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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board



Meeting Date	6th February 2020		Agenda Item	4.1
Report Title	Mental Capacity Act 2005 Update Monitoring Report			
Report Author	Jodie Denniss, Safeguarding Specialist			
Report Sponsor	Gareth Howells, Director of Nursing and Patient Experience			
Presented by	Gareth Howells, Director of Nursing and Patient Experience			
Freedom of Information	Open			
Purpose of the Report	This paper will provide the Committee of the Health Board position in relation to the Mental Capacity Act 2005			
Key Issues	This report highlights the importance of consistent and robust safeguarding and governance processes, which are an essential part in contributing to effective safeguarding for adults at risk.			
Specific Action Required <i>(please choose one only)</i>	Information	Discussion	Assurance	Approval
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recommendations	Members are asked to: <ul style="list-style-type: none"> NOTE 			

MENTAL CAPACITY ACT 2005 UPDATE MONITORING REPORT

1. INTRODUCTION

This report is requested by the Mental Health and Capacity Act Legislative Committee in order to provide assurance to the Board of Swansea Bay University Health Board (SBU HB) regarding compliance with the Mental Capacity Act 2005.

2. BACKGROUND

The Mental Capacity Act 2005 (MCA) came into force in October 2007, amended to include the Deprivation of Liberty Safeguards (DoLS) in April 2009.

SBU HB supports a significant number of patients with impaired decision-making, therefore this report aims to provide assurance of awareness and the use of MCA throughout the Health Board, via training and the use of the Independent Mental Capacity Advocacy Service (IMCAs).

2.1 LEGISLATIVE UPDATE

Following implementation of the Mental Capacity (Amendment) Act 2019, the Deprivation of Liberty Safeguards (DoLS) will be replaced with the Liberty Protection Safeguards (LPS). The target date for implementation is from October 2020, with 12 months of transitional arrangements whereby DoLS and LPS are used alongside each other, with full implementation of LPS in 2021.

A Revised Mental Capacity Act Code of Practice is currently under development, being led by the Ministry of Justice, and a Code for LPS is being co-produced by the Department of Health & Social Care (DHSC) and Association of Directors of Social Services (ADSS). There will be public consultation for both Codes, and the intention is that they will be published together, with review within 3 years and 5 yearly thereafter. It was originally anticipated that the Codes will be finalised and agreed by Parliament in Spring 2020; however it is likely that there will be a delay as the consultation has not yet commenced.

The NHS Wales Safeguarding Network and Welsh Government have tasked the National Safeguarding Team to lead on an initial review of the current approaches to and management of the implementation of the Mental Capacity Act and Deprivation of Liberty Standards within NHS Wales. This will include the implications of the Mental Capacity Act Amendment Bill, the new Liberty Protection Standards and how these demands can be met consistently across NHS Wales to safeguard those at risk. A Task and Finish group has been set up which includes representation from the

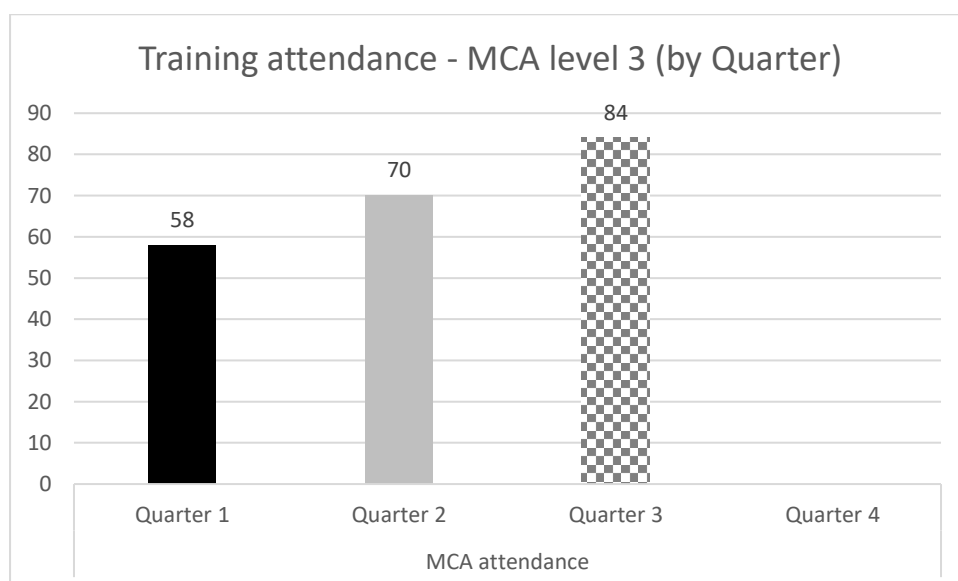
Corporate Safeguarding Team and Primary Care & Community Service Delivery Unit (as the current Supervisory Body). The first meeting was held in December 2019 and is currently scoping MCA/DoLS policies, processes and structures across Wales.

