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Power of Discharge Hospital Managers Hearings Conduct Protocol

Policy Statement

Provides guidance on the duties and responsibilities of members of the Power of Discharge Group under section 23 of the Mental Health Act 1983.

Policy Commitment

To sets out the conduct required when conducting Power of Discharge Hospital Managers hearings.

The Mental Health Act 1983 does not define the criteria or the procedure for reviewing a patient's detention or community treatment order. The Hospital Managers' conduct of reviews must therefore abide by the rules of natural justice.

Supporting Procedures and Written Control Documents

- The Mental Health Act 1983 (as amended by the Mental Health Act 2007)
- Mental Health (hospital, guardianship, community treatment and consent to treatment)(Wales) regulations 2008
- The Mental Capacity Act 2005 (including the Deprivation of Liberty Safeguards delegated to this Act under the Mental Health Act 2007)
- The respective Codes of Practice of the above Acts of Parliament
- The Human Rights Act 1998 (and the European Convention on Human Rights)
- Domestic Violence, Crime and Victims Act, 2004

All Cardiff and Vale (UHB) policies on the Mental Health Act 1983 as appropriate including:

Hospital Managers' Scheme of Delegation Policy
Receipt of applications for detention under the Mental Health Act
Mental Health Review Tribunal Procedure and Guidance
Section 5(4) Nurses' Holding Power Policy
Section 5(4) Nurses' Holding Power Procedure
Section 5(2) Doctors' Holding Power Policy
Section 5(2) Doctors' Holding Power Procedure
Community Treatment Order Policy
Community Treatment Order Procedure

Scope

This protocol is applicable to Power of Discharge Hospital Managers and employees within all Mental Health inpatient settings, community settings and general hospital settings where patients' detention or Community Treatment Order requires review on behalf of the Hospital Managers.	
Equality and Health Impact Assessment	There is potential for both positive and negative impact. The policy is aimed at improving services and meeting diverse needs. Mitigation actions are already in place to offset any potential negative outcome, e.g. through the monitoring of the policy. There is nothing, at this time, to stop the policy from going ahead.

Policy Approved by	Board/Committee/Sub Committee
Group with authority to approve procedures written to explain how this policy will be implemented	Mental Health Clinical Board
Accountable Executive or Clinical Board Director	Mental Health Clinical Board Director of Operations

Disclaimer

If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or the Governance Directorate.

Summary of reviews/amendments

Version Number	Date Review Approved	Date Published	Summary of Amendments
1	18/04/2012	04/10/2012	New Document
2	11/04/2018 MH Quality and Safety	20/07/2018	Amendments made to reflect the changes made to the Mental Health Act Code of Practice, Revised 2016. Supervised Community Treatment has been replaced with Community Treatment Order.
3	17/06/2021		Amendments made to promote the welfare and safety of staff when conducting a managers hearing via video conference. Additional sections inserted in relation to annual review and training.

Glossary of Terms

Absolute discharge	Discharge from detention, liability to detention, guardianship or community treatment order under the Act.
After-care	Services provided following discharge from hospital, especially the duty of health and social services to provide after-care under s.117 of the Act following the discharge of a patient from detention for treatment under the Act. The duty applies to CTO patients and conditionally discharged patients as well as those who have been absolutely discharged.
Appropriate medical treatment	The requirement in some of the criteria for detention, and Community Treatment Order, that appropriate medical treatment must be available for the patient.
AMHP – Approved Mental Health Professional	A professional with training in the use of the Act, approved by a local social services authority to carry out a number of functions under the Act.
Article 5 European Convention of Human Rights (ECHR)	Right to Liberty and Security of Person: *No one should be deprived of their liberty except for specific cases and in accordance with procedure prescribed by law e.g. after conviction, lawful arrest on suspicion of having committed an offence, lawful detention of person of unsound mind, to prevent the spread of infectious diseases. Everyone deprived of liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of detention shall be decided speedily by a court and release ordered if the detention is not lawful.*
Degree	Refers to the current manifestation of the person's mental disorder.
Mental Disorder	Any disorder or disability of mind. As well as mental illness it includes conditions like personality disorders, autistic spectrum disorders and learning disabilities.
Mental Health Review Tribunal for Wales (MHRT for Wales)	A judicial body that has the power to discharge patients from detention, community treatment order, guardianship and conditional discharge.
Nature	Nature refers to the particular disorder from which the patient is suffering, its chronicity, its prognosis and the patient's previous response to receiving treatment for the disorder.

