REGIONAL CHAIRMEN'S MANUAL

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FOREWORD

During the past year, the Regional Chairmen have been engaged in a systematic review of the judicial procedures and processes of the Mental Health Review Tribunal to ensure that they are focused on achieving a just and speedy conclusion for the tribunal user.

It is essential that that the administrative staff work in close partnership with the tribunal members to ensure that all relevant information and material is available on the hearing day and that any extraneous issues have been resolved in advance.

It is a true pleasure in achieving this objective for the Regional Chairmen to be able to welcome and commend the Regional Chairmen's Manual designed to set out the policies and procedures governing judicial case management and the flow of information between the administration, the Regional Chairmen and the tribunal members.

It is necessary for administrative and judicial procedures to operate in harmony and to this end the Manual has been issued to all tribunal members and the administrative staff so that they are all aware of the administrative procedures that should be followed in the course of an application or reference.

The Regional Chairmen have drafted, as part of the process of harmonisation, a Judicial Bench Book, which will be published shortly for inclusion in the loose-leaf binder. Manuals giving guidance to hospital administrators and representatives are also being prepared.

The quartet of manuals will provide the essential reference guidance for all those involved in an application or reference to the tribunal and we hope that the Manual and the forthcoming publications will prove to be sturdy and reliable companions to you over many years.

Professor Jeremy Cooper
Mr John Wright
June 2006

PART A

1. INTRODUCTION

1.1 The objective of this Manual is to set out the policies and procedures governing judicial case management and the flow of information between the administration, the Regional Chairmen's offices and the tribunal.

1.2 All references to the MHA 1983 mean the **Mental Health Act 1983** and all references to the Rules mean the **Mental Health Review Tribunal Rules 1983.**

1.3 All forms referred to in this Manual are set out in **Appendix 1**.

1.4 The Manual is in loose-leaf format to facilitate the removal and substitution of pages by way of up-dating.

2. APPLICATIONS

2.1 An application shall be made to the tribunal in writing, signed by the applicant or any person authorised by them to do so on their behalf. **(Rule 3*)*** There is no prescribed form.

2.2 An application made on behalf of a patient must contain a statement or words to the effect that they have been authorised by the patient to make the application.

2.3 Any problems relating to the capacity of an applicant must be referred to the Regional Chairman.

2.4 Any query as to the validity of an application which cannot be resolved by the administration shall be referred to the Regional Chairman on **Form 5** giving all relevant known dates as to detentions and renewals.

2.5 A summary of the provisions of the Act relating to Applications and References is set out in tabular form in **Appendix 6**.

3. REGIONAL CHAIRMEN'S AUTHORITY TO ACT ON BEHALF OF THE TRIBUNAL

3.1 As regards matters preliminary or incidental to an application, the Regional Chairman may, at any time up to the hearing of an application by the tribunal, exercise the powers of the tribunal under rules 6, 9, 10, 12, 13, 14(1), 15, 17, 19, 20, 26 and 28 **(Rule 5).** These are -

- To send copies of the documents forming the responsible authority's or the Secretary of State's statement to the applicant or patient, excluding any part contained in a separate document (r.6)
- The power to give notice of the proceedings, including to any person who in the opinion of the tribunal should have an opportunity to be heard (r.7)
- The power to postpone consideration of a further application (r.9)
- The power to appoint an authorised representative for a patient (r.10)
- The power to withhold a document forming part of the Statement (r. 12)
- The power to give directions to ensure the just and speedy determination of the application (r.13)
- The power to subpoena any witness to appear or produce documents (r. 14)
- The power to direct that further information or documents be provided and to give directions as to the manner in which, and by whom, the information or reports shall be furnished (r.15)
- The power to make arrangements for an application or reference to be heard by members other than those originally appointed or to transfer the proceedings to a different regional tribunal (r. 17)
- The power to agree to an application being withdrawn (r. 19)
- The power to give notice of the hearing (r. 20)
- The power to abridge or extend time limits (r. 26)
- The power to cure irregularities (r. 28)

3.2 Once the tribunal has sat and adjourned the matter part-heard or otherwise, the Regional Chairmen have agreed that all requests for further or amended directions or postponements of the adjourned hearing date or any other requests shall be referred to the tribunal President and not the Regional Chairman. All decisions made thereafter shall be made by the tribunal Panel acting together, and not by the President acting alone. **Form 5** shall be used in these circumstances. See also paragraph 9.4.3.

3.3 MHA 1983 s. 78 (6) permits the Regional Chairman to authorise another member of the tribunal to exercise al or any of the above functions if for any reason he is unable to act.

4. REGIONAL CHAIRMEN'S POLICY ON LISTING

4.1.1 On receipt of an application from a patient [other than a section 2 application], a menu of available dates 5-8 weeks ahead will be identified by the Listing Team [12-14 weeks ahead in Restricted Cases]. These dates will be offered to the Hospital MHA Administrator and to the patient's legal representative by telephone within 24 hours of receipt of the application. MHA administrators are themselves encouraged to suggest possible dates when they submit an application on behalf of a patient.

4.1.2 The Hospital MHA Administrator and legal representative will be requested to respond by telephone to the Listing Team setting out which of these dates would/would not be suitable hearing dates, **within 48 hours of the initial telephone request.** The Hospital MHA Administrator will be taken to have confirmed the suitability of these dates with the RMO or his/her nominee, prior to telephoning the Listing Team to agree a hearing date.

4.1.3 In the light of these responses the Listing Team will list the case and confirm the hearing date by telephone to the Hospital MHA Administrator and the legal representative/patient with a follow-up letter of confirmation. The whole listing process should therefore be completed within 72 hours of receipt of the application.

4.1.4 If the parties do not respond within this timescale then a hearing date will be imposed by the Listing Team and the parties informed accordingly (as to the meaning of failure to respond see 4.2 below).

4.1.5 Once a hearing date has been fixed and notified to the parties only the Regional Chairman or his Deputy shall be empowered to authorise any subsequent change of date.

4.2 Interpretation of failure to respond

In cases where there is clear lack of cooperation such as failure to return telephone calls then a date will have to be imposed as in 4.1.4 above. However there may be cases where a party is cooperating fully but may need further time to reply which takes the time out of the 48 hour period and in these circumstances it is permissible to extend the 48 hour period by a reasonable time. What is reasonable will depend on the circumstances and is a matter of judgment.

4.3 Section 2 applications

It is important to appreciate the time limits for such applications as below.

4.3.1 An application must be made within 14 days of the day on which the patient was admitted to hospital in pursuance of an application for admission for assessment (**s66 of MHA**). The day of admission counts in calculating the 14 days. The tribunal has no discretion to extend the 14 day period. 'Made' shall be deemed to refer to the day the application is despatched, not the day it is received.

4.3.2 On receipt of an assessment application the tribunal shall fix a date for the hearing, being not later than seven days from the date on which the application was received, and the time and place for the hearing (**Rule 31(a))**

4.3.3 The day on which the application is received by the tribunal is counted as the first day of the seven day period. Where the seventh day falls on a Bank Holiday, a Saturday or Sunday the hearing is considered in time if it is listed for the next working day (**rule 26**)

4.3.4 In the particular circumstances of the case the time appointed by the Rules may be extended on application to the Regional Chairman (**Rule 26 (2)).** Such applications should be used sparingly because the tribunal could remain liable to a claim for damages for delay.

4.4 Listing of section 2 applications ("assessment applications")

When dealing with assessment applications, every effort should be made to follow the procedures set out below.

4.4.1 On receipt of a section 2 application available dates within the seven day period will be inevitably very limited. However, the parties, particularly the hospital should be offered two dates whenever possible. The dates will be determined, in the vast majority of cases, by tribunal availability. This is the determining factor.

4.4.2 In the majority of cases, the tribunal cannot accommodate, in practical terms, the prior commitments of the Authority's witnesses and patients' solicitors. Over involvement in this process leads to unnecessary complications and can lead to the parties dictating when the hearing takes place.

4.4.3 The tribunal is very aware of the pressures on doctors and social workers but the overriding consideration in terms of priorities must be the tribunal hearing because it involves deprivation of liberty.

4.4.4 The Regional Chairman will continue to liaise whenever necessary with hospital administrators to explain the position concerning listing.

5. APPOINTMENT OF THE TRIBUNAL

5.1 Some cases require the same members to sit. Apart from cases adjourned part-heard when it is necessary for the same members to sit other examples are (1) deferred conditional discharges when the tribunal has to reconvene (2) reconvened hearings in non restricted cases concerning the tribunal's recommendations for leave and/or transfer and (3) a case transferred from one region to another.

5.2 It may not be possible to retain the same members because of, for example, death, illness or retirement in which case the following procedure should be adopted.

5.2.1 Any difficulties in appointing the same tribunal shall be reported to the Regional Chairman with an explanation using **Form 5.**

5.2.2 The Regional Chairman will then decide whether arrangements should be made for the appointment of another member(s) (**Rule 17**).

5.2.3 The overriding principle guiding 'Rule 17 appointments' shall be the avoidance of undue delay in determining the outcome of the application.

6. REPORTS

6.1 Time limits and procedures

The responsible authority has to send a statement to the tribunal and, in the case of a restricted patient, the Secretary of State, as soon as practicable and in any case within 3 weeks of its receipt of the notice of application **(Rule 6).** The matters required to be contained in the statement are set out in Schedule 1 of the Rules. Delivery within the statutory time scales by the tribunal is crucial to achieving a speedy and just conclusion and it is imperative that the situation is closely monitored as set out below.

6.1.1 If the reports are not received on time then automatic Directions should be issued under the general authority of the Regional Chairman using **Form 1.** The directions provide for a further 7 days to deliver the reports.

6.1.2 There may be circumstances when the Authority seeks permission for late delivery when, for example the RMO has been taken ill or other exceptional circumstances. Such circumstances must be referred to the Regional Chairman, for determination. However, very little latitude can be afforded because the time limits are set by the Act and are statutory.

6.1.3 If there is no response to the automatic directions (6.1.1 above) then the matter must be reported immediately on **Form 5** to the Regional Chairman who will then issue a further Direction or a subpoena for their production.

6.1.4 It is essential that reports are despatched by the administrative office immediately upon receipt to all the parties and the members,.

6.2 Confidentiality

6.2.1 The Responsible Authority or the Secretary of State have the right to set out material in a separate document to the medical and/or social circumstances reports which it is considered should be withheld from the patient on the grounds that disclosure would adversely affect the health or welfare of the patient or others. See paragraph 7 for the procedures for dealing with this and other confidentiality issues.

