



Ministry
of Justice



HM Prison &
Probation Service

Mental Health Casework Section

Tribunals - guidance

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1 Purpose of this guidance

This guidance provides stakeholders (including patients and their families, responsible clinicians and other report writers and victims) with an overview of the Tribunal process for Restricted Patients. “MHCS Action” boxes and the annexes are directed to MHCS staff and provide guidance to those staff on MHCS internal processes. They are published within this guidance to enable stakeholders to understand the MHCS procedures in place and how decisions are made on behalf of the Secretary of State.

2 Legal Provisions

The statutory framework is provided by:

- The Mental Health Act 1983 (specifically, but not limited to sections 69-75) (the “MHA”);
- Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 and The Mental Health Review Tribunal for Wales Rules 2008 (“the Tribunal Rules”);
- The Senior President’s Practice Direction on the Contents of Statements and Reports in Mental Health Cases (“Practice Direction”);
- Domestic Violence, Crime and Victims Act 2004 (and The Code of Practice for Victims of Crime 2015)

3 Glossary of terms

The “Tribunal Rules” refers both to the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 and The Mental Health Review Tribunal for Wales Rules 2008

“the Tribunal” refers to both the First-tier Tribunal (Mental Health) and the Mental Health Review Tribunal for Wales

“MHCS” is the Mental Health Casework Section in the Ministry of Justice

“VLO” is the Victim Liaison Officer

“Secretary of State” refers to the Secretary of State for Justice

4 Key Points

- All detained restricted patients, whose cases have not otherwise been considered by the Tribunal within the last three years, must be referred to the Tribunal by the Secretary of State;
- The Home Office must be notified of any foreign national patients by the MHCS;
- The Secretary of State will provide a statement, and may be represented at the hearing if appropriate;
- The Tribunal must decide whether the patient continues to meet any of the criteria for detention under the MHA;

- Victims who are eligible under the *Code of Practice for Victims of Crime*, may make representations to the Tribunal on the conditions of discharge the patient should be subject to in the event of discharge. MHCS will provide the Tribunal with details of any VLO. VLOs will be contacted by the Tribunal to invite victim representations;
- The Tribunal may prohibit the disclosure or publication of specified documents or information to a person (including the patient) if it considers that such disclosure would be likely to cause serious harm and that, having regard to the interests of justice, it is proportionate to do so.

5 Eligibility of applications

The following information is advice on eligibility to apply to the Tribunal. **The decision as to whether a patient is eligible to apply lies with the Tribunal.** If there is any uncertainty, advice should be sought from the relevant Tribunal secretariat.

Section 70 of the MHA states that a restricted patient subject to a hospital order (sections 37/41 MHA) or a transfer direction (sections 47/49 and 48/49 MHA) or a hospital direction (section 45A MHA) has the right to apply to the Tribunal once in the second six month period of detention after the date of the hospital order or direction and once in any subsequent period of 12 months thereafter. Under section 69(2) MHA, restricted patients subject to a transfer direction (47/49 and 48/49) may additionally apply in the first six months after the date of the direction.

Under section 75(2) of the MHA, restricted patients who have been conditionally discharged may apply directly to the Tribunal once during the second year from the date of discharge and once in every subsequent two year period. A patient is 'conditionally discharged' for the purposes of counting time, on the date he is physically discharged from the hospital once the conditions have been met. In the intervening period, the patient is still detained under the hospital order. Any leave from the hospital can only be taken under section 17 MHA and will require the consent of the Secretary of State.

A patient who withdraws an application may apply again during the same period of eligibility (see section 77(2) MHA). The patient may apply and withdraw more than once, but is only entitled to one review in each eligibility period.

MHCS ACTION:

The decision as to whether a patient is eligible to apply lies with the Tribunal. However, where a caseworker is concerned that an application is not eligible, the matter should be referred to your team manager or deputy head of casework. The team manager or deputy head of casework should decide whether it is appropriate to contact the Tribunal secretariat to raise concerns if it is considered that a mistake has been made.

6 Correspondence

All correspondence between the Tribunal office and the MHCS must quote both the Tribunal reference (where it is known) and the MHCS reference (where it is known). It would also be helpful if any correspondence also quoted the patient's date of birth.

MHCS ACTION:

MHCS staff must ensure that the above information is included in all correspondence to the Tribunal offices. This enables the Tribunal to identify the case quickly and accurately.

7 Referrals and applications

7.1 Foreign Nationals

The Home Office must be notified by MHCS of any applications from a foreign national patient or when the Secretary of State refers such a patient to the Tribunal.

MHCS ACTION:

The MHCS case management system automatically creates a Home Office milestone for every Tribunal review. If the patient is British, this milestone should be deleted. The milestone draws Home Office colleagues' attention to the fact of the Tribunal and allows the Home Office to follow the progress of the case and ascertain the outcome. This is particularly important in cases where there are immigration proceedings and where the Home Office may be considering deportation.

7.2 Secretary of State referrals for detained patients

All MHCS electronic records for detained restricted patients will have a milestone set for a referral to be made by the Secretary of State three years from the date of the last decision. It is a statutory requirement for such a referral to be made where a case has not been considered by the Tribunal within the last three years (see section 71(2) MHA).

The Tribunal must consider a case referred under section 71(2) MHA. If the patient makes a direct application under section 70 at the same time, or while the referral is under consideration but then withdraws it, this does not override the Secretary of State's referral which remains extant. Where a patient has made a direct application which has still not been considered at the three year anniversary of the last decision, the Secretary of State will still make the statutory referral to ensure that even if the patient withdraws their direct application, the case will be considered by the Tribunal. The Tribunal will usually combine the application and the referral, to avoid duplicate sets of proceedings.

MHCS ACTION:

Caseworkers should always ensure that the next three year referral milestone is set after a Tribunal decision. Where a patient application has already been made, the statutory referral still needs to happen.

7.3 Secretary of State discretionary referrals for detained patients

Under section 71(1) MHA, the Secretary of State has the power to make a discretionary referral to the Tribunal at any time. A decision to make a discretionary referral may be taken at the Secretary of State's own volition, or on request of the patient or the responsible clinician.

The case of *R. (on the application of C) v The Secretary of State for the Home Department* [2001] EWHC Admin 501 examined the nature of the Secretary of State's discretion. Where a recent Tribunal decision has been made, the Secretary of State must pay proper respect to the decision of the Tribunal. The power to make a discretionary referral should not be used in these circumstances merely because the Secretary of State disagreed with the Tribunal's decision.

A reference can be made: (a) where the decision of the Tribunal has been ruled unlawful or stayed by the court on judicial review; (b) where the Tribunal has imposed a condition that has proved impossible to put into effect;

and (c) where there has been a material change in circumstances. A reference due to a material change in circumstances should only be made if the Secretary of State considers that it is probable the material in question would have affected the decision of the Tribunal in that it would have decided either that a more onerous condition be imposed, or that a conditional discharge would not have been ordered.