Nearest Relative	A person defined by s.26 of the Act who has certain rights and powers under the Act in respect of a patient for whom they are the nearest relative.
Recall	A requirement that a person subject to the Act return to hospital. It can apply to patients who are on leave of absence, who are on community treatment order, or who have been given a conditional discharge from hospital.
Responsible Clinician	The approved clinician with overall responsibility for the patient's case.
Section 20	Duration of authority to detain
Section 20A	Community treatment period
Section 25	Restrictions on discharge by the nearest relative
Community Treatment Order (CTO)	Arrangements under which patients can be discharged from detention in hospital under the Act but remain subject to the Act in the community rather than in hospital. Patients on CTO are expected to comply with conditions set out in the community treatment order (CTO) and can be recalled to hospital if treatment in hospital is necessary again.

CONTENTS

1 INTRODUCTION

Section 23 gives Hospital Managers the power to discharge an unrestricted patient from detention or Community Treatment Order. (Mental Health Act 1983 Code of Practice for Wales)

“Hospital Managers” means the organisation (or individual) in charge of a hospital e.g. for hospitals vested in a Local Health Board it is the Board members who are “the managers” – and by extension, this includes the individuals and committees to whom they delegate specific functions.

In line with Standing Orders (3.3.1) and the University Health Board (UHB) Scheme of Delegation, the Mental Health and Capacity Legislation Committee of the Cardiff and Vale University Local Health Board has established the Mental Health Act Hospital Managers’ Power of Discharge Group. This is made up of lay people with suitable experience from outside the UHB who have been suitably trained to consider whether Hospital Managers’ power of discharge should be exercised.

Persons appointed to the Power of Discharge Sub Committee are not employees of the UHB even though a fee is paid for attending hearings. A session is defined as a morning or afternoon. No more than two hearings will be arranged to take place during a session.

Panels arranged to review detention orders on behalf of Hospital Managers must have at least three members and may include Independent Members of the Board. However, in Cardiff and Vale UHB, panel members may be drawn entirely from the Power of Discharge Group.

Ideally at least one of the panel members should be of the same gender as the patient and one should be of the same ethnicity. However, it is recognised that achieving the ideals will not always be possible

In all cases, the Board should endeavor to recruit members from all sectors of the community and ensure that people appointed for this purpose properly understand their role and the relevant legislation. The Board should also ensure that those appointed receive suitable training.

2 PURPOSE OF THE PROTOCOL

The purpose of this protocol is to ensure that members of the Power of Discharge Group are aware of their responsibility and duty under section 23 of the Mental Health Act 1983.

3 SCHEME OF DELEGATION

The arrangements for authorising decisions should be set out in a scheme of delegation approved by a resolution of the body itself.

Regulations permit Local Health Boards to delegate functions to committees or sub-committees whose members need not be Directors or members of the Board. However, the Board retains the ultimate responsibility for the Hospital Managers' duties and the committees or sub-committees should wherever possible include members of the Board.

4 SECTION 23 POWER OF DISCHARGE

The Hospital Managers have delegated their power under section 23 to discharge an unrestricted patient from detention or CTO to the Power of Discharge Sub-Committee formed specifically for this purpose.

The Hospital Managers should ensure that those acting on their behalf are competent to undertake the functions delegated to them by ensuring they are properly informed about the provisions of the Act and receive suitable training. While the Hospital Managers should determine any necessary arrangements to monitor and review the way functions under the Act are exercised on their behalf, they may authorise a committee or sub committee for this purpose with a process of reporting on findings.

5 PRINCIPLES

The exercise of the section 23 power is subject to the general law and to public law duties which arise from it.

The Mental Health Act 1983 defines the criteria not the procedure for reviewing a patient's detention or community treatment order. The Hospital Managers' conduct of reviews must therefore abide by the rules of natural justice:

- They must adopt and apply a procedure which is fair and reasonable
- They must not make irrational decisions, that is, decisions which no body of Hospital Managers properly directing themselves as to the law and on the available information, could have made
- They must act in good faith and without bias, giving everyone the opportunity to state their case adequately
- They must not act unlawfully

People taking decisions under the Act must recognise and respect the diverse needs, values and circumstances of each patient, including their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion, or belief, sex and sexual orientation and culture, or any combination of these. There must be no unlawful discrimination and reasonable adjustments must be made. Individual protected characteristics

should be taken into account and good practice followed in all aspects of care and treatment planning and implementation.

