

Orders of the Royal Court

**I
2012**

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 7th day of May, 2012 before John Russell Finch, Esquire, Judge of the Royal Court;
present:- Barbara Jean Bartie, David Osmond Le Conte, Stephen Murray Jones, Peter Sean
Trueman Girard, Terry George Snell, David Percy Langley Hodgetts L.V.O., Esquires,
Margaret Ann Spaargaren, Terry John Ferbrache, and David Allan Grut, Esquires, Jurats.

No. I Order, 2012

ENTITLED

THE MENTAL HEALTH REVIEW TRIBUNAL PROCEDURE RULES, 2012

ORDER OF THE ROYAL COURT

ENTITLED

The Mental Health Review Tribunal Procedure Rules, 2012

ARRANGEMENT OF RULES

No.

PART 1

INTRODUCTION

1. Chairman and Deputy Chairman.
2. The Tribunal.
3. Allowances and expenses of Tribunal members.
4. Appointment of Clerk to the Tribunal.
5. Overriding objective and parties' obligation to co-operate with the Tribunal.
6. Department deemed to be a party.

PART 2

GENERAL POWERS AND PROVISIONS

7. Practice directions.
8. Case management powers.
9. Procedure for applying for and giving directions.
10. Failure to comply with rules etc.
11. Striking out a party's case.
12. Substitution and addition of parties.
13. Orders for costs.
14. Representatives.
15. Calculating time.
16. Sending and delivery of documents.
17. Use of documents and information.

18. Evidence and submissions.
19. Summoning of witnesses and orders to answer questions or produce documents.
20. Making of certain applications.
21. Two or more pending applications.
22. Withdrawal of application.

PART 3
PROCEEDINGS BEFORE THE TRIBUNAL

23. Procedure.
24. Notice of proceedings to interested persons.
25. Medical examination of the patient.
26. No disposal of proceedings without a hearing.
27. Entitlement to attend a hearing.
28. Time and place of hearings.
29. Public and private hearings.
30. Hearings in a party's absence.
31. Power to pay allowances.
32. Decisions.

PART 4
CORRECTING, SETTING ASIDE AND APPEALING TRIBUNAL DECISIONS

33. Clerical mistakes and accidental slips or omissions.
34. Setting aside a decision which disposes of proceedings.
35. Appeals.

PART 5
MISCELLANEOUS

36. Contents of statements.
37. Interpretation.
38. Citation and commencement.

Schedule 1 - Oath and affirmation

Schedule 2 - Contents of statements

ORDER OF THE ROYAL COURT

ENTITLED

The Mental Health Review Tribunal Procedure Rules, 2012

THE ROYAL COURT, in exercise of the powers conferred upon it by sections 40(6), 46 and 106 of the Mental Health (Bailiwick of Guernsey) Law, 2010^a, and all other powers enabling it in that behalf, hereby orders:-

PART 1 INTRODUCTION

Chairman and Deputy Chairman.

1. (1) The Royal Court shall appoint from the members of the Panel a Chairman and a Deputy Chairman of the Panel.
- (2) The Chairman or, if he is unavailable or incapable, the Deputy Chairman shall perform the functions set out in these Rules.

The Tribunal.

2. (1) A person may only be appointed to sit as a member of the Mental Health Review Tribunal ("**the Tribunal**") if he has sworn the oath or made the affirmation set out in Schedule 1 before the Royal Court.
- (2) The composition of the Tribunal shall be as follows -
 - (a) a member who has relevant legal qualifications (the "**legally qualified member**"), who will chair the hearing,

^a Order in Council No. XV of 2011.

- (b) a member who is a medical practitioner (the "**medically qualified member**"), and
 - (c) a member who has experience and knowledge of health or social care matters (the "**lay member**").
- (3) For the purposes of paragraph (2) –
- (a) a person has "**relevant legal qualifications**" if, in any jurisdiction in the British Islands, he is -
 - (A) a practitioner, or
 - (B) a member of the judiciary,of at least 7 years' standing, and
 - (b) a person is a "**medical practitioner**" if he –
 - (i) in relation to Guernsey and Alderney, are a recognised medical practitioner within the meaning of the Doctors, Dentists and Pharmacists Ordinance, 1987^b,
 - (ii) in relation to Sark, are a medical practitioner authorised to practise medicine in Sark by the Committee, and
 - (iii) in any other case, are a fully registered person within the meaning of the Medical Act 1983^c whether or not he holds a licence to practise under that Act.

^b Recueil d'Ordonnances Tome XXIV, pp. 79, 238 and 262.

^c Act of the UK Parliament, ch. 54.

(4) Where Tribunal proceedings are started, the Chairman or Deputy Chairman (as the case may be) shall appoint from the members of the Panel the three members of the Tribunal who are to hear and determine the proceedings.

Allowances and expenses of Tribunal members.

3. There shall be paid to the members of the Tribunal such allowances as the Department may determine together with the travelling and other expenses incurred by them in connection with the exercise of their functions under the Rules.

Appointment of Clerk to the Tribunal.

4. The Department shall –

- (a) appoint a Clerk to the Tribunal on such terms and conditions and with such functions, and
- (b) provide such other officers and facilities,

as it thinks fit.