If a change in the patient's circumstances is brought to the Secretary of State's attention after a Tribunal has made a deferred conditional discharge but before discharge has been directed, there is no need for a referral to a fresh Tribunal; instead the Tribunal should be invited to reconsider its decision.

It is rare for the Secretary of State to refer a patient's case shortly after a decision has been made to discharge, but before that discharge has been effected. When this power is used, MHCS officials will follow the guidance set out above.

The Secretary of State may make a discretionary referral in circumstances where there has been no recent decision, but prior to the three year point. Where such a referral is made, it is generally on receipt of a request from the patient or responsible clinician. Consideration will be given to the reasons for the request and, if refused, MHCS will provide reasons for the refusal.

MHCS ACTION:

You may receive a request for a discretionary referral to be made, usually from the patient's legal representative, or from the responsible clinician. If so, please consult your Team Manager in the first instance.

Where there has been a recent decision to conditionally discharge, but you are informed by the responsible clinician that there has been a material change in circumstances which may have affected the Tribunal's decision (e.g. a deterioration in mental health, a serious incident, or an inability to provide a discharge address), refer the case to your Deputy Head of Team.

You must provide reasons for any request for a discretionary referral that is refused. Reasons will be set out by the manager taking the decision.

7.4 Secretary of State referrals of recalled patients

Section 75(1) MHA requires the Secretary of State to refer all recalled patients within one month of the date of return to hospital, unless she has conditionally discharged the patient within that time. The referral must be made within one month of the date that the patient returns to hospital; in practice the MHCS will aim to make the referral as soon as possible after admission to enable the patient's continued detention to be speedily reviewed by the Tribunal. The Tribunal must consider a referral made under section 75(1) MHA.

MHCS ACTION:

*When entering the date of referral on the system, you must enter the **actual** date the referral was made, not the date of admission to hospital.*

7.5 Secretary of State discretionary referrals of conditionally discharged patients

Under section 71(1) MHA, the Secretary of State has the power to make a discretionary referral to the Tribunal at any time. A decision to make a discretionary referral may be taken at the Secretary of State's own volition, or on request of the patient or the responsible clinician.

Where such a referral is made, it is generally on receipt of a request from the patient or responsible clinician. Consideration will be given to the reasons for the request and, if refused, MHCS will provide reasons for the refusal.

MHCS ACTION:

You may receive a request for a discretionary referral to be made, usually from the patient's legal representative, or from the responsible clinician. If so, please consult your Team Manager in the first instance.

You must provide reasons for any request for a discretionary referral that is refused. Reasons will be set out by the manager taking the decision.

8 Service of documents

8.1 Detained patients

The Tribunal Rules state that the responsible authority must send:

(a) in England, the documents specified in the relevant practice direction, and
(b) in Wales, a statement containing reports and information specified in the Schedule to the Tribunal Rules to the Tribunal so that it is received as soon as practicable and in any event within 3 weeks from the date the responsible authority received the application or reference. A copy of the documents and statement (as appropriate) must also be sent to the Secretary of State.

8.2 Conditionally discharged patients

The procedures for submitting evidence to the Mental Health Review Tribunal for Wales differs in respect of applications or referral concerning conditionally discharged patients. Rather than the relevant community supervisors submitting their reports directly to the Tribunal (as is the requirement in England), MHCS will obtain the reports from the supervisors and submit them to the Welsh Tribunal together with the Secretary of State's statement.

9 Notification of hearing

The Tribunal will provide details of the time and place of the hearing to each party and interested person, giving a reasonable period of notice and will also notify parties of any changes to the time, date and place of the hearing. The reasonable period of notice in England must be at least 21 days in England and 14 days in Wales, unless the Tribunal has the consent of the parties or in urgent or exceptional circumstances.

10 Secretary of State Statements

The Secretary of State is a party to the hearing and although in the majority of cases a written statement setting out the information required and the Secretary of State's views (if appropriate) will be sufficient, the Secretary of State may be represented at Tribunal hearings, if it is considered necessary in the circumstances of the case.

The Rules require the Secretary of State to provide a statement of relevant information to the Tribunal within three weeks of receiving the relevant documents from the responsible authority (two weeks in the case of recalled patients).

10.1 Contents of the statement

The template and guidance to MHCS case managers can be found at annex B and C of this guidance. The statement will include¹:

- A summary of the offence or alleged offence that resulted in the patient being detained in hospital (or in the case of transferred prisoners that resulted in him being remanded in custody, kept in custody or sentenced to imprisonment);
- A record of any other criminal convictions or findings recorded against the patient;
- Details of the history of the patient's liability to detention under the MHA since the restrictions were imposed (including dates of previous discharge and recall);
- Any further information in the Secretary of State's possession that the Secretary of State considers relevant to the proceedings (this may include whether there are any other hospital orders in existence, whether the Secretary of State is considering or has recently considered a request for consent to discharge and the most recent position on section 17 leave)
- Any other observations which the Secretary of State wishes to make (this may include, on occasion, the Secretary of State's view on the clinician's recommendation regarding discharge or other reports submitted).

Where the patient is conditionally discharged, the statement should also include:

- The conditions of discharge;
- Details of the community supervisors;
- The Secretary of State's view on the suitability of the patient for absolute discharge².

MHCS ACTION:

Please refer to Annexes A-C for full guidance on writing Secretary of State statements. Remember that all statements for "high profile"³ cases must be signed off by the Head of Team before submission.

¹ These bullet points reflect the requirements of the English Rules. The Welsh Rules solely require a "statement of any further relevant information". In practice, the Secretary of State provides all of this information to both Tribunals.

² This is a requirement under the Welsh Rules. MHCS practice is to provide the same information to both Tribunals.

³ MHCS marks some cases as "high profile" in order to ensure that these cases are carefully managed with the oversight of a senior manager. The criteria for "high profile" cover a number of different areas (e.g. intense media interest, seriousness of the index offence, particularly sensitive or complex victim issues, high security categorisation of transferred prisoners). This list is not exhaustive and the assignment of a "high profile" marking is not an indication that the Secretary of State considers the patient to be a high risk. Such cases are not subject to a different approach by the Secretary of State, other than with regard to handling (e.g. ensuring preparations are made for potential media interest.)

The Secretary of State is required by the Tribunal Rules to submit its statement within the relevant time limits. Further, MHCS has an internal performance measurement target to submit 100% of its statements on time to avoid any delays in the progress of the case.

MHCS ACTION:

It is important to prioritise these statements in order to ensure the statutory deadlines and 100% performance target are met. If you know you will be away when a statement is due, make sure you complete it early, or flag it to your Team Manager to ensure the target is not missed.

10.2 Late submission of responsible authority statement

MHCS will endeavour to provide its response to the responsible authority statement where it is submitted late. MHCS recognises that inability to provide a response to a responsible authority statement may mean that the case is delayed which is not in the interests of justice. Such delays should therefore be avoided wherever possible. Responsible authorities are therefore asked to ensure that statements and reports are submitted on time.

