

MEMORANDUM OF UNDERSTANDING BETWEEN THE SCOTTISH TRIBUNALS SERVICE AND MAINLAND HEALTH BOARDS THROUGHOUT SCOTLAND 2017

1. Introduction:

- This Memorandum sets out the framework for cooperation between the Scottish Courts and Tribunals Service (SCTS), which provides administrative support to the Mental Health Tribunal for Scotland (“the Tribunal”), and the mainland National Health Service Boards in Scotland.
- This Memorandum does not affect the existing statutory functions of the Tribunal or Health Boards nor amend any other policies or agreements relating to their activities.
- This Memorandum shall be reviewed from time to time (at intervals of no longer than three years), and may be amended as agreed by SCTS and the mainland National Health Service Boards.

2. Venues:

2.1 Availability

2.1.1 Paragraph 8(4) of schedule 2 to the Mental Health (Care and Treatment) (Scotland) Act (“the 2003 Act”) places the responsibility for providing accommodation for Tribunal hearings on Health Boards and Local Authorities (and in appropriate cases the State Hospitals Board for Scotland).

2.1.2 The majority of Tribunal hearings are held in hospitals and the provision of accommodation in hospitals is the responsibility of Health Boards.

2.1.3 SCTS will undertake a rolling review of accommodation to ensure that it meets the requirements set out in Annex A – Accommodation Guidelines for Tribunal Venues.

2.1.4 SCTS and mainland Health Boards will agree:

- the days on which the venue(s) will be available for use of the Tribunal
- any planned unavailability of the venue(s)
- contact details of a senior manager who has overall responsibility for facilitation of Tribunal Hearings.

2.1.5 All venues will be available from 8:30 am until 7:00 pm, unless otherwise agreed. Where it is clear that a hearing will continue past 5:30 pm SCTS will advise the named contact person before 4.00 pm on the day of the hearing in order that local arrangements can be made. Health Boards should make provision for the appropriate arrangements if this situation arises.

2.1.6 Before providing venues that are only available on certain days of the week the Health Board will consider the availability of its own Medical Practitioners and the Local Authorities’ Mental Health Officers (MHOs), to facilitate attendance at hearings.

2.1.7 There should be a provision available to allow parking for the tribunal members.

2.2 Quality

2.2.1 The requirements for facilities at each individual venue are set out in Annex A.

2.2.2 SCTS will assess the suitability and quality of each venue provided at least once a year. Each venue will be assessed as either:

- a. Exemplary
- b. Adequate
- c. In need of minor improvement
- d. Not fit for purpose

2.2.3 Where the venue is rated as either in need of minor improvement or not fit for purpose SCTS will write to the Health Board concerned setting out the issues that require to be addressed to make the venue adequate and specifying the period in which SCTS expects the issues to be satisfactorily addressed.

2.2.4 Where improvements are to be made the Health Board should respond to SCTS within six weeks setting out what steps, if any, will be taken to bring about improvements specifying the timescales in which it is expected the remedial steps will be taken.

2.2.5 Where regular venues become unavailable due to unforeseen circumstances; planned building works, permanent closure, etc., the appropriate Health Board (in conjunction with the appropriate Local Authority) should advise SCTS as soon as possible and put in place alternative arrangements.

2.2.6 Where a Health Board is unable to provide accommodation that is fit for purpose, SCTS will move hearings to other suitable venues.

2.2.7 SCTS will normally use venues in a location in the Health Board area in which the patient is normally resident. However, SCTS reserves the right to move patients from adjoining (and other) areas to the next suitable venue, when circumstances restrict the availability of venues in the patient's home area or where it is impractical to convene a hearing in the patient's home area. When a transfer of a patient to another Health Board area is required, it is the responsibility of the home Health Board for providing security.

2.2.8 On occasions, Health Boards may be asked to provide venues for patients from out-with their own area. Where this happens SCTS will attempt to give as much notice as possible to hosting Health Boards, although this may not always be possible in emergency situations.

2.2.9 No charges will be made to SCTS for the use of any alternative accommodation provided by the Health Board for hearings. Charges should not normally be levied on other Health Boards where hearings take place for their patients in adjoining Health Board areas, but Health Boards must make their own arrangements with their neighbours where there is prolonged use of venues.

