



# **Mental Health Review Tribunal (Legal Member) 2014**

**Shortlisting Assessment Test - 26 June 2014**

## **Question Booklet with answers for Feedback and Publication**

### **Test Description:**

The test contained **18** questions. Applicants were allowed 1 hour and 15 minutes to complete the test. There were 90 marks available in total. Each question attracted a total of 5 marks.

## Question 1

A person appearing in front of you feels aggrieved by the actions of the NHS. He says that he wants you to adjourn so that he can go straight to the European Court of Human Rights (ECtHR) for a hearing in relation to the human rights that he believes have been infringed. Which of the following is the most appropriate course of action?

- A. Agree to an adjournment for the purpose requested. (3 marks awarded)
- B. Agree to an adjournment so that he can take legal advice. (4 marks awarded)
- C. Tell him he must first exhaust all available and effective domestic remedies and if the case is decided against him he may then make an application to the ECtHR, but you intend to proceed. (5 marks awarded)
- D. Ask him to clarify the human rights issue and then give a preliminary ruling. (0 marks awarded)
- E. Refuse the request but consider making a reference to the ECtHR for a preliminary ruling if necessary. (2 marks awarded)

## Question 2

At the start of the hearing you realise that you presided over the patient's previous tribunal when the patient was not discharged. The patient also recognises you and her representative asks you to recuse yourself in order to avoid the appearance of bias. What do you do?

- A. Agree to do so and adjourn the case. (5 marks awarded)
- B. Refuse the application to recuse yourself and continue with the hearing. (2 marks awarded)
- C. Urgently make enquiries as to whether another president can be found so as to avoid an adjournment. (1 mark awarded)
- D. Seek the views of the Hospital Trust. (3 marks awarded)
- E. Ask for a copy of the previous decision before deciding. (4 marks awarded)

### Question 3

The patient attends the hearing before the tribunal along with his son and a patient advocate and states that whilst he is representing himself he also, with their consent, wishes both the patient advocate and his son to represent him.

Would you:-

- A. Explain that only one representative is permitted and that before the hearing commences the tribunal must be informed who is to be that representative. (5 marks awarded)
- B. Advise the patient that those attending may give evidence but only the patient may act as representative. (3 marks awarded)
- C. Advise the patient that those attending may give evidence but only the patient advocate may act as his representative. (4 marks awarded)
- D. Permit the patient to have all three said persons represent him and question the witnesses on his behalf provided that they do so one at a time. (1 mark awarded)
- E. Explain that only one representative is permitted but that those of the three not so acting each may make submissions to the tribunal at the conclusion of the evidence. (2 marks awarded)

#### Question 4

Whilst you are questioning the witnesses, the patient constantly interrupts the proceedings by speaking loudly and aggressively. You have already asked the patient to be quiet on three occasions. What should you do?

- A. Warn the patient that if they interrupt again they will be excluded. (5 marks awarded)
- B. Take evidence from the patient at this point as they clearly wish to speak. (2 marks awarded)
- C. Exclude the patient from the hearing, explaining that they can return later when it is their turn to give evidence. (3 marks awarded)
- D. Ignore the patient and the interruptions and continue to take evidence. (1 mark awarded)
- E. Ask the patient's representative whether the patient should leave the room. (4 marks awarded)

### Question 5

A tribunal may satisfy itself that the discharge of a patient would give rise to a substantial likelihood of serious physical harm to himself or to others only if it is established that:-

- A. He has entertained thoughts of harming others. (2 marks awarded)
- B. He has in the past so behaved as to lead others reasonably to fear that he would cause them serious physical harm. (5 marks awarded)
- C. He has mentioned to others the possibility of him hurting himself. (1 marks awarded)
- D. He has heard voices from the TV suggesting that he should hurt others. (3 marks awarded)
- E. He has in the past acted violently towards others. (5 marks awarded)

## Question 6

You observe that the responsible medical officer, a witness before the tribunal, appears to be texting on his telephone during the hearing. Do you:-

- A. Ignore the fact as it is not disrupting the proceedings. (2 marks awarded)
- B. Suggest that the tribunal take a break to allow him to finish messaging. (3 marks awarded)
- C. Interrupt the proceedings and ask the responsible medical officer to explain what he is doing and why. (5 marks awarded)
- D. Write a note asking the responsible medical officer to desist and pass the note to him. (1 mark awarded)
- E. Halt the proceedings, explain to those present what you have observed and ask the parties' representatives if they have any views as to whether or not the case should proceed. (4 marks awarded)

