

**Unconfirmed**  
**MINUTES OF THE**  
**MENTAL HEALTH LEGISLATION COMMITTEE**  
**HELD ON 5<sup>th</sup> MAY AT 09:30AM**  
**MICROSOFT TEAMS**

**Present**            Stephen Spill            Vice Chair (in the chair)  
                         Maggie Berry            Independent Member  
                         Jackie Davies           Independent Member

**In Attendance**   Penny Cram            Interim Mental Health Act Manager  
                         Gareth Howells        Interim Director of Nursing and Patient Experience  
                         Carol Killa              External Reviewer, Corporate Governance  
                         Georgia Pennells       Corporate Governance Officer  
                         Rhonwen Parry        Head of Psychology  
                         Tanya Spriggs         Nurse Director, PCC Service Group (**minute 21/22**)  
                         Hazel Lloyd             Acting Director of Corporate Governance  
                         Dermot Nolan          Interim Associate Director, Mental Health and Learning  
                                                     Disabilities

MINUTE		ACTION
14/22	<b>WELCOME AND INTRODUCTIONS</b>	
	Stephen Spill welcomed all to the meeting.	
15/22	<b>APOLOGIES FOR ABSENCE</b>	
	Apologies for absence were received from Inese Robotham, Chief Operating Officer.	
16/22	<b>DECLARATIONS OF INTEREST</b>	
	There were none.	
17/22	<b>MINUTES OF THE PREVIOUS MEETING</b>	
	The minutes of the meeting held on 3 <sup>rd</sup> February 2022 were <b>received</b> and <b>approved</b> as a true and accurate record.	
18/22	<b>MATTERS ARISING</b>	
	(i) <u>05/22 - Matters Arising from 3<sup>rd</sup> February 2022</u> Maggie Berry sought assurance that hospital managers' had now received travel expenses and remuneration. Penny Cram confirmed that this issue had been resolved and all payment had been made.	
19/22	<b>ACTION LOG</b>	
	The action log was <b>received</b> and <b>noted</b> .	

20/22	<b>MENTAL HEALTH ACT 1983 MONITORING REPORT</b>	
	<p>A report providing an update on performance against the Mental Health Act 1983 was <b>received</b>.</p> <p>In introducing the report, Penny Cram highlighted the following points:</p> <ul style="list-style-type: none"> <li>- No concerns to raised, the data remains consistent from the previous quarter;</li> <li>- There was one detention of an under 18 on Ward F the length of stay was 10 days which is longer than it has been in previous reporting periods.</li> <li>- The report now includes data surrounding part three of the act which is the criminal justice data and a general overview of new sections into Caswell and Taith Newydd and some current detentions;</li> <li>- Detentions in the community continues to fall and voluntary assessments are consistent and rising due to the good work in the triage and police control room;</li> <li>- There was one death of a patient during February 2022 and the necessary documents have been completed and sent to Health Inspectorate Wales;</li> <li>- An issue has been identified with the Mental Health review tribunal in terms of their failure to move to a more efficient way of holding hearings. During the pandemic they have only held hearings through telephone conferences which restricts nearest relatives and observers and there are a lot of dissatisfactions and it was asked that the chair of the committee raises the concern with Welsh Government;</li> <li>- Health Inspectorate Wales carried out two unannounced audit visits during March 2022 – one took place in the learning disability services and the other adult treatment wards in Cefn Coed hospital. The feedback was quite positive – pending written feedback;</li> <li>- In terms of the receipt and scrutiny of documents and the number of exceptions the numbers continue to fall and this was due to the training which has taken place on the wards.</li> </ul> <p>In discussing the report, the following points were raised:</p> <p>Jackie Davies congratulated the Mental Health Administration team on the brilliant work taken to roll out the programme of mental health training at ward level as it is clear from the numbers reported that it's delivering dividends. Jackie Davies was pleased to see the reduction of the number of section fours. Jackie Davies requested an update from the delivery unit on how the work surrounding the improvement of the review of treatment and care plans and lastly, queried the delays of tribunal hearings beyond 60 days due to allowing grants to extend report writing deadlines and emphasised that there if this was becoming accepted practice then it is not acceptable for the patient. Penny Cram noted that due there is a lot of staff sickness and staff covering each other, this has become difficult and was out of the hands of the mental health act team and an extension will only be asked unless absolutely desperate. Dermot Nolan will work with Penny Cram to make sure cases are escalated to senior managers in the service groups to ensure an escalation process is put in place, as staff sickness and</p>	

