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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board



Meeting Date	25th November 2019	Agenda Item	5.1
Report Title	<i>Mental Health Act Performance Report for the period 1 July – 30 September 2019</i>		
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 <i>(please ✓ one only)</i>	Information	Discussion	Assurance
			✓
Recommendations	Members are asked to: <ul style="list-style-type: none"> Approve the report for submission to the Health Board. 		

Governance and Assurance										
Link to corporate objectives (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	
			✓		✓				✓	
Link to Health and Care Standards (please ✓)	Staying Healthy	Safe Care	Effective Care	Dignified Care	Timely Care	Individual Care	Staff and Resources			
	✓	✓	✓	✓	✓	✓	✓			
Quality, Safety and Patient Experience										
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.										
Financial Implications										
There are no financial implications in this report.										
Legal Implications (including equality and diversity assessment)										
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).										
Staffing Implications										
There are no workforce issues in this report.										
Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015 - https://futuregenerations.wales/about-us/future-generations-act/)										
The report does not impact on population health.										
Report History		Considered by the Mental Health & Learning Disabilities Legislative Committee Operational Group on 15 July 2019								
Appendices		<ol style="list-style-type: none">1. Benchmarking Report on Defective and Rectifiable Errors2. Report on exceptions and non-rectifiable errors3. Postponements and adjournments of the Hospital Managers Power of Discharge patient review panels4. Minutes of the Hospital Managers Power of Discharge Committee meeting5. Mental Health Act Training								

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 Swansea Bay 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 six exceptions for this period and one invalid detentions identified by the Mental Health Act Department. There were no breaches to the Mental Act for in-patients admitted to Swansea Bay UHB who are under the age of 18. An analysis of the reason for the invalid detention between the periods 1 July – 30 September 2019, 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.	Cefn Coed Hospital (Fendrod Ward) Two medical recommendations were completed for detention under section 3 of the Act. The AMHP application completed was for a section 2, therefore this invalidated the detention. Detention without authority: 17 hours 5 mins	Ward manager informed that detention is invalid. Doctor informed that detention is invalid and discussed whether further section needs to be applied. Doctor 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

A benchmarking report showing the number of fundamentally defective applications and rectifiable errors by Health Board is attached at **Appendix 1**. A table detailing the exceptions and non-rectifiable errors is attached at **Appendix 2**.

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 Swansea Bay University Health Board. Rates of detention under different sections of the Act typically fluctuate between each quarter; therefore only significant points are highlighted.

1st July – 30th September 2019 (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:

- Two under 18 year olds were admitted to Ward F, Neath Port Talbot Hospital, one informally, the other under section 2 of the Mental Health Act.
- One section 3 patients' authority for detention was not renewed and the patient continued to be kept in circumstances which amounted to de facto detention for a period of 47 days. This was reported as a serious incident to HIW in accordance with chapter 32.9 of the Code of Practice for Wales.

6. Hospital Managers Power of Discharge Committee

During the reporting period seven hospital managers' panels were postponed or adjourned, see **Appendix 3**. A meeting of the above committee was held on 13th August 2019. There were no issues to be brought to the attention of the Legislative Committee. The minutes of the meeting held on 13th August 2019 is attached at **Appendix 4**.

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

During the reporting period there was one unannounced visit by HIW to Fendrod and Clyne wards, 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. One training session was undertaken during the reporting period, see **Appendix.5**
- Clinicians to be reminded of their responsibilities under the Act when completing statutory documentation. Persistent non-compliance should be an issue raised formerly.

