



Mental Health Commission

Quality Assurance Directions

Legal Representatives

Mission

The Mental Health Commission is committed to fostering and promoting high standards in the delivery of mental health services, to promoting and enhancing the well-being of all people with a mental illness and ensuring that the interests of those involuntarily admitted under the provisions of the Mental Health Act 2001 are protected.

MAY 2008

OVERVIEW

Introduction

The Mental Health Commission (MHC) has statutory responsibility for:

- the provision of a Mental Health Legal Aid Scheme (“the Scheme”);
- the selection of solicitors to participate in the Panel of legal representatives for the Scheme;
- the assignment of legal representatives in individual cases;
- the management and evaluation of the Scheme; and
- the payment of fees to legal representatives.

The MHC has an obligation to ensure that clients receive effective and professional legal representation. In this regard, the MHC incorporated provisions in the Scheme and in the Terms and Conditions for legal representatives regarding the quality of the service to be provided to clients.

To ensure that a quality service is being provided, the MHC proposes to carry out a number of activities including:

- issuing Best Practice Directions for legal representatives;
- reviewing case files;
- undertaking satisfaction surveys of clients provided with legal representation; and
- implementing a formal complaints procedure.

This document looks at a number of these issues as follows:

Best Practice Directions - Best Practice Directions (“Directions”) are there to assist the legal representatives in acting for the client and to assist the MHC to ensure the quality of the service being provided to clients.

File reviews - Files in respect of cases assigned by the MHC to legal representatives may be reviewed on an on-going basis by the MHC, or by a person(s) nominated by the MHC.

Satisfaction surveys - The MHC will write to clients from time to time enclosing a survey to be returned to the MHC. A copy of a sample survey is attached at Appendix A.

BEST PRACTICE DIRECTIONS

1. Representation before a Mental Health Tribunal

Legal representatives and the MHC have an obligation to ensure that proper standards are maintained and that an effective, efficient and professional legal service is provided to clients in mental health cases.

These Directions are intended to assist legal representatives on the MHC's panel to represent clients before a Mental Health Tribunal in accordance with section 17 of the Mental Health Act 2001. The Directions have been prepared by the MHC and a copy has been provided to the Law Society for information. They seek to ensure that clients receive a service that best serves the interests of the client; to place before the tribunal any material or submissions that may be relevant to the issues that are for consideration by the tribunal, and to ensure that the client's views are known to the tribunal.

The Terms and Conditions of the Scheme provide, *inter alia*, that legal representatives are required to generally adhere to Directions issued by the MHC to ensure that legal representatives maintain the highest possible standards in the preparation, presentation and conduct of their client's case before a tribunal.

These Directions are not absolute and what is being sought is general adherence. Legal representatives are not prevented from taking immediate and decisive action where necessary and it may also be necessary to depart from the Directions from time to time if professional rules or duties so require in the particular circumstances of the case.

2. Accepting Instructions

A legal representative should not agree to act for a client if he or she knows that he / she will be unable to carry out the instructions of the client adequately or if he or she will not have time to give the necessary attention to the case (see page 8 of the Guide to Professional Conduct of Solicitors in Ireland – 2nd Edition).

3. The Best Interests Principle

Any decision made on behalf of a client who lacks capacity, or has limited capacity and as a result has difficulty giving instructions, must be made in that person's best interest and having regard, where appropriate, to any decisions or opinions he or she previously expressed (where known). Where there is uncertainty about what the best interests of the client are, the legal representative should follow a structured approach in seeking to ascertain them.

The following are some guidelines that should be taken to ascertain the best interests of a person who lacks capacity and has difficulty giving instructions:

- encourage participation;
- seek to ascertain any views/opinions expressed by the client prior to the onset of incapacity/limited capacity;
- find out the client's views; past and present wishes; and any beliefs and values (moral, religious, political);
- assess whether the client may regain capacity; consult others if appropriate. (Do not assume close family support); and
- avoid making assumptions about the best interests on the basis of the client's age, condition or behaviour.

A record of the process undertaken to establish the best interests of that person should be kept setting out:

- how the decision was reached;

- the factors that were taken into account; and
- the reasons for reaching the decision.

A best interests approach to client representation could properly incorporate:

- a requirement to always test the evidence;
- a requirement to always request the best evidence available;
- representing the capable client in accordance with his / her instructions generally and insofar as that course best protects the autonomy of the patient; and
- representing the incapable client in accordance with any instructions generally and insofar as that course best protects the autonomy of the patient; and by adopting clear principles for example, the entitlement to be unwise, and a less or more restrictive approach to determining best interests.

