



# **Mental Health Review Tribunal for Wales Annual Report 2017 – 2018**

March 2019

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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 2017 – March 2018. 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.

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.

**Mrs Carolyn Kirby OBE**

President

# Section 1 – About Us

## In this section:

- Basis for the Tribunal
- The Tribunal's Function
- The Tribunal Rules
- Members of the Tribunal
- Appointments
- Training
- Appraisal
- 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:

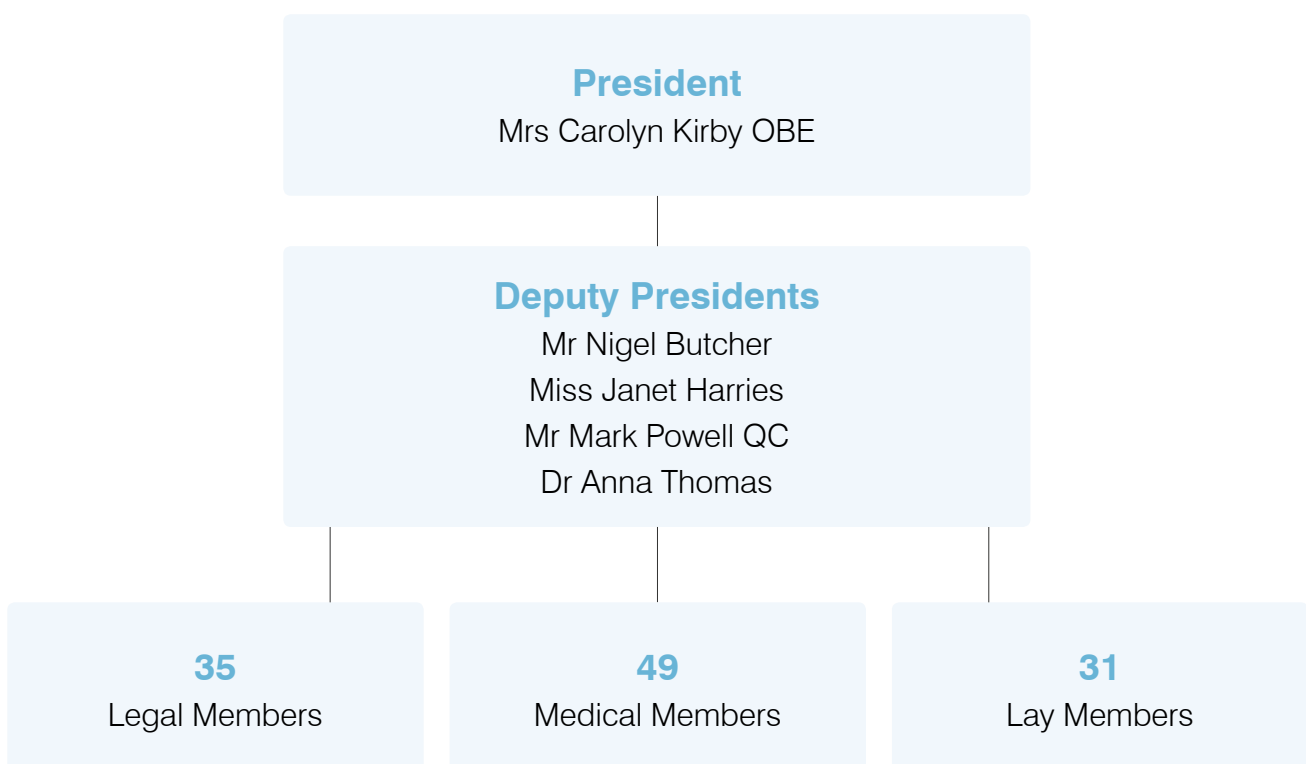
**Restricted patients** – these are mentally disordered offenders who are detained in hospital for treatment and who are subject to special controls by the Ministry of Justice because of the level of risk they pose. They may in due course become conditionally discharged as part of their gradual return 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 President and all members of the MHRT. 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 President 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 fourteen new medical members appointed in 2017/18. There were six new Restricted Patient Panel (RPP) members appointed in 2017/18.

