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Bwrdd Iechyd Prifysgol  
Abertawe Bro Morgannwg  
University Health Board



Meeting Date	8 <sup>th</sup> November 2018		Agenda Item	2a.
Report Title	Mental Health Act Performance Report for the period 1 July – 30 September 2018			
Report Author	Lynda Rogan, Mental Health Act Manager			
Report Sponsor	David Roberts, Service Director, Mental Health & Learning Disabilities Service Delivery Unit			
Presented by	David Roberts, Service Director, Mental Health & Learning Disabilities Service Delivery Unit			
Freedom of Information	Open			
Purpose of the Report	The purpose of the paper is to present to the Mental Health 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 s23.			
Key Issues	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.			
Specific Action Required (please ✓ one only)	Information	Discussion	Assurance	Approval
				✓
Recommendations	Members are asked to: <ul style="list-style-type: none"><li>• Approve the report for submission to the Health Board.</li></ul>			

Governance and Assurance							
<b>Link to corporate objectives</b> (please ✓)	Promoting and enabling healthier communities	Delivering excellent patient outcomes, experience and access	Demonstrating value and sustainability	Securing a fully engaged skilled workforce	Embedding effective governance and partnerships		
		✓	✓		✓		
<b>Link to Health and Care Standards</b> (please ✓)	Staying Healthy	Safe Care	Effective Care	Dignified Care	Timely Care	Individual Care	Staff and Resources
	✓	✓	✓	✓	✓	✓	✓
<b>Quality, Safety and Patient Experience</b>							
This report does not impact on the quality, safety and patient experience although the aim of the Committee's work is to assure the Board that Mental Health and Learning Disabilities Delivery Unit are performing in accordance with the Mental Health Act 1983 which directly impacts on patient care.							
<b>Financial Implications</b>							
There are no financial implications in this report.							
<b>Legal Implications (including equality and diversity assessment)</b>							
There are no specific legal implications (although non-compliance with the Mental Health Act could result in legal proceedings being brought against the Health Board who is the detaining authority).							
<b>Staffing Implications</b>							
There are no workforce issues in this report.							
<b>Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015 - <a href="https://futuregenerations.wales/about-us/future-generations-act/">https://futuregenerations.wales/about-us/future-generations-act/</a>)</b>							
The report does not impact on population health.							
<b>Report History</b>	Considered by the Mental Health & Learning Disabilities Legislative Committee Operational Group on 9 October 2018.						
<b>Appendices</b>	<b>1. Minutes of the Hospital Managers Power of Discharge Committee meeting held on 1 October 2018</b>						

## EXCEPTION REPORT

### 1.0 INTRODUCTION

The report provides assurance in respect of the work that has been undertaken by Mental Health and Learning Disabilities (MHLDD) DU 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.

### 2.0 BACKGROUND

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.

### 3.0 GOVERNANCE AND RISK ISSUES

#### 3.1 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.

#### 3.2 Detention without authority or Invalid Detentions

There were eight exceptions for this period and three invalid detention identified by the Mental Health Act Department. An analysis of the reason for the invalid detention between the periods 1 July – 30 September 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
1	<b>NPT Hospital (Ward F)</b>  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.  Detention without authority: <b>72 hours</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

<b>2</b>	<p><b>Singleton Hospital (Ward 3)</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>72 hours</b></p>	<p>Ward manager informed that holding power is invalid.</p> <p>Doctor informed that holding power is invalid and discussed whether further section needs to be applied.</p> <p>Staff informed to make an entry in the patients' health record to document incident and outcome.</p> <p>Correspondence sent to patient to inform them of the incident.</p> <p>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>
<b>3</b>	<p><b>NPT Hospital (Ward F)</b></p> <p>Parts 1 and 3 of the renewal form HO15 was completed by the responsible clinician before Part 2 of the form which required consultation with the AMHP to take place. As the correct procedure was not followed it invalidated the renewal and an amendment to the date delayed the error from being highlighted.</p> <p>Detention without authority: <b>3 months 4 days</b></p>	<p>Ward manager informed that detention is invalid.</p> <p>Doctor informed that detention is invalid and discussed whether further section needs to be applied.</p> <p>Staff informed to make an entry in the patients' health record to document incident and outcome.</p> <p>Correspondence sent to patient to inform them of the incident.</p> <p>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>

The details of the fundamental defect at point 3 is outlined in **Appendix 1**.

## 4. Assessment

### Mental Health Act 1983

A summary 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> July – 30<sup>th</sup> September 2018 (Quarter 2)

### **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 to Ward F, Neath Port Talbot Hospital. One patient was transferred under section 2 to a Learning Disabilities Unit and is subsequently detained under section 3 of the Act.
- Section 4 which should only take place in cases of urgent necessity and to avoid an unacceptable delay was used on two occasions, one patient reverted to informal status, the other was converted to section 2 within the 72 hour period allowed.
- The nurses holding power under section 5(4) of the Act was used on two occasions, this was necessitated as it was not practicable to secure the immediate attendance of a doctor to furnish a report under section 5(2).

