



Information for restricted patients detained under the Mental Health Act 1983 (as amended by the Mental Health Act 2007)

First-tier Tribunal – Health, Education and Social Care Chamber (Mental Health)

The following guidance is designed to inform you about tribunals.

The tribunal

The tribunal is an independent judicial body which reviews the need for the continued detention of patients in hospital.

Restricted patients

A restricted patient is a patient who is subject to a restriction order (from a court) or a restriction direction (for example, for a prisoner transferred to hospital). Persons found unfit to plead in criminal proceedings may be treated as restricted patients depending on the court order.

Members of the tribunal

The tribunal usually consists of a judge (a circuit judge, recorder, or full-time professional mental health judge); a consultant psychiatrist, and a specialist lay member with substantial experience of mental health cases.

What the tribunal does and what their powers are

The tribunal considers whether you should be discharged or not, having regard to the criteria relating to restricted patients in the Mental Health Act 1983 (as amended by the Mental Health Act 2007). If certain discharge criteria are met, the tribunal must direct an absolute discharge but only if it is also satisfied that it is not appropriate for you to be liable to recall to hospital (to be conditionally discharged). If it is appropriate for you to remain liable to recall, then you may be conditionally discharged and must comply with the conditions imposed by the tribunal. You may be recalled to hospital by the Secretary of State. A tribunal may defer your conditional discharge until suitable arrangements have been made, usually for supervision and accommodation. The tribunal cannot discharge you subject to a restriction order (a transferred prisoner) but can notify the Secretary of State that you would be entitled to an absolute or conditional discharge if you were on a hospital order made by a court with restrictions on discharge. If you are subject to a restriction direction you may be liable to return to prison in such circumstances, but the

tribunal can recommend that you remain in hospital if the Home Secretary decides not to discharge you. A tribunal considering an application from a conditionally discharged patient may vary, add any condition, or remove the restrictions absolutely.

How to apply to the tribunal

Applications can be made by you or someone authorised by you such as your legal representative. A downloadable application form is provided on our website www.gov.uk/mental-health-tribunal with the information required. This form should be submitted to the:

HM Courts and Tribunals Service
First-tier Tribunal (Mental Health)
PO Box 8793
5th Floor
Leicester
LE1 8BN

Or emailed to: mhtapplications@justice.gov.uk

When to apply to the tribunal

As a restricted patient detained in hospital you can apply to a tribunal:

- a. in the period between the expiration of six months and the expiration of 12 months beginning with the date of the relevant hospital order or transfer direction; and
- b. in any subsequent period of 12 months
- c. If you are a conditionally discharged patient, you may apply in the period between the expiration of 12 months and the expiration of 2 years beginning with the date of the conditional discharge

After you apply

The tribunal office will acknowledge receipt of your application. If you are not legally represented, they will send you information regarding your rights to legal representation and to see the tribunal doctor. You should let the office know in writing at least 14 days before the day of the tribunal hearing if you want to have an interview with the tribunal doctor. This can be over video or face to face.

The tribunal office will also ask the hospital for reports from your responsible clinician (RC), approved mental health professional (AMHP) and comments from the Ministry of Justice. Nearer the time of the tribunal, you or your representative will be given copies of the reports to prepare for the hearing.

When a hearing will take place

The tribunal must provide a speedy hearing but this will depend on the circumstances of the case. As a rule of thumb, a hearing will take place between 12 to 20 weeks from the date of your application.

Legal representation

Legal representation is available to anyone who has applied for a tribunal. The hospital keeps a list of specialist solicitors. You are entitled to contact any other solicitor you think will be able to assist you. It is important to do so as soon as possible so as to avoid delay in arranging the hearing of the tribunal.

Where the tribunal will be held

Your tribunal can be held remotely by video or face to face with participants attending the venue. The venue is usually the hospital where you are detained, or if you are conditionally discharged, at the hospital where your responsible clinician is based or another venue.

If you change your mind about having a tribunal

If you do not want to proceed with your application, then you must tell the tribunal office as soon as possible in writing giving your reasons. An application should be supported where possible by the legal representative. The chair of the tribunal or the principal judge will then decide whether or not to accept your withdrawal.

The tribunal hearing

If you have asked to see the tribunal doctor before your hearing, arrangements will be made for this to take place. The doctor will examine you and may read (and may make copies of) your medical records.

The hearing is usually in private. Written medical and social circumstances reports will be provided to the tribunal members, you, and your solicitor before the hearing. Your solicitor may ask for an independent psychiatric report. Any information that would be likely to cause you or some other person serious harm if it is disclosed to you must be submitted in a separate confidential report giving the reasons why the information should be withheld from you. The tribunal may direct that these documents should be sent to your legal representative. This can be over video or face to face.

The tribunal decision

The tribunal normally makes its decision at the end of the hearing and tells you or your legal representative. The tribunal will provide a written decision with reasons within 7 days.

Appeal against a tribunal decision

In certain circumstances you may have the right to appeal against the decision made by the tribunal. These rights will be explained in writing and will be forwarded to you along with the written decision from the tribunal.

Further information

guidance and further information is available on the tribunal website at www.gov.uk/mental-health-tribunal. Or you can contact the Customer Service Team at:

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First-tier Tribunal (Mental Health)
PO Box 8793
5th Floor
Leicester
LE1 8BN

Telephone: 0300 123 2201

Email: mhtenquiries@justice.gov.uk