

THE MENTAL HEALTH (CARE & TREATMENT)
(SCOTLAND) ACT 2003

The Mental Health Act

Are You a **Named Person?**

**A Guide Supporting
the Role of Named Person**

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(SCOTLAND) ACT 2003

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Are You a Named Person?

A Guide Supporting the Role of Named Person

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Contents

Introduction – Service User Representation

PART ONE – THE NAMED PERSON

1.	What does a named person do?	2
2.	Can a service user have more than one named person?	2
3.	What’s the difference between a carer and a named person?	3
4.	What is an independent advocate – and can they be the named person?	3
5.	Who can choose a named person?	4
6.	Can a child choose their named person?	4
7.	Who can be a named person?	4
8.	Can a health professional act as named person?	5
9.	What if I work in a related role, and there may be a conflict of interest?	5
10.	If I accept the appointment, who can help me?	5
11.	What is the Mental Welfare Commission, and will they support me?	6
12.	What happens if I do not wish to act as named person?	6
13.	I’m already a carer – what rights do I have to information?	7
14.	What other rights does a carer have?	8
15.	What further rights does a named person have in representing a service user subject to compulsory measures?	8
16.	What rights does a named person have?	9

PART TWO – PAPERWORK AND PROCEDURES

17.	I’ve agreed to act as named person – so what next?	10
18.	What if the service user does not want a particular person to be appointed as named person – are there any safeguards to prevent this?	10
19.	What if the service user changes their mind?	11
20.	Once I’ve accepted the role, might I be removed by anybody other than the service user?	11
21.	What if I decide that I no longer want to act as a named person?	12
22.	What is an Advance Statement?	12
23.	When can compulsory treatment be given under the Act?	13
24.	How can I object to the service user’s treatment or the compulsory measures?	13

PART THREE – THE MENTAL HEALTH TRIBUNAL

25.	What is the Mental Health Tribunal?	14
26.	How can I contact the Tribunal?	14
27.	How does the Tribunal hear cases?	15
28.	I would like legal advice, but am worried about the expense – will I qualify for legal aid?	15
29.	If I have legal representation at the Tribunal, what role will I then have?	15
30.	Will I be entitled to claim travel and other expenses?	16
31.	I have information that I would like the Tribunal to consider...	16
32.	What information will I receive prior to the hearing?	16
33.	Will I receive all the information, even if there are confidentiality issues in the case?	17
34.	What if I don't want to see all the documents regarding the service user?	17
35.	Where will the hearing be held?	17
36.	Who else might be invited to attend the hearing?	17
37.	What is a curator <i>ad litem</i> ?	18
38.	What will happen on the day?	18
39.	When and how will I be given the Tribunal's decision?	18
40.	What if I am not happy with their findings and want to appeal?	19
	Contacts mentioned in this guide	20
	Other contacts	20
	Glossary	21
	Acknowledgement	22

Introduction – Service User Representation

In March 2003, the Scottish Parliament passed The Mental Health (Care and Treatment) (Scotland) (Act 2003) “the Act”, which came into effect in October 2005. The Act set out how people can be treated if they have a mental illness, a learning disability or a personality disorder. It covers such issues as:

- What a person’s rights are under the Act.
- What safeguards are in place to ensure those rights are not abused.
- When a person can be taken into hospital against their will.
- When a person can be given treatment against their will.

Detailed information about the Act can be found on the Scottish Government website at: www.scotland.gov.uk/Topics/Health/health/mentalhealth/mhlaw/home

The Act is based on a set of guiding principles that can be used as a guide to what a service user can expect in their care and treatment, and which most people performing functions under the Act have to consider. These include:

- taking into account the present and past wishes and feelings of the service user;
- taking into account the views of the service user’s named person, carer, guardian or welfare attorney;
- the importance of the service user participating as fully as possible;
- the importance of providing the maximum benefit to the service user;
- the importance of providing appropriate services to the service user; and
- the needs and circumstances of the service user’s carer.

The Act also sets out principles relating to the way in which a function must be discharged. These require the person discharging the function to do so in a way which, for example:

- involves the minimum restriction on the freedom of the service user that appears to be necessary in the circumstances;
- encourages equal opportunities; and
- if the service user is a child, best secures their welfare.

The Act makes provision for new rights for service users and those who care for them, and highlights important issues relating to the representation of service users including: named persons, advance statements and independent advocacy.

PART ONE – THE NAMED PERSON

1. What does a named person do?

A named person is someone chosen by the service user to represent and help protect their interests should they become subject to compulsory measures under the Act. Where the service user hasn't chosen a named person for themselves, one may be appointed either under the default provisions within the Act, or by the Mental Health Tribunal.

As a named person, you have various rights with regard to the welfare of the service user if an application is being made, a certificate has already been issued, or if an order has been made for the service user to be treated under the Act. You must be informed and consulted about some aspects of their care and treatment, and can make certain applications on their behalf. Your views and wishes, and those of the service user, will be taken into account when considering the care and treatment of the service user – unless those wishes are unreasonable or impractical to carry out.

It is important to note that the named person can act independently of the service user, and that they may not always agree with what the service user thinks is in their best interests. The named person in such circumstances has a right to state what their own views are. Acting in someone's best interests is not the same as representing the service user, for instance in a tribunal hearing – that is the role of their lawyer.

For the service user, choosing a named person is a very important decision, as the choice could affect their future welfare. They should be advised to think very carefully about the decision and discuss their choice – with their family and friends, doctors and nurses, and their solicitor or independent advocate if they have one.

The service user will want to be sure that their named person is someone who knows them well, and whom they trust to act in their best interests at all times. Someone who will be able to make important decisions about their care and treatment if they are not able to do so themselves.

