

Mental Health Tribunal for Scotland Administration

Report on the 2007/08 Audit



August 2008



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Executive Summary

Introduction

In 2007/08 we looked at the key strategic and financial risks being faced by the Mental Health for Scotland Administration (MHTSA). We audited the financial statements and we also performed a follow-up review of our 2006/07 report on governance and accountability arrangements. This report sets out our key findings.

Financial Position

The MHTSA incurred costs of £9,773,000 in the year ended 31 March 2008, while the financial allocation was £8 million, giving rise to an overspend of £1,773,000 against budget (2006/07: £895,000 overspend). The overspend was due to the fact that there was a higher than expected number of tribunals held during the year together with the organisation being notified in November 2007 of a lower than expected resource allocation.

As at August 2008, the 2008/09 budget had not been agreed with the SGHD and the MHTSA was monitoring spend against estimated budget levels. The lack of timely details of budget allocation increases the risk that resources may not be applied efficiently.

Financial Statements

We have given an unqualified opinion on the financial statements of the MHTSA for 2007/08.

We have also concluded that in all material respects, the expenditure and receipts shown in the financial statements were incurred or applied in accordance with applicable enactments and relevant guidance, issued by Scottish Ministers.

Performance

The current 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. As highlighted in previous years, 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 the 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 concluded that a large amount of progress was made in 2007/08 and development is planned during 2008/09 to ensure that all risks highlighted in our report are addressed. We note that appropriate disclosure of this position was made in the Statement on Internal Control.



We examined the key financial systems which underpin the organisation's control environment. We concluded that financial systems and procedures operated sufficiently well to enable us to place reliance on them.

Looking forward

The final part of our report notes some key risk areas for the MHTSA going forward. Following the reform announcement in January 2008 by the First Minister there may be changes which could have a significant long term effect on how the MHTSA and the tribunals will operate and function in the future. During a period of change there are increased risks for any organisation, for example continuing to meet targets and ensuring that services are delivered, while staff and functions are transferred. We will consider as part of our 2008/09 audit how the organisation is developing and implementing as required good change management processes to minimise risk while implementing these reforms.

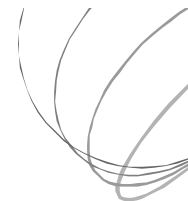
The assistance and co-operation given to us by Board members and staff during our audit is gratefully acknowledged.

Audit Scotland
August 2008



Introduction

1. This report summarises the findings from our 2007/08 audit of the Mental Health Tribunal for Scotland Administration for Scotland (MHTSA). The scope of the audit was set out in our Audit Plan, which was presented to the Accountable Officer in March 2008. This plan set out our views on the key business risks facing the organisation and described the work we planned to carry out on financial statements, performance and governance.
2. We have issued a report on governance and accountability this year, and we briefly touch on the key issues we raised in this report. The report set out our detailed findings and recommendations and the Board's agreed response.
3. We would like to take this opportunity to express our appreciation for the assistance and co-operation provided by officers and members of the MHTSA 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 Position

4. In this section we summarise key outcomes from our audit of the MHTSA's financial statements for 2007/08, and comment on the key financial management and accounting issues faced. The financial statements are an essential means by which the organisation accounts for its stewardship of the resources available to it and its financial performance in the use of those resources.

Our responsibilities

5. We audit the financial statements and give an opinion on:
 - whether they give a true and fair view of the financial position of the MHTSA and its expenditure and income for the period in question
 - whether they were prepared properly in accordance with relevant legislation, applicable accounting standards and other reporting requirements
 - the consistency of the information which comprises the Management Commentary and Operating and Financial Review with the financial statements
 - the regularity of the expenditure and receipts.
6. 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
 - assessing whether disclosures in the statement are consistent with our knowledge of the MHTSA.

Overall conclusion

7. We have given an unqualified opinion on the financial statements of the MHTSA for 2007/08.
8. The unaudited accounts were provided to us on 10 June 2008 supported by a working paper package. The standard of the supporting papers and the timely responses from MHTSA staff allowed us to conclude our audit within the agreed timetable and provide our opinion to the Audit Committee on 14 July 2008 as timetabled.



Financial Position

Outturn 2007/08

9. The MHTSA is required to work within the resource budget set by the Scottish Government. The MHTSA incurred costs of £9,773,000 in the year ended 31 March 2008, while the financial allocation was £8 million, giving rise to an overspend of £1,773,000 against budget (2006/07: £895,000 overspend). As in prior years, the reason for the overspend was that there was a higher than expected number of tribunals held during the year.

