

GUIDANCE TO CURATORS AD LITEM

1. This Guidance refers where a curator *ad litem* is appointed by the Mental Health Tribunal for Scotland (“the Tribunal”) or a Convener in terms of rule 55 of the Mental Health Tribunal for Scotland (Practice and Procedure) (No.2) Rules 2005 (“the Rules”).
2. The curator is appointed in a personal capacity and should appear personally before the Tribunal unless there are exceptional circumstances which prevent this.
3. The appointment of a curator will be made on a case by case basis from the List of Curators maintained by the Tribunal. Inclusion in the List of Curators maintained by the Tribunal does not guarantee that a curator will be appointed with any particular frequency.

Section 1 principles

4. While a curator *ad litem* is not subject to a statutory duty to have regard to the principles specified in section 1 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) when discharging any function under the 2003 Act, good practice suggests that the principles should be taken into account by a curator when representing the interests of a patient in proceedings before the Tribunal.
5. It is recognised that there can be a tension between the role of a curator and the principle of patient participation in Tribunal proceedings. On occasion the patient may attend and wish to make representations at a hearing when a curator has been appointed. Good practice would suggest that such a situation is handled sensitively to ensure that the patient is allowed to participate as fully as possible.

Timescales

Visiting the patient

6. Where a curator *ad litem* is appointed by the Tribunal or a Convener the curator should normally visit the patient within 3 working days of the appointment. It is expected that in accepting the appointment the curator can meet this timescale in the interests of the patient and in the efficient and effective management of the Tribunal.
7. If after visiting the patient the curator is of the view that the patient is capable of instructing a solicitor to represent his/her interests in proceedings before the Tribunal the curator should contact the Tribunal in writing and inform the Tribunal that the appointment of a curator is not necessary in order that the appointment can be revoked by the Tribunal.

8. If at any time during the proceedings before the Tribunal the curator is of the view that the patient is capable of instructing a solicitor the curator should inform the Tribunal that the appointment is no longer necessary in order that the appointment can be revoked by the Tribunal.

Instructing an independent medical report

9. In the event that the curator is of the view that it is necessary to instruct an independent medical report the curator should endeavour to instruct the report within 5 working days of the appointment. The curator should advise the Tribunal that a report has been instructed and when the report is likely to be available.

10. Where a date has been set for a Tribunal hearing and the curator is of the view that it will not be possible to complete necessary investigation and enquiry by the date of the hearing the curator should advise the Tribunal of this at least 7 days before the date of the hearing so that consideration can be given to whether the hearing should proceed.

Remuneration

11. The curator will be remunerated in accordance with the Tribunal's Scale of Fees for Curators *ad litem* (attached at Annex A). The curator should submit a professional account for payment of fees and outlays to the Tribunal as soon as possible after the conclusion of the proceedings.

12. The Tribunal's prior approval in writing should be obtained before the curator incurs expenditure of an exceptional nature.

13. In the event of any dispute in relation to a professional account submitted the curator or the Tribunal may refer the account to the Auditor of Court for taxation.

A handwritten signature in cursive script that reads "Joe Morrow". The signature is written in black ink and is underlined with a single horizontal stroke.

Dr Joe Morrow
President
November 2008