



# **Mental Health Review Tribunal for Wales Annual Report 2015 – 2016**

October 2017

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

# Foreword

I am pleased to present our Annual Report for the Mental Health Review Tribunal for Wales (MHRTW). The report covers the period April 2015–March 2016. I hope you find the report informative and user friendly.

We aim to ensure that the Tribunal serves the interests of all those in Wales having applications or referrals falling within our jurisdiction by dealing with any such applications or referrals both efficiently and effectively, within statutory and best practice guidelines.

This year we have introduced our new appraisal scheme for members. My Deputies and I have been delighted, but not surprised, at the standards displayed by appraised members. We will continue this practice in the coming year.

I am pleased to announce that the MHRTW website was launched in July and contains information and guidance to service users about the MHRTW process.

Any questions or comments arising as to any aspect of the work of the Tribunal, or as to the contents of the Report, are most welcome and should in the first instance be addressed to the Tribunal Secretariat.

**Carolyn Kirby OBE**  
Chairman

# Section 1 – About Us

## In this section:

- Basis for the Tribunal
- The Tribunal's Function
- The Tribunal Rules
- Members of the Tribunal
- Appointments
- Training
- Contacting the tribunal
- Accessing the Tribunal

## Basis for the Tribunal

The Mental Health Review Tribunal for Wales (MHRTW) is an independent judicial body established under the Mental Health Act 1959 operating under the provisions of the Mental Health Act 1983 (as amended). The MHRTW has the responsibility of deciding applications and references concerning patients detained under the Mental Health Act 1983 (MHA), patients subject to community treatments orders (CTOs) and guardianship and patients conditionally discharged from hospital.

The MHRTW as a judicial body is independent of government and members are appointed by the Lord Chancellor.

## The Tribunal's Function

The MHRTW provides a significant safeguard for patients who have had their liberty curtailed under the Mental Health Acts. It is for those who believe that a patient should continue to be liable to detention or remain a supervised community treatment patient to prove their case and not for the patient to disprove it. They therefore need to present the tribunal with sufficient evidence to support their case. Clinical and social reports form the backbone of this evidence and these are tested orally at hearings in the presence of the patient. The procedures to be followed are clearly laid down in the MHRTW Rules 2008.

## The Tribunal Rules

The Tribunal operates in accordance with the procedures set out in the MHRTW Rules 2008 which can be found at:

[www.mentalhealthlaw.co.uk/Mental\\_Health\\_Review\\_Tribunal\\_for\\_Wales\\_Rules\\_2008](http://www.mentalhealthlaw.co.uk/Mental_Health_Review_Tribunal_for_Wales_Rules_2008)

The purpose of the MHRTW Rules 2008 is to ensure that all cases heard by the Tribunal are dealt with fairly, justly, efficiently and expeditiously. The Rules require the Tribunal to ensure, as far as possible, that all parties are able to participate fully in the proceedings.

MHRTW applications and references broadly fall into three categories;

**Restricted patients** – these are mentally disordered offenders who are detained in hospital for treatment and who are subject to special controls by the Ministry of Justice because of the level of risk they pose. They may in due course become conditionally discharged as part of their gradual return to the community. The MHRTW has jurisdiction to make decisions about the

