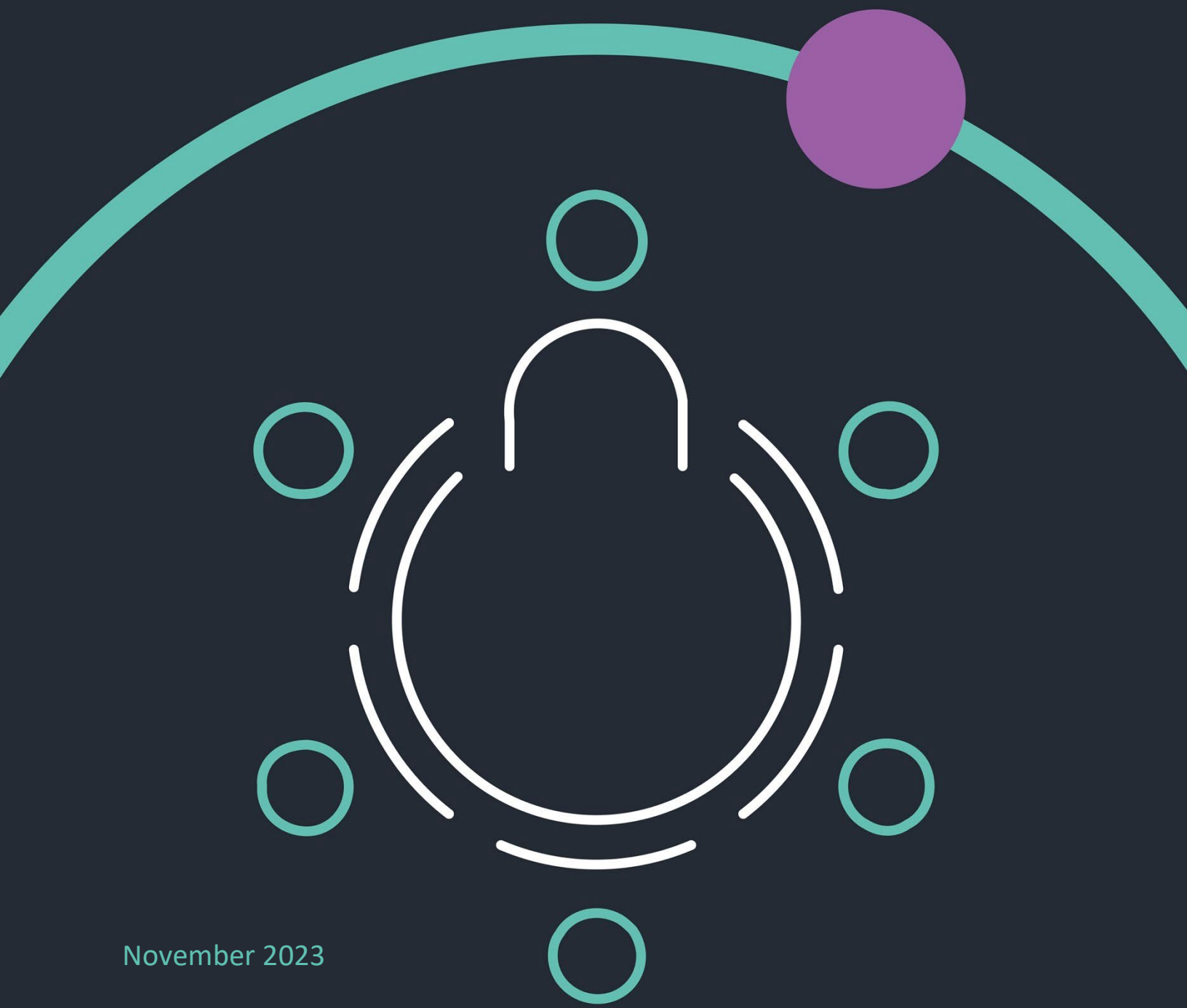


Mental Health Tribunal



Information and Guidance
for Panel Members



November 2023

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Introduction

The Mental Health Commission has the statutory responsibility for appointing members of Mental Health Tribunals (“tribunals”) and putting in place the necessary arrangements for these tribunals as provided for in the Mental Health Acts 2001 to 2018 (the Acts).

Tribunals are primarily established to decide whether a person is or is not suffering from a mental disorder as defined in the Acts further to an order being made pursuant to Sections 14, 15 or 24. Tribunals may also be arranged to decide whether to authorise or refuse to authorise the transfer of a patient to the Central Mental Hospital or to authorise or refuse to authorise psychosurgery for a patient.

Patients may also request an additional review of their order where they are detained for a period of three months on a renewal order not exceeding six months. Further information on additional reviews is provided in **Appendix 1**.

Panel members should remember that this is the patient’s tribunal; the patient is at the centre of the process and must be informed at all times about what is happening during the tribunal.

This document provides guidance to the panel members in relation to tribunals. There are five panels as follows:

1. A panel of practicing barristers or solicitors to serve as the Chairpersons of tribunals (Tribunal Chairpersons “TCH”),
2. A panel of consultant psychiatrists to serve as members of tribunals (Tribunal Consultant Psychiatrists “TCP”),
3. A panel of persons other than barristers, solicitors, consultant psychiatrists, registered medical practitioners or registered nurses to serve as members of tribunals (Tribunal Lay Members “TLM”),
4. A panel of consultant psychiatrists to carry out independent medical examinations under section 17 (Independent Consultant Psychiatrists “ICP”),
5. A panel of legal representatives for the granting by the Commission of legal aid to patients (Legal Representatives “LR”).

Panels 1-3: Chairpersons, Consultant Psychiatrists and Lay Members (“tribunal panel members”): These persons are assigned to serve as members of tribunals.

