

<b>MAIN REPORT</b>		ABM University Health Board
<b>MENTAL HEALTH LEGISLATION COMMITTEE</b>		Date of Meeting: 10 <sup>th</sup> May 2018 Agenda item: 2a
<b>Subject</b>	<b>Mental Health Act Performance Report</b>	
<b>Prepared by</b>	Lynda Rogan, Mental Health Act Manager	

## 1. PURPOSE

The purpose of the paper is to present to the Mental Health and Capacity Legislation Committee the quarterly Mental Health Act performance report in relation to Hospital Managers' scheme of delegated duties under the Mental Health Act 1983 and the functions, including section 23.

## 2. INTRODUCTION

The report provides assurance in respect of the work that has been undertaken by Mental Health and Learning Disabilities (MHLDD) Services during the quarter, that those functions of the Mental Health Act 1983 (the Act), which have been delegated to officers and staff under the policy for Hospital Managers' Scheme of Delegation, are being carried out correctly, and that the wider operation of the Act across the Health Board area is operating properly.

The hospital managers must ensure that patients are detained only as the Act allows, that their care and treatment fully comply with it, and that patients are fully informed of, and supported in exercising their statutory rights. Hospital managers must also ensure that a patient's case is dealt with in line with other legislation which may have an impact, including the Human Rights Act 1998, Mental Capacity Act 2005 and Mental Health (Wales) Measure 2010.

## EXCEPTION REPORT

### 3.0 Data Collection and Exception Reporting

Any exceptions highlighted in the Mental Health Act activity report are intended to raise the Committee's awareness of matters relating to the functions of hospital managers and give assurance that the care and treatment of patients detained in Abertawe Bro Morgannwg University Health Board and those subject to a community treatment order is only as the Act allows.

### 3.1 Detention without authority or Invalid Detentions

There were no exceptions for this period and five invalid detentions identified by the Mental Health Act Department. An analysis of the reasons for the invalid detentions between the periods 1 December 2017 – 28 February 2018, with actions taken and by whom, is documented to provide assurance that actions are being taken to minimize or eradicate this occurring.

No.	Reason for detention without authority	Actions taken	By Whom
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1	<p><b>Cefn Coed Hospital (Fendrod Ward)</b></p> <p>The section 2 was invalid as the AMHP addressed their application to the incorrect hospital which did not comply with the requirements under s.11 (2) of the Mental Health Act 1983.</p> <p>Detention without authority: <b>1 hour 5 mins</b></p>	<p>Ward manager informed that detention is invalid. Doctor and AMHP informed that detention is invalid and discussed whether further section needs to be applied. Staff informed to make an entry in the patients' health record to document incident and outcome. Correspondence sent to patient to inform them of the incident. Incident Report Form completed.</p>	<p>MHA Administrator</p> <p>MHA Administrator</p> <p>MHA Administrator</p> <p>MHA Administrator</p> <p>MHA Administrator</p>
2	<p><b>NPT Hospital (Ward F)</b></p> <p>A section 5(2) was completed for the patient, however, the doctor did not complete the start date on the Form HO12. As this omission could not be rectified under section 15 of the Act it rendered the holding power invalid.</p> <p>Detention without authority: <b>6 hours 30 mins</b></p>	<p>Ward manager informed that holding power is invalid. Doctor informed that holding power is invalid and discussed whether further section needs to be applied. Staff informed to make an entry in the patients' health record to document incident and outcome. Correspondence sent to patient to inform them of the incident. Incident Report Form completed.</p>	<p>MHA Administrator</p> <p>MHA Administrator</p> <p>MHA Administrator</p> <p>MHA Administrator</p> <p>MHA Administrator</p>
3	<p><b>Princess of Wales Hospital (Ward 14)</b></p> <p>A section 4 application was not signed or dated by the AMHP which could not be remedied under section 15 and therefore not authorise the detention of the patient.</p>	<p>Ward manager informed that detention is invalid. Doctor and AMHP informed that detention is invalid and discussed whether further section needs to be applied. Staff informed to make an entry in the patients' health record to document incident and outcome. Correspondence sent to</p>	<p>MHA Administrator</p> <p>MHA Administrator</p> <p>MHA Administrator</p> <p>MHA Administrator</p>

	Detention without authority: <b>25 days 17 hrs</b>	patient to inform them of the incident. Incident Report Form completed.	MHA Administrator
<b>4</b>	<b>Morriston Hospital (Ward A)</b> A section 5(2) was completed for the patient, however, the doctor did not sign or complete the start date on the Form HO12. As this omission could not be rectified under section 15 of the Act it rendered the holding power invalid.  Detention without authority: <b>2 hours 45 mins</b>	Ward manager informed that holding power is invalid. Doctor informed that holding power is invalid and discussed whether further section needs to be applied. Staff informed to make an entry in the patients' health record to document incident and outcome. Correspondence sent to patient to inform them of the incident. Incident Report Form completed.	MHA Administrator  MHA Administrator  MHA Administrator  MHA Administrator  MHA Administrator
<b>5</b>	<b>NPT Hospital (Ward F)</b> A section 2 application was invalid as the AMHP had not signed or dated their application Form HO2 which could not be rectified under section 15 of the Act and provided no authority to detain the patient.  Detention without authority: <b>2 hours 45 mins</b>	Ward manager informed that detention is invalid. Doctor and AMHP informed that detention is invalid and discussed whether further section needs to be applied. Staff informed to make an entry in the patients' health record to document incident and outcome. Correspondence sent to patient to inform them of the incident. Incident Report Form completed.	MHA Administrator  MHA Administrator  MHA Administrator  MHA Administrator  MHA Administrator

## 4. Assessment

## **Mental Health Act 1983**

A report along with definitions of relevant section of the Act is included below which summarises key points of the use of the Act within ABMU Health Board. Rates of detention under different sections of the Act typically fluctuate between each quarter; therefore only significant points are highlighted.