7. RECEIPT AND DISCLOSURE OF DOCUMENTS

7.1 The disclosure of documents is governed by **Rule 12**.

7.1.1 Subject to 7.2 below, the tribunal must, as soon as practicable, send a copy of every document it receives which is relevant to the application to the patient or other applicant, the responsible authority and, in restricted cases to the Secretary of State (**Rule 12(1)**).

7.1.2 Any of the persons referred to in 6.1.1 above has the right to submit comments in writing to the tribunal. All such comments must be referred to the Regional Chairman.

7.2 Documents received by the tribunal for which non-disclosure to the patient is claimed will fall into two broad categories (1) documents withheld in accordance with **Rule 6** (see 6.2 above) (Type 1) and (2) letters and statements received from, for example, patients' relatives and from victims (Type 2). The following procedures should be adopted;

7.2.1 Under no circumstances should any of the above documents be disclosed to the patient unless ordered by the Regional Chairman or the tribunal.

7.2.2 Documents withheld in accordance with **Rule 6** (Type 1) can be disclosed to the patient's representative if he is- (a) a barrister or solicitor (b) a registered medical practitioner or (c) in the opinion of the tribunal, a suitable person by virtue of experience or professional qualification.

7.2.3 The letter enclosing such documents must contain the following words-

> "No information disclosed to you in accordance with rule 12(3) of the Mental Health Review Tribunal Rules 1983 shall be disclosed either directly or indirectly to the applicant or (where he is not the applicant) to the patient or to any other person without the authority of the tribunal or used otherwise than in connection with the application."

7.2.4 As regards documents withheld under **Rule 6** the normal practice of the Regional Chairman will be to leave the matter of disclosure to be decided at the hearing because the tribunal is likely to have the material witnesses present.

7.2.5 The tribunal is required to record its decisions on disclosure on the appropriate decision form.

7.2.6 In the case of Type 2 documents these must be referred upon receipt, using to the Regional Chairman.

7.2.7 The Regional Chairman will then decide the appropriate procedure. It is likely that, in the majority of cases he will refer the matter to the tribunal, to be dealt with by way of a preliminary hearing immediately before the substantive hearing.

7.3 Service of documents on the Authorised Representative

7.3.1 Any document required or authorised by the Rules to be sent or given to any person shall, if sent or given to the authorised representative of that person, be deemed to have been sent or given to that person (Rule 10 (5)).

7.3.2 There is, therefore, no legal requirement to send copies of the reports or other documents to patients if these have been sent or given to the authorised representative.

8. REPRESENTATION

8.1 This is governed by **Rule 10** which provides-

8.1.1 any party may be represented by any person whom he has authorised for that purpose not being a person liable to be detained or subject to guardianship (or after-care under supervision) under the Act or a person receiving treatment for mental disorder at the same hospital or mental nursing home as the patient (**Rule 10(1)**).

8.1.2 Any authorised representative must notify the tribunal of his authorisation and postal address. (**Rule 10(2)).** Note that there is no time limit or requirement of notice in writing.

8.1.3 As regards the representation of any patient who does not wish to conduct his own case and does not authorise a representative under **Rule 10(1),** the tribunal may appoint some other person to act as his authorised representative (**Rule 10(3).**

8.2 Procedures for the appointment of representatives.

8.2.1 Any request for the appointment of a representative (other than at the hearing) should be referred to the Regional Chairman.

8.2.2 Upon the Regional Chairman authorising the appointment of a representative or the tribunal directing the appointment of a representative, it is essential that representatives are chosen on a fair and proper basis. Whilst regard will have to be had to geographical locality and numbers of available representatives in the locality nonetheless representatives should be selected on a rotation basis from the list of members of the Law Society Panel. The aim must always be to ensure, so far as reasonably practicable, a fair and equal distribution of representation.

8.4 The policy of the Regional Chairmen on the appointment of representatives, "Guidance to Hospital Administrators" is set out in Appendix 2.

9. DIRECTIONS

9.1 Directions are governed by **Rules 13** and **15**.

9.1.1 The tribunal may give such Directions, as it thinks fit to ensure the speedy and just determination of the application *(***Rule 13***)*

9.1.2 Before or during any hearing, the tribunal may call for such further information or reports as it may think desirable, and may give such Directions as to the manner in which and the persons by whom such material is to be furnished. (**Rule 15(1)**).

9.1.3 The powers in rules 13 and 15(1) will be exercised by the use of Directions.

9.1.4 The powers in these rules are exercisable by the Regional Chairman (**Rule 5**) or the tribunal under rules **13** and **15**.

9.1.6 Directions will fall into two categories (1) given in advance of the hearing ("interlocutory") or (2) given at the hearing.

9.1.7 Interlocutory Directions will fall into three classes (1) given by the Regional Chairman to facilitate case management without an application having been made by a party (2) given by the Regional Chairman in respect of an application for directions by a party or (3) by the tribunal President when power has been delegated by the Regional Chairman to the tribunal.

9.2 Interlocutory Directions by the Regional Chairman

Such Directions will usually be given by the Regional Chairman to achieve a speedy and just hearing when there is, for example, concern about delay or complexity in an application. The following procedure should be followed.

9.2.1 Whenever the Regional Chairman issues Directions of his own motion these Directions will be served on the parties by the Regional Chairman and copied to the administration.

9.2.2 Interlocutory applications for Directions should be sent directly by the administrative office to the Regional Chairman who will serve the Directions on the parties with a copy to the administration.

9.2.3 The administration shall maintain a suitable carry forward system to monitor compliance with any time limits in the Directions for the doing of any act and shall notify the Regional Chairman as soon as is possible of any breaches of the Directions.

9.3 Directions given by the tribunal at the hearing and the further involvement of the tribunal

If a tribunal adjourns, Directions will be usually given. The following procedures should be followed.

9.3.1 The tribunal President shall complete the standard Adjournment Form including any Directions and return it to the tribunal office.

9.3.2 The administration shall send, as soon as is possible, a copy of the Directions to any body or person the subject of a Direction.

9.3.3 The administration shall maintain a suitable carry forward system to monitor compliance with any time limits for the doing of any act and shall notify the President of the tribunal as soon as is possible of any breaches of the Directions using **Form 5**.

9.3.4 It shall be the responsibility of the President, following consultation with the other members, to give further Directions or instructions.

9.3.5 The administration shall then follow the procedures in 9.3.2 and 9.3.3 above.

10. SUBPOENAS

10.1 The issue of a subpoena is governed by **Rule 14(1)** which provides-

10.1.1 For the purpose of obtaining information, the tribunal may take evidence on oath and subpoena any witness to appear before it or to produce documents.

10.1.2 A subpoena can be issued by the Regional Chairman or the tribunal.

10.1.3 A subpoena will require a named witness to attend the hearing and/or to produce documents and/or to produce documents to the tribunal administration within a specified period.

10.2 Procedures for the issue of a subpoena by the Regional Chairman

10.2.1 The Regional Chairman will normally issue a subpoena either when it appears appropriate on the papers or on the application of a party.

10.2.2 An application for a subpoena by a party should be submitted to the administration and forwarded as soon as is possible to the Regional Chairman using **Form 5.** It is essential that the full name and address of the witness are supplied.

10.2.3 The Regional Chairman shall where appropriate issue the subpoena and serve it directly on the witness with a copy to the administration.

10.2.4 The person responsible for posting must before posting complete the Certificate of Service on the subpoena and enter the date of issue on the subpoena. This will be the date upon which it was posted.

10.2.5 A copy of the subpoena shall be sent to the President of the tribunal and to each party.

10.2.6 Where a subpoena is issued for the production of documents to the tribunal administration the administration shall maintain a suitable carry forward system to monitor compliance with the requirements of the subpoena and shall notify the Regional Chairman as soon as is possible of any breach [and at the same time shall notify the Regional Chairman of the date on which the subpoena was posted].

10.3 Procedures for the issue of a subpoena by the tribunal

10.3.1 It shall be the responsibility of the President of the tribunal to complete the standard form of subpoena save for the date of issue.

10.3.2 The subpoena and the standard notice of adjournment should be sent by the President to the administration for postal service as soon as is possible.

10.3.3 The administration shall then follow the procedures in 10.2.3 to 10.2.6 above save that in respect of 10.2.6 the President of the tribunal shall be notified of any breach and not the Regional Chairman.

10.4 Applications to set aside a subpoena

10.4.1 Any such application should be submitted to the administration by the applicant in accordance with the advice on the subpoena.

10.4.2 The administration shall send the application to the Regional Chairman where the Regional Chairman has issued the subpoena or to the President of the tribunal when the tribunal has issued the subpoena. [**Form 5** will be used in both cases]

10.5 Guidelines for the issue of a subpoena are set out in Appendix 3

11. CHANGE OF DATE REQUESTS (CDRs)

11.1 The following procedures should be followed:

11.1.1 All CDRs must be submitted to the Regional Chairman using **Form 3.**

11.1.2 The Regional Chairman will give his decision on **Form 3** and return it to the administration as soon as is possible.

11.1.3 The Regional Chairman will maintain a database of all applications to postpone a hearing to facilitate general case management.

11.1.4 Applications to move the **time** of a hearing should be dealt with by the administration and only failing agreement between the parties should the matter be referred to the Regional Chairman for a decision.

11.1.5 Applications to **advance** the hearing date should be dealt with by the administration and if the parties agree then the hearing date may be advanced without reference to the Regional Chairman.

11.2 See Appendix 4 “Regional Chairmen’s guidelines on grounds for postponement of listed cases”.

12. ADJOURNMENTS AT THE HEARING

12.1 Adjournments are governed by **Rule 16(1)** which provides that the tribunal may at any time adjourn a hearing for the purpose of obtaining further information or for such other purpose as it may think appropriate.

12.2 **Tribunal procedures on adjournments**:

12.2.1 **Adjournment Form A** must be completed in every case and must include (1) any Directions given by the tribunal (2) a statement whether the same tribunal must sit on the adjourned hearing or (3) a statement that a different panel can be appointed.

12.2.2 Tribunal members have been instructed to agree at the hearing with the parties, whenever possible, a date and time for the new hearing in consultation with the office.

12.2.3 If the tribunal wishes to bring the listed time of the hearing forward or backward on the day of the hearing they should ensure that all parties, including any nearest relative or other party permitted to attend the hearing is consulted prior to agreeing the time change

13. WITHDRAWALS

13.1.1 **Rule 19 (1)** provides that an application may be withdrawn at any time at the request of the applicant provided that the request is in writing and the tribunal agrees. Agreeing a withdrawal is therefore a judicial, not an administrative function.

