

**The Mental Health Tribunal for Scotland  
(Practice and Procedure) (No.2) Rules 2005 (SSI 2005/519)**

**A guide to rules 46 and 48**

If someone you care for or are close to has a tribunal hearing, you may wish to be involved in that process. If you are a Named Person, you do not need to do anything further; you are already a party to any hearing for that person and you will receive papers and notifications directly from the Tribunal.

However, if you are not a Named Person and you wish to be involved, there are other ways in which you can seek this.

**Rule 46**

Rule 46 requires that copies of any documents received in relation to the proceedings should be sent to the parties. However, if you are not a party, rule 46(2) allows you to make a request to the Tribunal for copies of these documents to be provided to you. This is a judicial decision which will be taken by a tribunal convener (either at a hearing, or in-house prior to a hearing). If you wish to request papers for a hearing which has been arranged, you may do so by contacting the Tribunal. A decision will be made as quickly as possible when we receive your request. If you are a Guardian or have a welfare Power of Attorney in respect of the person, or if you are a carer, spouse, partner or parent for example, please let us know when you get in touch. Whilst the Tribunal hearings are held in private, and all papers are also private, rule 46(2) gives some flexibility to provide papers to those who care for or about the person whose hearing is being arranged. We will balance the person's right to privacy with the understanding that those closest to them may have a significant role in their care and wellbeing.

If you wish to make an application under rule 46(2) please contact the President's Office at [MHTSPresidentsOffice@scotcourtribunals.gov.uk](mailto:MHTSPresidentsOffice@scotcourtribunals.gov.uk).

**Rule 48**

Whilst rule 46(2) may allow you to have access to documents about a person's hearing, you may also wish to be involved in the legal process. If so, an application may be made in writing (email is acceptable). If granted, an application under this rule will permit you to be treated as a party or relevant person, with the rights which accompany that status. In some circumstances, if you receive party status, you may be able to seek legal representation (and access to the legal aid fund).

This process requires a formal application in writing, setting out the following information:

- Your name and address
- The nature of your interest and the reasons for the request.

'Interest' here means that you have a legitimate interest in the hearing and in the outcome. For example, the person who needs the hearing might be a partner, child or parent, or you may have a Power of Attorney in respect of that person. The reasons for the request will of course depend on your own circumstances, but it may be that you are directly involved in longer term care and recovery, for example of a child or partner, and that you wish to have your voice heard by the tribunal.

If you make an application in writing under rule 48, those who are already parties will be given the opportunity to make representations to the tribunal on your application. A convener will carefully consider all representations and if satisfied that it is reasonable to do so, direct that you be treated as a party or as a relevant person.

If you wish to make an application under rule 48, please contact the President's Office at [MHTSPresidentsOffice@scotcourtribunals.gov.uk](mailto:MHTSPresidentsOffice@scotcourtribunals.gov.uk), setting out your interest and reasons for applying, as detailed above.

### **What (and who) is a party?**

Rule 2(1)(a) gives a list of those who are parties to a hearing (no further action is required for them to be invited to the hearing, to speak or be represented at the hearing and to receive all documents in respect of the hearing). Parties are:

- (a) The person who initiated the proceeding (often a Mental Health Officer, or a Responsible Medical Officer, or a patient or Named Person).
- (b) The patient
- (c) The patient's named person (if applicable)
- (d) Any person whose decision is the subject of proceedings (for example, a Responsible Medical Officer)
- (e) Any person added as a party under rule 48 (see above)
- (f) Scottish Ministers (in respect of a patient who is subject to a Compulsion and Restriction Order)
- (g) The relevant health board (in certain cases only);
- (h) The patient's RMO in an application under section 164A of the Act.

### **What (and who) is a relevant person?**

A relevant person is any party and any other person who advises the Tribunal that they wish to make representations, lead or produce evidence. See 'rule 46' above.

This is intended as a summary of rules 46 and 48 and does not constitute legal advice. Unfortunately, the Tribunal cannot offer legal advice to individuals. If you require legal advice specific to your situation, you should contact a solicitor (the Law Society of Scotland has a list of solicitors specialising in mental health law) or other suitable organisation, such as a Citizens Advice Bureau, for assistance.

**Application under the Mental Health Tribunal for Scotland  
(Practice and Procedure) (No. 2) Rules 2005  
for Party Status**

You can simply write to us or email us to make a request, or you can use the form below to insert details of your request and return this form by post or email, and we will consider the request as soon as possible.

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**Your name and contact information:**

*[enter details]:*

**The name of the person whose hearing you wish to be a party to** (including MHTS reference number if you know that):

*[enter details]:*

**Your relationship with that person**

*[enter details]:*

**Why you wish to be a party to the hearing**

*[enter details]:*