1<sup>st</sup> December 2017 – 28<sup>th</sup> February 2018 (Quarter 3 and 4)

### **KEY TO SECTIONS**

#### **Part 2 – Compulsory Admission to Hospital or Guardianship**

- Section 5(4) Nurses Holding Power (up to 6 hours)
- Section 5(2) Doctors Holding Power (up to 72 hours)
- Section 4 Emergency Admission for Assessment (up to 72 hours)
- Section 2 Admission for Assessment (up to 28 days)
- Section 3 Admission for Treatment (6 months, renewable)
- Section 7 Application for Guardianship (6 months, renewable)
- Section 17A Community Treatment Order (6 months, renewable)

#### **Part 3 - Patients Concerned with Criminal Proceedings or Under Sentence**

- Section 35 Remand for reports (28 days, maximum 12 weeks)
- Section 36 Remand for treatment (28 days, maximum 12 weeks)
- Section 38 Interim Hospital Order (Initial 12 weeks, maximum 1 year)
- Section 47/49 Transfer of sentenced prisoner to hospital
- Section 48/49 Transfer of un-sentenced prisoner to hospital
- Section 37 Hospital or Guardianship Order (6 months, renewable)
- Section 37/41 Hospital Order with restriction (Indefinite period)
- Section 45A Hospital Direction and Limitation Direction
- CPI 5 Criminal Procedure (Insanity) & Unfitness to Plead (Indefinite period)

#### **Part 10 – Miscellaneous and Supplementary**

- Section 135(1) Warrant to enter and remove (up to 24 hours)
- Section 135(2) Warrant to enter and take or retake (up to 24 hours)
- Section 136 Removal to a place of safety (up to 24 hours)

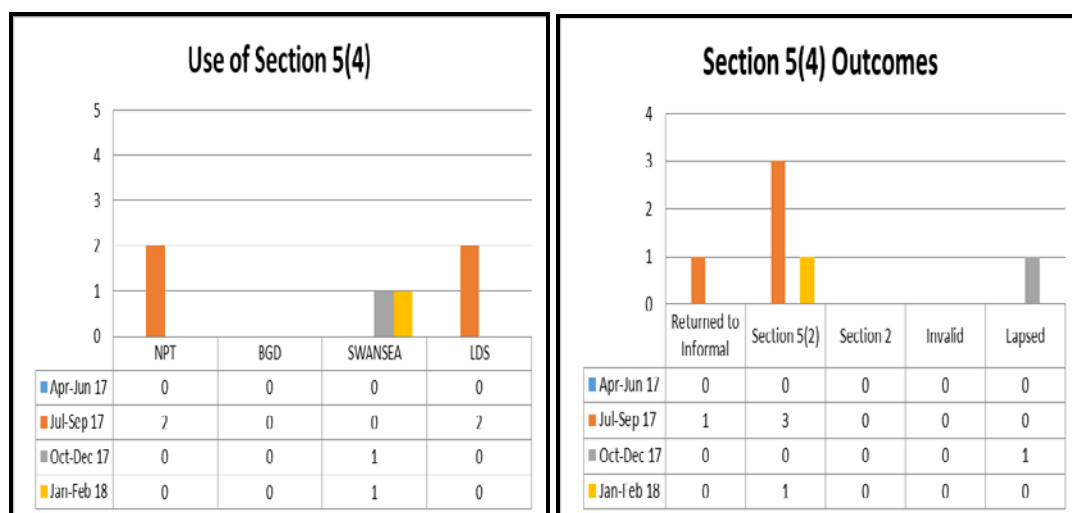
## **5. Mental Health Act, 1983 - Data Collection and Exception Reporting**

The data below summarises some of the key points of the use of the Mental Health Act (1983) during the quarter:

- Three under 18 year olds were admitted under the Act to Ward F, Neath Port Talbot Hospital. The longest length of stay recorded was 10 days.
- Section 4 which should only take place in cases of urgent necessity and to avoid an unacceptable delay was used on one occasion, this was converted to section 2 within the 72 hour period allowed.
- The reduction in the number of assessments taking place in the police station has been maintained, with only one assessment taking place in police custody for the reporting period.

### i) Detention under Section 5 – Holding Powers

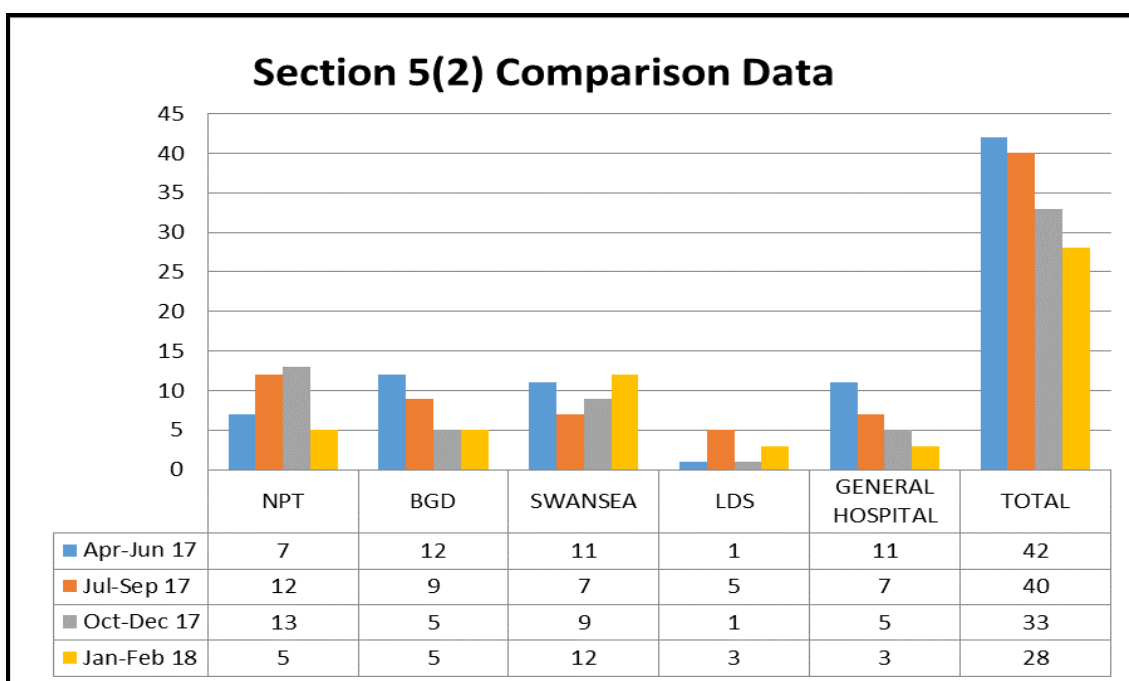
Section 5(4) is used by mental health and learning disability nurses in mental health in-patient settings for up to 6 hours to allow for a further assessment to take place. This section of the Act was used on two occasions during the period 1 December 2017 – 28 February 2018.