13.1.2 Where a patient subject to after-care under supervision fails without reasonable explanation to undergo a medical examination under **Rule 11** any application relating to the patient may be deemed by the tribunal to be withdrawn (**Rule 19(2A).**

13.1.3 A reference cannot be withdrawn by the patient.

13.2 **Procedure for withdrawal**:

13.2.1 All applications to withdraw shall be submitted in writing as soon as is possible (subject to 13.2.5 below) to the Regional Chairman using **Form 4.** All the information required on the form must be supplied or the form will be returned to the administration for completion of the outstanding information.

13.2.2 The Regional Chairman will give his decision on the **Form 4** and return it to the administration as soon as is possible. If the application to withdraw is made to the tribunal on the day of the hearing they shall also record their decision using **Form 4.**

13.2.3 For a withdrawal to be valid, it must be in writing and accepted by any of the following:

At any time up to the hearing of the application, by the Regional Chairman or some other legal member authorised by the Regional Chairman for that purpose under s. 78 (b) MHA 1983:

or

At any time, by the tribunal.

13.3 Administrative Protocol

The Regional Chairmen, in consultation with the Head of the MHRT Secretariat have accepted the following Administrative Protocol, to assist the tribunal in carrying out the above judicial function, as set out below.

13.3.1 The power to agree a withdrawal of a patient's application rests solely with the bodies set out at 13.2.3 above, and is a judicial power.

13.3.2 To assist these judicial bodies in reaching an equitable and expeditious decision when asked to agree a withdrawal of an application, the administrative office upon receipt of such an application will advise as follows-

(i) whether an unambiguous written request to withdraw, signed by the patient, has been received; and

(ii) whether such request is accompanied by an unambiguous letter in support from the patient's legal representative.

On the basis of this information, the relevant body outlined at 13.2.3 will determine the application but reserving the right to call for further enquiry.

14. COMMUNICATION OF DECISIONS

14.1 Communication of decisions is governed by **Rules 24** and **33** which provide that the written decision of the tribunal, including the reasons, must be communicated in writing within 7 days (3 days for section 2 applications – **Rule 33(d)**) of the hearing to all the parties (**Rule 24(1)**). Presidents are required to keep their own copy of the whole decision (not just the Reasons), unless the written decision has been handed to the Tribunal Assistant at the hearing, who will discharge this responsibility.

14.1.1 Prior to leaving the hospital the President shall complete and leave with the Mental Health Act Administrator a written confirmation of the tribunal decision **Form 6**. *This procedure shall apply in all cases.*

14.2 **Procedures for monitoring the receipt of decisions**:

14.2.1 The administration shall maintain a suitable system for monitoring the time limits for the receipt of decisions.

14.2.2 Any case of non-delivery of a decision shall be reported to the Regional Chairman on **Form 5** as soon as is possible. The Regional Chairmen will expect the administrative office to have made reasonable efforts to obtain the decision.

15. RECONVENED HEARINGS

15.1 Where the tribunal do not direct the discharge of a patient, it may recommend that the patient be granted leave of absence or transferred to another hospital or into guardianship (**s. 72(3)(a)** and **(b) MHA 1983.** The tribunal should adopt the following procedure:

15.1.1 The recommendation is recorded in the decision form.

15.1.2 The decision must specify the period at the expiration of which the tribunal will consider the case further in the event that the recommendations not being complied with ("the compliance date"). This is *not* a reconvened hearing.

15.1.3 It is the responsibility of the President to note the compliance date and if at its expiry the recommendation has not been carried out then the President should contact the other members to decide whether the tribunal should reconvene or not.

15.1.4 If the tribunal decides to reconvene it is the responsibility of the President to contact the administration to have the case relisted to a date convenient to all three members.

15.1.4 If the tribunal decides not to reconvene the President shall make a written note of this decision, with brief reasons, to be added to the case file in the MHRT Secretariat.

15.2 Administrative procedures

15.2.1 It shall be the responsibility of the administration to forward to the three members of the tribunal any documents or information received from any party relevant to the recommendation(s).

15.2.2 The administration shall relist the case for hearing on receiving instructions from the President.

15.2.3 At the reconvened hearing the President will record the outcome of the hearing in the normal way, using a standard decision form.

16. USE OF INTERPRETERS FOR DEAF PATIENTS

16.1 The following procedures should be followed for the use of **Deaf Interpreters.**

16.1.1 A deaf patient who uses sign language should always be provided with the services of a CACDP qualified or ASLI Licensed British Sign Language Interpreter with experience of working in a court or tribunal setting.

16.1.2 A deaf patient may also need the services of a second interpreter known as a Relay Interpreter. These interpreters are themselves deaf and use British Sign Language as their first language. Their task is to operate as language intermediaries between the deaf patient and the other interpreter. The Deaf Worker at the hospital may be able to fulfil the role of Relay Interpreter.

16.1.3 The administration is responsible for paying the professional fees of any interpreters required to attend the tribunal hearing for any of the above purposes.

16.1.4 When the services of interpreters are required as above, the administration is responsible for the booking arrangements choosing the interpreters from the list maintained in the office.

16.1.5 The booking arrangements should ensure that (1) the interpreters attend the preliminary examination of the patient by the medical member (2) that the interpreters are booked to be available at least one hour before the tribunal commences to enable the interpreters to liaise with the tribunal and to spend time with the patient and legal representative.

16.1.6 The administration shall ensure that, so far as is practicable assistance is given to the interpreters in acquiring materials in advance of the hearing to enable them to prepare adequately for the hearing.

17. COMMUNICATIONS

17.1 The forms (1 to 6) are designed to be used electronically and e-mail should be used whenever possible, subject to satisfactory arrangements as to security and confidentiality.

17.2 If it is not possible to use e-mail, then a facsimile should be used.

17.3 Guidance notes on the use of the forms are set out in Appendix 1.

18. DEPUTY REGIONAL CHAIRMEN

18.1.1 The Regional Chairman's PA will maintain details of who is deputising and will notify the administration in good time of all deputising arrangements.

18.1.2 Whenever a deputy has been delegated to cover for the Regional Chairman, all paperwork should be sent in the usual way to the Regional Chairman's administration and it shall be the PA's responsibility to assess the level of urgency. As a rule of thumb, any matter relating to a section 2 application will be deemed urgent. Matters relating to section 3 and other hearings will also be deemed urgent if the case is listed for hearing within the following 7 days.

18.1.3 The PA shall be responsible for contacting the Deputy Regional Chairman and sending his decision and any papers to the office. Save for the circumstances in 18.1.4 and 18.1.5 below, all communications will be dealt with by the PA who will contact the Deputy as appropriate.

18.1.4 In extremely urgent cases, the PA may at his/her discretion supply the Deputy's contact details to the administration to enable the administration to contact the administration direct.

18.1.5 In the case of an urgent request from a member, the PA has a discretion to give the member the Deputy's contact details for direct contact.

19. CLAIMS FOR JUDICIAL REVIEW AND DAMAGES

19.1 Judicial Review

Persons aggrieved by the decision of a tribunal have a right to challenge the decision usually by way of judicial review (JR). The JR system requires a pre-action letter to the tribunal setting out the grounds for the challenge. If the matter is pursued then a Claim will follow and the aggrieved party must then have permission from the court to pursue the claim. The following administrative procedures should be followed.

19.1.1 Any documents received in the administration relating to a claim for judicial review must be sent as soon as is possible to the Secretariat which is the administrative centre for such claims. Copies should not be sent to the Regional Chairman who will receive copies from the Secretariat and it is his responsibility alone for giving instructions for the handling of the claim.

19.1.2 It is likely that the administration will receive requests for documents, e.g. the decision, from the Regional Chairman, the Secretariat or The Treasury Solicitor's Office and such requests should be dealt with promptly given that the JR procedure is subject to time limits.

19.2 Damages

All claims for damages usually based on alleged delay should be forwarded upon receipt to the Secretariat and not to the Regional Chairman. Such claims fall to be dealt with by the Treasury Solicitor's office.

20. KEEPING NOTES, RECORDS AND THE DISPOSAL THEREOF

20.1 Presidents must take a full note of the proceedings in an appropriate notebook, and shall keep these notes in a secure place for a minimum period of 6 months from the final determination of the hearing.

20.2 The other panel members should also keep any notes taken by them for 6 months, including a note of the decision.

20.3 If the patient wishes to tape record the hearing they must first obtain leave of the tribunal, who will determine the matter as a preliminary issue under s. 9 Contempt of Court Act 1981. Rule 21 applies. If the tribunal grants leave, the Secretariat will arrange for an appropriate recording facility to be provided.

20.4 At the end of the hearing all reports must be shredded either by the Tribunal Assistant, or if there is no Tribunal Assistant, by the panel member personally. If the panel member has no facility for carrying out effective shredding, they should refer to the Secretariat for assistance.

21. THE PRELIMINARY MEDICAL EXAMINATION

21. Medical Examination

21.1 ***Timing of Medical Examination***

Rule 11 requires the medical examination to take place, 'at any time before the hearing of the application'. Experience has shown that it is not good practice for this examination to take place on the day of the hearing, unless this is unavoidable, for example because of late booking of the medical member. A medical examination on the day of the hearing creates timetable pressures for the Panel, it can add further stresses to a patient who will already be anxious about the hearing, and it can interfere with the ability of the patient's legal representative to take full instructions from their client. The policy is reflected by the existence of an additional fee for the preliminary examination.

21.1.1 The preliminary examination should normally be carried out a day or two prior to the hearing date. We would be grateful if medical members would use their best endeavours to ensure that this policy is implemented. If the policy causes difficulties to a medical member in a particular instance, the details should be reported back to the Regional Chairmen, for investigation**.**

21.2 Purpose of Medical Examination

The purpose of the medical examination is to assist the medical member, together with any other steps they deem appropriate, in forming an opinion as to the patient's mental state. Case law provides further guidance as follows:

a) The medical member must not form a concluded opinion, but can form a provisional opinion.

b) All parties to the hearing should be given the opportunity to address and to comment upon any significant findings arising from the medical examination.

c) To assist in this process, the substance of the medical member's views, and in particular a summary of any significant findings, must be communicated to the parties at the outset of the case, unless exceptionally it is not practicable to do so.

