PRACTICE GUIDANCE ON PROCEDURE FOR HANDLING REPRESENTATIONS FROM VICTIMS IN THE MENTAL HEALTH JURISDICTION OF THE HEALTH, EDUCATION AND SOCIAL CARE CHAMBER[1]

PRACTICE GUIDANCE NO. 2 OF 2025

This Practice Guidance revises and replaces the Practice Guidance on Procedure for Handling Representations from Victims in the Mental Health Jurisdiction, dated 23 August 2023

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Unless stated otherwise, the Rules referred to in this document are the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008

[1] Issued by the Chamber President under Schedule 4 of the Tribunals, Courts and Enforcement Act 2007

I. BACKGROUND

1) This Guidance Note is drafted to assist judges and members of the Health, Education and Social Care Chamber who sit in the Mental Health jurisdiction ("the tribunal"), in managing, amongst other things:
    a representations from victims;
    b applications to read victim impact statements;
    c applications for attendance at hearings from victims; and
    d applications for reasons for decisions from victims.

2) This revised guidance is issued by the President of the Health, Education and Social Care Chamber following the introduction of a new right under section 21 of the Victims and Prisoners Act 2024 ["VPA"] (amending the Domestic Violence, Crime and Victims Act 2004 ["DVCVA"]) to confer upon victims in restricted patient cases the right to provide a victim impact statement and, unless there are good reasons to prohibit it, attend a tribunal hearing to read it. At the time of writing, this amendment is due to take effect from 25 June 2025.

3) It also incorporates the decision in *Maher v FtT (Mental Health) and Ors* [2023] EWHC 34 (Admin) (*'Maher'*), which concerned a claim from Teresa Maher, whose son Kyle was unlawfully killed. The intention is to ensure that going forward victims' representations are also considered as part of the open justice framework identified in that judgment.

II. VICTIMS

4) Both the DVCVA (s.32) and the VPA (s2) require the Secretary of State for Justice to issue a code of practice on the services provided to a victim of criminal conduct ('the Victims' Code')).

5) The meaning of 'victim' for the purposes of Part 1 of the VPA is set out in section 1 of the VPA.

6) Further, the most recent version of the Victims' Code, updated on 29 January 2025, also contains a definition for a victim. At the time of issuing this guidance, the Victims' Code is likely to be subject to further review.

III. STATUTORY DUTY

7) Where the court sentenced the patient/offender to certain 'disposals' (see paragraph 8 below), the tribunal has a statutory duty[2] to permit a victim, usually via their Victim Liaison Officer ('VLO'), to make representations to the tribunal on what conditions

[2] Chapter 2 of Part 3 of the Domestic Violence, Crime and Victims Act 2004 (DVCVA)

should be attached to the patient's discharge from hospital[3], so long as sentencing occurred on or after 1 July 2005 or, for non-restricted patients, after 3 November 2008. This duty is not retrospective and applies only to victims.

8) Those disposals include the following:

- those convicted of a sexual, violent or terrorism offence who are then made subject of a hospital order;
- those found to be
  a) unfit to plead and to have committed the act or made the omission charged as the offence; or
  b) not guilty by reason of insanity, under the Criminal Procedure (Insanity) Act 1964 as amended by the DVCVA in respect of a sexual, violent or terrorism offence; and are then made subject to a hospital order;
- those convicted of a sexual, violent or terrorism offence, who are then made subject of a hospital direction and limitation direction (if the associated prison sentence is for 12 months or more); and
- those sentenced to 12 months imprisonment or more, for a sexual, violent or terrorism offence, and transferred from prison to hospital, under a transfer direction.

9) Under Schedule 6 to the Mental Health Act 2007, which amends the DVCVA, these rights are also extended to the victims of a sexual, violent or terrorism offence committed by patients who are detained in hospital but are not subject to restrictions.

IV. PRELIMINARY MATTERS

10) There are three important considerations that victims, probation bodies, and others should bear in mind when contemplating contacting the tribunal or providing a victim impact statement:

- Victims and their close family members are not parties to the case. Parties to mental health cases are the patient, the 'responsible authority' (the managers of the hospital), the Secretary of State for Justice (if the patient is a restricted patient), and any other person who starts a case by making an application (Rule 1(3)).
- When a person is detained under the Mental Health Act 1983 ('MHA'), they are diverted away from punishment for treatment. The person being detained is a mental health patient. The patient's privacy will form part of any considerations being balanced when an application is made.
- When discharge is considered by the tribunal it is, pursuant to the MHA, focused on the statutory criteria set out in that Act. The tribunal cannot operate outside of the statutory scheme.

