

Mental Health Review Tribunal for Wales Annual Report 2020 – 2021

June 2021

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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 2020 – March 2021. 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 has never been more so than this year because of the challenges presented by the COVID-19 pandemic which has had a significant impact on the Tribunal and all its users. Hearings had to move from being held in person, usually at hospitals, to being held remotely by using telephone hearings. Since the first lockdown was imposed, back in March 2020, every hearing has taken place by telephone and we continue to explore the possibility of other forms of remote hearings.

The Mental Health Review Tribunal for Wales Rules 2008 lacked the flexibility to allow us to constitute a tribunal with only one or two members (as opposed to the full complement of three) in order to make decisions in certain types of cases. This has long since been possible in the equivalent tribunal in England where different provisions apply. However, once it became known that the UK Parliament intended to enact the Coronavirus Act 2020 strenuous efforts were made to ensure that the legislation included provisions specific to MHRTW to ensure that we could work as flexibly as our English counterpart if necessary. Through a great deal of hard work on the part of many people and co-operative working between civil servants in Wales and England suitable provisions were drafted specific to MHRTW and incorporated into the Act.

Accordingly, the MHRTW acquired the ability to work as flexibly as its English counterpart for as long as the relevant provisions of the Coronavirus Act are in force. With the approval of the First Minister, the President of Welsh Tribunals and I were able to issue jointly a Practice Direction relating to the work of MHRTW, in order to supplement the rule changes, within days of the Act receiving Royal Assent.

The provisions relating to our hearings are of course enabling rather than prescriptive and I am delighted to say that the provision to reduce the panel to a single judge has not been used by the Tribunal. The provision to conduct a paper-only hearing has also not been used here in Wales. The Tribunal has delivered a full programme of hearings in every category, with a fully constituted panel throughout the pandemic, without resulting in a backlog of hearings. Despite the lack of hearings in person, I am pleased to say that the discharge rates have remained close to normal, indicating that patients have not been disadvantaged by having their hearings held remotely during the pandemic.

I wish to record here my thanks to the administration and tribunal members for adapting so quickly to ensure that remote hearings were able to be implemented within days of the first lockdown, which ensured that there was no backlog of cases and that patients had their access to justice.

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 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

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:

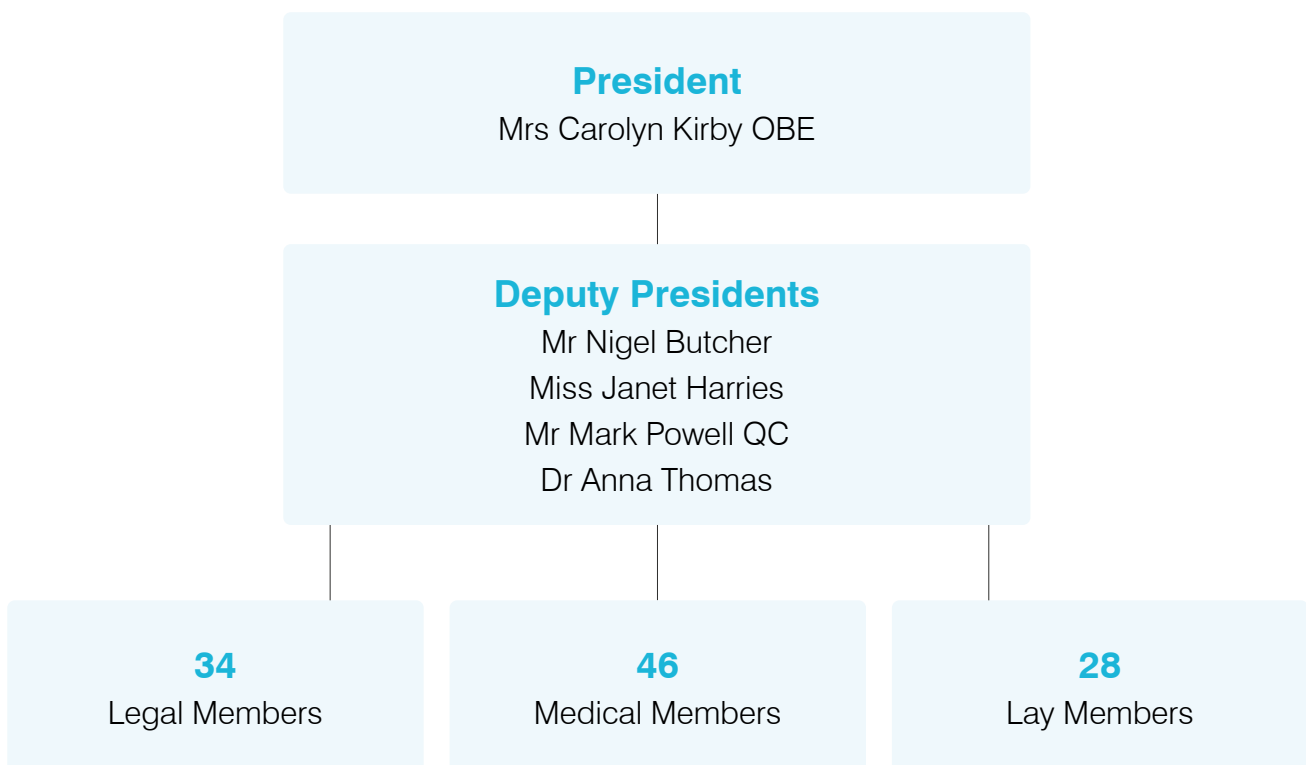
Restricted patients – these are mentally disordered offenders who are detained in hospital for treatment and who are subject to special controls by the Ministry of Justice because of the level of risk they pose. They may in due course become conditionally discharged as part of their gradual return to 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 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 no new panel member appointments made in 2020-21, however, selection exercises were launched for legal and lay members in the first quarter of 2020 and for medical members in February 2021. Due to the global pandemic of COVID-19 all the exercises were delayed and the appointments will now be made during 2021-22.