	<p>staff covering for colleague shouldn't prevent someone from completing a report.</p> <p>Maggie Berry asked why there was a stay of 10 days in Ward F as this seemed to be a long period of time. Dermot Nolan advised that the Child and Adolescent Mental Health Services (CAMHS) patient was not from the health board area and complications were due to the lack of information therefore finding an alternative placement took a while to set up.</p> <p>Gareth Howells felt there was a piece of work to be done to identify the number and reasons for being unable to repatriate the out of area young patients who find their way into the Swansea Bay services.</p> <p>Jackie Davies noted that the health board is currently restructuring school nurses and the looked after children (LAC) schools will no longer have a dedicated LAC nurse and wondered whether there will be implications for the health board. In terms of the skill set surrounding education, training and knowledge is shared across school nursing and health visitors, it is the experience element of it which will need to grow and to work alongside the existing staff or work around children who are deemed as LAC. Tanya Spriggs assured the committee that the health board isn't out alignment with its approach across Wales. Tanya Spriggs also advised there aren't huge numbers of workforce across this field of work so there needs to be something done to upskill existing staff and being do that there is more of an opportunity to address the needs rather than deal with the shortfalls in workforce.</p> <p>Dermot Nolan updated the group that CAMHS have submitted a bid to Welsh Government to enhance the school provision out of this year's mental health service improvement fund, and it has been recognised what they need to enhance. For awareness, WHSSC have put out their five year strategy for specialised mental health services and it has come to Swansea Bay University health board as a stakeholder for consultation starting from 6<sup>th</sup> May – 10<sup>th</sup> June, Dermot Nolan highlighted that there needs to be a good response into the consultation as one of the seven sub groups is CAMHS and the health board have inputted into that from a forensic point of view and it would be helpful for the health board to reinforce not only the tier four admission, but the emergency short fall admission and that would give a more appropriate environment for those children in an emergency situation.</p> <p>Gareth Howells understood there to be a piece of work to be done in scoping what the numbers were over the last 6-months. Dermot Nolan offered an option to collect data through the CAMHS commissioning group, CAMHS services, network and the local Swansea Bay CAMHS which should allow a monthly or quarterly report around the number of cases.</p> <p>Steve Spill noted that as it isn't a legislative issue an update should be provided to the Quality and Safety Committee within the next few months.</p>	
<b>Resolved</b>	<p>Committee members <b>noted</b> the Mental Health Act 1983 monitoring report.</p> <p>It was <b>agreed</b> to refer the high number of out of area referrals to the Quality and Safety Committee and the board.</p>	<b>SS/GH</b>
<b>21/22</b>	<b>MENTAL CAPACITY ACT 2005 AND DEPRIVATION OF LIBERTY</b>	

## SAFEGUARDS MONITORING REPORT

Tanya Spriggs was welcomed to the meeting.

A report providing an update on the Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards (DoLS) position for Quarter 1 was **received**.

In discussing the report, the following points were made;

- In Q4 there were 214 referrals received, of those a total of 8 were assessed by the two dedicated BIAs, two internal staff members completed 9 BIA assessments (not primary role). Total number granted 13;
- Breaches continue to rise, which is an ongoing concern. Most breaches were due to a continuing lack of BIA Assessors – both internal and external. The breach timeframes range between 3 weeks and 5 months. 89% of all referrals received for Q4 were for urgent authorisations.

In discussing the report the following points were raised:

Steve Spill requested that moving forward the number noted under referrals to be presented in a table rather than as a narrative. Tanya Spriggs noted that the numbers aren't linear but will try to make the table as clear as possible.

Steve Spill sought clarity surrounding the funding for Best Interest Assessors (BIAs). Tanya Spriggs clarified that substantively there has only been funding for two BIAs, however there is a small amount of additional monies received from Welsh Government every year around DoLS and further additional money has been received this year as it's been recognised that the back log of DoLS is an issue throughout Wales. Tanya Spriggs noted that due to introduction of Liberty Protection Safeguarding (LPS) the BIAs won't exist in the same format, the team were expecting LPS to be established by now, however there have been delays due to covid-19. Resulting in significant challenges in terms of the workforce and not having the expertise across the health board for existing staff. The team have had to look at the best approach and so far it has been to recruit the external company to reduce the backlog.

Jackie Davies highlighted the comment in the report regarding the DoLS structure being fragmented and wondered whether the reason was due to the non-existent BIAs or is it that we don't have the money available to dedicate to recruit substantive people into the posts. Tanya Spriggs understood it to be a mixture of both. Tanya Spriggs has found there isn't an interest in the fixed term post, but was hopeful to recruit to the more permanent positions. Tanya Spriggs was keen to recruit the very experienced BIA within the team, who is now in the team leader role and he will form part of the functionality around LPS.