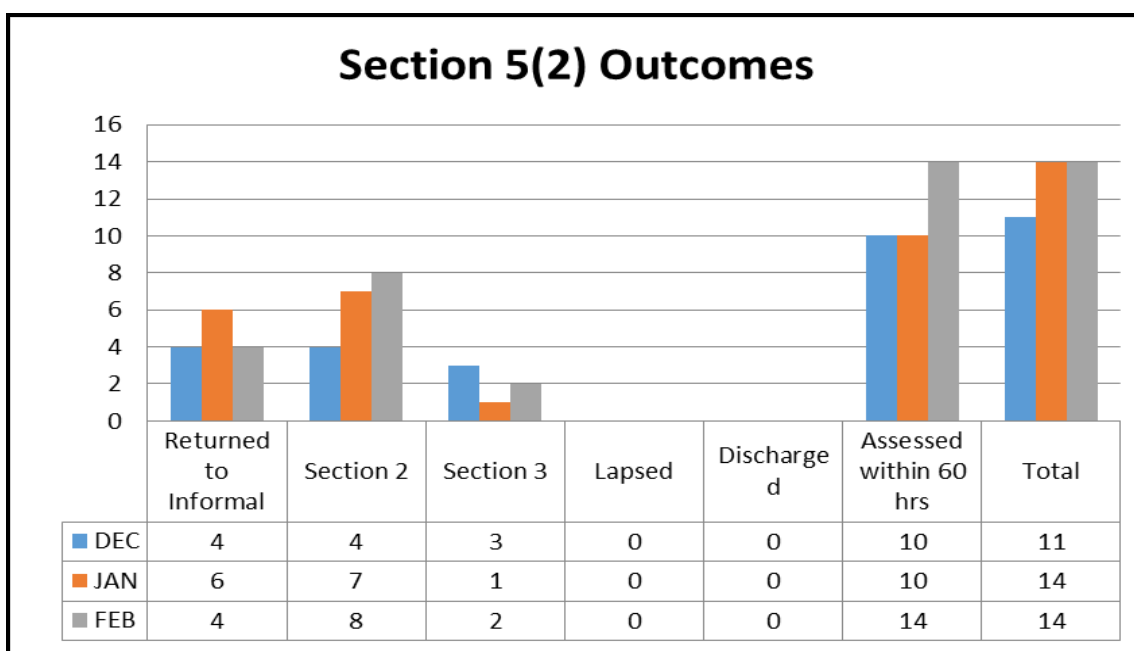
**Table 1:** This shows the use of the nurses holding power over an eleven month period, by locality.

**Table 2:** This shows the outcomes of the use of the nurses holding power over eleven months.

Section 5(2) is used by Doctors in both mental health and general hospital settings to detain an in-patient for up to 72 hours to allow for a mental health act assessment to take place. The use of this holding power was used on thirty-five occasions. Twenty-five of those patients were further detained on either section 2 or 3. This section was used in a general hospital setting on five occasions.



**Table 3:** This shows the use of the doctors holding power over an 11 month period, by locality.



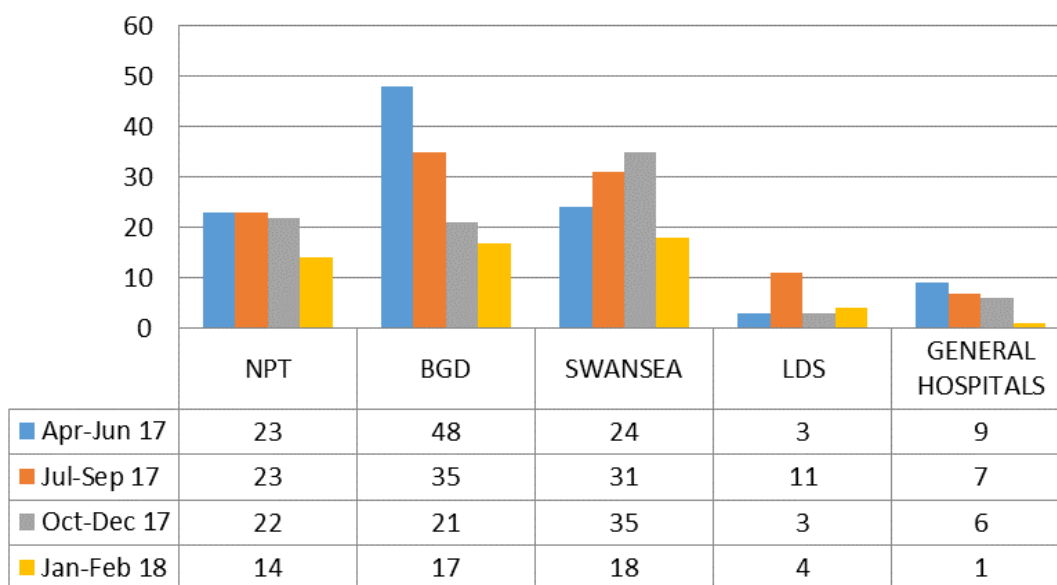
**Table 4:** This shows the outcome of the doctors holding power following assessment.

