



GIG
CYMRU
NHS
WALES

Bwrdd Iechyd Prifysgol
Caerdydd a'r Fro
Cardiff and Vale
University Health Board

Reference Number: UHB 340
Version Number: 2
Date of Next Review: 17/10/2022
Previous Trust/LHB Reference Number N/A

MENTAL HEALTH REVIEW TRIBUNAL PROCEDURE AND GUIDANCE

Introduction and Aim

This policy has been developed in line with the Mental Health Act (MHA) 1983 (2007), the Human Rights Act 1998, the MHRT for Wales rules 2008, the MHA Regulations 2008 and the MHA Code of Practice for Wales.

Objectives

This procedure is required to ensure correct procedures are followed in relation to all aspects MHRT proceedings in accordance with the MHA 1983 and the MHRT for Wales rules 2008.

Scope

This policy is applicable to all employees involved in MHRT proceedings.

Equality Impact Assessment

Not required for procedural guidance

Health Impact Assessment

A Health Impact Assessment (HIA) has not been completed

Documents to read alongside this Procedure

Mental Health Act 1983
Mental Health Act 2007
Mental Health Act 1983, Code of Practice for Wales
Mental Health Regulations for Wales
Mental Health Review Tribunal for Wales rules 2008

Approved by

Mental Health Act Policy Group
Mental Health Clinical Board Quality & Safety Committee

Accountable Executive or Clinical Board Director

Mental Health Clinical Board

3 Disclaimer

If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or the [Governance Directorate](#).

| Summary of reviews/amendments | | | |
|-------------------------------|----------------------|----------------|--|
| Version Number | Date Review Approved | Date Published | Summary of Amendments |
| 1 | 10/12/2015 | | <i>State if either a new document, revised document (please list main amendments). List title and reference number of any documents that may be superseded</i> |
| 2 | 12/11/2018 | 28/10/2019 | Format of reports – should be a social worker who provides the social circumstance report. CTO replaces SCT. Mental Health (Wales) Measure 2010 replaces Care Programme Approach. |
| | | | |
| | | | |

CONTENTS

1. Introduction
2. Information to patients and their nearest relative
3. Hospital Managers' duties
4. Role of Responsible Clinician/Approved Mental Health Professional, Care Coordinator at Tribunal hearings
5. Format of reports
6. Content of statement by Responsible Authority and Secretary of State
7. Tribunal hearing
8. Interpreters
9. Attendance at hearings
10. Domestic Violence, Crime and Victims Act 2004
11. Decision of the Tribunal
12. Appeals
13. Complaints

APPENDIX 1 – Mental Health Review Tribunal Applications/referrals

APPENDIX 2 – Application to the Mental Health Review Tribunal for Wales – English

APPENDIX 3 – Application to the Mental Health Review Tribunal for Wales - Welsh

1. Introduction

The Mental Health Review Tribunal for Wales (MHRTfW) is an independent judicial body which deals with applications and references by and in respect of qualifying patients detained under the Act, and provides a significant safeguard for detained patients and guidance on the role of the Tribunal and the duties placed on the Hospital Managers and others.

2. Information to patients and their nearest relative

When a patient is detained under a qualifying section of the Mental Health Act 1983, the Hospital Managers and local social services authority (LSSA) have a duty to ensure that the patient and their nearest relative have been informed of:

- Their rights to apply for a Mental Health Review Tribunal
- The role of the Mental Health Review Tribunal
- How to apply to the Mental Health Review Tribunal
- How to contact a suitably qualified solicitor (a list of solicitors who undertake Tribunal work is available on each ward)
- Entitlement to free legal advice and representation
- How to contact any other organisation which may be able to help them make an application to the Mental Health Review Tribunal for Wales
- Their right of access to the advocacy service

3. Hospital Managers' duties

The Hospital Managers have a duty to refer cases to the Mental Health Review Tribunal for Wales where patients have not exercised their right to apply for a hearing as set out in section 68 of the Act. Hospital Managers or those delegated to undertake this duty on their behalf should ensure that there are robust systems in place to alert them to when references need to be sent to the Tribunal.

