



SCOTTISH EXECUTIVE

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REPORT TO MINISTERS BY WORKING GROUP INVESTIGATING THE ROLE OF CURATORS AD LITEM

I would like to express my thanks to you, and to the members of your working group, for preparing this report. The Report's recommendations should help us find an agreed way forward with this difficult issue and I thought it would be helpful to let you know how I intend to progress the recommendations in your report.

I am happy to accept Recommendations 1 and 4 of the Working Group's Report and understand that these might helpfully be implemented in the near future and bring immediate benefit to everyone involved in cases where a curator is to be appointed. I am therefore writing to Mrs Eileen Davie, President of the MHTS, to suggest that she develops guidance to implement Recommendations 1 and 4 as soon as practical. I have also asked that she consults with you and the Law Society on this.

On recommendation 5 I understand that the Law Society, while not able to replace the list of mental health lawyers on their website, are offering to provide callers with details of lawyers in their area who are willing to act in mental health cases. This would provide an interim solution while their accreditation scheme is further developed.

Recommendations 2 and 3 address the issue of payments for curators. I am not minded to accept these recommendations. In particular, while you have recommended that we should obtain Counsel's advice, I am not sure that further such advice is necessary or indeed will now be helpful. Nevertheless I am keen, as I am sure you are, to see this matter resolved as soon as possible.

I remain of the view that the Act provides the necessary power for the Tribunal to pay the fees of curators appointed by the Tribunal and intend to take the necessary steps at the earliest opportunity to put this beyond doubt in the legislation. I am sure that this is the best way to ensure that patients' rights are adequately protected.



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I am, therefore, asking the Tribunal President, Mrs Eileen Davie, to take forward Recommendations 1 and 4 and also to draw up a scale of fees for curators appointed by the Tribunal and to pay these fees.

I enclose, for information, a copy of my letter to the Tribunal President.

I trust that this will give us a workable way forward. Thank you again for taking on this task and providing such a helpful report.

Yours sincerely
Lewis Macdonald

LEWIS MACDONALD

Copy to Mrs Eileen Davie, President, Mental Health Tribunal

Annex

Recommendation 1 - In order to reduce delays and cut the costs of Tribunal hearings, the Group recommend that when the Mental Health Officer (MHO) is requested by the Responsible Medical Officer (RMO) to make application to the Tribunal for a Compulsory Treatment Order, and there is concern in relation to the person's capacity to instruct a solicitor or arrange legal representation, the MHO shall, within forty eight hours of that request, advise the Tribunal accordingly. On receipt of such advice, the Tribunal will appoint a curator ad litem to protect the legal interests of the patient.

Recommendation 4 Consideration should be given to introducing a practice note or guidance to curators ad litem as to their duties towards the patient.

