



# **Mental Health Review Tribunal for Wales Annual Report 2018 – 2019**

August 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 2018 – March 2019. 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**

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
- 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 referrals concerning patients detained under the Mental Health Act 1983 (MHA), patients subject to community treatments orders (CTOs), 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 Act. 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 referrals broadly fall into three categories:

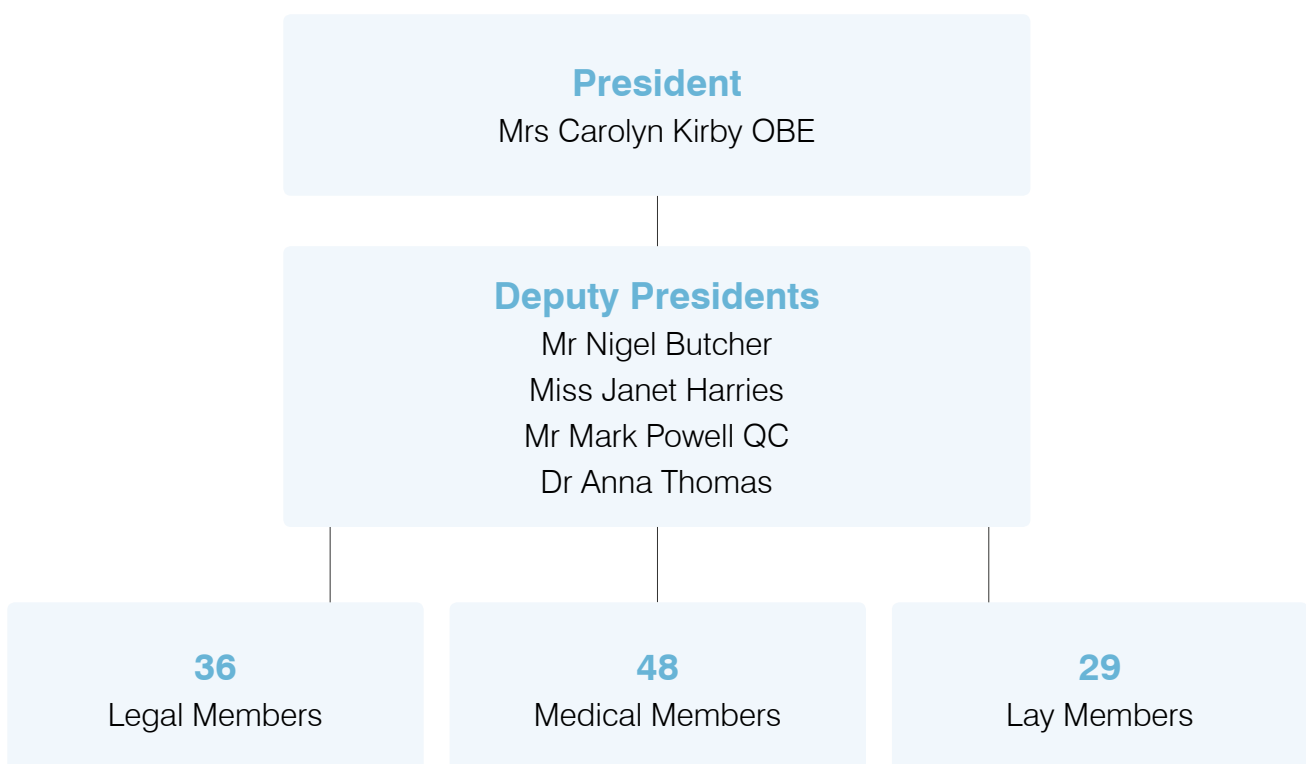
**Restricted patients** – these are mentally disordered offenders who are detained in hospital for treatment and who are subject to special controls by the Ministry of Justice because of the level of risk they pose. They may in due course become conditionally discharged as part of their gradual return 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 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 referrals 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 2018/19. There were six new Restricted Patient Panel (RPP) members appointed in 2018/19.

## 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 2018 at the Village Hotel, Cardiff. The conference included an update on recent developments in patient capacity practice and case-law and a discussion around the new guidelines in place for members to ensure that GDPR guidelines are followed. Dr Tim McInerney gave a presentation to members on mental disorder, covering elements of risk, detention and discharge planning. Sir Wyn Williams, President of the Welsh Tribunals Unit, gave a talk on emerging themes across the Welsh Tribunals Unit, highlighting the opportunities that will arise for members to sit on other Tribunals within Wales. A Q&A session was then chaired in the afternoon by Mr Mark Powell, QC to discuss the topics raised on the day at the conference.

A series of training workshops were held this year, one in Conwy and two in Cardiff. The focus of the training session was to provide members with a summary of the different powers of the Tribunal in different types of cases. Members were split into groups of mixed specialty and

given case studies to consider and then templates were provided for decisions to be drawn up after the cases had been discussed. The aim of the training was to enable members to share their experience of various situations, learn about any relevant legal decisions and/or guidance and achieve a consensus about how to deal with such situations in practice.

## Appraisal

22 tribunal members received appraisals during 2018/19 in accordance with the scheme to appraise all members every three 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 their 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 1st April to 31st March.

The following statistics are collated:

2.1: Number of applications and referrals received

2.2: Number of hearings held

2.3: Number of applications and referrals finalised at first hearing

2.4: Number of applications and referrals which did not proceed to a hearing and reasons

#### 2.1 Number of applications and references received

Between 1st April 2018 and 31st March 2019 the Mental Health Review Tribunal for Wales received 2,046 applications or referrals for a Tribunal hearing. Not all of these applications and referrals proceeded to a hearing (see table 2.4), however administrative work was carried out on every application and referral received.

