

Mental Health Tribunal for Scotland Administration

Report on the 2006/07 Audit

 AUDIT SCOTLAND

September 2007

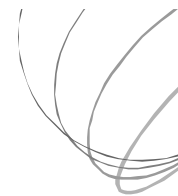


Mental Health Tribunal for Scotland Administration

Report on the 2006/07 Audit

Contents

Executive Summary	1	Performance Management	8
Introduction	3	Governance	10
Financial Statements	4	Looking Forward	12
Financial Management	7	Appendix A: Action Plan	13



Executive Summary

Introduction

In 2006/07 we audited the Mental Health Tribunal for Scotland Administration's (MHTSA) financial statements and we also performed a follow-up review of our 2005/06 report on 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 2006/07, including the regularity of transactions. The MHTSA incurred costs of £8,395,000 in the year ended 31 March 2007, while the financial allocation was £7,500,000, giving rise to an overspend of £895,000 against budget (2005/06: £130,000 overspend). The overspend in 2006/07 was due mainly to the higher than expected number of tribunals which have been held during the year.

Financial management

Our follow-up review of the MHTSA's governance and accountability framework and the audit of the financial statements highlighted that the MHTSA does not presently have the appropriate financial expertise within its own staffing establishment to support the operation of internal controls and the production of budget and financial information.

All organisations should have in place appropriate policies and guidance setting out the rules and procedures underpinning the conduct of its business. Throughout 2006/07, the MHTSA continued to operate without having formalised standing orders, standing financial instructions or a scheme of delegation in place.

Performance management

The current Guidance on Best Value issued by the Scottish Executive 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 2006/07 Management Commentary. As highlighted in 2005/06, 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.



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 still not in place for 2006/07 and that there are key areas which need to be developed as a priority including the formation of a board and an audit committee and the finalisation of a Framework Document. We note that appropriate disclosure of this position has been made in the Statement on Internal Control.

Audit Scotland
September 2007



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 Tribunal 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 2006/07 audit of the MHTSA which is its first complete year of operation. The work planned in the areas of financial statements, performance and governance was discussed with the Chief Executive in January 2007.
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 .



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 the year ended 31 March 2007.

Financial position

10. The funding allocation received from the Scottish Executive for 2006/07 was lower than expected. Also, MHTSA received notification from the SEHD that the 2006/07 funding allocation was £8 million and the organisation monitored against this figure during the financial year. However, this figure differed from the allocation of £7.5 million set by the Budget Act and Autumn and Spring revisions for MHTSA. There is, therefore, an overspend of £895,000 which is the difference between the total expenditure for the year of £8,395,000 and the budget allocation of £7.5 million. During the year to 31 March 2007, the Mental Health Tribunal for Scotland held in excess of 3,500 hearings while during the first 6 months of operations from October 2005 to March 2006 there were approximately 1,200 hearings. The increase in the number of hearings has a direct effect on expenditure levels and this, together with the inaccurate notification of budget allocation, has contributed to the overspend.



The issues arising from the audit

11. MHTSA does not presently have an audit committee. In the absence of such a forum, we reported the following main issues to the Accountable Officer on 19th July 2007:

- **Statement on Internal Control.** The following disclosures had not been included within the Statement on Internal Control:

- a risk management system was not in place for the whole of 2006/07;
- a framework agreement was not in place for 2006/07;
- a governance structure was not in place for 2006/07. This includes a Board with non-executive directors along with the required committees, including an audit committee; and
- standing orders, standing financial instructions and a scheme of delegation were not in place for 2006/07.

Resolution: The statement on internal control was amended to reflect the above points.

- **Capitalisation of Fixed Assets.** All invoices received by MHTSA are processed and paid by the Scottish Executive which is also responsible for reclaiming VAT where appropriate. The MHTSA had capitalised invoices at the cost shown in SEAS. However, the value of fixed assets is incorrect as there has been inconsistent treatment of VAT for invoices relating to the same asset.

Resolution: The difference was assessed to be immaterial and no adjustment was made in the 2006/07 financial statements. However, the issue will be resolved in future with MHTSA ensuring that fixed assets are capitalised at the correct value.

- **Fixed Asset Register.** There was no register for fixed assets maintained during 2006/07. The capital asset manual states that NHS bodies must maintain a fixed asset manual.

Resolution: A fixed asset register is to be created during 2007/08 and appropriate disclosure was made in the 2006/07 Statement on Internal Control.

- **Accrual of invoices.** Sample cut-off testing identified some invoices which related to goods or services received before the end of the financial year but which had not been included within the accounts payable report provided by the Scottish Executive.

