

# *A Criminal Justice*

# *Survival Guide*

*dros adferiad  
o afiechyd  
meddwl difrifol*

# hafal

*for recovery  
from serious  
mental illness*

Help for people with a **serious mental illness** who come into contact with the criminal justice system



# Contents

	<b>Introduction</b>	<b>2</b>
1.	Prevention	3
2.	Police	4
3.	Sentencing	6
4.	In Prison	8
5.	Discharge	9
6.	Recovery	10
7.	Useful Contacts	11
	<b>About Hafal</b>	<b>12</b>



# Introduction

This “Survival Guide” is designed for people with a serious mental illness who find themselves in trouble with the law *or* have contact with criminal justice agencies – especially the police – who are intervening because they believe you are unwell. The guide will cover each aspect of the process and it will advise you of your rights and responsibilities along the way.

In this guide we look at the different stages people may go through as they move through the criminal justice system, as follows:



However, it's important to remember that **most people** who enter the system **don't** end up in prison, even if they are convicted of an offence.

The criminal justice system is not set up to deal with people with mental illness. The agencies you come across will have some experience in this area but it is not their sole function. It is in your interest (as much as you are able) to be clear about your mental health needs and the treatment and care you need. And don't assume the worst: the experience of Hafal Members is that the police and others in the criminal justice agencies will usually be helpful to you, especially if you explain your problems to them.



**Hafal's advice:** Don't assume people will know anything about you unless you tell them.

Don't be afraid to ask questions as you go along. It is perfectly reasonable to ask:

*“What is happening to me?”*

*“Will you let my carer know where I am?”*

*“Will you arrange for me to see a doctor as I have a mental illness for which I receive/need treatment?”*

# 1. Prevention



**The evidence shows clearly that people with a serious mental illness are much more likely to be a victim of crime than to commit crimes.** However, this guide is designed to help those who come into contact with criminal justice agencies because of their illness or because they get into trouble with the law.

Obviously, it is in anyone's interest not to get into difficulty in the first place. Here are some of the ways in which you can avoid this:

- Avoid using illegal drugs (or alcohol inappropriately) as they can affect your mental state.
- If you think you are becoming unwell make sure you tell your carer/social worker/psychiatrist as soon as possible so that they can assist you in managing this.
- Don't stop taking your medication without discussing this with your doctor or psychiatrist.
- Avoid places where you may become victimised or bullied by other people (for example areas where people hang out drinking).
- Try to sort out arguments and difficulties calmly. If necessary, ask for help from a neutral party in resolving the problem.
- If you are having difficulties managing your money ask for help from a social worker or the Citizen's Advice Bureau.

However, we know that realistically illness may sometimes cause people to behave in ways which other people can find strange and problematic, and this can lead to contact with the criminal justice system. In some cases this will **not** be because you have done anything wrong but because the police feel they need to intervene when you are ill; in other cases you may actually have committed an offence and the police may want to interview and/or charge you, in which case this guide will help you understand what is happening to you.

If you do enter the criminal justice system, we would offer the following general advice, although we give more specific advice in each section:



People working in criminal justice agencies will generally want to help you, especially if they understand that you have a mental illness.

All of the agencies that you may come across have a duty towards people with mental illness under their care. If you want to see their codes that govern your rights and how you are treated, ask them.

If you are unhappy with any treatment you have received, ask for a complaint form.

If you have had a positive experience from any of the agencies try to give them positive feedback. This helps agencies to know what they are doing right and this may help other people in the same situation as you.

## 2. The Police



If you find yourself approached by the police about your behaviour, it is important to co-operate and listen to what they are saying. Use this guide as a way of making sure you know what your rights and responsibilities are.

### • Mental Health Act 1983, as amended by the Mental Health Act 2007

The police have powers under the Mental Health Act to take you to “a place of safety” if they believe you are suffering from a mental disorder and they are seriously concerned about your health or about the safety of others. These powers are set out in Section 135 and 136 of the Mental Health Act, depending on whether you are in a private house or a public place.

Under **Section 135** the police have the power to enter your home or another private house, together with a doctor and an approved mental health professional, and take you to a place of safety but, before they can do this, they must obtain a warrant from a magistrate.

If the police and mental health professionals enter your home, it is important to ask to see their authorisation from the magistrate. When you have seen this, try to remember that the reason they are there is because they are concerned about your health, safety and well-being. It is unlikely you have done anything wrong, but you may be very unwell and not realise that you need some help and assistance.