## ii) Section 2 – Admission for Assessment

This section authorises the compulsory admission of a patient to hospital for assessment (or for assessment followed by medical treatment), for mental disorder for up to 28 days.

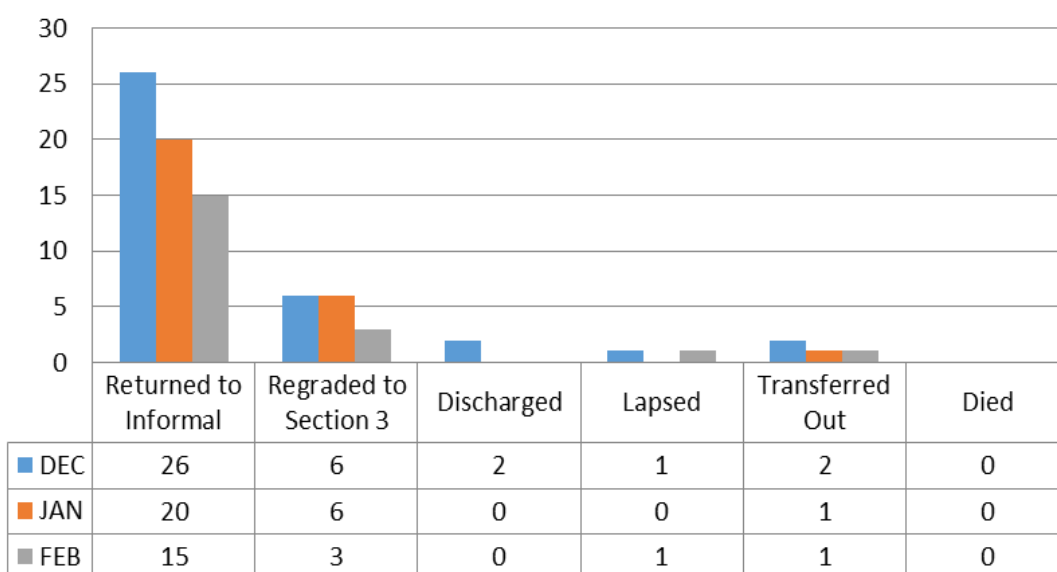
Section 2 was used on 77 occasions during the reporting period. The majority of patients reverted to voluntary status following this period of detention under the Act.