21.2.1 Reporting Significant Findings from Medical Examination

As a normal rule it shall be the President who takes responsibility for reporting a summary of the medical member’s 'significant findings' to the parties, unless there are exceptional reasons for not doing so.

22. THE ROLE OF THE TRIBUNAL ASSISTANT

22. Role of Tribunal Assistant

22.1 Pre-hearing

MHRT assistants must be present at the tribunal venue at least one hour before the hearing is to begin, in order:

- To check that the room allocated for the Tribunal is appropriate and adequately set up for the tribunal hearing.
- To introduce yourself to members of the Tribunal on arrival and familiarise them with facilities.
- To check that members have all the necessary papers and take instruction from the president on any missing information.
- To ensure all reports produced on the day are distributed to the panel members and, as advised by the President, to those attending the hearing.
- To ensure all section 2 reports are submitted at least half an hour before the hearing and distributed as advised by the President.
- To ensure that the patient's clinical records are made available to the Tribunal if requested.
- To draw up a list of the Parties names for the Tribunal President.
- To take final instructions from the President before calling the first case.
- If availability to ensure that refreshments are available in the Tribunal room.

22.2 During the hearing

Assistants will need to make themselves available should the tribunal need them. At the President's behest, it may be necessary on occasions to contact the designated MHRT case manager/officer.

Assistants must withdraw during the Tribunal's deliberations, but remain close by so they can be recalled if necessary.

22.3 Post Hearing

- Collect the Decision form from the President and despatch to Tribunal office, ensuring that the President retains a copy.

- Advise appropriate hospital staff member of all discharge Decisions, and ensure copy of short-form Decision is left with MH Administrator.

- Arrange for collection and shredding of all other confidential documents.

23. SKELETON ARGUMENTS AND HUMAN RIGHTS POINTS

23.1

The tribunal regards it as good practice to submit a skeleton argument for cases of complexity and/or involving points of law.

23.11 Skeleton arguments should contain a numbered list of points, stated in no more than a few sentences.

23.12 Each point should have references to documentation that is relied on later. In the case of points of law, authorities relied on should be cited with reference to the particular pages where the principle concerned is set out.

23.2

Where a Human Rights Act issue is raised, the 1st Practice Direction to Civil Procedure Rules, Part 39 (Hearings) shall apply as follows:

23.2.1

If it is necessary for a party to give evidence of an authority at a hearing referred to in section 2 of the HRA 1998:

- the authority to be cited should be an authoritative and complete report;
- the party must give to the tribunal and any other party a list of the authorities they intend to cite, and copies of the reports not less than 3 days before the hearing;
- copies of the complete original texts issued by the European Court or Commission, either paper based upon, or from the Court's judgement database (HUDOC), which is available on the Internet, may be used.

PART B – RESTRICTED CASES

Introduction

The purpose of this Section is to highlight the main differences from non-restricted cases and to clarify certain procedures particularly those relating to conditional discharges.

1. Discretionary powers

There is *no* discretionary power to discharge a restricted patient as with non-restricted patients under s. 72(1) of the Act. It must discharge a patient whom it is satisfied meets the discharge criteria and not discharge a patient unless it is satisfied that is the case. Where a patient is entitled to discharge, the discharge may be absolute or subject to conditions.

2. Absolute Discharge

If a patient is entitled to be absolutely discharged then the tribunal's decision has immediate effect and it *cannot defer* the discharge to a specified future date.

3. Recommendations

3.1 The tribunal has *no* power to make recommendations in respect of transfer or leave of absence equivalent to that under s.72(3) of the Act in relation to non-restricted patients

3.2 A recommendation from the tribunal is an important input but is not determinative.

3.3 The following Written Answer was given in the Commons (HC Vol. 121. cols 261, 262, October 28, 1987) –

> "Any such recommendation received in the Home administrative office is acknowledged, and any comments are offered which can usefully be made at that stage. Correspondence with the tribunal is copied to the patient's responsible medical administrative officer since it is for this administrative officer to consider the recommendation in the first instance. If the responsible medical administrative officer submits a proposal based on a tribunal's recommendation, full account is taken of the tribunal's views. At any subsequent hearing of the

case, the statement which the Home Administrative office provides will explain the outcome of any recommendation which the tribunal has made".

3.4 In restricted cases, it is *unlawful* for the tribunal to adjourn solely for the purpose of the exercise of a non-statutory recommendation in respect of the patient's transfer or leave of absence.

4. Conditional Discharge

4.1 Where the mandatory discharge criteria are satisfied but the tribunal is satisfied that it is appropriate for the patient to remain liable to recall for further treatment, it must direct his conditional discharge.

4.2 It is incumbent on the tribunal to consider whether it is satisfied that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment. The matter must be referred to in the tribunal's reasons.

Conditions

4.3 Provided satisfactory arrangements outside hospital are in place which enable the conditions to be satisfied forthwith, the direction takes effect forthwith and, as with absolute discharge, *cannot be postponed to a specified future date.*

4.4 It is unlawful to adjourn to monitor the patient's progress in the hope that the projected treatment will eventually permit the tribunal to discharge. (*R. v Nottinghamshire MHRT, ex p. Secretary of State for the Home Department.* The Times, October 12, 1988, CA).

4.5 The tribunal has a discretion as to the nature of the conditions it wishes to impose (*R. v Mental Health Review Tribunal Ex p. Hall* [2000] 1 W.L.R. 1323). Only reasonable conditions should be imposed and any condition that the tribunal positively knows will be impossible or highly unlikely to be put into effect is not reasonable. The tribunal should give reasons for its decision to impose conditions.

5. Deferred Conditional Discharge (DCD)

5.1 s. 73(7) gives the tribunal express power to defer a conditional discharge "until such arrangements as appear to the tribunal to be necessary for that purpose [i.e. of satisfying the conditions of discharge] have been made to their satisfaction."

5.2 The effect is to make the order for discharge *provisional* on the conditions being complied with. It must be sharply distinguished from the non-provisional discharge on a future date of a non-restricted patient under s. 72(3).

5.3 The tribunal cannot defer to a fixed date.

Practical Considerations on reconvened hearings – Deferred Conditional Discharge

5.4 It is desirable for there to be, so far as practicable, a continuation of the constitution of the tribunal. On granting a DCD and adjourning, the members should fix a date, or latest date by which the tribunal should reconvene, in liaison with the administrative office.

5.5 In the event of a member being unable to sit on the reconvened hearing, the member is required to notify the administrative office with an explanation as soon as is possible and the administrative office shall notify the Regional Chairman so that **Rule 17** may be considered (see Part A Paragraph 5, above).

5.6 It is open to the tribunal to give any Directions it considers necessary in respect of the deferred conditions in which case the administrative office shall follow the procedures for Directions as in non-restricted cases.

6. Deferred Conditional Discharge to Conditional Discharge

6.1 The administrative office shall send copies of all correspondence and documents evidencing the fact that the conditions are met to all the tribunal members within 24 hours of receipt.

6.2 The lay and medical member shall respond in writing to the administrative office with their agreement or otherwise within 48 hours after receipt of the correspondence. Copies of their responses, together with a blank Form M shall then be despatched forthwith to the President in the case.

6.3 In cases where the members are agreed that the conditions are met, the President shall complete **Decision Form M 1** (s. 73 cases) and **Form M 2** (s. 74 cases).

6.4. In cases where the members are not agreed they should attempt through the President to reach agreement and failing this the President should inform the administrative office in writing with reasons for rejecting the evidence that the conditions have been met. Upon receipt of the reasons the administrative office should inform the RA forthwith.

6.5 This entire process should normally be completed within 7 days of receipt by the administrative office of the papers described at 6.1 above.

6.6 A patient is conditionally discharged for the purposes of calculating time under **s. 75 MHA 1983** (application by conditionally discharged patient) on the date on which he actually leaves hospital once conditions have been met not on the date when the tribunal decided that he be discharged.

7. Recalled patients

7.1 The Secretary of State must refer a conditionally discharged patient to the tribunal within one month of the day on which the patient returns or is returned to hospital (**s. 75 (1) (a)**).

7.2 The hearing of the reference *must be arranged* not later than 8 weeks and not earlier than 5 weeks from the date of receipt of the reference (**Rule 29 (cc)**).

8. Application by a conditionally discharged patient – s. 75.

8.1 In **s. 75** applications, the duty to provide (and to chase) the reports specified in **Parts C and D of Schedule 1 of the Rules** is on the Secretary of State and *not* on the Responsible Authority.

9. The Home Secretary as a party

9.1 The Home Secretary's interests as a party must be borne in mind throughout, in particular when considering whether written material proposed to be put in evidence has been seen by the Home Secretary.

9.2 Particular regard must be had for paragraphs 2.6 to 2.10 in the Guidance agreed between the Regional Chairmen, DoH and Home Office referred to in paragraph 9.3 below. The various roles and responsibilities arising in restricted cases are set out in **Appendix 6** - "Home Office - MHRT Guidance in Restricted Cases".

APPENDIX 1

FORMS

INDEX OF PROCEDURAL FORMS

Form 1 Reports: This form is for use by the office in cases where the statutory reports have not been received on time and will be issued on the authority of the Regional Chairman.

Form 2 Directions: This form is for use by (1) the Regional Chairmen in response to an application for directions from a party or on their own motion to facilitate case management or (2) the tribunal in the above circumstances when case management has been assigned to the tribunal or the tribunal is seised of the application having adjourned.

Form 3 Adjournments: This form is for use by (1) the Regional Chairmen on an interlocutory application by a party to adjourn the hearing or (2) the tribunal where case management has been assigned to it or where the tribunal is seised of the application having adjourned. Tribunals should continue to use Decision Form A in respect of adjournment applications made at the hearing.

Form 4 Withdrawals: This form is for use by (1) the Regional Chairmen on an application by an applicant to withdraw or (2) by the tribunal at the hearing (there being no existing decision form) or when case management has been assigned to it or it is seised of the matter having adjourned the application.

Form 5 Enquiry and Report Form: This form is for use in connection with all matters that might arise not referred to above.

Form 6 Confirmation of Mental Health Review Tribunal Decision: This form is to be completed by the President at the end of every hearing and a copy left with the MHA Administrator at the hospital.

Form of Subpoena

Form 1 MENTAL HEALTH REVIEW TRIBUNAL

MENTAL HEALTH REVIEW TRIBUNAL RULES 1983

Patient:	Hospital:
Date of hearing:	

DIRECTIONS

☐ The Responsible Authority having failed to comply with the above Rules shall send an up-to-date medical report to the tribunal office **no later than on …….**

☐ The Responsible Authority having failed to comply with the above rules shall send an up-to-date social circumstances report to the tribunal **no later than**

on…….