There is a published protocol between the First Tier Tribunal in England and the MHCS which provides more detail about the agreed responsibilities of each in relation to such situations. This can be found here: <http://www.justice.gov.uk/offenders/types-of-offender/mentally-disordered-offenders> .

MHCS ACTION:

Case managers should make themselves familiar with the protocol.

The Secretary of State has a maximum of three weeks to respond to the responsible authority's statement (two in the case of recalled patients).

*Where the responsible authority's statement is provided late, MHCS must make **all reasonable efforts** to assist the Tribunal in preventing the need for an adjournment by providing its response or by confirming to the Tribunal that there are no objections to proceeding without a statement from the Secretary of State.*

*Where MHCS has at least five working dates to respond, you should use all reasonable endeavours to respond. While it may not always be possible for MHCS to respond to a late statement (particularly if there are less than five working dates to do so), you should give priority to recall referrals. **Even if a statement cannot be produced in time, it may be possible for you to indicate to the Tribunal that the Secretary of State has no objection to the Tribunal proceeding in the absence of a statement.***

If you are contacted by the Tribunal (by email or telephone) less than five working days in advance, you should consider what can be done to assist and where there is insufficient time to prepare a full statement, refer the request for a late statement to your Team Manager in the first instance.

10.3 Supplementary statements

As the Secretary of State does not generally offer a view on the clinical recommendation for discharge from hospital, it is unlikely that a supplementary statement will be provided in response to any additional clinical

reports are received after the Secretary of State has submitted the main statement. The Secretary of State is likely to submit supplementary statements in the following situations:

- Where there have been important developments since the main statement was submitted (such as a Secretary of State refusal to conditionally discharge);
- In a conditionally discharged patient's case, where the main statement had to be submitted prior to receipt of reports and recommendations from the supervising team.

MHCS ACTION:

If an additional or addendum report is received, you should consider whether a supplementary statement is necessary. Where the Secretary of State is not offering a view on the clinical recommendation, it is unlikely that you will need to provide a supplementary statement and there is no need to submit a formal supplementary statement simply stating a report has been received but that there is nothing to add.

Where the Tribunal has directed that the Secretary of State has until a certain date to respond to any additional report(s), but where you have decided there is nothing for the Secretary of State to add, you should send an email to the Tribunal secretariat before the direction deadline, confirming that you have received the additional report, but will not be providing a statement in response to it.

Where additional reports are received that have an impact on the information already provided by the Secretary of State, a supplementary statement should be prepared providing any relevant further information and/or the Secretary of State's observations. This statement should make clear which aspects of the initial statement remain and which have been overtaken by the new supplementary statement.

Where the additional report is an independently commissioned expert report, the Secretary of State should not take a view on conflicting clinical assessments. However, consideration should be given to commenting on any public protection issues where the new report offers an alternative view. This will be particularly important on cases where the new recommendation is for absolute discharge.

If the Secretary of State has made a decision on leave or CD (for example) since the main statement was submitted, you should submit a supplementary statement setting out this development (including a copy of any refusal letter, if the decision was a refusal).

If the Secretary of State has conditionally discharged the patient before the Tribunal hearing, then please inform the Tribunal secretariat by email; there is no need for a formal supplementary statement in this scenario.

10.4 Reports “not for disclosure to the patient”

Where a party has submitted a report which they are seeking to be withheld from the patient and the Secretary of State needs to respond to or make comment on its contents, a separate supplementary statement will be provided clearly marked “Not to be disclosed to the patient without the express permission of the Tribunal” and reasons provided for this.

The decision on disclosure is ultimately a matter for the Tribunal and it can only prohibit disclosure where such disclosure would be likely to cause serious harm and, having regard to the interests of justice, it is proportionate to do so. Even where the Tribunal directs that a document or information must not be disclosed to the patient, it

may still permit disclosure to the patient's legal representative where that would be in the interests of the patient.

MHCS ACTION:

When a report is served that seeks non-disclosure and a Secretary of State response to it, is necessary, you should issue a supplementary statement, using the relevant "non-disclosure" template (Annex C).

In the unlikely event you are providing new information (rather than responding to a report) to the Tribunal which you are seeking to withhold from the patient, you must refer the case to your Deputy Head of Casework of advice.

11 Victims

The *Code of Practice for Victims of Crime* allows victims to make representations to the Tribunal on the following matters:

- Whether the patient should, in the event of their discharge or release from detention, be subject to any conditions;
- If so, what conditions should be imposed;
- If the patient is already subject to a conditional discharge, whether the same or different conditions are now required.

The sorts of conditions that victims usually seek are conditions that prevent the offender making contact with them or their family or from entering the area in which the victim or family live.

The Tribunal cannot lawfully take into account representations from victims outside of the areas listed above.

Victims who have opted into the Victim Contact Service will have a Victim Liaison Office (VLO) allocated to them. MHCS will provide the Tribunal with the details of any VLO that is on its record. It is important that VLOs contact MHCS once they are allocated a case to ensure that their details are on record. The Tribunal will notify the VLO as soon as it has received an application or referral and provide the VLO with the date of hearing and information on how the victim may submit representations.

The Tribunal will seek to deal sensitively with non-disclosure applications and has the power to direct that certain material is not disclosed to the patient if it considers that such disclosure would be likely to cause serious harm and that it is proportionate, in the interests of justice, to do so.

The Tribunal will inform the VLO of the outcome of the Tribunal hearing.

11.1 Further guidance for victims and VLOs

The First Tier Tribunal in England has published a leaflet for victims, a form with guidance notes for submitting representations and a Practice Direction. These can be located at the following links:

Leaflet: <https://formfinder.hmctsformfinder.justice.gov.uk/t118-eng.pdf>

Form: <http://formfinder.hmctsformfinder.justice.gov.uk/t144-eng.pdf>

Practice Direction: [Courts and Tribunals Judiciary | Procedures concerning handling representations from victims](#)

MHCS ACTION:

The VLO must be notified whenever you refer a case or there is an application where there is a VLO assigned. You must always ensure that VLO details are provided to the Tribunal.

The VLO is responsible for informing the victim that there is a Tribunal review.

If a VLO sends victim representations directly to MHCS, you must forward them on to the Tribunal, informing the VLO that you have done so.

All cases with a VLO on record should have the “victims” flag marked on the system. Even if the flag is not marked, check the records for VLO involvement. You should always ensure the flag is marked in every relevant case.

12 Hearings

Hearings generally take place in the hospital in which the patient is detained (or the local relevant hospital where the patient is discharged) and may be attended by the patient, their legal representative (if any) and the authors of any reports submitted. The Tribunal will decide which of the report writers can and should attend as witnesses (it may not be necessary for each report writer to give evidence in person). Hearings are held in private, unless the Tribunal directs otherwise. In order for the Tribunal to direct a hearing to be held in public, it must consider that it is in the interests of justice to do so.

12.1 Attendance of Ministry of Justice officials as observers

On occasion, staff from the MHCS may request permission to attend a hearing to observe. If the Tribunal grants permission, attendance will also be subject to the patient’s consent which can be withdrawn at any time.