2008/09 Budget

10. As at August 2008 the 2008/09 budget had not been agreed with the Scottish Government Health Directorates (SGHD) and the MHTSA is monitoring spend against estimated budget levels. The 2007/08 budget was also not agreed until November 2007 and this was a contributory factor to the overspend for the financial year. Without receiving accurate and timely details of the budget allocation from the SGHD there is a risk that the MHTSA will record an overspend in 2008/09.

Action plan point 1

Financial stewardship

11. As in 2005/06 and 2006/07, our work during the governance review and the financial statements audit highlighted that the MHTSA still does not have sufficient permanent 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 SGHD or whether an appropriately qualified officer is recruited on a permanent basis to support financial management.

Action plan point 2

Issues arising from the audit

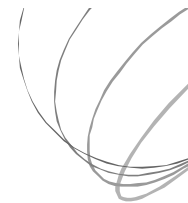
12. As required by auditing standards we reported to the audit committee on 14 July 2008 the main issues arising from our audit of the financial statements. The key issues reported were:
13. **Fixed Asset Register** – there is currently no detailed register for fixed assets. The capital asset manual states that NHS bodies must maintain a fixed asset register. The MHTSA has agreed to develop the fixed asset register during 2008/09.



14. **Long term Liability** – Included within the accounts is a long term liability of £100,000 for the former President's pension as this was included within the President's pay package. The MHTSA has calculated this liability based on information provided by the Mental Health Division at the SGHD. This is an unusual arrangement and written assurance on this matter was obtained in the letter of representation including an assurance that the categorisation of this accrual as a long term liability was reasonable.
15. **Travel expenses** – The MHTSA has included an accrual for travel expenses payable to the former President of the MHTSA totalling approximately £5,000. Payment in respect of this accrual was made by the MHTSA after 31 March 2008. Several of these expenses were dated 2005. We requested and received written assurance that late receipt of these claims and the subsequent payment of them did not contravene any MHTSA regulations and also that there were no similar unaccrued expenses.
16. **Former President's salary** – As part of our review we considered the arrangements relating to the departure from office of the current President of the Mental Health Tribunals for Scotland, Mrs Eileen Davie, and liaised with the SGHD who are the body's sponsor Department. We have since confirmed that all MHTS members, and the President of MHTS, have specified terms of office, which are protected under Schedule 2 of the Mental Health (Care and Treatment) (Scotland) Act 2003. In late May 2008 Mrs Davie gave notice of her intention to resign as MHTS President from 19 October of that year. Mrs Davie's remuneration continued in accordance with her terms of office under the Act and the instrument of her appointment, until her resignation became effective.

Regularity Assertion

17. The Public Finance and Accountability (Scotland) Act 2000 imposes a responsibility on auditors that requires us to certify that, in all material respects, the expenditure and receipts shown in the accounts were incurred or applied in accordance with applicable enactments and guidance issued by the Scottish Ministers. We have been able to address the requirements of the regularity assertion through a range of procedures, including written assurances from the Accountable Officer as to his view on adherence to enactments and guidance. No significant issues were identified for disclosure.



Governance

Overview of arrangements

18. This section sets out our main findings arising from our review of the MHTSA's governance arrangements. This year we performed:
- a review of the key systems of internal control
 - a follow up review of our 2006/07 governance report.
19. We also discharged our responsibilities as they relate to prevention and detection of fraud and irregularity; standards of conduct; and the organisation's financial position. Our overall conclusion is that arrangements within the MHTSA are sound and have operated through 2007/08.

Governance framework

20. The governance framework within the MHTSA has developed since our 2006/07 report which highlighted that the MHTSA was operating without a Board being appointed. A Board is now in place at the MHTSA and the first Board meeting was held on 15 April 2008. An Audit Committee has also now been appointed and the 2007/08 financial statements were reviewed at the Committee's first meeting on 14 July 2008.
21. Our previous governance reports stated that, to ensure effective working arrangements between the MHTSA and the Scottish Government Health Directorates (SGHD) it was important that roles and responsibilities were clearly defined. The Good Governance Standard for Public Services states that *"the governing body should set out clearly, in a public document, its approach to performing each of the functions of governance."* During 2007/08, the Framework Document was agreed and signed by the Scottish Government.

