

# NEW 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, 5<sup>th</sup> 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.*

July 29<sup>th</sup> 2005.