6 WHEN TO REVIEW

Hospital Managers should ensure that all detained patients are aware that they may seek discharge via the Power of Discharge review process and explain the distinction between this and the right to a hearing by the Mental Health Review Tribunal for Wales.

The Mental Health Act Manager ensures that relevant information is provided to patients and their nearest relatives at certain times during a patient's admission under the Act. In addition to which, Hospital Managers **may** undertake a review of a detained patient's case at any time.

Hospital Managers **must** review a patient's detention:

- When the Responsible Clinician submits a report renewing detention (s.20 (3)) or (s.20A) extending the community treatment order period. The responsible clinician's report provides authority for a patient's continued detention or community treatment under the Act. In both instances, hospital managers should decide whether it is appropriate to exercise their power of discharge before the current period of detention or community treatment ends.

Hospital Managers **should consider** holding a review:

- When a patient requests a review

- When the responsible clinician makes a report under s.25 (1) opposing a nearest relative's application for the patient's discharge

In cases where the hospital managers have discretion whether or not to hold a review, they are entitled to take into account whether the Mental Health Review Tribunal for Wales has recently considered the patient's case, or is due to do so in the near future.

7 PATIENTS ON SECTION 17 LEAVE TO ANOTHER HOSPITAL

For patients on section 17 leave to another hospital, the Hospital Managers of the original hospital should undertake any necessary hearings which may mean travelling to other placements where a patient resides even if this is outside the Cardiff and Vale University Health Board area.

8 INFORMATION AND REPORTS

The review panel should have before them sufficient information about the patient's past history of care and treatment and wherever possible, details of any current and future care plans.

It is essential that managers' discharge panels are fully informed about any history of violence or self harm and that a recent risk assessment and/or risk management plan is provided to the panel.

In advance of the hearing, the review panel will receive reports from the patient's Responsible Clinician and others directly involved in the patient's care including the named nurse/ care coordinator, Approved Mental Health Professional/ social worker. An up to date care and treatment plan will also be provided.

The patient's nearest or most concerned relatives and any informal carers will be informed of the review and invited to attend, provided that the patient consents.

Relatives and carers may be invited to put their views to the panel in person. If the patient objects to this, a suitable member of the professional care team e.g. the patient's social worker, will be asked to include the relative's and/or carer's views in their written report.

9 REPORTS NOT FOR DISCLOSURE

The patient should be provided with copies of the reports as soon as they are available, unless (in the light of any recommendation made by their authors) managers' discharge panel are of the opinion that disclosing the information would be likely to cause serious harm to the physical or mental health of the patient or any other individual.

The test of being "likely to cause serious harm" is a fairly high standard and means that in most cases there could be no objection to disclosure of the reports. Accordingly, managers should consider whether there is anything in the reports which, if disclosed to the patient, would adversely affect the health or welfare of the patient or another. If so, it would be reasonable to withhold that material.

If there is information that clinicians or members of the multi-disciplinary team believe to be inappropriate to share with the patient, it should not be disclosed to an Independent Mental Health Advocate in case it might compromise the clinician's/ multidisciplinary team's relationship with the patient. Such information should be provided in a separate document, clearly headed "Not for Disclosure". The reasons why must be set out for consideration by panel members and the document must be signed and dated by the author.

There are no formal rules of procedure specifically applicable to a managers' hearing. The Code of Practice does, however, give some guidance. It is also appropriate to consider the provisions of the Mental Health Review Tribunal Rules insofar as they could be regarded as setting a standard to be followed in relation to a managers' hearing.

If a patient is to be represented by an Independent Mental Health Advocate (*see "Chairing Review Panels" below for definition*), they will in most

circumstances tell the patient all the information they have received on the patient's behalf.

10 RESPONSIBLE CLINICIAN'S REPORT

Where a report has been prepared by the Responsible Clinician under section 20 renewing detention, or section 20A, extending a Community Treatment Order, the panel should have a copy of this report supplemented by a copy of the record by the professional who was consulted by the responsible clinician (under sections 20(5) and 20(5A)). Any report made under section 25(1), barring discharge by the nearest relative should also be made available to panel members.

A supplementary report submitted by the responsible clinician should cover the history of the patient's care and treatment and details of his/ her care plan including all risk assessments.

11 CONDUCT OF REVIEWS

Any patient who is detained under the Mental Health Act 1983 can submit an application to the Hospital Managers requesting a review.

The patient does not have to be legally represented; an Independent Mental Health Advocate, other advocate, relative or friend may accompany the patient to give support. The patient does not have to attend the hearing if they do not wish to do so.