Overriding objective and parties' obligation to co-operate with the Tribunal.

5. (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes -

- (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties,
- (b) avoiding unnecessary formality and seeking flexibility in the proceedings,
- (c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings,

- (d) using any special expertise of the Tribunal effectively, and
 - (e) avoiding delay, so far as compatible with proper consideration of the issues.
- (3) The Tribunal must seek to give effect to the overriding objective when it -
 - (a) exercises any power under these Rules, or
 - (b) interprets any rule or practice direction.
- (4) Parties must -
 - (a) help the Tribunal to further the overriding objective, and
 - (b) co-operate with the Tribunal generally.

Department deemed to be a party.

6. Unless the contrary intention applies, the Department shall be deemed to be a party for the purposes of any proceedings for the purposes of these Rules.

PART 2
GENERAL POWERS AND PROVISIONS

Practice directions.

7. The Chairman, in consultation with the Deputy Chairman, may from time to time give such practice directions as he considers necessary for the proper conduct of proceedings before the Tribunal.

Case management powers.

8. (1) Subject to the provisions of the Law and any other enactment, the Tribunal may regulate its own procedure.

(2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Tribunal may -

- (a) extend or shorten the time for complying with any rule, practice direction or direction, unless such extension or shortening would conflict with a provision of another enactment containing a time limit,
- (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case,
- (c) permit or require a party to amend a document,
- (d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party,
- (e) deal with an issue in the proceedings as a preliminary issue,
- (f) hold a hearing to consider any matter, including a case management issue,
- (g) decide the form of any hearing,
- (h) adjourn or postpone a hearing,
- (i) require a party to produce a bundle for a hearing, or

(j) stay proceedings.

(4) For the purposes of this rule, the Tribunal may properly be constituted by the legally qualified member sitting alone whether within or outside the Bailiwick, and that member may give a direction under paragraph (2) without a hearing.

Procedure for applying for and giving directions.

9. (1) The Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

(2) An application for a direction may be made -

(a) by sending or delivering a written application to the Tribunal,
or

(b) orally during the course of a hearing.

(3) An application for a direction must include the reason for making that application.

(4) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send written notice of any direction to every party and to any other person affected by the direction.

(5) If a party, or any other person given notice of the direction under paragraph (4), wishes to challenge a direction which the Tribunal has given, he may do so by applying for another direction which amends, suspends or sets aside the first direction.

Failure to comply with rules etc.

10. (1) An irregularity resulting from a failure to comply with any requirement in these Rules, a practice direction or a direction, does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as it considers just, which may include -

- (a) waiving the requirement, or
- (b) requiring the failure to be remedied.

Striking out a party's case.

11. The Tribunal must strike out the whole or a part of the proceedings if it does not have jurisdiction in relation to the proceedings or that part of them.

Substitution and addition of parties.

12. (1) The Tribunal may give a direction substituting a party if -

- (a) the wrong person has been named as a party, or
- (b) the substitution has become necessary because of a change in circumstances since the start of proceedings.

(2) The Tribunal may give a direction adding a person to the proceedings as a respondent.

(3) If the Tribunal gives a direction under paragraph (1) or (2) it may give such consequential directions as it considers appropriate.

Orders for costs.

13. (1) The Tribunal may make an order in respect of costs only where costs have been incurred by a party -

- (a) as a result of any improper, unreasonable or negligent act or omission on the part of any representative (whether a legal representative or not), or any employee of such a representative, or

(b) which, in the light of any such act or omission occurring after they were incurred, the Tribunal considers it is unreasonable to expect that party to pay.

(2) The Tribunal may make an order in respect of costs on an application or on its own initiative.

(3) A person making an application for an order under this rule must -

(a) send or deliver a written application to the Tribunal and to the person against whom it is proposed that the order be made, and

(b) send or deliver a schedule of the costs claimed with the application.

(4) An application for an order under paragraph (1) may be made at any time during the proceedings but may not be made later than 14 days after the date on which the Tribunal sends the decision notice recording the decision which finally disposes of all issues in the proceedings.

(5) The Tribunal may not make an order under paragraph (1) against a person (the "**paying person**") without first -

(a) giving that person an opportunity to make representations, and

(b) if the paying person is an individual, considering that person's financial means.

(6) The amount of costs to be paid under an order under paragraph (1) may be ascertained by -

(a) summary assessment by the Tribunal, or

- (b) agreement of a specified sum by the paying person and the person entitled to receive the costs ("**the receiving person**").

Representatives.

14. (1) A party may appoint a representative (whether a legal representative or not) to represent him in the proceedings.

(2) If a party appoints a representative, the representative shall send or deliver to the Tribunal and to each other party written notice of his name and address.

(3) Anything permitted or required to be done by a party under these Rules, a practice direction or a direction may be done by the representative of that party, except signing a witness statement.

(4) A person who receives due notice of the appointment of a representative -

- (a) must provide to the representative any document which is required to be provided to the represented party, and need not provide that document to the represented party, and

- (b) may assume that the representative is and remains authorised as such until he receives written notification that this is not so from the representative or the represented party.