## Section 2 - Comparison Data



**Table 5:** This shows the use of section 2 over an eleven month period, by locality.

## Section 2 - Outcomes

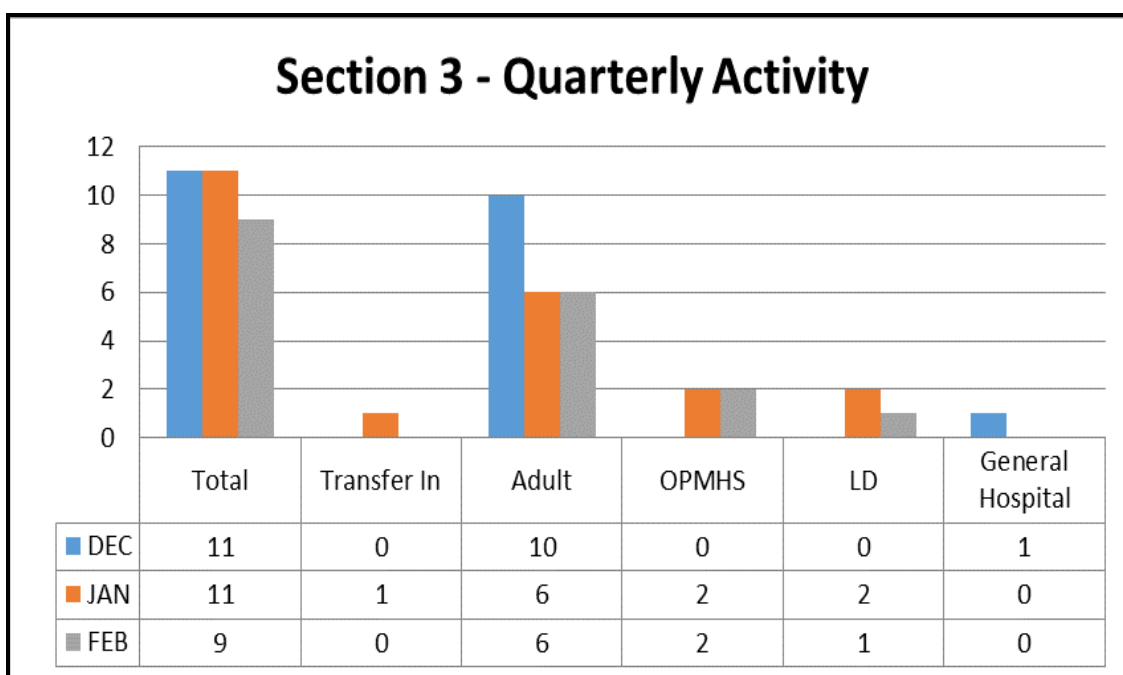


**Table 6:** This shows the outcome of section 2 for Quarter 2 and 3 following assessment.

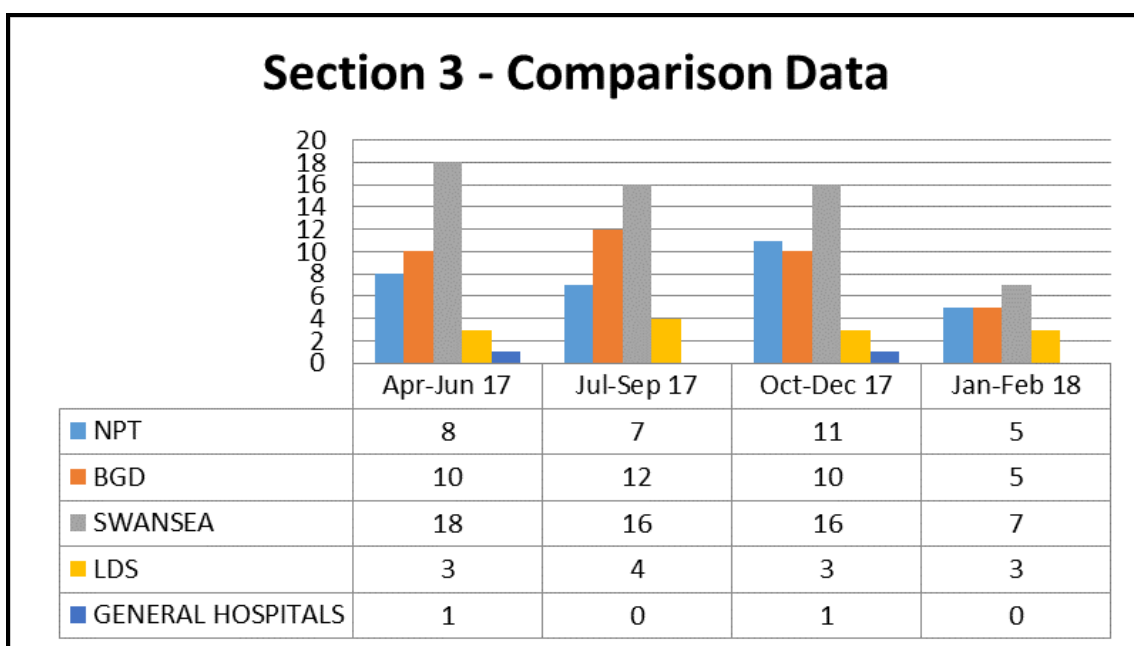
### iii) Section 3 – Admission for Treatment

This section provides for the compulsory admission of a patient to hospital for treatment for mental disorder. The detention can last for an initial period of six months.

During 1 December 2017 – 28 February 2018, section 3 was used on thirty-one occasions. Fifteen patients subject to section 2 had their sections converted to section 3. One patient was detained on section 3 on a general hospital ward.



**Table 7:** This shows the usage of section 3 for the period December 2017 – February 2018, by admission type and patient group.



**Table 8:** This shows the use of section 3 over an eleven month period, by locality.

#### iv) **Section 4 – Emergency Admission for Assessment**

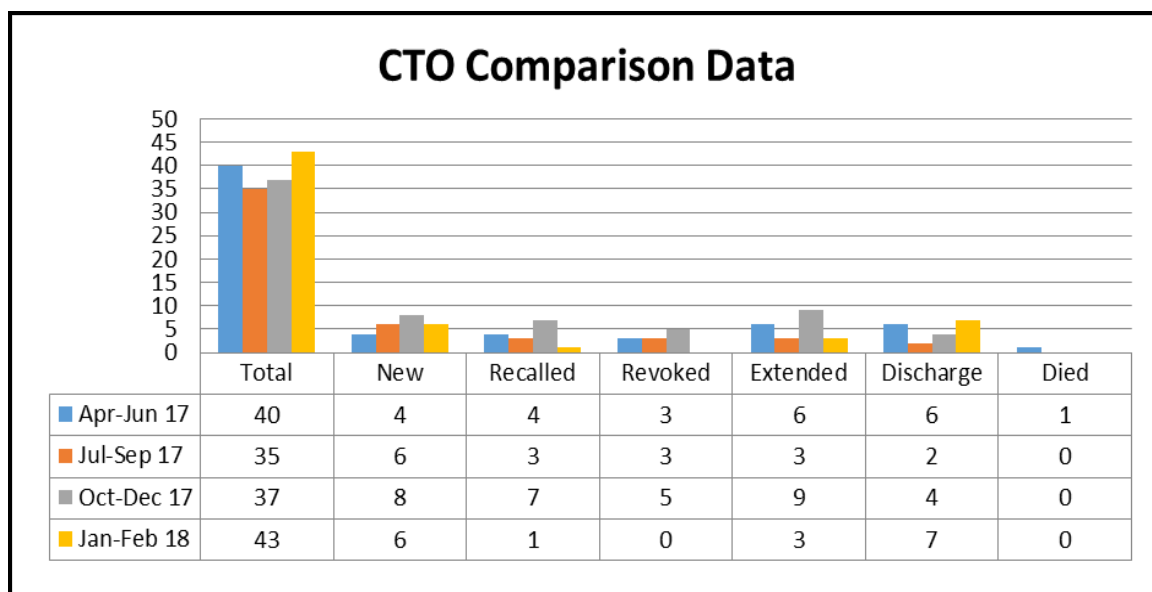
The use of section 4 of the Mental Health Act 1983 is to enable an admission for assessment to take place in cases of urgent necessity. It should only be used to avoid an unacceptable delay and as such is infrequently used and specifically examined by Mental Health Act Managers when this is the case. Section 4 was used on one occasion, and was converted to section 2 within the 72 hour period allowed.



**v) Section 17A – Community Treatment Order**

This section provides a framework to treat and safely manage certain eligible patients who have been detained in hospital for treatment, in the community, whilst still being subject to powers under the Act.

There are currently forty-three community treatment orders in place as at 28 February 2018. The CTO activity includes seven new CTO's for December 2017– February 2018, six extensions, one recall and no revocations. Eight patients were discharged from their orders by the Responsible Clinician and one discharged by the Mental Health Review Tribunal.



