

Victim Notification Scheme Offenders with a Mental Disorder (Compulsion Order and Restriction Order)

**Guidance for Victims
Making written or oral
representations
to the Mental Health Tribunal
for Scotland**

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Riaghaltas na h-Alba
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Introduction

This booklet is for victims registered under the victim notification scheme. It tells you how to make written or oral representations to the Mental Health Tribunal for Scotland (“The Tribunal”) under the scheme.

If you want to speak to someone about this booklet, you can contact Victim Support Scotland, a national charity that helps victims of crime. You can find details of your local office in the telephone directory under “Victim Support”, or you can contact them on 0345 603 9213 from Monday to Friday between 8 am and 8 pm. You can also find details of your local office on Victim Support Scotland’s website at www.victimsupportsco.org.uk.

Terms you may not be familiar with

Absolute discharge is when an offender is no longer subject to a compulsion order and restriction order.

Compulsion order is used when an offender commits an offence that is punishable by imprisonment but is found to have a mental disorder. The court can decide not to send the offender to prison but that they must stay in hospital for mental health treatment.

Conditional discharge allows a period of formal supervision of the offender in the community by closely monitoring their mental health. The offender will be subject to conditions.

Mental Health Tribunal for Scotland (often referred to as the Tribunal) is an independent judicial body set up to make and review decisions on the compulsory care and treatment and detention in hospital of people with a mental disorder in Scotland.

Restriction order can be added to a compulsion order. It is made by the court at the time of sentencing where the court considers that the person presents a risk of serious harm to the public.

What types of cases you can make representations to the Tribunal about

Under the scheme you can make representations before a decision by the Tribunal about an offender subject to a compulsion order and restriction order. There are many reasons why the Tribunal will be asked to hold a hearing, in each case the Tribunal has the power to:

- make no change to the compulsion order and restriction order (maintaining the status quo)
- revoke the compulsion order
- revoke the restriction order - where an offender is under a compulsion order and restriction order, the assessment of the risk posed by the offender and the measures needed to manage any risks may be such that it is no longer necessary for the offender to be subject to a restriction order. The offender may continue to meet the criteria for a compulsion order. If a Tribunal decides that the offender no longer poses a risk of serious harm to the public, it may revoke the restriction order.
- vary the measures given in the compulsion order - a compulsion order is a hospital based order but it can be modified for example to provide for treatment in the community. The Tribunal can only vary the measures given in the compulsion order when the restriction order is revoked. These variations can require the offender to live at a given address or to allow visits from the clinical team, or to go to a given place for treatment.
- grant conditional discharge imposing certain conditions - If the Tribunal is satisfied that it is not necessary for the offender to be detained in hospital (to protect others from serious harm or for any other reason) then it may make an order for conditional discharge. The offender remains under a compulsion order and restriction order but does not have to stay in hospital. He or she will however be subject to conditions set by the Tribunal, which may include supervision and treatment requirements; exclusion zones; “no contact” conditions; conditions about abstinence from drugs/alcohol; and place of residence.
- decide on changes to conditions imposed on the offender – If the offender appeals later changes to conditions imposed on them, the Tribunal can decide whether or not the conditions should be changed.
- decide about recall of the offender to hospital - if the offender appeals their recall to hospital, the Tribunal can decide whether or not the offender should remain in hospital or whether the offender should be again conditionally discharge. If the latter the Tribunal will consider whether or not any conditions placed on the offender should be changed.

There may be other Tribunal hearings about the offender which do not form part of the victim notification scheme.

What your representations may cover

Your representations must be about how the Tribunal's decision might affect you or members of your family.

Before the Tribunal hearing you will be told what the hearing is about and what decisions may be made by the Tribunal. You may tell the Tribunal anything, but think about what you have been told about the reason for the hearing.

You may want to tell the Tribunal about how seeing the offender or contact with them would affect you or your family. If you are concerned, you may wish to tell the Tribunal about places where you or members of your family live or visit regularly.

The Tribunal must take into account your representations when making a decision about what (if any) conditions to impose on the offender if they are conditionally discharged. They must take your concerns into account when deciding conditions prohibiting the offender from contacting named individuals or being in certain places.

Written Representations

When to make your representations

You'll be contacted and told:

- that a Tribunal hearing is being scheduled
- when you can make your representations

The letter will tell you what the Tribunal hearing is about and what decisions the Tribunal may reach. This should help you think about what you want to say to the Tribunal in writing.

We will tell you who to send your representations to in plenty of time before the Tribunal makes a decision.

You will be asked to return your representations by a specific date. This is so that the information you provide is available before the day of the hearing. If you miss that date, your representations may not be able to be taken into account by the Tribunal.