Actions

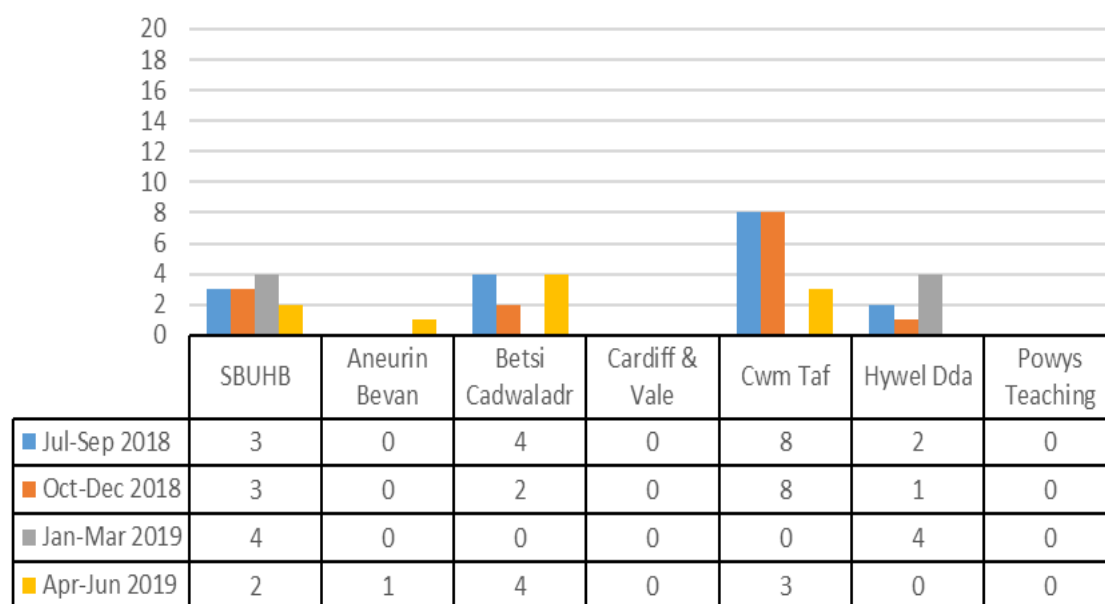
- The Mental Health Act Department is arranging training sessions for qualified staff on the receipt and scrutiny of Mental Health Act documentation across all mental health hospital sites and learning disability units. This will instruct staff on how to recognise minor errors and fundamentally defective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

By Whom

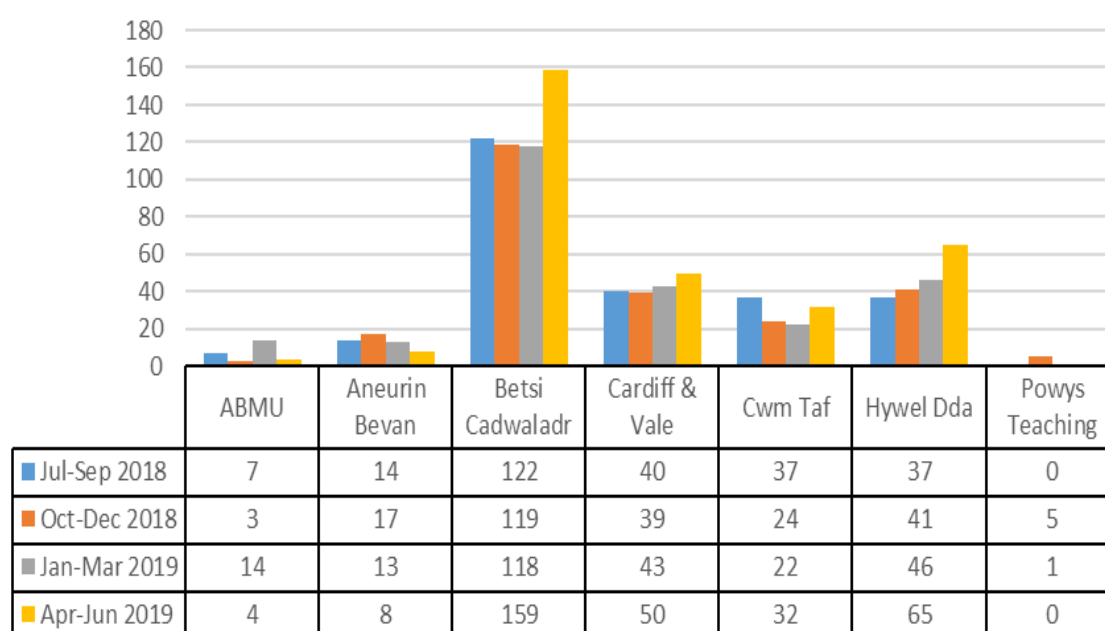
- Training will be delivered by the Mental Health Act Senior Managers.