[3] https://www.gov.uk/mental-health-tribunal-victim-representations

V. VICTIM LIASON OFFICERS

11) VLOs will act as a bridge between the victim, probation bodies, and the tribunal.

12) The tribunal would ordinarily expect any applications to come through the VLO or hospital manager, rather than directly from the victim.

VI. VICTIM IMPACT STATEMENTS

13) Section 21 of the VPA provides:

> *21 Victim impact statements to Mental Health Tribunals (restricted patients)*
>
> (1) Chapter 2 of Part 3 of the Domestic Violence, Crime and Victims Act 2004 (victims' rights to make representations and receive information) is amended as follows.
>
> (2) In section 37(8)(c)(i), for "that area" substitute "that local probation board".
>
> (3) After section 37 insert—
>
> *"37ZA Victim impact statements where restriction order made*
>
> (1) This section applies if, in a case where section 37 applies, an application or reference mentioned in subsection (5) of that section is made to the First-tier Tribunal or the Mental Health Review Tribunal for Wales.
>
> (2) The relevant probation body—
>
> (a) must take all reasonable steps to ascertain whether a person who appears to the body to be the victim of the offence or to act for the victim of the offence wishes to provide a victim impact statement to the body, and
>
> (b) if the person provides such a statement, must forward it to the tribunal.
>
> (3) Where a victim impact statement has been forwarded to the tribunal under subsection (2), the tribunal must—
>
> (a) allow the person who made the statement to request permission to read the statement to the tribunal at a relevant hearing, and
>
> (b) grant such permission unless the tribunal considers that there are good reasons not to.
>
> (4) The tribunal may have regard to the statement when determining a matter specified in section 36(5)(a) or (b) (but must not have regard to it for any other purpose).
>
> (5) In this section—

"relevant hearing" means any hearing held by the tribunal before making a decision which disposes of proceedings on the application or reference mentioned in subsection (1);

"the relevant probation body" has the meaning given in section 37(8);

"victim impact statement" means a statement about the way in which, and degree to which, the offence has affected and (as the case may be) continues to affect the victim or any other person."

14) Under section 37ZA of the DVCVA, and only in a qualifying restricted case, victims of restricted patients now have an unqualified right to forward a Victim Impact Statement to the tribunal. Where they apply to read the VIS at a tribunal hearing, the tribunal must allow them to do so unless the tribunal finds that there are good reasons not to allow it.

15) There is a staged approach:

a. It must be a case where a restriction order applies;
b. The relevant probation body/VLO must take all reasonable steps to ascertain whether a person who appears to the body to be the victim of the offence or to act for the victim of the offence wishes to provide a victim impact statement;
c. The relevant probation body/VLO, if the person provides such a statement, must forward it to the tribunal;
d. The tribunal must then allow the person who made the statement to request permission to read the statement to the tribunal at a relevant hearing and grant such permission, (unless the tribunal considers that there are good reasons not to.)

Purpose of the Victim Impact Statement

16) The amendment introduced by the VPA does not change the requirement to consider the statutory criteria.

17) The relevance of the VIS to the tribunal's decision is, if the tribunal does decide to discharge, what conditions should be imposed upon a conditional discharge. This is because the new provisions provide that the tribunal may have regard to the VIS when determining a matter specified in section 36(5)(a) or (b) of the DVCVA (but must not have regard to it for any other purpose). Section 36(5)(a) or (b) of the DVCVA 2004 provides:

(5) The matters are—

(a) whether the patient should be subject to any conditions in the event of his discharge from hospital [while a restriction order is in force in respect of him];

(b) if so, what conditions;

(c)….

18) As the tribunal may in law only take a VIS into account when considering the issue of conditions, any VIS should be accompanied by any conditions that the victim would like to see imposed in the event of discharge.

19) There is nothing to prevent a victim simply sending in representations as to conditions, as many have always done: they do not have to make a VIS if they do not wish to.

Victim Impact Statement: Procedure

20) If the victim wants to apply to read a VIS to the tribunal, the VLO/probation body must make an application to the tribunal as soon as reasonably possible and, where possible, no later than 28 days before the hearing, by forwarding the request to the tribunal.