Dated: **……**

Signed **.....**
On behalf of Regional Chairman [South] [North] Region

Any failure to comply with these Directions may result in the issue of a subpoena by the tribunal

Form 2

Form 2 MENTAL HEALTH REVIEW TRIBUNAL

MENTAL HEALTH REVIEW TRIBUNAL RULES 1983

Patient:	Hospital:
Date of hearing:	

DIRECTIONS

☐ The [Party] having requested in writing directions on [date]……, the Regional Chairman has made the following [further] directions:

☐ The Regional Chairman has made the following directions to secure a just and speedy conclusion of the application:

Dated: **……**

Signed **.....**Regional Chairman [South] [North]

Any failure to comply with these Directions may result in the issue of a subpoena by the tribunal.

Form 3

MENTAL HEALTH REVIEW TRIBUNAL

APPLICATION FOR ADJOURNMENT

Patient	Section
Hospital	
Date of hearing	
Date application received	

Application attached ☐ Faxed ☐ e-mail ☐

Medical Report received **Yes** ☐ **No** ☐ **If no, date due** ☐
Social Report received **Yes** ☐ **No** ☐ **If no, date due** ☐
Tribunal appointed **Yes** ☐ **No** ☐ **Proposed new date?** ☐
Previous adjournments **Yes** ☐ **No** ☐ **Are other parties in agreement with Adjournment request? Yes** ☐ **No** ☐

If yes, give details:

Application granted ☐ refused ☐

If granted, the application shall be heard on:

If refused, the reasons are:

Directions ☐ Attached ☐

Dated:
Signed:
Regional Chairman [South] [North]

Form 4

Patient:	Section:
Hospital:	
Date of application:	
Date of hearing	

MENTAL HEALTH REVIEW TRIBUNAL

APPLICATION FOR WITHDRAWAL

Application by: Patient ☐ Representative ☐

Application attached ☐ Faxed ☐ E-mail ☐

Application granted ☐ refused ☐

Reasons for refusal **[set out below]**

Dated:

Signed: Regional Chairman [South] [North]President (where application is made directly to the tribunaL).

Form 5

MENTAL HEALTH REVIEW TRIBUNAL

ENQUIRY AND REPORT FORM

Patient:	Section:
Hospital:	
Date of application:	Date of hearing:

From: Tel: Fax:
To:

Report/Query (set out below)

All relevant documents attached ☐

Response(set out below)

Directions issued ☐ **Attached** ☐

Subpoena issued ☐ **Attached** ☐

Dated: Signed: Position:

Form 6

CONFIRMATION OF MENTAL HEALTH REVIEW TRIBUNAL DECISION

(without reasons)

Date of Hearing:		
Patient's Name:		
Section:		
Patient is Discharged from Section with immediate effect: *(tick box)*		
Patient Not Discharged from Section: *(tick box)*		
Patients' Discharge Deferred until:	Date:	
	Time:	
Hearing Adjourned until:	Date:	
	Time:	
Patient Withdrawal:	Date:	
Conditional Discharge:	Date:	
Presidents Signature:		

Please leave this form with the Mental Health Act Administrator

MENTAL HEALTH ACT 1983
MENTAL HEALTH REVIEW TRIBUNAL RULES: Rule 14
SUBPOENA

To

Applicant:
Hospital:
Issued on

☐ You are summoned to attend at on

at (am)(pm) (and each following day of the hearing until the tribunal tells you are no longer required)

☐ to give evidence in respect of the above application

☐ to produce the following document(s) *(give details)*

OR

☐ You are summoned to produce the following documents to the tribunal office

no later than p.m. on day of .

This summons was issued [by the Regional Chairman] [by the Tribunal] [on the application of the applicant's solicitors] [on the application of]

Do not ignore this subpoena

Wilful disobedience of this subpoena may amount to a contempt of court for which you could be fined or imprisoned. If you wish to set aside or vary this subpoena, you may make an application to the tribunal office from which it was issued (see foot of form), marked for the attention of the Regional Chairman.

CERTIFICATE OF SERVICE

I certify that the subpoena of which this is a true copy, was served by posting to (*name)*. (the witness) at the address stated on the subpoena on

(date) on

Signed …….
Position ……

The tribunal office at 5th Floor, 11 Belgrave Road, London SW1V 1RS is open between 10 am and 4 pm Monday to Friday. When corresponding with the tribunal please address forms or letters to the Regional Chairman.

APPENDIX 2

Regional Chairmen's Guidelines for the Appointment of Representatives

The MHRT Rules requires the applicant to give details of his/her representative or to state whether he/she wishes to conduct his/her own case. If the applicant does not desire to conduct his/her own case and does not authorise a representative then the tribunal is given a discretion under Rule 10(3) to appoint one.

We are agreed that the discretion should not be used to require a person to be represented against his/her wishes.

We are also agreed that any system that *automatically* appoints a representative is not exercising a discretion but operating a policy and that any system whereby the tribunal does not engage with Rule 10 may have human rights implications because the liberty of the individual is in issue.

We accept that it is desirable for applicants to be represented but we believe it should not be difficult for patients wishing to be represented to find a representative. On admission to hospital many patients are given a leaflet advising them of their rights of application to the tribunal and of their entitlement to free legal advice and representation. Patients may have their own solicitors but we are very mindful of the availability of a large number of specialist mental health lawyers who are members of the Law Society Panel. Many of these lawyers have, at any one time, a client base within the hospital. The Law Society publishes a list of the Panel members which should be available to you and from which patients can select representatives. For details of the Panel you should contact the Law Society's Mental Health Review Panel Administrator. We believe that it is in the patients' interests, for the matter of representation to be resolved, *whenever possible,* on admission or at the time of the application and we would welcome your co-operation to achieve this.

If (a) the patient fails to respond to your efforts by refusing to decide one way or the other about representation; or (b) you have doubts about his/her capacity to make any decision, and (c) you believe the patient should be represented, then you should notify the tribunal office, in writing, giving short reasons. The matter will then be referred to the Regional Chairman with whom the decision will rest.Applicants appearing before the tribunal who are not represented but subsequently seek representation will have their application dealt with by the tribunal at the hearing.

Referrals will be treated in a similar manner.

APPENDIX 3

Guidelines for the issue of subpoenas by the tribunal (amended)

The law

Rule 14 of the Mental Health Review Tribunal Rules 1983 provides- "*(1) for the purposes of obtaining information, the tribunal may take evidence on oath and subpoena any witness to appear before it or to produce documents, and the president of the tribunal shall have the powers of an arbitrator under section 12(3) of the Arbitration Act 1950 and the powers of a party to a reference under an arbitration under subsection (4) of that section, but no person shall be compelled to give evidence or produce any document that he could not be compelled to give or produce on the trial of an action. (2) The tribunal may receive in evidence any document or information notwithstanding that such document or information would be inadmissible in a court of law*". The tribunal is a court within the meaning of section 12(1)(b) of the Administration of Justice Act 1960 and section 19 of the Contempt of Court Act 1981 (Pickering v. Liverpool Daily Post and Echo Newspapers [1991] 2 AC 370 and R (von Brandenburg) v. City and East London Mental Health Trust [2004]2 AC 280). Accordingly, a refusal to comply with a subpoena issued by the tribunal would amount to a contempt of court just as much as a refusal to comply with a witness summons issued by the High court or the County Court under CPR 34.4. Section 12 of the Arbitration Act 1950 has been repealed but there has been no corresponding amendment to rule 14 to accommodate this. An amendment is called for. **Who will issue subpoenas?** The power under rule 14 is a power in the tribunal as a court. A subpoena will be issued by either the tribunal or the Regional Chairmen exercising the powers of the tribunal under rule 5.

Issue by the tribunal or on application to the tribunal?

Given the partly inquisitorial nature of the tribunal, there will be many cases where issues arise which are incapable of proper or fair resolution without a subpoena being issued pursuant to the rule 14 power and, indeed, may be bound to use it. Certainly, in the light of the numerous *dicta* indicating that a tribunal should consider available after-care services before exercising the power to discharge, and should if necessary adjourn for this purpose, the tribunal should be far readier than at present to consider issuing a subpoena against a relevant identified individual to ascertain what, if any, arrangements have been, or could be made to facilitate discharge. 2. There will be cases where a party applies for a subpoena and such applications should be dealt with on the merits

Practical matters

1. The form of subpoena is modelled on that in use by the High Court and County Court and the standard text must *not* be modified in any way;

2. The tribunal should ordinarily use rule 16 to obtain, by directions, any further information it requires before the issue of a subpoena;

3. Where possible, the tribunal should invite representations prior to issuing a subpoena;

4. The form of subpoena indicates specifically that the individual concerned has a right to apply to the tribunal/Regional Chairmen to set aside the subpoena. Whilst this is not required by the rules nonetheless the concession is seen as a matter of fairness;

5. A strict test of relevance and proportionality should be applied prior to issuing a subpoena. Moreover, care should be taken not to allow the issue of a subpoena to be oppressive.

6. A subpoena should always be issued to an identified individual and specify carefully described documents. There must be a separate subpoena for each witness; and

7 A subpoena is issued on the date entered on the subpoena by the Regional Chairman or the administrative office.

Administration

1. It shall be the responsibility of the tribunal issuing a subpoena to complete the standard form of subpoena. Do not insert the date of issue. The form is available on the web site and can be obtained in hard copy or used in editable form.

2. The completed subpoena should be sent by the President with any adjournment notice to the administrative office, which will be responsible for postal service of the subpoena. The administration will offer to cover reasonable travelling expenses and compensation for loss of time (according to any DH rates from time to time) in appropriate cases.

3. The administrative office will send a copy of the subpoena to the Regional Chairman for the purposes of monitoring and moderating the issue of subpoenas.

4. All applications to set aside a subpoena will go initially to the Regional Chairmen before being passed to the issuing tribunal who will have the final decision.

APPENDIX 4

Guidelines on Grounds for Postponement of Listed Cases

"The Regional Chairmen will decide requests for case postponements on their merits. Subject to this, you may find the following guidelines of assistance to you.

1. Where a tribunal hearing date has been notified to the parties, it will not be altered unless there are exceptional circumstances for doing so.

2. All requests to change a notified date should be in writing and give sufficient reasons. A statement such as the date is "inconvenient" or "the RMO has other commitments" will not be accepted, without further explanation.