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 the Annual Conference for all members in November 2020 virtually via Microsoft Teams in order to adhere to COVID-19 restrictions. Over 100 members joined the virtual conference successfully.

The President of the MHRTW, Carolyn Kirby OBE, opened the session with a general update and Sir Wyn Williams, President of Welsh Tribunals, addressed the members regarding the many changes needed and the impact COVID-19 has had on the Welsh Tribunals during the year.

During the conference members were encouraged and able to take part in a discussion regarding tribunal hearings held under COVID-19 restrictions, and were also able to give feedback on their experiences. Dr Clementine Maddock gave a virtual presentation on 'Consent to Treatment' and held a Q&A session.

The feedback received from the Virtual Conference was excellent, with members feeling included and able to join in either by asking questions directly or in a virtual chat.

The conference was recorded for any members who were unable to attend and presentation slides sent to all members.

The workshops usually scheduled to take place in the spring were held back in the hope of completing some training on the Mental Health Act reforms in the summer of 2020, but have been further postponed.

Appraisals

Member appraisals have been put on hold whilst hearings are conducted via telephone conference. Appraisals will continue as soon as it is practicably possible to resume face-to-face hearings.

Contacting the Tribunal

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Tribunal Helpline: 03000255328

Tribunal E-mail: mhrt@gov.wales

Website: 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
- Complaints
- Statutory and Best Practice Targets

Numbers and Statistics

A tribunal year runs from 1st April to 31st March.

The following statistics are collated:

Number of applications and referrals received

Number of case files resulting from these applications and referrals

Number of hearings held

Number of case files finalised at first hearing

Number of case files which did not proceed to a hearing and reasons

Applications and referrals received, and their case files

Between 1st April 2020 and 31st March 2021 the Mental Health Review Tribunal for Wales received 1,790 applications or referrals for a Tribunal hearing.

An application or referral may result in a number of hearings being scheduled, as the same application may be adjourned or postponed for a variety of reasons, and on more than one occasion. Therefore a number of different case files will be created.

A case file is created for each application or referral that is received, and therefore a patient can have multiple case files created for them over the course of their detention period.

Every time a hearing is set and does not come to a conclusion, a new case file is created for the same application or referral. For example, Joe Bloggs makes an application which is created into a case file. The first hearing is scheduled but is postponed, so that first case file is closed, and a new case file is opened to allow the new hearing to be scheduled. This allows the MHRTW to more precisely record case figures and statistics.

It is also worth noting that not all case files created from applications received will have progressed to a stage where a hearing has been scheduled.

From applications and referrals received between 1st April 2020 and 31st March 2021, 2,016 cases were created.

Not all of those case files were closed by 31st March 2021. 120 cases remain to be heard in the next Financial Year (1st April 2021 to 31st March 2022).

All case files created and their result

The below table shows all cases created from applications/referrals received in 2020 – 2021, and the end result of those cases.

If an explanation to a status is not listed below, it can be found on our website at the following link: <https://mentalhealthreviewtribunal.gov.wales/sites/mentalhealthreview/files/2019-06/mhrtw-16-list-of-words-en.pdf>

Case Result	Number of Cases
Absolute Discharge	2
Adjourned	104
Conditional Discharge	10
Deceased (patient died before the case could progress)	0
Deferred Conditional Discharge	3
Deferred Discharge	16
Discharged	35
Informal (patient discharged by the detaining authority)	513
Not Discharged	720
Open (case is yet to be heard)	119
Postponed	125
Request Ineligible (applications or referrals incorrectly made to the MHRTW)	34
Transferred out of Area (patient transferred out of Wales before proceeding to a hearing)	25
Withdrawn (application withdrawn by the patient)	266
Withdrawn on the Day (application withdrawn by the patient on the day of the hearing)	44
Total	2016

Applications and referrals received and not scheduled for a hearing, and reasons

The below table is a breakdown of applications or referrals that were received in 2019 – 2020 but that were never scheduled for a hearing. The reasons are noted below, with a brief explanation.

