

GUIDANCE to TRIBUNAL Members No. 01/2025

Recorded Matters

Purpose of this Guidance

1. This guidance applies to any hearing relating to a Compulsory Treatment Order where the addition, removal or variation of a recorded matter is in contemplation.
2. The purpose of this guidance is to provide a framework aimed at ensuring that any recorded matter made is communicated to the relevant people, the subject matter is achievable and the expectations of the persons named in the recorded matter are clear and realistic.
3. The guidance also follows up from the recorded matters module in Member Training 2023.

Definitions

4. At any hearing in relation to a Compulsory Treatment Order, the Tribunal may (in terms of s.64(4)(a)(ii) of the 2003 Act), specify such medical treatment, community care services, relevant services, other treatment, care or service as the Tribunal considers appropriate. The terms 'medical treatment', 'community care services' and 'relevant services' are all defined in the Act, at s. 329.
5. Medical treatment includes nursing, care, psychological intervention and habilitation and rehabilitation.
6. Community care services include residential accommodation, personal care and personal support, social, cultural and recreational activities, training and assistance in obtaining and undertaking employment.
7. Other treatment, care or service can be considered anything else that doesn't fall neatly within one of the other definitions.
8. RMOs and patients are able to seek variation of an order solely by the addition or removal of a recorded matter under sections 95 and 100 respectively.

Before making a Recorded Matter

9. It is important to identify whether you have sufficient information about the appropriateness or availability of the treatment, care or service in contemplation.
10. Whilst it is not necessary for the RMO or MHO to agree with the terms of any recorded matter their evidence as to what is realistic or achievable should have a bearing on the decision to make a recorded matter.

11. If not you may wish to make an interim decision or adjourn so that a direction can be made to obtain more information from specific individuals. You may also wish to consider a same panel request (in whole or part) if that would allow the matter to be handled as expeditiously and efficiently as possible.
12. If the recorded matter is directed towards a particular post holder who is not present or represented at the hearing, consideration must be given as to how the recorded matter is to be communicated to that post holder. This could take place by, for example, securing an undertaking from another party to communicate the recorded matter or by the issuing of a Direction to Administration to communicate the making of a recorded matter.
13. If a Direction is to be issued, attempts should be made to obtain accurate contact information for the relevant post holder to allow the recorded matter to be communicated to them without delay.

Framing of the Recorded Matter

14. The first step is to identify the treatment, care or service that should be provided to the patient before considering whether it is realistic and achievable that it will be provided.
15. Identify the post holder identified as responsible for organising or providing this care, treatment or service.
16. Identify the date by which it is reasonable to expect the patient to be receiving the specified treatment, care or service or for a report or assessment on same to be provided.
17. Specify who is to receive a copy of any report or assessment.
18. Specify what is to be done by the RMO should the recorded matter not be provided by that date (i.e. a s.96 referral).
19. Ensure the recorded matter is recorded fully in the Order form and not solely in the FFR.

Delayed Discharge

20. There can be a temptation to state that a patient should be placed in a suitable community facility by a certain date but that could be considered *ultra vires*. It may be more helpful to require an assessment in preparation for a community place being identified.
21. An assessment or report to be undertaken by a reasonably chosen date is more likely to be achieved than the setting of a timetable for the completion of multiple pieces of work.

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President