## Question 7

The lay member of the tribunal explains to you before the commencement of the hearing that in his experience approximately 80% of all applications/references to the Mental Health Review Tribunal result in the patient being discharged from detention and therefore his practice is to seek to ensure that at least 80% of all applications/references result in the discharge of the patient from detention. Which of the following would be your first action:-

- A. Advise him that he is making his decisions unlawfully and refuse to continue the hearing. (2 marks awarded)
- B. Continue with the hearing but make a judicial complaint to the Lady Chief Justice about the practice of the lay member in question. (0 marks awarded)
- C. Take no action and continue with the hearing. (0 marks awarded)
- D. Explain to the lay member the need to provide a fair hearing to all parties according to the evidence adduced in each case and continue with the hearing but subsequently refer the matter for consideration by the Chairman of the Mental Health Review Tribunal. (5 marks awarded)
- E. Inform the parties' representatives and seek their views as to the continued participation of the lay member in the hearing. (4 marks awarded)

### Question 8

After lengthy discussion you take a fundamentally different view on the outcome of the hearing from your two colleagues (who agree with each other). Agreement is not possible. What do you do?

- A. Order a re-hearing. (2 marks awarded)
- B. Ask your colleagues to draft the decision. (4 marks awarded)
- C. Write the decision reflecting the views of the majority, even though you disagree with it – and make no mention of your disagreement. (5 marks awarded)
- D. As President of the tribunal record a casting vote. (0 marks awarded)
- E. Write the decision reflecting the views of the majority but recording the fact that it is a majority decision. (3 marks awarded)

### Question 9

On the hearing of an application by a patient to be discharged from detention the tribunal decides that he should continue to be detained in hospital as a patient but it is also satisfied on the evidence that the patient is very disgruntled with the treatment he is receiving and that he distrusts his responsible medical officer. What would you do?

- A. Direct that he be discharged from detention. (0 marks awarded)
- B. Direct that another consultant in the hospital be appointed as his responsible medical officer. (0 marks awarded)
- C. Direct that he be transferred as a detained patient to another hospital. (0 marks awarded)
- D. Direct that he continue to be detained without further order. (5 marks awarded)
- E. Direct that he be transferred into guardianship. (0 marks awarded)

## Question 10

For a tribunal to direct the continued detention of a patient it must be satisfied on the evidence that:-

- A. He is suffering from a mental illness. (2 marks awarded)
- B. He is suffering from a mental impairment. (2 marks awarded)
- C. He is suffering from a mental illness or from severe mental impairment which can be treated only in hospital. (3 marks awarded)
- D. He is suffering from a mental illness or severe mental impairment which would give rise to a substantial likelihood of serious physical harm to himself or to others were he to be discharged. (4 marks awarded)
- E. He is suffering from a mental illness or severe mental impairment which would give rise to a substantial likelihood of serious physical harm to himself or to others were he to be discharged and which warrants his detention in hospital for treatment. (5 marks awarded)

### Question 11

The medical member of the tribunal, when reporting to it before the commencement of the hearing, expresses the provisional view that the patient is suffering from a mental illness or severe mental impairment and that they should continue to be detained in hospital. What should you do?

- A. Discuss with the members of the tribunal prior to the commencement of the hearing all of his findings and advice. (0 marks awarded)
- B. Discuss only those parts of his findings and advice as relate to his provisional diagnosis. (3 marks awarded)
- C. Discuss only those parts of his findings and advice as relate to his view in relation to the issue of detention. (0 marks awarded)
- D. At the commencement of the hearing inform the parties and their representatives that prior thereto the medical member has expressed views as to provisional diagnosis and as to detention and invite their comments. (5 marks awarded)
- E. Arrange for the application/reference to be heard by a differently constituted tribunal at a later date. (4 marks awarded)

## Question 12

The Hospital Trust refers to the Mental Health Review Tribunal the detention of a patient whose continuing detention has not been reviewed by a tribunal for a period of two years and you in your capacity as president have been informed that the patient has stated that he does not wish legally to be represented at the hearing. What do you do?

- A. Fix a date for the hearing and take steps at the hearing to determine whether or not the patient is capable of representing himself at the same. (2 marks awarded)
- B. Have the patient informed that the hearing will not be listed unless and until he has nominated a lawyer to represent him at the same. (0 marks awarded)
- C. Cause inquiry to be made of the responsible medical officer in advance of the hearing if the patient is competent to make the decision not to be legally represented. (5 marks awarded)
- D. Decide in advance of the hearing that if it appears that the patient will not be able effectively to represent himself that you, as president, will ensure that you and other members of the tribunal will ask such questions as should be asked in the interest of the patient. (3 marks awarded)
- E. Cause a solicitor to be appointed to represent the patient at the hearing. (4 marks awarded)

### Question 13

What are the remedies available to a party aggrieved by a decision of a tribunal concerning a question of law?