Hospital Managers must refer cases where:

- Detention under section 2 is extended pending a decision by the County Court under section 29
- The patient lacks capacity to make an application
- If the case has not been heard in the first six months or after three years for patients detained under section 3 or 37
- As soon as possible after the revocation of a patient's Community Treatment Order (CTO)

Referrals by Welsh Ministers may take place at any time for qualifying patients under Part 2 of the Act (including CT patients) and unrestricted Part 3 patients.

The Secretary of State for Justice may at any time refer the case of a restricted patient to the Mental Health Review Tribunal for Wales.

A patient cannot withdraw a referral made to the Tribunal by the Hospital Managers, Welsh Ministers or Secretary of State for Justice.

The hospital managers should notify the Mental Health Review Tribunal for Wales in the case of a patient who does not have the capacity to instruct a legal representative to represent their case. The Tribunal will assign a legal representative on behalf of the patient in accordance with rule 13 (5)(b)(ii).

4. Role of Responsible Clinician, Approved Mental Health Professional/Care Coordinator at Tribunal hearings

The responsible authorities (the hospital managers or the responsible LSSA for a guardianship patient) will be required to produce reports on the patient's mental and physical health. The request for reports will be initiated by the Clerk to the Tribunal via the Mental Health Act Administrator, who will write to the responsible clinician, approved mental health professional and others to provide reports three weeks from the date of the application, at the latest.

To comply with the Tribunal rules, reports must be submitted by the due date. Failure to submit reports by the due date may result in a direction from the Chairman of the Mental Health Review Tribunal for Wales. It could also result in the postponement or adjournment of the hearing.

5. Format of reports

In accordance with Mental Health Tribunal Rules, reports should take the following format:

The Responsible Clinicians report should include:

- Relevant medical history
- Full report on the patient's medical condition

The social circumstances report should include:

- The patient's home and family circumstances, including the attitude of the patient's nearest relative or the person so acting
- The opportunities for employment or occupation and the housing facilities which would be available if the patient were discharged
- The availability of community support and relevant medical facilities
- The financial circumstances of the patient

Any information which is not to be disclosed to the patient should be written on a separate sheet clearly headed "not to be disclosed to the patient".

The social circumstance report should be provided by a social worker. However if there is no social work involvement and the report is written by the Care Coordinator (who is not a social worker), the social work lead is required to review the report, sign and date it.

The Local Authority should attend the Tribunal, particularly where there is a joint section 117 responsibility. If the social work team lead does not feel that Local Authority attendance is required, a paragraph explaining why must be included in the social circumstance report.

It is important that all reports are dated and signed and are headed with the patient's name, address, date of birth and name of report writer. [Reports for Mental Health Tribunals.pdf](#)

When considering relevant patients' cases, the Tribunal will expect to be provided with information from the professionals concerned on what after-care arrangements might be put in place for them under section 117 should the patient be discharged.

After-care for all patients admitted to hospital for treatment for mental disorder should be planned within the framework of the Mental Health Wales Measure (2010) whether or not they are detained or will be entitled to receive after-care under section 117.

The onus is on the detaining authority to prove conditions for continued detention exist.

6. Content of statements from Responsible Authority and Secretary of State

The responsible authority must send a statement to the Tribunal office within three weeks of receiving a copy of the application or referral.

The statement provided to the Tribunal must include specific information dependent on the legal status of the patient.

7. Tribunal Hearing

The Mental Health Review Tribunal for Wales will set a date for the hearing to take place. The date will be within seven days from receipt of a section 2 application, eight weeks from receipt of an application for section 3, 37, 47, CTO and Ministry of Justice recalls, and within 20 weeks of an application for restricted cases.

Wherever possible the responsible clinician and other staff involved in the patient's care should attend the full hearing so they are aware of all the evidence and the decision of the Tribunal. The patient should attend the hearing with their relative, carer, solicitor and/or Independent Mental Health Advocate.

A request to withdraw an application must be in accordance with Mental Health Review Tribunal Rule 22(1).

8. Interpreters

Where necessary, the Tribunal will provide interpretation services free of charge for patients. The Tribunal should be informed as soon as possible if the patient and their representatives require such services.

