



**Lord Justice Ryder
Senior President of Tribunals
Ministry of Justice
Post point 3.41
102 Petty France
London SW1H 9AJ**

24 November 2016

Via email

Dear Sir Ernest

Transforming our Justice System Consultation

Further to our response letter of 6 October and recent meeting with the Ministry of Justice, the Mental Health Alliance wishes to reiterate our concern about how the proposed reforms to the Tribunal system would affect people detained under the Mental Health Act 1983.

The Mental Health Alliance is a coalition of more than 75 organisations from across the mental health spectrum and beyond that work together to advocate for fair implementation of the Mental Health Act in England and Wales.

A number of our members – including Rethink Mental Illness, The Law Society and Royal College of Psychiatrists and Mind – have responded to the consultation in detail and we urge you to consider their representations.

The Mental Health Act criteria for detention and discharge are based on a person having a mental disorder, so psychiatric diagnosis is fundamental to decision-making under the Act. As a consequence, the focus of the Mental Health Tribunal is based on an understanding of the illness and associated needs and risks. Medical evidence is therefore an integral part of its process.

It is for the detaining authority to prove that a patient meets the criteria for continued detention. If, as a result of the proposed amendment to the tribunal composition order, the medical member of the Tribunal were removed, there would not be any independent medical professional evaluation of the Responsible Clinician's (RC's) evidence. This would inevitably give more weight to the RC's evidence and would place the patient at a substantial disadvantage. The tribunal will lose this valuable expertise as well as the patient losing an important safeguard. This would bring into serious doubt the fairness of the process and could potentially breach Article 6, right

to a fair hearing and Article 5(4) as the Tribunal may no longer be a sufficiently robust safeguard for a deprivation of liberty.

The Tribunal does not consider medical evidence alone, receiving social reports and, of course, hearing from the patient. The lay member of the Tribunal brings their own expertise on mental health and helps provide a broader perspective that safeguard against a narrowly medico-legal view.

When carrying out a mental health review, the First Tier Tribunal is deciding on a person's liberty. The seriousness of such a decision is reflected by having a three-person panel. In our view it would be unacceptable to have this decision taken by a one-person panel sitting in private without the transparency of open court.

These factors all mean that the current composition of panels is necessary for practical and effective access to justice, not something to be decided on a case by case basis.

As a matter of urgency we seek reassurance that the Government will not weaken the justice system for detained patients by applying this proposed measure.

Yours sincerely

The Mental Health Alliance

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