

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. This means attending proceedings in the same manner as the members – in other words, attending in person at an in-person hearing if this is the mode of hearing set down. In the event that a curator *ad litem* becomes unable to attend a hearing to conduct proceedings on a patient’s behalf, prompt notification requires to be made to the Tribunal. It is likely to be necessary for the curator to be discharged to enable the appointment of a curator who is available to conduct the hearing on the patient’s behalf.
3. Curators *ad litem* should not be engaged on any other business when personally conducting a tribunal hearing before a tribunal on behalf of a patient.
4. 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. Curators *ad litem* on the List of Curators should ensure that an efficient response system is in place when they are contacted by the Tribunal seeking their appointment to minimise delays in the process.

Section 1 principles and the overriding objective

5. 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”.
6. 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.

Commitment and Timescales

7. 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.

8. It is a matter for each curator to consider whether or not a meeting with the patient will be appropriate. The tribunal recognises that there will be some cases where a meeting with a patient will not be of benefit to the patient or assist the curator in the course of their enquiries or the conduct of the case. There is a well-established practice in such cases of a curator reserving their position on the application until they have heard the evidence at the hearing, and this continues to be reasonable where it is apparent that a meeting with the patient would not be of benefit to the patient or assistance to the curator. Where a curator *ad litem* considers a meeting with the patient a necessary step, the curator should visit the patient within at most four working 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.

9. If the curator *ad litem* forms 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 and state their reasons for reaching this conclusion to enable the appointment to be revoked timeously by the Tribunal.

10. If, at any time during the proceedings before the Tribunal, the curator *ad litem* reaches the view that the patient is capable of instructing a solicitor, they 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.

11. 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, they should contact the Tribunal at the earliest opportunity by email, stating the reasons that they have been unable to complete these investigations, to enable the Tribunal to determine whether the hearing should proceed.

12. The curator *ad litem* is not required to produce a written report, save in exceptional circumstances. The curator *ad litem* should report on their investigations orally at the outset of the tribunal hearing. Any written report deemed necessary by the curator *ad litem* should be submitted to the Tribunal at least three days in advance of the hearing.

Curator Appointments in pre –existing applications and appeals instigated by the patient

13. A curator *ad litem* may be appointed in an application or appeal lodged by a patient when the patient's solicitor has withdrawn from acting (eg an application lodged in terms of section 50 of the Act). Upon notice of this event the Tribunal may appoint a curator *ad litem ex proprio motu* solely for the purpose of determining whether the application or appeal should be maintained. Any curator *ad litem* appointed in such

proceedings shall provide the tribunal with a written report within a period set down by the Tribunal stating whether or not the application or appeal should be maintained on the patient's behalf. They should provide in that report information as to the patient's level of understanding of the application, including whether the patient is expecting a hearing to take place. In the event that the curator *ad litem* concludes that the application or appeal should be maintained by the patient, the curator will normally be appointed by the Tribunal to undertake the conduct of the application or appeal and should conduct the tribunal proceedings on the patient's behalf as they consider appropriate.

Practical arrangements

14. The conduct and mode of enquiry for contacting a patient in any proceedings is a matter for each curator and will depend on the circumstances of the patient and the nature of each case. Curators should ensure that they have appropriate arrangements in place to assess and minimise any risk to either themselves or the patient when they are conducting their enquiries. In particular, when a home visit to a patient is considered necessary by the curator, it is prudent and good practice for curators to make enquiries with the patient's care team prior to any such meeting. The patient's care team will be best placed to provide information about the most appropriate way to meet with a patient.