Try to stay calm and ask that they contact your family or carer, and also try to ensure that the mental health professionals take time to explain what is happening to you.

Under **Section 136** the police have powers to take you from a **public place** to a place of safety if you appear to be behaving strangely and showing signs of being seriously unwell.



### • Assessments in a Place of Safety

The police powers in Section 135 and 136 have just one purpose – to create the opportunity for you to be examined and assessed by a doctor and an approved mental health professional in order to ensure you have access to the care and treatment you need. (The term “approved mental health professional” is in the 2007 Act and replaces the term “approved social worker” in the 1983 Act. An “approved mental health professional” can now be a nurse, occupational therapist or psychologist as well as a social worker.)

You can be held in a “place of safety” (the term used in the Act) for up to 72 hours, although in practice your assessment should be completed in a much shorter time, usually within a few hours. A place of safety could be a hospital, other mental health accommodation or a police cell as a last resort. While hospitals are now preferred to police cells as places of safety, police cells are still used too often and Hafal is campaigning to change this. Under the 2007 Act you can now be moved from one place of safety to another, possibly from a police cell to somewhere more appropriate.

Once you are assessed there could be three outcomes:

1. You are released from the place of safety and allowed to return home, hopefully with the help and support you need.
2. You agree to be admitted to hospital on a voluntary basis.
3. You are compulsorily admitted to hospital under a further Section (normally Section 2 or 3) of the Mental Health Act.



**Hafal's advice:** If you are seriously unwell, these police powers are there to help you receive the care and support you need. Try to stay calm and cooperate with your assessment.

### • Stop and Search

The police also have the power to stop and search people if they think they have reasonable grounds for suspicion. Remember, the police **do not** have general powers to stop and search you unless you consent.

A 'stop' is when an officer stops you and asks you what you are doing, where you are going and what you are carrying. A 'stop and search' can take place if an officer believes that you are carrying drugs/weapons/stolen property, or items that could be used to commit an act of crime/terrorism. It **does not** mean you are being arrested.

The officer who stops you must give you the reason why you have been stopped, give you their details (including name, police number and station) and a copy of the stop/search form. You can ask that the officer who searches you is the same sex as you.



**Hafal's advice:** It is important for you to keep your copy of the stop/search form, especially if you wish to complain about the way you were treated.

#### • Arrest

The police can arrest you with or without a warrant if they suspect that you have committed an offence. The Serious and Organised Crime & Police Act 2005 got rid of the term 'Arrestable Offence', meaning that today any Constable can arrest for any offence. The police have the power to use 'reasonable force' in arresting you. This is a level of force "no more than absolutely necessary" to achieve the arrest. If the police exceed that level of force, they may violate your human rights.

When you are arrested you cannot be locked up indefinitely. The general rule is that you may not be kept in police detention for more than 24 hours without being charged. This period can be extended to 36 hours by an officer at the rank of Superintendent. If the police wish to detain you for over 36 hours a magistrate's extension is needed. The general maximum period of detention is 96 hours after which they must either let you go, ask a magistrate for another 24 hours in which to question you, or charge you.

After being arrested you have three basic rights:

1. The **right** to free and independent legal advice.
2. The **right** to have someone informed of your arrest – usually a relative or friend.
3. The **right** to consult the Codes of Practice (a booklet concerning police powers and procedures).



**Hafal's advice:** Make sure you ask for legal advice as soon as possible. Everyone is entitled to free legal advice at the police station from a solicitor whose office is contracted with the Legal Services Commission (LSC) or from a Public Defenders office. You can ask the police to contact the duty solicitor (if there is one available), or for a list of local solicitors, or to contact your own solicitor. Also make sure you ask the police to inform a relative/friend that you have been arrested and make sure your Care Coordinator knows what has happened.

In very rare and unusual circumstances access to legal advice may be delayed by the police for up to 36 hours. However the police would need to have extremely strong grounds for thinking it necessary, and it must be authorised by a Superintendent. When the solicitor arrives, they will:

1. Tell you what is happening to you.
2. Explain any legal terms to you.
3. Speak on your behalf and present a case for your defence.