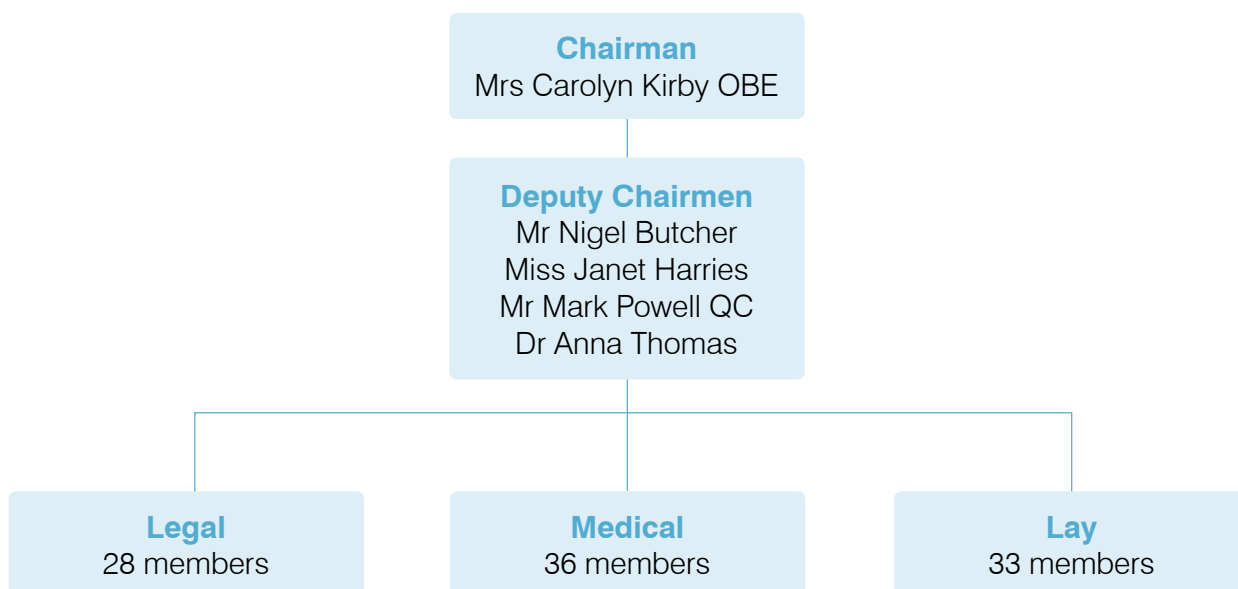
absolute and conditional discharge of restricted patients, as well as the variation of conditions upon them.

**Unrestricted patients** – these are non-offender patients who are detained in hospital, under either section 2 or section 3 of the MHA, suffering from a mental disorder of a nature or degree warranting detention. Section 2 of the MHA is used where there is a need for assessment, or assessment followed by medical treatment, for at least a limited period and section 3 of the MHA is used where there is a need for treatment. The task of the Tribunal is to decide whether at the time of hearing the criteria justifying detention continue to be met.

**Community patients** – these patients are not detained but may be subject to either a Community Treatment Order (CTO) or a guardianship order. The task of the Tribunal is to decide whether at the time of hearing the criteria justifying these orders continue to be met.

## Members of the Tribunal

The Lord Chancellor is responsible for the appointment and re-appointment of the Chairman and all members of the MHRTW. Appointments are made following the advertisement of vacancies and competitive interview by the Judicial Appointments Commission.



**The role of the legal member** – The legal member’s role is to preside (i.e. take the chair) at tribunal hearings. Responsibilities also include making sure that the proceedings are conducted fairly, that the legal requirements of the Mental Health Act are properly observed and advising on any questions of law which may arise. The legal member is also responsible, in consultation with other members of the Tribunal, for drafting the reasons for the decision, and for signing the record of the decision. The legal members are required to have ‘such legal experience as the Lord Chancellor considers suitable’.

**The role of the medical member** – The tribunal medical member has a dual role to perform. The Tribunal Rules require them to carry out an examination of the patient before the hearing and to take any steps that they consider necessary to form an opinion of the patient’s mental condition. At the hearing, they, together with the other members, have the judicial responsibility of deciding the outcome of the hearing. The tribunal medical member is invariably a consultant psychiatrist of several years’ standing. He or she will be able to advise the other members of the Tribunal on any medical matters.

**The role of the lay member** – The lay member is not a lawyer or a psychiatrist, but brings to the Tribunal other knowledge and experience relevant to the jurisdiction of the Tribunal. The lay member may contribute knowledge of mental illness, mental health or social services, patient rights, and community issues to the consideration of the patient's case.

**Secretariat** – The day-to-day administration is largely delegated to the secretariat which deals with all the preliminary paperwork and the processing of applications and references to the Tribunal. The secretariat consults the Chairman or her deputies on all legal points arising during the preliminary pre-hearing stages of the proceedings and passes on their rulings and directions in writing to the parties. The secretariat acts as a point of contact for all tribunal members and users; members of the secretariat attend some hearings to help with the efficient running of proceedings.

## Appointments

There were no new tribunal members appointed in 2015/16.

## Training

It is important for the efficient and effective functioning of the tribunal that all tribunal members are appropriately trained and kept up to date with developments in the field of mental health law.

