



Complaint Guidance for Members of the Mental Health Tribunal for Scotland

The President of Mental Health Tribunal for Scotland (“MHTS”) has appointed the Judicial Office for Scotland to supervise the operation generally of the Complaints Procedure, report to the President about any matters as appropriate and to carry out functions as specified by the procedure.

This guidance document has been approved by the President of MHTS.

A copy of the Complaints Procedure for the Mental Health Tribunal for Scotland 2024 (“the Complaints Procedure”) can be accessed on the MHTS website.

What can someone complain about?

We can only investigate complaints about a member’s **personal conduct**. It is not possible to provide a definitive list of what this may include. However, below are some examples of the types of matters we can and cannot investigate.

What can be investigated	What cannot be investigated
<ul style="list-style-type: none">• The use of racist, sexist or offensive language• Misuse of judicial status for personal gain or advantage• Claims of discrimination• Inappropriate behaviour• Political activity	<ul style="list-style-type: none">• A judgment, verdict or order• The impact of the decision made• What evidence should be, or has been considered• The award of expenses or damages• Decisions about hearing programming, case management or conduct of proceedings• Who should be allowed to participate in a hearing• Allegations of criminal activity

For further information on what may be considered misconduct, it may be useful to look at the [Guidance to Judicial Office Holders on Judicial Ethics in Scotland](#). This is a document that describes the principles and standards which Judicial Office holders should adhere to in their personal and professional lives.



What happens when a complaint is submitted to the Judicial Office for Scotland?

The Judicial Office for Scotland (JOS) will firstly determine whether the complaint:

- is validly made in terms of rule 4; and
- is submitted within the necessary time requirement (rule 5)

If the complaint is late, the President of MHTS has a discretion to allow it to proceed in exceptional circumstances, based on the explanation for lateness provided by the complainer.

If any of the criteria are not met, the JOS will write to the complainer to request further information. The complainer will have 28 days to respond with the requested information or the complaint will be closed. If a complaint contains allegations of criminal conduct, the complainer will be directed to the police.

If the above criteria are met, the JOS will carry out an assessment of the complaint in terms of rule 6.

Please note that you will not receive any notification that a complaint has been received at this stage.

Initial Assessment by the Judicial Office

The complaint will be dismissed by the JOS if it falls under any of the following:

- The complaint does not contain sufficient information. However, where appropriate, the JOS may write to the complainer asking for further information;
- The complaint is about a decision of MHTS; or
- It raises a matter that has already been dealt with and does not contain any new evidence.

On completion of the initial assessment, the JOS will send you a copy of the complaint that has been made against you, in line with rules 6(5) and (6). This correspondence will be issued by the office of the President of MHTS. **Please note that at this point, we will not seek your representations and any representations received will not be considered.**



Other proceedings

Where, at any stage after you have been notified of a complaint, you are notified of an investigation or disciplinary procedure by any other competent professional disciplinary body or tribunal concerning the same or similar subject matter as that complaint, you are to notify the President of MHTS of that fact. Any matters notified to the President of MHTS should not disclose any personal data relating to the complainer or third parties.

When the President of MHTS becomes aware, or is notified of any such investigation or procedure they will consider whether further consideration of the complaint against you is appropriate before that investigation or procedure has concluded.

Assessment of Complaint by President of MHTS

If the complaint is not dismissed under rule 6, the complaint will be sent to the President of MHTS. The President of MHTS will send a copy of the complaint to the member within 7 working days and you will be asked to comment on the allegations made within 7 working days of receipt.

Members should fully co-operate and must respond without discussing the nature of the complaint, or response to it with other members.

Copies of the members' response to the complaint will not be copied to the complainer, except where consent is given by the member.

The President of MHTS may seek comments from the other members, the clerk or any other people who were present during the conduct complained of and the President may also have regard to the audio-recording of the hearing and, if appropriate, interview any person in relation to the complaint.

Notification of Outcome

Once the investigation has concluded the President of MHTS will write to the complainer and the member who was the subject of the complaint detailing the findings and any action which they propose to take.

If the complaint is upheld and the President of MHTS is of the view that the complaint is of a serious nature, 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.

Judicial Office for Scotland
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