

# ORDER OF THE ROYAL COURT

ENTITLED

## **The Mental Health Review Tribunal Procedure Rules, 2012** \*

[CONSOLIDATED TEXT]

### *NOTE*

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* O.R.C. No. I of 2012; as amended by the Mental Health Review Tribunal Procedure (Amendment) Rules, 2018 (O.R.C. No. I of 2018); the Mental Health Review Tribunal Procedure (Amendment) Rules (No. 2), 2018 (O.R.C. No. II of 2018). See also the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

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## **The Mental Health Review Tribunal Procedure Rules, 2012**

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(Made on 7th May, 2012.)

## **The Mental Health Review Tribunal Procedure Rules, 2012**

### **1**

**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<sup>a</sup>, 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.

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##### **NOTE**

*These Rules are modified, in part, by the .*

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##### **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 –

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<sup>a</sup> Order in Council No. XV of 2011.

- (a) a legally qualified member, who will chair the hearing,
- (b) a medically qualified member, and
- (c) a lay member who has experience and knowledge of health or social care matters.]

[ (3) ...]

(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.

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## NOTES

*In rule 2,*

*paragraph (2) was substituted by the Mental Health Review Tribunal Procedure (Amendment) Rules, 2018, rule 1(b), with effect from 6th February, 2018;*

*paragraph 3 (which was previously substituted by the Mental Health Review Tribunal Procedure (Amendment) Rules, 2018, rule 1(c), with effect from 6th February, 2018) was revoked by the Mental Health Review Tribunal Procedure (Amendment) Rules (No. 2), 2018, rule 1, with effect from 6th November, 2018.*

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## **Allowances and expenses of Tribunal members.**

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

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**NOTE**

*In rule 3, the words in square brackets were substituted by the Mental Health Review Tribunal Procedure (Amendment) Rules, 2018, rule 1(d), with effect from 6th February, 2018.*

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**Appointment of Clerk to the Tribunal.**

4. The [Policy & Resources Committee] 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.

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**NOTE**

*In rule 4, the words in square brackets were substituted by the Mental Health Review Tribunal Procedure (Amendment) Rules, 2018, rule 1(d), with effect from 6th February, 2018.*

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**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.

**[Policy & Resources Committee] deemed to be a party.**

**6.** Unless the contrary intention applies, the [Policy & Resources Committee] shall be deemed to be a party for the purposes of any proceedings for the purposes of these Rules.

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**NOTE**

*In rule 6, the words in square brackets were substituted by the Mental Health Review Tribunal Procedure (Amendment) Rules, 2018, rule 1(d), with effect from 6th February, 2018.*

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PART 2  
GENERAL POWERS AND PROVISIONS

**Practice directions.**

7. [ (1)] 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.

[ (2) Where, for the purposes of paragraph (1), the Chairman cannot consult the Deputy Chairman due to unavailability or incapacity, the Chairman shall instead consult with the legally qualified members of the Panel.]

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**NOTE**

*In rule 7, paragraph (1) was renumbered and paragraph (2) inserted by the Mental Health Review Tribunal Procedure (Amendment) Rules, 2018, rule 1, respectively paragraph (e)(i) and paragraph (e)(ii), with effect from 6th February, 2018.*

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**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 4 pm 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 –

*Consolidated text*

- (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<sup>d</sup>, 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
- (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.

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<sup>d</sup> Ordres en Conseil Vol. XVIII, p. 75.

- (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].

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**NOTE**

*In accordance with the provisions of the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a) and section 4, with effect from 1st May, 2016, the Home Department has since been replaced by the Committee for Home Affairs; and the functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of these Rules were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a) and section 4, with effect from that sae date, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.*

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**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 any relevant time] specified in the Law.
- (2) An application must, if possible, include –

*Consolidated text*

- (a) the name, address and date of birth of the patient,
  - (b) ...
  - (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 [every] other party.

[ (5) If the patient is a conditionally discharged patient, any person specified in a practice direction must send or deliver a statement containing the information and documents required by any practice direction to the Tribunal so that it is received by the Tribunal as soon as practicable and in any event within 6 weeks after that person 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 [by any practice direction] 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 [by any practice direction] 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 [any practice direction] 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 any other person specified in a practice direction, and that person must send a statement of any further relevant information to the Tribunal as soon as practicable and in any event within 3 weeks after that person received the relevant authority's statement.]

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**NOTE**

*In rule 23, first, the words in square brackets in paragraph (1)(c) were substituted, second, paragraph (2)(b) was revoked, third, the word in square brackets in paragraph (4), fourth, paragraph (5), fifth, the words in square brackets in paragraph (6)(c) and (d), sixth, the words in square brackets in paragraph (7) and, seventh, paragraph (8) were substituted by the Mental Health Review Tribunal Procedure (Amendment) Rules, 2018, rule 1, respectively paragraph (f)(i), paragraph (f)(ii), paragraph (f)(iii), paragraph (f)(iv), paragraph (f)(v), paragraph (f)(vi) and paragraph (f)(vii), with effect from 6th February, 2018.*

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**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) ...

