

Mental Health Review Tribunal for Wales Annual Report 2022 – 2023

June 2024

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Foreword

This has been another challenging year for the tribunal, particularly because the effects of the COVID pandemic have prevented us holding hearings in person in the hospital or other venue where the patient is detained, as has been our invariable practice in the past. However, whereas we were initially only able to hold hearings by telephone, during the year the technological advances within the venues progressed to the point where we have been able to hold the hearing by video conference so that participants can see as well as hear one another.

At the time of this report however, the progress of the pandemic has evolved to the point where we are starting to be allowed back into hospitals to conduct hearings in person. This will once again become the default format of hearings, but with the option of a hearing by video conference if that is the patient's preference, now that technology is in place.

I wish to record my thanks to the members of the tribunal and the administrative team for their heroic efforts in maintaining the service of the tribunal for the benefit of the patients without any backlog throughout this very taxing period. We take our statutory obligations towards patients detained under the Mental Health Act extremely seriously, so holding hearings within the statutory or recommended timescales is our top priority.

I also place on record our thanks to the outgoing President of Welsh Tribunals, Sir Wyn Williams, for his interest in and support for this tribunal during his tenure.

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
- Appraisals
- 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 referrals broadly fall into three categories:

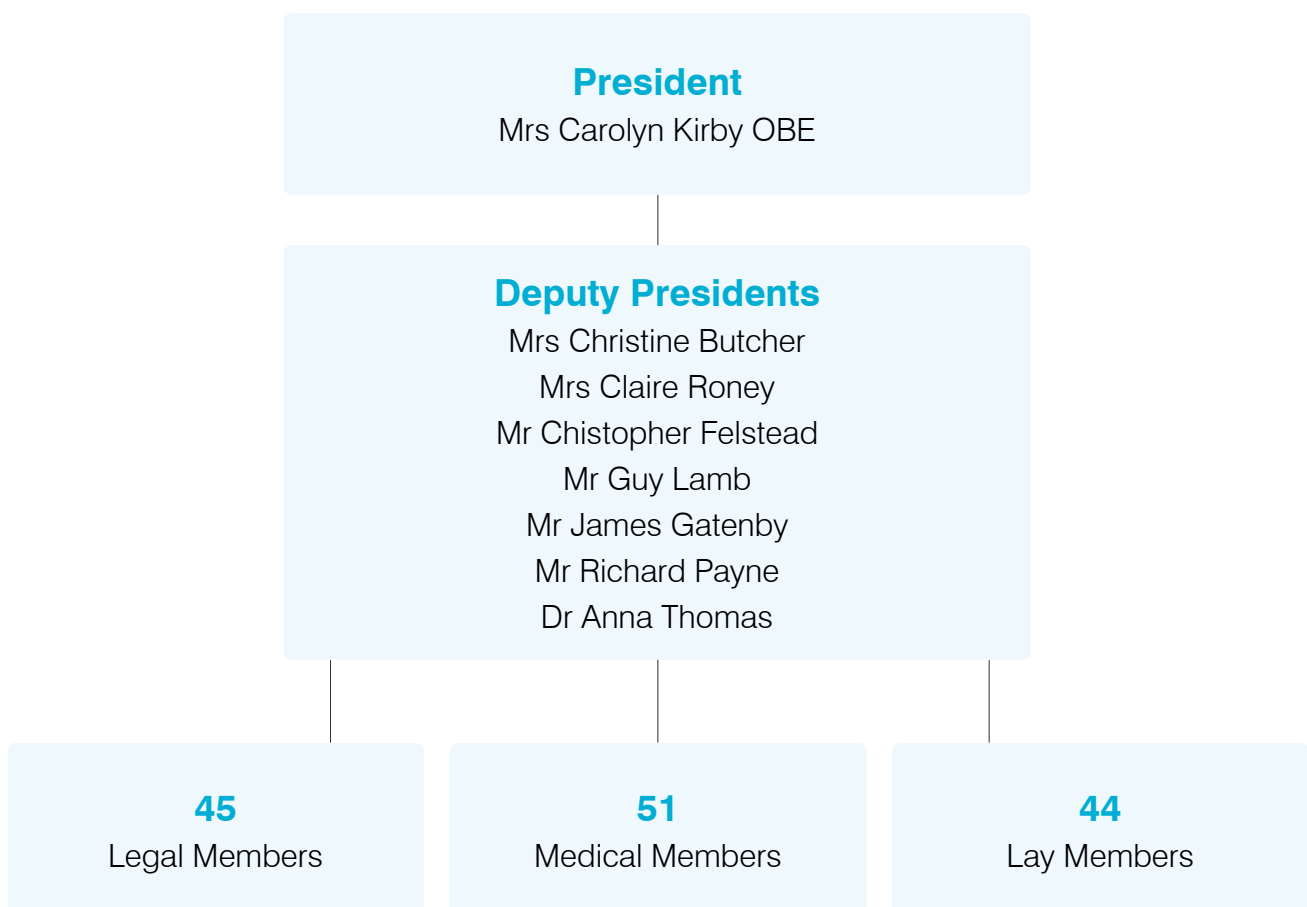
Restricted patients – these are mentally disordered offenders who are detained in hospital for treatment and who are subject to special controls by the Ministry of Justice because of the level of risk they pose. They may in due course become conditionally discharged as part of their gradual return to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