Jackie Davies noted that there has to be substantive posts in place as the service needs the long term sustainability. Tanya Spriggs agreed and advised she was working through securing the right people now in preparation.

Jackie Davies highlighted the gap in the service provision of the DoLS five day response, Tanya Spriggs noted that the legislation was changing and that DoLS wouldn't operate in the same way.

TS

<p><b>Resolved;</b></p>	<p>Committee members <b>noted</b> the performance data for Quarter 4 – January - March 2022 together with cumulative information for year to-date.</p> <p>Committee members <b>noted</b> that there was a further delay on the implementation date for LPS. Suggested proposed time scale was likely to be Oct 2023/April 2024. LPS Code of Practice and Guidance has been disseminated for a 16-week consultation period (17th March 2022 until 7th July 2022).</p> <p>Committee members <b>noted</b> Liquid Personnel Agency has been commissioned to undertake Best Interest Assessments to meet the DoLS backlog utilising funds from Welsh Government.</p> <p>Committee members <b>noted</b> that further Welsh Government funding to manage the DoLS backlog and DoLS/MCA Training is to be made available. Proposals for this funding are to be submitted by 25th April 2022.</p> <p>Committee members <b>noted</b> the DoLS annual monitoring report.</p>	
<p><b>22/22</b></p>	<p><b>HEALTH BOARDS IMPLICATIONS AND PREPAREDNESS SURROUNDING LIBERTY PROTECTION SAFEGUARDS</b></p>	
	<p>Carol Killa, was welcomed to the meeting.</p> <p>In introducing the report the following points were raised:</p> <ul style="list-style-type: none"> <li>- The Mental Capacity (Amendment) 2019 Act (MCA) introduced the Liberty Protection Safeguards (LPS), which will replace the previous Deprivation of Liberty Safeguards. (DoLS) The aim being to move away from a beurocratic time consuming process to a situation where the MCA is embedded into practice and care planning, with the focus more widely on the human rights of the individual in care and treatment planning;</li> <li>- Responsible Bodies will replace the Supervisory body to authorise an incapacitated person’s deprivation of liberty. It is clear that in Wales the Responsible Body with be the local Health Board;</li> <li>- The LPS scheme arrangements will cover hospitals and care homes, supported living, shared lives and private and domestic settings. The LPS can also provide authorisation of day centre and transport arrangements;</li> <li>- Continuing Health Care patients will now be the responsibility of the local Health Board Responsible Body to arrange LPS assessments, make the determination and carry out the authorisation;</li> <li>- LPS will apply to 16 and17 year-old young people in line with the MCA (2005);</li> <li>- Authorisations can also be for multiple settings built into the person’s care plan and so is transportable across care settings;</li> <li>- The role of the Best Interest Assessor will cease and new roles will be introduced: Approved Mental Capacity Professional (AMCP) the purpose of this role is to look at complex cases and any disputes with families around the arrangement, and the Pre authoriser / Reviewer the purpose of this role is to check all information once collated;</li> <li>- The current five assessments will reduce to three. Assessments</li> </ul>	

required to determine an LPS are: Mental capacity assessment to consent to arrangements, Determination on having a mental disorder as defined under the MHA 1983/2007, Medical Assessment and Assessment required on deprivation of liberty is' necessary and proportionate 'to prevent harm to themselves. If the person is undergoing other health and or care assessments, then these should be carried out alongside that process;

- The whole structure is fragmented and under resourced. It is necessary to consider the new roles required and that the HB does not have BIAs to transition into these roles within the current resource. There is one substantive BIA post out to advert which is the sole post for the Health Board. The DoLS team leader is a qualified and experienced BIA who supports with the most complex cases and those are often in the court arena and take up substantial time and expertise;
- The Primary Care, Community and Therapies Delivery Service unit (PCC&TDSU) has already put in place a robust plan to manage the backlog of DoLS cases and this is being closely monitored;
- The implementation of LPS was planned for April 2022 but has now been delayed until the consultation process via Welsh Government is complete and the Regulations have been finalised agreed in the Senedd. No future implementation date has been agreed, but it is likely to be late 2023 - early 2024;
- Consultation was launched on the 17th April 2022 from Welsh Government for the changes to the legal regulations for the Mental Capacity (Amendment) Act and the closing date is 7<sup>th</sup> July 2022;
- The delay in implementing LPS allows for preparation of staff for what is likely to be a complex change in practice and to ensure the Health Board is assured of a level of competence where it is feasible to make the transition. It also gives time for Swansea Bay to put in place a safe infrastructure to support and monitor compliance with the MCA going forward;
- The WG will allocate monies over the next two years to support planning and the delay in implementation gives the Health board a year to consider the needs and develop the service.

