

Request for a curator *ad litem*

The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005 specify under Rule 55 when a curator *ad litem* can be appointed. Requests for the appointment of a curator *ad litem* to a patient should be made when the application is lodged, or as soon as the need arises. These requests will be considered at Standing Tribunals, held in Hamilton House, three times a week, or by the Tribunal sitting to hear the application.

The CTO1 (section 63) form states:

The patient IS/NOT capable of arranging for a person to represent him/her in connection with the application under section 63 of this Act.

Rule 55 states:

Curator ad litem

55.-(1) Where the circumstances in paragraph (2) apply, a curator ad litem may be appointed by the Tribunal or a Convener.

(2) Those circumstances are-

(a) that the patient does not have the capacity to instruct a solicitor to represent the patient's interests in proceedings before the Tribunal;

(b) that where the Tribunal or a Convener has made a decision not to disclose a document or report or part of it to the patient under rule 47, and, the patient does not have a representative to represent their interests; or

(c) that the patient has been excluded from any hearing or part of it under rule 68 or 69 and the patient does not have a representative to represent their interests.

The test specified in Rule 55 (a) is the one which will be used to determine whether a curator *ad litem* should be appointed by a Tribunal, rather than that specified on the form.

Requests will be made under section 55 (2) (a) where the patient lacks capacity to instruct a solicitor. **Please note** this is distinct and separate from the test to be considered at section 64 (5) (d) of the Act (*that because of the mental disorder the patient's ability to make decisions about the provision of such medical treatment is significantly impaired*)

The table overleaf may be used to assist in the provision of evidence to support your request.

Supporting evidence for the appointment of a curator *ad litem*

1. Does the patient have the capacity to give an instruction to a solicitor in connection with the tribunal application (for example they may wish to oppose being on an order or they may dispute they have a mental disorder)? Please explain why the patient lacks the capacity to instruct a solicitor.

Note: It is not necessary for the patient to understand the tribunal process or the law to give an instruction to a solicitor.

2. Does the patient have a welfare attorney or a guardian? If so, please provide details:

3. Has a solicitor been contacted by or on behalf of the patient?

Solicitor's details:

4. Details of any previous curator appointments (dates/application/name of curator):