Following the launch of the selection exercises for medical members in the second quarter of 2021, the MHRTW was successful in appointing 14 new medical members to the Tribunal in 2022-2023.

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 an Annual Conference for all members in November 2022 at the Leonardo Hotel, Cardiff.

The President of the MHRTW, Carolyn Kirby OBE, addressed the members and provided updates regarding the many changes that impacted the MHRTW during the year. An overview on the developments in tribunal practice and procedure delivered by Mr Jim Gatenby, Deputy President. This was followed by a session on the tribunal process from the perspective of patients and their representatives given by Mr Richard Payne, Deputy President.

The afternoon commenced with a presentation on clarifying and assessing Nature and Degree, by Dr Anna Thomas. This was followed by a presentation from Linda James, Lay member and Karen Donaldson, Lay Member who focussed on maximising the contribution of the expertise of the Lay Member during a tribunal hearing.

The conference concluded with a Q&A forum which provided attendees with the opportunity to participate in discussions about specific tribunal hearings.

The Tribunal appointed 14 new medical members in 2022. All new members were required to observe several hearings prior to attending their induction training. This was held at the New House Country Hotel, Cardiff. Following the completion of the training the members were then able to sit as panel members.

Appraisals

During the pandemic member appraisals were put on hold. Appraisals are due to recommence during 2023-24.

Contacting the Tribunal

Tribunal Address:	Mental Health Review Tribunal for Wales PO Box 1143 Cardiff CF11 1WX
Tribunal Helpline:	03000255328
Tribunal email:	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 can be arranged to translate at the hearing. If a sign language interpreter is needed to attend the hearing this can also be arranged providing sufficient notice is provided to the MHRT secretariat.

If anyone attending the hearing has any access requirements that may affect arrangements of a hearing, provisions will be made providing sufficient notice is provided to the MHRT secretariat.

Section 2 – Performance and Progress

In this section:

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

Statistics

A tribunal year is the same as a financial year and runs from 1st April to 31st March.

The following statistics are collated by the MHRT Secretariat:

- Number of applications and referrals received.
- Number of case files created and their outcome.
- Number of hearings scheduled.
- Number of hearings scheduled which proceeded to an outcome.
- Number of hearings scheduled which did not proceed to an outcome.

Applications and referrals received

Between 1st April 2022 and 31st March 2023, the Mental Health Review Tribunal for Wales received 1,747 applications or referrals for a Tribunal hearing.

An application or referral may result in several hearings being scheduled, as the same application may be adjourned or postponed for a variety of reasons, and on more than one occasion. Therefore, several 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 arranged and is not concluded, 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.

From applications and referrals received between 1st April 2022 and 31st March 2023, a total of 2,053 case files were created. There were 52 case files open at the end of the year which carried over into the following year (1st April 2023 to 31st March 2024).

Case files created and their outcome

The table below shows a breakdown of cases created from applications/referrals received in 2022-2023, and the outcomes.

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

Case Outcome	Number of Cases
Absolute Discharge	4
Adjourned	116
Conditional Discharge	16
Deceased (patient died before the case could progress)	7
Deferred Discharge	12
Discharged	45
Informal (patient discharged by the detaining authority)	551
Not Discharged	700
Open (case is yet to be heard)	52
Postponed	198
Request Ineligible (applications or referrals incorrectly made to the MHRTW)	37
Transferred out of Area (patient transferred out of Wales before proceeding to a hearing)	12
Withdrawn (application withdrawn by the patient before the day of hearing)	252
Withdrawn on the Day (application withdrawn by the patient on the day of the hearing)	51
Total	2053

Applications and referrals received which did not proceed to a hearing, and the reasons why

Of the 2,053 cases detailed in Table.1 above, a total of 110 Applications and Referrals did not proceed to a hearing. The table below provides further information on the reasons why.