Panel 4: Independent / Section 17 Consultant Psychiatrists: These persons are assigned to provide reports to tribunals. In most cases, these Consultant Psychiatrists do not attend tribunals. They may on occasion be called as witnesses.

Panel 5: Legal Representatives: These persons are assigned to act for involuntarily detained patients.

Information provided in this document should also assist the tribunal panel members with determining the procedures for tribunals. The Acts, however, include a number of requirements for the carrying out of the tribunals which must be complied with and cannot be departed from.

Panel members and the tribunals they sit on are bound by the principles of natural justice and fairness and must be compliant with both the Constitution of Ireland and the relevant European Conventions on Human Rights.

In the event of any conflict of wording, the following order of priority will apply:

1. The Mental Health Acts 2001-2018,
2. The contract entered into by the Commission with the Panel Member,
3. The Code of Conduct for Panel Members,
4. This guidance document, and
5. Any other related guidance documents.

Appendix 2 lists the current Statutory Forms and templates that relate to the involuntary detention of patients. Panel Members should ensure that they are familiar with these Forms when they are appointed. They are –

- 16 Statutory Forms,
- Patient notification forms,
- Two (2) Section 17 template reports, and
- Record of Tribunal Proceedings template.

All forms and templates are available on the MHC website for downloading at https://www.mhcirl.ie/for_H_Prof/Forms/.

In addition to the above there are also the clinical practice forms, (which belong to the approved centre and are not statutory forms).

Panel members should only use the Forms and / or templates provided by the MHC and should not use their own templates.

1 Requirements for arranging Tribunals

1.1 Comprehensive Information System (“CIS”)

The Commission generally adopts a digital first approach in relation to the operation of tribunals. CIS is an information system that facilitates the access by all panel members to the relevant documentation for the tribunal (hearing) to which they have been appointed.

The MHC uses CIS to publish User Group Messages for the attention of panel members. When a notice has been published, panel members will see an icon on their CIS homepage to notify them.

CIS training materials can be found at https://www.mhcirl.ie/cis_training.

1.1.1 Hearing acceptance on CIS

When you have been assigned to a hearing as a panel member (ICP, LR, TCH, TCP, TLM), you will receive a text message prompting you to log into CIS to formally accept and confirm your availability.

Text message sent to confirm availability:

Username: _____, you have been assigned to a new Hearing by the Mental Health Commission. Please login to the CIS and confirm your availability for Hearing ID: _____ Date/Time: Approved Centre: _____ Date/Time Sent: __/__/____:____

When you have accepted the hearing in CIS you will receive a text to confirm your acceptance.

Case ID: _____, Hearing ID: _ is confirmed. Your PIN for accessing the Hearing documents is _____.

The PIN in the text message is used to open all documents within the hearing on CIS.

If you do not accept the hearing within 24 hours, you will receive two separate reminders by text giving you a total of 52 hours to accept the case. If the hearing is not accepted and the MHC cannot contact the panel member, then the hearing will be reassigned to another panel member.

If the agreed date and/or time of the tribunal you are attending has been changed on CIS, you will receive the following text message:

Username: _____ Please note that there has been a change to the upcoming Hearing for _____. This hearing is now due to proceed on __/__/____ at 00:00. Please log into CIS for further details. Please contact us urgently if you are not able to attend the hearing at the revised date or time.

1.1.2 Hearing documents on CIS

Only documentation that is relevant to the order being reviewed can be accessed through CIS and

viewed by the panel members assigned. Panel members will not have access to hearings to which they are not assigned. Once a hearing to which you were assigned closes, your access to that hearing will cease.

When the hearing documents are available to view, the assigned panel members will receive a text message to notify them.

Username: _____. Document ID _____ has been added to Hearing ID: _____. Please log on to CIS to view

The PIN in the text message will be used to open all documents within the hearing on CIS.

1.2 Assignment of Panel Members

1.2.1 Legal Representation

Under Section 33 (3) (c) of the Acts “...the Commission shall make or arrange for the making... of a scheme or schemes for the granting by the Commission of legal aid to patients”. Accordingly, the Commission established a panel of legal representatives (the “LR panel”) together with a scheme of legal aid for patients.

LRs indicate the approved centre where they are available to accept work. Hearings are assigned on a rotational basis to the next available panel member for that approved centre save in exceptional cases and in those cases, the approval of the MHT Manager or General Counsel is required.

Please Note that where an LR declines an assignment they will automatically move to the end of the relevant panel.

When the Commission receives an admission order (Form 6 or Form 13), a renewal order (Form 7), a request for an additional review (Form 7A), a proposal to transfer to the Central Mental Hospital (Form 11) or proposal to carry out psychosurgery (Form 15)¹, an LR shall be assigned from the LR panel. An LR will be assigned to each patient no later than **one working day** after the Commission processes the statutory forms.

When an admission order is received, and where there is no previous patient history, an LR on the panel is contacted by telephone, initially to seek verbal confirmation of their acceptance of the hearing. If confirmation is not immediately received, then a text message will be sent as follows:

Username: ___, please note you missed a call from the Mental Health Tribunals Division. Please check your voice mail or respond to us within the next two hours.

If no response has been received within 2 hours of the Commission making contact, the next LR on the panel is contacted.

¹ As at the date of publication, the MHC has not received a proposal to carry out psychosurgery since 1.11.2006.

Where patients have previously been the subject of an order under the Acts, the Commission will endeavour to assign the same LR. Therefore, with a renewal order or an additional review or admission order (where there is previous patient history), the same LR who represented the patient previously is assigned to the hearing, subject to the patient's agreement.

