the mental health jurisdiction, appraisals, or work shadowing approved by the Judicial Office, Chamber President or Deputy Chamber President, the views of the patient and/or the patient's representative must be sought before any observations are permitted or before any disclosure of relevant confidential information takes place. Any objections from the patient and/or the patient's representative must be respected.

Categories of observers

Judicial Office Holder – Induction or Training, or Approved¹ Work Shadowing

5. It is essential anyone appointed as a judicial office holder within the mental health jurisdiction should observe a number of tribunal hearings as part of their induction or training before they are entitled to sit. In addition, the Judicial Office may authorise a lawyer to work-shadow a judge, or the Chamber President or Deputy Chamber President may authorise a prospective Medical Member or Specialist Lay Member to work shadow a panel member². These observations have to be facilitated and, subject to the presiding judge and the booking and listing team being made aware in advance, these guidelines apply:
6. The presence of the observer at the hearing is not subject to the consent of the patient, witnesses, individual tribunal members, or any other party. However, if the presence of the observer causes a patient to feel particular discomfort or distress, the observer and the tribunal judge (having consulted colleagues) may agree that the observation should not continue.
7. The observing judicial office holder may receive copies of the reports or other documents before the tribunal (either in advance of, or at, the hearing) on the strict understanding that the reports and documents should not be retained, and the contents must not be made public under any circumstances.
8. The tribunal judge should agree with the observer as to how the observer will be introduced to the parties. The observer should sit where the tribunal judge (having consulted colleagues) feels it is appropriate, and should adopt as passive a role as is possible having regard to the lay-out of the hearing room and the proximity of the parties and witnesses.
9. The observer must not intervene in any way during the hearing and is entitled to make such notes as are appropriate for the purposes of the induction or training process. Such notes must not be made public and must be maintained as strictly confidential, and in a form that the patient cannot possibly be identified.
10. The observer is entitled to be present during the tribunal's deliberations, but shall take no part whatsoever in the deliberations.

¹ & ² ONLY the Judicial Office, Chamber President or the Deputy Chamber President may authorise judicial work shadowing.

Appraisers

11. Appraisals have to be facilitated although the tribunal judge and the booking and listing team should be made aware in advance. In the sense that an appraiser is an observer, the role and functions of an appraiser attending the hearing to appraise one of the members are set out in the Appraisers' Guide. The guidance set out above also applies, as appropriate.

Other persons seeking to observe a tribunal hearing

12. It is impossible to attempt to list all the categories of persons wishing to observe a tribunal hearing. However, most observers are trainees in relation to professional mental health work, including clinical, nursing, social work and legal trainees. However, please note that the Chamber President or Deputy Chamber President are very unlikely to give permission to persons under 18 years of age, school students, or others without a clear professional or training interest in mental health work. The Chamber President or Deputy Chamber President also limit the numbers of observers per hearing (usually no more than one) and do not usually permit a trainee to observe more than 4 hearings in all.

Advance Permission

13. Except in relation to the induction or training of judicial office holders in the mental health jurisdiction, appraisals, or work shadowing approved by the Judicial Office, Chamber President or Deputy Chamber President, all observation requests should be forwarded for decision to the Chamber President or Deputy Chamber President's office. Requests should be made by email to:

presidentsoffice.HESC@justice.gov.uk

14. The name of the observer, their age (if under 21), and their reason for seeking to observe must be given, along with the precise details of the case to be observed, and when/where it is listed to be heard.
15. Except in Section 2 cases, observation requests should be made at least 5 working days in advance. Even in Section 2 cases, every effort should be made to make a timely request. If the matter is urgent, the Chamber President or Deputy Chamber President's office will endeavour to deal with the matter speedily.
16. If a representative, hospital staff member or other professional appears at a hearing with a student or observer without having first sought advance permission from the Chamber President or Deputy Chamber President's office, and without good reason for not having sought advance permission, the tribunal will be very reluctant to undermine this Guidance by nevertheless granting permission to observe. In any event, in all such cases, the guidance set out below must be followed.

17. Even if the Chamber President or Deputy Chamber President's office indicates that there is no objection to the presence of the particular observer for the reasons given in support of the request - the patient, witnesses, tribunal members and other parties must be asked for their views before the observation may take place.
18. **In the event that permission for observation is granted, the following guidance shall apply³**
 - a. The reports and any other documents before the tribunal must not be disclosed at any time to the observer.
 - b. The tribunal judge will advise the observer in private that the proceedings before the tribunal are confidential and that information about the proceedings and the names of any persons concerned in the proceedings must not, under any circumstances, be made public by the observer.
 - c. The tribunal judge should agree with the observer as to how the observer will be introduced to the parties.
 - d. The observer should sit where the tribunal judge (having consulted with colleagues) feels it is appropriate and should adopt as passive a role as is possible having regard to the lay-out of the hearing room and the proximity of the parties and witnesses.
 - e. The observer shall not intervene in any way during the hearing.
 - f. The observer must not take any notes during the hearing.
 - g. The observer is not entitled to be present during the tribunal's deliberations either before or after the hearing itself, and should withdraw, along with the parties and witnesses, from the hearing room at all times when the panel members are discussing the case together.

**H.H. Judge P. Sycamore
Chamber President**

**Judge M. Hinchliffe
Deputy Chamber President**

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³ Except in relation to the induction or training of judicial office holders in the mental health jurisdiction, appraisals, or work shadowing approved by the Judicial Office, Chamber President or Deputy Chamber President, when Paragraphs 7 – 10 apply.