**Table 9:** This shows a comparison of Section 17A-G activity over an eleven month period.

**vi) Police Powers to Remove a Person to a Place of Safety under Section 136**

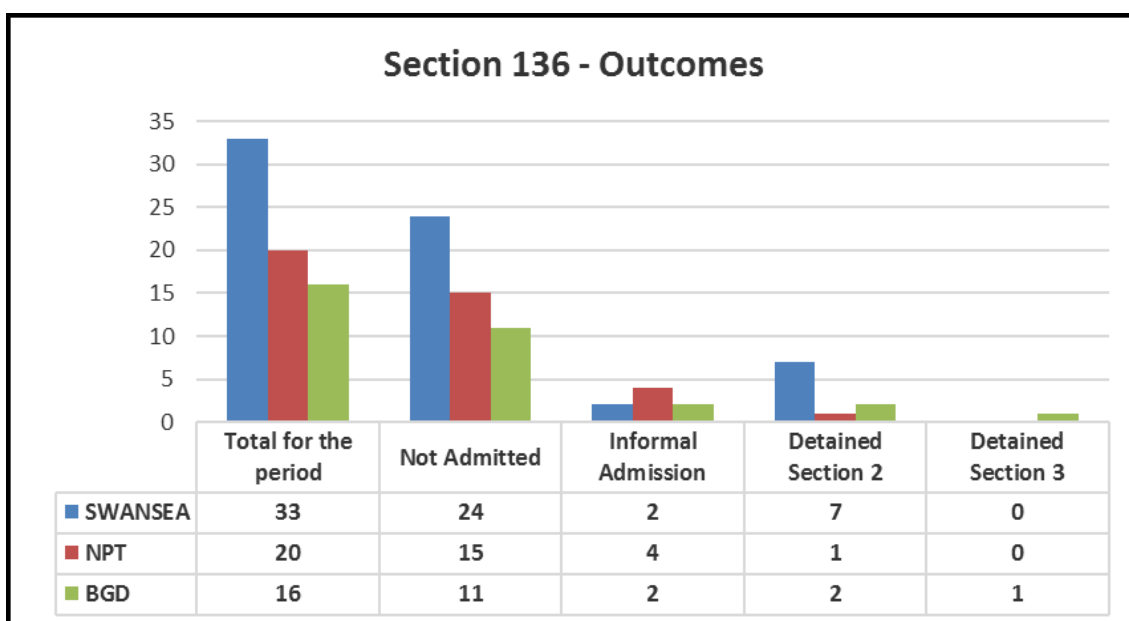
This section empowers a constable to remove a person from a public place to a place of safety if it is considered the person is suffering from mental disorder and is in immediate need of care or control.

Although the police station can be used as a designated place of safety, it was used on one occasion, all of the other assessments that took place under this section of the Act were carried out in a health based place of safety.

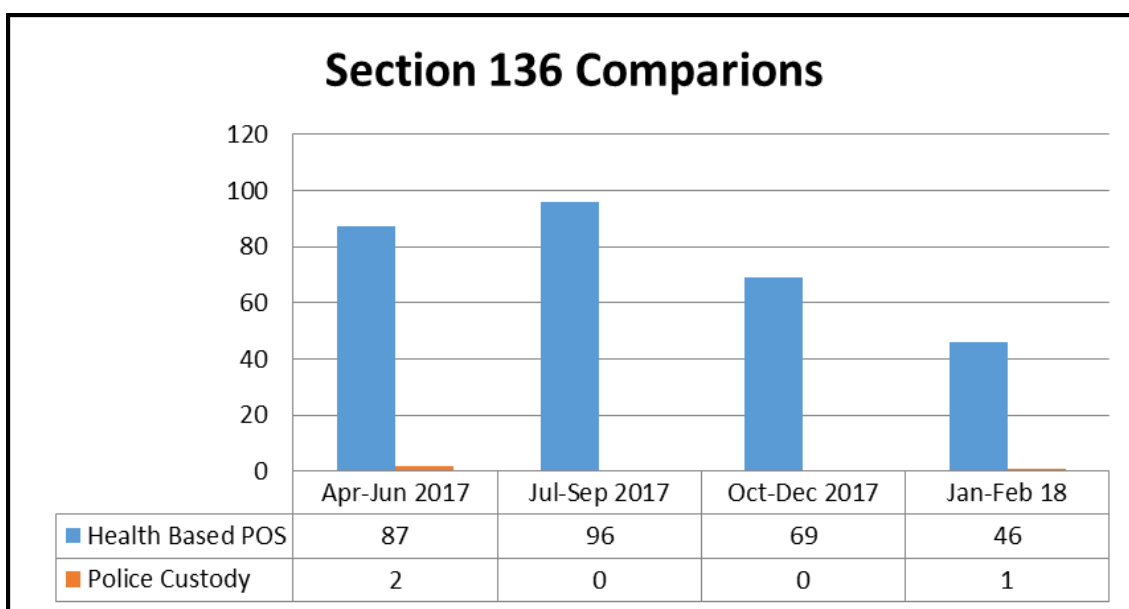
The number of occasions that section 136 was used in December 2017 – February 2018 was 69, but this is not indicative of a trend. During the reporting period the majority of those assessed did not result in the admission or further detention of the person.

Eleven people had been detained on more than one occasion under this section of the Act in the reporting period.

Twenty-three people were previously know to mental health services.