If you are asked to be a named person you must ask yourself if you are prepared to invest your time and effort in representing the service user should this be required at some time in the future. You must recognise that the role of named person is not one to be undertaken lightly – not least because the named person can act independently of the service user.

However, you should not feel too daunted by the task, or the level of knowledge that may seem to be required. Nobody will expect you to know what to do for the best all the time, in any given situation. You won't be expected to make decisions on your own, without any support. There are a number of agencies, including the Mental Welfare Commission (covered in more detail later in this document at Q11), who are able to provide support, advice and information.

2. Can a service user have more than one named person?

A service user cannot have joint named persons sharing the role. The named person must be an individual. Of course, you may be supported by others – but they will have no rights or powers under the Act to represent the best interests of the service user.

3. What's the difference between a carer and a named person?

The Act states that a person whose paid job it is to provide care to a service user, or who is a paid or unpaid employee of a voluntary organisation which is providing service to the service user cannot be defined as a carer. Instead, a carer is a person who provides a substantial amount of care on a regular basis, and support to, a service user without any payment being made. They don't have to be a relative. Nor do they have to live with the person they support. Carers may be a spouse, a partner, relatives, friends or neighbours.

You may also hear the term: "primary carer". This is the person who provides all or most of the care and support for the service user, without receiving any payment. If there are two or more such carers providing roughly equal amounts of care and support, they must decide between themselves who is the primary carer. Under the Act, the primary carer has specific rights that cannot be shared.

A carer is not the same as a named person. However, you can be both the carer *and* named person for a service user, if you are already the main carer and the service user then asks you to also be their named person, and you agree. Where a service user hasn't appointed a named person, their carer may become their named person by default, but only if the carer agrees to it.

4. What is an independent advocate – and can they be the named person?

A service user can have both an independent advocate and a named person, but because their roles are different they cannot be the same person.

The Act gives all service users the right to be helped by an independent advocate – they do not have to be in hospital or on any kind of order to receive the help. Independent advocates do not work for hospitals or social services and their services are absolutely free. Independent advocates can help a service user in many different ways from accompanying them to a meeting with a doctor to helping deal with a housing issue.

Independent advocacy is a way to help a service user have a stronger voice and to have as much control as possible over their own life. It is called "independent" because it is not tied to the people who provide other types of services. It does not make decisions on the service user's behalf, guide them, or tell them what to say. Instead it helps service users get the information they need to make real choices and assists them discover all their options. It is there to help service users decide what they want to say, and then to help them say it.

An independent advocate can accompany a service user to a tribunal hearing to support them – but does not have the same rights you, as named person, have to be consulted, informed or to make applications and representations to the Tribunal.

If the service user is in hospital, their doctor, nurse or social worker may provide them with information about advocacy services and give them every opportunity to make contact with advocacy service providers. Alternatively, the service user should be able to approach a nurse for information.

If the service user is under any form of compulsory order, their Mental Health Officer (MHO) is required by law to inform the service user of their right to independent advocacy, and to take the appropriate steps to ensure that the person has the opportunity to make use of the service.

Anyone can find out about agencies that provide a free independent advocacy service – and also obtain a free booklet with more detailed information regarding the use of independent advocates – by checking the Scottish Independent Advocacy Alliance website (see contact details on page 20).

5. Who can choose a named person?

A named person can be chosen by anyone aged 16 or over – so long as a suitably qualified witness can verify that they understand the effect of choosing a named person and was not unduly influenced by others when making their choice. (The person choosing a named person does not have to be a user of mental health services, though clearly this is usually the case.)

6. Can a child choose their named person?

Children under 16 cannot nominate a named person for themselves. The person with parental rights and responsibilities for the child, as long as they themselves are 16 years old or more, will be the named person. Where parental responsibility is shared, the parties must decide between themselves who will act as the named person. Where the child is looked after by a local authority, the local authority will automatically be the named person. In any other case, the child's primary carer (if they are 16 years or over) will be the named person.

7. Who can be a named person?

As a named person, you could be anyone the service user feels can be trusted – if they become subject to compulsory treatment – to always act in their best interest. You could be their carer, spouse, partner, relative, or friend.

You can be a named person if you are a mental health service user, so long as you are – and continue to be – capable of taking on this important role.

You must be aged 16 or over, know what is involved in the role and agree to act as named person. The service user's nomination of yourself as their named person must be signed and witnessed (covered later in this document at Q.17).

Alternatively, where a service user has failed to nominate a named person, one may be appointed under default provisions contained in the Act (see Q.12), or be appointed for the service user by the Mental Health Tribunal.

8. Can a health professional act as named person?

As a general rule, the named person should not be someone responsible for providing professional care to the service user – for example their General Practitioner (GP), Mental Health Officer (MHO) or Community Psychiatric Nurse (CPN). This is because the named person must be able to make independent decisions about what is in the service user's best interests – and this might be different to the care team's views.

9. What if I work in a related role and there may be a conflict of interest?

If you work in a *related* role but are not responsible for the service user's care or treatment – for example, you might be a residential housing worker – you could be approached to act as named person and might feel reluctant to decline if, say, the service user has made Declarations (see later at Q.18) stating that their carer and nearest relative shall not be their named person.

In such circumstances, you may wish to accept the named person role, in order to ensure the service user has a named person, but may also feel that there is the potential for a conflict of interests. For example, if an application for a community-based Compulsory Treatment Order (CTO) were to be made specifying the service you work for as part of the care plan, then you might feel a conflict of interest had arisen between your work role and your role as named person.

It would be best practice for you – as a person working in a support role who wishes to undertake the named person role in circumstances like these – to discuss the Nomination with the service user's Mental Health Officer with a view to identifying and preventing any potential difficulties.

Also, it would be best practice for you, in circumstances such as these, to seek guidance and support from your employer before agreeing to act in the named person role. Some organisations have clear organisational stances on whether their staff can ever act in this capacity, in which case individual staff members will not have the discretion to decide for themselves.

