

# COMPLAINTS PROCEDURE FOR THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND 2024

## Application

1. This procedure applies in relation to complaints about the conduct of a member of the Mental Health Tribunal for Scotland (MHTS).

## Functions of the President of MHTS

2. The President of MHTS has appointed the Judicial Office for Scotland to—
- (a) supervise the operation generally of this procedure and report to the President about that matter as appropriate;
  - (b) carry out other functions specified by this procedure.

## Judicial Office

3. References in this procedure to the Judicial Office are to the Judicial Office for Scotland which supports the Lord President as head of the Scottish judiciary.

## Making a complaint

- 4.—(1) A complaint may be made by submitting a complaint document to the Judicial Office.
- (2) A “complaint document” is a document in writing which—
- (a) is legible;
  - (b) contains one or more detailed allegations of misconduct on the part of a named or identifiable member of MHTS;
  - (c) gives the date or dates of the alleged misconduct; and
  - (d) states the name of the person alleging misconduct and details of an address to which correspondence may be sent.
- (3) A complaint document is to be accompanied by all documents within the control of the person complaining upon which that person seeks to rely.
- (4) If the tribunal member concerned—
- (a) is under investigation by or is subject to an ongoing disciplinary procedure by any other competent professional disciplinary body or tribunal; and
  - (b) the fact of that investigation or procedure is known to the person complaining, the person complaining should include that information in the complaint document.
- (5) A complaint document will not be accepted where it (or any communication associated with it) indicates that the person complaining does not consent to the member concerned seeing a copy of the complaint document or any document accompanying it.

## Time limit

- 5.—(1) Subject to rule 5(2) and (3), a complaint must be made within three months of the conduct complained of.
- (2) If a complaint is submitted late, the Judicial Office must —
- (a) if it considers that the complaint falls to be dismissed under rule 6(3), dismiss the complaint; or
  - (b) if it considers that the complaint does not fall to be dismissed under rule 6(3), inform the person complaining that they have 28 days to seek an extension of time and invite them to

provide an application based on exceptional circumstances to justify the complaint being treated as on time.

(3) Where such a case is made, and after seeking such further information (if any) as considered necessary, the President of MHTS is to decide whether the allegation is to be allowed to proceed under these Rules as if it had been submitted on time.

(4) The President of MHTS may extend the time limit for making a complaint only in exceptional circumstances. If the President of MHTS grants the application, the complaint will proceed to rule 7. If the application is refused, the complaint must be dismissed.

(5) Where an allegation is dismissed under rule 6 the Judicial Office is to write to the person complaining to that effect.

### **Initial assessment of complaint**

**6.—**(1) Promptly after receiving a complaint, the Judicial Office must send a written acknowledgement to the person complaining.

(2) The Judicial Office is to carry out an initial assessment of the allegation(s) of misconduct.

(3) If the Judicial Office considers that an allegation falls within paragraph (4), it is to dismiss that allegation.

(4) An allegation falls into this paragraph if—

- (a) it does not contain sufficient information to enable a proper understanding of the allegation to be achieved;
- (b) it is about a decision of MHTS;
- (c) it raises a matter which has already been dealt with (whether under this procedure or otherwise), and does not present any material new evidence;

(5) Where an allegation is dismissed under paragraph (4), the Judicial Office is to provide written reasons why the allegation has been dismissed to the person complaining. The tribunal member concerned will also be provided with a copy of the complaint with reasons for the dismissal.

(6) Where an allegation is not dismissed under paragraph (4), the Judicial Office is to write to the person complaining to inform that person of that fact and submit the complaint to the President of the MHTS for consideration.

### **Assessment of Complaint by President of MHTS**

**7.—**(1) Where a complaint is received by the President of MHTS from the Judicial Office, the member to whom the complaint relates will be sent a copy by the President of MHTS within 7 working days<sup>i</sup> and will be asked to comment on the allegations made within 7 working days of receipt.

- (a) MHTS members must respond without discussing the nature of the complaint, or response to it, with each other.
- (b) Except where the consent of the member is given, copies of the member's response to the complaint will not be copied to the complainer.
- (c) Where appropriate, the President of MHTS will seek comments from the case officer or any other people who were present during the conduct complained of.
- (d) The President of MHTS may have regard to the audio-recording of the hearing, and may, if appropriate, interview any person in relation to the complaint.

## **Notification of Outcome**

**8.—**(1) The President of MHTS is to write to the person complaining and the member who was the subject of the complaint, detailing the findings and any action which they propose to take.

(2) In the event that a complaint of a serious nature against the member is upheld, the President of MHTS may refer the matter to the Scottish Ministers under the terms of paragraph 5 of schedule 2 to the Mental Health (Care and Treatment) (Scotland) Act 2003, as amended, which provides that a disciplinary committee appointed by the Lord President may order the removal of a member of MHTS if, after investigation carried out at the request of the Scottish Ministers, it finds that the member is unfit for office by reason of inability, neglect of duty or misbehaviour.

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<sup>i</sup> The terms “working days” means days which are not, (a) Saturday; (b) Sunday; or (c) a day which is a Public Holiday.