(5) At a hearing a patient may be accompanied by another person whose name and address has not been notified under paragraph (2) but who, subject to paragraph (8) and with the permission of the Tribunal, may act as a representative or otherwise assist in presenting the patient's case at the hearing.

(6) Paragraphs (2) to (4) do not apply to a person who accompanies a patient under paragraph (5).

(7) If the patient has not appointed a representative pursuant to paragraph (1), the Tribunal may appoint a legal representative for the patient where -

- (a) the patient has stated that he does not wish to conduct their own case or that he wishes to be represented, or
- (b) the patient lacks the capacity to appoint a representative but the Tribunal believes that it is in the patient's best interests for the patient to be legally represented.

(8) A party may not appoint as a representative, or be represented or assisted at a hearing by –

- (a) a person liable to be detained, or who is a community patient, under the Law, or
- (b) a person receiving treatment for a mental disorder at the same hospital as the patient.

Calculating time.

15. (1) An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done by 4pm on that day.

(2) If the time specified by these Rules, a practice direction or a direction for doing any act ends on a non-business day, the act is done in time if it is done on the next business day.

Sending and delivery of documents.

16. (1) Any document to be provided to the Tribunal under these Rules, a practice direction or a direction must be -

- (a) sent by pre-paid post or delivered by hand to the address specified for the proceedings,

- (b) sent by fax to the number specified for the proceedings, or
- (c) sent or delivered by such other method as the Tribunal may permit or direct.

(2) Subject to paragraph (3), if a party provides a fax number, email address or other details for the electronic transmission of documents to him, that party must accept delivery of documents by that method.

(3) If a party informs the Tribunal and all other parties that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to provide documents to that party, that form of communication must not be so used.

(4) If the Tribunal or a party sends a document to a party or the Tribunal by email or any other electronic means of communication the recipient may request that the sender provide a hard copy of the document to the recipient, and any such request must be made as soon as reasonably practicable after receiving the document electronically.

(5) The Tribunal and each party may assume that the address provided by a party or his representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

Use of documents and information.

17. (1) The Tribunal may make an order prohibiting the disclosure or publication of -

- (a) specified documents or information relating to the proceedings,
or
- (b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

(2) The Tribunal may give a direction prohibiting the disclosure of a document or information to a person if -

- (a) the Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm, and
- (b) the Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.

(3) If a party ("**the first party**") considers that the Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to another party ("**the second party**"), the first party must -

- (a) exclude the relevant document or information from any documents that will be provided to the second party, and
- (b) provide to the Tribunal the excluded document or information, and the reason for its exclusion, so that the Tribunal may decide whether the document or information should be disclosed to the second party or should be the subject of a direction under paragraph (2).

(4) The Tribunal must conduct proceedings as appropriate in order to give effect to a direction given under paragraph (2).

(5) If the Tribunal gives a direction under paragraph (2) which prevents disclosure to a party who has appointed a representative, the Tribunal may give a direction that the documents or information be disclosed to that representative if the Tribunal is satisfied that -

- (a) disclosure to the representative would be in the interests of the party, and
- (b) the representative will act in accordance with paragraph (6).

(6) Documents or information disclosed to a representative in accordance with a direction under paragraph (5) must not be disclosed either directly or indirectly to any other person without the Tribunal's consent.

(7) Unless the Tribunal gives a direction to the contrary, information about cases and the names of any persons concerned in such cases must not be made public.

Evidence and submissions.

18. (1) Without restriction on the general powers in rule 8(1) and (2) (case management powers), the Tribunal may give directions as to -

- (a) issues on which it requires evidence or submissions,
- (b) the nature of the evidence or submissions it requires,
- (c) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence,
- (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally,
- (e) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given -
 - (i) orally at a hearing, or
 - (ii) by written submissions or witness statement, and
- (f) the time at which any evidence or submissions are to be provided.

(2) The Tribunal may -

- (a) admit evidence whether or not -
 - (i) the evidence would be admissible in a civil trial before the Royal Court, or
 - (ii) the evidence was available to a previous decision maker, or
- (b) exclude evidence that would otherwise be admissible where -
 - (i) the evidence was not provided within the time allowed by a direction or a practice direction,
 - (ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction, or
 - (iii) it would otherwise be unfair to admit the evidence.

(3) Subject to the provisions of the Oaths and Affirmations Law, 1959^d, the Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

Summoning of witnesses and orders to answer questions or produce documents.

- 19.** (1) On the application of a party or on its own initiative, the Tribunal may
-
- (a) by summons require any person to attend as a witness at a hearing at the time and place specified in the summons, or

^d Ordres en Conseil Vol. XVIII, p. 75.

(b) order any person to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings.

(2) A summons under paragraph (1)(a) must -

(a) give the person required to attend 14 days' notice of the hearing, or such shorter period as the Tribunal may direct, and

(b) where the person is not a party, make provision for the person's necessary expenses of attendance to be paid, and state who is to pay him.

(3) A person required to give evidence before or produce any document to the Tribunal shall have the same privileges and immunities as if he were giving evidence before or producing a document to the Royal Court.

(4) A summons or order under this rule must -

(a) state that the person on whom the requirement is imposed may apply to the Tribunal to vary or set aside the summons or order, if he has not had an opportunity to object to it, and

(b) state the consequences of failure to comply with the summons or order.

