

# Mental Health Tribunal for Scotland Administration

Report on the 2005/6 Audit



September 2006



# Contents

<b>Executive Summary</b>	<b>1</b>	<b>Performance Management</b>	<b>7</b>
<b>Introduction</b>	<b>3</b>	<b>Governance</b>	<b>9</b>
<b>Financial Statements</b>	<b>4</b>	<b>Looking Forward</b>	<b>11</b>
<b>Financial Management</b>	<b>6</b>	<b>Appendix A: Action Plan</b>	<b>12</b>



# Executive Summary

## Introduction

In 2005/6 we audited the Mental Health Tribunal for Scotland Administration's (MHTSA) financial statements and we also performed a review of its governance and accountability arrangements. This report sets out our key findings.

## Financial Position

We have given an unqualified opinion on the financial statements of the MHTSA for 2005/6, including the regularity of transactions.

The MHTSA incurred costs of £4,448,000 in the year ended 31 March 2006, while the financial allocation was £4,320,000, giving rise to a deficit of £128,000 against budget.

## Financial Management

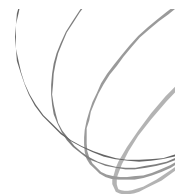
Our review of the MHTSA's governance and accountability framework and the audit of the financial statements highlighted that the MHTSA does not have sufficient financial expertise within its own staffing establishment to allow the maintenance of internal controls and the timeous preparation of budget and financial information.

Good practice suggests that every organisation should have in place appropriate policies and procedures which set out the rules and approach to conducting its business. These form a key element of the internal control framework for the organisation. During 2005/6 the MHTSA did not have standing orders, standing financial instructions or a scheme of delegation in place.

## Performance Management

The Secondary Guidance on Best Value places a duty on Accountable Officers which extends to the reporting of performance. Currently, the MHTSA publishes key statistics on a quarterly basis on its website and in the 2005/6 Management Commentary. To comply with guidance, the key statistics could be developed to include more detail on whether the MHTSA is meeting its strategic and operational objectives and targets.

Good practice suggests that performance information should be issued timeously. Currently, the MHTSA's website does not have any performance data relating to the period after 31 March 2006.



## **Governance**

Corporate governance is concerned with structures and processes for decision-making, accountability, control and behaviour at the upper levels of an organisation. Our review of the MHTSA's governance and accountability framework highlighted that appropriate governance arrangements were not in place for 2005/6 and that there are key areas which need to be developed as a priority including the formation of a board and finalisation of a Framework Document. Appropriate disclosures have been made in the Statement on Internal Control.

**Audit Scotland**

**September 2006**



# Introduction

1. The Mental Health Tribunal for Scotland (MHTS) consists of two distinct parts within a single organisation. The judicial arm of the MHTS is a Non Departmental Public Body comprising the President and more than 300 publicly appointed tribunal members, while the Mental Health for Scotland Administration (MHTSA) is an Executive Agency sponsored by the Health Department and led by a Chief Executive.
2. The core function of the MHTSA is to provide case management and hearing support to allow the tribunals to determine the applications and referrals made to it under the Mental Health (Care and Treatment)(Scotland) Act 2003. All finances are managed by the MHTSA including payments to tribunal members.
3. The MHTSA commenced operations on 5 October 2005 with the introduction of the Mental Health (Care and Treatment)(Scotland) Act 2003. Prior to that, from 1 April to 4 October 2005 activities were undertaken to set up the organisation.
4. This report summarises the findings from our 2005/6 audit of the MHTSA. The work planned in the areas of financial statements, performance and governance was discussed with the Chief Executive in May 2006.
5. Appendix A of this report sets out the key risks highlighted in this report and the action planned by management to address them.
6. We would like to take this opportunity to express our appreciation for the assistance and co-operation provided by officers during the course of our audit. This report will be submitted to the Auditor General for Scotland and will be published on our website, [www.audit-scotland.gov.uk](http://www.audit-scotland.gov.uk).



# Financial Statements

## Our Responsibilities

7. We audit the financial statements and give an opinion on whether:
  - they give a true and fair view of the state of affairs of the MHTSA for the year;
  - the expenditure and receipts in the financial statements were incurred or applied in accordance with applicable enactments and guidance issued by the Scottish Ministers; and
  - they have been prepared properly in accordance with the Public Finance and Accountability (Scotland) Act 2000 and directions made by the Scottish Ministers.
  
8. We also review the Statement on Internal Control by:
  - considering the adequacy of the process put in place by the Chief Executive as Accountable Officer to obtain assurances on systems of internal control; and
  - assessing whether disclosures in the Statement are consistent with our knowledge of the MHTSA.

## Overall Conclusion

9. We have given an unqualified opinion on the financial statements of the MHTSA for 2005/6.

## Financial Position

10. The Scottish Executive agreed a budget for 2005/6 of £4,320,000. Total expenditure shown in the Operating Cost Statement is £4,448,000 resulting in an overspend of £128,000. The budget for 2006/7 has been increased to £8,800,000 as this will be the first full year of tribunal operations.