In discussing the report the following points were raised:

Steve Spill acknowledged that a sub-group should be put in place. To which Gareth Howells noted that recommendations are required from the task and finish group to understand where the work sits and is keen to get to the stage where there are clear steps to enable financial and executive support.

Jackie Davies noted that the only answer to the work is investment in terms of money and resource. Carol Killa agreed with Jackie Davies comment and in addition noted that it is also about bringing together the accountability of as a health board for the mental capacity act.

Steve Spill queried whether the health board work together with local authorities. Carol Killa advised that the health board work alongside Swansea Bay and Neath Port Talbot and there are multi agency regional meetings involving welsh government and there would be a regional and national response to the consultation. In terms of plan for LPS there a regular meetings to discuss structures moving forward.

	Given the risks involved it was agreed to refer the LPS work to the Quality and Safety Committee.	
<b>Resolved:</b>	<p>The committee <b>noted</b> the changes required to implement Liberty Protection Safeguards and the plan to develop a business case.</p> <p>The committee <b>agreed</b> to be updated on progress at each meeting.</p> <ul style="list-style-type: none"> <li>- Given the risks involved it was <b>agreed</b> to refer the LPS work to the Quality and Safety Committee.</li> </ul>	<b>SS/GH</b>
<b>23/22</b>	<b>MENTAL HEALTH ACT MONITORING REPORT</b>	
	<p>The Mental Health Act Monitoring report was <b>received</b>.</p> <p>In introducing the report the following points were raised:</p> <ul style="list-style-type: none"> <li>- The health board met the target (80%) for the twelve months excluding CAMHS data. Including CAMHS we met the target nine of the twelve months. All Wales data in January ranged from under 18 (5.3% to 100%, SBU 28.2 %), over 18 (14.9% to 95.3%, SBU 95.3%);</li> <li>- The health board met the target (80%) for the twelve months excluding CAMHS data. Including CAMHS we met the target nine of the twelve months. All Wales data in January ranged from under 18 (19.3% to 100%, SBU 39%), over 18 (12.7% to 100%, SBU 98.5%);</li> <li>- Care and treatment plan (CTP) compliance remains below target but direct intervention and support from the SMT has seen a gradual improvement in performance. The CMHT managers are working to an action plan to ensure that the 90% target is attained;</li> <li>- The service group have utilised the mental health service improvement funds to put in place additional mental health link workers into the general practice cluster areas. Whilst not directly linked to the local private mental health services it should try and deal with some work at the general practice cluster areas in preventing some referrals.</li> </ul>	
<b>Resolved:</b>	<p>Committee members <b>noted</b> the levels of compliance to Welsh Government access targets with regard to the Mental Health Measure (Wales) 2010 which offer no concerns regarding overall compliance with the legislation.</p> <p>Committee members <b>noted</b> that steps have been taken to mitigate the anticipated increase in demand and restrictions due to social distancing requirements to maintain compliance.</p>	
<b>24/22</b>	<b>MENTAL HEALTH LEGISLATION COMMITTEE TERMS OF REFERENCE</b>	
<b>Resolved:</b>	The Mental Health Legislation Terms of Reference were <b>approved</b> .	
<b>25/22</b>	<b>INTERNAL AUDIT REPORT ON MENTAL HEALTH LEGISLATION</b>	
	<p>The Internal Audit Report on Mental Health Legislation was <b>received</b>.</p> <p>In introducing the report Gareth Howells highlighted the following points:</p> <ul style="list-style-type: none"> <li>- Gareth Howells highlighted that the action plan will be taken through Audit committee and an updated would be provided to the Mental</li> </ul>	

	<p>Health Legislation committee in due course.</p> <p>In discussing the report the following points were raised:</p> <p>Steve Spill requested Gareth Howells to provide an update at the next committee as to what has been done to address the limited assurance area.</p>	<b>GH</b>
<b>Resolved:</b>	<p>Committee members <b>noted</b> the internal audit report on mental health legislation.</p> <p>Update be provided to the next meeting as to the action to address the limited assurance areas.</p>	
<b>26/22</b>	<b>ANY OTHER BUSINESS</b>	
	No further business was discussed.	
<b>27/22</b>	<b>DATE OF THE NEXT MEETING</b>	
	The next meeting would take place on <b>Thursday, 4<sup>th</sup> August 2022</b>	