

Opinion: Legal Representation at MHRT's in South West England Hanging by a Thread

Representation at MHRT's in the South West of England is currently hanging by a thread with the number of practitioners concerned in mental health work falling by half over a two-year period.

In 2006, 28 solicitors firms were awarded contracts by the Legal Services Commission to provide mental health legal services in the south west region. By early 2008, only 14 firms remained active in the Bristol area, representing the numerous service users appearing before the MHRT in the Avon, Wiltshire, Gloucester and Somerset regions. Three firms have since discontinued and others are reducing caseloads due to retirement of experienced mental health lawyers or transfer to other types of legal work.

The rapid withdrawal from mental health work has been a direct result of the introduction of the fixed fee scheme. The rigid fee structure has made no allowance for a largely rural region. Travel time is significant with numerous small units spread over a distance, thus making it impossible for representatives to take on a sufficient volume of cases to make the work cost-effective. Bristol has a greater concentration of work but practitioners there are likely to face a higher proportion of more complex cases, for example due to the existence of the regional secure unit. A standard fee does not adequately compensate the more experienced advocate focusing on difficult or forensic work. Sadly the higher cost per case is often not quite sufficient to enter the "exceptional case" category for which a higher rate is payable. It is understood that not a single case in this region has reached that threshold since the introduction of the scheme in January. Many will fall into the gap between the fixed fee and the actual cost, thereby rendering the work uneconomic.

It is disappointing that whilst aware of the fragility of mental health legal aid work, the Legal Services Commission have not developed a more sensitive fee regime. Even the beleaguered criminal lawyers have some concessions not available to the mental health advocate. Police station rates are varied by location. Magistrate court rates allow travel to be additional to the fixed fee, apart from in specific urban areas, and also currently permit a mark up to reflect unusual complexity. Criminal appeals are not fought on a "no win, no fee" basis yet no payment is available to the mental health representative for the work involved in appealing to the new Upper Tribunal if an application for leave or to amend the decision is turned down.

The Legal Services Commission have been informed of the critically low number of mental health representatives in the South West and of the prospect of patients appearing unrepresented before tribunals. Their own analysis concludes "there is sufficient evidence for concerns to be raised with regard to the state of access in the South West". Having acknowledged the problem, the Commission states "however, it was this region that was afforded a bid round in November 2007, with a significant number of new matter starts awarded, particularly to providers based outside the region".

The suggestion that the gaps appearing in local provision be filled by legal representatives based at a distance was strongly rejected when proposed to hospital

Mental Health Act Administrators, who are often involved in helping detained service users to obtain legal representation. The Administrators are aware that service users require a flexible, supportive and recognisable representative to give them confidence in the difficult process of making an appeal and appearing before the tribunal. Long journeys, frequently changing representatives and poor communication are all cited as common problems in instructing out of area representatives. Mental health work does not require compulsory accreditation and the peer review process is slow to catch up with bad service or poor standards of representation. In such instances, the only recourse of service users and Administrators are cumbersome complaints procedures.

In any event, the last year has seen no evidence of increased numbers of local unrepresented service users being assisted by out-of-area representatives. It is highly impractical, and this has no doubt been realised by service users and those who assist them in obtaining representation.

So how does this leave the problem for the Tribunal process in the South West region? There is no solution on the table and left without hope, the local firms, in a tight economic climate, continue to shrink. Underpinned by the fundamental right to liberty, we never anticipated that the legal aid system could drift so far as to allow patients to be left without representation in their appeal for release. It appears 2009 is about to witness the crumbling of a once unassailable pillar of our social structure.