Resolution: No adjustment was made to the accounts on the grounds of materiality and appropriate assurance was provided in the letter of representation.



- **Long term liability.** The 2006/07 financial statements include a long-term liability of £64,000 relating to the President's pension. The MHTSA has calculated this liability based on information provided by the Mental Health Division at the SEHD. This is an unusual arrangement and specific procedures will need to be put in place for accounting for and administering the pension in future.

Resolution: Appropriate assurance was provided in the letter of representation.

- **Budget 2006/07.** The MHTSA was advised by the SEHD that the budget for 2006/07 was £8 million and this was disclosed in the Operating and Financial Review within the draft accounts. However, the Budget (Scotland) Act for the year ended 31 March 2007 stated that the budget allocation for the MHTSA was £7.5 million.

Resolution: The Fraser Figure for the MHTSA is to investigate the matter. Adjustment was made to the Operating and Financial Review to agree to the Budget (Scotland) Act allocation and appropriate assurances were obtained in the letter of representation.

- **Departmental funding.** Third party confirmation was not received from the Scottish Executive in relation to the level of departmental funding.

Resolution: The Scottish Executive provided confirmation of funding and appropriate assurances were obtained in the letter of representation.

Statement on Internal Control

12. The Statement on Internal Control (SIC) signed by the MHTSA's accountable officer reflects the main findings from our audit work and other significant control issues. The SIC highlighted a number of key issues:

- a risk register was not in place for the full year ended 31 March 2007;
- there was no Board operational during the year;
- an Audit Committee has not yet been introduced at the MHTSA;
- no non-executive Board members have yet been appointed;
- due to the lack of a governance structure, Standing Orders and Standing Financial Instructions, with a scheme of delegation remain in draft format; and
- there is no Fixed Asset Register in use at the MHTSA.



Financial Management

Financial stewardship

13. As in 2005/06, our work during the governance review and the financial statements audit highlighted that the MHTSA still does not have sufficient financial expertise within its own staffing establishment to support effective financial management. We, therefore, continue to recommend that the MHTSA considers 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. This resource should be secured as a priority.

Action Plan point 1

14. As at August 2007, the MHTSA had still not been notified of its 2007/08 budget allocation and the SEHD has not requested any monitoring returns from the organisation. The MHTSA is currently monitoring internally against an estimated allocation which is substantially higher than the actual 2006/07 allocation. Without receiving accurate details of the budget allocation from the SEHD, there is, therefore, a high risk that the MHTSA will record an overspend during 2007/08.

Action Plan point 2

15. During 2006/07, the MHTSA continued to operate without having formalised standing orders, standing financial instructions or a scheme of delegation in place. The 2006/07 Management Commentary states that *'these documents remain in draft form pending the appointment of the Board of Management and the appropriate approval process'*. We will continue to review these developments during 2007/08.

Action Plan point 3



Performance Management

Introduction

16. 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:

- Performance against targets; and
- Best Value.

Targets

17. 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). During 2006/07, there has been an improvement in the timing of applications received by the MHTS and this has helped the scheduling of work. However, in general the work pattern for the Tribunals remains volatile with large week by week variations.

18. The MHTSA publishes quarterly statistics including numbers of applications and hearings, time elapsed between medical reports, hearings by health board and local authority. The statistics are published on the Mental Health Tribunal for Scotland website. The 2006/07 Management Commentary states that the MHTSA's website will continue to be developed to provide information that is better suited to the needs of service users and carers and provide more complete information for the general public on the volume and spread of the work of the MHTSA. As in last year's report, however, we continue to recommend that, 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.

Action plan point 4



Best Value

19. 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.
20. 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.
21. As part of the 2007/08 audit we will be reviewing the progress that the MHTSA has made in strengthening arrangements for securing Best Value. Over the next year we will also be developing and refining our approach to the audit of bodies' arrangements to secure economy, efficiency and effectiveness in the use of resources, this being one of the key auditors' objectives under the new Code of Audit Practice approved by the Auditor General. In turn, this will inform our ongoing work to develop our approach to the audit of Best Value across the public sector. We intend to consult with clients and stakeholders at key stages of these initiatives.



Governance

Introduction

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

Governance framework

23. 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. Our 2005/06 governance report highlighted that there was no formal Board in place at August 2006 to direct and control the MHTSA. The MHTSA continued to operate throughout 2006/07 without a Board being appointed and continues to do so at September 2007.
24. 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."* As at September 2007, almost two years after the MHTSA became fully operational, the Framework Document has still not been finalised and remains in draft format.