**Hafal's advice:** Make sure you tell the solicitor you have a mental illness.

People with a mental illness are particularly vulnerable to the distress and pressures caused by the experience of arrest and police detention, and an 'appropriate adult' must be offered to people who find themselves in such situations. This is a responsible adult who is independent of the police and whose role is to:

- Look after the detained person's welfare.
- Help them understand what is happening and why.
- Explain police procedures.
- Provide information about rights and ensure that these are protected.
- Facilitate communication with police.



**Hafal's advice:** Make sure you ask for an appropriate adult to attend, if one hasn't been offered to you. Make sure you ask the solicitor and appropriate adult to request that a mental health practitioner assess you.

If you are taking regular medication let the police know as soon as possible.

At this point if you are very unwell (for example experiencing psychosis) the police can ask a police surgeon to examine you to decide whether you are fit to be detained and/or interviewed. This is the point where the medical examiner can ask for an approved mental health professional to be called so that a psychiatric assessment can take place. If you need to be taken out of the criminal justice process because of your mental ill health, a psychiatrist will normally need to make this decision. They work alongside the solicitor and are there to support you.

The police have the right to take your fingerprints, to photograph you and to take samples from you. When the police interview you, they will tape record the interview.



**Hafal's advice:** If you are finding any aspect of the interview difficult it is important that you ask for a break and that you use your appropriate adult to liaise on your behalf to ensure that you get the support you need.

There are several possible outcomes following an interview with the police:

1. **No further action** – where the police decide that there is insufficient evidence to prosecute or that a warning would be sufficient.
2. **Caution** – if it isn't in the public interest to prosecute you, the police can give you a formal caution for your conduct.
3. **Fixed Penalty Notice** – this is a fine and it is used for a variety of minor offences (e.g. causing noise).
4. **Penalty Notice for Disorder** – these are also fines but they are for more serious behaviour like causing alarm and distress to others, being drunk and disorderly, retail theft under £200 and using threatening words or behaviour.
5. **Prosecution** – this is where it has been decided that the case needs to go to court. The Government Department responsible for determining the charge and prosecuting criminal cases instigated by the police in England and Wales is the **Crown Prosecution Service (CPS)**. The CPS must “prosecute cases firmly, fairly and effectively when there is sufficient evidence to provide a realistic prospect of a conviction and when it is in the public interest to do so”.



## 3. Sentencing



**Hafal's advice:** If you are summoned or charged by the police and released from custody you should see a solicitor as soon as possible. You may be eligible for Legal Aid if you cannot afford the services of a solicitor. It also depends on factors such as how likely it is that you may win the case. The Legal Services Commission (LSC) provides advice and legal representation for people facing criminal charges through the Criminal Defence Service (CDS). More information can be found at [www.clsdirect.org.uk](http://www.clsdirect.org.uk) or on 0845 3454345.

**All criminal cases, even the most serious, begin in a magistrates' court.** The **magistrates** listen to the evidence and (in less serious cases) decide whether the accused is **guilty** or **not guilty** and, where appropriate, determine the sentence.

More serious criminal matters are referred by the magistrates' court to the **Crown Court** which deals with both adults and young people. The Crown Court has a judge presiding over trials and a jury consisting of 12 persons randomly selected from a list of all those persons aged 18–70 who are registered as electors.

### • First Court Appearance

If you attend court for a criminal offence you may want to bring a friend to support you. Take with you any papers you have about your case. When you arrive tell a court official and your solicitor. Check the notice board as it will show when your case will be heard and where you need to go.

Remember to attend in plenty of time and to be prepared to wait until your name is called. Dress appropriately and take a pen and paper. Also remember to take any medication you may need with you.

At your first appearance in magistrates' court you will normally be asked to enter your plea of '**guilty**' or '**not guilty**'. If you plead guilty the court will request a report before passing sentence. If you plead not guilty, a date will be set for your trial.

You may be sent to prison for a period of time (known as being 'remanded in custody'), given bail, ordered to appear in court or admitted to hospital for an assessment. If you are given bail, it may be with conditions.



**Hafal's advice:** Make sure you understand the conditions of your bail before you leave court.

If the **solicitor** recognises that a client has a mental health condition they may request a delay in the proceedings until a **psychiatric report** can be obtained.

#### • Sentencing

If you are convicted – that is found guilty of the offence(s) – you may be sentenced immediately. Most people are called back to court for sentencing at a later date. During this period you are likely to be asked to see the Probation Service. They will prepare a pre-sentence report. The purpose of this report is to provide an assessment of your needs, the risk you pose to others and your readiness or ability to change your behaviour. The report is designed to assist the court in reaching a decision about how best to sentence you.



