



Information for victims

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

Who is this leaflet for?

You should find this leaflet useful if you are a victim (which can sometimes include close family members of the victim) of a violent or sexual offence committed by a person who was subsequently detained under the Mental Health Act 1983 and whose detention is being considered by the First-tier Tribunal (Mental Health). It gives information about the procedures we have for providing information about a hearing date, and for victims to make representations about possible conditions if the patient is to be discharged.

If you are a victim then, in most serious cases where there are special restrictions in place (a 'restricted case'), you should be contacted by a Victim Liaison Officer ('VLO'), on behalf of the local Probation Board. The VLO's role is to provide information about the patient and give you an opportunity to make representations to the tribunal about possible conditions. If you have not been contacted, and wish to take the matter further, you should contact your local Probation Board, or the tribunal office. The tribunal's address is at the end of this leaflet. Sometimes, where special restrictions are not (or are no longer) in place, the hospital managers will be the contact point for you.

What is the First-tier Tribunal (Mental Health)?

All patients liable to be detained in hospital are subject to the Mental Health Act 1983 (as amended). Such patients are entitled to periodic reviews of their liability to be detained, and this review is undertaken by a specialist tribunal, which is independent and judicial. The tribunal's function is to review the need for certain patients to be detained in hospital. The tribunal also considers cases involving patients in the community, such as restricted patients on a Conditional Discharge from hospital, or non-restricted patients on a Community Treatment Order.

The tribunal panel is made up of three people – a judge, a consultant psychiatrist and a person with experience in health and social care issues. If the patient was convicted of a serious offence and, at the time of sentence, was regarded as being a danger to the public then the hearing will usually be chaired by a particularly experienced judge.

In order to reach its decision, the tribunal has to consider a number of questions, including the risks to the patient and/or the public if the patient is discharged. If there are risks, the tribunal will consider whether those risks can be reduced or minimised by imposing or suggesting conditions.

Prior to the hearing, all the written evidence prepared for the tribunal will be sent to the patient and his or her representative, unless the disclosure of such documents would be likely to cause serious harm to the patient or to any other person, and it is proportionate to withhold disclosure from the patient. It is for the tribunal (and not the author of the document) to decide whether any documents should be withheld.

The hearing usually takes place at a hospital and is held in private, which means that members of the public, and victims, cannot normally attend.

In a restricted case, the tribunal's powers include discharge into the community, but usually subject to specific conditions such as place of residence, arrangements for treatment and supervision, and – if appropriate – the imposition of a carefully defined exclusion zone to protect victims and their families. In a non-restricted case, the tribunal cannot impose any conditions following discharge. But it can make informal suggestions.

A restricted patient may apply to have his or her case heard by a tribunal once every year. If the patient does not apply, the Ministry of Justice will refer the case to the tribunal for a hearing every three years.

What information can a victim request, and what types of representation can a victim make?

If you are the victim of a serious violent or sexual offence where the offender has subsequently been detained as a restricted patient under the Mental Health Act 1983 you can ask your VLO to inform you of the date of any future hearing. You will then be informed of the future hearing date when it is fixed.

The Domestic Violence Crime and Victims Act 2004 provides victims with a right to make representations to the tribunal about discharge conditions. If you know that a hearing is coming up, you are permitted to make written representations to the tribunal and all the members of the tribunal panel will see a copy of your representations. The patient will also see your representations, and have a chance to comment on them, unless the tribunal decides otherwise.

Please remember that representations from victims can only relate to the following questions:

- whether, if the patient is to be discharged or released from hospital, any conditions should be imposed and, if so,
- what particular conditions should be imposed.

Other matters, for example your feelings as the victim of the original offence, however strongly and justifiably felt, cannot be considered by the tribunal (unless relevant to possible conditions) because – unlike the court that sentenced the patient – the tribunal is not there to consider punishment or assess the impact of the offence on the victim's physical, mental or emotional health. These matters will have been taken fully into account at the sentencing stage. The tribunal has a different role, and will be focussing on the patient's current mental health, and his or her readiness for discharge.

However, where the tribunal has power to impose conditions, it will want to know the views of any victim on whether to impose conditions and, if so, what conditions to impose. And even where the tribunal cannot impose conditions itself (e.g. if a non-restricted patient is recommended for discharge onto a Community Treatment Order) the tribunal can usefully make the victim's representations in relation to possible conditions known to the patient's psychiatrist.

Attendance at hearings

The tribunal holds hearings in nearly all cases, the exception to this relates to patients on a Community Treatment Order. However, even in these cases the tribunal will look at all the papers, which will include any representations made by the victim. The tribunal believes and expects that, in the vast majority of cases, written representations are the best way for victims to make their views known about possible conditions. However, if you feel that the tribunal cannot deal with a case fairly and justly without giving you as a victim an opportunity of being heard in person, then you may apply in advance for permission to attend and give evidence about possible conditions. Your application must explain why the right to make written representations is neither sufficient nor adequate, and why you need the additional opportunity to be heard in person. If, exceptionally, the tribunal agrees to your attendance then you will be told the time and place of the hearing, but your involvement will necessarily be limited to the matters referred to above and you may not be allowed to stay for the whole case.

Disclosure of information

A victim is not a party to the proceedings, and the law says that we should not disclose any of the case papers or reports to persons who are not parties. Therefore we cannot disclose any confidential case papers or reports to a victim.

As a victim, the tribunal values your input on possible conditions – but it must also be fair to the patient. So you must understand that no guarantees can be given that any written representations you make to the tribunal about possible conditions will not be disclosed to the patient. The expectation is that all relevant matters will be disclosed to the patient, unless it is clearly demonstrated that somebody is likely to suffer serious harm as a result of such disclosure and it is proportionate to withhold disclosure from the patient. There is a special procedure for asking that written evidence be withheld from the patient, and the VLO will advise you of this, if necessary. Details can be found in the tribunal's booklet 'Reports for Mental Health Tribunals' which can be found on the tribunal's website: www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/mental-health/report-guidance-booklet%202010.pdf

In Restricted cases, the tribunal office should be able to inform the VLO of the relevant aspects of the tribunal's decision, in writing within seven days of the hearing. In particular the victim is entitled to know:

- a. whether the patient is to be discharged and, if so, when the discharge will take effect;
- b. if a Restricted patient is to be discharged subject to conditions, whether the victims needs to know the detail of any conditions and, if so, what those conditions are;

- c. if a Restricted patient has previously been discharged subject to conditions of which the victim has been notified, of any variation of these conditions by the tribunal and;
- d. if the restriction order is to cease to have effect by virtue of action to be taken by the tribunal, of the date on which the restriction order is to cease to have effect.

Useful addresses

HM Courts & Tribunals Service

First-tier Tribunal (Mental Health)

PO Box 8793

5th Floor

Leicester

LE1 8BN

Victim Support National Office

39 Brixton Road

London

SW9 6DZ

Ministry of Justice Mental Health Casework Section

2nd Floor

Fry Building

2 Marsham Street

London

SW1P 4DE