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

Annual Report of the Mental Health Legislation & Mental Capacity Act Committee 2022/23

1.0 INTRODUCTION

In accordance with best practice and good governance, the Mental Health Legislation & 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), the Executive Nurse Director, the Clinical Board Director – Mental Health Clinical Board, Director of Nursing – Mental Health Clinical Board, the Director of Operations – Mental Health Clinical Board, 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 2022 to 31 March 2023. This is in line with its Terms of Reference. The Mental Health, Capacity and Legislation Committee achieved an attendance rate of 92% (80% is considered to be an acceptable attendance rate) during the period 1st April 2022 to 31st March 2023 as set out below:

| | 26.04.22 | 26.07.22 | 25.10.22 | 31.01.23* | Attendance % |
|------------------------------|-------------|-------------|-------------|------------|--------------|
| Ceri Phillips | ✓ | ✓ | ✓ | ✓ | 100 |
| Akmal Hanuk | ✓ | ✓ | ✓ | X | 75% |
| Sara Moseley (Vice Chair) | ✓ | ✓ | ✓ | ✓ | 100% |
| Total | 100% | 100% | 100% | 67% | 92% |

*The January Committee meeting was not quorate. Those matters which required approval were referred to the Board approval at its March 2023 meeting.

4.0 TERMS OF REFERENCE

The Terms of Reference were reviewed by the Committee on 31st January 2023. The Terms of Reference are due to be considered by the Board for approval on 30 March 2023.

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 to 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 2022/23 the Mental Health, Capacity and Legislation Committee reviewed the following key items at its meetings:

PRIVATE MENTAL HEALTH, CAPACITY AND LEGISLATION COMMITTEE

There were no private meetings held during the reporting year of 2022/23.

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

MENTAL CAPACITY ACT

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

Policies and procedures are reviewed on a rolling programme and LPS elements will be included as and when required.

At its meeting in April 2022, the Committee was advised that: -

- i) The Mental Capacity Act (MCA) Lead had been in post for 3 months and was prioritising MCA training, and had trained staff groups within HM Prison, Physiotherapy, Critical Care, Endoscopy, Mental Health and the North West Locality Community.
- ii) In preparation and utilising the funding from Welsh Government (WG) to support Liberty Protection Safeguards (LPS), 20 places had been secured with Swansea University to attend Level 7 MCA training and an external provider to deliver MCA training to 700 staff.

At its meeting in July 2022, the Committee was advised that: -

- iii) It was noted that the Mental Capacity element of the training had now been linked to the Safeguarding training in order to improve the MCA training compliance rates. Further, a Liberty Protection Safeguards project lead had been appointed and that new appointee would be providing MCA training.
The Committee raised its concern at the low uptake on MCA training.

At its meeting in October 2022, the Committee was advised that: -

- iv) WG funding had been utilised to secure an external provider (Edge Training) to train staff with regards to assessing mental capacity and best interest decision making. The seven sessions provided to date had been well received by staff with four more sessions booked in the New Year.
The Committee noted its concern that the Mental Capacity Training compliance levels had continued to remain low.

At its meeting in January 2023, the Committee was advised that: -

- v) Referral rates had increased from an average of 72.5% over the past two years for the same quarter and that there is no clear reason for that however, it was likely due to an increased awareness of the types of decisions that required IMCA referral; both as a result of MCA training and the informal training provided to clinicians by the advocacy service themselves when visiting ward areas.
- vi) Multiple Training streams had continued within the Mental Health Clinical Board including:
- Mental Capacity Training
 - Mental capacity and best interests training (Edge Training)
 - Assessing decision making capacity MSc module
- vii) In December 2022, 115 DoLS applications were received; 107 Urgent (7 days), 7 standard (21 days) and 1 further application. It was noted that it continued to show an upwards trend which could be linked to the work carried out within Medicine Clinical Board and awareness raising initiatives such as the dissemination of posters to ward areas across the UHB.

• **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 Health Board, Cardiff City Council and the Vale of Glamorgan Council, through a Partnership Management Board which consisted of senior representatives of each Supervisory Body.

LIBERTY PROTECTION SAFEGUARDS (LPS)

At its meeting in April 2022, the Committee was advised that: -

- i) The consultation relating to the Welsh Government LPS draft Regulations was launched on 17th March 2022. It was noted that as part of the consultation there

were 4 aspects of the draft Regulations that the Health Board was being asked to consult on:

- Appointment of Independent Mental Capacity Advocates (IMCAs).
- The Mental Capacity (Deprivation of Liberty: eligibility to carry out assessments, make determinations and carry out pre-authorisation reviews) (Wales) Regulations 2022.
- The Mental Capacity (Deprivation of Liberty: training and criteria for approval as an Approved Mental Capacity Professional) (Wales) Regulations 2022.
- The Mental Capacity (Deprivation of Liberty: Monitoring and Reporting) (Wales) Regulations 2022.

The Committee was advised that the Welsh Government (WG) funding strategy had been agreed, which included £8million transitional costs for the LPS in 2022/23, although it was yet to be decided how much the Health Board would receive.