- A. Ask for the tribunal to re-convene to hear his complaint(s). (0 marks awarded)
- B. Ask for the tribunal to re-convene to hear further evidence. (0 marks awarded)
- C. Seek judicial review of the tribunal's decision by the High Court. (5 marks awarded)
- D. Apply to the Mental Health Commission to intervene. (0 marks awarded)
- E. Appeal to the Court of Appeal. (0 marks awarded)

### Question 14

A lawyer appears in a complex case on behalf of a patient who has a learning disability. She says that her client will have problems following the process but that she will explain it all to him afterwards. What do you do first?

- A. Adjourn for an expert report to enable you to deal with the case justly. (3 marks awarded)
- B. Check whether your colleagues on the panel agree to this suggestion and ask how you might make the proceedings easier to follow and alter your style accordingly. (5 marks awarded)
- C. See the patient privately with your colleagues, in order to assess the nature of the patient's particular difficulties, and ability to follow the proceedings. (1 mark awarded)
- D. Ascertain at the outset whether the patient's learning disability is associated with abnormally aggressive or seriously irresponsible conduct. (2 marks awarded)

### Question 15

Which of the following is the most important objective of the Tribunal Rules?

- A. To enable the tribunal to deal with cases flexibly and justly. (3 marks awarded)
- B. To avoid unnecessary delay. (4 marks awarded)
- C. To use the tribunal's special expertise effectively. (1 mark awarded)
- D. To maintain procedural consistency. (5 marks awarded)
- E. To ensure that all parties can participate fully. (2 marks awarded)

## Question 16

During the course of a hearing before the tribunal of which you are president it becomes apparent that the patient has been detained in hospital by virtue of the provisions of Article 12 (1) of the Mental Health (NI) Order 1986 without his detained status having been reviewed by the Tribunal for a period of 3 years. May the tribunal (answer **Yes** or **No** to each of the five options below):-

- A. Make a declaration that the patient's detention is unlawful and on that basis discharge him from detention. (No - 1 mark awarded)
- B. Refer the issue of his detention to the Mental Health Commission on the grounds that it is unlawful and terminate the hearing before the tribunal. (No - 1 mark awarded)
- C. Refer the matter to the Police on the basis that it appears to the tribunal that the patient may have been unlawfully imprisoned. (No - 1 mark awarded)
- D. Proceed to hear and determine the patient's application to be discharged from detention having regard only to the provisions of Article 77 (1) of the Mental Health (NI) Order 1986. (Yes - 1 mark awarded)
- E. Refer the issue to the Attorney General for such action to be taken as may appear appropriate. (No - 1 mark awarded)

### Question 17

May a patient suffering from a mental disorder be admitted to and detained in hospital on the ground that (answer **Yes** or **No** to each of the five options below):-

- A. His community social worker is of the opinion that in accordance with the provisions of the Mental Health (NI) Order 1986 he should be detained. (No - 1 mark awarded)
- B. His general practitioner is of that opinion. (No - 1 mark awarded)
- C. Both his community social worker and his general medical practitioner are of that opinion. (No - 1 mark awarded)
- D. His mother with whom he lives, who knows him better than anybody else does and has become concerned at the recent significant deterioration in his mental health is of that opinion. (No - 1 mark awarded)
- E. His community social worker, his general medical practitioner and a member of the hospital medical staff are of that opinion. (Yes - 1 mark awarded)

### Question 18

For a tribunal to determine that a person suffering from a mental disorder should be detained in hospital is it sufficient that it be established that (answer **Yes** or **No** to each of the five options below):-

- A. His mental disorder is of a nature or degree which warrants his detention in hospital for treatment. (No - 1 mark awarded)
- B. His mental disorder is of a nature or degree warranting his detention in hospital for treatment and his discharge would give rise to the likelihood of serious physical harm to himself or to others. (Yes – 1 mark awarded)
- C. His discharge would give rise to a substantial likelihood of serious physical harm to himself. (No - 1 mark awarded)
- D. His discharge would give rise to a substantial likelihood of serious physical harm to others. (No - 1 mark awarded)
- E. His detention is in the best interests of his own welfare. (No - 1 mark awarded)