2.2.10 Health Boards will provide a facility for the secure disposal of confidential papers by Tribunal Members, staff and other parties at the sight of each tribunal venue. The Health Board must make arrangements for this confidential waste to be uplifted and disposed of securely on a regular basis.

2.3 Use by other Tribunals

2.3.1 From time to time SCTS may seek to use Health Board provided venues for hearings by tribunals other than the Tribunal.

2.3.2 Only venues provided outwith psychiatric units will be used in this way i.e. venues that are within a hospital campus may be used but venues that are adjacent to, or inside, a psychiatric unit will not be.

2.3.4 Where additional resources are used e.g. paper or phones in connection with hearings held by other Tribunals then either SCTS or the Tribunal who held the hearing will reimburse the Health Board for such resources. SCTS will be responsible for ensuring such liabilities are discharged and for ensuring venues are treated with respect and, in the unlikely event of any damage occurring as a direct result of its use for a tribunal hearing that the cost of repair is met.

3. Communication Difficulties.

3.1 Where a person is either detained in hospital or not detained in hospital but subject to one of the following certificates, orders or directions

- an emergency detention certificate;
- a short-term detention certificate;
- a compulsory treatment order;
- an interim compulsory treatment order;
- a hospital direction;
- a transfer for treatment direction; or
- a compulsion order,

and has difficulty in communicating or generally communicates in a language other than English, the appropriate person (hospital manager specified in the certificate, order, direction) shall take reasonable steps to ensure the patient is able to communicate and understand Tribunal proceedings. The patient will be provided with assistance, or material, appropriate to the patient's needs in relation to proceedings before the Tribunal. This is a statutory duty under Section 261 of the 2003 Act.

3.2 There is no statutory requirement on the Tribunal to provide an interpreter for a patient involved in proceedings before the Tribunal. This will apply even if the patient is not detained in hospital but is living in the community.

3.3 Where the patient is subject to one of the certificates, orders or directions listed above and it comes to the attention of SCTS that the patient concerned has a difficulty in communicating, SCTS will bring that to the attention of the person submitting the application/appeal, reference or review and remind them of the hospital managers

responsibility to meet the needs of the patient with communication difficulties. Similarly, where arrangements have been put in place to support the patient with communication difficulties, hospital managers (again in practice usually a task performed by the ward staff or MHO) should alert SCTS as soon as possible but in any event in advance of the hearing commencing.

4. Responsible Medical Officers (RMOs)

4.1 Health Boards will provide SCTS with a list of RMOs (an Approved Medical Practitioner (AMP)) list with contact addresses, telephone numbers and, where available, secure e-mail addresses; together with any specific details concerning contact with individual RMOs e.g. messages to be passed via secretaries/deputies.

4.2 Changes of personnel and/or addresses will be notified as they occur, but a revised list will be updated annually by Health Boards and issued formally to SCTS by 31 January in each year.

5. Cases likely to attract media attention and cases involving SCTS, Tribunal, Health Board or Local Authority Personnel.

5.1 As with medical records for all persons, data should be treated with strict confidentiality by Tribunal staff as well as Health Board staff. There will be certain individuals whose cases are particularly sensitive and need careful handling due to the potential for attracting the attention of the media or due to a risk of a person who knows them handling their case. Where a person for whom an application is made or a notification is sent to the Tribunal falls into the above categories then the Health Board should contact (initially by telephone) the SCTS staff member specified at the end of this document.

6. Cases where there is the risk of incident

6.1 Where it becomes clear to Health Board staff (usually the RMO), that a patient or other party associated with a case (for example a Named Person or a member of the patient's family) has displayed violence or has made recent threats of violence then the Health Board will alert the SCTS as soon as the information becomes available.

6.2 Where it becomes apparent to the SCTS (either via information from the Health Board or from elsewhere) that a hearing participant poses a risk of violence, SCTS will liaise with appropriate Health Board and/or Local Authority officials and where appropriate the Police to agree the best course of action. To complement the above, the SCTS will determine particular arrangements on a case-by-case basis where there is a risk identified. This may result in the SCTS providing additional security in the form of an additional Clerk (where reassurance is required) or Venue Assistant (Security Guard) where a level of deterrence is desirable.

