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Health Board



<b>Meeting Date</b>	<b>25 November 2019</b>	<b>Agenda Item</b>	<b>4.2</b>
<b>Report Title</b>	<b>Mental Health Legislation Committee (MHLC)– Terms of Reference (TOR) (incorporating TOR for the Power of Discharge Committee (PODC))</b>		
<b>Report Author</b>	Jacqui Maunder, Interim Head of Compliance		
<b>Report Sponsor</b>	Pam Wenger, Director of Corporate Governance		
<b>Presented by</b>	Jacqui Maunder, Interim Head of Compliance		
<b>Freedom of Information</b>	Open		
<b>Purpose of the Report</b>	The purpose of this report is to provide an update on the review of the Terms of Reference (TOR) for the Mental Health Legislation Committee (MHLC), incorporating the TOR for the Power of Discharge Committee (PODC).		
<b>Key Issues</b>	<ul style="list-style-type: none"> <li>• To ensure effective governance Committee terms of reference should be reviewed on an annual basis,</li> <li>• The revised MHLC TOR have been updated to include: <ul style="list-style-type: none"> <li>◦ comments received from the Chair of the Mental Health legislation Committee,</li> <li>◦ updated reference to the legislative and regulatory frameworks for Mental health,</li> </ul> </li> <li>• The Mental Health Legislation Training day provided by Blake Morgan Solicitors 30 July 2019 outlined key areas of good practice that have been incorporated into the revised TOR for the MHLC, Appendix 1,</li> <li>• The TOR for the PODC have been reviewed and updated and are presented at Appendix 1, sub appendix 2 for approval.</li> </ul>		
<b>Specific Action Required</b> <i>(please choose one only)</i>	<b>Information</b>	<b>Discussion</b>	<b>Assurance</b>
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Recommendations</b>	Members are asked to: <ul style="list-style-type: none"> <li>• <b>NOTE</b> the report;</li> <li>• <b>APPROVE</b> the revised Terms of Reference (TOR) for the Mental Health Legislation Committee (MHLC)</li> <li>• <b>APPROVE</b> the revised Terms of Reference (TOR) for the Power of Discharge Committee (PODC).</li> </ul>		

# **MENTAL HEALTH LEGISLATION COMMITTEE – TERMS OF REFERENCE (TOR) (INCORPORATING TOR FOR THE POWER OF DISCHARGE COMMITTEE)**

## **1. INTRODUCTION**

The purpose of this report is to provide an update on the review of the Terms of Reference (TOR) for the Mental Health Legislation Committee (MHLC), incorporating the TOR for the Power of Discharge Committee (PODC).

## **2. BACKGROUND**

### **2.1 Mental Health Legislation Committee**

The 1983 Mental Health Act sets out procedures for detaining patients in hospital where that is necessary for their own health or safety, or the protection of other people. The Act also contains provision under which people may be subject to guardianship or be discharged from detention onto a community treatment.

The Mental Health Legislation Committee advises the Board of any areas of concern relating to responsibilities under Mental Health Legislation, and provide assurance that:

- statutory duties under the Mental Health Act 1983 (the Act) and subsequent amendments are exercised reasonably, fairly and lawfully, including the functions and processes of discharge under Section 23 of the Act
- provisions set out in the Mental Health Measure (Wales) are implemented and exercised reasonably, fairly and lawfully
- provisions set out in the Mental Capacity Act 2005 are exercised reasonably, fairly and lawfully.

It also ensures that other relevant legislation, particularly the Human Rights Act (1998), the Equality Act (2010) and Deprivation of Liberty Safeguards (DoLS) are also being fully adhered to for those people covered by Mental Health Legislation.

The Mental Health Legislation Committee discussed the need to review its Terms of Reference on the 8 August 2019 and it was agreed that they would be reviewed to reflect the good practice learnt on the Mental Health Legislation Training day provided by Blake Morgan Solicitors on the 30 July 2019.

The revised TOR have been updated to include:

- comments received from the Chair of the Mental Health Legislation Committee and the Mental Health Act Manager
- updated reference to the legislative and regulatory frameworks for Mental health
- Appendix 1 – general housekeeping and guiding principles have been included from the Code of Practice
- Good practice identified on the Mental Health Legislation Training day provided by Blake Morgan Solicitors on the 30 July 2019, for example:
  - a scheme of delegation - The Code of Practice requires (Chapter 37) that arrangements for who is authorised to take which decisions should be set out in a scheme of delegation. The Health Board is required to approve the scheme of delegation by a resolution of the body itself. Unless the Act or the regulations say otherwise, organisations may delegate their functions under the Act to any one and in any way that

their constitution or, in the case of NHS providers or NHS commissioners, NHS legislation allows them to delegate their other functions.

## **2.2 Power of Discharge Committee (PODC)**

The 1983 Mental Health Act sets out procedures for detaining patients in hospital where that is deemed necessary either for their own health or safety, or the protection of other people. The Act also contains provision under which people may be subject to guardianship or be discharged from detention onto a Community Treatment Order (CTO).

The process for considering patients' discharge under the Act is delegated to the Hospital Managers Power of Discharge Sub-Committee (PODC) by the Mental Health Legislation Committee (MHLC). This Sub Group will meet on a quarterly basis to consider whether the discharge processes within the UHB are fair and reasonable and are being exercised lawfully

The 'Health Board' retains responsibility for the performance of hospital managers' functions exercised on their behalf under Chapter 37, and those delegated to Managers Panel Members under Chapter 38, and must ensure that the people acting on their behalf are competent to do so.