2.2 MCA TRAINING

MCA training continues to be delivered via e-learning for MCA Levels 1 & 2 for all SBU HB staff. MCA Level 3 training is facilitated as a workshop directed at ward managers, senior nurses and senior clinicians. Table 1 illustrates the training attendances for MCA Level 3 training and shows a continuing trend of improved attendance over the last quarter. The exact reason for this pleasing increase is not known, however it could be hypothesised that

- Presence of the Best Interests Assessors across sites is leading to an improved awareness
- Implementation of the Training Needs Analysis has enabled managers to identify gaps in training within their services.

TABLE 1. MCA Level 3 TRAINING ATTENDANCE



Training is continually being evaluated and feedback remains positive as demonstrated in Tables 2 & 3.

Table 2 EVALUATION REPONSES FOR QUALITY OF PRESENTATION

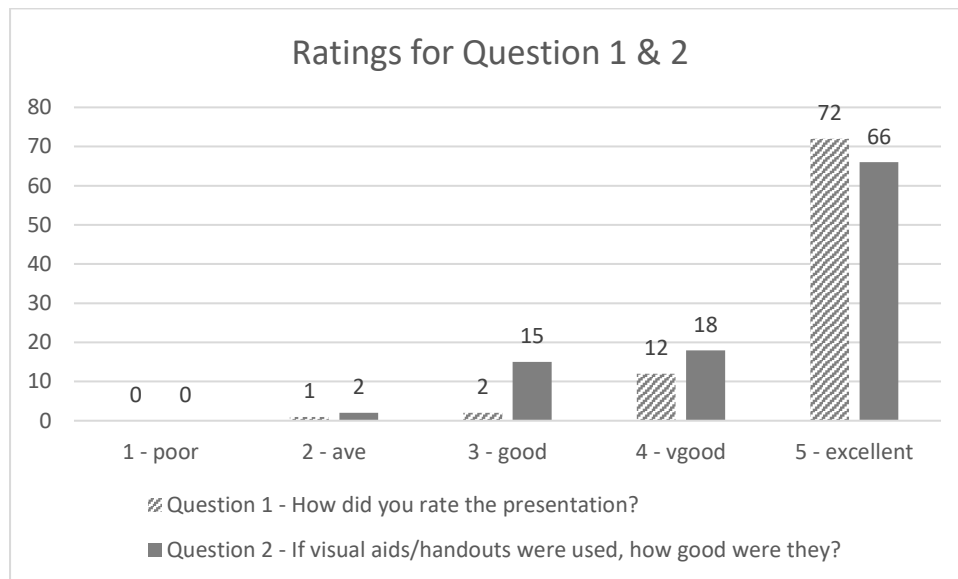
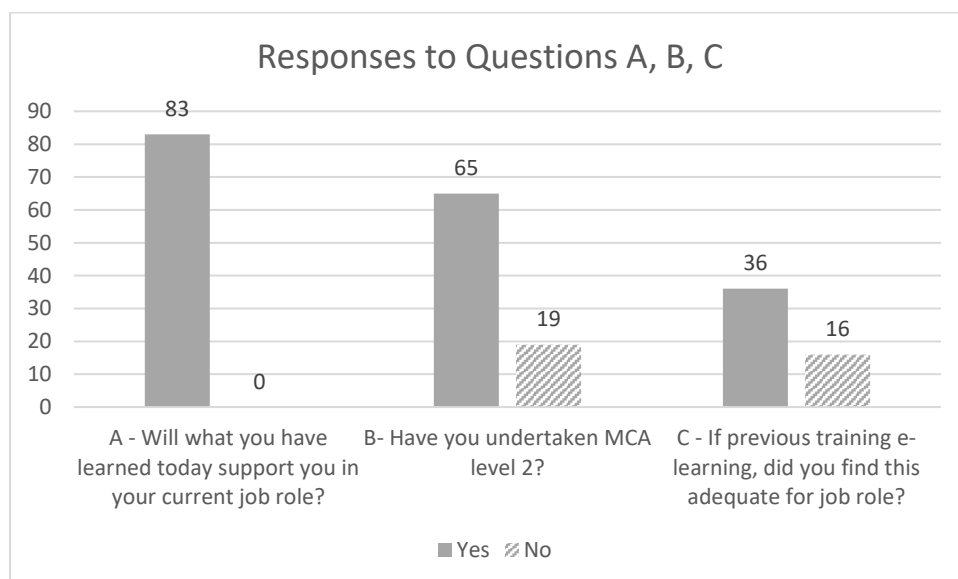


Table 3 EVALUATION RESPONSES FOR APPLICATION OF TRAINING TO ROLE



In addition to formal training, learning from safeguarding cases, including MCA/DoLS, is disseminated more widely across the Health Board via quarterly rotational learning events. The IMCA quarterly monitoring reports are shared via Safeguarding Committee and include case scenarios.

2.3 INDEPENDENT MENTAL CAPACITY ADVOCATES (IMCA)

The Independent Mental Capacity Advocate (IMCA) service is a statutory service which came into effect in Wales on the 1st October 2007. IMCAs are independent advocates who represent people who lack capacity in order to support them in making important decisions, which must comply with the MCA 2005. An IMCA must be appointed for anyone aged 16 or over who has been deemed as lacking capacity and are unbefriended; they can also be appointed for Care Reviews or Adult Protection cases.