6.3 The responsibility for the care of an in-patient (including their general welfare and the management of any violent behaviour) during a hearing remains with the Health Board. The Health Board will provide a minimum of two emergency contacts who can respond to incidents involving the patient should they occur. Details will be displayed in each current venue. These details will include contact numbers for any hospital internal security personnel.

6.4 Where a patient who is living within the community is recognised as posing an additional risk, the SCTS will normally seek to hold a hearing in relation to that patient within a hospital venue.

8. Availability for Hearings

8.1 SCTS will take all reasonable steps to accommodate the availability of everyone who is required or entitled to attend Tribunal hearings. Unfortunately it may not always be possible to accommodate the requirements of everyone with an interest within the timescales available.

8.2 Where RMOs and MHOs complete a scheduling *pro forma* and submit it with an application, SCTS will attempt to work with that availability but this cannot be guaranteed.

8.3 RMOs should make every effort to attend Tribunal Hearings and Health Boards will encourage all relevant staff to attend. Tribunals may decide where a key participant cannot attend a hearing that the best way to proceed is to grant an interim order. This should not be relied upon or used as a reason for not attending a hearing. Interim compulsory treatment orders (ICTO) can only be granted where the statutory criteria for an ICTO are met. If an RMO is unable to attend a hearing in certain circumstances the tribunal hearing the case may be of the view that it does not have sufficient evidence before it to make the order sought.

9. Delivery of post

9.1 Post is often despatched by SCTS with relatively short-notice of the hearing date. This is due to the time constraints specified in the 2003 Act. It is important that notification reaches the appropriate contact as soon as possible.

9.2 Mail may be sent by SCTS on Fridays for Saturday delivery to patients and RMOs. Health Boards will ensure that mail delivered to hospitals on Saturdays is forwarded to the patients concerned the same day. If individual hospitals cannot provide this service then the Health Board will advise the SCTS and SCTS will provide same day delivery by courier in appropriate cases. SCTS will ensure all staff have clear instruction on using full clear addresses to ensure proper delivery.

9.3 Health Boards will provide accurate contact details for Medical Records Officers (MROs) to ensure correspondence is addressed correctly.

9.4 Health Board Medical Records staff will keep records of addresses of all concerned (including RMOs and patients) up-to-date and advise SCTS of any changes.

9.5 Tribunal decisions are mostly written on the day and the applicant (often the MHO or RMO) will usually get a copy of the Order on the day. If the applicant is not in attendance at the end of the hearing, the Tribunal will send out a copy of the decision to the applicant within ten working days. Alternatively the Health Board can arrange for a staff member to pick a copy of the decision up at the end of the hearing.

9.6 SCTS will not be able to send papers for patients (even when they are in-patients) via Health Board electronic secure email.

9.7 SCTS will provide advice to Health Board staff on the best way to communicate securely with the Tribunal. SCTS and Health Boards may enter into local agreements to manage the flow of electronic papers.

10. Periods of Notice

10.1 The 2003 Act places strict time constraints on the requirement to hold a hearing in relation to a CTO application when the patient is subject to a short term detention certificate.

10.2 Whilst the submission of a CTO application is the responsibility of an MHO, early provision of paperwork by RMOs to MHOs will provide for additional notice of hearings and a greater likelihood that availability requirements can be fully taken into account.

10.3 Where a CTO application is received before the expiry of the related Short-Term Detention Certificate (STDC), a hearing will be arranged to take place within five working days of the expiry date. If an application is received after the STDC has expired, the patient concerned becomes informal, but the SCTS will attempt to arrange a hearing as soon as possible taking into account the needs of cases received within the statutory timescales.

10.4 SCTS will normally process applications within 48 hours of receipt of a valid and complete application. The Tribunal will endeavour to hold all non-time critical cases within 42 days of the receipt of an application with a 28 day notice period provided to parties and other attendees.

10.5 Where a patient or their representative appeals against the issue of a STDC, a hearing to decide the appeal will usually be held within five working days. Health Board representatives (and others) should make every effort to attend such hearings.