**Table 2.2** Number of hearings held

Month	Restricted	Community	Unrestricted	Total (Month)
April	19	13	77	109
May	12	7	63	82
June	16	10	93	119
July	19	7	100	126
August	22	6	88	116
September	13	5	74	92
October	16	9	78	103
November	12	8	88	108
December	12	4	48	64
January	17	8	86	111
February	14	5	62	81
March	11	12	95	118
Total (Year)	183	94	952	1229



Of the Unrestricted hearings held, 315 were section 2 applications/Welsh minister referrals.

### 2.3 Number of applications and referrals finalised at first hearing

The total number of cases that proceeded to an outcome at the first hearing was 846. 172 cases were adjourned (to be heard at a later date), before proceeding to a final decision. Applications and referrals that are received in one year may not be concluded until the following year.

### 2.4 Number of applications and referrals which did not proceed to a hearing and reasons

Reason for not Proceeding to a Hearing		Number of Cases
Informal	(patient discharged by the detaining authority before proceeding to a hearing)	439
Withdrawn	(application withdrawn by the patient before proceeding to a hearing)	230
Deceased	(patient died before proceeding to a hearing)	2
Postponed	(applications or referrals postponed before proceeding to a hearing)	205
Request Ineligible	(applications or referrals incorrectly made to the MHRTW)	6
Transferred out of Area	(patient transferred out of Wales before proceeding to a hearing)	17
<b>Total</b>		<b>899</b>

### Appeals

There is no statutory provision for the MHRTW to review a decision, only to decide whether to give leave 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 three requests were made to the President for leave to appeal to the Upper Tribunal, of which one was granted.

### Complaints

The Tribunal received four formal complaints during the course of the year, of which one was partially upheld and the others were rejected. Each complaint was dealt with by the President in accordance with the Tribunal's complaints policy.

## Statutory and Best Practice Targets

The MHRTW has four statutory deadlines to meet.

### Section 2 cases listed within 7 days of receipt

All section 2 applications or referrals that are received must be listed within seven days of the date of receipt. If the hearing is subsequently postponed or adjourned, the statutory listing date is then lifted; however the case must be heard before the section expires. If the deadline date falls on a Bank Holiday, then the deadline date is then considered as the next working day.

In exceptional circumstances, any Party to the Tribunal hearing may request an extension to the listing date of a section 2 hearing. They must submit adequate reasons for their request, which will then be considered by the President or one of her Deputies. If the reasons are agreed, the hearing will then be listed on the 8th day after receipt of the application/referral.

230 section 2 applications/referrals were received and proceeded to be listed for the first hearing.

217 hearings were listed within the statutory timescale.

7 of the hearings were listed on the 8th day because of a Bank Holiday.

6 of the hearings were listed on the 8th day with permission of the President or her Deputies.

### Restricted recall referrals listed between 5-8 weeks

All Ministry of Justice Recall Referrals that are received must be listed within five to eight weeks of the date of receipt. If the hearing is subsequently postponed or adjourned, the statutory listing date is then lifted. If the deadline date for listing falls on a Bank Holiday, then the last possible day is considered as the next working day.

In exceptional circumstances, any Party to the Tribunal hearing may request an extension to the listing date of a Recall Referral. They must submit adequate reasons for their request, which will then be considered by the President or one of her Deputies. If the reasons are agreed, the hearing will then be listed on the next available date.

Only a Restricted Patient Panel member may chair a hearing for a Recall Referral. In some instances, there may not be an RPP member available to chair the hearing within the statutory timescale. All efforts are made to secure an RPP member, however if this is not possible, then the hearing may also be listed past the deadline date.

13 Ministry of Justice Recall Referrals were received and proceeded to be listed for the first hearing.

10 hearings were listed within the statutory timescale.

### **Section 2 decisions issued within 3 working days**

77% of section 2 decisions were issued within 3 working days.

Of the 23% of decisions issued outside of the timescale, 17% were received for issuing past the deadline date. The remaining 6% were received in time, however were issued at least one day past the deadline date.

### **Decisions for all other sections issued within 7 calendar days**

85% of all other sections decisions were issued within 7 calendar days.

Of the 15% of decisions issued outside of the timescale, 7% were received for issuing past the deadline date. The remaining 8% were received in time, however were issued at least one day past the deadline date.

The MHRTW has three best practice targets to meet.

### **All cases acknowledged within 3 working days of receipt**

83% of all applications and referrals received were acknowledged within the best practice target.

### **Non-restricted cases listed within 8 weeks**

55% of all non-restricted cases were listed within the best practice target.

Some cases may have been listed 1 or 2 days over the deadline date. This could be for a multitude of reasons, including:

- a member of the care team required to attend the hearing being unavailable in the timescales provided
- the legal representative for the patient being unavailable in the timescales provided
- panel members being unavailable to hear the case at a hearing.

## Restricted cases listed within 14 weeks

49% of all restricted cases were listed within the best practice target.

Some cases may have been listed 1 or 2 days over the deadline date. This could be for a multitude of reasons, including:

- a member of the care team required to attend the hearing being unavailable in the timescales provided
- the legal representative for the patient being unavailable in the timescales provided
- panel members being unavailable to hear the case at a hearing.

## Section 3 – Expenditure

### In this section:

- Expenditure for 2018-19

### Expenditure for 2018-2019

Content	Amount
Cost of tribunal proceedings	£2,293,481
Cost of Members' training	£108,350
	£2,401,831

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.