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

The minutes of the Hospital Managers meeting held on 1<sup>st</sup> October 2018 are attached at **Appendix 2**. It was agreed that the following matter should be brought to the attention of the Committee:

- Appropriately completed Care and Treatment Plans (CTPs) need to be provided for hospital managers review panels.

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

During the reporting period there was one unannounced visit by HIW to Clyne and Fendrod wards in Cefn Coed Hospital. There were no issues raised on the administration of the Mental Health Act 1983.

## **8. 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.

## **9. 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. 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. The training sessions for the period May 2017 – August 2018 is attached at **Appendix 3**.

**By Whom**

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

**Detention without authority – Neath Port Talbot Hospital**

A copy of the renewal of detention Form HO15 showed that Parts 1 and 3 of the form had been completed by the Responsible Clinician before consultation had taken place with the AMHP at Part 2 which is not in compliance with section 20(3)(a) and 20(5) of the Act. It is classed as a fundamental defect which cannot be amended under section 15 of the Act, and does not warrant the continued detention of the patient.

However, on inspection of the original form, Part 3 had been amended to show the same date as Part 2 and therefore delayed the detection of this fatal error. It is unclear at what point in time that the amendment took place or by whom, as it was discovered after three months and 4 days. This has been brought to the attention of Janet Williams, Head of Operations, Hazel Powell, Nurse Director and Dr Richard Maggs, Medical Director. No further investigation or actions other than those documented on the incident report form are envisaged, due to the length of time that has transpired and likely outcome.

The following actions were taken:

- Ward staff informed that the detention was invalid.
- Responsible Clinician contacted and informed of incident.
- Form HO17 completed in accordance with section 23 of the Act.
- Entry made in patient's case notes.
- Ward based doctor met with patient to explain situation and assess if patient still meets the criteria for continued detention under the Act. Outcome of assessment was not to detain and the patient was happy to remain as a voluntary patient on the ward. This was documented in patient's case notes.
- Ward staff informed of outcome of assessment.
- Incident report form completed by Mental Health Act Department.
- Letter sent to patient informing of the irregularity.

The case law below has confirmed the position regarding damages in unlawful detention cases, namely that where the Claimant can establish no loss, only nominal damages will be payable:

**Bostridge -v- Oxleas NHS Foundation Trust [2015] – Court of Appeal**



## HOSPITAL MANAGERS POWER OF DISCHARGE COMMITTEE

### M I N U T E S

**for the meeting held at 10 a m on Monday 1<sup>st</sup> October 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 J Davies, Non Officer Member (Chair)	(JD)
	Mrs J Williams, Head of Operations	(JW)
	Mrs M Berry, Non Officer Member	(MB)
	Mrs I David, Associate Manager	(ID)
	Mr D Cooper, Associate Manager	(DC)
	Mr W Griffiths, Associate Manager	(WG)
	Mr K Faulkner, Associate Manager	(KF)
	Mr K Morgan, Associate Manager	(KM)
	Mrs C Castle, Associate Manager	(CC)

#### **In Attendance**

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

- |                 |   |
|-----------------|---|
| <b>HM/18/21</b> | <p><u><b>Welcomes and Introductions</b></u><br/>The new Chair was welcomed to the meeting and introductions were made.</p>  |
| <b>HM/18/22</b> | <p><u><b>Apologies for Absence</b></u><br/>Apologies for absence were received from Mr C Toutt, Mr D Adams, Mrs R Morgan, Mrs K Crabbe, Dr J Copley, Mrs M Pritchard and Mrs S Abbott.</p>  |
| <b>HM/18/23</b> | <p><u><b>Minutes of the Previous Meeting</b></u><br/>The minutes of the meeting held in the Board Room, Glanrhyd Hospital, on 26<sup>th</sup> February 2018 were held as a true record.</p>   |
| <b>HM/18/24</b> | <p><u><b>Matters Arising</b></u><br/><b>LR</b> informed those present that Ty Garngoch was available for use as a venue for hospital managers and tribunal hearings.</p>  |
| <b>HM/18/25</b> | <p><u><b>Re-appointment of Hospital Managers</b></u><br/><b>JD</b> informed members that a calendar of dates has been allocated for appraisals for the re-appointment of hospital managers for a further period of 12 months and invite letters have been sent out to individual members by the Chairman of the Health Board.</p> |

The group considered the report on activity for the period.

Section 136 activity showed that 170 people were brought to a place of safety, resulting in 74% not being admitted to hospital following a mental health assessment. **CC** asked if there was a pressure to keep people out of hospital. **JW** responded that although there are capacity issues, options for alternative support in the community were also considered, such as Home Treatment Team, Crisis Team or CMHT. The group also discussed the assessment process used to accommodate the needs of the individual, with the least restrictive means used, unless the criteria for detention under the Act were met.

