

Tribiwnlys Adolygu  
Iechyd Meddwl Cymru

Mental Health Review  
Tribunal for Wales

## Referral Guidance

Mental Health Review Tribunal for Wales  
2<sup>nd</sup> Floor, Crown Buildings  
Cathays Park  
Cardiff  
CF10 3NQ  
Telephone: 0300 025 5328  
Fax: 0300 025 7331  
Email: [mhrt@wales.gsi.gov.uk](mailto:mhrt@wales.gsi.gov.uk)

# This booklet tells you about:

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## What are referrals?

Under certain circumstances the authority responsible for your Section or Order (known as the Responsible Authority) or the Ministry of Justice has a legal duty to make a referral to the Tribunal. This is often because you have been subject to the Mental Health Act for a long period of time and have not applied to the Tribunal yourself. The Tribunal must then decide whether the Section or Order to which you are subject is still appropriate. A hearing will take place in the same way as if you had made your own application. However, you cannot withdraw a referral. The hearing will go ahead unless your doctor discharges the Section or Order.

In exceptional cases, the National Assembly for Wales' Minister for Health and Social Services can also make a referral to the Tribunal.

You do not have to attend the Tribunal hearing if you don't want to. You are entitled to free legal representation if you want it. A legal representative can put your point of view to the Tribunal panel whether or not you attend the hearing yourself. You can find a list of specialist mental health solicitors on the Applications page of this website, or ask your advocate (IMHA), ward staff, Mental Health Act Administrator, care co-ordinator or social worker for a copy of the list.

## What happens when a referral is made?

The referring authority will write to the Tribunal office to make the referral. The Tribunal office will then write to let you know that a referral has been made. A little later on, you or your legal representative will be told the date of the hearing.

Shortly before the hearing the Tribunal's Medical member will ask to see you for a preliminary examination. This means the Medical member will interview you and form a view about your mental condition which will be disclosed to the other Tribunal members before the hearing.

## Can I still apply to the Tribunal if a referral is made?

Referrals do not affect your own right to apply to the Tribunal. See our Guidance on making an application to find out about how and when to do so. You may wish to take legal advice about making an application if you think a referral is due.

## When are referrals made?

When a referral is made depends on which Section or Order you are subject to, and for how long. Your legal representative or Mental Health Act Administrator can tell you when a referral is due. Our website contains a comprehensive Eligibility Table showing when referrals are due. Below is a brief outline of when you can expect a referral to happen for some of the more frequent Sections and Orders.

## **Section 2**

The Responsible Authority has no duty to make a referral regarding people detained under Section 2. You can apply to the Tribunal within the first 14 days of your Section.

## **Sections 3 and 17a (also known as a Community Treatment Order)**

- If you have not applied for a hearing within the first six months of being subject to the Mental Health Act, the Responsible Authority has a duty to make a referral;
- From then on, if you remain subject to the Section or Order, the Responsible Authority will make a referral every three years from the date of your last hearing. If you are under 18 years old, you will be referred every year since your last hearing;
- If you are subject to Section 17a, also known as a Community Treatment Order or CTO, and your CTO is revoked, the Responsible Authority has a duty to make a referral as soon as possible after the revocation.

## **Section 37**

- If you have not applied to the Tribunal and had a hearing within the first 3 years of your Section, the Responsible Authority has a duty to make a referral;
- If you remain subject to the Section or Order, the Responsible Authority will then refer every three years from the date of your last hearing. If you are under 18 years old, a referral will be made every year since the date of your last hearing.

## **Section 37/41**

The Ministry of Justice can make a referral at any time, but has a duty to make a referral every three years since your last Tribunal. It also has duty to make a referral to the Tribunal within one month of a patient being recalled to hospital from conditional discharge.

## **Section 41**

The Ministry of Justice can make a referral at any time, but is not under any duty to do so. If you are recalled to hospital the Ministry of Justice will make a referral within one month of the date you were recalled.

## **When will my referral hearing happen?**

- All non-restricted Sections (e.g. Section 3, 37, 17a and Guardianship): where possible, your hearing will be within 8 weeks from the date the Tribunal office received the referral;
- Sections including a restriction order (e.g. Section 37/41, 41/49): where possible your hearing will be within 14 weeks from the date the Tribunal office received the referral;
- Conditionally discharged (Section 41), and recalled to hospital: your hearing will be between 5 and 8 weeks after the Tribunal office receive the referral.

This document is also available in Welsh.

The Mental Health Review Tribunal for Wales welcomes receiving correspondence in Welsh or English. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding. The Tribunal also welcomes phone calls in Welsh or English.

You may submit forms, documents and make written representations to the Mental Health Review Tribunal in Welsh or English.