3. It is preferable that requests are made by the Mental Health Act Administrator or the patient's legal representative.

4. Requests should be made, whenever, possible, in good time. Late requests will not be looked on favourably unless there are wholly exceptional circumstances."

APPENDIX 5

APPLICATIONS TO THE MENTAL HEALTH REVIEW TRIBUNAL

Section of Mental Health Act 1983	Patient	Nearest Relative
2. Admission for assessment	Once in first 14 days 66(1)(a)	
3. Admission for treatment – 6 months then every 12 months	Once in the first 6 months 66(1)(b) and once in each subsequent renewal period 66(1)(f)	
7. Application for Guardianship – 6 months, renewed for 6 months then every 12 months	Once in first 6 months 6(1)(c) and once in each subsequent renewal period 66(1)(f)	
16. Reclassification report by RMO	Within 28 days of being informed of reclassification 66(1)(d)	Within 28 days of being informed of reclassification 66(1)(d)
25. RMO bars nearest relative discharging		Within 28 days of being informed of RMO's report barring discharge 66(1)(g)
29. Appointment by court of acting nearest relative		Once in each 12 month period 66(1)(h)
25A After - care under supervision	At any time within 6 months of the application being accepted	Within the first 6 months of the application being accepted

Section of Mental Health Act 1983	Patient	Nearest Relative
37. Hospital Order 6-months, renewed for six months then every 12 months	No right within first 6 months. Once in each renewal period 66(1)(f)	No right within first 6 months. Once in each renewal period 69(1)(a)
37. Guardianship Order	Once in the first 6 months 66(1)(b)(i). Once in each subsequent renewal period	Once in each 12 month period 69(1)(b)(ii)
37 "Notional" i.e. prisoner in hospital under ss47/49 becomes a "notional"s 37 when his earliest date of release (EDR) occurs.	Unlike section 37 above, once in the first six months of the "notional" s 37: s.69(2)(b) and at yearly intervals thereafter	No right within 6 months. Once in each renewal period s.69(1)(a)

(RESTRICTED)

37/41 – Hospital order with restriction order	No right within first 6 months. Once in second six months 70(a). Once in any subsequent 12 month period 70(b)	
CPIA	No right within first 6 months when court imposes section 37/41. The Domestic Violence, Crime and Victims Act 2004 has amended the Criminal Procedure (Insanity) Act 1964 and the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991	
47/49 – Removal to hospital from prison with restriction direction	Once in first 6 months 69(2)(b). Once in second 6 months 70(a) and in any subsequent 12 month period 70(B)	
Restricted patient Conditionally discharged	12-24 months after discharge-75(2)(a) Once in every subsequent period of 2 years 75(2)(b)	

AUTOMATIC REFERENCES TO THE MENTAL HEALTH REVIEW TRIBUNAL

Section of 1983 Mental Health Act under which reference is made	Time of Reference
67 – Reference by Secretary of State for Health	Any time
68(1) – Reference by Hospital Managers	Patients who have been detained under Section 3 and on renewal have not had a Tribunal within the previous six months
68(2) – Reference by Hospital managers	Patients who have been detained under Section 3, or 37 and on renewal have not had a Tribunal within the previous three years

(RESTRICTED)

71(1)- Reference by the Home Secretary	Any time
71(2) – Reference by the Home Secretary	Restricted patient who has not had a Tribunal for three years will be automatically referred
71(5) – Reference by the Home Secretary	Repealed by Domestic Violence, Crime and Victims Act 2004 as from 31 March 2005.
75(1) – Reference by the Home Secretary	Conditionally discharged patient recalled to Hospital – automatically referred within 1 month

APPENDIX 6

HOME ADMINISTRATIVE OFFICE - MHRT GUIDANCE

This guidance has been agreed between the Home Administrative office, Department of Health, the MHRT Regional Chairmen and the Liaison Judge. It sets out the various roles and responsibilities of those involved in Mental Health Review Tribunals for restricted patients in England and Wales, so that all parties of aware of both their obligations and the level of service they can expect from the other parties. The guidance is set out in three parts: Pre-hearing; Hearing & Post-hearing.

The status of this document is non-statutory guidance. It will be revised annually. Additional copies of this document are available in both electronic and hard copy format from Delores Stratton or Geraldine Marsh (020 7273 2910).

Contents

1. Statutory framework

This is covered by the Mental Health Act 1983 (ss70-75) and the Mental Health Review Tribunal Rules 1983. Any reference to the Act in this guidance should be taken as a reference to the Mental Health Act 1983, unless otherwise specified. Any reference to the Rules should be taken as a reference to the Mental Health Review Tribunal Rules 1983, unless otherwise specified

2. Pre-hearing
Detained Restricted patients

2.1 *Responsible Authority's Obligations* - Rule 6 of the MHRT Rules places an obligation on the Responsible Authority (i.e. the hospital managers) to provide the tribunal and the Home Administrative office with their statement, including the relevant reports within 3 weeks of its receipt of the notice of application.

2.2 *Tribunal administrative office's obligations* - Rule 4 obliges the tribunal to send the Home Administrative office notice of any application received in respect of a restricted patient. Rule 12 obliges the tribunal to provide the Home Administrative office with a copy of every document it receives in restricted patient cases. This means that it is for the tribunal administrative office to provide copies of any reports it receives other than the Responsible Authority statement which is covered by Rule 6 above. Rule 20 requires the tribunal to provide at least 14 days notice of the hearing date to all parties, including the Home Secretary. It is important that the tribunal administrative office notify the Home Administrative office as soon as possible once a hearing date is set.

2.3 *Home Secretary's obligations* - Under the MIHRT Rule 6 the Home Secretary is obliged to provide a statement to the tribunal on receipt of the Responsible Authority's statement. The Rules state that the Home Secretary must do this as soon as practicable and has a maximum of 3 weeks to provide this statement from the moment a report is received. Where the Home Administrative office makes a reference to the tribunal (e.g. in respect of a recalled patient or because the tribunal has not considered the case for three years), then the maximum period is 2 weeks from receipt of the responsible authority's statement.

2.4 The Home Secretary will also endeavour to provide a supplementary statement in respect of any further reports that are received (see paragraphs 2.11 - 2.16 below). See also paragraph 3.6 in respect of further reports in deferred Conditional Discharge cases.

2.5 The Home Administrative office target is to provide the Home Secretary's statement on time in 100% of cases. Tribunal statements take priority over all over areas of work undertaken by Mental Health Unit of the Home Administrative office and senior managers in the unit require a written explanation from caseworkers each time a statement misses its statutory deadline. Tribunal administrative offices should expect that, save for exceptional circumstances, they will receive the Home Secretary's statement within the statutory deadline.

2.6 Late/ non-submission of Responsible Authority Statements for detained Restricted patients

This can lead to unnecessary delays and even adjournments and covers two scenarios. One, where the Responsible Authority reports are not received by the tribunal within the required timescales. The second is where the Responsible Authority sends the reports to the tribunal but not to the Home Administrative office.

2.7 Role of the tribunal administrative office — Rule *27* states that failure to comply with the rules does not make tribunal proceedings void but that if a person may have been prejudiced the tribunal must take such steps as it thinks fit to deal with the problem.

2.8 The tribunal administrative office is best placed to chase up missing or late reports and should do so. Moreover, the consequences of late or missing reports not being chased will fall to the tribunal as it could lead to adjournments that could have been avoided.

2.9 In cases where the Responsible Authority have failed to provide the Home Administrative office with copies of the reports, the tribunal administrative office will know that the reports actually exist, the Home Administrative office will not. In any case, Rule 12 of the MHRT Rules provides that that the tribunal shall send a copy of every document it receives to the Home Administrative office in the case of restricted patients. In such cases, the tribunal administrative office may wish to first check whether the Home Administrative office has been sent the report before sending a copy.

2.10 Role of the Home Administrative office - The Home Administrative office is under no obligation to chase up reports from Responsible Authorities. There are also good practical reasons why the Home Administrative office is not best placed to undertake this task. The Home Administrative office will be unaware that a statement from the Responsible Authority exists if it is not sent to them, while the tribunal administrative office will have the report already if it has been completed. The Home Administrative office is also not always routinely informed of the hearing date as soon as it is set.

2.11 **Submission of late Responsible Authority Statement B to the Home Administrative office - requests for postponement or adjournment of hearing**

Tribunals will sometimes request a Home Administrative office response to a Responsible Authority part B statement that has been submitted less than 3 weeks prior to the hearing date.

2.12 *Position of Home Administrative office* - Under the MHRT Rules the Home Administrative office, although required to respond as soon a practicable, has a maximum of 3 weeks in which to respond to the Responsible authority part B statement (2 weeks in the case of Secretary of State references). The Home Administrative office, however, fully appreciates the need to avoid adjournments, if at all possible, as they not only cause additional work for all parties involved but can also be unfair to the patient. The Home Administrative office will endeavour to respond to late requests whenever possible.

2.13 It will, however, not always be possible for the Home Administrative office to respond to every Responsible Authority statement B that is submitted late and there will be circumstances where the Home Administrative office will need to seek a postponement or adjournment. While it is impossible to set down rigid criteria for circumstances when the Home Administrative office will need to seek an adjournment or postponement, it will generally be in cases where:

- the Home Administrative office assessment is that the patient poses a potentially serious risk if discharged
- the late report increases the likelihood that the tribunal may discharge; and
- the time available does not allow the Home Administrative office to submit a properly considered response.

2.14 A key relevant factor will be the amount of time the Home Administrative office has to consider the late report. Where the Home Administrative office has at least 5 working days or more in which to consider the late Responsible Authority part B statement it will almost always be possible for the Home Administrative office to provide a response. Where the Home Administrative office has fewer than 5 working days, it will not normally be possible to provide a response to a Responsible Authority part B statement.

2.15 Submission of other late reports to the Home Administrative office - requests for postponement or adjournment of hearing

Increasingly, further reports are being submitted to the tribunal only days before the hearing and even on the day of the hearing itself. These are typically either independent reports commissioned by the patient's representatives or addendum reports from the patient's care team. The Home Administrative office will not, save in exceptional circumstances, be able to respond to any reports that are submitted less than 2 working days before the hearing is scheduled.

2.16 Where the Home Administrative office has at least 5 working days before the tribunal hearing, the Home Administrative office will be able to provide a supplementary

statement, unless there are exceptional circumstances (for example, if on receipt of the additional report, the Home Administrative office wishes to consider being represented at the tribunal).