21) Any application shall be dealt with as an interlocutory matter by a District Tribunal Judge or Legal Officer ('LO') prior to the hearing. The tribunal must grant the application unless there is good reason not to do so.

22) The judge or LO may take representations from the Responsible Authority ('RA') and/or representative before a decision is made. Once a decision on the application is made, the tribunal will inform the victim and the parties and issue directions in terms of any practical arrangements for the hearing.

23) If the victim wishes to supply a VIS and suggested conditions for the tribunal to consider, but does not want to attend the hearing itself, that should be made clear on the application. Such a request can be accommodated by the tribunal.

24) Similarly, if the victim does not want to read the statement live to the tribunal, the victim may request that their VIS be read out by the VLO or they can ask for it to be prerecorded.

25) The above does not limit a judge's case management powers under Rule 5 or their ability to exclude people under Rule 38(4) at the hearing itself. The tribunal may need to make or alter any decision on the day if new submissions are made.

26) It should be noted that where there is more than one victim wishing to supply a VIS, depending on length, the tribunal will need to consider any impact on the listing window and time estimate for the hearing.

Victim Impact Statement: Best Practice

27) Rule 36(2) permits interested persons to attend and take part in the hearing to such extent as the tribunal considers proper. This gives the tribunal a wide discretion to regulate its own procedure, taking into account relevant circumstances, including the principle of open justice and the presumption of privacy.

28) Many tribunal hearings are now dealt with online via video link. If the victim requests permission to read a VIS and the application is granted, it will be the usual practice that the victim is given the opportunity to read their VIS to the tribunal over the telephone and/or via the Cloud Video Platform at the outset of the hearing, unless there is good reason to depart from that practice.

29) If the victim wishes to attend by video, while the tribunal will be visible, the patient and staff at the hospital may not be.

30) The victim should be made aware that they must read out only the content of their VIS. They will not be entitled to alter or add to it, unless (with permission) a written supplementary statement has been provided prior to the tribunal hearing. The VLO should ideally be with the victim when they read out their VIS.

31) The victim must also be made aware by the VLO prior to the hearing that their VIS can in law have no effect on the decision whether to discharge the patient, but will only be considered by the tribunal if the tribunal decides to discharge and is considering whether to impose conditions and, if so, what they should be.

32) The new amendment does not provide for the victim to stay throughout the hearing. They will therefore usually leave before any other evidence is given, unless separate application is made and permission granted (see paragraph 48 below).

VII. VICTIMS WHO WISH TO KNOW THE DATE OF THE NEXT HEARING

33) A detained patient may apply to have their case heard by a tribunal once each year. If the patient does not apply, their case is currently referred to the tribunal every three years. In addition, after a conditionally discharged patient has been recalled, the Secretary of State for Justice (SOSJ) must refer the case to the tribunal within one month of recall.

34) Where a victim wishes to be advised of the date of any pending tribunal proceedings concerning that patient/offender, their VLO shall, following a written request from the VLO to the tribunal on behalf of the victim, be informed in advance of the date (but not the venue) fixed for any hearing concerning that patient.

35) Such a request should be addressed to HMCTS Mental Health: mhtcorrespondence@justice.gov.uk

36) The tribunal will log and acknowledge all such requests. The VLO/victim will subsequently be informed of the date fixed for the hearing. (NB. this is not a notification under Rule 33(e), but merely an informal practice to be adopted in order to allow a victim to know when a tribunal hearing is taking place so that the victim may have the opportunity of providing written information to the tribunal in advance, should they wish to do so (pursuant to Rule 5(3)(d) and Rule 15(1)(e)(ii).))

37) It may be that, once notified, at that stage the victim will want to provide a VIS, the procedure for which is set out above [para 20].

VIII. VICTIMS WHO WISH TO PROVIDE REPRESENTATIONS ON DISCHARGE CONDITIONS TO THE TRIBUNAL

38) Having submitted a written request to be advised of the date fixed for any hearing concerning a restricted patient in advance of the hearing, a victim has the right to provide to the tribunal (preferably via the VLO) a VIS and any relevant representations that they wish the tribunal to consider relating to discharge conditions.

39) The representations from the victim should focus on the following:

- whether the patient should, in the event of their discharge or release from detention, be subject to any conditions and, if so,
- what particular conditions should be imposed and why.

40) The victim should be advised by the VLO that the tribunal will be required to consider a large amount of information from various sources. A victim's representations and information, whilst potentially relevant and helpful, are only part of a range of factors that will help inform the tribunal's final decision concerning the conditions that it imposes upon the patient.