It is for the Hospital Managers to decide how the hearing is to be run.

The proceedings should be conducted with sensitivity. They can either be conducted via video conferencing or in a suitable environment that is both safe and practical but not intimidating. Due regard needs to be given to the patient for a fair and impartial representation of the case. The safety and welfare of all staff involved must also be considered. If the hearing is held in a face to face environment, a risk assessment should be conducted by the ward prior to the hearing to determine if extra nursing staff will be required to accompany the patient to the meeting and provide support to the nurse giving evidence.

The same principle should apply to video conference to ensure that the nurse giving evidence is able to do so in a safe environment. It may be necessary for the nurse giving evidence to be in a separate room to the patient to ensure that all the facts are given to the panel. Additional nursing staff may be required to support the patient where there is a risk identified in a separate room.

This is to ensure that nursing staff are not prevented from providing examples and opinions due to concerns for their safety in fear of the patient's reaction, which can result in the panel not hearing important facts and opinions about

the patient's presentation and care, which may have an impact on the panel's decision making.

Panel members are not expected to challenge the veracity of any facts contained in the reports but can seek guidance to establish the significance of all facts presented.

Panel members should arrive in good time for hearings to provide sufficient opportunity to discuss reports thus ensuring that all the evidence has been read.

Every effort should be made to start the hearing on time to ensure that the patient is at ease and to avoid any anxiety.

In the conduct of the hearing, the review panel will balance informality against the rigour demanded by the importance of the task. Key points for the panel to follow are:

- The patient should be given a full opportunity, and any necessary help, e.g. from an Independent Mental Health Advocate (IMHA), to explain why they should no longer be detained or on a Community Treatment Order.

- The patient should be allowed to be accompanied by a representative of their own choosing to help in putting their point of view to the panel. If the patient lacks capacity to put their point of view, their deputy, attorney or other representative of their choosing should be allowed to represent them.

- The patient should also be allowed to have a relative, friend, carer, deputy, attorney or advocate attend to support them.

- The Responsible Clinician and other professionals should be asked to give their views on:

    - Whether the patient's continued detention or community treatment order is justified; *and*
    - Explain the grounds on which those views are based.

- The patient and other parties to the review should, if the patient wishes, be able to hear each other's statements and to put questions to each other, unless the review panel is of the view that this would be likely to cause serious harm to the mental or physical wellbeing of the patient or any other individual.

- In any circumstance, the patient should always be offered the opportunity of speaking to the panel alone unless, exceptionally, it is considered unsafe to do so.

12 INDEPENDENT MENTAL HEALTH ADVOCATE (IMHA)

IMHAs provide an important safeguard for certain patients. An IMHA can offer a qualifying patient with independent help and support with understanding issues, and assist them to put forward their views, feelings and ideas under arrangements which are specifically required to be made under the Act.

13 CHAIRING REVIEW PANELS

The Chair must be an experienced member of the review panel and someone who is able to provide leadership to the panel.

The Chair must control the conduct of the hearing.
The Chair should welcome everyone to the hearing and seek to create a relaxed and informal atmosphere that is conducive to balance and fair representation of all present.

The Chair should introduce the panel members and invite everyone else present to introduce themselves.

The Chair should inform all participants of the procedure for the hearing, including the usual order of the interviews. The patient and his/her representative, whether legal or otherwise have the right to put questions to all participants in accordance with the principles of natural justice which concern procedural fairness and ensure a fair decision is reached by an objective decision maker.

The Chair should also ascertain whether the patient wishes to remain present through the hearing whilst the relevant reports from the professionals are discussed.

The Chair should establish that the patient has received copies of the reports and has had the opportunity to read them; also that everyone else who is entitled to read the reports has done so.

In contested hearings the patient should be given full opportunity and any necessary assistance (e.g. Independent Mental Health Advocate (IMHA)/ interpreter – definitions below) to explain why he/she wishes to be discharged.

14 DELIVERY OF INTERPRETOR SERVICES

Background

It has been established that good communication is one of the most important aspects of effective care and that without it inappropriate treatment, complaints and litigation increase (Audit Commission, 1993).

Individuals regardless of what language they speak, have ‘a fundamental right’ to proper treatment and care. This is often jeopardised when the health professional and client speak a different language (Alexander, 1999).

Public institutions such as Cardiff and Vale UHB now have a legal responsibility to provide an appropriate interpretation service which may also require bilingual link workers (Commission of Racial Equality, 2000). The failure to do this has been identified as one of the most common forms of institutional racism (Macpherson 1999).