**Hafal's advice:** It is very important that you cooperate with the Probation Service when they prepare a report about you. Don't forget to tell them about your mental illness and the treatment you receive or need.

The main sentences of a court are:

- Custodial sentence (for the most serious offences).
- Suspended sentence.
- Community sentences.
- Fines.
- Discharge.
- Compensation.

If you receive any sentence at court other than a prison sentence, you must find out what the sentence is and what you must do next. Do not be afraid to ask the usher or the clerk of the court to explain this to you. Your solicitor should not leave court until they have explained to you exactly what has happened to you and what you need to do next.

You may receive a community sentence with a number of conditions attached. This means that you will be under the supervision of the Probation Service in the community and that they will design a programme of work for you to undertake.

**Hafal's advice:** You must comply with the conditions of your sentence otherwise you could risk being returned to court where you may receive a harsher sentence.

If a psychiatric report has been obtained recognising that you have a mental health condition, the outcome may be different. When the magistrates have found someone with a mental illness guilty they may decide to impose:

- A hospital order: this is known as being 'sectioned' and is based on the evidence of two doctors.
- A guardianship order: when the court places you under the guardianship of the local authority for the protection of yourself/others.
- An absolute discharge: when the court takes no further action against you (but you will have a criminal record).



## 4. In Prison

**Most people** who enter the criminal justice system **don't** end up in prison, even if they are convicted of an offence.

Hafal believes that no-one with a serious mental illness should be held in prison as this is an inappropriate environment. However, statistics show that a large percentage of prisoners have a mental health problem, and many have a serious mental illness.

On entering prison, prisoners spend a short period being assessed on an induction before being allocated their accommodation. Induction usually lasts 1-2 weeks and may include:

- A health assessment that identifies areas of risk.
- Suicide prevention/self-harm management.
- Assessment for mental health problems including serious mental illness and personality disorder.
- Detoxification/maintenance regimes for specific drugs.
- Immunisation/vaccination.

Remember that there is no guarantee that you will go to a prison in Wales – you may end up in England. There are currently **no women's prisons** in Wales.



**Hafal's advice:** It is vital that you let the Prison Service know that you have a mental illness and, if you are used to taking medication, what that medication is. If you are feeling suicidal, you must let a prison officer know so that they can support you.

If you are feeling very low you can ask to see someone from the **listener scheme** (a service available in most prisons). This involves talking to a fellow prisoner who has been trained to listen to people in prison who are experiencing distress or who may be particularly vulnerable.



Before you enter prison, take steps to ensure you keep your home and let people know where you are.

During your time in custody there should be:

- Further assessment and screening on transfer between prisons.
- Advice offered on maintaining good health, including mental health.
- Discharge and resettlement planning.
- Advice on maintaining contact with your family and friends.
- Advice on being released on licence (being on licence means that you are still serving a prison sentence but you can live in the community instead of being in prison).

Prison Mental Health In-reach Teams (MHIRTs) work within the prison setting to provide assessment, care and treatment to those experiencing serious mental illness. They link in with services outside of prison. MHIRTs should assist with:

- G.P. registration.
- Referral to specialist treatment should you need this.

If you are very unwell in prison you may need to be transferred to a hospital, medium secure unit or a special hospital where you will serve your sentence. It is possible to go back and forth between prison and hospital.

The Probation Service work with people in prisons who are serving their sentences. For example they may be asked to write a report about you for the Parole Board to help them decide whether or not it is safe to release you and, if you are released, what arrangements need to be in place to stop you reoffending and to keep you and others safe. If you are serving more than 12 months imprisonment you will have an offender manager who has overall responsibility for you during your time within the criminal justice system.

If you have concerns about your healthcare or accommodation, or any other part of your life, it is important that you let your offender manager know so that they can assist you with resettlement.

# 5. Discharge



If you think you are coming out of prison without the support you need for your mental illness you must tell prison staff before you leave. They should be able to provide you with support.

The more you can do to plan ahead before discharge, the better.

We advise that while you are still in prison, you check that mental health support services in prison are in communication with those in the community. If this is the case, you are more likely to receive the right services as soon as possible when you are released.

If you have nowhere to live on release, it is extremely important to engage with housing services before you leave. Make full use of any resettlement services available inside the prison and ask for help from family and friends.