IX. DISCLOSURE OF THE VICTIM'S EVIDENCE TO THE PATIENT

41) Rule 15(2) provides that the tribunal may admit in evidence any document or written material, whether or not such document or material would be admissible in a civil trial.

42) As a matter of basic procedural fairness, patients can usually read and hear what is said about them and this includes representations made by victims at the hearing. Victims should therefore be made aware by the VLO that information they give is highly likely to be disclosed to the patient.

43) A victim who is concerned about this should contact their VLO in restricted cases or the hospital manager in unrestricted cases to seek advice.

44) A victim may apply for their representations to be withheld from the patient, but this will normally only be allowed in certain circumstances. Such an application would need to be judicially considered and any representations must be made at the time the material from the victim is submitted.

45) Under Rule 14(2), for the tribunal to withhold information from any party they must be satisfied that:

a) there is a likelihood of serious harm to someone if the information is disclosed, and
b) having regard to the interests of justice, withholding the information is proportionate.

46) When deciding whether it is in the interests of justice and proportionate to direct that the material must be withheld from the patient (or another party), the tribunal must ask itself whether non-disclosure would prevent the patient/party from participating effectively in all aspects of the proceedings, including the hearing (see *RM v St Andrew's Healthcare* [2010] UKUT 119 (AAC)). Partial or redacted disclosure may be a consideration.

47) If the tribunal decides to prohibit disclosure to the patient having heard representations from the victim and/or others, it may still send a copy of the material to the patient's legal representatives (rule 14 (5) and (6)). They will then be able to make an application for disclosure and, if successful, this may lead to the disclosing of some or all the information to the patient. If the application is not allowed, they will not be permitted to disclose such material, or the information contained within it, to the patient.

X. APPLICATION FROM A VICTIM TO ATTEND THE HEARING

48) In most cases, a written statement or the opportunity to read a VIS at the start of the hearing will be the most satisfactory way for the victim to express their views because direct involvement in the proceedings, or a procedure that brings the victim into direct contact with the patient, is in many cases unlikely to be helpful to the victim, to the patient, or to the tribunal.

49) Any request to attend the whole or part of a hearing will be treated on a case-by-case basis applying the principles of open justice, the overriding objective as set out in Rule 2, and the fact that the hearing should be in private unless otherwise ordered. Any application to attend may require the tribunal to seek representations from the parties.

50) In deciding whether a victim should attend throughout or part of a hearing, the tribunal is likely to have regard, amongst other things, to:

(a) the principle of open justice and Rule 2;
(b) any need to protect the rights of the parties, including the presumption of privacy;
(c) the nature of the evidence in the proceedings;
(d) whether the tribunal location where the hearing will be held has video or other facilities appropriate to allow access to the hearing, and whether it would be practicable or proportionate to move to another location or hearing room;
(e) whether there is any risk of disruption to the hearing;
(f) any representations the parties may wish to make.

51) Rule 38(4) and (5) will be a consideration when a tribunal is deciding what approach to take.

XI. SHARING THE HEARING OUTCOME AND CONDITIONS OF DISCHARGE WITH THE VICTIM

52) In restricted cases, the tribunal office should, upon request, be able to inform the VLO of the relevant aspects of the tribunal's discharge conditions in writing. In particular, the victim is entitled to know:

- whether the patient is to be discharged and, if so, when the discharge will take effect;
- if a restricted patient is to be discharged, whether the discharge is to be absolute, or subject to conditions;
- if a restricted patient is to be discharged subject to conditions, what those conditions are in general terms;
- if a restricted patient has previously been discharged subject to conditions of which the victim has been notified, of any variation to these conditions by the tribunal; and
- if any restriction order is to cease to have effect by virtue of action to be taken by the tribunal, of the date on which the restriction order is to cease to have effect.

53) In unrestricted cases, the hospital manager is usually responsible for notifying the victim of the outcome of the hearing. Hospital authorities as parties to the proceedings must comply with the Rules, particularly Rule 14(7), to ensure disclosure is limited to outcome and conditions. In the event of doubt, an application should be made to the tribunal for it to consider further disclosure.