12.2 Representation

Any of the parties (the Secretary of State, the patient, the Responsible Authority) may be represented at the hearing. The Tribunal has the power to appoint a representative for a patient in certain circumstances.

13 Decisions

13.1 Powers of the Tribunal – restricted hospital orders

In the case of detained restricted patients subject to a hospital order under ss 37/41 MHA, the role of the Tribunal is limited to determining whether it is satisfied:

- That the patient is suffering from mental disorder of a nature or degree which makes it appropriate for them to be detained in hospital for medical treatment; or
- That it is necessary for the health or safety of the patient or the protection of others that they should receive that treatment; or
- That appropriate medical treatment is available.

If any one of these statutory criteria is not met and, then the Tribunal must order that the patient should be discharged and decide whether that discharge should be absolute or subject to conditions. The Tribunal may defer a conditional discharge (see section 73(7) MHA).

In the case of conditionally discharged patients, the Tribunal may order absolute discharge or may add to or vary the existing conditions of discharge.

In all cases, the Tribunal has a number of other powers, such as the power to adjourn or postpone a hearing, or to direct provision of information or the attendance of witnesses.

13.2 Powers of the Tribunal – transferred prisoners

Where a restricted patient is detained in hospital under a transfer direction or hospital direction (47/49, 48/49, 45A MHA), the Tribunal makes the same determination as set out above. However, if any one of the statutory criteria is not met in these cases, the Tribunal does *not* have power to order discharge. Instead, it must notify the Secretary of State:

- Whether, in its opinion, the patient would be entitled to be absolutely or conditionally discharged from hospital were they detained under sections 37 and 41 (rather than a sentenced prisoner); and
- If the Tribunal considers that the patient would otherwise be entitled to discharge, it may make a statutory recommendation that if the Secretary of State does not so discharge them, they should remain in hospital.

If the Tribunal considers that the criteria for detention in hospital continue to be met, the transferred prisoner remains in hospital as a restricted patient.

If the Tribunal considers that if the patient did not also have a prison sentence, the patient would have been entitled to discharge, the Secretary of State will consider whether to notify the Tribunal that he may be so discharged. The MHA states that if the Secretary of State notifies the Tribunal that it agrees with the conditional discharge within 90 days, the Tribunal must direct the patient's discharge. Although the MHA provides a 90 day period, in practice this decision is made as soon as possible after the Tribunal decision. Note however that where the patient was transferred to hospital under section 48 MHA, the patient cannot be discharged; instead they must remain in hospital or be transferred to the appropriate place of detention.

Before reaching a decision regarding the discharge of a sentenced prisoner, the Secretary of State will consider all the circumstances of the case. However, other than in exceptional circumstances, the Secretary of State will not generally agree to discharge a sentenced prisoner into the community. The transferred prisoner will instead be returned to prison to serve the remainder of their sentence and, where the offender is eligible, a referral will be made to the Parole Board to consider release.

If there is a recommendation that the transferred prisoner remain in hospital if not discharged, the Secretary of State will generally follow that recommendation unless there are cogent reasons to return the patient to prison. Such reasons might include safeguarding issues if the patient's risk to others (unrelated to his mental disorder) increases following the Tribunal hearing.

13.2 Deferred conditional discharge

A deferred conditional discharge decision is a provisional decision to conditionally discharge a patient, pending the Tribunal being satisfied that suitable arrangements have been put in place to enable the conditions of discharge to be met. Most often, the deferral is made to enable identification of a suitable placement for the patient on discharge. If ordering a deferred conditional discharge, the Tribunal should not defer the case to a

specific date. The Tribunal can reconvene if there is a material change in circumstances after deferral, or it may confirm the conditional discharge on the papers once the conditions are met. If the Tribunal does reconvene, it can rescind its earlier decision if it subsequently finds that the criteria for detention are met. It can also discharge absolutely, vary the conditions, or uphold its original provisional decisions.

There is no statutory requirement for the Secretary of State to provide a supplementary statement where further reports are submitted following a decision to defer conditional discharge. MHCS will consider in each case whether a supplementary statement from the Secretary of State is appropriate.

MHCS ACTION:

Where there has been no change, other than confirmation that conditions are in place, it is unlikely that there will be a need for a supplementary statement. Where, for example, there has been an adverse development, consideration should be given to providing a supplementary statement.

13.3 Adjournments

The Tribunal has wide powers to seek further information. A Tribunal may not, however, adjourn for the sole purpose of finding out whether the patient improves, or to monitor the patient's progress. It may adjourn a hearing to obtain information necessary to reach a decision.

Any party may make an application to adjourn a hearing at any time.

MHCS ACTION:

If you consider that an adjournment decision may have been made outside the Tribunal's powers (e.g. to see if the patient's mental health has improved after six months), you should flag the case to your Deputy Head of Team to review.

It is rare for the Secretary of State to challenge adjournment decisions, but where there is concern that the decision has been taken unlawfully, the Deputy Head of Team will seek legal advice before taking any action.

13.4 Recommendations

While the Tribunal has the power to discharge a patient subject to orders under sections 37 and 41, it does not when considering restricted patients who are detained under section 45A or sections 47 and 49 of the MHA (that is, offenders who were sentenced to imprisonment), The Tribunal can only notify the Secretary of State that had the patient been subject to a restriction order under section 41 instead, the patient would have been entitled to be discharged. In such cases, the Tribunal may recommend that the patient remain in hospital if he is not so discharged (see below).

Tribunals may make "non-statutory recommendations" in relation to matters such as whether the patient should be transferred to another hospital or in respect of section 17 MHA leave. The Secretary of State will carefully consider such recommendations, if a Responsible Clinician applies for consent for leave or to transfer following a recommendation, but is not bound to accept such recommendations. The Tribunal is not obliged to make such a recommendation if requested by a party and there is no legitimate expectation that they will do so. (See *EC v Birmingham and Solihull Mental Health Trust [2013] EWCA Civ 701*).

MHCS ACTION:

If there is a non-statutory recommendation that the Secretary of State should consent to leave or a transfer, case managers should check if there is an existing application currently under consideration. If so, the decision-maker's attention should be drawn to the recommendation by creating a manual milestone in the relevant review. Where there is no existing application, there is no need for action to be taken as consideration will be given to the most recent Tribunal decision when determining future applications.

Case managers should always take note of any non-statutory recommendations and draw any particularly unusual or specific recommendations to the attention of the Deputy Head or Head of Casework. An example of such a recommendation might be where the Tribunal is concerned that a case is particularly complex and recommends that it should receive the attention of a senior manager. Such recommendations will be rare and differ from those cases where the Tribunal is recommending the Secretary of State make a particular decision.

13.5 Discharge conditions

Conditions of discharge should be necessary and proportionate in all the circumstances. Residence conditions should include details of the discharge address so that the MHCS is aware of the patient's location. Any future changes of residence should also be notified to the MHCS and the Secretary of State requests that Tribunal panels word the residence conditions accordingly.

