

GUIDANCE TO CURATORS *AD LITEM*

1. This Guidance applies 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 *ad litem* is appointed to safeguard the interests of a patient in proceedings before the Tribunal. 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 *ad litem* will be made on a case by case basis from the List of Curators *ad litem* maintained by the Tribunal. Inclusion in the List of Curators *ad litem* maintained by the Tribunal does not guarantee that a curator *ad litem* will be appointed with any particular frequency.

Section 1 principles and the overriding objective

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 *ad litem* when representing the interests of a patient in proceedings before the Tribunal. Likewise good practice suggests that a curator *ad litem* should have regard to the overriding objective of the Rules (under which a curator *ad litem* is appointed) as stated in Rule 4, namely to “secure that proceedings before the Tribunal are handled as fairly, expeditiously and efficiently as possible”.
5. It is recognised that there can be a tension between the role of a curator *ad litem* 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 *ad litem* 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

6. The expectation of the Tribunal is that a curator *ad litem* will only accept an appointment where they are available to act expeditiously in discharging the duties of the curator *ad litem* and are available to attend the hearing.
7. In particular, where a curator *ad litem* is appointed by the Tribunal, or a Convener, the curator *ad litem* should visit the patient within at most 4 calendar days of the appointment. It is expected that in accepting the appointment the curator can meet this timescale in the interests of both the patient and the efficiency of Tribunal proceedings.
8. If, after visiting the patient, the curator *ad litem* is of the view that the patient is capable of instructing a solicitor to represent their interests in proceedings before the Tribunal, the curator *ad litem* should contact the Tribunal by email immediately and

inform the Tribunal that the appointment of a curator *ad litem* is not necessary, to enable the appointment to be revoked by the Tribunal.

9. If, at any time during the proceedings before the Tribunal, the curator *ad litem* reaches the view that the patient is no longer incapable of instructing a solicitor, the curator *ad litem* should inform the Tribunal that the appointment is no longer necessary in order that the Tribunal can discharge the curator *ad litem* from their appointment.

10. Where a date has been set for a Tribunal hearing and the curator *ad litem* is of the view that it will not be possible to complete the necessary investigation by the date of the hearing, the curator *ad litem* should contact the Tribunal by email at least 7 calendar days before the date of the hearing, stating the reasons that they have been unable to complete these investigations, to enable the Tribunal to determine whether the hearing should proceed.

11. The curator *ad litem* is not required to produce a written report, but may do so if there is a particular benefit to the patient from so doing. Any written report prepared by the curator *ad litem* should be submitted to the Tribunal in advance of the hearing. Where it is not possible to submit in advance, the curator *ad litem* should provide a paper copy of their report on the day of the hearing. Where the hearing is taking place remotely, any report should be submitted three days before the hearing or, if this is not possible, intimated by the curator to all other parties before the hearing.

Remuneration

12. The curator *ad litem* will be remunerated in accordance with the Tribunal's Scale of Fees for Curators *ad litem* applicable at the date of appointment. 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.

13. The Tribunal's prior approval in writing should be obtained before the curator incurs expenditure of an unusual nature or significant amount.

14. 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.