The IMCA service that is currently contracted to the HB is provided by Mental Health Matters Wales, and quarterly monitoring reports are provided to the Health Board. For the period 1st October to 31st December 2019, 22 new instructions were received for an IMCA from the HB (Table 4).

Table 4. BREAKDOWN OF REASONS FOR INSTRUCTION OF AN IMCA

Serious Medical Treatment	Long term move of accommodation	Care Review	Vulnerable Adult	39a*	39d*
6	10	1	0	2	3

* These different categories are, when a person who is deprived of their liberty, does not have a representative e.g. a friend, family member or advocate

2.4 DoLS PROCESSES AND BEST INTEREST DECISIONS

If a patient has been assessed as lacking in capacity then any action taken or decision made on their behalf must be made in his or her best interests. There are many factors within the MCA to consider in deciding what is in a person's best interests. It is good professional practice to record these, particularly as these decisions may be challenged. These best interest decisions happen on a frequent basis and can vary from simple to very complicated. Currently the Service Delivery Units (SDUs) do not collate the number of occasions where best interest decisions are made or provide assurance around the process, except in cases requiring DoLS assessment whereby best interests assessment occurrences are collated on the DoLS 'Dashboard'. The

Primary Care and Community Care Service Delivery Unit has appointed two substantive Best Interests Assessors who, as part of their role, are reviewing DoLS processes across the HB.

3. COURT OF PROTECTION

The Court of Protection (CoP) is a key decision making component of the Mental Capacity Act and has jurisdiction over property, financial affairs and the welfare of people who lack capacity. It has the same powers, rights, privileges and authority as the High Court. Historically the links between the Corporate Safeguarding Team and the Legal Team have not been sufficiently robust to enable a regular oversight and assurance regarding CoP cases. However in January 2020 a Datix Change request was submitted to the Datix User Group meeting by the Mental Health & Learning Disabilities Delivery Unit to request an addition to the Complaints Module of Datix to enable capture of the CoP cases. This would allow secure storage of documents and maintenance of a central oversight of CoP cases. The group accepted the change in principle but recommended that the change would need to incorporate all Service Delivery Units.

NWSSP Legal and Risk Services were contacted to request information in relation to Court of Protection Cases involving the Health Board. Regrettably no information has been received to inform this report.

GOVERNANCE AND RISK ISSUES

The Service Delivery Units (SDUs) monitor MCA training levels as part of their overall Safeguarding training compliance, reporting to the Safeguarding Committee via their Performance reports. A Health Board-wide training needs analysis has been undertaken and reviewed; this has been reported on previously and although it is recognised that there were issues with returns and accuracy, ultimately the Health Board will be able to better identify more accurate figures of staff requiring training, thereby enhancing compliance monitoring.

5. FINANCIAL IMPLICATIONS

Safeguarding is a core duty of care for the Health Board. Financial implications to meet the statutory safeguarding mandatory training requirements are within existing budgets. Withdrawal of Bridgend Local Authority funding has resulted in an additional cost pressure for the Corporate Safeguarding Team but this is minimal.

6. RECOMMENDATION

The Committee is requested to note the contents of this report.

Governance and Assurance		
Link to Enabling Objectives (please choose)	Supporting better health and wellbeing by actively promoting and empowering people to live well in resilient communities	
	Partnerships for Improving Health and Wellbeing	<input checked="" type="checkbox"/>
	Co-Production and Health Literacy	<input type="checkbox"/>
	Digitally Enabled Health and Wellbeing	<input type="checkbox"/>
	Deliver better care through excellent health and care services achieving the outcomes that matter most to people	
	Best Value Outcomes and High Quality Care	<input checked="" type="checkbox"/>
	Partnerships for Care	<input checked="" type="checkbox"/>
	Excellent Staff	<input checked="" type="checkbox"/>
	Digitally Enabled Care	<input type="checkbox"/>
	Outstanding Research, Innovation, Education and Learning	<input type="checkbox"/>
Health and Care Standards		
(please choose)	Staying Healthy	<input checked="" type="checkbox"/>
	Safe Care	<input checked="" type="checkbox"/>
	Effective Care	<input checked="" type="checkbox"/>
	Dignified Care	<input checked="" type="checkbox"/>
	Timely Care	<input type="checkbox"/>
	Individual Care	<input checked="" type="checkbox"/>
	Staff and Resources	<input checked="" type="checkbox"/>
Quality, Safety and Patient Experience		
N/A		
Financial Implications		
Safeguarding is a core duty of care for the Health Board. Financial implications to meet the statutory safeguarding mandatory training requirements are within existing budgets.		
Legal Implications (including equality and diversity assessment)		
The Health Board has a statutory responsibility to make arrangements to protect and safeguard the welfare of children, young people and adults at risk. Safeguarding policies uphold that patient and service users have the right to independence, dignity, respect, equality, privacy and choice.		
Staffing Implications		
N/A		

Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)	
Improve population health through prevention and early intervention	
Report History	N/A
Appendices	N/A