## The Issues Arising from the Audit

11. The main issues arising from the audit related to the set up of the MHTSA and the control framework in operation during 2005/6. Our review of the governance and accountability framework highlighted that appropriate governance arrangements were not in place for 2005/6 and that there were key areas which required to be developed as a priority. In particular, the absence of a robust internal control framework means that the organisation did not operate in accordance with requirements and standards for public sector bodies. The main findings from our review and the planned management actions are detailed in our separate report on governance which was issued on 22 August 2006.



## Statement on Internal Control

12. As part of our responsibilities we are also required to review whether the Statement on Internal Control provided by the accountable officer reflects the MHTSA's compliance with Scottish Executive guidance. We are required to report if it does not meet the requirements specified or if the statement is misleading or inconsistent with other information of which we are aware from the audit of the financial statements. There were no issues from the Statement on Internal Control which required inclusion in our report.



# Financial Management

## Financial stewardship

13. Our work during the governance review and the financial statements audit highlighted that the MHTSA does not have sufficient financial expertise within its own staffing establishment to support effective financial management. The MHTSA should consider whether expertise in financial management can be accessed through formal support from the Scottish Executive or whether an appropriately qualified officer needs to be recruited to strengthen financial management.
  
14. Providing the organisation's management team with high-quality, reliable monitoring information is essential if all financial and operational targets are to be achieved. The information regularly reported may include:
  - performance against statutory duties and targets;
  - a summary of performance against resources and budgets;
  - the current key risks that the agency faces; and
  - a longer-term forecast of financial risks.
  
15. At the time of our review, the financial reporting system was still being developed to support operational management.

### **Action Plan point 1**

16. There is a risk that the 2006/7 budget allocation may be insufficient for the organisation to fulfil its statutory objectives. This is due to:
  - actual activity levels exceeding previous estimates; and
  - additional financial liabilities created by HM Revenue and Customs guidance which requires Tribunal members to be reclassified as employees.

### **Action Plan point 2**





# Performance Management

## Introduction

17. This section covers our assessment of the way in which the MHTSA secures best value in the use of its resources. Our work has focused on two main areas:

- achievement against targets; and
- Best Value.

## Targets

18. The Mental Health (Care and Treatment)(Scotland) Act 2003 places tight timescales on the holding of hearings when Compulsory Treatment Orders (CTOs) are made and the Tribunal must hold a first hearing within five working days of the expiry of a Short Term Detention Certificate (STDC). Since the MHTSA became operational, it has become clear that CTOs account for 85% of hearings and 70% of those received allow less than 8 working days to organise and hold a hearing.

19. The MHTSA publishes quarterly statistics including numbers of applications and hearings, time lapses between medical reports, hearings by health board and local authority. The statistics are published on the Mental Health Tribunal for Scotland website. The 2005/6 Management Commentary states that the MHTSA intends to upgrade the website to provide more complete information for the general public on the volume and spread of work of the organisation. To improve the current performance reporting, the MHTSA could develop these published statistics to include details demonstrating that the MHTSA is complying with statute, for example, percentage of tribunals held within the prescribed timeframe.

20. Currently, the MHTSA publishes quarterly statistics. However, as at the end of August 2006, there were no statistics published relating to the period after 31 March 2006. The MHTSA should aim to publish statistics timeously to demonstrate transparency and to help ensure that any necessary corrective action can take place.

**Action plan point 3**



## Best Value

21. Since April 2002 there has been a duty of Best Value on Accountable Officers to *'to ensure arrangements are in place to secure Best Value'*. Secondary guidance was issued in May 2006 in which the duty of Best Value was described as:
- to make arrangements to secure continuous improvement in performance whilst maintaining an appropriate balance between quality and cost; and in making those arrangements and securing that balance;
  - to have regard to economy, efficiency and effectiveness, the equal opportunities requirements; and
  - to contribute to the achievement of sustainable development.
22. In May 2005, Ministers decided that they would not bring forward legislation which extends Best Value in the wider public sector. However, Ministers do wish to encourage and embed the principles of Best Value across the wider public sector, and revised guidance was issued in May 2006.
23. The 2005/6 Management Commentary states that *'the MHTSA plans a number of initiatives which are aimed at improving the level of service and efficiency of the organisation'*. The MHTSA should ensure that the characteristics of Best Value are embedded into the organisation's strategy and operations. As the MHTSA continues to develop, we will review the organisation's formal arrangements for compliance with the revised best value guidance.

**Action plan point 4**



# Governance

## Introduction

24. This section sets out our main findings arising from our review of the MHTSA's governance arrangements in relation to:
- compliance with relevant guidance on governance arrangements; and
  - internal control and reporting.