4. General case/file management

The Legal representative's file and papers are an important record of their contact with the client and their preparation for the case. Files should be maintained in a structured manner and should include:

- clear and concise notes and records of consultations, instructions, and of any legal advice provided to the client;
- attendance notes and correspondence filed chronologically;
- a record of what transpired at Mental Health Tribunal and any Court hearings; and
- psychiatric and other reports kept separately, for example, in an envelope, on the file with strictly limited access.

5. Legal service delivery

The legal service provided will generally involve the following key stages:

Key stage 1 - preparatory work/research

Key stage 2 - taking instructions from the client consultation

Key stage 3 - preparation for and attendance at the tribunal hearing

Key stage 4 - the decision and follow up work

Key stage 1 - preparatory work/research

On acceptance of a request from the MHC to take on a case, a legal representative must:

- review forms to assist in obtaining the facts and ensure compliance with the provisions of the Act and fair procedures;
- contact the approved centre to which the client is involuntarily admitted and arrange a consultation with the client as soon as possible and preferably within 2 working days of receipt of the papers.

Key stage 2 - taking instructions from the client

When meeting the client the legal representative should:

- seek to hold a consultation which respects the client's privacy, to ensure that the arrangements are made at convenient times with prior contact with the approved centre, and providing appropriate identification on attendance at the centre;
- obtain consent from client to access medical records at approved centre;
- ascertain the facts and obtain corroborating evidence of these facts, either from the client's medical records or by interviewing witnesses, if necessary;
- identify anyone who may have any legal authority in the client's affairs;
- obtain consent from client to view his/her medical records and if this is not forthcoming, notify the tribunal;
- advise the client in plain language breaking down the information in easy to understand points, the role of the legal representative and the purpose of the tribunal;
- ascertain the views of the client so as to be in a position to represent his / her views to the tribunal;
- act in the best interests of the client at all times which may include making an assessment of the likelihood of the client being discharged or detained and advising the client accordingly (but noting that the client has the right not to accept that advice);

- in the event that a client has communication difficulties due to their mental disorder, take additional time to ensure the client is well informed and adequately represented;
- ensure that the consultation or consultations that take place with a client are sufficient for the purpose of taking adequate instructions;
- where capacity to give instructions is in doubt, assess whether the person may regain capacity; and
- if capacity is absent refer to best interests principle as set out above.

Key Stage 3 - preparation for and representing a client before a Mental Health Tribunal

Legal representatives should approach the hearing in a structured manner and should:

- review the procedures to ensure that they were correctly followed in relation to the specific order being considered by the tribunal;
- review expert reports including the independent medical report arranged by the MHC, in order to identify the client's current medical diagnosis and the past medical history;
- research relevant case law, if necessary; if a particular judgment is relied upon a copy should be made available to the tribunal;
- have regard to any case law when advocating on behalf of the client;
- consider any other issues relevant to the particular situation;
- put the facts/evidence before the tribunal and, in particular, the instructions of the client;
- approach the tribunal hearing in a non adversarial manner, in accordance with the principles of the best interest of the client as set out above; in a manner that seeks to preserve the fundamental ethos and principles underpinning the work of the Mental Health Commission, and which seeks to adopt a non-confrontational approach to dealing with witnesses; and
- seek to ensure that the hearing takes place in an atmosphere that preserves the dignity of the client and the other participants in the hearing.

Key stage 4 - the decision and any follow up work

Following the Tribunal's decision the legal representative should:

- be available to discuss the decision with the client on the day of the tribunal and ensure that the client is aware of its consequences;
- in the event that the decision is that the order being reviewed is affirmed by the tribunal, consider and advise the client and the MHC whether or not, in his or her opinion, there are any grounds for an appeal to the Circuit Court;
- where possible, note the approximate date of a renewal hearing and advise the client of the review;
- in the event that the decision of the mental health tribunal is that the order is revoked and that the client can leave the approved centre, advise the client of his or her entitlement to leave the approved centre; or to remain as a voluntary patient;
- provide such other advice as is appropriate in the particular circumstances of the case;
- consider any technical, legal or procedural issues that need to be addressed; furnish an invoice for fees, to the MHC for payment;
- if the matter is at an end, i.e. not applying for legal aid for the Circuit or High Court, close the file, and
- if the client is applying for legal aid an application should be made and services provided in accordance with the key stages set out above, suitably amended to take account of the jurisdictional issue.

General

In the event that the client does not wish to be represented by the legal representative at the tribunal, the legal representative should remain at the hearing, offer assistance to the tribunal if necessary and document the hearing, subject to the client's views.