11. Withdrawals

11.1 Where possible, notwithstanding the above, in cases in which an RMO (or MHO) decides that an order is not required prior to a hearing taking place, the application will be withdrawn (and for a CTO, via the MHO) in time to give SCTS three working days' notice. This allows for the hearing to be cancelled without SCTS incurring costs. All withdrawals must be made in writing; by fax (with the prior agreement of the SCTS); or via email from a previously notified and secure account. Verbal withdrawals cannot be accepted by SCTS under any circumstances.

12. Nurse Escorts

12.1 It is the responsibility of Health Boards to provide at least one Nurse Escort to look after the welfare of the patient during the entirety of a Tribunal Hearing. Nurses should not simply deliver and collect patients.

12.2 It is the Nurse Escort's responsibility to look after the welfare of the patient and ensure that the patient's needs are addressed e.g. for toilet or meal breaks, and to ensure the patient's comfort should the patient become distressed. The Nurse Escort should be familiar to the

patient, be able to provide support for the duration of the hearing and be trained in de-escalation techniques.

12.3 Nurse Escorts are not required to do anything else at the hearing, and should not give evidence at a hearing. Instances of Nurse Escorts being asked to give evidence at a hearing should be reported to the Tribunal.

12.4 A nurse who is required to give evidence should not perform the role of Nurse Escort in the same case.

12.5 A Nurse Escort is required to be present at a Tribunal hearing when a patient is detained in hospital, unless the RMO advises that this is not necessary (e.g. where a detained patient is on suspension of detention and the RMO is of the opinion that it is not necessary for a nurse escort to accompany the patient to a Tribunal hearing).

12.6 A Nurse Escort is not required to be present at a Tribunal hearing when a patient is based in the community, unless the RMO advises that this is necessary (e.g. where a Tribunal hearing is to consider whether a patient based in the community should be detained in hospital). Whether a Nurse Escort is required at a Tribunal hearing for a patient based in the community or not, appropriate support should be provided by the Health Board and/or the Local Authority for such a patient if the patient needs physical or other support relevant to their general health.

13. Equality Monitoring

13.1 In conjunction with others, notably the Mental Welfare Commission for Scotland (MWCS) and NHS Scotland, the Tribunal will progressively introduce increased equality monitoring procedures covering all areas of equal and appropriate treatment. Health Boards and Local Authorities will work towards the supply of the required information to allow for monitoring of SCTS activity and to allow for wider analysis of those people subject to compulsory measures.

14. Use of Technology

14.1 SCTS will agree local arrangements for the use by SCTS of local networks with appropriate routing protocols, or broadband lines, which can be used to establish a secure connection with the Scottish Courts and Tribunals network.

14.2 SCTS will seek to extend the use of video conferencing in appropriate cases to facilitate the efficient discharge of Tribunal cases.

14.2.2 Where a Health Board (or Local Authority) has particular concerns about the use of video-links in a specific case or hearings involving a specific person they will alert SCTS as soon as the issue becomes apparent.

14.2.3 SCTS will not seek to hold cases by video link where a patient or patient's representative has raised objections; or where a patient or other participant has experienced difficulties in the recent past i.e. in their present or related period of ill health, in using video-links or where the patients mental health condition and associated symptoms make it undesirable to hold the hearing by video link.

14.2.4 Health Boards may be asked to make their existing video-link facilities available to SCTS to facilitate hearings involving their own patients and those of other Health Boards, where those facilities are not otherwise required by the Health Board.

SCTS ** END **

Signed on behalf of Health Board	
Name	
Position	
Date	
Signed on behalf of Scottish Courts & Tribunals Service	
Name	
Position	
Date	

MENTAL HEALTH TRIBUNAL FOR SCOTLAND

ACCOMMODATION GUIDELINES FOR TRIBUNAL VENUES

The Mental Health Tribunal for Scotland (the Tribunal) is a key part of the mental health law system brought into effect by the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) and we are committed to working with others to develop and improve the system for all who come into contact with it. This includes ensuring a high standard of venues in which to hold our hearings.