Making of certain applications.

20. For the avoidance of doubt, where under section 41 of the Law an application can only be made after the expiry of a stated period, this shall not be taken to prevent an applicant from lodging an application in written form with the Tribunal before the expiration of that period.

Two or more pending applications.

21. (1) The Tribunal may consider more than one application in respect of a patient at the same time and may for this purpose adjourn the proceedings relating to any application.

(2) Where the Tribunal considers more than one application in respect of the patient at the same time, each applicant (if more than one) shall have the same rights under these Rules as he would have if he were the only applicant.

Withdrawal of application.

22. (1) An application may be withdrawn at any time at the request of the applicant provided that the request is made in writing and the Tribunal agrees.

(2) If a patient ceases to be liable to be detained or a community patient, any application relating to that patient shall be deemed to be withdrawn.

(3) Where an application is withdrawn or deemed to be withdrawn, the Tribunal shall so inform the parties and, in the case of a restricted patient, the Home Department.

PART 3

PROCEEDINGS BEFORE THE TRIBUNAL

Procedure.

23. (1) An application or reference must be -

(a) made in writing,

(b) signed (in the case of an application, by the applicant or any person authorised by the applicant to do so), and

(c) sent or delivered to the Tribunal so that it is received within the time specified in the Law.

(2) An application must, if possible, include -

- (a) the name, address and date of birth of the patient,
- (b) if the application is made by the patient's nearest relative, the name, address and relationship to the patient of the patient's nearest relative,
- (c) the provision under which the patient is detained, liable to be detained, or a community patient,
- (d) whether the person making the application has appointed a representative or intends to do so, and the name and address of any representative appointed, and
- (e) the name and address of the responsible authority in relation to the patient.

(3) A reference must, if possible, include –

- (a) the name, address and date of birth of the patient,
- (b) the name and address of any representative of the patient,
- (c) the provision under which the patient is detained, liable to be detained, or a community patient, and
- (d) the name and address of the responsible authority in relation to the patient, or, in the case of a conditionally discharged patient, the name and address of the responsible medical officer in relation to that patient.

(4) Subject to rule 17(2) (withholding evidence likely to cause harm), when the Tribunal receives a document from any party it must send a copy of that document to each other party.

(5) If the patient is a conditionally discharged patient, the Home Department must send or deliver a statement containing the information and documents required by paragraph 4 of Schedule 2 to the Tribunal so that it is received by the Tribunal as soon as practicable and in any event within 6 weeks after the Home Department received a copy of the application or a request from the Tribunal.

(6) In proceedings under section 41(1)(a) of the Law (application for the grant of an assessment order), on the earlier of receipt of the copy of the application or a request from the Tribunal, the responsible authority must send or deliver to the Tribunal -

- (a) the application for admission,
- (b) the medical recommendations on which the application is founded,
- (c) such of the information required in paragraph 3 of Schedule 2 as is within the knowledge of the responsible authority and can reasonably be provided in the time available, and
- (d) such of the documents required in paragraph 3 of Schedule 2 as can reasonably be provided in the time available.

(7) If paragraph (5) or (6) does not apply, the responsible authority must send or deliver a statement containing the information and documents required by paragraph 3 of Schedule 2 to the Tribunal so that it is received by the Tribunal as soon as practicable and in any event within 3 weeks after the responsible authority received a copy of the application or reference.

(8) If the patient is a restricted patient, the responsible authority must also send the statement under paragraph (7) to the Home Department, and the Home Department must send a statement of any further relevant information to the Tribunal as soon as practicable and in any event within 3 weeks after the Home Department received the relevant authority's statement.

Notice of proceedings to interested persons.

24. When the Tribunal receives the information required by rule 23(4), (5) or (6), it must give notice of the proceedings -

- (a) subject to a patient with capacity to do so requesting otherwise, where any person other than the applicant is named by the relevant authority as exercising the functions of the nearest relative, to that person,
- (b) where one has been appointed, to the tuteur or curateur of an applicant, and
- (c) to any other person who, in the opinion of the Tribunal, should have an opportunity of being heard.

Medical examination of the patient.

25. (1) Before a hearing to consider the disposal of a case, the medically qualified member of the Tribunal must, so far as practicable -

- (a) examine the patient, and
 - (b) take such other steps as that member considers necessary to form an opinion of the patient's mental condition.
- (2) For the purposes of paragraph (1), that member may -
- (a) examine the patient in private,
 - (b) examine records relating to the detention or treatment of the patient and any after-care services,
 - (c) take notes and copies of records for use in connection with the proceedings.

(3) For the purposes of this rule, the appropriate member of the Tribunal is the member who is a registered medical practitioner.

No disposal of proceedings without a hearing.

26. (1) Subject to paragraph (2), the Tribunal must not dispose of proceedings without a hearing.

(2) A Tribunal may dispose of proceedings without a hearing where –

(a) the parties consent to the disposal of proceedings without a hearing, and

(b) the Tribunal decides that it is not necessary in the interests of justice for a hearing to be held to dispose of the proceedings.

(3) For the avoidance of doubt, where proceedings are disposed of without a hearing under paragraph (2), a decision to dispose of proceedings may be made in writing in electronic or non-electronic form.

