

Mental Health Review Tribunal for Wales Annual Report 2023 – 2024

January 2025

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Foreword

I am pleased to present our Annual report for the Mental Health Review Tribunal for Wales. This report covers the period April 2023-March 2024. I hope you find this report informative in providing an insight into the work that we undertake. As a tribunal, we strive to ensure that we serve the interests of all those in Wales whose applications or referrals fall within our jurisdiction. The requirements provided by statute and our own best practice guidelines govern our practice.

Since our last report, the Tribunal has continued to conduct hearings, where possible, in a format of the patient's choosing, so that Tribunals are held via videoconference or in-person. Whilst this places an additional burden on the administration team, it maintains an essential involvement of the patient in being able to participate in their own Tribunal and to elect the format of that participation. We do not conduct paper-only hearings, again, to facilitate as much involvement as the patient seeks during the review of their detention under the Mental Health Act.

Our Tribunal deals with very sensitive and confidential matters relating to a patient's liberty and also the protection of the public. Unlike other tribunals, our hearings are conducted in private, and our written decisions are only issued to the parties. We retain flexibility where, for example an application to observe a Tribunal is made by a professional who identifies a specific training need. Where there is direct involvement with the patient and agreement is given by the patient for this person to attend, approval may be given by the Tribunal, as training is recognised as an essential aspect of our work.

As a final note, I wish to reiterate my thanks to the administration team and tribunal members for their continued dedication and commitment to ensuring that patients' right to justice remains paramount. Tribunal members have demonstrated a willingness and flexibility to conduct hearings at different venues, both in-person and remotely and often at short notice. The administration team continue to support and facilitate these hearings and ensure arrangements for our annual workshops are in place so that our members receive this vital training.

Both Tribunal members and the administration team continue to make every effort to maintain the level of service available to our Tribunal users despite ever-increasing budgetary pressures and limited resources.

Any questions or comments arising about any aspect of the work of the Tribunal, or about the contents of this report are most welcome. In the first instance, please address any comments to the Tribunal Secretariat.

Carolyn Kirby OBE

President of the Mental Health Review Tribunal for Wales

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:

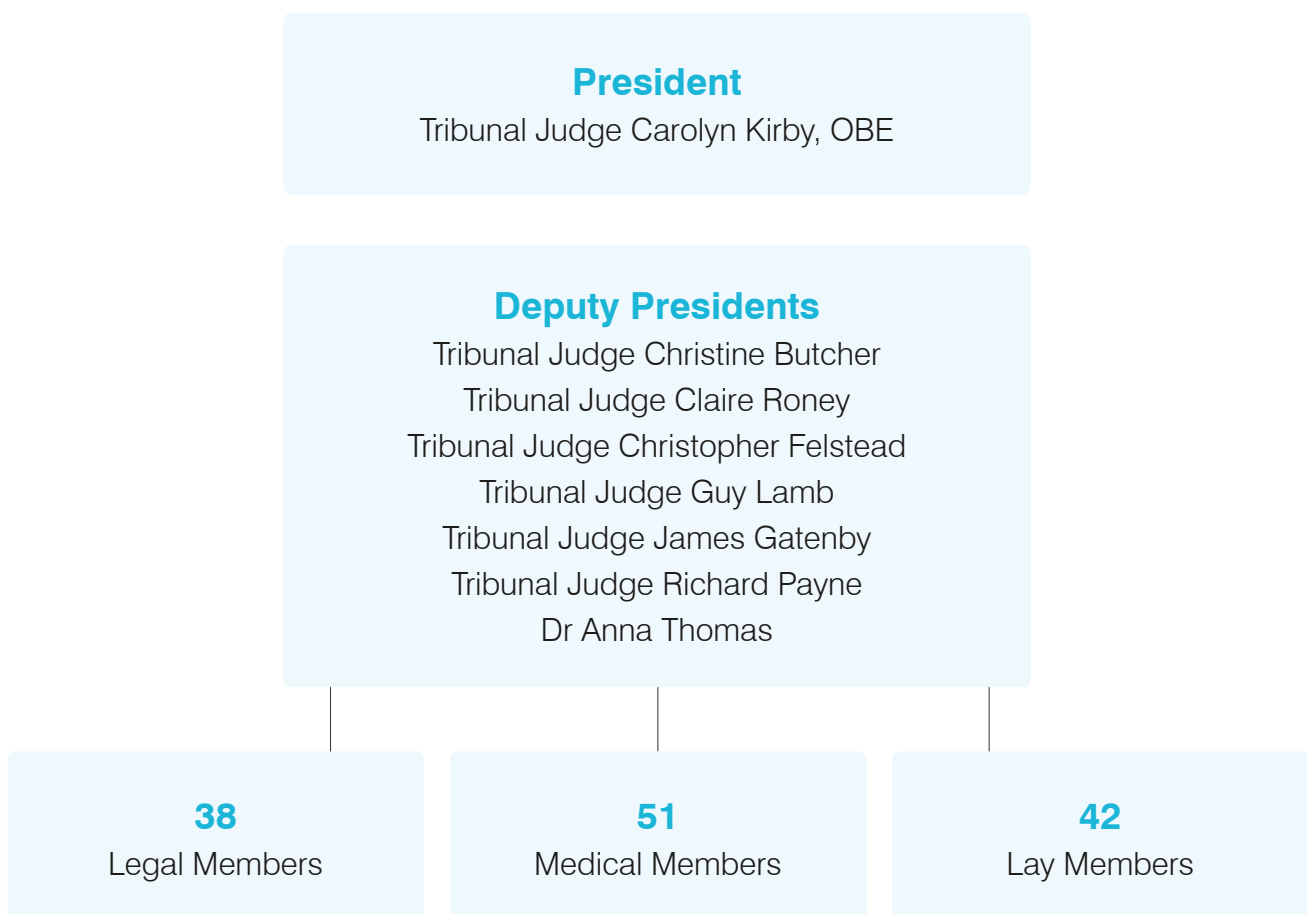
Restricted patients – these are mentally disordered offenders who are detained in hospital for treatment and who are subject to special controls by the Ministry of Justice because of the level of risk they pose. They may in due course become conditionally discharged as part of their gradual return to 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 deputies on all legal points arising during the preliminary pre-hearing stages of the proceedings and passes on tribunal rulings and directions in writing to the parties.

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 a number of workshops for members during the spring 2023. These provided members with an opportunity to meet and work collectively on scenarios which had been prepared following suggested training topics. By working in groups and sharing views, all members were able to work collaboratively and add to best practice ways of working which will be applied in future tribunals.

An Annual Conference for all members was held in Cardiff during November 2023.

The President of the MHRTW, Carolyn Kirby OBE, addressed the members and reflected on the main change that had impacted on the MHRTW during the year which was the return to face-to-face hearings.

The President of the Welsh Tribunals Unit, Sir Gary Hickinbottom, spoke to members about his vision for tribunal reform in Wales. Guest speakers included Dr Chris Lawrence who provided an overview of Risk Assessment in relation to patients, Mr Matthew Graham who spoke about the interface between the Mental Capacity Act 2005 and the Mental Health Act 1983, and Mrs Nicola Charles who provided an update on the General Data Protection Regulation.

Deputy President, Mr James Gatenby presented on changes, as a result of case law, which have an impact on the tribunal. Following the conference, feedback from members was gathered which will be utilised to inform future training.

Contacting the Tribunal

Mental Health Review Tribunal for Wales

PO Box 1143

Cardiff

CF11 1WX

Tribunal Helpline: 0300 0255 328

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 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 2023 and 31st March 2024, the Mental Health Review Tribunal for Wales received 1,798 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 2023 and 31st March 2024, a total of 2,216 case files were created. There were 17 case files open at the end of the year which carried over into the following year (1st April 2024 to 31st March 2025).