10. If I accept the appointment, who can help me?

When you are first appointed as a named person, you should discuss this with the service user's Responsible Medical Officer (RMO). That is, the medical practitioner, usually a consultant psychiatrist, who is responsible for the service user's care and treatment. They will be able to signpost you to someone who will assist with the process. They may also explain the role of the Mental Welfare Commission and the Mental Health Officer (MHO).

11. What is the Mental Welfare Commission, and will they support me?

Any named person can seek the support and guidance of the Mental Welfare Commission – an independent organisation whose job is to safeguard the rights and welfare of everyone with a mental illness or learning disability. Named persons, carers, service users, people who work in the care services, and independent advocates are just some of those who can contact the Commission if they are unsure or unhappy about any aspect of someone's care or treatment.

The Commission is a group of people – including medical practitioners, social workers and lawyers – with experience of mental health and learning disabilities services, medicine, social care and law. Some of the Commissioners have been appointed because they have experience either in using mental health and learning disability services or in caring for a service user.

They have a free phone advice line for people who are concerned about their rights or the rights of others – you can call 0800 389 6809 during office hours to access this.

The Mental Welfare Commission also produce a range of information that can be found on their website at www.mwscot.org.uk (see contact details on page 20).

12. What happens if I do not wish to act as named person?

Nobody has to take on the role of named person – you must agree to it.

A service user who becomes subject to compulsion under the Act might not have a named person for a variety of reasons. In such circumstances, a named person may be appointed for them by the Mental Health Tribunal for Scotland (see later, Q.18), according to rules set down in the Act.

The Act states that if a named person hasn't been nominated, or the person previously chosen is now unable or unwilling to undertake the responsibility, then the service user's primary adult carer (aged 16 or over) will automatically become their named person, but only if the primary carer agrees. If the service user has more than one adult carer, they can decide between them who will undertake the responsibility. And if no adult carer is willing to become the named person, then it will be the service user's nearest relative – if the relative agrees.

Please note that as a carer or relative, you might become named person even if the service user hasn't nominated you. In such circumstances – if you become the named person by default – and do not want to take on the role, you must let the service user know this. You must also tell the local authority that you do not want this role (see later on how to decline to act, Q.21).

If there are no carers or relatives willing or able to be named person, then the Mental Health Officer or anyone else who has an interest in the service user's welfare can apply to the Mental Health Tribunal to have another person appointed as named person.

13. I'm already a carer – what rights do I have to information?

Anyone involved in the care and treatment of the service user must provide you, as a carer, with the information you need to provide effective care. However, you will not receive any personal information that the service user does not want to be given to you.

Unless a service user has given permission, hospital and other staff are obliged by law not to share their personal health information with people such as a relative, carer or friend.

Unfortunately this may sometimes mean that staff may be unable to release information to people who are desperate to understand what is happening to their friend or family member. But the law is very clear regarding this issue. Medical information cannot be shared unless the service user gives permission – though hospital staff can provide general information about mental illnesses, signpost carers support services and listen to what carers have to say about the service user and their care.

The service user can give full or limited consent to the sharing of information with you. That is, they can give permission for all and any aspects of their care and treatment to be discussed, or can say if there is some particular information about their illness or treatment that they don't want to be shared, while allowing other information to be passed on.

There are limited exceptions to this. Where a person has been appointed under other legislation to have specific powers to act on behalf of a service user (for instance to have parental rights for a child or to act as a guardian or welfare attorney for a person with incapacity) they may, if they have appropriate welfare powers, be allowed to see the service user's records and discuss their care. In these special cases, that person will not receive any information that the service user has told NHS staff they don't want them to have, or which staff feel would be harmful to the service user's health or the health of others.

The best way for a service user to ensure that information can be given to a member of their family or to their carer, should they become too unwell to give nursing staff permission at the time, is to have their consent included in an Advance Statement (see later, Q.22) lodged with their records at the hospital. This allows them to choose who the nursing staff should contact and can talk to if they are unwell in the future.

The Mental Welfare Commission has very useful guidance on Carers and Confidentiality which explains the issues in more detail.

www.mwscot.org.uk/web/FILES/Publications/Carers_Confidentiality_web.pdf

A comprehensive guide to all aspects of patient confidentiality can be found on the NHSScotland website at:

<http://www.confidentiality.scot.nhs.uk/publications/6074NHSCode.pdf>

14. What other rights does a carer have?

As a carer, your views must be taken into consideration whenever decisions about the service user's care and treatment are made.

Primary carers have the right to attend a Mental Health Tribunal and present relevant information. Other carers may ask the Tribunal if they may be invited to attend, but may only do so if the Tribunal considers them to have an interest in the application being considered.

Primary carers have a right to ask their local authority and NHS Board to carry out an assessment of the service user's needs.

The Act requires that the primary carer has the right to be notified by hospital management when the service user they support is going to be transferred to another hospital in Scotland under the Act. Unless this transfer is urgent (in which case they should be notified as soon as possible after the transfer), they have the right to be informed at least seven days beforehand.

15. What further rights does a named person have in representing a service user subject to compulsory measures?

A named person has a number of rights or "powers" in representing a service user subject to compulsory measures, which appear throughout the Act. For example:

- to be consulted when certain things happen – such as when a short-term detention or an application for a compulsory treatment order (CTO) is being considered;
- to be notified that the RMO has applied to the Tribunal for changes to the service user's order;
- to be notified when certain changes to the service user's circumstances happen – for example, if their short-term detention is revoked, where a certificate suspending the service user's detention in hospital is granted or if the service user is to be transferred to another hospital;
- to receive copies of certain records or information which are given to the service user, including the record made if treatment has been given which conflicts with the service user's Advance Statement (if they have made one);
- to make applications or appeals to the Mental Health Tribunal;
- to be a party in any hearing involving the service user and to speak and give or lead evidence at a hearing;
- to consent to two medical examinations taking place at the same time, if the service user is not capable of giving their consent to this (two medical examinations are needed when an application is being made for a compulsory treatment order);
- to ask for an assessment of the service user's needs from the local authority and/or Health Board.