What happens with your representations

Written representations may be considered by the Tribunal without you attending a hearing.

Written representations to the Tribunal will be shared with other parties. This will include the offender and the offender's solicitors. **Your contact details will not be shared with the offender.**

Every person in Scotland detained under a compulsion order and restriction order must by law have their orders reviewed by the Tribunal on at least a 2-year basis. The offender or a person representing them also has a right of appeal against the order. This means it is possible for a Tribunal hearing to take place annually or more frequently.

You should inform the Victim Notification Administration Team of any change to your circumstances such as a change in address.

Oral Representations

Attending a hearing

If you choose to make oral representations, the Victim Notification Scheme Administration Team will pass on your details to the Tribunal.

What to expect at a Tribunal hearing after requesting to give oral representations

We will tell the Tribunal you wish to give oral representations and give them your details. The Tribunal will write to you to seek your availability in advance of arranging a Tribunal hearing.

Once you have notified the Tribunal of your availability, they will issue a second letter to confirm the hearing details. This letter will also offer some information on how the tribunal hearing will be conducted, including the make-up of the panel and also some general information about the venue.

Who will be at the Tribunal hearing?

The three people who will always be in attendance while the representations are being made are the three Tribunal panel members. The Tribunal panel will comprise a Sheriff, who will convene the hearing, a medical member and a general member. These panel members will be the same members who sit on each Tribunal hearing for this case and will make the decision in the offender's case.

Other attendees will depend on the parties involved in the case. These additional people may include the legal representative of the offender, the legal representative of the named person for the offender and a legal representative for the Scottish Ministers. The Tribunal will advise you of the attendees in advance of the hearing.

You will be met on arrival by a Tribunal Administration hearings clerk, who is there to help administer the hearing.

Where they are heard

Tribunal hearings are held across the country and the Tribunal will try to arrange a hearing at a suitable venue to allow your attendance.

The Tribunal decision

You will receive a letter following the decision of the Tribunal. You have a right to be informed:

- that the compulsion order has been revoked (absolute discharge);
- that the restriction order has been revoked
- if the decision to revoke the compulsion order or restriction order is appealed
- that the compulsion order has been varied
- that the Tribunal has made an order conditionally discharging the offender
- of any conditions placed on the offender that are relevant to you that the Tribunal impose on conditional discharge
- if an appeal has been made against variation of conditions of discharge, the terms of those conditions that have been imposed, by the Tribunal, that are relevant to you;
- if there is an appeal against recall from conditional discharge, the terms of those conditions imposed that are relevant to you that have been imposed by the Tribunal

Conditions that are relevant to you are conditions about contacting you or being in places that you have asked to be informed about. The place that you have asked to be told about must be a place that you or your family are regularly at and must not cover an unreasonably large area.

What support is available for me?

Information on support organisations is available at www.mygov.scot/crime-justice-and-the-law

If you need help about anything in this booklet you can contact **Victim Support Scotland** on **0345 603 9213** from **Monday to Friday between 8 a.m. and 8 p.m.** You can also find details of your local office on **Victim Support Scotland's website** at

www.victimsupportsco.org.uk

More information about your rights as a victim of crime, and how to exercise these rights, can be found in the Victims' Code for Scotland. It is available from the Scottish Government website <https://www.mygov.scot/victims-code-for-scotland/>

Victim Support Scotland

15/23 Hardwell Close
Edinburgh EH8 9RX
Tel. 0131 668 4486
Email: info@victimsupportsco.org.uk
www.victimsupportsco.org.uk

The Scottish Government
(Victim Notification Scheme Administration Team)
The Hub
Mental Health and Protection of Rights Division
Room 3-ER
St Andrew's House
Regent Road
Edinburgh
EH1 3DG
Tel. 0131 244 3340
Email: vns@gov.scot

Mental Health Tribunal for Scotland

President's Office
Hamilton House
Caird Park
Hamilton
ML3 0QA
Telephone: 01698 390019
Email: representations@scotcourtribunals.gov.uk

Further Information

More information on how the Criminal Justice System works in Scotland can be found at:

www.mygov.scot/crime-justice-and-the-law

More information about sentencing can be found at:

<https://www.scottishsentencingcouncil.org.uk/>

More information about mental health disposals under the Criminal Procedures Act can be found at:

<http://www.mwscot.org.uk/the-law/criminal-procedures-act/>

More information about the Mental Health Tribunal for Scotland can be found at:

https://www.mhtscotland.gov.uk/mhts/Home/Welcome_to_the_Mental_Health_Tribunal

More information about how the parole system works and the role of the Parole Board for Scotland can be found at:

www.scottishparoleboard.gov.uk



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