If at any time a patient requests an alternative LR from the LR panel, or where the LR does not accept the hearing, the Commission will replace the LR. The patient is also entitled to appoint their own private solicitor. If the patient chooses to appoint their own private solicitor, the Commission requires the patient, or their solicitor, to provide the Commission with a letter of authority signed by the patient. This letter will allow the Commission to deal with the patient's private solicitor directly and send them the relevant documentation. The patient will also be responsible for the costs of their private solicitor. The Commission shall keep the tribunal panel members updated of any such changes prior to the hearing.

Where the patient seeks to represent themselves, the Commission will ask the LR, whom they have appointed, to attend the approved centre for the MHT, by way of an additional support, for example if the patient changes their mind about representing themselves. The MHC shall notify the tribunal panel members of the matter. The LR will only attend and/ or sit in the tribunal with the patient's consent but if the patient does not consent the LR cannot attend and/or sit in on the tribunal.

If the patient instructs their own private solicitor, the LR assigned by the MHC shall stay assigned to the cases until the MHC has received written confirmation from the private solicitor shall he / she will be attending the tribunal.

In addition to the above –

- If an LR is delayed and will be late for a tribunal, they must call and email the MHC immediately.
- If an LR cannot attend a tribunal at short notice, they must call and email the MHC immediately.
- If the MHC has been contacted about an LR not showing up for a tribunal, they will contact the tribunal panel members immediately.

1.2.2 Section 17 Report

Under Section 33 (3) (b) of the Acts, the Commission established a panel of independent consultant psychiatrists (the "ICP panel") who carry out independent medical examinations under Section 17 of the Acts.

ICPs indicate the approved centre where they are available to accept work. Hearings are assigned on a rotational basis to the next available ICP for that approved centre save in exceptional cases and in those cases the approval of the MHT Manager or General Counsel is required.

Please Note that where an ICP declines an assignment they will automatically move to the end of the relevant panel.

When the Commission receives an admission order (Form 6 or Form 13), a renewal order (Form 7), a request for an additional review (Form 7A), a proposal to transfer to the Central Mental Hospital (Form 11) or proposal to carry out psychosurgery (Form 15), an ICP is assigned from the ICP panel.

An ICP will be assigned to each patient no later than **two working days** after the Commission processes the statutory forms. An ICP on the panel is contacted by telephone, initially to seek verbal confirmation of their acceptance of the hearing. If confirmation is not immediately received then a text message will be sent to you as follows:

Username: _____, please note you missed a call from the Mental Health Tribunals Division. Please check your voice mail or respond to us within the next two hours.

If no response has been received within 2 hours of the Commission making contact, the next ICP on the panel is contacted.

The ICP must examine the patient concerned, interview the consultant psychiatrist responsible for the care and treatment of the patient and review the records relating to the patient. The ICP must then prepare a written report for the tribunal in accordance with Section 17. CIS includes the Section 17 report templates that ICPs are required to complete for each assignment.

This report must be submitted to the Commission via the template provided in CIS. When submitted, this report can be accessed on CIS by all the other panel members assigned to the hearing. The Section 17 report can be made available to the ICP to amend if required. The original and amended version will be made available to the LR and tribunal panel members.

In accordance with the Acts, **the ICP will provide the Section 17 report within 14 days of the date of the admission/renewal order**. Where a patient is the subject of a proposal to transfer to the Central Mental Hospital, the ICP will provide the report **within 10 days of the date of the proposal**. On occasion, the Commission may require Section 17 reports to be completed in a shorter timeframe. In those cases, the ICP will be told of the date verbally before they are assigned to the hearing and in writing after they have accepted the hearing.

If a Section 17 report has not been submitted on CIS by the due date provided to you, a text message will be sent as follows:

Username: _____, we refer to our previous SMS text to you in relation to an s17 Independent Report for Hearing ID: _____. As the due date for the receipt of the report has arrived and the report has not been received, this hearing may now be re-assigned. Please contact us immediately if you still intend on submitting the report. Please disregard this message if you have already received an SMS informing you that the order for this hearing has been revoked.

If the Section 17 report has still not been received after the date of the first text message reminder,

you will receive another reminder as follows:

Username: _____, we refer to our previous SMS text to you in relation to an s17 Independent Report for Hearing ID: _____. Please note the tribunal is due to take place at 00:00 on __/_____/_____. As we are within X days of the Mental Health Tribunal and the report has not been received, this hearing may now be re-assigned. Please contact us immediately if you still intend on submitting the report.

Separate to the above, if a hearing that you are assigned to has been revoked before the hearing has taken place, you will receive a text message as follows:

REVOKED ORDER Username: _____ Case ID: _____ Hearing ID: _____ Approved Centre: [approved centre name]. Date/Time sent: __/_____/_____ at 00:00.

The Section 17 report template will be available to complete on CIS until 14 days after the revocation date. If the Section 17 report has not been received prior to the time of revocation, you will receive the following text:

Hearing ID: _____ has now been closed before hearing, it is therefore no longer possible to submit the report on CIS. If you wish to claim a fee please log into CIS before __/____/____ and fill in the Work Completed Form.

1.2.3 Tribunal Panel Members

Tribunals comprise of a Tribunal Chairperson, Tribunal Consultant Psychiatrist and a Tribunal Lay Member (Tribunal panel members).

Tribunal panel members indicate the approved centre where they are available to accept work. Hearings are assigned on a rotational basis to the next available panel member for that approved centre save in exceptional hearings and in those hearings the approval of the MHT Manager or General Counsel is required.

If the time or date of a tribunal has been changed on CIS, a text message will be sent as follows:

Username: _____ Please note that there has been a change to the upcoming Hearing for _____. This hearing is now due to proceed on __/____/____ at 00:00. Please log into CIS for further details. Please contact us urgently if you are not able to attend the hearing at the revised date or time.