16. What rights does a named person have?

The named person also has rights while the service user is being treated on an informal, voluntary basis. These are:

- to ask for an assessment of the service user's needs from the local authority and/or Health Board;
- to ask the Tribunal to review the need for the service user to remain in hospital when not formally detained – that is, to challenge situations where you believe a voluntary patient is being detained unlawfully.

PART TWO – PAPERWORK AND PROCEDURES

17. I've agreed to act as named person – so what next?

Once you have agreed to act as named person the service user must complete what is known as a Nomination. It must be made in writing, signed by the service user, and then be signed and dated by a witness. It does not have to be typed, but it must be easily readable. Any style of Nomination which contains the essential information and is properly signed and witnessed is acceptable.

See Form 1 in folder on back cover for a form you may wish to use. However, note that all the forms contained in this booklet are intended simply as guides and do not have to be used).

The witness must certify that the service user understands the effect of choosing a named person, and that they have not been under any undue pressure from anyone in making their choice. The witness must be chosen from a specified group of professionals – a medical practitioner, clinical psychologist, occupational therapist registered with the Health Professions Council, a registered nurse, social worker, solicitor or certain persons working in or managing certain care services.

When the Nomination of you as the named person has been completed and witnessed, copies should be sent to all those who need to know about it. They might include: the primary carer, family members, solicitor, nurse, independent advocate, guardian, welfare attorney, Responsible Medical Officer (RMO), Mental Health Officer (MHO), General Practitioner (GP), and any other people who are close to the service user.

It is very important for the service user to keep a list of the names and contact details of everyone who has been given a copy of their Nomination. If the service user later decides to change their named person, they will need to notify everybody who received a copy.

As the named person, it would be a good idea for you to hold a copy of the list of names and contact details for safe keeping.

18. What if the service user does not want a particular person to be appointed as named person – are there any safeguards to prevent this?

In view of the provisions for the Tribunal appointing a named person where one hasn't been nominated, you may be concerned that an unsuitable person – perhaps one who doesn't really know the service user, or might not have their best interests at heart – could be given the role. The service user can protect themselves against this by making what is known as a Declaration.

In a Declaration, the service user states the name of any person or persons they do not wish to act as their named person. Such a Declaration does not have to be typed, but it must be easily readable, signed and appropriately witnessed as for a Nomination (see Form 2 in folder on back cover).

19. What if the service user changes their mind?

If a service user changes their mind about their named person, they can make what is known as a Revocation of their Nomination following the usual rules regarding the Documentation – readable, signed and appropriately witnessed, with copies sent to everyone on their contact list (see Form 3 in folder on back cover). A copy of the Revocation should be sent to everyone who received the Nomination – including the named person.

If the service user wishes to appoint a new named person they will need to complete one document revoking the original Nomination, and another document making a new Nomination. Copies of both documents should be sent – preferably at the same time – to everybody who received copies of the original Nomination, including the original and new named persons. The contact list should be updated to include the new named person.

The service user can also revoke a Declaration that identified someone they didn't want to be their named person, if they later decide that the person would be suitable – despite their earlier reservations, by following the usual rules in regard to legibility, signing and witnessing (see Form 4 in folder).

If at some later date they wish the person referred to in the original Declaration to act as their named person, they will need to complete one document revoking their Declaration, and another document – a Nomination – appointing same as their named person. Again, copies of both documents should be sent to everybody on the contact list.

20. Once I've accepted the role, might I be removed by anybody other than the service user?

The Mental Health Tribunal can change a nominated or appointed named person if he or she is thought to be acting inappropriately. It may be, for example, that the named person is always arguing for the opposite of what the service user said he or she would want in their Advance Statement (see Q.22), or are thought to be acting in a “bullying” fashion towards the service user. In such circumstances – and while it will always take account of the service user's wishes – The Tribunal can make whatever decisions it thinks are in the service user's best interests.

In addition, a number of people can apply to the Tribunal to have the named person changed if he or she is thought to be unsuitable or acting inappropriately. These include the service user's Mental Health Officer (MHO), Responsible Medical Officer (RMO), hospital managers if the service user is in hospital, their welfare attorney if they have one, their guardian if they have one, family and relatives, and anyone else who has an interest in the service user's welfare. In response, the Tribunal will make whatever decision it thinks is in the service user's best interests.

In the case of those service users who are not yet 16 years of age, an application to remove or replace their named person can be made by someone with parental responsibilities.

21. What if I decide that I no longer want to act as a named person?

Having agreed to act as a named person, you can change your mind at any time by giving notice in writing to the service user and the local authority for the area where the service user lives. Copies of your withdrawal from the role should be sent to everybody on the contact list. That is, everybody who received copies of your Nomination.

22. What is an Advance Statement?

In normal circumstances, health professionals should work with service users to find out what care and treatment options they think might be best for them. However, if the service user becomes very ill, it might be difficult for him/her to be involved or to make their views clear. In order to ensure that their wishes about their care and treatment will be taken into account despite such circumstances, the service user can prepare an Advance Statement.

An Advance Statement is a document that the Act says any service user has a right to complete. The statement should be written when the service user is well and has capacity to understand the choices for their treatment. It sets out their views on what care and treatment they would (or would not) prefer to receive in future if they become unwell and require treatment. It can include their wishes about medications, therapies and particular treatments, like ECT, or where they would prefer to be treated, such as a particular ward. The Advance Statement only becomes relevant if, at some time in the future, the service user becomes too unwell to make decisions about their treatment.