MHCS ACTION:

Deputy Heads of Team will review all Tribunal decisions. Particular attention will be paid to residence conditions to ensure that the wording used meets the need for MHCS to be made aware of any future change of residence. Where the condition does not set out a specific address (for example), the Deputy Head of Team may consider it necessary to vary that condition either immediately or in the future.

The Secretary of State has the power to vary, remove or add conditions at any point. It is, however, rare to do so immediately after the Tribunal has set conditions unless it is considered absolutely necessary. A more appropriate way forward might be to make a discretionary referral asking the Tribunal to consider amending a condition, or imposing an additional condition if the decision to discharge has not yet been put into effect. This would be an appropriate step if, for example, the Responsible Clinician were to inform MHCS that a discharge placement had fallen through, or that there had been a similar material change in circumstances. See section 7.3.

13.7 Notification of decision

The Tribunal may give its decision orally at the hearing, or may wait until the written decision is provided. A written decision, setting out the reasons, is provided to all parties within seven days of the hearing.

Where a patient has been granted an absolute, conditional or deferred conditional discharge, the Tribunal office will notify the MHCS within 24 hours of the hearing.

Where a patient has been given an immediate conditional discharge, it is particularly important that MHCS is informed as soon as possible. The Secretary of State has a statutory responsibility for the management of conditionally discharged restricted patients and cannot carry out this function unless it is known that the patient has been discharged, the conditions of discharge and the identity of the community supervisors.

13.8 Appealing a decision

Any of the parties, including the Secretary of State may apply for permission to appeal a Tribunal decision.

This may only occur on points of law, for example if the Tribunal:

- Did not apply the correct law or wrongly interpreted the law;
- Did not follow the correct procedures, or
- Had no evidence or insufficient evidence to support its decision.

An application for permission to appeal must be received by the Tribunal within 28 days of the date that the Tribunal decision was sent.

ACTION:

It is rare for the Secretary of State to seek to appeal a decision, but s/he may do so on occasion. Where the Deputy Head of Team has identified there may be a concern, legal advice must be sought in the first instance.



Ministry
of Justice



HM Prison &
Probation Service

**Secretary of State for Justice statement to the First-tier Tribunal (Mental Health)] /
Mental Health Review Tribunal for Wales**

The statement by the responsible authority in respect of the patient named below was received by the Mental Health Casework section (MHCS) of the Ministry of Justice on *[insert date RASB received at MHCS]*

The Secretary of State has no objection to this statement being disclosed to the patient.

NB: Where you are seeking that the statement be withheld from the patient, please use the non-disclosure template

Patient's Name and any alias: «PTNT_FNAME1» «PTNT_SNAME»

Date of birth:

Name of hospital:

Tribunal reference: *[Please insert the tribunal's reference number – found on notice of hearing email]*

A. Admission to hospital and summary of the (alleged) offence(s) (including details of any concurrent detention authorities)

[Please use appropriate stock paragraph below (and delete all others) to ensure the correct wording for the relevant detention authority is used. You must include details of multiple detention authorities - If there is more than one current detention authority, you must ensure that the Tribunal has a referral/patient application for each.]

[S37/41]

«PTNT_FNAME1» «PTNT_SNAME» was convicted of <<OFFENCE>> and was sentenced on <<SENT_DATE>> at <<CRT NAME>> Court.

(S)He was reported to be suffering from mental disorder and the court made an order under section 37 of the Mental Health Act 1983 authorising his(her) detention in <<HOSP/HOSP UNIT>> together with an order under section 41 of the Act adding the special restrictions to the hospital order without limit of time/ until (date).

**ANNEX A
OFFICIAL – SENSITIVE**

Summary of the index offence(s): *[insert summary]*

[S47/49]

«PTNT_FNAME1» «PTNT_SNAME» was convicted of <<OFFENCE>> and on <<SENT_DATE>> at <<CRT NAME>> Court was sentenced to <<YRS/MTHS>> years/life imprisonment with a minimum term of <<YRS>>.

(S)He was subsequently reported to be suffering from mental disorder and on <<WARRANT_DATE>> the Secretary of State issued a warrant under section 47 of the Mental Health Act 1983 authorising his/her transfer to <<HOSP/HOSP UNIT>>, together with a direction under section 49 of the Act restricting his (her) discharge without limit of time.

Summary of the index offence(s): *[insert summary]*

[S45A Hospital Direction]

«PTNT_FNAME1» «PTNT_SNAME» was convicted of <<OFFENCE>> and on <<SENT_DATE>> at <<CRT NAME>> Court was sentenced to <<YRS/MTHS>> years/life imprisonment with a minimum term of <<YRS>>.

(S)He was reported to be suffering from mental disorder and the court made a Hospital Direction and Limitation Direction order under sections 45A and 45B of the Mental Health Act 1983 authorising her/his detention in <<HOSP/HOSP UNIT>>. By virtue of section 45A(3)(b) s(he) is subject to the special restrictions set out in section 41 of the Act.

Summary of the index offence(s): *[insert summary]*

[S48/49]

On <<REMAND_DATE>> at <<CRT NAME>> Court, «PTNT_FNAME1» «PTNT_SNAME» was remanded/committed in custody having been charged with <<OFFENCE>>.

In the light of medical reports subsequently received to the effect that «PTNT_FNAME1» «PTNT_SNAME» was suffering from mental disorder the Secretary of State issued a warrant dated <<WARRANT_DATE>>, authorising «PTNT_FNAME1» «PTNT_SNAME»'s transfer from HMP <<PRISON>> to <<HOSP/HOSP UNIT>> under section 48 of the Mental Health Act 1983, together with a direction under section 49 of the Act, imposing restrictions on the patient's discharge.

Summary of the alleged offence(s): *[insert summary]*

[Immigration Detainee]

On <<ORDER_DATE>> an order was made for the detention of «PTNT_FNAME1» «PTNT_SNAME» under the provisions of the immigration Act 1971. He was subsequently reported to be suffering from mental disorder and on <<WARRANT_DATE>> the Secretary of State issued a warrant under section 48(2)(d) of the Mental Health Act 1983 authorising his detention in <<HOSP/HOSP UNIT>> together with an order under section 49 of the Act restricting his discharge until the expiry of the immigration Detention Authority.

**ANNEX A
OFFICIAL – SENSITIVE**

[Unfit to plead/not guilty by reason of insanity (court order made on or after 1 July 2005)]

On <<SENT_DATE>> at <<CRT NAME>> Court, «PTNT_FNAME1» «PTNT_SNAME» was found [to be under disability and unfit to plead to a charge of] [not guilty by reason of insanity to a charge of] <<OFFENCE>>.

The court made a hospital order and restriction order under sections 37 and 41 of the Mental Health Act 1983.

Summary of the index offence(s): *[insert summary]*

[Unfit to plead/not guilty by reason of insanity (court order made before 1 July 2005)]

On <<SENT_DATE>> at <<CRT NAME>> Court, «PTNT_FNAME1» «PTNT_SNAME» was found [to be under disability and unfit to plead to a charge of] [not guilty by reason of insanity to a charge of] <<OFFENCE>>.