Benchmarking Report – 1 July 2018 – 30 June 2019

Number of Fundamentally Defective Errors



Number of Rectifiable Errors



Report on exceptions and non-rectifiable errors on Mental Health Act statutory documents for the period 1 July – 30 September 2019

Hospital	Ward	Exceptions under Section 15 of the Act	By Whom	Section
CCH	Fendrod	Reasons why neither doctor knew the patient not recorded on Form HO2	AMHP	2
CCH	Fendrod	Address of the nearest relative not recorded on the Form HO2	AMHP	2
NPTH	F	Patient's middle name spelt incorrectly on both Form HO4's and Form HO2	AMHP/Doctor/GP	2
NPTH	F	Reasons why neither doctor knew the patient not recorded on Form HO2	AMHP	2
Area		Non-correctable errors under Section 15 of the Act	By Whom	Section
NPTH	F	Incorrect dates entered on CTO Renewal Report Form CP3	Responsible Clinician	17A
Court	Cardiff	Return date to court not entered on interim hospital order	Officer of the Court	38
Court	Swansea	Return to court date for remand order over 28 days	Officer of the Court	36
Court	Bristol	Extension of hospital interim order over 28 days	Officer of the Court	38
LDS	Ty Garth Newydd	Full name of patient not entered on renewal report Form HO15	Responsible Clinician	3
LDS	Ty Garth Newydd	Full name of patient and incorrect date entered on renewal report Form HO15	Responsible Clinician	3

Hospital Managers Postponed/Adjourned 1 July – 30 September 2019

Postponed/Adjourned	Type of hearing	Date/time	Reason for postponement/adjournment	Outcome
Postponed	Renewal of detention	01/07/2019 10.00 a.m.	Chair of the meeting contacted the department 45 minutes before the hearing stating that they were unable to attend due to a family emergency.	Rescheduled hearing on 08/08/2019
Postponed	Renewal of detention	01/07/2019 10.45 a.m.	Chair of the meeting contacted the department 45 minutes before the hearing stating that they were unable to attend due to a family emergency.	Rescheduled hearing on 08/08/2019
Adjourned	Renewal of detention	12/07/2019	The hearing had to be adjourned as no majority decision could be agreed by the panel. <small>R.(on the application of Tagoe-Thompson) v The Hospital Managers of the Park Royal Centre [2003] EWCA Civ 330; [2003] M.H.L.R. 326</small>	Rescheduled hearing on 13/08/2019
Adjourned	Application for discharge from detention	24/07/2019	The chair of the panel adjourned the hearing as the patient stated that they had not received copies of their reports and was not happy to continue with the hearing. It was later confirmed that the patient had received the reports of the hearing 5 days earlier.	Rescheduled hearing 21/08/2019
*Postponed	Renewal of detention	02/08/2019 2.00 p.m.	Responsible Clinician was taken ill on the morning of the hearing and the chair of the panel asked for a postponement	Rescheduled hearing on 16/08/2019
*Postponed	Renewal of detention	16/08/2019 12.00 p.m.	The patient informed his responsible clinician at 10am on 16/08/2019 that he did not want the hearing to go ahead without himself or his Solicitor present. The patient's solicitor was unavailable due to being on annual leave.	Rescheduled hearing on 27/09/2019
Adjourned	Renewal of detention	21/08/2019 10.00 a.m.	The patient informed his responsible clinician at 9.50 a.m. on 21/08/2019 that he did not want the hearing to go ahead without himself or his Solicitor present.	Rescheduled hearing on 07/10/2019

