

MENTAL HEALTH TRIBUNAL FOR SCOTLAND

Request for a curator *ad litem*

The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005 (“the Rules”) 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 CTO2 form (mental health report) states:

“The patient IS/NOT capable of arranging for a person to represent him/her in connection with the application under section 63 of the 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(2)(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 CTO2 form.

Requests will be made under rule 55(2)(a) of the 2003 Act where the patient lacks capacity to instruct a solicitor. **Please note** that this is distinct and separate from the test to be considered at section 64(5)(d) of the 2003 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.

Name of Patient:	
Diagnosis:	
MHTS Reference Number:	
Home Address:	
Current Ward and Hospital if patient is an in-patient:	

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 application to the Tribunal (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, in order 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?
Provide solicitor's details:**

**4. Provide details of any previous curator appointments
(dates / application / name of curator):**

Signature:	
Designation:	
Date:	