The court made an order under section 5(1) of the Criminal Procedure (Insanity) Act 1964 as substituted by section 3 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 directing his/her admission to such hospital as might be specified by the Secretary of State. On <<ORDER_DATE>> the Secretary of State issued a warrant specifying <<HOSP/HOSP UNIT>> as the hospital to which «PTNT_FNAME1» «PTNT_SNAME» should be admitted. By virtue of paragraph 2 of Schedule 1 to the 1991 Act, «PTNT_FNAME1» «PTNT_SNAME» is now treated as if he/she had been admitted in pursuance of a hospital order and restriction order under sections 37 and 41 of the Mental Health Act 1983.

Summary of the index offence(s): *[insert summary]*

[S51(5)]

On <<SENT_DATE>> at <<CRT NAME>> Court, «PTNT_FNAME1» «PTNT_SNAME» was indicted on a charge of <<OFFENCE>>, it being impractical or inappropriate to bring the defendant to court. (S)He was reported to be suffering from mental disorder and on <<SENT_DATE>> the court made an order under section 51(5) of the Mental Health Act 1983. This order has the same effect as one issued under section 37 of the Mental Health Act 1983 together with an order under section 41 of the Act adding the special restrictions without limit of time/ until (date).

Summary of the index offence(s): *[insert summary]*

[S60/65 MHA 1959]

«PTNT_FNAME1» «PTNT_SNAME» was convicted of <<OFFENCE>> and was sentenced on <<SENT_DATE>> at <<CRT NAME>> Court.

S/he was reported to be suffering from psychopathic disorder and the court made an order under section 60 of the Mental Health Act 1959 authorising his/her detention in <<HOSP/HOSP UNIT>> together with an order under section 65 of the Act making him subject to the special restrictions set out in that section without limit of time. By virtue of paragraph 3 of Schedule 5 to the Mental Health Act 1983 the patient is now detained as if subject to orders under sections 37 and 41 of the 1983 Act.

**ANNEX A
OFFICIAL – SENSITIVE**

Summary of the index offence(s): *[insert summary]*

Summary of offence(s) relating to any previous hospital orders that have been absolutely discharged

[If the case was subject to dual detention, but the SoS has AD previous order(s), please insert summary of offence, date of order and date of AD]

B. History of the patient's liability to detention under the Mental Health Act 1983 since the restrictions were imposed – including any dates of previous discharge and recall

[Please insert details of the patient's detention, including any previous dates of conditional discharge and recall. For a post-recall review, please insert reasons for recall and conditions at time of recall].

«PTNT_FNAME1» «PTNT_SNAME» was conditionally discharged by direction of the tribunal / with the agreement of the Secretary of State/ on <<CD_DATE>> and was recalled to hospital by warrant of the Secretary of State on <<RECALL_DATE>> *[Note: each instance of CD and recall must be recorded, not just the most recent. Only the most recent conditions are required. If the most recent recall was 5+ years ago and you don't have access to the conditions, then no need for conditions; they are unlikely to be relevant now.]*

C. Previous convictions

Details of the patient's previous convictions are attached / the patient does not have any previous convictions *[delete as appropriate]*

[NB: You should ensure that the previous convictions include the conviction under the index offence. If they do not, until we regain direct access to PNC it is acceptable not to seek a fresh print out for detained patients. Please confirm in the statement that we have not been able to provide a more recent version. If the case is complex (e.g. numerous offences, appeals and it's unclear what the final outcome was) or for a discharged patient seeking absolute discharge, you should make efforts to obtain an up to date version]

D. Details of current leave entitlement

[Please insert details below as appropriate or delete if not applicable.]

There is currently no authority for s17 community leave.

[NB: Only include details of community leave; if a patient only has authority for medical leave or to attend court, it is not necessary to include details of this]

The Secretary of State authorised *[insert type of leave]* on *[date]*

Conditions of leave are as follows:

[NB: Where a patient has unescorted leave, there is no need to record the previous escorted leave as well as this is no longer relevant. Insert terms of leave from leave authorisation screen – it is particularly important to include any conditions imposed

**ANNEX A
OFFICIAL – SENSITIVE**

in relation to victims. Where a map exists in conjunction with an exclusion zone, please attach the map to the statement]

The Secretary of State refused an application for [insert details] leave on [date]. The refusal letter setting out the reasons for this decision is attached to this statement.

[NB: Attach the leave refusal letter]

The Secretary of State received an application for [insert details] leave on [date], but has not yet made a decision.

[If there is a current application being considered, you may need to add a manual milestone to provide a supplementary statement informing the Tribunal of the outcome of the leave application.]

The Secretary of State authorised [insert type of leave] on [date], but rescinded this authority on [date], because [explain reasons].

[NB: It is only necessary to include this information if you have the reasons leave was rescinded. If leave was rescinded more than 3 years ago, it is unlikely to be relevant to the Tribunal considerations, but include if you have the details and it appears to remain a relevant risk issue. Where a patient has been subject to repeated leave/rescind decisions, it is sufficient to state that leave has been approved and rescinded X number of times since X date and set out the most recent reason it was rescinded and whether there is a pattern – e.g. repeated abscond incidents/repeated use of drugs.]

E. Secretary of State’s observations on Part A of the Responsible Authority’s statement

[NB: check date of DA/names/aliases/DOB and any other key facts – correct any discrepancies here]

F. Secretary of State’s observations on Part B of the Responsible Authority’s statement

[NB: In most cases, the Secretary of State will not offer a view on the recommendations (whether for discharge or not). Please add relevant wording as appropriate]

Transferred prisoners, and hospital orders where there is no reason to exceptionally provide a view

The Secretary of State does not offer a view on the clinical assessment and recommendation regarding discharge.

Hospital orders, where the RC recommends discharge in a potentially high risk case where recommendation appears not to consider public protection matters fully

[Where the RC is recommending discharge, in some cases, it may be appropriate to take a view on whether or not discharge is appropriate, based on public protection

**ANNEX A
OFFICIAL – SENSITIVE**

concerns. If so, complete all other sections of the statement and pass to Deputy Head of Team setting out why consideration should be given to taking a view on suitability for discharge, or any other additional information. In cases where there are Deprivation of Liberty (DoL) issues, ensure that the Deputy Head of Team has reviewed the case. High Profile patients always require Head of Team sign off.]

Where the RC has also recommended that the Secretary of State discharge

The Secretary of State has received a request from the Responsible Clinician that he agree to conditional discharge. He is currently considering the request and the Tribunal will be informed of the outcome prior to the hearing / but it will not be possible for a decision to be made prior to the hearing [delete as appropriate].; or

[Add a manual milestone to inform the Tribunal of the outcome before the hearing. Ensure that the CD will be considered before the hearing.]

It is noted that the Responsible Clinician reports that s/he has recommended that the Secretary of State discharges the patient. The Secretary of State has not received a direct application from the Responsible Clinician and will not be considering conditional discharge unless or until such an application is received.