Systems of internal control

22. Key controls within systems should operate effectively and efficiently to accurately record financial transactions and prevent and detect fraud or error. This supports a robust internal control environment and the effective production of financial statements. In their annual report for 2007/08 Chiene & Tait provided their opinion that, based on the internal audit work undertaken during the year, there was substantial assurance on the adequacy and effectiveness of the systems of internal control.



23. As at June 2008 the following controls remain to be implemented:

- **Standing orders** – we note that standing orders were drafted during 2006/07 and reviewed in 2007/08. However, the standing orders have not yet been reviewed or approved for use by the Board.
- **A schedule of decisions reserved to the Board and Scheme of Delegation** – the Scheme of Delegation has not been reviewed or approved by the Board.
- **Standing financial instructions** – during 2006/07 standing financial instructions were drafted and they were reviewed in 2007/08. They have not yet been reviewed or approved for use by the Board.

Action plan point 3

24. The existing draft risk register was revised during 2007/08, with all identified risks described in a new format. This risk register requires to be reviewed by the Board and a system should be introduced which ensures that the risk register is continually updated so that it is representative of the risks facing the MHTSA.

Action plan point 4

25. As part of our audit we reviewed the high level controls in a number of the MHTSA's systems that impact on the financial statements. Our overall conclusion was that key controls were operating effectively.

Statement on Internal Control

26. The Statement on Internal Control provided by the MHTSA's Accountable Officer reflected the main findings from both external and internal audit work. This recorded management's responsibility for maintaining a sound system of internal control and set out the MHTSA's approach to this.



Performance Management

27. Public audit is more wide-ranging than in the private sector and covers the examination of, and reporting on, performance and value for money issues. As part of our audit we are required to plan reviews of aspects of the arrangements to manage performance, as they relate to economy, efficiency and effectiveness in the use of resources.
28. Accountable officers also have a duty to ensure the resources of their organisation are used economically, efficiently and effectively. These arrangements were extended in April 2002 to include a duty to ensure 'best value' in the use of resources.

Best Value developments

29. The positive impact of the Best Value concept in local government led Scottish Ministers to introduce a non-statutory Best Value duty on all public sector accountable officers (i.e. across health and central government) in 2002. This was reinforced by refreshed Ministerial guidance in 2006, highlighting the importance that the Scottish Government places on Best Value as a means of supporting public service reform.
30. That position was re-iterated in the Scottish Government's recent response to the Crerar scrutiny review which credited the Best Value regime as a key driver of modernisation and improvement in public services. Audit Scotland is committed to extending the Best Value audit regime across the whole public sector and significant development work has taken place over the last year.
31. The framework for our proposed Best Value audit approach was agreed by Audit Scotland's Corporate Management Team in September 2007. It is based on the key principles of flexibility and proportionality; alignment and integration with our existing activities; being delivered within our existing resources, and with an evolutionary implementation.
32. Using the Scottish Government's nine best value principles as the basis for our audit activity, we have identified five priority development areas (Use of Resources, Governance and Risk Management, Accountability, Review and Option Appraisal, and Joint Working) for our initial development work.
33. Currently we are concentrating on the development of Use of Resources audit toolkits, focusing initially on Financial Management, Efficiency and Information Management. These toolkits are being piloted in a sample of NHS and central government clients during 2007/08 and 2008/09. Developed toolkits will also be made available to public bodies to consider for self assessment. Our work in 2008/09 will be informed by developments in the audit of Best Value.



Performance Management

34. 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). The most recent data published on the MHTS website which relates to the quarter ended 31 March 2008, indicates that applications appear to be arriving later than previously. This means that the MHTSA has less time available to arrange hearings and there is therefore an increased risk that the statutory timescales will not be met.

Action plan point 5

35. The MHTSA publishes quarterly statistics including numbers of new cases, application attributes, numbers of hearings, administration information and activity by local authority population. The 2007/08 Management Commentary states that *“the organisation’s website will continue to be developed to provide information that is better suited to the needs of service users and carers and to provide more complete information for the general public”*. Internal audit recommended that a regular review of the adequacy and relevance of all KPIs should be undertaken. As in all of our Annual Reports issued since the formation of the MHTSA we continue to recommend that, to improve the current performance reporting, details of the percentage and number of tribunals held within the statutory timeframe could be added to the website.

Action plan point 6

36. As at August 2008, the most recent performance data included on the website related to the quarter ended 31 March 2008. The timeous reporting of performance information is an essential step towards improving service delivery. Internal audit recommended that performance results are reported consistently to the Board on a regular basis. We will continue to review developments in performance reporting during 2008/09.