The use of ~~client's~~ a relative, friend and/or child of the patient is deemed highly inappropriate and has implications regarding confidentiality and accuracy. The use of bilingual staff to interpret is also not recommended. (Sanders, 2002).

Face to face interpretation using professional interpreters and trained bilingual link workers provide the best practice. (Commission of Racial Equality, 2000).

Definitions:

Link Worker - a person employed to develop links between the service provider and service user. The link worker often has had training in the area that he/she is working in and is fluent in English and another language (Poonam Knight, 1998).

Interpreter - a person who facilitates spoken communications between two people who speak different languages (Poonam Knight, 1998).

If an interpreter is present, at the start of the hearing, it is advisable that the Chair should ensure that both the patient and the interpreter understand each other. This may be achieved by asking the interpreter to communicate a few questions to the patient and convey the patient's response to the panel.

The British Sign Language (**BSL)/English Interpreter -** a person who facilitates communication between deaf, sign language users, and people who do not use sign language.

Language Line – A 24-hour telephone line service which allows the health professional to have a three-way telephone conversation between an interpreter and the client. The service has qualified interpreters who are specifically trained and monitored in their performance. The Language Line service provide over one hundred languages and can be accessed in the community as well as in the hospital

Telephone interpreting is not considered good practice for sensitive or complicated situations (Sanders 2002) so 'face to face' interpretation using a link worker or interpreter is the better practice. Nevertheless this service can be very useful particularly during unsociable hours and when interpreters are not available.

15 REASONS FOR DECISIONS

Hospital Managers have a common law duty to give reasons for their decisions. The decisions of review panels and the reasons for them should be fully recorded by the Chair at the end of each review.

It will be the responsibility of the Chair to record fully, clearly and succinctly, the reasons for the panel's decision.

It will be the responsibility of the Chair to ensure that the reasons for continued detention or extension of Community Treatment Order are conveyed to the patient orally.

16 CRITERIA FOR REVIEWS

The Act does not define specific criteria to be applied by the Hospital Managers when considering the discharge of a patient who is detained or liable to be detained.

The essential yardstick in considering a review application is whether the grounds for admission, continued detention or continued community treatment under the Act are satisfied.

To ensure that this is done in a systematic and consistent manner, the review panel should consider asking the following questions in the order stated:

16.1 Patients detained under section 2:

- Is the patient still suffering from mental disorder?
- If so, is the disorder of a nature or degree which makes detention in hospital for assessment or assessment followed by treatment appropriate.
- Is detention in hospital still necessary in the interests of the patient's health or safety or for the protection of other people?

16.2 Other detained patients (sections 3, 37):

- Is the patient still suffering from mental disorder?
- If so, is the disorder of a nature or degree which makes treatment in hospital appropriate?
- Is continued detention in hospital still necessary in the interests of the patient's health or safety or for the protection of other people?
- Is appropriate medical treatment available in a particular part of the hospital?

16.3 Patients subject to community treatment orders:

- Is the patient still suffering from mental disorder?

- If so, is the disorder of a nature or degree which makes it appropriate for the patient to receive medical treatment?
- If so, is it necessary in the interests of the patient's health or safety or the protection of other people that the patient should receive such treatment?
- Is it still necessary for the responsible clinician to be able to exercise the power to recall the patient to hospital, if that is needed?
- Is appropriate medical treatment available to the patient?

In cases where the responsible clinician has made a report under section 25(1) barring a discharge order by a nearest relative, and the nearest relative has not applied to the MHRT for a review, panel members should also consider the following question in addition to those above:

- Would the patient, if discharged, be likely to act in a manner dangerous to other people or themselves?

This question focuses on the probability of a dangerous act, such as causing serious physical harm, not just the patient's general need for safety and others' general need for protection. It provides a more stringent test for continuing detention or community treatment.

If three or more members of the panel, being a majority, disagree with the responsible clinician and decide the answer to that question is **no**, the panel should usually discharge the patient.

In line with their findings, review panels may order the immediate and absolute discharge of a patient or decide not to order the patient's discharge.

Review panels may not order a patient's discharge subject to certain conditions being achieved e.g. preparation of an aftercare package.

17 ARTICLE 5 ECHR, RIGHT TO LIBERTY AND SECURITY

When exercising their discretion for patients who are liable to be detained, Hospital Managers and Responsible Clinicians should always be mindful that detention under the Act will be incompatible with Article 5 of the European Convention of Human Rights.