If someone involved in the care and treatment of a service user subject to compulsory measures makes a decision that goes against their Advance Statement, the service user will be informed in writing of the reasons for this. A copy of this letter will also be given to you as the service user's named person, and to their welfare attorney and guardian if they have them. The Mental Welfare Commission will also be informed and may investigate further.

At the same time that they are making an Advance Statement, the service user may choose to make a Personal Statement, which explains what actions they would like others to take (other than care and treatment – which is covered in their Advance Statement) if they become unwell in the future – for example, if they are taken into hospital, who will look after their children or pets. This is a separate document from the Advanced Statement.

For further details on Advance Statements, see the Scottish Executive's booklet:
The New Mental Health Act – A Guide to Advance Statements.

23. When can compulsory treatment be given under the Act?

People's needs for care and treatment can vary greatly depending on their particular circumstances. The Act deals with situations where it is believed someone needs care and treatment, but that care and treatment cannot be provided on a voluntary basis – either because the person refuses or is unable to accept it (perhaps because they are too ill to make a decision about it). Powers are set out in the Act which allow care and treatment to be provided in these types of situations – subject to conditions and safeguards being met.

Additionally, there will be times when a person who is subject to criminal proceedings may be in need of care and treatment. In such cases, various orders may be made by a court under the Criminal Procedure (Scotland) Act 1995.

Service users may be placed on different kinds of compulsory orders, according to their particular needs. Some are short-term powers to deal with emergency situations.

For further details on Compulsory Treatment, see the Scottish Executive's booklets: *The New Mental Health Act – A guide to compulsory treatment orders*, and *The New Mental Health Act – A guide to consent to treatment*.

24. How can I object to the service user's treatment or the compulsory measures?

As a named person, if you don't think the principles set down in the Act are being applied to the care and treatment of the service user you are representing – whether by an individual or organisation – you are advised, in the first instance, to discuss your concerns with the service user's Responsible Medical Officer (RMO) or Mental Health Officer (MHO). They should explain to you why they think the treatment is in the service user's best interests.

If you're still not satisfied, as the service user's named person you can contact the Mental Welfare Commission who provide free information and advice. If they agree that the principles are not being applied in a particular case, they can take this up with the health professionals providing the care.

Finally, if you are still unhappy about the service user's treatment, or their being subject to compulsory powers, you may be able to apply to the Mental Health Tribunal to review the case. You can appeal to the Tribunal against a short-term detention. If the service user is on a Compulsory Treatment Order (CTO), then you can appeal against the order, or ask the Tribunal to change the requirements in the order, if the service user has been subject to an order for longer than 3 months.

If you wish to appeal on the service user's behalf, then you should consider seeking advice from a solicitor. Legal aid may be available to assist with the appeal.

You can also make a complaint through the Health Board or local authority complaints system about the service the service user has received.

PART THREE – THE MENTAL HEALTH TRIBUNAL

25. What is the Mental Health Tribunal?

The Mental Health Tribunal for Scotland is an independent organisation introduced by the Mental Health (Care and Treatment) (Scotland) Act 2003. Its creation marked a fundamental change in the way decisions are made about long term compulsory care and treatment of people in Scotland who have a mental health disorder. It aims to provide a responsive, accessible, independent and impartial service. Its role is to make decisions about compulsory measures under the Act in relation to a service user's care and treatment.

They consider the following types of proceedings:

- applications to the Tribunal, e.g. for a compulsory treatment order (CTO),
- appeals to the Tribunal, e.g. appeal against a short-term detention certificate or a compulsory treatment order (CTO),
- appeals relating to certain orders relating to criminal proceedings/offences,
- applications for variation of an order,
- appeals against the Responsible Medical Officer's (RMO) determination to extend or revoke (cancel) an order,
- appeal against transfer to another hospital (either within or outwith Scotland), and
- application against being held in conditions of greater security than are necessary. (This right to review only applies to people in the State Hospital in Carstairs),
- references to the Tribunal by the Mental Welfare Commission,
- references to the Tribunal by the Responsible Medical Officer (RMO) where a recorded matter is not being provided,
- cases remitted to the Tribunal by the Sheriff Principal or the Court of Session,
- the Tribunal also hears cases involving people on orders resulting from criminal proceedings. Cases involving restricted patients will be chaired by a sheriff.

If you or the service user want to apply to the Tribunal for a review of an order you can write to the Tribunal Administration telling them you would like to make an appeal against an order. You will need to provide details of the service user's name, the name of their doctor and the hospital in their order. The Tribunal Administration will advise if an appeal is possible and if so, how to go about it. Alternatively you may seek advice from a solicitor who can make an application for you.

26. How can I contact the Tribunal?

The Tribunal Administration (MHTSA) is based in Hamilton, Lanarkshire. All communication and papers should go through that office (see contact details on page 20).

27. How does the Tribunal hear cases?

The Mental Health Tribunal (MHTS – the umbrella organisation) hears cases by means of mental health tribunals held in venues across Scotland. Each of the Tribunals has a panel of three members – legal, medical and general. The legally qualified member will chair the hearing. Medical members are psychiatrists. General members are people with some special interest in mental health including nurses, social workers, psychologists, service users and carers. All have relevant qualifications and experience in dealing with people with mental health disorders. None of the panel should have had any previous connection with the service user.

Tribunals should be as informal and comfortable as possible for all those concerned, in order to encourage them to participate in the proceedings. They look at all the relevant information in order to decide what care and treatment is in the best interest of the service user.

28. I would like legal advice, but am worried about the expense – will I qualify for legal aid?

The Tribunal cannot provide any person with legal advice in relation to the 2003 Act or proceedings before the Tribunal. If you require legal advice, you should contact a solicitor.