2.17 Where the Home Administrative office has between 4 and *2* working days before the tribunal hearing, the Home Administrative office will normally be able to provide a supplementary statement. While it is not possible to set out a rigid criteria of those cases where the Home Administrative office will not be able to provide a supplementary statement, generally they will be in cases that meet the criteria set out at paragraph 2.13 above.

2.18 Where the further reports do not make any recommendation for discharge, the Home Administrative office will respond either with a simple, faxed, statement that the Home Administrative office has no comments, or with an oral response. The statement will contain the patient's name, the tribunal administrative office and the Home Administrative office's references and also identify the reports to which the fax refers.

2.19 Legal representation

Under Rule 10 any of the parties may be represented at the tribunal hearing. The Home Administrative office, however, only very rarely seeks representation at a Mental Health Review Tribunal. Typically, there are only about a dozen or so hearings a year at which the Home Administrative office is represented. While it is impossible to set down rigid criteria for those cases where the Home Administrative office will seek representation, the following indicates the type of case where the Home Administrative office may consider representation. This is, of course, without prejudice, to the Home Administrative office's position that it may seek representation in any case where it feels it is appropriate-

> the Home Administrative office assessment is that the patient poses a particularly serious risk if discharged;
>
> there appears, from the reports submitted, to be a genuine prospect of discharge.

Representation is normally reserved for the small minority of cases where the risk to the public is assessed as particularly grave. Typically, cases where there appears to be a prospect of discharge from a high secure hospital, or perhaps, where Absolute Discharge is recommended from medium security where there are serious concerns about public safety.

Deferred Conditional Discharges - there will occasionally be cases where the Home Administrative office was not represented at the original hearing where a deferred conditional discharge was granted, but will wish to be represented at the re-convened hearing.

2.20 Conditionally Discharged Restricted patients

The Home Secretary's obligations- Where the patient is a Conditionally Discharged Restricted patient, there is no report from the responsible authority and, under rule 6 it is the Home Secretary's responsibility to provide the tribunal with the relevant reports as soon as practicable and within a 6 week target.

As with detained restricted patients, the Home Administrative office target is to provide the Home Secretary's statement on time in 100% of cases and the Tribunal statements take priority over all over areas of work undertaken by Mental Health Unit of the Home Administrative office. Similarly, the tribunal will be provided with 7 copies of the Home Secretary's statement.

2.21 *The Tribunal's obligations* - Rule 20 requires the tribunal to provide at least 14 day's notice of the hearing date to all parties, including the Home Secretary. It is important that the tribunal administrative office notify the Home Administrative office as soon as possible once a hearing date is set.

2.22 *Late/non-submission of Responsible Authority's reports for conditionally discharged restricted patients*

It is the Home Administrative office's responsibility to chase up late or missing reports in respect of conditionally discharged restricted patients.

Section* 3 - *the Hearing

3.1 Role of the MHRT in respect of detained restricted patients

The role of MHRTs in the case of Restricted patients is limited to determining whether or not the statutory criteria for detention in hospital continue to be met, and if not, whether discharge should be absolute or subject to conditions. The MHRT has no statutory role to play in the pace of the patient's rehabilitation and as such have no statutory role in respect of matters such as transfer or community leave (see below "extra-statutory recommendations").

In addition, the MHRT has to decide questions of the patient's classification under the Mental Health Act. Following the recent judgment in *ex parte B* this is of increased importance, as treatment can only be given for a classified mental disorder under the Act. For example, treatment of personality disorder can only be undertaken if the patient has a classification of psychopathic disorder under the Mental Health Act.

3.2 Standard of proof to be applied

The tribunal must be satisfied on the balance of probabilities whether or not the statutory criteria for detention continues to be met and not beyond reasonable doubt.

3.3 Extra-statutory recommendations

While MHRTs have no statutory role in the pace of rehabilitation, this does not mean that they cannot reach a view on, for example, the appropriate level of security for a patient. If, in the course of determining a patient's detainability under the MHA, the tribunal reach a view on transfer (or any other matter outside their statutory locus), this should be dealt with by way of an extra-statutory recommendation in the Reasons part of the pro-forma. The Home Administrative office will formally acknowledge any extra-statutory recommendations that are made.

3.4 Reasons

It is essential that accurate, good quality reasons are given by the tribunal for any decision that they reach. Poorly expressed, or inaccurate, reasons can lead to decisions being challenged. It is also important to bear in mind that the written reasons will be the only explanation that the Home Administrative office will usually have for the tribunal's decision, as the Home Secretary will not normally have been represented at the tribunal, so will not have heard the oral evidence that the tribunal have. It is also extremely helpful if the reasons are typed rather than hand-written.

3.5 Conditional discharge to hospitals

Following the case of *SSHD v MHRT (PH)* [2002] EWCA Civ 1868, it is established that a Tribunal can conditionally discharge restricted patients to a hospital. Any such discharge, in order to be lawful, must amount to a genuine discharge and not merely a continuation of detention by another means. The extent of the Tribunal's powers were recently clarified in the case of *R(G)v MHRT*[2004] EWCA 2193 (Admin). G. challenged the Tribunal's refusal to conditionally discharge him to the rehabilitation flats at Thomford Park Hospital where he was already resident as a detained patient. The court held that, although it was possible for a patient to cease to be detained if discharged with a condition that he remains at the hospital at which he had been detained, it would be difficult for a lawful discharge to take place if the regime and the purpose of the restrictions remained the same. In G.'s case, the court concluded that the restrictions on G. would have been such that they would have amounted to deprivation of liberty, had a condition of residence at Thornford Park been imposed. This was because G. would have continued to reside in circumstances amounting to detention which had not materially changed from when he had been a detained patient at the same hospital.

3.6 Condition that patient be escorted in community

In the case of *SSHD v MHRT (PH)* [2002] EWCA Civ 1868, unusually restrictive conditions were imposed primarily for the benefit of *PH* (who was frail, elderly and very institutionalised) rather than for the protection of the public. One of these was that *PH* was to be escorted whenever he left the hospital. The extent to which the Tribunal can impose unusually restrictive conditions was clarified in the case of *SSHD v MHRT* [2004] EWI-IC 2194 (Admin*). P* had been granted a deferred conditional discharge, which included the condition that he was not to be allowed out of the hostel without an escort. This was because of the risk *P* posed to the public. The court held that this

inevitably amounted to a deprivation of liberty.

3.7 Re-convened hearings following a deferred conditional discharge

Following the judgment in R on the application of *IH v Secretary of State for Health* [2002] EWHC (civ 646), deferred conditional discharges are provisional decisions and the tribunal may re-visit them at any point prior to the tribunal directing conditional discharge. In doing so, the tribunal is free to re-visit its earlier provisional decision and any decision that was originally open to them remains open to them at the re-convened hearing. This means that the tribunal can rescind their earlier, provisional decision, if they now find the criteria for detention are met. Equally, they can absolutely discharge, vary the conditions or up-hold the original, provisional, decision.

Tribunals can, and should, re-convene to progress chase where a deferred conditional discharge is granted. In doing so, however, tribunals must be careful not to defer the conditional discharge to a specific date, as there is no power to do so.

Under this judgment, where a tribunal re-convenes following the provisional decision to grant a deferred conditional discharge, the tribunal members should, as far as possible, be the same as originally considered the application.

3.8 Home Administrative office response to further reports following a decision to grant a deferred conditional discharge

The Home Administrative office is under no obligation to respond to any further reports that the tribunal receives following a provisional decision to grant a deferred conditional discharge. The Home Administrative office will, of course, consider, in every case whether a response is necessary. The Home Administrative office will normally only offer comments where the further reports raise issues about the patient's detainability. The Home Administrative office will not normally comments where the further reports are simply detailing progress in meeting the provisional conditions imposed by the tribunal, but do not raise any issues regarding the patient's suitability for conditional discharge.

3.9 Requests for adjournments to inform extra-statutory recommendations

Case law (*R (SSHD) v MHRT for NE Thames Region* [2001] ACD 62) has established that adjournments must not be granted solely for information in relation to an extra-statutory recommendation.

3.10 Adjournments to monitor a patient's progress

Similarly, it is unlawful to adjourn proceedings in order to monitor a patient's progress in the hope that a projected course of treatment would eventually permit the tribunal to discharge the patient.

3.11 Requests for adjournments by the Home Administrative office

Tribunals should always seek Home Administrative office comments on any written evidence before it. If the Home Administrative office provides comments, either in writing or orally, then the tribunal can, of course, proceed. Where the Home Administrative office is unable to provide comments in the timescale required, the tribunal will have to decide whether to adjourn the hearing, if it has already commenced, or postpone the hearing if it has not. This is a matter for the tribunal, but in reaching their decision, the tribunal should bear in mind that any decision to discharge could be vulnerable to challenge in such circumstances, particularly where the written material in question was of relevance in reaching the decision to discharge.

3.12 No notice evidence

The introduction of no notice evidence (written or oral) should be avoided.

3.13 Adjournments and oral evidence

Where oral evidence is given that significantly departs from that person's written evidence (for example, a RMO supports discharge where he had opposed discharge in his report), the tribunal may wish to consider seeking the Home Administrative office's views, or adjourning to seek the Home Administrative office's views, although there is no obligation for them to do so.

3.13 Adjournments and discharge conditions

Where a tribunal is minded to order a Conditional Discharge or a Deferred Conditional Discharge and they are considering conditions that are unusual or contentious (a discharge to hospital, for example), the tribunal may wish to consider seeking the Home Administrative office's views, if not already known. Again there is no obligation on the tribunal to do so.

3.15 Attendance of Home Administrative office as observers

From time to time staff from the Mental Health Unit of the Home Administrative office may wish to attend a MHRT as observers. Mental Health Unit will identify at the time of drafting the Home Secretary's statement, a MHRT they would wish to attend as an observer.

The Home Administrative office will then write to the tribunal administrative office **at** the same time as submitting the statement (but separate from it) informing them that the Home Administrative office wish to attend and providing them with the name(s) of the proposed observer(s). The tribunal administrative office then either agrees in principle, or if they are not content informs the Home Administrative office of this. Attendance at the tribunal as an observer would, of course, be subject to the patient's consent, which can be withdrawn at any time. It should also be made dear to the tribunal that those attending from the Home Administrative office do so solely as observers and should not be called to give evidence.

Section 4 Post-hearing

4.1 Notification of decisions

Rule 24 of the MHRT Rules requires the tribunal to notify all parties, including the Home Secretary of the decision, with reasons, in writing within 7 days. The Home Administrative office will take up with the tribunal administrative offices those cases where no decision has been received 4 weeks after the scheduled hearing date.