Please Note that where a tribunal panel member declines an assignment they will automatically move to the end of the relevant panel.

Tribunal panel members are generally appointed to Hearings up to five working days ahead of the tribunal hearing date.

1.2.4 Panel Members attendance at MHTs

Timely attendance at tribunals is very important therefore –

- If a panel member is delayed and will be late for a tribunal, they must call and email the MHC immediately.
- If a panel member cannot attend a tribunal at short notice, they must call and email the MHC immediately.
- If the MHC has been contacted about a panel member not showing up for a tribunal, they will contact the other panel members immediately.

Please see attached at **Appendix 4** list of approved centres for each of the five panel members.

1.3 Revocation of an Admission/Renewal Order

The Commission may receive a Form 14, Revocation of an Involuntary Admission or Renewal Order, from the patient’s responsible consultant psychiatrist.

Where the patient’s order has not yet been reviewed by the tribunal, the Commission shall cancel the tribunal. All panel members that have been assigned will be notified of the cancellation via telephone and a text message.

REVOKED ORDER Username: _____ Case ID: _____ Hearing ID: _____
Approved Centre: _____ Date/Time sent: __/__/____:_____

Notwithstanding that an order may be revoked before the relevant tribunal, Section 28 of the Acts provides that a patient is entitled to have their order reviewed by a tribunal if they so wish. The patient must indicate this wish in writing (by post or email) addressed to the Commission within 14 days of the revocation date. The request may also be submitted in writing by the patient’s LR.

Please note that in certain exceptional cases, the Commission may agree to extend the time for submission of a request for a tribunal under Section 28.

2 General matters relating to Tribunals

2.1 Venue and Practical Arrangements

Tribunals are held in approved centres. S.I. No. 551/2006 - Mental Health Act 2001 (Approved Centres) Regulations 2006 – Regulation 30 provides that:

“(1) the registered proprietor will ensure that an approved centre will co-operate fully with Mental Health Tribunals.

“(2) In circumstances where a patient’s condition is such that he or she requires assistance from staff of the approved centre to attend, or during, a sitting of a tribunal of which he or she is the subject, the registered proprietor will ensure that appropriate assistance is provided by the staff of the approved centre.”

The Inspector of Mental Health Services inspects against this Regulation in relation to each approved centre annually. If there are any issues relating to the tribunal room or associated matters which cause a panel member concern, they should notify the MHT team in writing and this concern will be considered.

The Commission liaises with all parties to arrange the location, time and venue for each tribunal hearing, but the final decision rests with the Commission.

The Commission aims to provide five working days’ notice of a tribunal hearing to the relevant panel members and any other relevant parties required to attend the tribunal ². The scheduled commencement date and time of the tribunal hearing will be notified to the tribunal panel members and the patient’s legal representative via CIS.

The Commission requires tribunal panel members and the patient’s legal representative to arrive at the Approved Centre at least 30 minutes before the hearing is scheduled to commence. The time notified is the scheduled hearing time, therefore, panel members must be at the Approved Centre at least 30 mins before this time.

2.2 Parity of Treatment

It is essential that all parties appearing before a tribunal are treated equally. For example, in the matter of seating arrangements, suitable thought should be given to demonstrate equality of treatment for all those appearing at the hearing.

2.3 Formality

Tribunals should at all times be conducted in a manner befitting the gravity of the matters being reviewed. As required by Section 49(11), sittings of a tribunal will be held in private. Although the gravity of these matters will call for a formally structured process and setting, the tribunal should endeavour to ensure the experience is not intimidating or stressful for the patient or other participants.

² There are exceptional cases where this might not be possible.

2.4 Courtesy

Courtesy is essential. All parties attending a tribunal are entitled to be treated with courtesy and respect by the presiding Chairperson and other tribunal members. Courtesy includes starting the hearing on time, speaking to parties in a polite and non-adversarial manner and taking the time to listen to and consider what they have to say.

Participants at the hearing should be told by the Chairperson who each of the tribunal members are and their functions should be explained. Name badges are provided to panel members to assist the patient in identifying those attending the tribunal. The Commission has received feedback from advocacy services and an issue that was raised was that patients can find it very stressful when tribunals do not start on time.

It is of utmost importance that tribunal be carried out in a respectful and appropriate tone. A high degree of respect should be shown to all attendees but most importantly to the patient, as it is their detention that is being reviewed.

2.5 Inquisitorial

The tribunal should be inquisitorial as opposed to adversarial. However, that is not to say that there may be cases in which it is appropriate for robust argument and examination of the facts to take place. In such cases, the tribunal members and in particular, the Chairperson must ensure that an appropriate balance is struck having regard to the rights of the patient.

Witnesses called by either the patient or the tribunal members may be cross-examined by the patient or his or her legal representative or by the tribunal members.

2.6 Tribunal Impartiality and Independence

Tribunal members shall be independent of the parties involved in the tribunal to include the patient, the approved centre where the patient is detained, the consultant responsible for the care and treatment of the patient and the legal representative acting for the patient.

Therefore, a tribunal shall be independent in its decision-making and free from influence by any party. Tribunal members must have an open mind and not allow themselves to be influenced by prejudice of any kind. They must treat all participants at the tribunal fairly and equally. They shall ensure that natural justice and fair procedures are applied.

2.7 Conflict of Interest

All panel members are required to ensure when accepting a case that they have no conflict of interest and if they have accepted a case to notify the MHC in writing as soon as any conflict is known.