* Relates to the same patient

HOSPITAL MANAGERS POWER OF DISCHARGE COMMITTEE

M I N U T E S

**for the meeting held at 2 pm on Tuesday 13th August 2019
in the Board Room, Glanrhyd Hospital, Bridgend**

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

Present:	Mrs M Berry, Non Officer Member (Chair)	(MB)
	Mrs E Woollett, Acting Chairman	(EW)
	Mrs J Williams, Head of Operations	(JW)
	Mrs K Crabbe, Associate Manager	(KC)
	Mrs M Pritchard, Associate Manager	(MP)
	Mrs I David, Associate Manager	(ID)
	Dr D Barton, Associate Manager	(DB)
	Ms C Castle, Associate Manager	(CC)
	Dr J Copley, Associate Manager	(JC)
	Mr A Thomas, Associate Manager	(AT)
	Mr W Griffiths, Associate Manager	(WG)
	Mr C Toutt, Associate Manager	(CT)
	Ms S Abbott, Associate Manager	(SA)
	Mr K Faulkner, Associate Manager	(KF)

In Attendance

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

HM/19/17 Welcomes and Introductions

The Chair opened the meeting and introductions were made. A warm welcome was extended to Emma Woollett, Interim Chairman Swansea Bay UHB.

HM/19/18 Apologies for Absence

Apologies for absence were received from Mrs J Davies, Mr D Adams, Mr D Cooper and Mr K Morgan.

HM/19/19 Minutes of the Previous Meeting

The minutes of the meeting held in the Millennium Room, Headquarters, Swansea Bay UHB on 23rd April 2019 were held as a true record.

HM/19/20 Matters Arising

Boundary Change – Service Changes

WG stated that he had not received this information. **JW** to forward this information to **LR** for circulation to members of the committee.

JW/LR

HM/19/21 Terms of Reference

MB informed members that the TOR had been discussed at the MHA Legislative Committee and will be revised in line with other Health Board TOR's by Jacqui Maunder and Pamela Wenger before being presented at the November Legislative Committee meeting. **EW** anticipated that the TOR would be available for circulation to the group shortly afterward.

HM/19/22 Information Governance

MB informed members of the risk of hard copies of reports and documents being sent in the external mail and reinforced the cost benefits, and the need for this to be escalated forward to the next Legislative Committee meeting. **LR** stated that a business case was currently being put together by Ricky Morgan to fund the I-Pads. **JW** reminded those present of the effects of breaching GDPR. Members to be kept updated on developments.

JW stated that Information Governance had been contacted to provide a training session on the key aspects of GDPR, however, if this could not be facilitated then it was agreed for an on-line video to be shown at the next meeting.

LR

MB stated that declaration of interest forms would be circulated to members at the next meeting.

JD

HM/19/23 Hospital Managers Remuneration

MB informed members that the remuneration for attendance at hospital managers' panel hearings will be reviewed by **JD** and Pamela Wenger and a decision regarding the current payment will be agreed. **MP** asked for clarity and a decision on remuneration for adjourned and cancelled hearings. **KC** also commented on the time spent by members reviewing reports where the meeting had then been cancelled. **MB** stated that currently only one Health Board reimburses their panel members in these circumstances, however, this could be considered as part of the review process. Members to be kept informed of the outcome of the review meeting.

JD

HM/19/24 Receive the Report of the Use of the MHA83 Jan – Jun 2019

The group considered the report on activity for the period.

Members noted that the activity for section 136 (police powers) had dropped significantly over the last six months. This was welcomed as a positive move and was attributed to the success of the triage system which had been introduced, in diverting people to the appropriate services ahead of the need to use the police powers. **JW** described how the triage system worked in partnership with mental health nurses and the police.

The activity of the appeals committee showed that 49 hearings were held, with 6 postponed/adjourned. The reasons for any hearing being postponed or adjourned is tabled to the Legislative Committee.

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 Act. **KC** asked if those involved in the invalid detentions are made aware of this, **LR** confirmed that all those concerned in the sectioning process would be contacted and made aware of the reasons for the detention being invalid.

The group noted the decline in CTO activity. No rationale could be accounted for this. **EW** asked if this data was benchmarked against other Health Boards. **LR** confirmed that this work was undertaken on a quarterly basis by Cardiff & Vale UHB for all Health Boards across Wales.

HM/19/25 Audit of Discharges by the Mental Health Review Tribunal

The group discussed the seven patients discharged by the Tribunal, four of these were restricted patients, who can only be discharged by the Tribunal or Ministry of Justice. One of the patients who was discharged had been re-admitted under the Act. **WG** asked if hospital managers could be informed where a detained patient had been discharged by the MHRT following a review of detention by the hospital manager's.