If as the named person you instruct a legal representative to act on your behalf at the Tribunal, you are entitled to free representation under Assistance by way of Representation (ABWOR). There are no means or merits tests.

29. If I have legal representation at the Tribunal, what role will I then have?

Your solicitor can attend the Tribunal hearing, and act on your behalf. You can still attend the hearing and will be able to answer any questions put to you.

30. Will I be entitled to claim travel and other expenses?

The Mental Health Tribunal for Scotland Administration (MHTSA) will reimburse reasonable travel/other expenses for a named person attending a Tribunal hearing. The most economical mode of travel (normally public transport) must be used. The cost of a taxi may be allowed for aged or infirm attendees but requires advance authorisation by MHTSA. Air travel is only allowed where prior permission of MHTSA has been obtained. Overnight accommodation should only be required in exceptional circumstances and should normally be agreed in advance.

At the hearing, the hearings clerk will provide an expenses claim form which if possible should be completed on the day and handed back with all receipts. Expenses will then be paid at a later date once the MHTSA finance office has processed the claim.

Where a named person is in receipt of benefits, nominal travel expenses may be paid on the day of the hearing. However, this can only take place if the named person has notified the Tribunal in advance of their request – otherwise, the Clerk will not have funds available to make the payment. The named person must then produce evidence to the Clerk on the day of the hearing that they are in receipt of benefits.

31. I have information that I would like the Tribunal to consider...

It is best if you submit any relevant information to the MHTSA at its Headquarters in Hamilton, prior to the hearing. This will allow the Tribunal to pass on the information to other parties. However, if you are unable to do so, you can bring the information to the hearing and give it to the Convenor on the day. A Tribunal Clerk will also be in attendance and they can also help you with any queries you may have.

32. What information will I receive prior to the hearing?

The Tribunal Administration “MHTSA or Administration” team will ensure that the service user and their named person receive information about the time and place of the hearing, and will send them copies of any relevant reports or papers – which will vary according to the nature of the hearing. For example, if the hearing is about an application for a compulsory treatment order (CTO), the papers will include reports from two doctors and from the Mental Health Officer (MHO). For other hearings the papers will usually include a report from the Responsible Medical Officer (RMO), and sometimes a report from the Mental Health Officer (MHO).

The Tribunal will normally send out information well in advance of the hearing, but by the nature of some applications – particularly first hearings for compulsory treatment orders – the notification and papers might arrive with only a few days or with just 24 hours warning in order that there is as little delay as possible and to meet the timing requirements under the 2003 Act.

If the service user and/or their named person have any questions about the hearing, they can contact the Administration.

33. Will I receive all the information, even if there are confidentiality issues in the case?

Generally speaking, you will receive all the information, including any application forms and medical reports in relation to the service user. However, the Tribunal may withhold a document, or part of a document or report, when the information may be considered likely to harm the service user or another person.

34. What if I don't want to see all the documents regarding the service user?

If you decide that you only want to know the current situation regarding the service user, you should notify the Tribunal Administration in writing that you do not wish to receive any documents in relation to the proceedings.

It is not possible to receive some of the documents, and not others. That is, the named person must opt to receive all the documents, or none.

The decision not to receive any of the documents should be considered very carefully because without all the background information, you may not be able to fully represent the service user's interests. If you have a solicitor you can ask the Tribunal to send the documents to them instead of to you.

35. Where will the hearing be held?

The hearing will usually be held in a place near the service user. Their local authority and Health Board have made suitable accommodation available for hearings. This could be in a local hospital or other facilities. However, in some cases all or part of a hearing may be held via a video or telephone link.

Both you and the service user may be able to claim travel and other expenses. The Tribunal Administration will give you information about this, and you can speak to the clerk on the day about getting these paid.

36. Who else might be invited to attend the hearing?

You and the service user will be invited to attend. Others who may attend include the service user's welfare guardian or welfare attorney, if appointed by the service user, along with any other person with an interest who the Tribunal thinks should be allowed to speak. This might include the service user's carer, independent advocacy worker or community psychiatric nurse.

The service user's Responsible Medical Officer (RMO), Mental Health Officer (MHO), and possibly their General Practitioner (GP) may also be invited to the hearing.

If the service user's Responsible Medical Officer (RMO) or Mental Health Officer (MHO) is making an application, it is expected that they will be present at the hearing.

37. What is a curator *ad litem*?

Where the service user does not have the capacity to instruct a solicitor, then the Tribunal or Convenor may appoint a curator *ad litem*. The curator *ad litem* must then decide whether to oppose the application. Where a curator instructs a solicitor to act on behalf of the service user, then the solicitor's fees can be paid through Assistance by way of Representation (ABWOR).

The named person can still make representations to the Tribunal when a curator is appointed.

38. What will happen on the day?

The panel at a Tribunal is allowed a degree of flexibility in deciding how best the hearing should be conducted, but the following may be taken as a reasonable description of what might typically occur.

When you (and the service user) arrive, the Tribunal Clerk should show you where the waiting room, hearing room and other facilities are situated. Later, the Convenor of the tribunal will explain the rules about the hearing, why it is taking place, who is there and what will happen.

During the course of the hearing, people involved in the service user's care and treatment will make their views known, and present information relevant to the case. The three members of the tribunal will read, listen to and discuss the information as it is presented.

39. When and how will I be given the Tribunal's decision?

The tribunal may reach a decision on the day of the hearing, and inform you as to their findings either verbally or in writing on the day of the hearing.

The administration will also send a formal copy of the decision reached by the Tribunal to you and the patient in writing shortly after the hearing. The tribunal will also let the other parties – and any relevant people identified by the panel – know about their decision. A copy of the decision will also be sent to the Mental Welfare Commission. If the case came to the tribunal through the Court system, a copy of the decision will also be sent to the Court.