The Mental Health Legislation Committee discussed the need to review the Terms of Reference for the Hospital Managers PODC at its meeting on the 8 August 2019 and it was agreed that they would be reviewed in accordance with good practice for POD Committees in other Health Board's; and to reflect the good practice learnt on the Mental Health Legislation Training day provided by Blake Morgan Solicitors on the 30 July 2019.

The revised TOR have been updated to include:

- comments received from the Chair of the Hospital Managers PODC and the Mental Health Act Manager,
- updated reference to the legislative and regulatory frameworks for Mental health, including clarity on meetings being quorate, standards of behaviour and complaints.

## **3. GOVERNANCE AND RISK ISSUES**

In accordance with the SBUHB Standing Orders, the Committee terms of reference are reviewed annually to ensure effective governance.

The Terms of Reference Welsh Government Mental Health 1983 Code of Practice for Wales<sup>1</sup> is provided as guidance to registered medical practitioners ('doctors'), approved clinicians, managers and staff of hospitals, and approved mental health professionals on how they should proceed when undertaking functions and duties under the Act. It also gives guidance to doctors and other professionals about certain aspects of medical treatment for mental disorder more generally. These people are required to have regard to the Code in carrying out their relevant functions under the Act. Departures from the Code could give rise to legal challenge and a court action, in reviewing any departure from the Code, the court will scrutinise

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<sup>1</sup><http://www.wales.nhs.uk/sites3/documents/816/Mental%20Health%20Act%201983%20Code%20of%20Practice%20for%20Wales.pdf>

the reasons for the departure to ensure there is sufficiently convincing justification in the circumstances.

The Mental Health (Wales) Measure 2010 (the Measure)<sup>2</sup> is a unique piece of legislation designed to provide a legal framework to improve mental health services in Wales. Implementation of the services required by the Measure began, on a phased basis, in January 2012.

#### **4. FINANCIAL IMPLICATIONS**

There are no financial implications of which the committee should be aware of.

#### **5. RECOMMENDATION**

Members are asked to:

- **NOTE** the report;
- **APPROVE** the revised Terms of Reference (TOR) for the Mental Health Legislation Committee (MHLC), including the new scheme of delegation
- **APPROVE** the revised Terms of Reference (TOR) for the Power of Discharge Committee (PODC).

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<sup>2</sup><http://www.wales.nhs.uk/sitesplus/documents/862/Item18a.MeasureDutyToReviewFinal%20Dec15%282%29.pdf>

Governance and Assurance		
<b>Link to Enabling Objectives</b> (please choose)	<b>Supporting better health and wellbeing by actively promoting and empowering people to live well in resilient communities</b>	
	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"/>
	<b>Deliver better care through excellent health and care services achieving the outcomes that matter most to people</b>	
	Best Value Outcomes and High Quality Care	<input checked="" type="checkbox"/>
	Partnerships for Care	<input type="checkbox"/>
	Excellent Staff	<input 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 type="checkbox"/>
	Safe Care	<input checked="" type="checkbox"/>
	Effective Care	<input checked="" type="checkbox"/>
	Dignified Care	<input checked="" type="checkbox"/>
	Timely Care	<input checked="" type="checkbox"/>
	Individual Care	<input type="checkbox"/>
	Staff and Resources	<input type="checkbox"/>
Quality, Safety and Patient Experience		
<p>The Mental Health Legislation Committee provides assurance to the Board in relation to the health board's arrangements for safeguarding and improving the quality and safety of patient-centred mental health and learning disabilities services in accordance with its stated objectives and the requirements and standards determined for the NHS in Wales; and provides assurance to the Board that there is compliance with the legislative and regulatory framework.</p> <p>The Committee provides evidence-based and timely advice to the Board to assist it in discharging its functions and meeting its responsibilities with regard to the quality and safety of mental health and learning disabilities services for the population of Swansea Bay.</p>		
Financial Implications		
There are no financial implications.		
Legal Implications (including equality and diversity assessment)		
<p>The Mental Health Legislation Committee provides assurance to the Board in relation to the health board's arrangements for safeguarding and improving the quality and safety of patient-centred mental health and learning disabilities services and provides assurance to the Board that there is compliance with:</p> <ul style="list-style-type: none"> <li>• The Hospital Managers' duties under the Mental Health Act (MHA) 1983;</li> <li>• the functions and processes of discharge under section 23 of the Act;</li> <li>• the provisions set out in the Mental Capacity Act (MCA) 2005, and</li> <li>• in the Mental Health Measure (Wales) 2010</li> <li>• the Mental Health Act 1983 Code of Practice for Wales</li> <li>• the Mental Capacity Act 2005 Code of Practice</li> <li>• the Mental Capacity Act 2005 Deprivation of Liberty Safeguards Code of Practice</li> <li>• the associated Regulations</li> </ul>		
Staffing Implications		
There are no staffing implications.		

<b>Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)</b>	
The review of the Powers of Discharge Committee (PODC) terms of reference and the hospital manager's role description will enable the board to take assurance that the organisation is treating patients detained under the act appropriately.	
<b>Report History</b>	Mental Health legislation Committee 8 August 2019- verbal report
<b>Appendices</b>	Appendix 1 – Draft Terms of Reference for the Mental Health Legislation Committee  <u>Sub Appendices</u> Appendix 1 – summary of the definitions of legislation and a glossary of terms Appendix 2 - Power of Discharge Sub-Committee, TOR