**Table 10:** This shows the outcome of section 136 for 1 Dec 2017 – 28 Feb 2018, by locality.



**Table 11:** This shows the location where section 136 assessments were completed.

## vii) Scrutiny of Documents

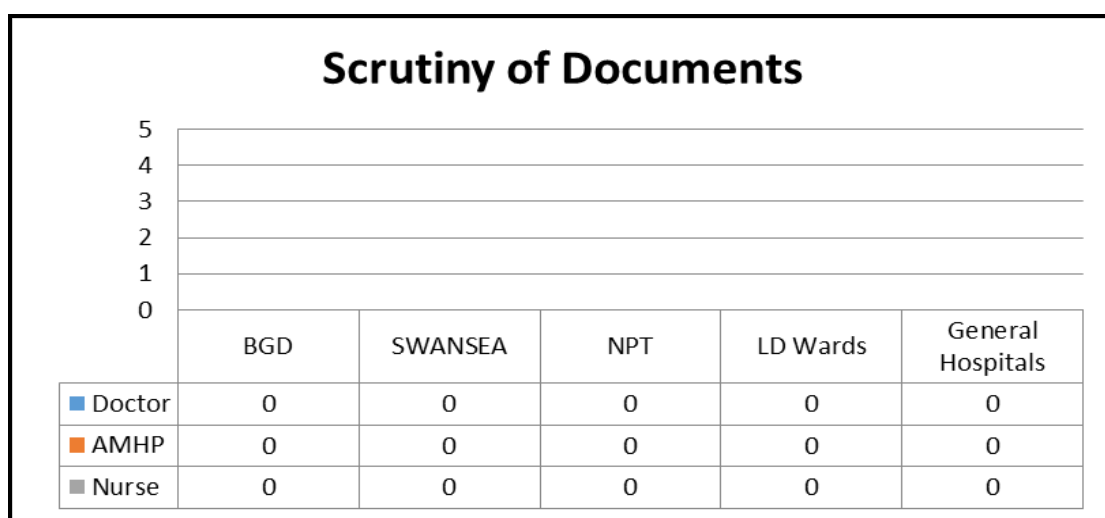
Section 15 of the Act provides for certain admission documents which are found to be incorrect or defective to be rectified within fourteen days of the patient's admission. Rectification or correction is mainly concerned with inaccurate recording and it cannot be used to enable a functionally defective application to be retrospectively validated.

The number of statutory documents scrutinised totalled 307 for the reporting period, this was compared to 424 for the previous three months. No errors were found that were required to be rectified within the 14 days statutory time limits under section 15 of the Act.

Other errors that do not fall under section 15 of the Act:

- The return to court date was not completed correctly by the Court for two section 35 Remand Orders.
- The return to court date was not completed correctly by the Court for a section 36 Remand Order.
- The incorrect form was used by the AMHP for the section of a patient to England.

There were five fundamentally defective detentions recorded for this period.



**Table 12:** This shows the number of errors, per locality for December 2017 – February 2018.

#### **viii) Deaths of detained patients**

During the period there were no deaths recorded for patients who was subject to detention under the Mental Health Act 1983.

#### **ix) Exclusion of Visitors**

There were no visitors excluded from visiting detained patients during the reporting period.

#### **x) Application for Discharge to Hospital Managers and Mental Health Review Tribunal**

During the reporting period 51 applications/referrals were made to the MHRT. 50 hearings took place, 6 patients were discharged, 5 hearings were adjourned, 13 patients were discharged by the responsible clinician and 6 patients withdrew their applications.

The Hospital Managers received no applications from the patient or the nearest relative of a patient for discharge from detention. 29 hearings were held to review the continued detention of the patient or extension of CTO, 16 of these hearings were contested by the patient. There were 9 hearings at which an Independent Mental Health Advocate (IMHA) attended to represent the patient.

## **7. Hospital Managers Power of Discharge Committee**

There were no matters to be brought to the attention of the Committee. The minutes of the Mental Health Managers meeting on 26<sup>th</sup> February 2018 are attached at **Appendix 1.**

## **8. Healthcare Inspectorate Wales (HIW) Visits to Mental Health & Learning Disabilities Units**

During the reporting period there were no visits made by HIW to mental health or learning disabilities hospitals/units.

## **9. Conclusions**

- Unlawful and de facto detentions are likely to re-occur where qualified ward staff have insufficient training in the receipt and scrutiny procedures under section 15 of the Mental Health Act 1983.

## **10. Recommendations**

- Training sessions to be arranged for qualified staff on the receipt and scrutiny of Mental Health Act documentation across all mental health hospital sites and learning disability units.
- Clinicians to be reminded of their responsibilities under the Act when completing statutory documentation. Persistent non-compliance should be an issue raised formerly.

### **Actions**

- The Mental Health Act Department is arranging training sessions for qualified staff on the receipt and scrutiny of Mental Health Act documentation across all mental health hospital sites and learning disability units which will run from January – March 2018. This will instruct staff on how to recognise minor errors and fundamentally defective applications likely to invalidate sections under the Mental Health Act; and should reduce the rate of de facto detentions.

### **By Whom**

- Training will be delivered by the Mental Health Act Senior Managers.

## Receipt & Scrutiny of Mental Health Act Documentation Training Sessions

## January – March 2018

[illegible]



## HOSPITAL MANAGERS POWER OF DISCHARGE COMMITTEE

### MINUTES

**for the meeting held at 10 am on Monday 26<sup>th</sup> February 2018  
in the Board Room, Glanrhyd Hospital**

All Committee members should be advised that public, patient or general staff access may be given to this meetings' minutes and associated documents under the Freedom of Information Act.

#### ACTION

<b>Present:</b>	Mrs C Patel, Non Officer Member (Chair)	(CP)
	Mrs M Berry, Non Officer Member	(MB)
	Mr D Adams, Associate Manager	(DA)
	Mr D Cooper, Associate Manager	(DC)
	Mrs K Crabbe, Associate Manager	(KC)
	Mr K Morgan, Associate Manager	(KM)
	Mrs I David, Associate Manager	(ID)
	Mr C Toutt, Associate Manager	(CT)
	Dr D Barton, Associate Manager	(DB)

#### In Attendance

Mrs L Rogan, Mental Health Act Manager	(LR)
Ms H Richards, Deputy Mental Health Act Manager	(HR)

#### **HM/18/01 Welcomes and Introductions**

The Chair opened the meeting and extended a warm welcome to everyone and introductions were made. The Chair informed members that this was her last meeting and thanked **LR** the secretary, the Mental Health Act Department and all members for their support.