The MHRTW held its Annual Conference for all members in October 2015 at Future Inn, Cardiff. The conference included a presentation on the new appraisal scheme by Janet Harries, and an overview of the future training plan by Nigel Butcher. There was also an update on recent case law by Hamish Hodgen and a presentation by Mark Powell QC on completing the new decision forms and avoiding adjournments. Tribunal members are fully committed to keeping up to date with developments in the area of mental health law and practice and took advantage of the opportunity given during the day to contribute their thoughts on the development of the proposed tribunal training programme.

There was also a series of 6 workshops (4 in Cardiff and 2 in Llandudno). Two of the workshops covered issues relating to mental capacity as it affects the day to day work of the MHRTW, exploring the legal implications of recent case law on tribunal decisions. The other workshops focused on the specific issues raised in the different tribunals involving consideration of case studies.

Half of the tribunal members received appraisals during 2015/16 in accordance with the scheme to appraise all members every 2 years.

## Contacting the Tribunal

**Tribunal Address:** Mental Health Review Tribunal for Wales  
2nd floor, Crown Buildings  
Cathays Park  
Cardiff  
CF10 3NQ

**Tribunal Helpline:** 03000 255328

**Tribunal E-mail:** [mhrt@wales.gsi.gov.uk](mailto:mhrt@wales.gsi.gov.uk)

**Website:** [mentalhealthreviewtribunal.gov.wales/?lang=en](http://mentalhealthreviewtribunal.gov.wales/?lang=en)

The Tribunal is happy to communicate with users in English or Welsh. If a Welsh speaker is not immediately available one will be arranged to make contact as soon as possible.

Patients can choose to have a Tribunal hearing conducted in Welsh or English. If the first language is not Welsh or English an interpreter in the requested language can be arranged to be present at the hearing. If a sign language interpreter is needed to attend the hearing this can also be arranged.

If anyone attending the hearing has any access requirements that may affect arrangements for the hearing provisions will be made. To enable arrangements for interpreters to be made, or to make provisions for any additional needs of attendees, sufficient notice must be given to the secretariat.

# Section 2 – Performance and Progress

## In this section:

- Numbers and Statistics
- Appeals
- Statutory and Best Practice Targets
- Complaints

## Numbers and statistics

A Tribunal year runs from April to March.

The following statistics are collated:

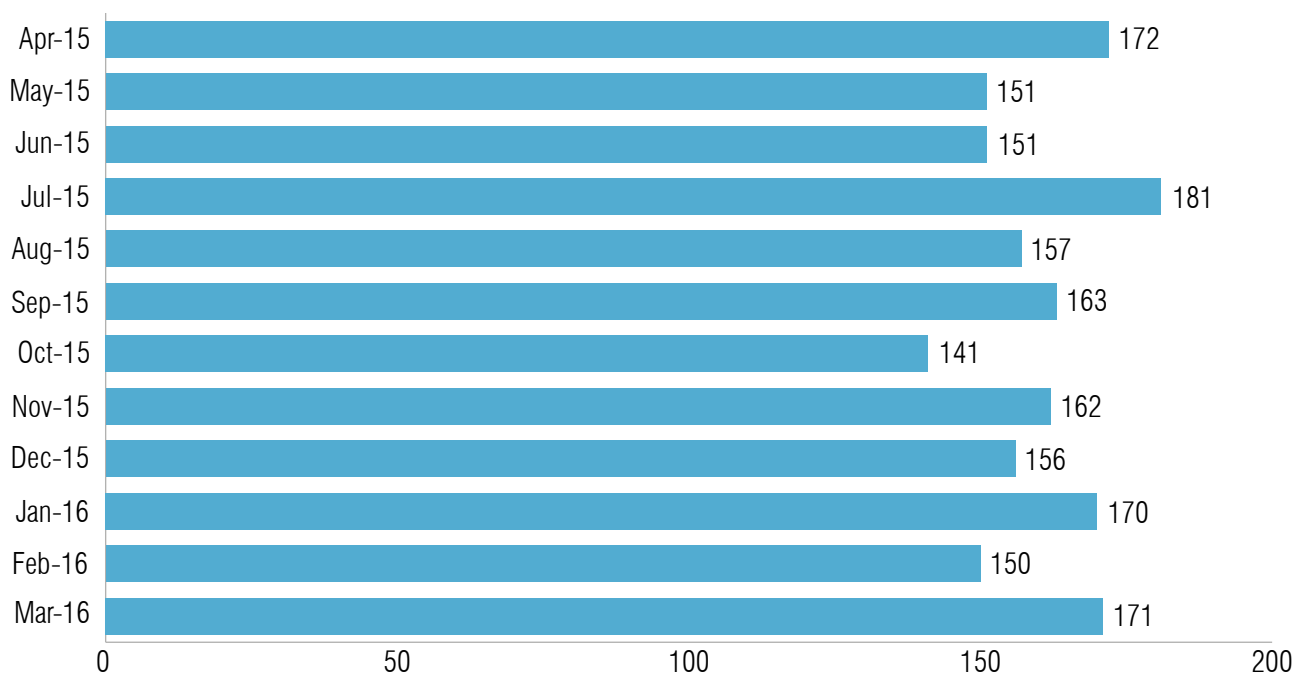
2.1: Number of applications and references received