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**NOTE**

*In rule 25, paragraph (3) was revoked by the Mental Health Review Tribunal Procedure (Amendment) Rules, 2018, rule 1(g), with effect from 6th February, 2018.*

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**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 [calendar] days after the date on which the Tribunal received the application [...].

(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.

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**NOTE**

*In rule 28, the word in the first pair of square brackets in paragraph (1) was inserted and the word omitted in the second pair of square brackets therein was revoked by the Mental Health Review Tribunal Procedure (Amendment) Rules, 2018, rule 1, respectively paragraph (h)(i) and paragraph (h)(ii), with effect from 6th February, 2018.*

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**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.

PART 5  
MISCELLANEOUS

**Contents of statements.**

36. ...

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**NOTE**

*Rule 36 and the corresponding entry in the Arrangement of Sections were revoked by the Mental Health Review Tribunal Procedure (Amendment) Rules, 2018, rule 1, respectively paragraph (i) and paragraph (a)(i), with effect from 6th February, 2018.*

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**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),

[ ...]

[ ...]

[ **"Clerk to the Tribunal"** includes any other person designated by the Policy & Resources Committee to discharge the functions, and exercise the powers, of the Clerk,]

**"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**" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,]

**"electronic means"** includes facsimile and e-mail,

[ "**Health & Social Care Committee**" means the States of Guernsey Committee for Health and Social Care,]

**"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,

[ ...]

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

**"legal representative"** means –

- (a) an Advocate of the Royal Court of Guernsey,
- [(b) any person who is subject to the supervision of an Advocate of the Royal Court of Guernsey and is –

- (i) a member of the Bar of England and Wales, of the Bar of Northern Ireland, or of the Faculty of Advocates in Scotland, or
- (ii) a Solicitor of the Senior Courts of England and Wales, of the Court of Judicature of Northern Ireland, or in Scotland, or]
- (c) ...
- (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<sup>e</sup>, [and **"business day"** shall be construed accordingly]

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

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<sup>e</sup> 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.

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

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

[ **"the Policy & Resources Committee"** means the States of Guernsey Policy & Resources Committee,]

**"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),

**"responsible authority"** means –

- (a) for the purposes of Guernsey and Alderney, the [Health and Social Care Committee], and
- (b) for the purposes of Sark, [the Sark Committee],

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

[ **"the Sark Committee"** means the Medical Committee of the Chief Pleas of Sark,]

[ "**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,]

**"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<sup>f</sup> applies to the interpretation of these Rules as it applies to the interpretation of an enactment.

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## NOTES

*In rule 37, first, the words omitted in the first and second pairs of square brackets immediately after the definition of the expression "application" were revoked, second, the definition of the expression "Clerk to the Tribunal" was inserted, third, the definition of the expression "enactment" was substituted, fourth, the definition of the expression "Health & Social Care Committee" was inserted, fifth, the words omitted in square brackets immediately after the definition of the expression "hearing" were revoked, sixth, paragraph (b) of the definition of the expression "legal representative" was substituted, seventh, paragraph (c) of that expression was revoked, eighth, the words in square brackets in the definition of the expression "non-business day" were inserted, ninth, the definition of the expression "the Policy & Resources Committee" was inserted, tenth, the words in square brackets in paragraph (a) of the definition of the expression "responsible*

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<sup>f</sup> Ordres en Conseil Vol. XIII, p. 355.

*authority" were substituted, eleventh, the words in square brackets in paragraph (b) of that definition were substituted, twelfth, the definition of the expression "the Sark Committee" was inserted and, thirteenth, the definition of the expression "subordinate legislation" was substituted by the Mental Health Review Tribunal Procedure (Amendment) Rules, 2018, rule 1, respectively paragraph (j)(i), paragraph (j)(ii), paragraph (j)(iii), paragraph (j)(iv), paragraph (j)(v), paragraph (j)(vi)(A), paragraph (j)(vi)(B), paragraph (j)(vii), paragraph (j)(viii), paragraph (j)(ix)(A), paragraph (j)(ix)(B), paragraph (j)(x) and paragraph (j)(xi), with effect from 6th February, 2018.*

*The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.*

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**Citation and commencement.**

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

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 [other than in accordance with the Mental Health (Bailiwick of Guernsey) Law, 2010 or in any case required by law].

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**NOTE**

*In Schedule 1, the words in square brackets were substituted by the Mental Health Review Tribunal Procedure (Amendment) Rules, 2018, rule 1(k), with effect from 6th February, 2018.*

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SCHEDULE 2

Rule 36

CONTENTS OF STATEMENTS

...

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**NOTE**

*Schedule 2 and the corresponding entry in the Arrangement of Sections were revoked by the Mental Health Review Tribunal Procedure (Amendment) Rules, 2018, rule 1, respectively paragraph (l) and paragraph (a)(ii), with effect from 6th February, 2018.*

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<sup>1</sup> These Rules were previously modified by several Emergency Powers (Coronavirus) (Mental Health) Regulations between 2nd April, 2020 and 19th January, 2022.