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Bwrdd Iechyd Prifysgol
Caerdydd a'r Fro
Cardiff and Vale
University Health Board

**Annual Report of
Mental Health
Legislation and
Mental Capacity Act
Committee
2021/22**

1.0 INTRODUCTION

In accordance with best practice and good governance, the Mental Health Legislation and the Mental Capacity Act Committee (“the Committee”) produces an Annual Report to the Board setting out how the Committee has met its Terms of Reference during the financial year.

2.0 MEMBERSHIP

The Committee membership is a minimum of four Independent Members. During the financial year 2021/22 the Committee comprised four Independent Members. In addition to the Membership, the meetings are also attended by the Chief Operating Officer (Executive Lead for the Committee) and the Director of Corporate Governance. The Chair of the Board is not a Member of the Committee but attends at least annually after agreement with the Committee Chair. Other Executive Directors are required to attend on an ad hoc basis.

3.0 MEETINGS AND ATTENDANCE

The Committee met four times during the period 1 April 2021 to 31 March 2022. This is in line with its Terms of Reference. The Committee achieved an attendance rate of 50% (80% is considered to be an acceptable attendance rate) during the period 1st April 2021 to 31st March 2022 as set out below:

	20.04.21	20.07.21	19.10.21	09.02.22	Attendance
Ceri Phillips (Chair from July 2021)	✓	✓	✓	✓	100%
Akmal Hanuk	X	X	X	X	0%
Michael Imperato	✓	✓	X	X	50%
Sara Moseley (Interim Chair to July 2021 and Vice Chair from July 2021)	✓	X	✓	X	50%
Total	75%	50%	50%	25%	50%

4.0 TERMS OF REFERENCE

The Terms of Reference were reviewed and ratified by the Committee on 9th February 2022 prior to formal approval being sought from the Board on 31st March 2022.

5.0 WORK UNDERTAKEN

The principal remit of the Committee is to consider and monitor the use of the Mental Health Act 1983 (“MHA”), Mental Capacity Act 2005 (which includes the Deprivation of Liberty Safeguards (“DoLS”) and the Mental Health (Wales) Measure 2010 (“the Measure”). In particular, the Committee should seek and provide assurance to the Board or escalate areas of concerns and advise on actions to be taken in relation to:

- Hospital Managers’ duties under the Mental Health Act 1983;

- the provisions set out in the Mental Capacity Act 2005, and
- in the Mental Health Measure (Wales) 2010

are all exercised in accordance with statute and that there is compliance with:

- the Mental Health Act 1983 Code of Practice for Wales
- the Mental Capacity Act 2005 Code of Practice
- the Mental Capacity Act 2005 Deprivation of Liberty Safeguards Code of Practice
- the associated Regulations.

During the financial year 2021/22 the Committee reviewed the following key items at its meetings:

PRIVATE MENTAL HEALTH LEGISLATION AND MENTAL CAPACITY ACT COMMITTEE

There were no private meetings held during the reporting year of 2021/22.

PUBLIC MENTAL HEALTH LEGISLATION AND MENTAL CAPACITY ACT COMMITTEE – SET AGENDA ITEMS

April 2021 - March 2022

PATIENT/ STAFF STORY

The Patient Stories presented were as below:

1. 20 April 2021 - Sectioned under the Mental Health Act (Patient)
2. 20 July 2021 - Shielding & My Mental Well-being (Staff Story)
3. 19 October 2021 - My Battle with Food (Patient Story)

MENTAL CAPACITY ACT

At three of the meetings the Committee was provided with updates and a monitoring report regarding the Mental Capacity Act 2005 (“MCA”) which has been in force for over 13 years and covers people aged 16 years and over. The Committee had noted that the MCA was amended to include the Deprivation of Liberty Safeguards (“DoLS”), which came into force in April 2009.

Members of the Committee were also informed of the work undertaken by the Independent Mental Capacity Advocate (“IMCA”) highlighting the number of referrals made and areas of concern / service issues. The IMCA Procedure had been slightly revised which was approved by the Vulnerable Adult risk management working group.

Liberty Protection Safeguards (LPS) was featured prominently within the Health Board and it was noted to Committee members that relevant Health Board procedures, policies and strategies would need to be amended in line with LPS.

Policies and procedures were reviewed on a rolling programme and LPS elements were included as and when required.

- **Deprivation of Liberty Safeguards (DoLs)**

The Committee received updates at each meeting with regards to the Deprivation of Liberty Safeguards (DoLs) and compliance in relation to the same. The Committee noted that the Cardiff and the Vale DOLS / MCA team operated the Supervisory Body responsibilities of the Deprivation of Liberty Safeguards on behalf of Cardiff & Vale UHB, Cardiff City Council and the Vale of Glamorgan Council, through a Partnership Management Board which consisted of senior representatives of each Supervisory Body.

MENTAL HEALTH ACT

- **Mental Health Act Monitoring Exception Report**

The report, which was shared at each meeting, provided the Committee with further information relating to wider issues of the Mental Health Act. Any exceptions highlighted in the Mental Health Act Monitoring report were 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 by Cardiff and Vale University Health Board and those subject to a community treatment order were only as the Act allows.