Where the Secretary of State has recently rejected a recommendation for discharge

The Secretary of State has recently considered and declined a request from the Responsible Clinician that he agree to <<PTNT-FNAME>><<PTNT-SNAME>>'s conditional discharge. He declined the request as set out in the attached letter and disagrees with the Responsible Clinician's recommendation for the same reasons.

[Attach the refusal letter to your statement]

[NB: If there have been material changes since the SoS refused CD, that you consider may alter our position, please refer case to Head of Team for review.]

G. Further information the Secretary of State considers relevant to these proceedings

[Insert relevant paragraph re. transferred prisoners]

Determinate sentence prisoner

As can be seen from section A above «PTNT_FNAME1» «PTNT_SNAME» was transferred to hospital during a sentence of imprisonment. His release date is <<REST_EXP_DATE>>.

The tribunal's consideration of the application is accordingly governed by section 74 of the Mental Health Act 1983. In the event that the tribunal notifies the Secretary of State that «PTNT_FNAME1» «PTNT_SNAME» would, if subject to a restriction order, be entitled to be conditionally discharged from hospital then, unless the tribunal additionally makes a recommendation under section 74(1)(b), the effect of the recommendation will usually be the return of «PTNT_FNAME1» «PTNT_SNAME» to prison to continue serving his sentence. If the tribunal makes a recommendation under section 74(1)(b), the Secretary of State will

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OFFICIAL – SENSITIVE

refer the case to the Parole Board, in the event that «PTNT_FNAME1» «PTNT_SNAME» would be entitled to a Parole Board review, but for his transfer to hospital.

Life or IPP sentence prisoner before tariff is served

As can be seen from section A above «PTNT_FNAME1» «PTNT_SNAME» was transferred to hospital during a sentence of life imprisonment/indeterminate sentence for public protection. His tariff date is <<TARIFF_EXP_DATE>>.

The tribunal's consideration of the application is accordingly governed by section 74 of the Mental Health Act 1983. In the event that the tribunal notifies the Secretary of State that «PTNT_FNAME1» «PTNT_SNAME» would, if subject to a restriction order, be entitled to be conditionally discharged from hospital, then unless the tribunal additionally makes a recommendation under section 74(1)(b), the effect of the recommendation will usually be the return of «PTNT_FNAME1» «PTNT_SNAME» to prison to continue serving his sentence. If the tribunal makes a recommendation under section 74(1)(b), then «PTNT_FNAME1» «PTNT_SNAME» may remain in hospital as a transferred prisoner. He acquires no entitlement to have his case considered by the Parole Board until his tariff is served

Life or IPP prisoner after tariff is served

As can be seen from section A above «PTNT_FNAME1» «PTNT_SNAME» was transferred to hospital during a sentence of life imprisonment/indeterminate sentence of imprisonment for public protection. His tariff expired on <<TARIFF_EXP_DATE>>.

The tribunal's consideration of the application is accordingly governed by section 74 of the Mental Health Act 1983. In the event of the tribunal notifying the Secretary of State that «PTNT_FNAME1» «PTNT_SNAME» would, if subject to a restriction order, be entitled to be conditionally discharged from hospital, then unless the tribunal also makes a recommendation under section 74(1)(b), the effect will usually be the return of «PTNT_FNAME1» «PTNT_SNAME» to prison. His case will be referred to the Parole Board for review. If the tribunal makes a recommendation under section 74(1)(b), the Secretary of State undertakes to refer his case to the Parole Board without his having to return to prison.

S45A Hospital Direction

As can be seen from section A above «PTNT_FNAME1» «PTNT_SNAME» is serving a prison sentence, to which the sentencing Court added a hospital direction under section 45A of the Mental health Act 1983.

[Add second paragraph, as above, depending on whether determinate, lifer, IPP, tariff expired etc]

Technical lifer

As can be seen from section A above, <<PTNT-FNAME>><<PTNT-SNAME>> transferred to hospital during a sentence of life imprisonment and the Tribunal's consideration of the case is accordingly governed by section 74 of the Mental Health Act 1983.

However, after consultation with the judiciary, the Secretary of State has decided to treat <<PTNT-FNAME>><<PTNT-SNAME>> as a 'technical lifer'. This means he will be treated as if he were subject to a hospital order with restrictions under sections 37 and 41 of the Mental Health Act 1983. In the event of the Tribunal notifying the Secretary of State that

**ANNEX A
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<<PTNT-FNAME>><<PTNT-SNAME>> would, if subject to an s37/41 hospital order, be entitled to be conditionally or absolutely discharged from hospital, the Secretary of State will consider the case in accordance with his status as a technical lifer.

CPI (A)

(in cases of a finding of unfit to plead)

As can be seen from section A, on <<SENT_DATE>> «PTNT_FNAME1» «PTNT_SNAME» was found unfit to be tried for the charges against him. The Secretary of State retains the power to remit «PTNT_FNAME1» «PTNT_SNAME» to stand trial for so long as he remains detained in hospital.

S48/49 remand prisoner or immigration detainee

As can be seen from section A above «PTNT_FNAME1» «PTNT_SNAME» was transferred to hospital while remanded in custody/detained under the Immigration Act 1971 (**delete as applicable**) and as such the tribunal's consideration is governed by section 74 of the Mental Health Act 1983.

Ministry of Justice Ref: «MNP_CASE_NUM»

Date: DD/MM/YYYY



Ministry
of Justice



HM Prison &
Probation Service

**Secretary of State for Justice statement to the First-tier Tribunal (Mental Health) /
Mental Health Review Tribunal for Wales**

The notice of application in respect of the below-named conditionally discharged patient was received by the Mental Health Casework Section (MHCS) of the Ministry of Justice on ***[insert date received in MHCS].***

The Secretary of State submits the following information and observations for consideration by the Tribunal.

The Secretary of State has no objection to this statement being disclosed to the patient.

[NB: Where you are seeking that the statement be withheld from the patient, please use the non-disclosure template]

Patient's Name and any alias: «PTNT_FNAME1» «PTNT_SNAME»

Date of birth:

Current address:

Tribunal reference: ***[Please insert the tribunal's reference number – found on notice of hearing email]***

A. Details of hospital order and summary of the index offence(s)

[Please use appropriate stock paragraph below (and delete all others) to ensure the correct wording for the relevant detention authority is used. You must include details of multiple hospital orders. In the unlikely event a discharged patient continues to be subject to more than one current hospital order, you must also ensure that the Tribunal has a referral/patient application for each.]

[S37/41]

«PTNT_FNAME1» «PTNT_SNAME» was convicted of <<OFFENCE>> and was sentenced on <<SENT_DATE>> at <<CRT NAME>> Court.

(S)He was reported to be suffering from mental disorder and the court made an order under section 37 of the Mental Health Act 1983 authorising his(her) detention in <<HOSP/HOSP UNIT>> together with an order under section 41 of the Act adding the special restrictions to the hospital order without limit of time/ until (date).