If you intend to claim benefits on release, you should do so as soon as possible to avoid delay in receiving benefit.



**Hafal's advice:** On the next page you'll find information on care planning. It is a good idea to look at this section before you leave prison so that you can consider what practical steps you need to take before and after your release.

If you receive a sentence of less than 12 months you will be released directly into the community. You will not have to see an offender management team but you may be subject to a home detention curfew (also known as a 'tag'). This involves having an electronic device attached to your ankle that can show if you have left your home during times when you are not supposed to.

If you receive a sentence of 12 months or more you will come out on what is called a licence. There are different types of licence and some, like a parole licence, depend on the length of your original sentence. Being on licence means that you are still serving a sentence but you can live in the community instead of being in prison.



**Hafal's advice:** You should ask what kind of licence you are subject to and exactly what the conditions are.

Being under licence means that you will be under the supervision of the Probation Service. You will have to keep appointments with the offender management team and undertake any programme of work they have designed for you. You will have an offender manager whose job it is to ensure that your sentence plan is carried out. The offender manager has overall responsibility for you, and for ensuring your needs are met.



**Hafal's advice:** Do not miss appointments with your offender manager (unless you have a note from your GP). If you do miss appointments you could be taken back to court and you could end up in prison.

The programme of work designed for you should take account of your mental health needs and it is important that you keep to the programme as it will be designed to help you stay out of trouble in the future.



**Hafal's advice:** It is vital that you are frank with your offender manager about your mental health needs.



# 6. Recovery

We believe that a model of support and care aimed at recovery is essential for all people with severe mental illness including those who come into contact with the criminal justice system.

Hafal's clients have found that recovery depends on the three components in the following diagram:



## 1. Empowerment and self-management

*Empowerment* means exercising rights and responsibilities in making choices about life.

*Self-management* means taking the actions required to lead a life based on those choices.

Within the criminal justice system and within hospital there are of course significant restraints on a person's ability to make choices (especially in prison). However, their recovery still depends on developing their empowerment and self-management.

## 2. Commitment to progress

Recovery depends on actively taking steps to improve life. It is vital to agree and act upon a step-by-step, goal-focused plan. The key plan for people with serious mental illness is the required care plan under the Care Programme Approach (CPA).

The National Probation Service and the Prison Service are both involved in offender management from the moment a person enters prison to the time they end their sentence in the community under licence. Both agencies use the Offender Assessment System (known as OASys) to assess risk and develop a plan to reduce reoffending.

## 3. A 'Whole Person Approach'

Recovery is not just about medication or other therapies which deal directly with symptoms. Recovery requires a "Whole Person" approach (sometimes called a 'holistic' approach). This means addressing all key aspects of life which together contribute to well-being. By setting goals in all areas of life people can approach recovery more comprehensively. Opposite we set out the Whole Person Approach along with some example goals which people might set in each of the eight areas.

## 7. Useful Contacts

### FFOPS – Families & Friends of Prisoners Services (South Wales)

Support and advice for the families and friends of prisoners.

Tel: 01792 458645

### Citizens Advice Bureau

The main UK organisation offering free general and legal advice.

Tel: See local directory

Web: [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

### NACRO Cymru

Provides various services for ex-prisoners.

Tel: 01248 354602

Web: [www.nacro.org.uk/cymru](http://www.nacro.org.uk/cymru)

*Nacro's Resettlement Helpline offers free advice to ex-offenders, serving prisoners, their families and friends. Tel: 0800 0181259*

### Crown Prosecution Service (CPS)

Government body responsible for criminal prosecutions in England and Wales.

Dyfed Powys Tel: 01267 242100

Gwent Tel: 01633 261100

North Wales Tel: 01978 346000

South Wales Tel: 02920 803902

Web: [www.cps.gov.uk](http://www.cps.gov.uk)

### Independent Police Complaints Commission (IPCC)

Body that oversees complaints against serving police officers in England and Wales.

Tel: 08453 002002

Web: [www.ipcc.gov.uk](http://www.ipcc.gov.uk)

### Criminal Defence Service (CDS)

The CDS provides people who are under police investigation or facing criminal charges with legal advice, assistance and representation.