Reason for not Proceeding to a Hearing	Number of Applications and Referrals
Informal (patient discharged by the detaining authority)	73
Request Ineligible (applications or referrals incorrectly made to the MHRTW)	23
Transferred out of Area (patient transferred out of Wales before proceeding to a hearing)	3
Withdrawn (application withdrawn by the patient)	11
Total	110

Hearings scheduled

Number of case files finalised at first hearing.

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

During this financial year, a total of 1,943 hearings were scheduled. Of these hearings, a proportion relate to applications/referrals received during the previous financial year.

Hearings scheduled which proceeded to an outcome

The below table shows a breakdown of hearings that were held in 2022-2023 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, not discharged or withdrew their application during the course of the hearing.

Month	Restricted	Community	Unrestricted	Total (Month)
April	11	10	65	86
May	19	6	69	94
June	13	6	71	90
July	11	8	79	98
August	6	9	79	94
September	20	7	60	87
October	12	5	78	95

Month	Restricted	Community	Unrestricted	Total (Month)
November	12	6	74	92
December	9	5	57	71
January	13	7	62	82
February	3	7	56	76
March	8	10	66	84
Total (Year)	147	86	816	1049

Hearings that did not proceed to a final outcome

The table below provides information on the reasons why hearings did not proceed to a final outcome.

Reason for postponement	Number of Cases
Informal (patient discharged by the detaining authority before proceeding to a hearing)	471
Withdrawn (application withdrawn by the patient before proceeding to a hearing)	205
Deceased (patient died before proceeding to a hearing)	8
Postponed (applications or referrals postponed before proceeding to a hearing)	193
Request Ineligible (applications or referrals incorrectly made to the MHRTW)	8
Transferred out of Area (patient transferred out of Wales before proceeding to a hearing)	9
Total	894

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 6 requests were made to the President for permissions to appeal to the Upper Tribunal, of which 2 were granted.

Complaints

The Tribunal did not receive any formal complaints during this period.

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 listing date falls on a Bank Holiday, the listing 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.

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

444 hearings were listed within the statutory timescale.

24 of the hearings were listed on or after the 8th day because of a Bank Holiday.

45 of the hearings were listed on or after the 8th day with permission from 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 a RPP member, however if this is not possible, then the hearing may also be listed past the deadline date.

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

2 hearings were listed after the statutory timescale with the permission the President or her Deputies.

Section 2 decisions issued within 3 working days

83% of section 2 decisions were issued within 3 working days.

Of the 17% of decisions issued outside of the timescale, 13% were received for issuing past the deadline date. The remaining 4% were received in time but 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, 1.7% were received for issuing past the deadline date. The remaining 0.3% were received in time but were issued at least one day past the deadline date.

Best Practice Targets

The MHRTW have 3 Best Practice targets to meet.

All cases acknowledged within 3 working days of receipt

96% of all applications and referrals received were acknowledged within the best practice target.

Non-restricted cases listed within 8 weeks

87% of all non-restricted cases were listed within the best practice target.

Ongoing pandemic restrictions limited how many hearings could be scheduled in a day and therefore some hearings had to be scheduled later than the best practice guideline.

Some hearings were listed 1 or 2 days past the best practice date for the following reasons:

- Members of the patient's care team were required to attend the hearing but were not available.
- Legal representatives for patients were not available.
- Panel members were not available.

Restricted cases listed within 14 weeks

92% of all restricted cases were listed within the best practice target.

Ongoing pandemic restrictions limited 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.
- Members of the patient's care team were required to attend the hearing but were not available.
- Legal representatives for patients were not available.
- Panel members were not available.

Section 3 – Expenditure

In this section:

- Expenditure for 2022-2023

Expenditure for 2022-2023

Contents	Amount
Cost of tribunal proceedings	£2,332,727
Other running costs	£78,825
Total	£2,411,552

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, hearings conducted in 2022-2023 were held via telephone conference or video conference. Hearings being held in person commenced 1st March 2023 with the introduction of patient choice for the format of the tribunal hearing.