XII. SHARING THE TRIBUNAL'S REASONS WITH THE VICTIM

54) In restricted cases, the position has been clarified following the decision in *Maher*, and now focuses upon the rights of victims to obtain information regarding the tribunal's decision. *Maher* establishes that the tribunal has a discretionary power to disclose the reasons or, if there are factors that weigh against disclosure of some or all of the reasons (as there may be), to consider providing an overview (the gist or summary) or a redacted version of the reasons for the decision to the victim.

55) Requests should be made in writing to the tribunal office: HMCTS Mental Health, PO Box 8793, 5th Floor, Leicester, LE1 8BN or via email: mhtcorrespondence@justice.gov.uk. To assist the judge, the victim /VLO should explain the reasons for the request and why it will advance the open justice principle.

56) The fact that the request from the victim/VLO may come after the tribunal's final decision has been issued (and the proceedings before the tribunal have therefore ended) shall not prevent the tribunal from considering such a request (paragraph 99 of *Maher*).

57) Once a written request is received, the tribunal will consider the application by applying the principle of open justice. The tribunal may only derogate from that open justice principle where it is strictly necessary to protect the privacy of the patient or others – see *Maher* at 116, which confirms *"The reasons for and against rebutting the presumption of privacy in mental health cases needed to be weighed against the open*

justice principle as a proportionality exercise for the FTT to undertake when considering whether to exercise its discretion."

58) The tribunal will therefore consider whether disclosing the information is practicable and proportionate and may assist in justice being seen to be done, and in turn, ensuring public confidence in judicial decisions, whilst also considering the privacy of the patient or others.

59) While not an exhaustive list, any application should be considered with the following factors in mind:

1. Derogations from the principle of open justice must be ordered only when it is necessary and proportionate to do so, with a view to protecting the rights which the patient (or others) are entitled to have protected (*Maher*, para 107).
2. The discretionary power vested in the tribunal must be exercised on each occasion in the light of the circumstances at the time (*R (MAS Group) v SSERA* [2019] EWHC 158, at para 56 and 57). Whether a departure from the principle of open justice is justified in any particular case will depend on the facts of that case. The tribunal has to conduct a balancing exercise that will be fact-specific.
3. The tribunal shall take into account not only the interests of the patient, but also engage in the wider public interest contained in the open justice principle, which is to both assist in justice being done through transparency and to enable the public to have confidence in the system.
4. It does not need to be all or nothing. The tribunal may consider providing the victim with a gist or summary of the reasons in a way that would protect the patient's privacy, but also provide reassurance and understanding to the victim.
5. Any risk of harm that the disclosure may cause to the maintenance of an effective judicial process or to the proper administration of justice or the legitimate interests of others, may amount to reasons for redaction or refusal.
6. Where it is proposed no reasons can be given to the victim, the tribunal must explain why a redacted version of the decision could not meet the privacy presumption or why redacted reasons were not possible. As part of this exercise, the tribunal must engage sufficiently with the reasons that the victim has put forward for disclosure.

60) If the reasons for the decision are disclosed to the victim, they will have been provided in response to the victim's specific request via their VLO and therefore disclosure of the reasons will usually be restricted to the parties and the victim/VLO. The default position shall remain that it cannot be publicised or shared without the permission of the tribunal. (Section 12 of the Administration of Justice Act 1960 provides that where a court is sitting in private, as is nearly always the case in Mental Health proceedings, publication of information relating to proceedings shall be a contempt of court (s12(1)(b).)

61) An application to publish a decision or summary may be made separately to the Deputy Chamber President of the tribunal. The tribunal can exercise its authority to disclose information more widely under Rule 14(7), but this must be exercised consistently with a range of considerations, including the open justice principle, the Article 6 and 8 rights of the patient and others, and with the overriding objective of Rule 2 in mind. This may involve taking representations from the parties. The tribunal is open to such applications and will make decisions on a case-by-case basis.

XIII. FURTHER REVIEW

62) A victim is not permitted to make an application for permission to appeal on a point of law to the Upper Tribunal under s.11 of the Tribunals, Courts and Enforcement Act 2007 or request the tribunal to review a Conditional Discharge Decision under Rule 49, because those rights are limited to parties to the proceedings, and a victim is not a party.

63) However, the victim may have standing in judicial review proceedings if they believe that the decision may be unlawful, irrational or Wednesbury unreasonable. They are therefore entitled to take legal advice on such matters.

JUDGE M SUTHERLAND WILLIAMS
PRESIDENT
HEALTH, EDUCATION AND SOCIAL CARE CHAMBER

27 May 2025