#### **HM/18/02 Apologies for Absence**

Apologies for absence were received from Prof. C Phillips Mrs J Williams, Mrs C Castle, Dr J Copley, Mr W Griffiths, Mrs M Pritchard, Mrs R Morgan, Ms S Abbott, Mr A Thomas and Mr K Faulkner.

#### **HM/18/03 Minutes of the Previous Meeting**

**DC** asked if the minutes of the meeting held in the Board Room, Glanrhyd Hospital, on 15<sup>th</sup> August 2017 could be amended at HM/17/32 to read Care Coordinator instead of AMHP.

**HM/18/04     Matters Arising**

The Chair informed those present that flowers and a condolence card had been sent to the family of the late Mrs Carole Hyde from the Health Board on behalf of the Hospital Managers.

**HM/18/05     Re-appointment of Hospital Managers**

The Chair was informed that the Health Board had approved the re-appointment of the following hospital managers for a further period of 12 months:

- Mr Keith Faulkner
- Ms Sue Abbott
- Mr Alyn Thomas
- Mr Craig Toutt

Re-appointment letters have been sent out to individual members by the Chairman of the Health Board.

**HM/18/06     Receive the Report of the Use of the MHA83 Jul – Dec 2017**

The group considered the report on activity for the period.

**DC** asked if details of available beds in Cefn Coed Hospital could be presented in the figures to show availability of Step Down/Rehabilitation beds as this issue had impacted on Hospital Managers hearings. **LR** stated that this was the remit of other committees. **MB** confirmed that the Legislative Committee review this information that is discussed at the Quality & Safety forum and **MB** would take this forward on their behalf.

**MB**

Applications and referrals to the Mental Health Review Tribunal have increased compared to those recorded for the same period last year (109), there were 138 applications/referrals received, which included eight referrals to the Tribunal by patients whose supervised community treatment orders have been revoked. Although 71 appeals were held, only 6 patients had their detention discharged by the Tribunal. There were no applications to the First-tier Tribunal.

**KC** enquired if any of the discharged patients had a prior Hospital Managers hearing. **LR** stated that it would not have been possible for the six patients to have had a hospital manager's review as two of those discharged were restricted patients and the other 4 were detained under section 2, which require a Tribunal to be scheduled within 7 days of their application.

**LR** informed the group that there had been seven unlawful detentions recorded during the detention period. All other errors had been rectified under section 15 of the Mental Health Act 1983.

**HM/18/07     Audit of Discharges by the Mental Health Review Tribunal**

The group discussed the six patients discharged by the Tribunal, three of the section 2 patients were re-admitted under the Act.

**HM/18/08    Policy for the Procedure for the hearing of patient appeals**  
LR informed members that the Joint Health Board Policy Group has not met to consider the policy for Hospital Managers yet. In the interim the group were asked to consider draft quick reference guide leaflets on the Code of Practice and Welsh Measure to aid panel members. A sub-group agreed to meet to discuss and provide feedback on the content and usefulness. **LR/HR**

**HM/18/09    Schedule of Meetings/Training Events for 2018**  
The list of dates was circulated to members. The venue and timings have been amended to accommodate a higher number of participants from the three Health Boards and additional presentation by the Mental Health Review Tribunal.

### **TRAINING**

**HM/18/10    Training Requirement for Hospital Managers**  
The group discussed the presentation by Richard Griffiths, Swansea University on the role of the hospital managers and an update of case law. A copy of this presentation had been included in the papers for members. All those who attended felt that the subjects were very informative.

LR provided details of the training event to be held on 8<sup>th</sup> May 2018 in Seminar Room A, Education Centre, Cefn Coed Hospital. Richard Griffiths, Swansea University will deliver a presentation on decision writing for hospital managers. The Mental Health Review Tribunal will also be giving a presentation on their role and function.

**HM/18/11    Issues relating to specific hospital managers hearings**  
There were no issue raised by members.

### **FOR INFORMATION**

**HM/18/12    Law Society response to the Mental Health Act 1983 Independent Review 2017/18**  
The group considered the report produced by the Law society on their specific proposals and suggestions for Mental Health Act legislative reform.

**HM/18/13    Welsh Government Admission of patients to mental health facilities in Wales, 2016-17**  
The group considered the summary report on the number of patients admitted to mental health facilities in Wales both formally and informally, including patients subject to community treatment orders. LR informed the group that the CTO data submitted for discharges by the ABMU Health Board was not accurate and Welsh Government Statistics had been asked to amend this information on the report.

**HM/18/14    RadcliffeLeBrasseur Article – Section 117 Aftercare trigger**  
The group considered the judgement delivered in R (CXF) v



Central Bedfordshire Council case law, this reinforced when section 117 should be triggered, which will depend upon the circumstances of the individuals section 17 leave.

**HM/18/15**      **RadcliffeLeBrasseur Article – Assessment of Evidence in Mental Health Review Tribunals**

The group considered this article which looked at the recent case law of DL-H v West London Mental Health Trust & Another (2017) at the extent at which the Tribunal will consider evidence about religious beliefs.

**Any Other Business**

**HM/18/16**      **Venues for Hospital Managers Hearings**

The Chair raised the issue about the unsuitability of some venues used for holding hospital managers hearings. **JW** is in the process of looking for alternative accommodation in the Swansea area to facilitate this.

**JW**

**HM/18/17**      **In Remembrance**

**KM** wanted to express the excellent contribution made by the late Mrs Carole Hyde to the work of the Hospital Managers and the service she provided for ABMU Health Board. She will be sadly missed by her colleagues and friends.

**HM/18/19**      **Farewell to Chair**

**KM** thanked the Chair on behalf of all hospital managers for her contribution to the committee and wished her well in her future role.

**HM/18/20**      **Date and Time of Next Meeting**

Tuesday, 8<sup>th</sup> May 2017 at 10.00 am – 1.00 pm (Joint Training Event) in Seminar Room A, Education Centre, Cefn Coed Hospital.