3 Tribunal Procedures

3.1 General

Section 49 of the Acts sets out the powers of tribunals and Section 49 (6) provides that the procedures of a tribunal in relation to a review by it under the Acts will be such as will be determined by the relevant tribunal. In particular, section 49 states:

1. The power to direct the consultant psychiatrist responsible for the care and treatment of the patient to arrange for the attendance of the patient before the mental health tribunal (Section 49(2)(a))
2. Direct in writing any person whose evidence is required to attend and give evidence and produce any document (Section 49(2)(b))
3. Give any other directions for the purpose of the proceedings that appear to the tribunal to be reasonable and just (Section 49(2)(e))

The tribunal panel members must be familiar with all sections of the Acts but in particular those that relate to its work – Sections 3, 4, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 23 & 24, 26, 28, 48 and 49.

3.2 Procedures for the Taking of Oaths and Affirmations

Section 49 (6) of the Acts requires that the tribunal makes provision for the determination by the tribunal whether evidence at the tribunal should be given under oath and where this is agreed, the administration by the tribunal of the oath to witnesses.

The Bible, the Koran, and a Hebrew version of the Old Testament will be made available to each tribunal Chairperson, for the administering of oaths to Christian, Muslim and Jewish witnesses respectively.

The following outlines the procedure for the administering of oaths and affirmations to different categories of witnesses where required at tribunals. It is based on the provisions of the *Oaths Acts 1888 and 1909*.

Christian Witnesses

Section 2 of the Oaths Act 1909 provides that a Christian, who is taking an oath, will hold the New Testament in an uplifted hand. They should then say:

'I swear by Almighty God that the evidence I will give will be the truth, the whole truth and nothing but the truth'.

Jewish Witnesses

The Oaths Act 1909 provides that a Jew, who is taking an oath, will hold the Old Testament, in his uplifted hand. They should then say:

'I swear by Almighty God that the evidence I will give will be the truth, the whole truth and nothing but the truth'.

Muslim Witnesses

Muslim witnesses may swear on the Qur'an by taking the book in his or her right hand and saying:

'I swear by Allah that the evidence I will give will be the truth, the whole truth and nothing but the truth'.

Handling holy books

Certain holy books, including the Qur'an, should be kept in a bag/box at all times and remain covered except when being handled by the witness.

Witnesses without Religious Beliefs or for whom the Taking of an Oath is contrary to His or Her Religious Beliefs

The Oaths Act 1888 provides that:

'Every person upon objecting to being sworn, and stating, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious beliefs, will be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is or will be required by law...'

The form of affirmation to be taken by such a witness would be:

'I, A.B. [insert name here], do solemnly, sincerely and truly declare and affirm that the evidence I will give will be the truth, the whole truth and nothing but the truth'.

Interpreters

The form of oath taken by interpreters should be in the following or similar form:

"I swear by Almighty God that I will well and truly interpret and explain to the tribunal all such matters and things as will be required of me according to the best of my skill and understanding".

The interpreter should be sworn in before the witness.

Other Situations

The Law Reform Commission Reports (LRC 34 – 1990 & LRC 117 – 2016) made a number of recommendations regarding oaths, affirmations and evidence. It may be instructive for panel members to consider their recommendations for use in such situations not provided for in the Oaths Acts.

It advises that for other religions and non-religious:

"The modern practice is to inquire what oath a witness or deponent will regard as binding and to swear him accordingly".

"That a person may give sworn testimony on oath or affirmation without the need when testifying by

affirmation to indicate religious belief”.

3.3 Conduct

Section 49 (7) of the Acts provides that all witnesses and the patient’s legal representative will be entitled to the same privileges and immunities as if they were appearing in a court.

3.4 Privilege

Section 49 (10) of the Acts provides that the following will be absolutely privileged:

- (a) documents of the tribunal and documents of its members connected with the tribunal or its functions, wherever published,
- (b) reports of the tribunal, wherever published,
- (c) statements made in any form at meetings or hearings of the tribunal by its members or officials and such statements wherever published subsequently.

4 The Mental Health Tribunal

4.1 Who Attends a Tribunal?

The patient may or may not attend the tribunal hearing, that is a matter for them to decide.

The following persons shall attend a tribunal hearing:

1. The Consultant Psychiatrist responsible for the patient's care and treatment,
2. The Patient's LR (if the patient agrees), and
3. The three tribunal panel members,

The following persons may also attend a tribunal hearing:

4. Witnesses (if any), and
5. Other Approved Centre staff.

4.2 Patient Attendance

In many cases, the patient attends the tribunal hearing. However, a patient may indicate a wish to not attend the tribunal. The patient's attendance, or not, should be noted in the Record of Proceedings.

Furthermore, under Section 49(11) of the Acts provides that:

'A patient will not be required to attend before a tribunal under this section if, in the opinion of the tribunal, such attendance might be prejudicial to his or her mental health, well-being or emotional condition'.

The tribunal panel members should record a note in the Record of the Proceedings where this provision is invoked setting out the information that was considered in arriving at the decision.

Emergency situations may arise during the course of a tribunal, such as a patient becoming physically ill or emotionally distressed. Tribunal members, with the LR and treating consultant psychiatrist should attempt to address this in order that the patient can remain at the hearing; this might be achieved by way of an adjournment or otherwise.

4.3 Requests by Other Persons to Attend the Tribunal

From time to time, tribunals may receive requests from the patient, his/her LR or the responsible consultant psychiatrist for another person to attend the tribunal. The tribunal may of its own accord decide to call a witness(es).

Such people may include family members, friends, carers or advocates of the patient. The responsible consultant psychiatrist may also request that a specialist registrar be permitted to attend for training purposes.

The decision on whether or not to allow another person to attend rests with the tribunal members and not the Commission. If correspondence is received in advance by the Commission, it shall be sent to the tribunal members, but the matter cannot be considered and decided upon until the hearing is convened on the relevant day. When considering such requests, tribunal members shall have regard to:

1. whether or not the patient consents to the person's attendance,
2. the possible supportive role that such person may be able to offer the patient if applicable; and
3. whether it may be appropriate to allow a person to attend part of but not all of the tribunal.

