

Mr John Gibbons

Review Tribunal Deputy Chairman

Appointed 2 April 2019

Professional Background

I have been a solicitor in private practice since 1991, and set up my own firm in 1995, in the City Centre, handling the typical wide range of 'high street' work. As my experience grew and I was looking for new challenges, I was intrigued by the possibility of judicial work. My first experience was volunteering to chair the Solicitors Disciplinary Tribunal, on which I served for the maximum 10 years.

My first paid judicial role was when I was appointed as a Parole Commissioner in 2012, work which I found immensely challenging and rewarding, due to its importance for public protection.

I joined what used to be called the Mental Health Review Tribunal as a Legal Member in 2015, and then became the Deputy Chairman in 2019 supporting the Chair, Attracta Wilson.

What motivated you to apply for the role?

I consider there has been a fairly seamless and natural progression, as one role has led to another.

As a Parole Commissioner one is regularly deciding whether it is safe to release a prisoner back into the community. There are many similarities in Mental Health work, when deciding if a patient is well enough to be discharged from hospital back to the community. So, I felt my experience in assessing risk, would easily translate across the jurisdictions. Unfortunately, there are mentally ill patients who can be very dangerous and great care must be taken in deciding cases as the consequences can be very serious. I knew the work would be very intellectually challenging and important. Decisions can be lifechanging for the individuals involved and their families. I also enjoy the fact that the work is so different from my day to day work as a solicitor, and each case is completely different.

My duties as Deputy Chairman have required that I expand from pure casework, to assisting in the management side of what has become a very large Tribunal, due to the commencement of the Mental Capacity (Northern Ireland) Act 2016. This legislation has resulted in a considerable increase in the number of cases the Review Tribunal. We now have a large cohort of legal, experienced and medical members, and have had to retrain and develop a whole new way of working, to manage this new caseload. I felt my business and organisational skills would be useful on the management side of the Tribunal.

What are the main responsibilities of a Legal Member?

The Legal Member has to preside over the hearings, and they fall into two categories; cases under the Mental Health (Northern Ireland) Order 1986 and cases under the Mental Capacity (Northern Ireland) Act 2016. The former tend to be cases involving patients who have been detained in hospital due to mental ill-health, and the latter usually relates to older people who, in their own best interests, are subject to a Deprivation of Liberty, whilst residing in a care or nursing home.

The main responsibility is to ensure that each person whose case falls to be decided receives a fair hearing before an impartial Tribunal, compliant with the Law. This is easier said than done, and many cases can be contentious.

Describe a typical day in the Review Tribunal.

In Mental Health Order (MHO) cases, papers are meant to arrive at least 14 days in advance of the hearing so there is a fair bit of reading to do before the day arrives, usually medical reports and a Social Worker's report. This varies depending on the nature of the case. Directions can be given in advance if an issue arises from reading the papers. The panel convene at 1.30pm prior to the hearing and receive a report from the Medical Member who will have already examined the Patient. Clarification may be sought relative to issues emerging from the Medical Member's report and issues may be identified from the Trust reports for further exploration at hearing. The hearing commences at 2pm and typically lasts for two and a half to three hours. The hearing is inquisitorial, and the Patient is usually present. (Covid greatly affected our procedures and currently hearings are still held by Webex or conference call, but this may be changing). In MHO cases evidence is received from the Trust (Responsible Medical Officer and Social Worker) and is tested under cross examination. The panel may have questions for the Trust witnesses and the Patient may give evidence. In any event the Patient has an opportunity to address the Tribunal at the close of the Trust evidence. Following legal submissions, the parties leave, and the panel consider and analyse the evidence and ultimately decide whether the test for detention is met. This involves a full and frank discussion of the evidence and each President will give legal guidance in relation to the statutory test. Once a decision is reached the parties are informed. In the evening following the hearing. I usually do a first draft of the decision and finalise it the next day for the approval of the panel prior to issue to the parties. Drafting a decision usually takes 2 to 3 hours.

The process under the Mental Capacity (Northern Ireland) Act 2016 is different in that the patient rarely will play any role, as usually they have lost 'capacity'. Cases tend to arise by way of referral from the Attorney General and the process is more one of oversight by the Panel. Thus, cases are dealt with in batches of four. Nevertheless, this involves a lot of reading and requires the preparation of a written decision in each case. The panel meet at 10am on the morning of the hearing and will work through all of that day's cases. I will usually try to finish writing up the decisions that night.

Are there any expectations you had about serving on the Review Tribunal that you have found differed from reality?

Post the introduction of the Mental Capacity (Northern Ireland) Act 2016 the role has expanded and changed greatly in some ways. The concepts involved in a 'capacity based' approach to mental health law were new to all of us, and groundbreaking in the UK as a whole, so we all had to be 're-educated'. However, it is also a good example of how the Law has to develop, in-step with societal changes and evolving medical concepts. As lawyers we have become used to the concept of continuous professional development!

What do you enjoy most about the role?

I enjoy the hearings and in particular, being the President of a contested hearing and, having heard the oral evidence, listening to two experienced advocates skillfully arguing for different outcomes. I enjoy having to decide which argument is the better, in terms of making sense, interpreting the law correctly and leading to a proper and fair outcome. This involves discussing the case with the medical and experienced members and considering their views. I'm always amazed at the different perspectives they bring and how they may have considered a specific point or argument from an entirely different angle than I will have. Ultimately arriving at a unanimous decision that all three of us are comfortable with, gives a great sense of satisfaction.

What are the biggest challenges of the role?

The partial commencement of the Mental Capacity (Northern Ireland) Act 2016 was a challenge as it was commenced earlier than expected and involves an area of law unfamiliar to all members. Now that we are three years into the process we have received excellent training and we are now managing a full case load and making a large number of determinations. Nevertheless, the sheer volume of work remains a challenge and processing four Mental Capacity Act cases per sitting day has stretched the membership to its limit.

What skills are important to this role?

Teamwork would be very important. Ultimately as President, I will have to write the decision and need to be able to stand over it, but I strive for unanimity in decision-making, as it should be a rare case where the Tribunal cannot reach an agreed view. Getting the best out of colleagues and ensuring everyone gets to contribute equally is important.

Would you recommend serving as Legal Member on the Review Tribunal to someone else?

Absolutely. However, some have been surprised at how much hard work and commitment is involved. Experienced lawyers who are used to being decisive in running their practice or making decisions in their case work will likely have the skills to do the job. But there is no time to dither, as is the position in any judicial role. I think the work is also very different from what is encountered in the day-to-day work of either a solicitor or barrister.

What advice would you give to those considering applying to serve as a Legal Member of the Review Tribunal?

Give it a go. Even the process of applying is a useful experience and if unsuccessful it still offers the opportunity for your experience and skills to be critically analysed for future opportunities in a judicial role.