Action plan point 7



Looking Forward

37. The MHTSA faces a number of challenges in 2008/09, which include:

- **Simplification programme** – On 30 January 2008, the First Minister made a statement to Parliament which set out how the Scottish Government planned to meet its commitment to reduce in number the 199 significant national public sector organisations by 25%, by 2011. The First Minister stated that the case for an integrated tribunal service would be considered during a review of tribunals. We will monitor the progress of the review and the implications for the MHTSA.
- **International Financial Reporting Standards (IFRS)** – As part of the UK Budget 2007, the Chancellor announced that the timetable for IFRS implementation was to be extended by a year with central government accounts in Scotland to become IFRS compliant with effect from the 2009/10 financial year. The Scottish Government have notified central government bodies that they will be required to produce shadow IFRS based accounts for the financial year in 2008/09, including a restated balance sheet as at 1 April 2008. A detailed timetable and list of requirements is awaited from the Scottish Government. This process may require significant resource to complete and it will be important that the restatement is tackled early in 2008/09, with a plan in place to manage the transition.
- **Scotland Performs** – The Scottish Government is continuing to develop its approach to performance management based on a National Performance Framework and outcome agreements. The National Performance Framework is based on the outcome based 'Virginia-style' model of performance measurement and reporting. In support of this, the Scottish Government has developed a new electronic tool and website to communicate to the public on Scotland's progress. This will include progress on overall delivery of the administration's purpose for Government, the five strategic objectives for Scotland and other aspects of the outcomes based National Performance Framework. We will consider how the MHTSA is addressing this developing area as part of the 2008/09 audit.
- **Data handling** – The Scottish Government carried out a review of data handling arrangements in Scotland, in response to failures in UK government bodies' procedures and practices during 2007. The review considered current policies and procedures on data protection, consistency with government standards and local arrangements for implementation of procedures. An interim report published in April 2008 made some initial recommendations and a final report is expected soon. We will monitor the MHTSA's response to the review and action taken as part of our 2008/09 audit.



Appendix A: Action Plan

Key Risk Areas and Planned Management Action

Action Point	Risk Identified	Planned Action	Responsible Officer	Target Date
1	The organisation may be monitoring against an inaccurate budget allocation estimate leading to an overspend in 2008/09.	Funding for 2008/09 and the history of prior years has been discussed with SGHD Finance. The detailed Indicative Budget for 2008/09 has been provided to SGHD Finance and further discussions will be held in September. The MHTSA has been assured by the SGHD that funding up to £8m is authorised and any overspend above that will be covered by the SGHD.	Chief Executive	Funding agreed by 30 th Sept. 2008
2	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 permanent financial expertise within the MHTSA's staffing establishment.	Action is underway to replace the contracted part-time resource (in place since October 2006) as soon as possible. Any additional full-time resources will be recruited as required.	Chief Executive	Current resource to be replaced by October 2008
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 Standing Orders, Standing Financial Instructions and Scheme of Delegation were considered by the Audit Committee at its Meeting held on 14 th July 2008. Revised documents will be considered at the next AC Meeting to be held on 5 th September.	Chief Executive	Finalised documents depend on Board approval – target 30 th September 2008
4	Without an up to date risk register, some areas of risk for the organisation may remain unrecognised and uncontrolled.	The Revised Risk Register has been discussed with Board Members. Further revisions will be made to the Register.	Chief Executive	31 st October 2008
5	The later receipt of applications as disclosed on the MHTSA website for the quarter ended 31 March 2008 increases the risk that statutory deadlines are not achieved.	The MHTSA has no control over the timing of the receipt of applications. Internal processes are kept under review and every effort will continue to be made to ensure that all statutory deadlines are met.	Chief Executive	Monitored on an ongoing basis



Action Point	Risk Identified	Planned Action	Responsible Officer	Target Date
6	The required corrective action to enable the MHTSA to meet its statutory responsibilities may not take place due to the fact that performance data is not sufficiently detailed.	Key performance information (KPI) is currently under review.	Chief Executive	30 th September 2008
7	There is a risk that any required levels of corrective action are not achieved due to the late availability of performance data	The processes for producing the KPIs are also under review to ensure information is available as required as soon as possible after the end of the period to which it refers and the necessary action is taken.	Chief Executive	30 th September 2008