(4) This rule does not apply to a decision under Part 4.

Entitlement to attend a hearing.

27. (1) Subject to rule 29(4) (exclusion of a person from a hearing), each party to proceedings is entitled to attend a hearing.

(2) Any person notified of the proceedings under rule 24 (notice of proceedings to interested persons) may -

(a) attend and take part in a hearing to such extent as the Tribunal considers proper, or

(b) provide written submissions to the Tribunal.

Time and place of hearings.

28. (1) In proceedings under section 41(1)(a) of the Law (an application in respect of the grant of an assessment order), the hearing of the case must start within 10 days after the date on which the Tribunal received the application notice.

(2) In proceedings under section 42(1)(b)(i) of the Law (a reference to the Tribunal of the case a patient who is subject to an order under Part IX), the hearing of the case must start at least 5 weeks but no more than 8 weeks after the date on which the Tribunal received the reference.

(3) The Tribunal must give reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing), and any changes to the time and place of the hearing, to -

- (a) each party entitled to attend a hearing, and
- (b) any person who has been notified of the proceedings under rule 24 (notice of proceedings to interested persons).

(4) The period of notice under paragraph (3) must be at least 14 days, except that -

- (a) in proceedings for an assessment order under section 41(1)(a) of the Law the period must be at least 3 business days, and
- (b) the Tribunal may give shorter notice -
 - (i) with the parties' consent, or
 - (ii) in urgent or exceptional circumstances.

Public and private hearings.

29. (1) All hearings must be held in private unless the Tribunal considers that it is in the interests of justice for the hearing to be held in public.

(2) If a hearing is held in public, the Tribunal may give a direction that part of the hearing is to be held in private.

(3) Where a hearing, or part of it, is to be held in private, the Tribunal may determine who is permitted to attend the hearing or part of it.

(4) The Tribunal may give a direction excluding from any hearing, or part of it -

(a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing,

(b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely,

(c) any person who the Tribunal considers should be excluded in order to give effect to a direction under rule 17(2) (withholding information likely to cause harm), or

(d) any person where the purpose of the hearing would be defeated by the attendance of that person.

(5) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

(6) Where a hearing is held in public pursuant to paragraph (1), the Tribunal may order that –

(a) no report shall be published which -

(i) reveals the name or address, or

(ii) includes any particulars which are reasonably likely to lead to the identification,

of the patient in respect of whom the proceedings are taken, and

(b) in relation to the proceedings, no picture shall be published which is or includes a picture of the patient.

(7) Any person who publishes any matter in contravention of paragraph (6) is guilty of an offence and liable on –

(a) summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or both, or

(b) conviction on indictment to imprisonment for a term not exceeding 2 years, or to a fine, or both.

(8) Where a body corporate is guilty of an offence under this section and it is shown that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(9) Where the affairs of a body corporate are managed by its members, subsection (8) applies in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director.

Hearings in a party's absence.

30. (1) Subject to paragraph (2), if a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal -

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing, and
 - (b) considers that it is in the interests of justice to proceed with the hearing.
- (2) The Tribunal may not proceed with a hearing in the absence of the patient unless -
- (a) the requirements of rule 25 (medical examination of the patient) have been satisfied, and
 - (b) the Tribunal is satisfied that -
 - (i) the patient has decided not to attend the hearing, or
 - (ii) the patient is unable to attend the hearing for reasons of ill health.

Power to pay allowances.

31. The Tribunal may pay allowances in respect of travelling expenses, subsistence and loss of earnings to -

- (a) any person who attends a hearing as an applicant or a witness, and
- (b) a patient who attends a hearing otherwise than as the applicant or a witness.

Decisions.

32. (1) The Tribunal may give a decision orally at a hearing.

(2) Subject to rule 17(2) (withholding information likely to cause harm), the Tribunal must provide to each party as soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings (except a decision under Part 4) -

- (a) a decision notice stating the Tribunal's decision,
- (b) written reasons for the decision, and
- (c) notification of any right of appeal against the decision and the time within which, and the manner in which, such right of appeal may be exercised.

(3) The documents and information referred to in paragraph (2) must -

- (a) in proceedings under section 41(1)(a) of the Law, be provided at the hearing or sent within 3 business days after the hearing, and
- (b) in other cases, be provided at the hearing or sent within 10 business days after the hearing.

(4) The Tribunal may provide written reasons for any decision to which paragraph (2) does not apply.

(5) For the purposes of these Rules, a decision with recommendations under section 43(4)(a) or (5)(a) of the Law or a deferred direction for conditional discharge under section 44(7) of the Law is not a decision which finally disposes of the proceedings.

PART 4

CORRECTING, SETTING ASIDE AND APPEALING TRIBUNAL DECISIONS

Clerical mistakes and accidental slips or omissions.

33. The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by -

- (a) sending notification of the amended decision or direction, or a copy of the amended document, to all parties, and
- (b) making any necessary amendment to any information published in relation to the decision, direction or document.

Setting aside a decision which disposes of proceedings.