The activity of the appeals committee showed that 66 hearings were held, with 14 cancelled due to the non-availability of the report writer. **CC** stated that a recent court case had highlighted the consequences of a Tribunal decision being taken where a key individual was not present at the hearing, resulting in the discharge of a high risk patient. Members were advised that they should adjourn the hearing if the report writer was pivotal to the decision making of the panel.

The number of patients detained under a community treatment order (CTO) had decreased to twenty-three, which is the lowest number recorded since it was introduced in November 2008.

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

**HM/18/27     Audit of Discharges by the Mental Health Review Tribunal**  
The group discussed the eleven patients discharged by the Tribunal, seven of these were restricted patients, who can only be discharged by the Tribunal or Ministry of Justice. None of these patients have been re-admitted under the Act.

**HM/18/28     Standard of Medical Reports for Hearings**  
The group discussed their continued concerns on the quality and format of medical reports submitted for hospital manager reviews. **JW** stated that Dr Maggs had spoken with consultant colleagues and that Dr Provan has been tasked with auditing the contents of reports with a view to standardise them. **DC** stated that the receipt of one page or voluminous reports appears to have been addressed, although there still remained a lot of variation.

**HM/18/29     Policy for the Procedure for the hearing of patient appeals**  
A sub-group met to discuss and provide feedback on the content and usefulness of the two guidance booklets. It was agreed that no changes were required to the Welsh Measure and amendments to the Code of Practice booklet were to be sent to **LR** with recommendations. The sub-group also agreed that other guidance booklets to aid panel members should be developed i.e. Chairman's aide memoire and questions to be asked of the clinical team/patient.

**HM/18/30     Schedule of Meetings/Training Events for 2019**  
The list of dates to be circulated to members. Additional adhoc training events would be available during the year due to joint training with other Health Boards.

**LR/HR**

#### **TRAINING**

**HM/18/31     Training Requirement for Hospital Managers**  
Members have been invited to attend a MCA/DoLS workshop to be held on the 8<sup>th</sup> October 2018 in MPEC, Princess of Wales Hospital. An all Wales hospital managers training event sponsored by Welsh Government will take place on Wednesday, 28<sup>th</sup> November in the Angel Hotel, Cardiff from 10 a.m. – 3 p.m.

**HM/18/32     Issues relating to specific hospital managers hearings**  
Members raised their concerns regarding the quality and content of Care and Treatment Plans (CTPs) submitted by the Care Coordinator, with the aims and outcomes not always documented appropriately. **JW** to raise this at the next Business Team Meeting and with Principal Officers of the LSSA's. **MB** stated that this needs to be noted in the exception report for the next Legislative Committee Meeting.

**JW  
LR**

**KM** raised concerns that the patient's nearest relative were not always being identified by LSSA's and therefore unable to act for the patient. **HR** explained that only where the patient does not have capacity the Health Board will contact the heads of LSSA for someone to be appointed to act in their best interest. **HR** confirmed that responses had been received from LSSA's who are taking action to appoint nearest relatives for this patient group.

ID stated that occasionally where the author of the report could not attend the review hearing, the person attending on their behalf did not always have prior or sufficient knowledge of the patient and this had a bearing on the outcome of the meeting and would lead to the hearing having to be adjourned.

#### **FOR INFORMATION**

- HM/18/33**     **The Independent Review of the Mental Health Act 1983 Interim Report dated 1<sup>st</sup> May 2018**  
The group considered the interim report which outlines the work so far and the priority issues that have emerged with regard to the Mental Health Act legislative reform.
- HM/18/34**     **RadcliffeLeBrasseur Article: Interplay between covert medication and tribunal proceedings**  
The group considered the judgement delivered in M v ABM University Health Board [2018] UKUT 120 (ACC), which concerns disclosure in cases where the patient is being covertly medicated.
- HM/18/35**     **RadcliffeLeBrasseur Article: Diplomatic immunity and the Mental Health Act**  
The group considered the article on the effect of the Diplomatic Privileges Act and advice on what actions to consider if detention under the Act is contemplated for a person excluded under this legislation.
- HM/18/36**     **RadcliffeLeBrasseur Article – Deprivation of liberty safeguard reforms – publication of bill**  
The group considered this article which looked at the changes being introduced to this piece of legislation.
- HM/18/37**     **Any Other Business**  
There being no other business the meeting closed.
- HM/18/38**     **Date and Time of Next Meeting**  
Wednesday, 28<sup>th</sup> November 2018 at 10.00 am – 3.00 pm (All Wales Training Event) in the Angel Hotel, Cardiff.

### Training on the Receipt & Scrutiny of Mental Health Act Documentation – May 2017 – August 2018