If a final decision cannot be made on the day of the hearing, an interim order may be granted and a further hearing will be convened at a later date. An interim order can be made to ensure the service user receives the care and treatment they need until a final order is put in place.

40. What if I am not happy with their findings and want to appeal?

If the service user and/or yourself are unhappy with the Tribunal's decision, you may be able to appeal to the Sheriff Principal within 21 days and then to the Court of Session for a review of the decision. The tribunal will explain this when they give their decision.

An appeal can only be made on one or more of the following grounds:

- that the Tribunal's decision was based on an error of law;
- that there has been a procedural impropriety in the conduct of the hearing by the Tribunal on the application;
- that the Tribunal has acted unreasonably in the exercise of its discretion;
- that the Tribunal decision was not supported by the facts found to be established by the Tribunal.

If you or the service user do decide to appeal the decision you should consult a solicitor.

Contacts mentioned in this guide

Mental Health Tribunal for Scotland

1 st Floor, Bothwell House, Hamilton Business Park, Caird Park, Hamilton, ML3 0QA

Telephone 01698 390 000

FREEPHONE: 0800 345 70 60

Website: www.mhtscot.org

Mental Welfare Commission for Scotland

Floor K, Argyle House, 3 Lady Lawson Street, Edinburgh EH3 9SH

Telephone: 0131 222 6111

FREEPHONE: 0800389 6809

Website: www.mwscot.org.uk

Scottish Independent Advocacy Alliance (SIAA)

69a George Street, Edinburgh EH2 2JG

Telephone: 0131 260 5380

Website : www.siaa.org.uk

Other contacts

Depression Alliance Scotland

3 Grosvenor Gardens, Edinburgh EH12 5JU

Telephone: 0131 467 3050 or 0845 123 23 20

Website: <http://www.dascot.org/>

National Schizophrenia Fellowship (Scotland)

Claremont House, 130 East Claremont Street, Edinburgh EH7 4LB

Telephone: 0131 557 8969

Website: www.nsfscot.org.uk

Email: info@nsfscot.org

Scottish Association for Mental Health (SAMH)

Cumrae House, 15 Carlton Court, Glasgow G5 9JP

Telephone : 0141 568 7000

Website: www.samh.org.uk

Scottish Consortium for Learning Disability (SCLD)

The Adelphi Centre, Room 16, 12 Commercial Road, Glasgow G5 0PQ

Telephone: 0141 418 5420

Website: www.sclld.org.uk

Glossary

Act (the): The Mental Health (Care and Treatment) (Scotland) Act 2003.

Advance Statement: a document setting out how a person wishes to be treated if, in the future, they become unwell and unable to express their views.

Carer: any person who provides, on a regular basis, a substantial amount of care for, and support to, a service user – but not as part of their paid employment.

Compulsory Treatment Order (CTO): initiates a course of compulsory care and treatment, based in a hospital or in the community. Lasts for 6 months initially, but can then be extended.

Curator *ad litem*: a solicitor appointed to represent a person who, in the opinion of the Mental Health Tribunal or a court, is unable to make decisions for themselves.

Declaration: is the form of words employed by a service user to ensure that an individual is not appointed to act as their Named Person. Must be witnessed.

Independent Advocacy: a free service open to every person with a mental disorder. The independent advocate's role is to enable a service user to deal with any situation they may face, rather than to deal with the problem on the service user's behalf.

Mental Disorder: a term used in the Mental Health Act to cover mental illness including dementia, learning disability or personality disorder.

Mental Health Tribunal for Scotland: makes decisions about the care, treatment and other matters relating to those who are subject to compulsory powers under the Mental Health Act.

Mental Health Officer (MHO): a social worker who deals specifically with people with mental disorder, and has particular duties under the Act.

Mental Welfare Commission: an independent organisation working to safeguard the rights and welfare of everyone with a mental illness, learning disability or other mental disorder. The Commission visits people receiving care and treatment, publishes good practice guidance and provides telephone advice and information for service users, carers and professionals.

Named Person: chosen by a service user (or can be appointed by a mental health tribunal) to represent their interests should they become subject to compulsory treatment under the Mental Health Act.

Nomination: is the form of words used in the appointment of a named person by a service user. Must be witnessed.

Personal Statement: explains what a person would like done (other than care and treatment – which is covered in an Advance Statement) if they become unwell in the future. For example, if they are taken into hospital, who will look after their children or pets.

Primary Carer: the person who provides all or most of the care and support for a service user.

Responsible Medical Officer (RMO): is a medical practitioner, usually a consultant psychiatrist, who is responsible for the service user's care and treatment.

Service User: is a person using mental health services, either in hospital or in the community.

Voluntary or informal service user: someone who agrees to accept treatment for their mental disorder and who is not subject to compulsory powers under the Act – also known as a voluntary patient.

Witness: in the context of the Act, is someone qualified to witness a service user's Nomination (or Declaration or Revocation) of their Named Person, or Advance Statement – can be a medical practitioner, clinical psychologist, occupational therapist registered with the Health Professions Council, a registered nurse, social worker, solicitor or certain persons providing, or managing the provision of, certain care services.

Acknowledgement

We wish to thank Crawford Little, User and Carer Involvement, Dumfries for his assistance with this guide.