Summary of the index offence(s): ***[insert summary]***

**ANNEX B
OFFICIAL – SENSITIVE**

[Unfit to plead/not guilty by reason of insanity (court order made on or after 1 July 2005)]

On <<SENT_DATE>> at <<CRT NAME>> Court, «PTNT_FNAME1» «PTNT_SNAME» was found [to be under disability and unfit to plead to a charge of] [not guilty by reason of insanity to a charge of] <<OFFENCE>>.

The court made a hospital order and restriction order under sections 37 and 41 of the Mental Health Act 1983.

Summary of the index offence(s): *[insert summary]*

[Unfit to plead/not guilty by reason of insanity (court order made before 1 July 2005)]

On <<SENT_DATE>> at <<CRT NAME>> Court, «PTNT_FNAME1» «PTNT_SNAME» was found [to be under disability and unfit to plead to a charge of] [not guilty by reason of insanity to a charge of] <<OFFENCE>>.

The court made an order under section 5(1) of the Criminal Procedure (Insanity) Act 1964 as substituted by section 3 of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 directing his/her admission to such hospital as might be specified by the Secretary of State. On <<ORDER_DATE>> the Secretary of State issued a warrant specifying <<HOSP/HOSP UNIT>> as the hospital to which «PTNT_FNAME1» «PTNT_SNAME» should be admitted. By virtue of paragraph 2 of Schedule 1 to the 1991 Act, «PTNT_FNAME1» «PTNT_SNAME» is now treated as if he/she had been admitted in pursuance of a hospital order and restriction order under sections 37 and 41 of the Mental Health Act 1983.

Summary of the index offence(s): *[insert summary]*

[S51(5)]

On <<SENT_DATE>> at <<CRT NAME>> Court, «PTNT_FNAME1» «PTNT_SNAME» was indicted on a charge of <<OFFENCE>>, it being impractical or inappropriate to bring the defendant to court. (S)He was reported to be suffering from mental disorder and on <<SENT_DATE>> the court made an order under section 51(5) of the Mental Health Act 1983. This order has the same effect as one issued under section 37 of the Mental Health Act 1983 together with an order under section 41 of the Act adding the special restrictions without limit of time/ until (date).

Summary of the index offence(s): *[insert summary]*

[S60/65 MHA 1959]

«PTNT_FNAME1» «PTNT_SNAME» was convicted of <<OFFENCE>> and was sentenced on <<SENT_DATE>> at <<CRT NAME>> Court.

S/he was reported to be suffering from psychopathic disorder and the court made an order under section 60 of the Mental Health Act 1959 authorising his/her detention in <<HOSP/HOSP UNIT>> together with an order under section 65 of the Act making him

**ANNEX B
OFFICIAL – SENSITIVE**

subject to the special restrictions set out in that section without limit of time. By virtue of paragraph 3 of Schedule 5 to the Mental Health Act 1983 the patient is now detained as if subject to orders under sections 37 and 41 of the 1983 Act.

Summary of the index offence(s): *[insert summary]*

Summary of offence(s) relating to any previous hospital orders that have been absolutely discharged

[If the patient was previously subject to dual detention, but the SoS has AD previous order(s), please insert details of offence, date of order and date of AD]

B. History of the patient's liability to detention under the Mental Health Act 1983 since the restrictions were imposed – dates of previous discharge and recall

[Please insert details of any previous dates of conditional discharge and recall.]

«PTNT_FNAME1» «PTNT_SNAME» was conditionally discharged by direction of the tribunal / with the agreement of the Secretary of State/ on <<CD_DATE>> and was recalled to hospital by warrant of the Secretary of State on <<RECALL_DATE>> *[Note: each instance of CD and recall must be recorded, not just the most recent.]*

C. Previous convictions

Details of the patient's previous convictions are attached / the patient does not have any previous convictions *[delete as appropriate]*

D. Details of supervision

D.1 Psychiatric or other medical supervision in the community

The patient receives out-patient supervision from

D. 2 Social Supervisor

The nominated social supervisor in this case is

D. 3 Current conditions of discharge

«PTNT_FNAME1» «PTNT_SNAME» is subject to the following conditions:

[Please insert conditions of discharge and attach any exclusion zone map]

E. Secretary of State's view

[Please insert SoS view as appropriate]

The Secretary of State has not yet received any reports. A supplementary statement will be submitted providing the Secretary of State's view once reports have been received.

The Secretary of State opposes/does not oppose the application for absolute discharge in this case. *[delete as appropriate]*

**ANNEX B
OFFICIAL – SENSITIVE**

[NB: If you consider that the SoS should not oppose AD, you must refer the case to your Head of Team initially]

The Secretary of State's view is that absolute discharge should not be granted unless it is clear that restrictions, including the power to recall to hospital, are no longer required to ensure the patient's safe management.

The Secretary of State is of the view that a continuation of the current conditions of discharge and the power to recall to hospital is necessary both for the protection of the public and for the patient's own health and safety for the following reasons:

[Please insert reasons, relevant to the individual case why you consider restrictions remain appropriate. Guidance: does the patient still have a mental disorder? Do they continue to take medication? Even if there is no existing disorder, is there a possibility they could relapse in the future? What would the risks to the public be if they did relapse and were not supervised in the community/subject to recall by the SoS? – consider nature, gravity and circumstances of index offence, nature and gravity of mental disorder, risk and likelihood of patient re-offending and degree of harm likely, risk and likelihood of recurrence or exacerbation of mental disorder, risk and likelihood of need to recall in the future]

ANNEX C
OFFICIAL – SENSITIVE



Ministry
of Justice



HM Prison &
Probation Service

**NOT TO BE DISCLOSED TO THE PATIENT WITHOUT THE EXPRESS PERMISSION
OF THE TRIBUNAL**

Secretary of State for Justice supplementary statement to the First-tier Tribunal (Mental Health) /
Mental Health Review Tribunal for Wales

Reason this statement is not to be disclosed

[choose applicable wording]

Where the Tribunal has not yet made a decision on non-disclosure

This supplementary statement is provided in order to comment on the report of [insert name] dated [insert date]. It is noted that the Responsible Authority has sought a direction that prohibits the disclosure of this report to the patient.

The Secretary of State makes no comment on the Responsible Authority's application for a non-disclosure direction, but submits this supplementary statement as a document not to be disclosed without the express permission of the Tribunal.

Where the Tribunal has directed it is prohibited to disclose the report in question

This supplementary statement is provided in order to comment on the report of [insert name] dated [insert date]. It is noted that Tribunal has directed that this report must not be disclosed to the patient. As this statement comments on that report, it is submitted as a withheld report, and must not be disclosed to the patient without the express permission of the Tribunal.

[NB If neither scenario above is applicable, please seek guidance from your Deputy Head of Casework]

Patient's Name and any alias: «PTNT_FNAME1» «PTNT_SNAME»

Date of birth:

Name of hospital:

Tribunal reference: ***[Please insert the tribunal's reference number – found on notice of hearing email]***

A. Secretary of State's comments

[Please insert details of the withheld report you are commenting on]

Ministry of Justice Ref: «MNP_CASE_NUM»

Date: DD/MM/YYYY