4.4 Matters addressed by the Tribunal

Under Section 18, each tribunal must address the following issues before arriving at a decision in relation to an admission or a renewal order:

1. Whether the patient has a 'mental disorder' in accordance with the provisions of Section 3 of the Acts, **and**
2. Whether there has been a failure to comply with the relevant sections in the Acts, where that failure affects the substance or the order and causes an injustice or not,

Both matters are required to be addressed in every decision of a tribunal.

When dealing with an Additional Review, the tribunal only has to consider one issue; whether the patient has a 'mental disorder' in accordance with the provisions of Section 3 of the Acts.

Under Section 21 (2) - transfer to the Central Mental Hospital - a tribunal must satisfy itself that it is in the best interests of the health of the patient concerned to authorise the transfer or not.

Under Section 58 (3) - proposal to perform psychosurgery - a tribunal must satisfy itself that it is in the best interests of the health of the patient concerned to authorise the surgery or not.

4.5 Submissions and Evidence

A tribunal may receive submissions and such evidence as it thinks fit in order that it reaches an informed decision. Submissions can be uploaded to CIS where it will be added to the hearing papers for the tribunal panel members.

All submissions received must be recorded by the tribunal members with the decision on the submissions and the reasons for the decision on the submission together with the decision and the reasons for the decision on the substantive matters. These are all to be recorded in the Record of the Proceedings.

4.6 Communication with the patient

It is essential that every effort is made to ensure that the patient is kept informed throughout the

course of the tribunal, that he or she understands what is happening and is clear as to what decision has been made and why it has been made.

Panel members should ensure, where possible, that they avoid legal and medical jargon and use plain English.

Where a patient has difficulty understanding the proceedings due to a sensory or cognitive impairment, time must be taken to communicate as far as possible and in a suitable manner.

The Approved Centre is required to notify the Commission on submission of the relevant statutory forms as to whether a patient requires interpretation services or other supports. Where this is indicated or where the Commission becomes aware through the legal representative, ICP or by other means that interpretation services are required then the Commission will arrange for the provision of interpretation services. Consideration with regard to other supports may also arise.

4.7 Decisions of a Tribunal

Before arriving at a decision, each tribunal must carefully consider all of the information and documents provided to them by the Commission, the patient's hospital chart, any additional documentation submitted at the time of the hearing, the evidence of the independent Section 17 consultant psychiatrist, the evidence of the patient (if he/she attends), the evidence of the treating consultant psychiatrist and any other evidence from witnesses together will all submissions made (fact or legal).

The Acts provide that at a sitting of a tribunal, each member of the tribunal will have a vote and every question will be determined by a majority of the votes of the members.

Each tribunal will make a decision to:

1. Affirm or revoke the admission or renewal order, or
2. Extend the period of review subject to Section 18(4) of the Act, or
3. Affirm or revoke the order further to an additional review, or
4. Authorise or refuse to authorise transfer to the Central Mental Hospital, or
5. Authorise or refuse to authorise psychosurgery.

Where a decision to extend the period of review is made by a tribunal under Section 18(4), the Commission requires the tribunal members to agree with the LR and the treating consultant psychiatrist the date for the resumed hearing to take place and this must be recorded on the relevant form (Form 9). The resumed / new hearing date shall be within 14 days of the original hearing date. This will ensure that the hearing is heard within the relevant statutory timelines. The same tribunal Panel members must attend the reconvened hearing.

4.8 Record of Proceedings

Tribunals are required under the Acts to make a sufficient record of their proceedings. This should include details as to majority or unanimous decisions, and the dissenting member if they request this to be recorded. The Mental Health Commission shall provide a template to assist with the recording of proceedings.

In the decision of Mr J O’Neill in MR (March 2007) (which has been relied on in the recent case of B - v- The MHT 16 March 2021) it was noted –

“In approaching an assessment of the decision of the Tribunal as revealed by the record of it, both as to substance and form, in my view, it is not appropriate to subject the record to intensive dissection, analysis and construction, as would be the case when dealing with legally binding documents such as statutes, statutory instruments or contracts. The appropriate approach is to look at the record as a whole and take from it the sense and meaning that is revealed from the entirety of the record. This must be done also in the appropriate context; namely the record must be seen as the result of a hearing which has taken place immediately before the creation of the record, and it must be read in the context of the evidence, both oral and written, which has just been presented to the Tribunal. The record is not to be seen as, or treated as a discursive judgment, but simply as the record of a decision made contemporaneously, on specific evidence or material, within a specific statutory framework.”

In the decision of Mr Justice Hardiman in MD (May 2008) it was noted –

“The Mental Health Tribunal consists of three persons, a lay representative, a lawyer and a psychiatrist. It is in my view important that, if it is found that a particular section of the Act has not been complied with, that fact should be ascertained, recorded, and its effect discussed. Only in this way can the Mental Health Tribunal hope to contribute to a situation of total compliance with the statutory provisions. Since the Act is operated exclusively by highly skilled professional people it is reasonable to hope that its provisions will be complied with and any difficulties that may be found in compliance identified and, if necessary, addressed. For example, it might be questioned, on the basis of experience in operating the Act and further consideration whether the form used to inform a patient of the meeting of an order under s.14 or s.15 is the best that can be devised in the circumstances having regard to the terms of the statutory provisions themselves.”

The above decisions were endorsed in 2021 by Mr Justice Heslin in **FC v Mental Health Tribunal** and by the Court of Appeal on **15 December 2022**. However, the Court of Appeal overturned the High Court decision and found for the applicant. Reasons must be provided for at common law and as a matter of natural or constitutional justice Reasons must be communicated to the parties and must be adequate. The court in this case, in assessing adequacy, looked at the legal context in which the decision was made (context specific) and the language and immediate circumstance of the decisions (case specific).