9. Attendance at hearings

It is important that the responsible clinician and other relevant staff involved in the patient's care should attend for the full hearing, as their evidence will be crucial in the decision reached by the Tribunal as to whether the patient still meets the criteria for continued detention or Community Treatment Order (CTO) under the Act.

Patients do not need to attend the hearing but should be encouraged to do so, unless it would be detrimental to their health or wellbeing.

10. Domestic Violence, Crime and Victims Act 2004

The Domestic Violence, Crime & Victims Act 2004 sections 35-45 allows victims of persons convicted of a sexual or violent offence where the person is made subject to a hospital order (with or without restrictions), hospital limitation and direction orders, transfer direction without restrictions or restriction direction, to receive information about discharge arrangements for the patient and make representations to the Tribunal via the Victim Liaison Office (VLO).

Professionals should encourage (but cannot require) mentally disordered offenders to share information that will enable victims and victims' families to be informed about their progress.

The DVCV Act 2004 also places a duty on hospital managers in relation to certain Part 3 patients who have committed sexual or violent crimes, which includes liaising with victims in order to:

- Advise victims if the patient's discharge is being considered or if the patient is about to be discharged;
- Forward representations made by victims to people responsible for making decisions on discharge or CTO and passing information received from those people;
- Inform victims who have asked to be told, if the patient is to go onto a CTO and of any conditions on the CTO relating to contact with them or their family, any variation of the conditions, and the date on which the order will cease; and
- Inform responsible clinicians of any representations made by the victim about the conditions attached to CTO.

11. Decision of the Tribunal

The decision will be communicated verbally to all parties at the end of the hearing (although the Tribunal may also reserve its decision) and written copies of the reasons for the decision will be sent out at a later date, usually within seven days.

12. Appeals

The Upper (First-tier) Tribunal will consider applications for permission to appeal against a Tribunal decision on a point of law under section 78A of the Mental Health Act 1983. The Tribunal office must receive a written application no later than 28 days after the date of the written decision.

The Tribunal may grant permission to appeal, but must comply with Rule 5(b) in the event that permission is refused.

13. Complaints

Complaints from service users about the Tribunal should be sent to the Tribunal office, whose address is:

Mental Health Review Tribunal for Wales
2nd Floor
Crown Buildings
Cathays Park
Cardiff CF10 3NQ

APPENDIX 1

| Mental Health Review Tribunal Applications/referrals | | | |
|---|--|--|--|
| Section | <i>Application by patient</i> | <i>Application by nearest relative</i> | <i>Automatic reference by Hospital Managers (section 68), Welsh Ministers or Secretary of State for Justice (section 67)</i> |
| Section 2 Admission for assessment | Within the first 14 days | No right to apply | Not applicable |
| Section 3 Admission for treatment | Within the first six months of detention, during next six months and then during each subsequent period of one year. | Within 28 days from the Responsible Clinician issuing a report barring their request to discharge the patient. | If no MHRT in the first six months of section (including any time detained under section 2 if it runs consecutively and no appeal held), then every three years. One year for a child under 18 years of age. |
| Section 7 Reception into guardianship | Within the first six months of reception, during next six months and then yearly. | | |
| Section 19 Transfer from guardianship to hospital | Within six months of the day on which the patient was transferred. | | If no MHRT in first six months of transfer; thereafter every three years. |
| Section 17A Community Treatment Order | Within the first six months of supervision, during next six months and then yearly. | Within the first six months of supervision, during next six months and then yearly. | If patient has not applied within the first six months, then every three years. One year from date case last considered. |
| Section 29 Nearest relative displaced by Court (Part 2 patients only) | | Within one year after Court orders displacement and subsequently in each period of a year for which order is in force. | Welsh Ministers may be asked to refer the patient to the Tribunal under section 67. |
| Section 37 Hospital Orders without restrictions | Between six and 12 months of the Order and then yearly. | Between six and 12 months of the Order and then yearly. | If three years have elapsed since last MHRT (one year for patients under age 18). |
| Section 37 Guardianship Order (by Court) | Within first six months of Order, during next six months and then yearly | Within one year of Order being made and then in each period of one year. | |
| Restricted Hospital Order (s.37/41) and CP I (5) | Between six and 12 months after the making of the order or direction and then yearly | | Reference by Secretary of State for Justice if no appeal within the last three years. |
| Recall of a conditionally discharged patient | Between six and 12 months period of re-admission, then each subsequent 12 month period. | | Reference by Secretary of State for Justice within one month of recall to hospital. |
| Restricted patient who has been conditionally discharged | Between one and two years after conditional discharge and then every subsequent two-year period thereafter. | | |
| Section 17F Revocation of CTO | Within first six months of the order being revoked. | | The Hospital Managers must refer the case as soon as possible after the CTO is revoked. |
| Transfers of prisoners with restrictions | Within first six months of warrant being made, six monthly then yearly. | | Reference by Secretary of State for Justice if no appeal within the last three years. |