## Governance Framework

25. HM Treasury's Code of Good Practice relating to Corporate Governance in Central Government Departments (the Code) defines corporate governance as *'the way in which organisations are directed and controlled'*. It recommends that a board, which should include independent non-executive members, is formed to manage the operations of an organisation within the strategic framework and to take ownership of performance. At the time of our review, there was no formal board in place to direct and control the MHTSA.
26. The Scottish Public Finance Manual (SPFM) requires that *"a framework document should be drawn up for each agency in consultation with the Public Bodies and Executives Unit and the relevant departmental Finance Team setting out the responsibilities and accountability of the various parties involved."* At the time of our review, the Framework Document for the Mental Health Tribunal for Scotland, encompassing the Administration, prepared by the SEHD, was still in draft format and was incomplete.

**Action Plan point 5**

## Internal Control and reporting

27. The Code requires that an organisation should ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control. The role of an audit committee is to provide an independent and objective review of the organisation's system of internal control including its financial systems, financial information, clinical governance arrangements, approach to risk management and compliance with legislation. The SPFM requires that an audit committee should be established and constituted in line with central government policy principles. An Audit Committee has not yet been established at the MHTSA.



28. At the time of our review MHTSA did not have key internal controls in place including:

- Standing Orders;
- a scheme of delegation including a schedule of decisions reserved to the board; and
- Standing Financial Instructions.

29. All public organisations are required to have an internal audit service and internal auditors must comply with standards based on those set down for government bodies. During the financial period to 31 March 2006, internal audit arrangements had not been established for MHTSA and no review had been performed of the systems operated.

30. At the time of our review there was no operational risk management framework in place. The MHTSA should ensure that progress is made to ensure that a risk framework is introduced and that risk management processes are embedded in the organisation.

**Action plan point 6**



# Looking Forward

31. The Mental Health Tribunal for Scotland Administration faces significant challenges in 2006/7 which include:

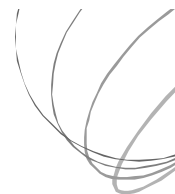
- the development of financial management procedures to ensure that the management team is provided with high-quality, reliable monitoring information. This is essential if all financial and operational targets are to be achieved;
- the Best Value agenda will play an increasingly important role throughout public services in Scotland. The MHTSA recognises that there is still work to be done to develop the arrangements which will demonstrate commitment to Best Value and continuous improvement;
- the development of governance arrangements to ensure that the MHTSA complies with HM Treasury's Code of Good Practice relating to corporate governance in central government departments. This is an essential development which will support the move towards the MHTSA becoming a more efficient organisation;
- the introduction of a system that will allow the electronic transmission of applications between Responsible Medical Officers, Mental Health Officers and the MHTSA; and
- the development of human resource policies including training, staff relations, flexible working arrangements, equality and diversity, health and safety and welfare arrangements. This is important to support human resource management as well as to comply with legislation.



# Appendix A: Action Plan

## Key Risk Areas and Planned Management Action

Action Point	Refer Para. No	Issue	Planned Action	Responsible Officer	Target Date
1	13-15	There is an insufficient level of financial and budgetary reporting and control within the organisation.	A Finance Committee was introduced in June 2006. A Sage system has recently been purchased and staff will be attending training on this at the end of October. This should facilitate a higher quality of reporting.	Chief Executive and Business Manager	Dec 06
2	16	The 2006/7 budget allocation may be insufficient for the organisation to fulfil its statutory objectives.	Original figures were based on forecast figures which had no historic data. With 6 months operational experience, we are now more informed to accurately predict volumes and associated spend. This means it is likely that we will meet our statutory objectives within the budget set.	Chief Executive	Dec 06
3	19,20	Performance information may not be sufficiently detailed or timeous to satisfy the needs of different sections of the community and stakeholders.	A comprehensive catalogue of reports covering all aspects of the Tribunal's activities has now been produced. Regular internal reports are produced with quarterly compendia of reports published on the Tribunal's website. A full range of statistical reports are available on request. Finance staff have recently attended SEAS training and will also be using the Sage system to provide financial reports.	Planning and Performance Manager and Business Manager	Dec 06
4	23	Best Value principles may not become embedded within the MHTSA.	Finance staff will attend relevant training to ensure best value principles are adhered to.	Business Manager	Jan 07
5	26	The framework document for the MHTSA is still in draft format.	The MHTSA will support the Scottish Executive Health Department in agreeing this document with the Tribunal President. Final agreement is yet to be reached on the document.	Chief Executive	Dec 06



Action Point	Refer Para. No	Issue	Planned Action	Responsible Officer	Target Date
6	27-30	The governance framework for the MHTSA is not in place and the organisation is, therefore, vulnerable to governance failure.	Lack of agreement on the framework document is impeding progress. However, drafts exist on the establishment of a non-executive board, risk management arrangements and memoranda of understanding with partnership organisations. A professional reference group meets quarterly and a user reference group is being established.		