While the Court endorsed MD and MR it also for the first time endorsed **HK –v- Llanarth Court Hospital 2014 [page 59/60 of FC]** where an “aide memoire” to the matters which should be covered was suggested in the following terms: -

First, it would be helpful if respondents were to set out their reasons by reference to the relevant criteria for detention...Using headings within the statement of reasons makes it easier to show that the respondent has dealt with each of the legal criteria it has to address...

Second, the respondent’s reasons should address how the respondent dealt with any disputes as to either the law or the evidence. If this is not done, the unsuccessful party might believe that the respondent has ignored important issues. In particular, failing to address explicitly any applications made by one or other of the parties may render a set of reasons inadequate. Such an omission certainly makes it more difficult for a party to know why they have been unsuccessful and additionally raises doubt as to whether the respondent has dealt fairly with that party’s case...

Third, the reasons themselves must be clear and unambiguous. It is not for a party to deduce the reasons for a decision.

Fourth, rehearsing what each witness told the respondent is, without more, liable to render a set of reasons erroneous in law. What is required is to explain (i) what facts the respondent found as a result of that evidence and (ii) what conclusions on those facts the respondent reached.

Fifth, it is not necessary for the respondent’s reasons to mention all the evidence in a case. It is entitled to be selective in its references to evidence in its reasons although it should, as I have indicated in paragraph 13 above, identify and resolve evidence and applications which are in dispute.”

The Court in FC went on to say: -

“To this I would add that it would have taken little more by way of explanation for the respondent to have explained that it was not accepting the appellant’s evidence and that it preferred the unanimous view of the psychiatrists, rather than doing what it did: simply describing what the psychiatrists had said on the issue of insight without actually indicating that this expert evidence was being preferred over the evidence of the appellant. In this regard, it seems to me that the former is precisely what the respondent did in the A.X. case and that it is therefore distinguishable from the record of decision in the present case. “

The Court added: -

“I am satisfied, therefore, that adequate reasons were not given in the present case albeit that only a little more by way of explanation would have been sufficient to satisfy the “adequate reasons” requirement. Nonetheless, in a matter of such significance for the liberty of a vulnerable individual such as the appellant, an explanation should be explicit and unambiguous even if it is simple and short, in order to demonstrate that all the evidence was properly considered and ruled upon, and that the respondent was clearly satisfied from its conclusions on that evidence that the relevant legal criteria were fulfilled...Where persons suffering from mental illness participate in proceedings of the respondent by giving evidence, respect for not only their liberty but also their dignity, self-determination and

autonomy requires that the decision-maker engage with their evidence and to explain, if it be the case, why it has not been accepted. Leaving inferences to be drawn is not sufficient. “

4.9 Recording and Communication of Decision

The decision of a tribunal will be recorded on a statutory form known as a Form 8 (decision to affirm or revoke an order / authorise or refuse to authorise the transfer or treatment of a patient).

All tribunal panel members must sign and deliver the Form 8/9 and the decision. The reasons for a tribunal’s decision must be clearly recorded in the Record of Proceedings.

In order to comply with the requirements of the Acts, the Commission requires the tribunal to make copies of the tribunal decision and the reasons for the decision so that in accordance with Section 18 (5), a copy of the decision will be given to:

1. the patient,
2. the patient’s legal representative,
3. the responsible consultant psychiatrist, and
4. any other person specified by the tribunal.

These copies of the tribunal decision and the reasons for that decision should, save for exceptional circumstances, be given to all the parties named above on the day of the hearing.

A copy of the Form 8 or 9 and a copy of the reasons for the decision should be given to the responsible consultant psychiatrist (or a designated person acting on their behalf) to facilitate placement on the patient’s medical records at the approved centre.

The Chairperson must upload the Form 8 or 9 and the full Record of the Proceedings to CIS.

The Chairperson must collate all of the tribunal documentation and return it by post to the Commission within five days of the tribunal taking place. The documentation will be sent to the Commission by registered post using the prepaid, addressed envelopes provided by the Commission.

5 Tribunal Payments

5.1 Payment of fees

A fixed fee is applicable to Tribunal Panel Members (Chairperson, Consultant Psychiatrist and Lay Member) for attending a completed tribunal.

Where an order is revoked before the hearing takes place, depending on how soon, the following fees are applicable:

1. 75% of fee if cancelled on same day as hearing,
2. 50% fee if cancelled with one- or two-days' notice,
3. 25% fee if cancelled with three days' notice,
4. Nil fee if cancelled with four or more days' notice.

Please note that if a tribunal is adjourned, no additional fee is paid i.e., only one fee is applicable.

Tribunal fees are generated on completion of a case/hearing. These fees are approved by the Tribunals Team and Finance Manager. The approved fees are paid directly to panel members' accounts. For further information on payment of panel members fees please see [Claiming and Payment of Fees - A User Guide for Panel Members](#) on the MHC website www.mhcirl.ie.

5.2 Legal Representatives (LR)

A Work Completed Form (WCF) must be completed on CIS by LRs indicating work completed on a hearing. The WCF is approved by the Tribunals Team and Finance Manager. The approved fees are paid directly to panel members' accounts. For further information

For further information on payment of legal representative fees please see [Claiming Fees - A User Guide for Legal Representatives](#) on the MHC website www.mhcirl.ie

5.3 Independent Consultant Psychiatrists (ICP)

There are three elements to a Section 17 report:

1. Evidence of the patient examination,
2. Evidence that the patient file was reviewed,
3. Evidence that the ICP spoke to the RCP

A Work Completed Form (WCF) must be completed on CIS by ICPs indicating the work completed on Section 17 reports. This includes hearings that were revoked before the hearing took place where a Section 17 report has not been submitted but work has been carried out.