2.2: Type of application and reference received

2.3: Number finalised

2.4: Number of applications and references did not proceed to a hearing

**Table 2.1: Number of applications and references received**



**Total number of applications and references received – 1,925**



**Table 2.2 Type of applications and references received by month**

Type of Application and Referrals	Month of Year											
	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Sep-15	Oct-15	Nov-15	Dec-15	Jan-16	Feb-16	Mar-16
Unrestricted	148	112	118	146	136	142	117	131	129	155	131	150
Restricted	17	14	27	19	16	16	12	16	18	10	14	20
Community	7	25	6	16	5	6	12	15	9	5	4	1

Total number of unrestricted cases 1,615

Total number of restricted cases 199

Total number of community cases 111

**Total 1,925**

### 2.3 Number finalised at first hearing

The total number of cases that proceeded to an outcome at the first hearing was 1,091. 172 cases were adjourned (to be heard at a later date), before proceeding to a final decision.

Applications and references that are received in one year may not be concluded until the following year.

**Table 2.4 Applications and references did not proceed to a hearing for the following reasons**

Reason for Not Proceeding to Hearing	Number of Cases
Informal (discharged by the detaining authority before proceeding to a tribunal)	392
Withdrawn (application withdrawn by the patient before proceeding to a tribunal)	274
Deceased (patient died before proceeding to a tribunal)	2
Postponed (application or references postponed before proceeding to a tribunal)	228
Request ineligible (application or reference was incorrectly made to the MHRTW)	16
Transferred out of area (patient transferred out of Wales)	10
<b>Total</b>	<b>922</b>

## Appeals

There is no statutory provision for the MHRTW to review a decision, only to decide whether to give permission to appeal to the Upper Tribunal. Parties can ask permission from the Chairman to appeal a tribunal decision to the Upper Tribunal on grounds of an error of law. If the Chairman refuses permission to appeal the party may apply directly to the Upper Tribunal for permission to appeal.

Over the period of this report 5 requests were made to the Chairman for permission to appeal to the Upper Tribunal. None were granted.

## Statutory and Best Practice Targets

The MHRTW have four statutory deadlines to meet.

Section 2 cases listed within 7 days of receipt (but no less than 3 days due to the duty to provide 3 days notice)

Restricted recall referrals listed between 5 – 8 weeks

Section 2 decisions issued within 3 working days

All other decisions issued within 7 calendar days

The MHRTW have two best practice targets to meet.

All cases acknowledged within 2 working days

Non-restricted cases listed within 8 weeks

Restricted cases listed within 12 weeks

## Complaints

The Tribunal received 7 formal complaints during the course of the year.

Each complaint was dealt with by the Chairman in accordance with the Tribunal's complaints policy. No complaint was upheld.

## Section 3 – Expenditure

### In this section:

- Expenditure for 2015/16

### Expenditure for 2015/2016

Content	Amount
Members' Fees and Expenses for tribunal proceedings	£1,813,234
Total	£1,813,234

MHRTW hearings take place either within the hospitals where the patient is detained or for community patients at venues close to where they live. All tribunal members therefore undertake very significant travel to fulfil their duties.