If requested to do so by the MHC the legal representative will forward the file, by arrangement with the MHC, to a legal representative who has been assigned to take over the matter.

FILE REVIEWS

Background

Having regard to the need to ensure that a professional service is provided by legal representatives to clients, the MHC is now putting in place, with effect from 1st June a system of case file reviews. The reviews will be benchmarked against the Directions.

Reviewers

File reviewers will be practising solicitors/barristers with not less than five years experience and will be selected and appointed by the MHC. Once appointed, the file reviewers will be independent in carrying out their function. Reviewers will be required to declare any conflicts of interest, in individual cases or in relation to individual legal representatives.

File review methodology

Primary responsibility for the provision of a professional and timely service lies with the individual legal representative to whom the case is assigned. The primary responsibility for ensuring the overall quality of legal representation lies with the Director of Mental Health Tribunal (“the Director”). To assure performance to the satisfaction of the Director, reviews of the documented aspects of the legal service provided will be carried out in an appropriate manner, as set out in this document and having regard to the requirements of effective oversight and client/solicitor confidentiality.

1. For the purpose of this structured system of file reviews, ‘file review’ means that a reviewer, as set out below, shall be entitled to have sight of all such necessary documents as to enable that reviewer carry out the review process.
2. The review will take place at such times as the MHC shall determine.
3. Reviews will be carried out on the basis of a checklist, benchmarked against the Directions, albeit having regard to the fact that the Directions are general guidelines and are subject to the exercise by a solicitor of his or her professional judgement in any individual case.
4. A number of files, selected at random, will be reviewed.

5. The client's consent to the review will be obtained prior to the file being reviewed. If the patient does not consent, it is not possible for a review to take place.
6. A written report will be prepared on the reviews and a copy furnished to the legal representative.
7. If a reviewer considers that a file review identifies areas of concern, the reviewer will identify those concerns to the Director and to the legal representative and every effort should be made by the legal representative to address those concerns within an agreed timeframe. (Such concerns could include, inter alia, a failure to engage and communicate with the client or insufficient preparation). The reviewer shall monitor on a regular basis whether the concerns are being addressed by the legal representative. If the concerns are not being addressed, the legal representative will be so informed in writing and the matter will be brought to the attention of the Director. It will be a matter for the Director, in consultation with the reviewer, to determine what further action is required.
8. In the event that the file reviews identify areas of major concern, the reviewer will identify those concerns to the legal representative in writing and the concerns will be brought to the attention of the Director. The Director, in consultation with the reviewer, will determine what needs to be done which could include a more comprehensive review of case files. The legal representative the subject of the review, will be notified in writing in advance of any further review and any other action to be taken.
9. Fair procedures will apply at all stages of the process (which will include giving the legal representative an opportunity to reply to the concerns raised).

COMPLAINTS PROCEDURE

Introduction

The MHC is committed to quality assurance in the provision of legal representation to clients whose cases come before the Mental Health Tribunal. The MHC wish to have procedures in place which will be available in the event of complaints being made about legal representatives. The procedures to be operated by the MHC for dealing with complaints and performance issues are set out below and have regard to the need for fair procedures while ensuring the provision of a quality service to all clients and are in line with the MHC's Customer Complaints Procedure. In considering these issues, regard must be had to the Mental Health Act, 2001, the Mental Health Legal Aid Scheme and the Terms and Conditions pursuant to the Scheme.

Verbal complaints

If a verbal complaint is made to the MHC every effort will be made by the MHC to respond to the complaint informally within 48 hours and without recourse to the formal procedures set out below. A written record of the verbal complaint will be kept by the MHC.

Formal written complaints

If it is not possible to resolve a verbal complaint informally, the complainant will be asked to put the complaint in writing and advised that only complaints that have been made in writing will be considered formally by the MHC. Where there are communication / literacy difficulties, appropriate assistance will be provided to enable the complaint to be put in writing.

Complaints are handled by the MHC's Chief Executive Officer who ensures that all formal complaints are investigated. The MHC has provided a form for this purpose which is included in the MHC's Customer Complaints Procedure which is attached to this document at Appendix B . On receipt of a written complaint:

- the complainant will receive a written acknowledgement within five working days of receipt:

- a copy of the written complaint will be furnished to the legal representative requesting his / her comments within a period of two weeks of receipt;
- the MHC will consider the comments and prepare a response or seek additional information or a copy of the legal representative's file if necessary;
- the MHC will respond to the complainant in writing within a period of twenty working days of the complaint being received;
- the MHC will copy the legal representative with the response;
- within reason and if appropriate, the MHC will engage in ongoing correspondence with the complainant; and
- if appropriate the MHC will offer the complainant an appointment to try and resolve the matter.