Application to the Mental Health Review Tribunal for Wales

Please complete this form as far as you are able. If you require any assistance please ask the Ward Staff or Mental Health Act Administrator for assistance.

I am detained under a Section of the Mental Health Act 1983 and wish to apply to The Mental Health Review Tribunal for Wales.

Mr/Miss/Mrs/Ms (please delete as appropriate)

| | | | |
|----------|--|----------------|--|
| Surname: | | First Name(s): | |
|----------|--|----------------|--|

| | |
|----------------|--|
| Date of Birth: | |
|----------------|--|

| | | | |
|-------------------------|--|--------------------------------|--|
| Section detained under: | | Date current Section commenced | |
|-------------------------|--|--------------------------------|--|

| |
|--|
| Name and Address of Hospital/Residence |
| |

| |
|---------------|
| Name of Ward: |
| |

| |
|-------------------------------|
| Name of Responsible Clinician |
| |

| |
|---|
| Name and Address of Solicitor/Representative: |
| |

If you do not have a solicitor we can send you a list of solicitors who are able to represent you under the Legal Aid Scheme.

Yes please send me a list/No I do not wish to be represented (please delete as appropriate)

Signed:.....

Dated:.....

Please return this form to:

Mental Health Review Tribunal for Wales
4th Floor
Crown Buildings
Cathays Park
Cardiff CF10 3NQ



Cais i Dribiwnlys Adolygu Iechyd Meddwl Cymru

Llenwch gymaint o'r ffurflen hon ag y medrwch. Os bydd angen unrhyw gymorth arnoch, gofynnwch i Staff y Wardiau neu'r Swyddog Cofnodion Meddygol.

Rwy'n cael fy nghadw o dan un o Adrannau Deddf Iechyd Meddwl 1983 a hoffwn wneud cais i Dribiwnlys Adolygu Iechyd Meddwl Cymru.

Mr/Miss/Mrs/Ms (dileer yn ôl y gofyn)

| | | | |
|---------|--|--------------------|--|
| Cyfenw: | | Enw(au) Cyntaf: | |
|---------|--|--------------------|--|

| | |
|---------------|--|
| Dyddiad Geni: | |
|---------------|--|

| | | | |
|---------------------------|--|-----------------------------------|--|
| Wedi'ch cadw o dan Adran: | | Dyddiad cychwyn y cyfnod cadw: | |
|---------------------------|--|-----------------------------------|--|

| |
|-------------------------------------|
| Enw a Chyfeiriad yr Ysbyty/Cartref: |
|-------------------------------------|

| |
|-------------|
| Enw'r Ward: |
|-------------|

| |
|---------------------------------|
| Enw'r Swyddog aethau clinigwyr: |
|---------------------------------|

| |
|--|
| Enw a Chyfeiriad eich Cyfreithiwr/Cynrychiolydd: |
|--|

Os nad oes gennych gyfreithiwr, gallwn anfon rhestr atoch o'r cyfreithwyr all eich cynrychioli o dan y Cynllun Cymorth Cyfreithiol.

Anfonwch restr ataf/Nid wyf am gael fy nghynrychioli (dileer yn ôl y gofyn)

Llofnod:.....**Dyddiedig:**

Anfonwch y ffurflen hon at:

Tribiwnlys Adolygu Iechyd Meddwl Cymru

4^{ydd} Llawr

Adeiladau'r Goron

Parc Cathays

Caerdydd CF10 3NQ