34. (1) The Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision or the relevant part of it, if -

- (a) the Tribunal considers that it is in the interests of justice to do so, and
 - (b) one or more of the conditions in paragraph (2) are satisfied.
- (2) The conditions are -
- (a) a document relating to the proceedings was not sent to, or was not received at an appropriate time by, a party or a party's representative,
 - (b) a document relating to the proceedings was not sent to the Tribunal at an appropriate time,
 - (c) a party, or a party's representative, was not present at a hearing related to the proceedings, or
 - (d) there has been some other procedural irregularity which was such as to prevent any party from presenting his case fairly before the Tribunal.

(3) A party applying for a decision, or part of a decision, to be set aside under paragraph (1) must make a written application to the Tribunal so that it is received no later than 28 days after the date on which the Tribunal sent notice of the decision to the party.

Appeals.

35. (1) A party who wishes to appeal under section 46(1) of the Law shall, within a period of 28 days (or such longer period as the Royal Court may for good cause allow) immediately following the date of the decision in question, send or deliver to Her Majesty's Greffier a written notice setting out the grounds for his appeal, accompanied by all relevant documentation, including every document that the Tribunal had before it when it made the decision appealed.

(2) No decision of the Tribunal shall be invalidated solely by reason of a procedural irregularity unless the irregularity was such as to prevent any party to the appeal from presenting his case fairly before the Tribunal.

Contents of statements.

36. Schedule 2 shall have effect.

Interpretation.

37. (1) In these Rules -

"appeal" means an appeal to the Royal Court under section 46 of the Law,

"applicant" means a person who -

- (a) starts Tribunal proceedings, whether by making an application or a reference, or
- (b) is substituted as an applicant under rule 12(1) (substitution and addition of parties),

"the Committee" means the Medical Committee of the Chief Pleas of Sark,

"the Department" means the States of Guernsey Health and Social Services Department,

"dispose of proceedings" includes, unless indicated otherwise, disposing of a part of the proceedings,

"document" means anything in which information is recorded in any form, and an obligation under these Rules or any practice direction or direction to provide or allow access to a document or a copy of a document for any purpose means, unless the Tribunal directs otherwise, an obligation to provide or allow access to such document or copy in a legible form or in a form which can be readily made into a legible form,

"enactment" means a Law, an Ordinance and any subordinate legislation,

"electronic means" includes facsimile and e-mail,

"hearing" means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication,

"Home Department" means the States of Guernsey Home Department,

"the Law" means the Mental Health (Bailiwick of Guernsey) Law, 2010,

"legal representative" means –

- (a) an Advocate of the Royal Court of Guernsey,
- (b) a member of the Bar of England and Wales, of the Bar of Northern Ireland, or of the Faculty of Advocates in Scotland,
- (c) a Solicitor of the Senior Courts of England and Wales, of the Court of Judicature of Northern Ireland, or in Scotland, or

- (d) any other person who is approved by the Royal Court to exercise a right of audience or the conduct of litigation in the Tribunal,

"non-business day" means -

- (a) a Saturday, a Sunday, Christmas Day and Good Friday, and
- (b) any day appointed as a public holiday by Ordinance of the States of Deliberation, the States of Alderney or, as the case may be, the Chief Pleas of Sark under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^e,

"party" means the patient, the responsible authority, and any other person who starts a case by making an application to the Tribunal,

"patient" means the person who is the subject of proceedings under the Law,

"paying person" has the meaning given in rule 13(6),

"receiving person" has the meaning given in rule 13(7)(b),

"respondent" means -

- (a) in an appeal against any other decision, the person who made the decision,
- (b) a person substituted or added as a respondent under rule 12 (substitution and addition of parties),

^e Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; Orders in Council No. XI of 1993; No. XIV of 1994 and No. IX of 2001.

"responsible authority" means –

- (a) for the purposes of Guernsey and Alderney, the Department,
and
- (b) for the purposes of Sark, the Committee,

"Royal Court" means the Royal Court of Guernsey, sitting as an Ordinary Court,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

"Tribunal" means the Mental Health Review Tribunal,

and all other words or phrases have the same meaning as they have in the Law.

(2) Where any decision is required to be given under these Rules, that decision may be given by electronic or non-electronic means.

(3) Any reference in these Rules to an enactment or rule is, unless the context otherwise requires, a reference thereto as from time to time amended, applied, repealed or re-enacted.

(4) The Interpretation (Guernsey) Law, 1948^f applies to the interpretation of these Rules as it applies to the interpretation of an enactment.

Citation and commencement.

38. These Rules may be cited as the Mental Health Review Tribunal Procedure Rules, 2012 and come into force on 22nd May 2012.

^f Ordres en Conseil Vol. XIII, p. 355.

J. TORODE,
Her Majesty's Greffier.

SCHEDULE 1

Rule 2

OATH AND AFFIRMATION

You [swear and promise on the faith and truth that you owe to God] [do solemnly, sincerely and truly declare and affirm] that you will well and faithfully discharge the functions of a member of the Mental Health Review Tribunal in accordance with law, that you will exercise the powers entrusted to you only as appears necessary to you for the due discharge of those functions and that you will not disclose any information received by you in the discharge of those functions except where disclosure is necessary to enable the due discharge of those functions or as permitted under the Mental Health (Bailiwick of Guernsey) Law, 2010 or in any case required by law.