## Training

It is important for the efficient and effective functioning of the tribunal that all members are appropriately trained and kept up to date with developments in the field of mental health law and practice. The MHRTW is fully committed to this process and held its Annual Conference for all members in November 2017 at the Park Inn Hotel, Cardiff. The conference included an overview on the Social Service and Wellbeing (Wales) Act 2014 and how it interacts with the Mental Health (Wales) Measure and the Mental Health Act, delivered by Mr Steven Garland, Specialist Advisor in Health and Social Care. This session included break-out groups between the members so that they could discuss the presentation. The afternoon session focussed on the decision making process at Tribunals. Mrs Marian Trendell, Deputy Director Social Work Sussex Partnership NHS Trust and former Specialist Lay Member for the First Tier Tribunal gave a presentation on the decision making process from the Lay members point of view. This session also included break-out groups between the members so that they could discuss the presentation.

A series of training workshops were held this year, 1 in Conwy and 2 in Cardiff. Members focused on legal developments and how they affect the decision making of Tribunal panels. All members in attendance at each day were split into small specialist groups and shared their experience of various situations involved in the decision making process. The groups were given case studies and asked to draft decisions with reasons based on the updated guidance they had been given, reaching a consensus in all situations and how to deal with different scenarios in line with best practice guidelines.

## Appraisal

25 tribunal members received appraisals during 2017/18 in accordance with the scheme to appraise all members every 2 years.

## Contacting the Tribunal

### **Mental Health Review Tribunal for Wales**

Ground Floor, Crown Buildings  
Cathays Park  
Cardiff  
CF10 3NQ

Tribunal Helpline: 03000255328

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

Website: [www.mentalhealthreviewtribunal.gov.wales](http://www.mentalhealthreviewtribunal.gov.wales)

## Accessing the Tribunal

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: Number of applications and references finalised at first hearing

2.3: Number of applications and references which did not proceed to a hearing and reasons

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

Month	Restricted	Community	Unrestricted	Total (Month)
April	12	19	142	173
May	20	16	132	168
June	21	18	154	193
July	12	11	129	152
August	13	10	160	183
September	15	20	134	169
October	20	14	152	186
November	17	17	134	168
December	12	13	129	154
January	13	27	145	185
February	13	11	131	155
March	15	15	118	148
Total (Year)	183	191	1660	2034
Section 2 applications				635
Community applications and referrals				191
Restricted applications and referrals				183
Unrestricted applications and referrals (excluding Section 2)				1025
<b>Total</b>				<b>2034</b>



## 2.2 Number of applications and references finalised at first hearing

The total number of cases that proceeded to an outcome at the first hearing was 828. 168 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.

## 2.3 Number of applications and references which did not proceed to a hearing and reasons

Reason for Not Proceeding to Hearing	Number of Cases
Informal (patient discharged by the detaining authority before proceeding to a hearing)	585
Withdrawn (application withdrawn by the patient before proceeding to a hearing)	260
Deceased (patient died before proceeding to a hearing)	2
Postponed (applications or references postponed before proceeding to a hearing)	243
Request Ineligible (applications or references incorrectly made to the MHRTW)	44
Transferred out of Area (patient transferred out of Wales before proceeding to a hearing)	23
<b>Total</b>	<b>1150</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 President to appeal a tribunal decision to the Upper Tribunal on grounds of an error of law. If the President 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 President for permission to appeal to the Upper Tribunal. 2 were granted.

## Statutory and Best Practice Targets

The MHRTW has 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 has three best practice deadlines 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 5 formal complaints during the course of the year. 2 were partially upheld; no others were upheld. Each complaint was dealt with by the President in accordance with the Tribunal's complaints policy.

## Section 3 – Expenditure

### In this section:

- Expenditure for 2017-18

### Expenditure for 2017-2018

Content	Amount
Members' fees and expenses for tribunal proceedings	£1,769,175
Members' training	£106,625
<b>Total</b>	<b>£1,875,800</b>

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.