Detention under the Act will therefore be unlawful unless compliant with the "Winterwerp" criteria i.e;

- Except in emergency cases, no one can be deprived of liberty unless he or she can be reliably shown to be of unsound mind on the basis of objective medical expertise.
- The mental disorder must be of a kind or degree warranting compulsory confinement.

- The validity of continued confinement depends on the persistence of the disorder.

Winterwerp v Netherlands 6301/73 (1979) ECHR 4

Provided that professionals follow the requirements of the Act and the guidance contained within the code, there should not be any such breach.

18 CONTESTED RENEWALS

Renewals of detention (sections 3, 37 and Community Treatment Order) are made by the Responsible Clinician in accordance with section 20.

The format for a contested renewal will follow that for an appeal against detention.

The review will be held before, and as closely as possible to the expiry date of the section.

The review should be conducted so as to ensure that the case for detention or extension of the CTO is properly considered against the criteria for reviews and in the light of all relevant evidence.

In the case of hearings to consider extending the CTO, the Hospital Managers should offer an alternative venue in cases where attendance at the hospital may not be convenient or acceptable to the patient.

19 UNCONTESTED RENEWALS

If a patient's detention or CTO is renewed or extended by their Responsible Clinician under section 20, 20A or 21B, the Hospital Managers should always decide whether the patient should be discharged anyway, even if the patient has indicated that they do not wish to challenge the renewal of authority to detain or extension of the CTO.

Hospital Managers should apply as much rigour to considering uncontested cases as to contested ones, to ensure that the least restrictive option and maximising independence principle is being applied and that those decisions are only being made on the basis of the statutory criteria.

20 AFTERCARE

In applying the criteria set out above, and deciding in the light of those criteria whether or not to discharge the patient, the review panel needs to consider very carefully the implications for the patient's subsequent care.

When considering relevant patients' case, the Hospital managers will expect to be provided with information from the professionals concerned regarding aftercare arrangements which would be made available if the patient were to be discharged.

The presence or absence of adequate community care arrangements may be critical in deciding whether continued detention is necessary in the interests of the patient's health or safety or for the protection of others.

If the panel concludes that the patient ought to be discharged but arrangements for aftercare need to be made, they may adjourn to enable a full aftercare planning meeting to take place.

The panel should ensure that a full risk assessment has been carried out when considering discharge.

21 ADJOURNMENTS

The hearing may be adjourned for the following reasons:

- Key participants or reports are unavailable.
- Sufficient information or evidence is not available
- Whilst the panel must give full weight to the views of all the professionals involved in the patient's care, its members will not, as a rule, be qualified to form clinical assessments of their own. If there is a divergence of views about whether the patient meets the clinical grounds for continued detention or Community Treatment Order, especially in relation to matters such as risk assessment, the panel may wish to adjourn to seek further medical or professional advice.

A date for the adjourned hearing should be set at the time the adjournment was decided and the same members should form the panel wherever possible.

22 DEFERRED DISCHARGE

Whilst the Hospital Managers are able to adjourn a hearing, there is no provision in section 23(2) of the Act that enables Hospital Managers to defer discharge to a future date. This is in contrast to provisions contained within the Act relating to the Mental Health Review Tribunal for Wales under section 72(3) which specifically include the power to defer discharge.

23 THE HOSPITAL MANAGERS' DECISION

Hospital Managers have a common law duty to give reasons for their decisions. The decisions of review panels and the reasons for them should be fully recorded by the Chair at the end of each review.

The decision should be communicated as soon as practicable, both orally and in writing to the patient, the nearest relative (where relevant) and to the professionals concerned.

If the patient is not to be discharged, and is not available for the decision to be conveyed to them, where practicable, at least one member of the panel should offer to see the patient to explain in person, the reasons for the decision.

The formal record of the decision and reasons should be shared with the patient, and copies of the papers relating to the review should be kept in the patient's notes.

24 ANNUAL REVIEW

All panel members will be expected to participate in the Annual Review process. They will be asked to reflect on the skills and behaviors needed to perform their role prior to a 1:1 meeting with the Vice- Chair of the Health Board or the Chair of the Power of discharge Group.

Following the 1:1 meeting a decision will be made as to whether to reappoint. The Annual Review process will be kept under review by the Power of Discharge Business Meeting.

25. TRAINING

Prior to commencing their role as Hospital managers training will be provided by the Mental Health Act Manager. Thereafter, training will be provided as necessary. There will be an opportunity at the start of the Business meeting for shared learning and reflection.