4.2 Deferred conditional discharges

Where the tribunal grants a deferred Conditional Discharge, the Home Administrative office has no role in either meeting the conditions or agreeing that the conditions are met. It is for the tribunal to decide whether or not the conditions have been met.

Where the Home Administrative office wishes a tribunal to re-convene to re-consider a deferred Conditional Discharge, it will write to the tribunal asking the tribunal to re-convene under the IH procedure. The Home Administrative office will normally consider referring a case back to the tribunal where there is fresh evidence that the patient meets the criteria for detention in hospital or where it appears that the conditions cannot be met.

4.3 Deferred conditional discharges & 3 year auto-referrals

Under section 71(2) of the Mental Health Act 1983, the Home Administrative office is obliged to refer to the tribunal the case of any detained restricted patient that has not been considered by a tribunal for three years. This applies equally to those patients who have received a deferred Conditional Discharge but three years has elapsed without the conditions being met or the tribunal re-convening to consider the case. Section 71(2) refers to the case not being considered "whether on his own application or otherwise". The fact that the Mental Health Review Tribunal has not yet made its provisional decision on discharge final amounts to the case not being considered "otherwise" so section 7 1(2) starts the ball rolling again.

There is nothing in the referral under Section 71(2) that necessitates that the case is heard by a fresh tribunal. The case could therefore be heard by the original tribunal, as far as possible, and in keeping with the procedure set out in the IH judgment.

4.4 Section 74 recommendations in respect of life sentence prisoner transferred to hospital under the MHA

Where a tribunal makes a recommendation under S.74 of the MHA in respect of a life sentence prisoner who has been transferred to hospital, the tribunal administrative office must inform the Home Administrative office immediately of the tribunal decision. The tribunal administrative office should not exceed the 7 days set out in Rule 24 for the notification of the tribunal decision. The reason for this is the need for Mental Health Unit to refer the case to the Parole Board hearings as quickly as possible in such cases.

APPENDIX 7

VICTIMS POLICY

PROCEDURES CONCERNING THE RIGHTS OF ACCESS TO MHRT HEARINGS OF VICTIMS OF CERTAIN CRIMINAL OFFENCES COMMITTED BY PATIENTS PART A: TRIBUNALS COVERED BY THE DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004

Background

1. The *Domestic Violence, Crime and Victims (DVCV) Act 2004*, which received Royal Assent in November 2004, contains a number of measures to extend the Government's programme of improving services and support to victims of certain criminal offences (hereinafter described as 'victims'), from prison to hospital for psychiatric treatment, as well as offenders subject to hospital orders with restriction orders. This note provides information about the procedures for information-sharing, and forwarding victims' representations about discharge conditions.

2. The extended duty is not retrospective, and applies only to victims where the Crown Court sentences the offender to one of the following disposals, if it occurred, on or after 1 July 2005 [See PART B below for the position regarding disposals prior to 1 July 2005]:

• Those convicted of a sexual or violent offence, who are then made subject of a hospital order with a restriction order.

• Those found unfit to plead and to have committed the act, and been charged, or not guilty by reason of insanity, under the Criminal Procedure (Insanity) Act 1964 as amended by the DVCV Act 2004 in respect of a sexual or violent offence, and then made subject to a hospital order with restrictions.

• Those convicted of a sexual or violent offence, who are then made subject of a hospital direction and limitation direction.

• Those sentenced to 12 months imprisonment or more, for a sexual or violent offence, and transferred from prison to hospital, under a transfer direction and restriction direction.

3. The Home Office Mental Health Unit (MHU) carries out the Home Secretary's responsibilities under the Mental Health Act 1983, and related legislation. They direct the admission to hospital of patients transferred from prison, and consider recommendations from Responsible Medical Officers (RMOs) in hospitals for leave, transfer or discharge of restricted patients. MHU also prepare documentation for Mental Health Review Tribunals (MHRTs), and monitor patients who are conditionally discharged. Each restricted patient has a caseworker at MHU.

4. For each new case, including transferred prisoners, the Victim Liaison Officer (VLO) will contact the MHU caseworker. MHU will inform the VLO of the contact details for the care team or Responsible Medical Officer (RMO) in each case, where this is known.

Mental Health Review Tribunals

5. A detained restricted patient may apply to have his/her case heard by a MHRT once each year. If the patient does not apply, their case will be referred to a Tribunal by the Home Secretary every three years. In addition, after a conditionally discharged patient has been recalled, the Home Secretary must refer the case to a Tribunal within one month of recall. The Tribunal will consider whether the individual needs to be detained in hospital for the purposes of mental health treatment.

6. When the Home Secretary refers a patient to the Tribunal, MHU will forward the details of the relevant VLO to the MHRT Office. When an application is made to the Tribunal, the Tribunal office will obtain the details of the relevant VLO from MHU. In both circumstances, the MHRT Secretariat will then inform the VLO of the Tribunal date once it has been set, as well as the date the victim's representations must be received to be considered at the hearing.

7. VLOs should consult victims about their representations relating to discharge conditions and forward them to the Tribunal Office by the specified date.

Disclosure of Victim's Representations to the Offender

8. Victims should be made aware that no guarantees can be given that any representations they make will not be disclosed to the patient.

9. The expectation is that all documents are disclosed to the patient and the circumstances in which documents can be withheld are very limited. Rule 12 of the Mental Health Review Tribunal Rules 1983 allows for the Tribunal to withhold any document from the patient if they consider that disclosure would adversely affect the health or welfare of the patient or others. In such a case the Tribunal must disclose the document to the patient's authorised representative (if the patient has one). This is done on the basis that the representative must not disclose the contents of the document to the patient, either directly or indirectly.

10. It is a decision for the Tribunal whether or not any document should be withheld under Rule 12. Where the victim wishes for this to be considered this should be clearly indicated on the victim's representations. The Tribunal will consider whether or not to disclose the document to the patient. This may be done at the hearing or by the Regional Chairman at a preliminary hearing, under Rule 5. A victim may request to attend in person to argue that a document be withheld, but whether or not this is allowed will be a matter for the discretion of the Tribunal.

11. Any application by a victim to attend the tribunal hearing and give oral evidence must be considered under the existing MHRT Rules [see PART B, para. 16, below). The DVCV Act confers no new rights or obligations in respect of either attendance at MHRTs, or oral evidence heard by MHRTs.

Decision of the Tribunal

12. The Tribunal Secretariat will inform the VLO of the outcome of the hearing, in writing, within seven days. Where a Tribunal decides to direct the conditional discharge of a patient it may defer the discharge until it is satisfied that adequate arrangements have been made for the discharge to take place. It may impose any conditions on discharge for the protection of the public or the patient him/herself, such as residence at a stated address and supervision by a social worker (social supervisor) as well as cooperation with psychiatric treatment. Conditions relevant to victims would relate to 'no contact' conditions or exclusion zones.

13. Transferred prisoners are eligible to be considered by a Tribunal, but they cannot be discharged in this way. However, the Tribunal may make recommendations on how they would have acted had the offender not been a transferred prisoner. Therefore, VLOs may forward the victim's representations about conditions of discharge in these cases, as the Tribunal's deliberations will be forwarded to the Parole Board where appropriate.

PART B: CASES NOT COVERED BY THE DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004.

Background

14. As outlined at Part A above, The Domestic Violence, Crime and Victims Act 2004 ('DVCV 2004') came into force on 1 July 2005, but it does not apply to victims of incidents that occurred prior to that date, as the Act is not retrospective.

15. The MHRT has given careful consideration to the position of victims who have been subject to sexual or violent offences committed by persons who were subsequently detained under the provisions of the Mental Health Act 1983, where such assaults occurred prior to the introduction of the DVCV 2004. The MHRT

has determined that where in such circumstances a victim wishes to have access to any future tribunal proceedings concerning that patient, they shall normally be permitted such access on the following terms:

- The victim must give notice to the MHRT of their wish to be informed of any future Tribunal hearing arising in connection with the named patient.

- Such notice must be in writing, and addressed to Mr Jack Fargher, MHRT Head of Administration, 11 Belgrave Road, 5th Floor, London SW1V 1RS. The MHRT will log and acknowledge in writing all such applications.

• The victim will subsequently be informed of the date, time and place fixed for any hearing concerning that patient in advance of the hearing.

• The victim shall have the right a) to apply to the tribunal to attend the hearing in order to give evidence to the hearing, and b) to submit to the Tribunal any written evidence that he or she wishes the Tribunal to consider.

Application to Attend the Hearing

16. Mental Health Reviews Tribunal Rules 1983, Rule 7 (f), allows the tribunal to give notice of the hearing to any person who in the opinion of the Tribunal, 'should have an opportunity of being heard'. In the interests of equity, justice and a fair hearing and in line with the developing jurisprudence of Articles 6 and 8 of the European Convention of Human Rights, the Regional Chairmen of the MHRT have determined that there should be a presumption in favour of granting the right to the victim to give evidence at the hearing in question. This presumption could in limited circumstances still be rebutted, if evidence is provided by the patient, the Home Office or the responsible authority justifying such a rebuttal, and the Tribunal agrees.

17. Mental Health Reviews Tribunal Rules 1983, Rule 5, empowers the Regional Chairman to exercise the above power on behalf of the tribunal at any time up to the hearing.

18. The manner and format in which the applicant's oral evidence is presented to the Tribunal e.g. whether it is in the presence or absence of the other parties to the hearing, will be determined in each instance by the tribunal or the Regional Chairman, in advance of the hearing. In particular, it should be noted that Mental Health Reviews Tribunal Rules 1983, Rule 14 (2) states that 'the Tribunal may receive in evidence any document or information, notwithstanding that such document or information would be inadmissible in a court of law'.

19. If the applicant submits any written evidence to the hearing either in place of, or in addition to attending the hearing, Mental Health Reviews Tribunal Rules 1983, Rule 12, applies. This Rule requires the Tribunal to copy such written evidence to the patient, unless they are satisfied that its disclosure would 'adversely affect the health or welfare of the patient or others. The word 'others' can include the applicant. If the tribunal does decide not to disclose the written evidence to the patient it would still be forwarded to the patient's legal representative, but they would not be permitted to show the written evidence to the patient [see PART A: paras. 8-10).

Professor Jeremy Cooper, Southern Regional Chairman
Jack Fargher, Head MHRT Administration
HHJ Phillip Sycamore, MHRT Liaison Judge
Mr John Wright, Northern Regional Chairman.