Tel: 0845 3454345

Web: [www.legalservices.gov.uk/criminal](http://www.legalservices.gov.uk/criminal) or [www.clsdirect.org.uk](http://www.clsdirect.org.uk)

### Community Legal Advice Directory

This online resource allows people to search for a solicitor specialising in mental health issues.

Web: [www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)

### Physical Health

You may choose to:

- Make sure you are registered with a local GP
- Take care of your health – paying attention to your diet, smoking, exercise and drinking
- Avoid taking illegal or street drugs
- Go to the dentist for regular check-ups
- Go to the optician
- Attend well man or well woman clinics

### Medication for Mental Illness

(You should consult your doctor before changing your medication regime) You may choose to:

- Find out about the latest medical treatments for severe mental illness
- Ask your doctor to prescribe the most appropriate medication for you as an individual
- Find out about side-effects and management requirements of your medication and talk to your doctor or nurse about them
- Take the right amount of medication which has the most benefit for you with your doctor's advice

### Employment

You may choose to:

- Work full or part-time in general employment
- Get specialist support to sustain you in general employment
- Use a specialist supported employment service
- Use occupational therapy services
- Be a volunteer

### Other Treatment and Therapy for Mental Illness

You may choose to:

- Find out about the range of non-medical therapies and treatments for severe mental illness
- Ask your doctor about Cognitive Behavioural Therapy – CBT
- Ask your doctor about other psychotherapy/talking therapies
- Find out about other therapies, e.g. art therapy
- Explore alternative therapies

### Training & Education

You may choose to:

- Study in full or part-time education
- Get special support to sustain you in training or education
- Use distance learning packages, e.g. Open University
- Follow work-related or interest-related adult education courses
- Take up self-study through reading, internet

### Money

You may choose to:

- Earn a salary or wage
- Apply for a student grant or loan
- Maximise your social security, disability or other benefits
- Enhance your budgeting skills
- Get information about debt or savings management

### Accommodation

You may choose to:

- Manage your own accommodation
- Share your home with family or friends
- Live in your own home with support
- Live in shared accommodation with support
- Stay in specialist 24-hour supported accommodation
- Live in hospital when you are seriously ill

### Social Life

You may choose to:

- Maintain relationships with your family
- Maintain relationships with your friends
- Live in a personal relationship with a partner
- Engage with a religion of your choice or tradition
- Be supported while using leisure facilities
- Use specialist supported leisure facilities
- Follow your hobbies or interests individually, in a group

# About hafal

Hafal is the principal organisation in Wales working with people recovering from serious mental illness, their families and carers. Every day our 150 staff and 200 volunteers provide help to nearly 1,000 people affected by serious mental illness across all the 22 counties of Wales.

**Hafal is run by the people it supports: people with serious mental illness and their carers and families.** The charity is founded on the belief that people who have direct experience of mental illness know best how services can be delivered. In practice this means that at every project our clients meet to make decisions about how the service will move forward and the charity itself is led by a board of elected Trustees, most of whom have either had serious mental illness themselves or are the carers of a person with a mental illness.

## Our Mission

**'Hafal' means equal.** Our mission is to empower people with serious mental illness and their families to enjoy equal access to health and social care, housing, income, education, and employment, and to:

- achieve a better quality of life
- fulfil their ambitions for recovery
- fight discrimination.

All of our services are based on our unique **Recovery Programme**. Recovery means regaining mental health and achieving a better quality of life. Many people with serious mental illness can make a full recovery; others can make far greater progress than has traditionally been thought possible. Hafal's Recovery Programme involves creating a step-by-step plan identifying goals in key areas of life and the supporters who can assist in achieving those goals.

## Our Service

**Hafal delivers key services to both people with serious mental illness and their carers.** These services include: employment training; housing support; resource centres; befriending; arts projects; inpatient advocacy; family support; and carers' support services.

Hafal also supports clients and carers in providing a much-needed voice in the planning of mental health services. We campaign vigorously through research, publications and media work, and through direct contact with AMs and MPs, to improve services for clients and families and to remove the stigma and isolation associated with severe mental illness.

**This survival guide was prepared by the 'Hafal Answers' consultancy team. If you require more information or if your organisation would like to work with us on taking forward your agenda in this area please get in touch:-**

### "Hafal Answers"

Hafal  
Suite C2, William Knox House  
Brittanic Way  
Llandarcy  
Neath  
SA10 6EL

**Tel:** 01792 816600  
**Fax:** 01792 813056  
**Email:** hafal@hafal.org



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