

Tribiwnlys Adolygu | Mental Health Review
Iechyd Meddwl Cymru | Tribunal for Wales

Guidance

What Happens at the Tribunal hearing

Mental Health Review Tribunal for Wales
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What happens at a tribunal hearing?

The Tribunal's duty is to decide whether, at the time of the hearing, you have a mental disorder of a type and/or severity that means you need to be in hospital or subject to an Order under the Mental Health Act. To assist the Tribunal in making this decision, the panel will read the reports provided by your care team (your doctor, social worker etc).

The Tribunal will explain the procedure at the start of the hearing. At the hearing, the Tribunal panel and your legal representative will have the opportunity to ask questions of your care team and will usually want to speak to you too. You do not have to speak to the Tribunal if you don't want to. If you want to leave the hearing at any time, tell your legal representative or let the Tribunal panel know.

When the Tribunal members have finished asking questions and you, or your legal representative, have summarised your case at the end of the hearing, they will ask everybody to leave while they make their decision. Usually they will tell you their decision on the day as soon as they have made it. A copy of the written decision will be sent to you or your legal representative soon after the hearing.

Sometimes the Tribunal will be unable to reach a decision, for example because it does not have enough information. In this case, the hearing will be adjourned and new hearing date and time will be arranged. See guidance booklet MHRTW-07

Who will be at the tribunal hearing?

There will be three people on the Tribunal panel, known as the Legal, Medical and Lay members. They are independent and none of the members are connected with the section or order to which you are subject. Others present are likely to be your doctor, social worker, nurse, care co-ordinator and perhaps members of your family, if the Tribunal agrees to their attendance.

The Legal member, who is a lawyer or Judge, presides at the Tribunal hearing. The Medical member is a psychiatrist. The Lay member usually has experience in mental health matters, for example as a social worker. The Tribunal's Medical member will need to talk to you shortly before the hearing.

If you have an advocate (IMHA), they can also be with you for support, but they are not entitled to give their views to the Tribunal.

Sometimes, mental health professionals such as doctors or social workers may ask to attend your hearing as an observer, so that they may learn about Tribunals. If you do not want an observer at your hearing, please tell your legal representative, advocate (IMHA), or the Tribunal panel.

Can I bring someone with me to the hearing for support?

Yes if the Tribunal agrees you can be accompanied by any other person you wish but you must let the tribunal know of anyone that will be attending to support you by completing form MHRTW-02. The Tribunal will not pay their travel expenses and they cannot act as your representative.

How long does it usually take the Tribunal to issue its decision?

Usually the decision is made on the day and a copy of the written decision is sent you or your legal representative soon after the hearing.

Sometimes the Tribunal will be unable to reach a decision, for example because it does not have enough information. In this case the hearing will be adjourned and a new date will be arranged. This date is usually agreed at the adjourned hearing.

If the Tribunal decides you should not be discharged, this means that you will remain subject to the Section or Order at that time. This decision does not prevent your doctor from discharging you at a later date. In order to facilitate your discharge on a future date, the Tribunal can make recommendations that your doctor gives you leave, that you should be transferred to a different hospital, that you are transferred into Guardianship, or that your doctor should consider making a Community Treatment Order (CTO, or Section 17a). The Tribunal can then reconsider your application or referral if the recommendations are not met.

If the Tribunal decide you shall be discharged, the Section or Order is removed. Your Legal Representative, advocate, or a member of your care team can explain what happens next. Sometimes the Tribunal may delay your discharge (known as a “deferred discharge”), for example so that arrangements can be made for suitable care outside hospital.

What if I disagree with the Tribunal’s decision

If you disagree with the Tribunal’s decision you can appeal it but only if the Tribunal has erred in law. You must do this within 28 days of receiving the written decision. You will need to request permission to appeal to a higher tribunal (the ‘Upper Tribunal’). See guidance booklet MHRTW-14 under page 4 About of our website.

Should you wish to complain about the way in which the Tribunal was conducted you should write to the Chairman of the Mental Health Review Tribunal for Wales at the address included above.

The Tribunal's Powers

The legal criteria which the Tribunal must consider are detailed below.

The Tribunal shall discharge the Section or Order to which you are subject, if:

Section 2 - It is **not** satisfied:

- that you are suffering from mental disorder of a nature or degree which warrants your detention in a hospital for assessment or assessment followed by medical treatment, **or**;
- that your detention is justified in the interests of your own health or safety, or with a view to the protection of others;

Sections 3 or 37 or 37N - It is **not** satisfied:

- that you are suffering from mental disorder of a nature or degree which makes it appropriate for you to be detained in hospital for medical treatment, **or**;
- that it is necessary for your health or safety or for the protection of others that you should receive such treatment **or**;
- that appropriate medical treatment is available for you **or**;
- Where the application was made by your Nearest Relative, it is *not* satisfied that if released you would be likely to act in a manner dangerous to others or yourself.

Section 17A - It is **not** satisfied:

- that you are suffering from mental disorder of a nature or degree which makes it appropriate for you to receive medical treatment, **or**;
- that it is necessary for your health or safety or for the protection of others that you should receive such treatment, **or**;
- that it is necessary that the Responsible Clinician should be able to recall you to hospital **or**;
- that appropriate medical treatment is available for you;
- where the application was made by your Nearest Relative, it is *not* satisfied that if released you would be likely to act in a manner dangerous to others or yourself.

Guardianship Orders (Sections 7 or 37) - It is **not** satisfied:

- that you are not suffering from mental disorder or;
- that it is necessary in the interests of your welfare or for the protection of others that you should remain subject to Guardianship.

In exceptional circumstances, and if you are subject to Section 3, or 17A, or 37, the Tribunal has an additional power to discharge the Section or Order even if the legal criteria above are not met. This is known as a discretionary power.

Section 37/41 or Section 5 CPI (restricted)

The Tribunal shall discharge you subject to conditions if it is **not** satisfied:

- that you are suffering from mental disorder of a nature or degree which makes it appropriate for you to be detained in hospital for medical treatment, **or**;
- that it is necessary for your health or safety or for the protection of others that you should receive such treatment **or**;
- that appropriate medical treatment is available for you **and**;

It **is** satisfied:

- that you should remain liable to be recalled to hospital for further treatment.

If the Tribunal is not satisfied that you should remain liable to be recalled to hospital for further treatment, it shall discharge you absolutely.

Section 41 (Conditionally Discharged)

The Tribunal can vary the conditions to which you are subject, or if it is not satisfied that you should remain liable to be recalled to hospital for further treatment, it shall discharge you absolutely.

Restriction Directions (e.g. Section 47/49 transfer from prison)

The Tribunal has no power to discharge you. It can only notify the Ministry of Justice what it would do if it did have such a power. The Secretary of State then has ninety days in which to consider the Tribunal's findings.

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.