Other guides in this series

There are a number of other guides in this series, some of which will prove particularly useful to named persons. They can be viewed online at:

<http://www.scotland.gov.uk/Topics/Health/health/mental-health/mhlaw/guidance>

The new Mental Health Act – A guide to advance statements

The new Mental Health Act – A guide to compulsory treatment orders

The new Mental Health Act – A guide to consent to treatment

The new Mental Health Act – An easy read guide

The new Mental Health Act – A guide to emergency and short term powers

The new Mental Health Act – The role of the Mental Welfare Commission

The new Mental Health Act – A guide to named persons

The new Mental Health Act – A guide to the roles and duties of NHS Boards and local authorities

The new Mental Health Act – A guide for people involved in criminal proceedings

The new Mental Health Act – Putting Principles into Practice

The new Mental Health Act – What's it all about? A short introduction

The new Mental Health Act – What's it all about? An easy read guide

The new Mental Health Act – A guide to independent advocacy

The new Mental Health Act – An introduction to the Mental Health Tribunal for Scotland

The new Mental Health Act – A guide to the appeals process

The new Mental Health Act – A guide to the roll of the mental health officer

The new Mental Health Act – A guide to the rights of carers

**NOMINATION OF NAMED PERSON
MADE UNDER THE
MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003**

Full name of person making this Nomination: _____

Address of person making this Nomination: _____

I hereby nominate _____ (name) of _____

_____ (address)

to be my Named Person with regard to the Mental Health (Care and Treatment)
(Scotland) Act 2003.

Signature: _____ Date: _____

WITNESS CERTIFICATE

I hereby declare that I am of the opinion that at the time of making this Nomination,

_____ (name of person making Nomination)

*understands the effects of nominating a person to be their Named Person, and that
(he/she) has not been subject to any undue influence. I hereby witness (his/her) signature.*

Signature of witness: _____ Date: _____

Full name of witness: _____

Address of witness: _____

Designation of witness: _____

(State occupation or category which enables the witness to act as a 'prescribed person' – a clinical psychologist entered on the British Psychological Society's register of chartered psychologists, a medical practitioner, an occupational therapist registered with the Health Professions Council, a person employed in the provision of (or in managing the provision of) a care service, a registered nurse, a social worker or a solicitor.)

Note:

You are advised to keep a list of everybody who has received a copy of this document.

**DECLARATION WITH REGARD TO NAMED PERSON
MADE UNDER THE
MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003**

Full name of person making this Declaration: _____

Address of person making this Declaration: _____

*I hereby declare that _____ (name) should NOT be my
Named Person with regard to the Mental Health (Care and Treatment) (Scotland) Act 2003.*

Signature: _____ Date: _____

WITNESS CERTIFICATE

*I hereby declare that I am of the opinion that at the time of making this Declaration,
_____ (name of person making Declaration)
understands the effects of making this Named Person Declaration, and that (he/she) has
not been subject to any undue influence. I hereby witness (his/her) signature.*

Signature of witness: _____ Date: _____

Full name of witness: _____

Address of witness: _____

Designation of witness: _____

(State occupation or category which enables the witness to act as a 'prescribed person'
- a clinical psychologist entered on the British Psychological Society's register of
chartered psychologists, a medical practitioner, an occupational therapist registered
with the Health Professions Council, a person employed in the provision of (or in
managing the provision of) a care service, a registered nurse, a social worker or a
solicitor.)

Note:

You are advised to keep a list of everybody who has received a copy of this document.

**REVOCATION OF NOMINATION OF NAMED PERSON
MADE UNDER THE
MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003**

Full name of person revoking Nomination: _____

Address of person revoking Nomination: _____

I hereby revoke the Nomination made by me on _____ (date of Nomination).

*I no longer wish _____ (name) to be my Named
Person with regard to the Mental Health (Care and Treatment) (Scotland) Act 2003.*

Signature: _____ Date: _____

WITNESS CERTIFICATE

*I hereby declare that I am of the opinion that at the time of revoking this Nomination,
_____ (name of person revoking Nomination)*

*understands the effects of revoking their Named Person Nomination, and that (he/she)
has not been subject to any undue influence. I hereby witness (his/her) signature.*

Signature of witness: _____ Date: _____

Full name of witness: _____

Address of witness: _____

Designation of witness: _____

(State occupation or category which enables the witness to act as a 'prescribed person'
– a clinical psychologist entered on the British Psychological Society's register of
chartered psychologists, a medical practitioner, an occupational therapist registered
with the Health Professions Council, a person employed in the provision of (or in
managing the provision of) a care service, a registered nurse, a social worker or a
solicitor.)

Note:

**You are advised to send a copy of this document too all those who received a copy
of the original Nomination – keep an updated list of everybody who receives a copy
of documents relating to the named person.**

**REVOCATION OF DECLARATION WITH REGARD TO NAMED PERSON
MADE UNDER THE
MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003**

Full name of person revoking Declaration: _____

Address of person revoking Declaration: _____

I hereby revoke the Declaration made by me on _____ (date of Declaration). that _____ (name) should not be my Named Person with regard to the Mental Health (Care and Treatment) (Scotland) Act 2003.

Signature: _____ Date: _____

WITNESS CERTIFICATE

I hereby declare that I am of the opinion that at the time of revoking this their Declaration _____ (name of person revoking Declaration) understands the effects of revoking their Named Person Declaration, and that (he/she) has not been subject to any undue influence. I hereby witness (his/her) signature.

Signature of witness: _____ Date: _____

Full name of witness: _____

Address of witness: _____

Designation of witness: _____

(State occupation or category which enables the witness to act as a 'prescribed person' – a clinical psychologist entered on the British Psychological Society's register of chartered psychologists, a medical practitioner, an occupational therapist registered with the Health Professions Council, a person employed in the provision of (or in managing the provision of) a care service, a registered nurse, a social worker or a solicitor.)

Note:

You are advised to send a copy of this document too all those who received a copy of the original Declaration – keep an updated list of everybody who receives a copy of documents relating to the named person.



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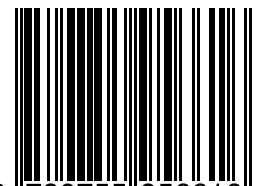
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