These figures are included in the overall figures above.

Reason for not Proceeding to a Hearing	Number of Cases
Deceased (patient died)	0
Informal (patient discharged by the detaining authority)	94
Request Ineligible (applications or referrals incorrectly made to the MHRTW)	27
Transferred out of Area (patient transferred out of Wales before proceeding to a hearing)	11
Withdrawn (application withdrawn by the patient)	33
Total	165

Hearings scheduled

During this financial year, a total of 1,878 hearings were scheduled. The hearings scheduled in 2020 – 2021 are not all from applications and referrals received in the same year, and are therefore reported separately.

Hearings scheduled which proceeded to an outcome

The below table shows a breakdown of hearings that were held in 2020 – 2021 that proceeded to an outcome. For the purposes of this report, an outcome is taken to mean that the patient was either (a variant of) discharged or not discharged, or withdrew their application during the course of the hearing.

Month	Restricted	Community	Unrestricted	Total (Month)
April	7	8	66	81
May	9	4	60	73
June	12	10	57	79
July	3	9	82	94
August	4	4	70	78
September	7	8	40	55
October	9	10	57	76
November	5	1	63	69
December	9	6	42	57

Month	Restricted	Community	Unrestricted	Total (Month)
January	15	15	65	95
February	6	10	52	68
March	6	16	66	88
Total (Year)	92	101	720	913

Of the above hearings, 57 resulted in discharge.

789 hearings resulted in the patient not being discharged.

52 applications were withdrawn on the day at the request of the patient.

Of the unrestricted hearings held, 257 were section 2 applications/Welsh minister referrals.

Applications and referrals finalised at first hearing

The total number of cases that proceeded to an outcome at the first hearing was 737.

Hearings scheduled but which did not proceed, and reasons

The below table is a breakdown of hearings that were scheduled to be heard, but for the varying reasons below, never proceeded to an actual hearing.

All of the below postponed cases would have been rescheduled and heard at a later date

Reason for not Proceeding to a Hearing	Number of Cases
Informal (patient discharged by the detaining authority before proceeding to a hearing)	417
Withdrawn (application withdrawn by the patient before proceeding to a hearing)	268
Deceased (patient died before proceeding to a hearing)	3
Postponed (applications or referrals postponed before proceeding to a hearing)	142
Request Ineligible (applications or referrals incorrectly made to the MHRTW)	5
Transferred out of Area (patient transferred out of Wales before proceeding to a hearing)	12
Total	847

In addition to the tables above, 112 hearings were adjourned (to be heard at a later date), before proceeding to a final decision. 6 hearings resulted in a deferred conditional discharge, with a conditional discharge then being granted at a later date.

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 six requests were made to the President for permissions to appeal to the Upper Tribunal, of which three were granted. One appeal was subsequently withdrawn.

Complaints

The Tribunal received three formal complaints during the course of the year. All three complaints were dealt with by the President in accordance with the Tribunal's complaints policy and were not upheld.

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, 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.

482 section 2 applications/referrals were received and listed for the first hearing.

449 hearings were listed within the statutory timescale.

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

23 of the hearings were listed on or after 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.

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

All hearings were listed within the statutory timescale.

Section 2 decisions issued within 3 working days

84% of section 2 decisions were issued within 3 working days.

Of the 16% of decisions issued outside of the timescale, 13% were received for issuing past the deadline date. The remaining 3% 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

98% of all other sections decisions were issued within 7 calendar days.

Of the 2% of decisions issued outside of the timescale, 1.4% were received for issuing past the deadline date. The remaining 0.6% were received in time, however were issued at least one day past the deadline date.

Best Practice Targets

The MHRTW has 3 Best Practice targets to meet.

All cases acknowledged within 3 working days of receipt

98% of all applications and referrals received were acknowledged within the best practice target.

Non-restricted cases listed within 8 weeks

64% of all non-restricted cases were listed within the best practice target.

The reason there is a decline in how many were listed within 8 weeks is largely due to COVID-19 restrictions. The tribunal was limited to how many hearings could be scheduled in a day and therefore some hearings had to be scheduled later than the best practice guideline.

Some cases may have also been listed 1 or 2 days over the deadline date for other 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

69% of all restricted cases were listed within the best practice target.

The reason there is a decline in how many were listed within 14 weeks is largely due to COVID-19 restrictions. The tribunal was limited to how many hearings could be scheduled in a day and therefore some hearings had to be scheduled later than the best practice guideline.

Some cases may have also been listed 1 or 2 days over the deadline date for other reasons, including:

- A shortage of restricted patient panel (RPP) judges.
- 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 2020 – 2021

Expenditure for 2020-2021

Content	Amount
Cost of tribunal proceedings	£1,753,100
Cost of Members' training	£31,256
TOTAL	£1,784,356

MHRTW hearings usually take place either within the hospitals where the patient is detained or for community patients at venues close to where they live. As a result of COVID-19 restrictions all hearings conducted in 2020-2021 were held via telephone conference.