Formal investigation following on from a complaint

If the MHC considers that the nature of the complaint is such that a formal investigation is required into the behaviour of the legal representative, such an investigation will be carried out by a person appointed by the Chief Executive Officer. In carrying out such an investigation, due regard will be had to the need for fair procedures and all relevant material will be provided to the legal representative. Any issues of performance raised arising from a complaint will be referred to the Director who, in consultation with the Chief Executive Officer, will decide what action, if any, should be taken.

It will be open to the MHC to take a decision that it is not appropriate to refer any further cases to a legal representative.

Removal of a legal representative from a panel

In the event that the MHC considers that a legal representative should be removed from the relevant Panel, this recommendation will be forwarded to the Director for a decision. In the event that the Director determines that a legal representative should be so removed, the legal representative who is to be removed will be advised of:

- the reasons for the decision; and of
- the right to seek a review /and / or appeal of the decision to an appeal committee to be established by the MHC within one month of the notification.

The Office of the Ombudsman

Complainants will receive a copy of the Customer Complaints Procedure which contains information regarding how a person who remains dissatisfied can contact the Ombudsman. A copy of the MHC's Customer Complaints Procedure is attached at Appendix B.

APPENDIX A – SATISFACTION SURVEY – CLIENT

Case ref number.....

Dear XXXXXXX

The Mental Health Commission organised a solicitor to act as your legal representative before a Mental Health Tribunal on **[insert date]**. To help us ensure that legal representation is of a high standard the Commission is now conducting a survey of client views on the service that they received. We would like to have your views on the quality of the legal representation you received.

We would be much obliged if you would answer the following questions and return the completed questionnaire in the pre-paid envelope provided. The MHC welcomes negative and positive feedback equally. Thank you for your participation in this survey. All replies are treated confidentially.

Were you generally satisfied with the level of legal representation you received?

YES/NO

Did your solicitor visit you before the Tribunal hearing?

YES/NO

Do you feel that your solicitor was adequately prepared for your Tribunal Hearing?

YES/NO

If not, in what respect was your solicitor not prepared?

Did your solicitor leave you a contact telephone number?

YES/NO

Did your solicitor introduce and identify themselves to you in a clear and appropriate way?

YES/NO

Do you believe that your solicitor carried out his/her work with you in a professional and competent manner?

YES/NO

If NO please give details as to why you have this opinion.

Did your solicitor give you information about what he/she was doing on your behalf.

YES/NO

Did your solicitor explain the decision of the Mental Health Tribunal.

YES/NO

Was your solicitor present when the Tribunal gave you its decision?

YES/NO

Do you have any other comments on the work of your solicitor?

Signed:

Date:



Customer Complaints Procedure

Mental Health Commission

November 2006

Customer Complaints Procedure – Mental Health Commission (MHC)

1. Introduction

The MHC, an independent statutory body, was established in April 2002 under the provisions of the Mental Health Act, 2001. The principal functions of the MHC, as specified in the Mental Health Act, 2001 are to promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services and to take all reasonable steps to protect the interests of persons detained in approved centres (Section 33 (1)).

The remit of the MHC incorporates the broad spectrum of mental health services including general adult mental health services, mental health services for children and adolescents, older people, people with learning disabilities and forensic mental health services.

2. MHC – Quality Customer Service

The MHC is committed to offering a quality customer service to all its customers, ensuring that all customer contacts are dealt with in an efficient, professional and courteous manner.

2.1 The development of a *Customer Charter* for the MHC has been guided by the Governmental Principles of Quality Customer Service. The charter sets out the role of the organisation, our values and service standards and applies to all our stakeholders. The *Customer Charter* is available on our website at www.mhcirl.ie. A Customer Action Plan for the MHC is currently being developed.

2.2 The core values which underpin the delivery of services by the MHC are:

Accountability and Integrity: The MHC is committed to expressing these values by operating at all times with probity and in a transparent manner.

Dignity and Respect: The MHC respects the dignity of those in contact with the organisation and responds with courtesy and consideration.

Confidentiality: The MHC pledges to handle confidential and personal information with the highest level of professionalism and to take due care not to release or disclose information outside the course of that necessary to fulfil our legal and professional requirements.

Empowerment: The MHC recognises that empowerment lies through the provision of information, training and education in an accessible manner.

Quality: The MHC is committed to striving for continuous quality improvement in all its activities.

