

Practice Direction

No.2 of 2023 – Community Treatment Orders

Active from 1 November 2023



Introduction

This Practice Direction sets out the procedures to be followed when making an application to the Mental Health Review Tribunal for a Community Treatment Order (CTO). Sections 51 and 52 of the Mental Health Act 2007 (the Act) apply.

The Act imposes an obligation on the applicant to provide written notice of the application and a copy of the treatment plan to the affected person.

Notice requirements, and the statutory time periods before a CTO application may be heard, will dictate hearing dates allocated by the Tribunal Registry. All applicants should carefully read the notice period requirements set out below.

Recommended Best Practice

To ensure compliance with legislative requirements, applicants should adopt the Best Practice guidelines which follow, and apply where the affected person is in the community:

- Treating teams should make an assessment whether an application for a CTO is to be made at least six weeks prior to the preferred hearing date - this is for new applications and further applications for those on an existing CTO.
- Serve the notice and proposed treatment plan on the affected person six weeks prior to the preferred hearing date.
- Send the Hearing Application form to the Tribunal at least 28 days before your preferred hearing date.
- The Confirmation of Service form should be submitted with the Hearing Application form. If you cannot send the Confirmation of Service form with the Hearing Application form, forward it to the Registry as soon as possible.
- Where the application is for a further order, make all reasonably practicable efforts to notify any designated carer/principal care provider of the application.
- Use the Notice of Application form on the Tribunal website.
- Use the Confirmation of Service form on the Tribunal website.
- Use the Hearing Application form on the Tribunal Website.
- Use the new Treatment Plan Template on the Tribunal website.

Note – these Recommended Best Practice guidelines apply to all CTO applications where the affected person is in the community; different considerations will apply to those detained in a mental health facility as set out below.

Who can apply for a CTO?

An application for a CTO can be made by:

- The authorised medical officer at a mental health facility where the person is detained/or is a patient.
- A medical practitioner familiar with the affected person
- A director of community treatment at a mental health facility (clause 9, Mental Health Regulation 2019)

- A designated carer, or principal care provider of the affected person (clause 9, Mental Health Regulation 2019)

1. Procedural requirements for all CTO applications

Where affected person is in the community:

- 1.1 Six weeks prior to the requested hearing date, the treatment plan should be prepared, and served on the affected person, with the notice of the application.
- 1.2 The applicant will send an application for a CTO to the Tribunal Registry – the application must be sent to the Registry at least 28 days before the preferred hearing date (six weeks prior is preferable).
- 1.3 Applicants are to use the Hearing Application form available on the Tribunal website.
- 1.4 The applicant will send the completed Confirmation of Service, with the Hearing Application form, or as soon as possible.
- 1.5 Each application for a CTO will be allocated a hearing date by the Tribunal Registry. All efforts will be made to allocate the preferred hearing date; however, this cannot be guaranteed.
- 1.6 The applicant for a CTO is to give the notice, detailed in 1.1, to the affected person before filing the Hearing Application form with the Tribunal Registry. If this cannot be achieved, please observe that Notice **must** be given within the time periods set out below.
- 1.7 If there has not been proper notice, the hearing of the application may not proceed.

If affected person is detained in a mental health facility:

- 1.8 If the affected person is detained in a mental health facility, then the copy of the treatment plan and the notice of the application is to be given to the affected person two days before the preferred hearing date; and the Hearing Application, and Confirmation of Service, is to be sent to the Tribunal Registry

2. Notice requirements

- 2.1 The Act requires that the affected person be given notice of the application prior to any hearing and sets out ways to serve the notice. The way that the notice is served can affect when the application is permitted to be heard by the Tribunal (see below).
- 2.2 Notice includes written notice of the application and a copy of the treatment plan.
- 2.3 An application may not be heard earlier than 14 days after notice is given (s52 of the Act) – this applies where there is no current CTO at the time the notice is served, and the person is not detained in a mental health facility.
- 2.4 Notice may be given less than 14 days before the hearing date, where a person is on a current CTO at the time of service, however reasonable notice must be given (see below). Notice can also be less than 14 days where the person is detained, however reasonable notice is required (see below).
- 2.5 For all applications where a person is not detained, the time frames in the Recommended Best Practice guidelines noted above should be followed, as this will assist with compliance with notice requirements. It will also allow sufficient time for the Tribunal Registry to allocate the applicant's preferred hearing date.

3. How to serve the Notice

- 3.1 Written notice can be personally given to the affected person (personal service) – personal service does not include placing it in the letter box in the absence of the person.
- 3.2 Written notice can be sent to an email address – note that this must be an email address which the affected person has approved for receiving such documents.
- 3.3 To meet legal requirements, where service is by email or personal service, you must do so no later than 15 days before the hearing.

3.4 Written notice can be sent by regular post – service will be taken to have been affected when the notice is posted 14 days PLUS 7 working days before the hearing date. Note: working days do not include Saturday, Sunday, Public Holidays or bank holidays. If the Recommended Best Practice is followed, then the postal notice period will be complied with.

4. Where the affected person is on an existing CTO at the time the Notice is served

4.1 Notice can be given less than 14 days before the hearing date (s52(3) of Act) however reasonable notice must be given.

4.2 Reasonable notice would be at least seven days, after the Notice is served, before the hearing date.

4.3 Complying with recommended best practice for those on existing CTOs would ensure compliance with notice requirements.

5. Where the affected person is detained in a mental health facility

5.1 Where the affected person is in a mental health facility at the time the Notice is served, then the 14-day period does not apply (s52(3)) however fairness requires reasonable notice of the application, including a copy of treatment plan.

5.2 Reasonable notice, where a person is detained, is two days' notice before the hearing is held.

6. Section 54(4)(b) - Request to have CTO application heard in shorter time frame

6.1 The Tribunal panel may hear an application for a CTO, where the notice period has not been complied with – that is, where the hearing is less than 14 days after notice is given, and the person is not on a current CTO or detained - if satisfied that this is in the best interests of the affected person

6.2 Whether it is in the best interests of the affected person to hear the application, will be decided by the Tribunal at a hearing.

6.3 If the Tribunal is satisfied of best interests, the hearing may proceed.

6.4 If the Tribunal is not satisfied that it is in the best interests of the affected person, the application will not be heard.

6.5 Best interests criteria – focus on what is best for the affected person. It is not a means to cure late notice because of administrative oversight.

6.6 Following the Recommended Best Practice guidelines in this Practice Direction will avoid unnecessary complications and delays.

Dated 23 July 2023
Her Honour Magistrate Carolyn Huntsman
President