SCHEDULE 2

Rule 36

CONTENTS OF STATEMENTS

1. The responsible authority must send a statement to the Tribunal and, in the case of a restricted patient other than a conditionally discharged patient, to the Home Department, so that it is received by the Tribunal as soon as is practicable and in any event within three weeks after the responsible authority received a copy of the application or reference.
2. If the patient is a conditionally discharged patient, the Home Department must send or deliver a statement to the Tribunal so that it is received by the Tribunal as soon as practicable, and in any event within 6 weeks after the Home Department received a copy of the application or a request from the Tribunal.
3. If the patient is neither a conditionally discharged patient nor a community patient, a statement to the Tribunal must contain the information, documents and reports specified in paragraph 5(a) to (e).
4. If the patient is a conditionally discharged patient, the statement to the Tribunal must, where possible, contain the reports specified in paragraph 5(c) and (d).
5. The information, documents and reports referred to in paragraphs 3 and 4 are –
 - (a) the information about the patient set out at Section A,
 - (b) the documents concerning the patient set out at Section B,
 - (c) the responsible medical officer's report set out at Section C,
 - (d) the social circumstances report set out at Section D, and
 - (e) if the patient is an in-patient, the nursing report set out at Section E.

6. If the patient is a community patient, the statement to the Tribunal must contain the reports specified in Section F.
7. Where the patient is a restricted patient, the Home Department must send to the Tribunal as soon as practicable and in any event within 3 weeks after the Home Department received the responsible authority's statement, a statement containing the information set out at Section G below.
8. For the purposes of this Schedule, a patient is an "in-patient" if at the time of the application or referral he is receiving in-patient treatment for mental disorder, even if it is being given informally or under an application, order or direction other than that to which the Tribunal application or reference relates.

SECTION A. INFORMATION ABOUT THE PATIENT

9. The statement provided to the Tribunal must, in so far as it is within the knowledge of the responsible authority, include the following information -
 - (a) the patient's full name (and any alternative names used in his patient records),
 - (b) the patient's date of birth, age and usual place of residence,
 - (c) the patient's first language and, if it is not English, whether an interpreter is required, and if so in which language,
 - (d) if the patient is deaf whether the patient will require the services of a British Sign Language interpreter, or a Relay Interpreter,
 - (e) the date of admission or transfer of the patient to the hospital in which the patient is detained or liable to be detained, together with details of the application, order or direction that constitutes the original authority for the detention of the patient, including the section of the Law by

reference to which detention was authorised and details of any subsequent renewal of or change in the authority for detention,

- (f) details as applicable of the hospital at which the patient is detained or liable to be detained,
- (g) details of any transfers under section 31(3) or 38(1) of the Law since the application, order or direction was made,
- (h) the name of the patient's responsible clinician and the period which the patient has spent under the care of that clinician,
- (i) the name of any care co-ordinator appointed for the patient,
- (j) except in the case of a restricted patient, the name and address of the patient's nearest relative or of the person exercising that function, and whether the patient has requested that this person is not consulted or kept informed about their care or treatment,
- (k) the name and address of any person who plays a significant part in the care of the patient but who is not professionally concerned with it,
- (l) where the patient is subject to the guardianship of a tuteur or curateur, the name and address of that tuteur or curateur, and
- (o) details of any existing advance decisions to refuse treatment for mental disorder made by the patient.

SECTION B. DOCUMENTS CONCERNING THE PATIENT

10. If the Tribunal so directs, copies of the following documents must be included in the statement provided to the Tribunal if they are within the possession of the responsible authority (otherwise they must be made available to the Tribunal if requested at any other time by the Tribunal) -

- (a) the application, order or direction that constitutes the original authority for the patient's detention under the Law, together with all supporting recommendations, reports and records made in relation to it,
- (b) a copy of every Tribunal decision, and the reasons given, since the application, order or direction being reviewed was made or accepted, and
- (c) where the patient is the subject of a treatment order under section 24 of the Law, a copy of any application for an assessment order that was in force immediately prior to the making of the treatment order.

SECTION C. RESPONSIBLE MEDICAL OFFICER'S REPORT

11. The statement provided to the Tribunal must include an up-to-date clinical report prepared for the Tribunal.
12. Unless it is not reasonably practicable, the report must be written or counter-signed by the patient's responsible medical officer.
13. This report must describe the patient's relevant medical history, to include -
 - (a) full details of the patient's mental state, behaviour and treatment for mental disorder,
 - (b) in so far as it is within the knowledge of the person writing the report a statement as to whether the patient –
 - (i) has ever neglected or harmed himself, or
 - (ii) has ever harmed other persons or threatened other persons with harm,

at a time when he was mentally disordered, together with details of any neglect, harm or threats of harm,

- (c) an assessment of the extent to which the patient or other persons would be likely to be at risk if the patient is discharged by the Tribunal, and how any such risks could best be managed,
- (d) an assessment of the patient's strengths and any other positive factors that the Tribunal should be aware of in coming to a view on whether he should be discharged, and
- (e) if appropriate, the reasons why the patient might be treated in the community without continued detention in hospital, but should remain subject to recall on community treatment.

SECTION D. SOCIAL CIRCUMSTANCES REPORT

14. The statement provided to the Tribunal must include an up-to-date social circumstances report prepared for the Tribunal.