LR/HR

HM/19/26 Standard of Medical Reports for Hearings

JW provided an update on the audit into the quality and format of medical reports for hospital manager's hearings. This is currently ongoing and there will be a further update at the next meeting on a recommended best practice template for use by RC's. **MP** raised concerns at the use of 'cut and paste' in some reports received. **SA** also commented on statements used by clinicians that were unclear and needed to be more informative. **EW** asked what procedure was in place if the group were dissatisfied with the quality of the report and how was this escalated. **HR** stated that reports should reach panel members five days in advance of the hearing and if contacted, the department would bring this to the attention of the author of the report. **JW** stated that for social services, this would be escalated to Mark Campasi, who has informed his staff to prioritize this and ensures a person who knows the patient attends the hearing.

HM/19/27 TRAINING

Training Requirement for Hospital Managers

A copy of the itinerary for the all Wales hospital managers training event sponsored by Welsh Government and presented by Edge Training and Consultancy Limited on 28th November in Cardiff handout was discussed. **SA** asked if additional information could be provided on the group workshops detailed in the programme in preparation for the training day. **LR** to contact the course facilitators for further details and disseminate to members.

LR

SA asked if a training event could be arranged on the interface between the MCA 2005, DoLS and the MHA 1983.

HM/19/28 Issues relating to specific hospital managers hearings

Hospital Managers Availability

JC registered his disappointment that the report showing the number of hospital managers hearings recorded against each associate member had been removed and had felt that this data had been very important in showing the distribution of work undertaken by individuals. **MB** stated that Pamela Wenger has advised that it was not appropriate for personal data to be shown. **JD** had received information on the given process and was assured that it did appear fair to members, given that some may not have been available to attend when contacted. It was agreed that a report on the process in distributing work from an equality aspect be presented at the next meeting.

LR

Clerking Hospital Managers Hearings

Members asked whether full clerking of hearings would now take place. **WG** raised concerns over how to ensure the decision and papers were returned to the department after the hearing. **LR** stated that due to staffing issues not all hearings would be able to be clerked for the foreseeable months.

FOR INFORMATION

HM/19/29 RadcliffeLeBrasseur Article: Perinatal Mental Health Services – Where are we in Wales?

The group considered the summary on the progress of recommendations provided in the October 2017 report on perinatal mental health services. **JW** informed the group that Swansea Bay Health Board is taking the lead in this area and that a paper will be submitted to the next Risk Management Group.

HM/19/30 RadcliffeLeBrasseur Article: Community Treatment Orders and Deprivation of Liberty

The group considered the judgement delivered in *Welsh Ministers v PJ* [2018] UKSC 66 which concerned conditions imposed under a CTO that amounted to a deprivation of liberty.

HM/19/31 RadcliffeLeBrasseur Article: Restraint and Restrictive Practices

The group considered the summary of the Mental Health Units (Use of Force) Act 2018 about the management and appropriate use of force in relation to people in mental health units and similar institutions.

HM/19/32 Case Law – PB v Priory Group Ltd [2018] MHLO 74

The group considered the case law for damages for unlawful psychiatric detention and breach of Article 5 ECHR, HRA 1998 and noted the importance of following due process when applying the Mental Health Act.

HM/19/33 RadcliffeLeBrasseur Article: Segregation may be breaching human rights

The group considered the interim findings of CQC about the segregation in mental health wards of young people and people with a learning disability or autism.

HM/19/34 Any Other Business

CC thanked **LR** for the quality of the case law and updates in legislation provided to members of the committee.

HM/19/16 Date and Time of Next Meeting

Tuesday, 17th September 2019 at 10.00 am – 3.30 pm at the Royal Welsh Showground, Builth Wells.

Receipt & Scrutiny of Mental Health Act Documentation**Training Sessions****1 July – 30 September 2019**

Date	Venue	Time	Number Attending	Comments
19.09.2019	Ysbryd Y Coed	1.30 – 3.30 pm	6	6 attended