All case files created and their result

The table below shows a breakdown of cases created from applications/referrals received in 2023-2024, and the outcomes. This includes the outcome for applications/referrals which may not have proceeded to a tribunal and those where a tribunal has taken place.

For further information about the definition of outcomes please visit the MHRTW website at the following link www.mentalhealthreviewtribunal.gov.wales/sites/mentalhealthreview/files/2019-06/mhrtw-16-list-of-words-en.pdf

Table 1

Case Outcome	Number of Cases
Absolute Discharge	5
Adjourned	162
Conditional Discharge	19
Deceased (patient died before the case could progress)	2
Deferred Discharge	13
Discharged	47
Informal (patient discharged by the detaining authority)	535
Not Discharged	751
Open (case is yet to be heard)	17
Postponed	256
Request Ineligible (applications or referrals incorrectly made to the MHRTW)	31
Transferred out of Area (patient transferred out of Wales before proceeding to a hearing)	36
Withdrawn (application withdrawn by the patient before the day of hearing)	286
Withdrawn on the Day (application withdrawn by the patient on the day of the hearing)	56
Total	2216

Applications and referrals received which did not have a hearing date arranged, and the reasons why

Of the 2,216 cases detailed in Table.1 above, a total of 161 Applications and Referrals did not progress to having a hearing date arranged. The table below provides further information on the reasons why.

Table 2

Reason for not Proceeding to an arranged Hearing	Number of Applications and Referrals
Informal (patient discharged by the detaining authority)	99
Request Ineligible (applications or referrals incorrectly made to the MHRTW)	23
Transferred out of Area (patient transferred out of Wales before hearing arranged)	13
Withdrawn (application withdrawn by the patient)	26
Total	161

Hearings scheduled

During this financial year, a total of 2,055 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 2023-2024 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.

Table 3

Month	Restricted	Community	Unrestricted	Total (Month)
April	4	5	67	76
May	9	8	54	71
June	8	8	56	72
July	2	9	61	72
August	5	3	65	73
September	6	11	70	87
October	6	6	74	86
November	3	4	60	67
December	6	3	48	57
January	6	4	57	67
February	14	4	47	65
March	3	8	69	80
Total (Year)	72	73	728	873

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.

Table 4

Reason for postponement	Number of Cases
Informal (patient discharged by the detaining authority before proceeding to a hearing)	431
Withdrawn (application withdrawn by the patient before proceeding to a hearing)	261
Deceased (patient died before proceeding to a hearing)	2
Postponed (applications or referrals postponed before proceeding to a hearing)	252
Request Ineligible (applications or referrals incorrectly made to the MHRTW)	9
Transferred out of Area (patient transferred out of Wales before proceeding to a hearing)	23
Total	978

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 there have been no requests to the President for permissions to appeal to the Upper Tribunal.

Complaints

The Tribunal has not received 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.

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

439 hearings were listed within the statutory timescale.

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

57 of the hearings were listed on or after the 8th day with permission from the President or 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.

12 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 Deputies.

Section 2 decisions issued within 3 working days

76% of section 2 decisions were issued within 3 working days.

Of the 24% of decisions issued outside of the timescale, 17% were received for issuing past the deadline date. The remaining 7% 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

94% of all other sections decisions were issued within 7 calendar days.

Of the 6% of decisions issued outside of the timescale, 2% 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.

Best Practice Targets

The MHRTW have 3 Best Practice targets to meet.

All cases acknowledged within 3 working days of receipt

95% of all applications and referrals received were acknowledged within the best practice target.

Non-restricted cases listed within 8 weeks

82% 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

93% 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 2023-2024

Expenditure for 2023-2024

Content	Amount
Cost of tribunal proceedings	£2,549,318
Other running costs	£16,862
Total*	£2,566,180

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. During 2023-2024 patients were given a choice with regard to the format of their tribunal hearing, this was either in person or virtual.