15. This report must include the following information –

- (a) the patient's home and family circumstances,
- (b) in so far as it is practicable, and except in restricted cases, a summary of the views of the patient's nearest relative, unless (having consulted the patient) the person compiling the report thinks it would be inappropriate to consult the nearest relative,
- (c) in so far as it is practicable, the views of any person who plays a substantial part in the care of the patient but is not professionally concerned with it,
- (d) the views of the patient, including his concerns, hopes and beliefs in relation to the Tribunal proceedings and their outcome,

- (e) the opportunities for employment and the housing facilities available to the patient,
- (f) what (if any) community support is or will be made available to the patient and its effectiveness, if the patient is discharged from hospital,
- (g) the patient's financial circumstances (including his entitlement to benefits),
- (h) an assessment of the patient's strengths and any other positive factors that the Tribunal should be aware of in coming to a view on whether he should be discharged, and
- (i) an assessment of the extent to which the patient or other persons would be likely to be at risk if the patient is discharged by the Tribunal, and how any such risks could best be managed.

SECTION E. IN-PATIENT NURSING REPORT

16. This report must include in relation to the patient's current in-patient episode, full details of the following -

- (a) the patient's understanding of and willingness to accept the current treatment for mental disorder provided or offered,
- (b) the level of observation to which the patient is subject,
- (c) any occasions on which the patient has been secluded or restrained, including the reasons why seclusion or restraint was considered to be necessary,
- (d) any occasions on which the patient has been absent without leave whilst liable to be detained, or occasions when he has failed to return when required, after being granted leave of absence, and

- (e) any incidents where the patient has harmed himself or others, or has threatened other persons with violence.

17. A copy of the patient's current nursing plan must be appended to the report.

SECTION F. THE HOME DEPARTMENT'S STATEMENT (RESTRICTED PATIENTS ONLY)

18. In cases involving a restricted patient, the Home Department must provide a statement to the Tribunal containing any written comments it wishes to make upon the statement it has received from the responsible authority, together with any further information relevant to the application as may be available to it.

19. In addition, the Home Department must provide to the Tribunal the following further information:

- (a) a summary of the offence or alleged offence that resulted in the patient being detained in hospital subject to a restriction order or, in the case of a patient subject to a restriction or limitation direction, that resulted in him being remanded in custody, kept in custody or sentenced to imprisonment,
- (b) a record of any other criminal convictions or findings recorded against the patient,
- (c) full details of the history of the patient's liability to detention under the Law since the restrictions were imposed.

SECTION H. PATIENTS RECEIVING COMMUNITY TREATMENT

Clinical Reports

20. The statement provided to the Tribunal must include an up-to-date clinical report prepared for the Tribunal.

21. Unless it is not reasonably practicable to do so, the report must be written or counter-signed by the patient's responsible clinician.

22. This report must include -

- (a) details of the original authority for the patient's community treatment under the Law,
- (b) the name of the patient's responsible clinician and the length of time the patient has been under their care,
- (c) full details of the patient's mental state, behaviour and treatment for mental disorder, and relevant medical history,
- (d) in so far as it is within the knowledge of the person writing the report a statement as to whether the patient –
 - (i) has ever neglected or harmed himself, or
 - (ii) has ever harmed other persons or threatened other persons with harm,at a time when he was mentally disordered, together with details of any neglect, harm or threats of harm,
- (e) an assessment of the extent to which the patient or other persons would be likely to be at risk if the patient is discharged by the Tribunal, and how any such risks could best be managed,
- (f) an assessment of the patient's strengths and any other positive factors that the Tribunal should be aware of in coming to a view on whether he should be discharged,

- (g) the reasons why the patient can be treated as a community patient without continued detention in hospital, and why it is necessary that the responsible clinician should be able to exercise the power under section 30(1) of the Law to recall the patient to hospital, and
- (h) details of any specific conditions in force regarding the patient under section 27 of the Law.

Social Circumstances Report

23. The statement provided to the Tribunal must include an up-to-date social circumstances report prepared for the Tribunal.

24. This report must include the following information -

- (a) the patient's home and family circumstances,
- (b) in so far as it is practicable a summary of the views of the patient's nearest relative, unless (having consulted the patient) the person compiling the report thinks it would be inappropriate to consult the nearest relative,
- (c) the views of any person who plays a significant part in the care of the patient but is not professionally concerned with it,
- (d) the views of the patient, including his concerns, hopes and beliefs in relation to the Tribunal,
- (e) the opportunities for employment, or for occupation and the housing facilities available to the patient,
- (f) the effectiveness of the community support available to the patient, or the likely effectiveness of the community support which would be available to the patient if discharged from community treatment,

- (g) details of the patient's financial circumstances (including his entitlement to benefits),
- (h) an assessment of the patient's strengths and any other positive factors that the Tribunal should be aware of in coming to a view on whether he should be discharged,
- (i) an account of the patient's progress while a community patient, and any conditions or requirements to which he is subject under the community treatment order, and details of any behaviour that has put him or others at risk of harm, and
- (j) an assessment of the extent to which the patient or other persons would be likely to be at risk if the patient remains a community patient.