

Consultation Response

Tribunal Procedure Committee proposal to amend the Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008

14 June 2018

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About this consultation

1. Introduction

Age UK is a national charity that works with a network of partners, including Age Scotland, Age Cymru, Age NI and local Age UKs across England, to help everyone make the most of later life, whatever their circumstances.

In the UK, the Charity helps more than seven million older people each year by providing advice and support. It also researches and campaigns on the issues that matter most to older people. Its work focuses on ensuring that older people: have enough money; enjoy life and feel well; receive high quality health and care; are comfortable, safe and secure at home; and feel valued and able to participate.

A January 2018 Care Quality Commission report¹ shows that there has been a 36% rise in the number of detentions under the Mental Health Act (MHA) since 2010. This rise has been a result of a number of factors (increased police awareness of mental health issues, overrepresentation of BME groups) but has also in part been due to the increase in the number of older people being detained under the MHA. Because of delays in getting an assessor visit under Deprivation of Liberty Safeguards (DOLS), staff are increasingly using the MHA for authorisation of care.

We are very concerned that these proposals will have a particular impact on older people, particularly those with Dementia being detained under the MHA. Furthermore, we are not aware that any impact assessment has been conducted to assess the impact on this group of people.

2. Proposal 1: Removing the right to a pre-hearing psychiatric evaluation

The PHE provides an up-to-date, safe and secure environment that is more conducive than a tribunal to the eliciting of accurate information based on a face to face interview with the person themselves. Relying on other reports

We are concerned that Proposal 2 will result in a system in which people who lack capacity, and who are therefore unable to request a hearing, will have their detention too easily renewed.

An oral hearing allows for far greater safeguards for the rights and needs of a service user than does a paper hearing, since clinicians must explain the course of treatment and their clinical assessment, and expect to be cross-examined by the tribunal. It also allows an opportunity for advocates to make a case based on the best interests of a service user. The rules already allow for a paper hearing where the service user has requested one.

Mental health tribunals make decisions about whether or not they are to be forcibly detained for the purposes of mental health treatment. This relates directly to the human rights of individuals within society. As such, mental health tribunals must conduct the highest levels of decision making, incorporating both clinical expertise and legal provision which must not be undermined by the need to save time or cut costs.

Age UK is very concerned that allowing tribunals to take decisions without an oral hearing will have a profound impact on those most vulnerable members of our community, particularly older people, resulting in their indefinite detention.

We urge the Government to wait until the Independent Review of the Mental Health Act to deliver its final report (and recommendations) later this year before pursuing any significant changes to tribunal procedure.