Achieving Together: The MHC is committed to collaborating for improving through ongoing partnership, consultation and teamwork.

3. Customer Charter Service Standards

3.1 The MHC is committed to offering a quality and timely service and to dealing with people courteously, professionally and efficiently.

Equality and Diversity

We recognise the importance of fair and unbiased service and will do our best to provide one. We respect the diversity of our customers and stakeholders. We are also aware of our obligations under the Equal Status Acts of 2000 and 2004 and the Disability Act 2005.

Access

We will do all we can to make the mental health services accessible to all by identifying barriers to access.

Information

We will do our best to make sure that the information we provide is clear, timely, and accurate.

Complaints and Appeals

If you are not satisfied with the quality of our service, please tell us. We will do our best to deal with your complaint to your satisfaction. If we cannot resolve your complaint, you may be able to take a complaint to the Ombudsman. The Ombudsman's Office has statutory powers to consider and deal with complaints about the delivery of public services. You can find out more about the Ombudsman's Office by visiting irlgov.ie/ombudsman.

Consultation and Evaluation

We are committed to working with stakeholders through ongoing partnerships, consultation and teamwork to continually improve the mental health services.

Official Languages Equality

You have the right to use either English or Irish, the official languages of the State, in your dealings with us. We have produced our main publications in English and Irish and a number of our publications are also available in other languages.

Integrated Service

We will work closely with key stakeholders to provide a co-ordinated service and integrated quality mental health service.

Internal Customers

The role that staff play in the delivery of a quality customer service is key to the success of the MHC. We regard staff as internal customers and will support and consult regularly with them regarding developments within the MHC.

4. Customer Complaints

4.1 What kind of complaints does this procedure cover?

The complaints procedure covers complaints about the quality of the service which you receive from the MHC.

4.2 What to do first?

If you are dissatisfied with the service you receive, please express this to the person with whom you are dealing. Every effort will be made to resolve the matter with your primary contact at the MHC, who will respond to you within two working days. The MHC's staff are committed to the provision of a quality customer service and will make every effort to resolve any difficulties which you experience. A written record of your discussion with the member of staff concerned will be kept by the MHC.

4.3 How to make a formal written complaint?

If you remain dissatisfied and wish to formally make a complaint, you can contact the Chief Executive Officer, who will ensure that your complaint is formally investigated. Complaints may be made in writing. Please complete the attached complaints form (Appendix A) and address marked strictly private and confidential to the following:

Chief Executive Officer
Mental Health Commission
St. Martin's House
Waterloo Road
Dublin 4
Telephone: (01) 6362400
Facsimile: (01) 6362440

When making a complaint try to give as much detail as possible including any correspondence/documentation which is relevant to your complaint. If you have special needs that may affect your ability to make a complaint. The MHC will make every effort to assist you.

4. Standards for Dealing with Complaints

4.1 We try to resolve complaints within the shortest possible timeframe.

- You will receive a written acknowledgment of your written complaint within five working days of receipt.
- Your complaint will be dealt with in confidence, fairly and impartially.
- A staff member other than the person originally involved will examine your complaint
- Your complaint will be examined and reviewed and a reply sent to you within twenty working days of the receipt of your complaint.

4.2 The Office of the Ombudsman

If we are unable to resolve your complaint to your satisfaction, you may be able to take your complaint to the Ombudsman. The Ombudsman has statutory powers to consider and deal with complaints about the delivery of public services. You can contact the Ombudsman's office at the following:-

18 Lower Leeson Street
Dublin 2
Telephone: (01) 6395600
Facsimile: (01) 6395674
e-mail: ombudsman@ombudsman.gov.ie

PROCESS FOR APPEALS UNDER S19 – APPEAL TO THE CIRCUIT COURT OF THE DECISION OF THE MHT

Legal representative notifies MHT of appeal by notice in writing within 14 days of receipt of the decision.

Legal representative applies to CEO's office for legal aid. CEO's office receive written request for legal aid, pro forma attached, and issue authorization/refusal.

MHT Division inform its legal advisors of the notice of appeal and copies patient file to them, with contact details for MHT members. Legal advisors prepare response to the appeal, liaise with legal representative to receive copies of any reports, e.g. expert witnesses, and liaise with patients responsible consultant psychiatrist to give evidence as to patient's mental condition on date appeal is heard.

MHT Division enters on SIAT system, (at case level), that MHT decision has been appealed and attaches appeal documentation to SIAT.

When appeal has been heard MHT Division legal advisors inform MHT of outcome and this is recorded on SIAT. Legal representative submits invoice to CEO's office for payment of legal aid