For further information on payment of ICP fees please see [Claiming and Payment of Fees - A User Guide for Panel Members](#) on the MHC website www.mhcirl.ie

5.4 Travel and Subsistence

Panel members (except Legal representatives) are entitled to recover all allowable and relevant expenses relating to their travel and subsistence, including when a tribunal has been adjourned and reconvenes. For further information on payment of expenses please see [MyExpenses - A User Guide to Claiming Travel and Subsistence](#) on the MHC website www.mhcirl.ie

5.5 70 Day Rule

It is clearly stated in all Panel Members' contracts that Claims must be submitted within 70 days of the event giving rise to the claim and that no travel or subsistence incurred will be paid if not submitted in that period.

For further information on the 70 day rule please see [MyExpenses - A User Guide to Claiming Travel and Subsistence](#) on the MHC website www.mhcirl.ie.

5.6 Witness Expenses

The reasonable expenses of witnesses directed to attend before a tribunal are paid by the Commission. Witnesses may obtain a tribunal Expenses Claim Form from the Commission's offices. The tribunal is requested to inform witnesses attending it to contact the Commission's Tribunals Division directly on 01 6362400 for a claim form.

6 GDPR

Panel members must also ensure compliance with Data Protection legislation and should be aware that the files of the Commission are subject to provisions of the data protection and freedom of information legislation.

The Commission would refer panel members to the following GDPR documents relating to their work for the Commission. These documents can be found at the links below on the MHC website www.mhcirl.ie:

1. [MHC GDPR Personal Data Security Breach Procedure for Panel Members](#)
2. [MHC GDPR Privacy Policy - Panel Members](#)
3. [MHC GDPR Data Subject Rights Request Policy and Procedure](#)

The MHC requests that when a tribunal is complete, panel members should ensure that they delete all documents downloaded from CIS off any device which they use to access that site. Panel members should also check their default folders to ensure they are clear of all such documents. Once you have removed these files from your default folder, you should also ensure that you clear these items from your “Recycle Bin” and any “deleted files” folder.

Panel Members are required to use Google Chrome when accessing CIS, however, if you use Firefox, it should allow you to view documents without having to download them first. Other browsers may also have this functionality; however, this should not be relied on, and panel members should always check that files have not been saved.

In accordance with GDPR, the MHC requests that all electronic communication regarding tribunals only includes the Hearing ID. No patient identifiers are to be included. You should contact the MHC by phone if you need to clarify Hearing information.

All hard copy documents should be given to the Chair and the Chair shall return these to the MHC when the tribunal is completed. If there is not tribunal you can arrange to confidentially shred your hard copy papers or return them to the MHC for shredding. The MHC is obliged for the co-operation shown by panel members in ensuring that patient confidentiality is safeguarded.

APPENDIX 1 - Additional Reviews

If a patient is detained for a period longer than three (3) months, on an order not exceeding six (6) months (pursuant to Section 15(3) of the Acts), the patient is entitled to seek an additional review of their order by an independent tribunal.

The request for an Additional Review be in the form of a Form 7A and should be sent by the patient or his/her LR to the Commission. Generally, the same LR that represented the patient for the renewal order will be appointed if the patient wishes.

The MHC specifically requires that:

1. The LR make contact and meet with the patient at the end of the three-month period. This contact should occur within two working days of the end of the three-month period.
2. The LR should advise the patient and seek instructions as to whether the patient wants an Additional Review or not.
3. If the LR cannot obtain instructions, he/she can on his/her own initiative after meeting the patient submit a Form 7A.

The 21-day statutory timeframe starts when the Commission receives the request for an Additional Review (Form 7A) and not from the date the Form is signed.

As per the above, the MHC specifically requires the Legal Representative to make contact and meet with the patient at the end of the three (3) month period. They should explain all of the above to the patient and seek instructions as to whether the patient wishes to apply for an additional review or not.

The MHC request that the MHT should consider (given that the running of the MHT is a matter for the MHT as per Section 49 of the 2001 Act) when they affirm a renewal order for a period longer than three (3) months, that they shall inform the patient (orally or in their decision) that they have a right to appeal that decision and a right to an additional review if the order is not revoked by the end of the three month period.

APPENDIX 2 – Forms – Mental Health Acts 2001 – 2018

The most up to date versions of all forms and templates can be found on the MHC website
www.mhcirl.ie

Statutory Forms

[Statutory Forms \(mhcirl.ie\)](http://www.mhcirl.ie)

Patient Notification Forms

[Patient Notification Form - Admission Order](#)

[Patient Notification Form - Renewal Order](#)

Clinical Practice Forms

[Clinical Practice Form Section 14\(2\)](#)

[Clinical Practice Form Section 23\(1\)](#)

Section 17 reports

[Section 17 report template](#)

[Section 17 report template CMH](#)

Record of Proceedings

[Record of Mental Health Tribunal Proceedings](#)

APPENDIX 3 - Guides

Comprehensive Information System (CIS) – Panel Member Information

[CIS Training](#)

Payments Information

[Claiming and Payment of Fees - A User Guide for Panel Members](#)

[Claiming Fees - A User Guide for Legal Representatives](#)

[MyExpenses - A User Guide to Claiming Travel and Subsistence](#)

All of the above can also be found on the [Panel Members Hub](#) section of the Commission's website

APPENDIX 4 – Approved Centres for Panel Members

Panel Members indicate the approved centre where they are available to accept work. A complete list of all approved centres is available on the MHC website

<https://www.mhcirl.ie/what-we-do/regulation/approved-centres>