

Practice Direction:



ABRIDGEMENT OF CTO NOTICE REQUIREMENTS

Mental Health
Review Tribunal

Purpose

The purpose of this practice direction is to offer guidance and to explain the Tribunal's processes in relation to the abridgement of notice requirements for applications for Community Treatment Orders referred to in s 52 of the *Mental Health Act, 2007* (as amended).

Section 52 of the *Mental Health Act, 2007* as recently amended is in the following terms:

52 Notice of applications

- (1) *The applicant for a community treatment order must notify the affected person in writing of the application.*
- (2) *The notice of the application is to include a copy of the proposed treatment plan for the affected person.*
- (3) *If the affected person is not detained in a mental health facility, the application must be heard not earlier than 14 days after the notice is given.*
- (4) *Subsection (3) does not apply:*
 - (a) *to an application for a further community treatment order in respect of an affected person who was the subject of a current community treatment order when the notice was given, or*
 - (b) *if the Tribunal decides it is in the best interests of the affected person that the application be heard earlier than 14 days after the notice is given.*

Section 52(3) stipulates the general requirement, namely, that the application for a CTO *must* be heard not earlier than 14 days after the notice is given. This is an important procedural safeguard for the affected person to ensure that they have an adequate amount of notice of the proposed application. The fact that the parliament has kept this requirement in its mandatory terms indicates the importance that parliament gives to the 14 day requirement.

Subsection 4(b) gives the Tribunal a power to hear the application prior to the expiry of 14 days after the notice has been served on the affected person, but only if the Tribunal is satisfied that to do so *is in the best interests of the affected person*.

It will, generally speaking, be in the best interests of the affected person that the 14 day requirement is complied with and that will be the Tribunal's starting point.

However, there may be exceptional cases where the Tribunal will be persuaded at the hearing that, due to exceptional or special circumstances, it should hear the application although the 14 day requirement has not been met. This would generally require cogent and compelling reasons being put forward to the Tribunal by the applicant.

The *best interests of the affected person* does not include, for example, reasons of workload or administrative convenience for community mental health facilities or legal practitioners. In contrast, for example, evidence of an urgent necessity for treatment in order to prevent a rapid deterioration in the affected person's mental state, might satisfy the *best interests of the affected person* requirement in appropriate circumstances. It is not proposed to set out here all the possible circumstances in which the 'best interests' requirement might be met. Suffice it to say that the Tribunal expects that such cases will be rare.

If the applicant for a CTO considers that there are exceptional circumstances that would justify the Tribunal deciding at the hearing that it would be in the best interests of the affected person to proceed to hear the CTO application earlier than 14 days after the notice is given, the applicant will need to speak to the Tribunal's Registrar or the Team Leader of the Tribunal's Civil or Forensic Division in order to request an early hearing day for the application. They will offer you guidance and assistance and, where appropriate, list the matter for an early hearing day.

However, it will only be at the hearing itself that the Tribunal will actually determine whether or not it considers it is in the best interests of the affected person to hear the matter earlier than 14 days after the notice is given.

If the Tribunal does not decide that it is in the best interests of the affected person to proceed to hear the matter, it will be necessary to adjourn the matter to allow the 14 day requirement to be met. This will inevitably result in the inconvenience to all concerned of having to come back to the Tribunal to finalise the matter and of having to re-notify concerned persons of the adjourned date. This is another reason why a request for an early hearing should only be made where there are genuine and exceptional circumstances.

This Practice Direction is issued pursuant to s 160(3) of the *Mental Health Act, 2007* and has effect from 31 August 2015.

**Professor Dan Howard SC
President**

Dated: 28 August 2015