Action Plan point 5

Internal control and reporting

25. 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. As at September 2007 an Audit Committee has not yet been established at the MHTSA.



26. At the time of our review the MHTSA was continuing to develop key internal controls for the organisation:

- **Standing Orders** – although standing orders were drafted during 2006/07 they have not been reviewed or approved for use due to the lack of a governance structure within the MHTSA;
- **Scheme of delegation including a schedule of decisions reserved to the board** – the MHTSA did not have this guidance available during 2006/07 and it is still not in place; and
- **Standing Financial Instructions** – the draft standing financial instructions have not been reviewed or approved for use due to the lack of a governance structure.

27. During 2006/07, the MHTSA established a Risk Strategy and a Risk Register. The 2006/07 Management Commentary stated that *'the Risk Strategy and Risk Register will continue to be developed, particularly after the requirements of the Framework Agreement have been progressed.'* During 2007/08 we will continue to review the organisation's formal arrangements for compliance with the requirements of the SPFM in relation to the development of a risk strategy.

Action plan point 6



Looking Forward

28. The Mental Health Tribunal for Scotland Administration faces significant challenges in 2007/08 which include:

- the need to development financial management procedures and provide appropriately qualified finance staff to ensure that the management team is supported by high-quality, reliable monitoring information. This is essential if the organisation's financial and operational targets are to be achieved;
- the need to develop 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;
- a further rise in tribunal cases is expected from October 2007 as two year reviews for Civil Patients are introduced. This increase in activity will lead to higher expenditure and the MHTSA must ensure that this is provided for within the annual budget; and
- revised guidance on best value in the wider public sector has now been issued. The MHTSA will need to ensure that it has mechanisms in place that enable it to demonstrate continuous improvement and that the principles of best value are embedded. Audit Scotland will be developing its approach to best value in the wider public sector in due course.



Appendix A: Action Plan

Key risk areas and planned management action

Action Point	Issue	Planned Action	Responsible Officer	Target Date
1	There is a risk that there may be weaknesses in the internal control systems due to the fact that there is an insufficient level of financial and budgetary reporting and control within the organisation.	The process to recruit a qualified accountant, probably on a part-time basis, is underway. Arrangements are in place to retain the assistance of the current financial adviser through to May 2008, on the basis of a few days per month primarily to oversee the finalisation of the corporate governance framework.	Business Manager	15 th Dec 2007
2	The organisation may be monitoring against an inaccurate budget allocation estimate leading to an overspend in 2007/08.	The MHTSA has recently and again requested confirmation of the 2007/08 funding allocation from the SEHD. The MHTSA Budget for the year, estimating the likely funding requirement was submitted to the SEHD in March 2007. Monthly Financial Reports continue to use that Budget information.	Acting Chief Executive	30 th Sept 2007
3	There is a risk that inappropriate governance procedures may take place due to a lack of agreed standing orders, standing financial instructions and a scheme of delegation.	The draft SOs, SFIs and Scheme of Delegation will continue to be developed over the next few months. The process of appointing at least three Non-Executive Directors to form a Board is underway.	Acting Chief Executive	31 st Dec 2007
4	The required corrective action to enable the MHTSA to meet its statutory responsibilities may not take place due to fact that published performance data is not sufficiently detailed.	The MHTSA website is updated with quarterly statistical information which is considered to be suitable for the purpose. The performance statistics generated by the MHTSA are unique to the organisation and have no similarity with those in the other parts of the NHS. Where there are specific enquiries for additional and perhaps more specialist information, those requests are processed promptly. The website will continue to be generally developed over the remainder of the financial year.	Acting Chief Executive	31 st March 2008



Action Point	Issue	Planned Action	Responsible Officer	Target Date
5	There is a risk of inappropriate governance procedures being followed due to the fact that the framework document for the MHTSA is still in draft format.	The Framework Agreement is in final draft from the Health Department's perspective. The MHTSA requires to complete the Annexes and also proposes a few minor amendments to the Framework Agreement. Finalisation of the Framework Agreement is targeted for the end of September.	Acting Chief Executive	31 st March 2008
6	The governance framework for the MHTSA is not in place and the organisation therefore faces a risk of failure of governance arrangements.	Note the comments in 1, 3 and 5 above. The process of establishing the governance framework is underway. The Risk Register is currently under review to ensure it continues to reflect the main risks to the MHTSA (review to be completed by 30 th September 2007).	Acting Chief Executive	31 st January 2008