Schedule 2, Part 2, paragraph 8(4) of the 2003 Act places responsibility for providing accommodation for tribunal hearings jointly with NHS Boards and Local Authorities.

Although the Tribunal has been in operation for over ten years the standard of venues across the country has remained variable throughout the period. Following the recommendations made in the Limited Review of the 2003 Act and in discussion with internal and external stakeholders, we have decided to review and simplify our current guidelines and clarify what the acceptable standard is.

Essential Requirements

It is essential that:

- All venues allow for hearings to be conducted in private due to the sensitive nature of the proceedings.
- All venues include at least one hearing room of a suitable size with a minimum of two waiting rooms for parties. In addition, there should be an ante-room for the Tribunal Members and a room which the clerk can use as an office to carry out all administrative duties on the day.
- All venues should be easily accessible, and not in an isolated or otherwise unsuitable area.
- All venues must comply with current Health and Safety legislation and essentially meet the requirements of the Equality Act 2010.

The more detailed revised and simplified standard of accommodation is specified below. Health Boards and Local Authorities must ensure that these requirements are met in order to ensure that hearings are held in a safe and appropriate environment. Should a venue fail to meet these standards, the Tribunal shall have no other option but to hold the hearing in a venue which meets the standards.

Standard of accommodation required.

The Tribunal suite must include the following:

Hearing Room

- The hearing room must be able to seat a minimum of twelve people comfortably round a table.
- The hearing room should have two entrances: one for the Tribunal and one for other parties to the proceedings.
- The Tribunal Members should be seated together, ideally next to the ante room exit to avoid disruption to others if leaving the room during the hearing. All other parties should be able to sit at the opposite side of the table.
- The hearing room should be equipped with a hearing loop system, or should be capable of accommodating a portable hearing loop system.
- The hearing room must provide a high level of soundproofing to ensure that the giving of evidence and subsequent deliberations are conducted in private. The room must also have a means of indicating that it is occupied.
- The doors of the hearing room should be fitted with a “digi-lock” or equivalent, to prevent anyone other than the Tribunal Members and clerk having access out with the actual hearing.
- It would be desirable if there was a telephone line in the hearing room to allow teleconferencing to take place if parties are unable to attend.

Ante-Room for Tribunal Members

- The ante-room must be able to seat four people comfortably around a table.
- It should lead into, or be adjacent to, the hearing room. Ideally it should be accessed through a connecting door.

Waiting Room x 2

- Each waiting room must be able to accommodate eight people.
- Each waiting room must provide a high level of soundproofing to ensure that any discussion is conducted in private. The room must also have a means of indicating that it is occupied.

Clerk's Room

- The clerk's room must be fully equipped with, or be in close proximity to the following: photocopier, fax machine, and telephone line. It would be highly desirable if a scanner and broadband access were also available. It must also have a table and chair to allow the clerk to carry out their administrative duties.
- A lockable cupboard is essential to store copies of legislation, additional copies of order forms and a small laptop.

General

- All facilities should be conveniently located within the Tribunal area.
- There should be appropriate signage within the building to direct parties to the Tribunal area.
- The venue should have adequate car parking, and there should be at least one on-site disabled car parking space.
- All Tribunal rooms should be decorated to a good and comfortable standard with all fixtures and fittings being securely fastened, and in a good state of repair. All potential hazards should be removed.

Provision for People with Disabilities

- No person attending the venue should be disadvantaged in terms of access. This includes wheelchair users, those with restricted mobility, sight, hearing or speech impairment. Access into and around the building should be suitable for all to use.
- Anyone with a disability should be treated with the same respect as others. This includes using the same entrances and having lifts wherever there are stairs. Areas to be considered are heavy doors, contrast markings (plate glass, steps and carpets), lifts, hearing loops and types of seating.

In consultation with others, the Tribunal continues to make best use of existing video-conferencing facilities and where appropriate will extend it's use. The Tribunal hopes that via the use of such facilities it will be able to minimise disruption to participants therefore it would be of benefit if these facilities were made available to the Tribunal at venues.

Should you wish to discuss any issues or concerns over venue provisions, please do not hesitate to contact the Tribunal Administration.

OPERATIONS ORGANISATION CHART