At the April 2021 meeting, the Committee was informed of an ongoing issue regarding when "the clock started ticking" for custody of mental health patients in Accident & Emergency (A&E). That issue had remained unresolved albeit further legal opinion had been sought and the Mental Health Clinical Board was awaiting a response.

The response was received by members of the Committee at the July 2021 meeting where Committee Members had noted that the "clock had started ticking" for section 136 in A&E and that relevant data was being collected in relation to those patients who were too unwell in A&E to receive an assessment.

In July 2021 the Committee was provided with an update on the number of people detained. The Committee noted that the figures had risen significantly by May 2021 due to the ongoing COVID-19 pandemic, although by October 2021 the use of section 136 had decreased significantly. That had suggested that the section 136 powers were only used when absolutely necessary by the Police.

- **Child and Adolescent Mental Health Service**

At each meeting, Members of the Committee were advised of the number of those children under 18 who had been assessed under section 136.

Members of the Committee were advised of the care and treatment plan trends which had incorporated the pressures of the COVID-19 pandemic and the Committee was provided with assurance on the parts of the Mental Health Measure applicable to children and young people (those aged under 18). A report provided further assurance that compliance against 28 days referral to assessment had been achieved and sustained. The service had continued to monitor its capacity for the delivery of interventions.

REFORM OF THE MENTAL HEALT ACT

At each meeting, Members of the Committee were provided with an update in relation to the proposed reform of the Mental Health Act.

The Committee had noted that the biggest response from Health Board staff was in relation to the increase in work demand and how that would be managed.

Members of the Committee were advised that the consultation with staff had lasted over a month and was also shared with Local Authority (LA) staff via the integrated teams but noted that the responses were from the Health Board and not the LA.

It was noted that all the responses from Wales would be sent to the Welsh Government and a decision would then be made.

At the October 2021 meeting, members of the Committee were advised that the UK Government (and not the Welsh Government) had prepared a response following the consultation undertaken in relation to its White Paper relating to the review of the Mental Health legislation.

MENTAL HEALTH MEASURE

- **Mental Health Monitoring Report**

The Health Board's Mental Health Measure performance data is reported to and monitored by the Welsh Government on a monthly basis, with reports back to the UHB Performance Monitoring Committee.

The Committee noted that the Measure introduced a number of important changes to the assessment and treatment of people with mental health problems in Wales. Parts 1 to 4 of the Measure set the main legislative requirements relating to Mental Health service provision and are supported by subordinate legislation and guidance. At each meeting the Committee receives a report which details the Health Board's compliance rates in relation to Parts 1 to 4 of the measures relate as follows:

- Part 1a – 28-day referral to assessment compliance target of 80%
- Part 1b – 28-day assessment to intervention compliance target of 80%
- Part 2 – Care and Treatment Planning Within Secondary Mental Health Services
- Part 3 - Right to request an assessment by self –referral
- Part 4 – Advocacy – standard to have access to an IMHA within 5 working days

The Committee was also presented with a report on the parts of the Mental Health (Wales) Measure 2010 application to children and young people under the age of 18. The Committee noted and discussed how the COVID -19 pandemic had impacted upon these services. In particular, the notable increase of referrals to the services, which had also seen an unprecedented demand to the Children and Young People in Crisis services and how the same was being managed.

- **Care and Treatment Plans**

Part 2 of the Mental Health (Wales) Measure 2010 (the Measure) places a statutory duty on Local Mental Health Partners to ensure that all patients who are accepted into secondary

Mental Health services have a written care and treatment plan (CTP) that is developed and overseen by an appointed care coordinator.

At all meetings, Members of the Committee were presented with an update report for the Mental Health Measure Monitoring Reporting including Care and Treatment Plans.

An update was provided at each meeting outlining issues, concerns and solutions.

POLICIES / PROCEDURES

Two policies and two procedures were reviewed by the Committee in February 2022, and were recommended to Board for formal approval in March. They related to the following :

- Section 5(2) Doctor's Holding Power Policy/Procedure
- Section 5(2) Doctor's Holding Power Procedure
- Section 5(4) Nurse's Holding Power Policy
- Section 5(4) Nurse's Holding Power Procedure

- **COMMITTEE GOVERNANCE**

Reports submitted to the Committee for review in February 2022.

1. Committee Annual Report 2021/22
2. Committee Terms of Reference
3. Committee work plan.

Also presented to the Committee were the minutes from the:

1. Hospital Managers Power of Discharge Minutes
2. Mental Health Legislation and Governance Group Minutes
3. Annual Review of Comments Raised by Members of Power of Discharge

6.0 REPORTING RESPONSIBILITIES

The Committee has reported to the Board after each of the Committee meetings by presenting a summary report of the key discussion items at the relevant Committee. The report is presented by the Chair of the Committee.

7.0 OPINION

The Committee is of the opinion that the draft Mental Health Legislation and Mental Capacity Act Committee Report 2021/22 is consistent with its role as set out within the Terms of Reference and that there are no matters that the Committee is aware of at this time that have not been disclosed appropriately.

CERI PHILLIPS

Committee Chair

SARA MOSELEY

Interim Committee Chair