At its meeting in July 2022, the Committee was advised that: -

- ii) The deadline for responses in relation to the Consultation on draft Regulations and new Code of Practice for the Mental Capacity Act and the LPS for England and Wales had expired on 15 July 2022. The Health Board was awaiting to hear the outcome of the same. Work was currently being undertaken to predict the increase in cases under the LPS, likely 200 – 400 per year. WG was releasing phased funding to support LPS preparedness and implementation. The Committee was informed that there was a financial risk to the Health Board as permanent funding would be required to support Liberty Protection Safeguard arrangements.

At its meeting in October 2022, the Committee was advised that: -

- iii) The feedback to WG following the Consultation exercise on draft Regulations and new Code of Practice for the Mental Capacity Act and the LPS for England and Wales was awaited and was due to be released in the Autumn 2022. It was noted that there was no confirmed date for the implementation of the LPS. In readiness for the implementation of the LPS, an LPS facilitator had been recruited by the Health Board and was supporting with the Mental Health Act training, plus the Health Board continued to work with WG and Local Authority partners. It was noted that the digital solution for recording and monitoring LPS was in the scoping phase of the LPS implementation.

At its meeting in January 2023, the Committee was advised that: -

- iv) The Health Board continued to await feedback from the Welsh and UK Governments in respect of the Regulations and updated MCA Code of Practice following the end of the consultation in July 2022. As yet, there was no confirmed date for implementation of the LPS. It was noted that as a result, the focus for the Health Board remained on providing training for staff to improve knowledge and confidence in applying the Mental Capacity Act and identifying a digital solution for recording and monitoring purposes.

DOLS AUDIT UPDATE ON RECOMMENDATIONS

The Committee received two updates at its April and July meetings with regards to the DoLS Audit Update on Recommendations.

At its meeting in April 2022, the Committee was advised that: -

- i) The report provided an update on the Internal Audit report and noted that the audit was performed between August 2019 and October 2019 and that 4 recommendations had been received:
 - Staff should attempt to ensure that all urgent assessments were undertaken within the stipulated seven days as detailed in the Department of Health Mental Capacity Act 2005 Deprivation of Liberty Standards.
 - The Health Board should ensure that staff were provided with the appropriate DoLs training and where areas had low compliance these areas should be targeted.
 - Staff should attempt to ensure that all standard and further assessments were undertaken within the stipulated 21 days as set out in the Department of Health Mental Capacity Act 2005 Deprivation of Liberty Safeguards.
 - The Health Board needed to ensure that it produced a plan for implementing Liberty Protection Safeguards following the Production of the Code of Practice.
- ii) It was noted that the Health Board had been unable to plan for implementing LPS due to the delay of issuing the LPS draft Code of Practice and Regulations and it was also important to note that the Health Board had no staff resource to manage the implementation of LPS.
- iii) The Committee was advised that the first recommendation was legally bound and it was noted that the Health Board could not be in a position where there was no plan and that if assurance could not be provided, it would need to be referred to Management Executives.

At its meeting in July 2022, The Committee was advised that: -

- iv) The 4 key recommendations received at the previous meeting had been completed.

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 are only as the Act allows.

At its meeting in April 2022, the Committee were advised that: -

- i) The use of the Mental Health Act had remained consistent during the period with 53% of inpatients being detained under the Act at the end of quarter 4, 53% at the end of quarter 3 and that there had been no fundamentally defective applications.
- ii) There had been one legal query raised when a patient was transferred to an independent provider and assurance was provided that the application was legal due to legal advice being obtained.
- iii) The use of Section 136 had increased and that 63.4% of individuals assessed did not require hospital admission, 51.9% were discharged with community support and 11.5% were discharged with no follow up.
- iv) Overall during the period 32.7% of patients were admitted to hospital following a Section 136 assessment, which was higher than the previous quarter at 30.7%.
- v) The number of patients under the age of 18 assessed under Section 136 had decreased from 7 in the previous quarter to 6 in this quarter and that there were 4 repeat presentations recorded.

At its meeting in July 2022, the Committee were advised that: -

- vi) Whilst the number of Section 136 assessments remained fairly stable for adults, there had been a significant increase in Section 136 assessments for children and young people via CAMHS (19 assessments compared to the 6 in the previous quarter). Some of the 19 assessments had related to the same individual. It was noted that the system was dealing with very complex young people with significant issues. Work was being undertaken to better develop relationships with Social Services to enable a multi team response to determine how the needs of the individual young people could be best met and to provide the appropriate care and assistance.

At its meeting in October 2022, the Committee were advised that: -

- vii) During the quarter reporting period (July – September 2022) the number of Section 136 referrals had increased, of which 69% were not admitted to hospital. It was noted that there was no specific reason for the increase, and that the number that had been received were an appropriate use of Section 136, and within the appropriate parameters.
- viii) The number of those under 18 years old assessed under Section 136 had decreased from 19 in the previous quarter period to 8. There were 5 repeat presentations for one Patient

At its meeting in January 2023, the Committee were advised: -

- ix) During the quarter there was 1 fundamentally defective application.
- x) During the quarter 1 section 5(2) lapsed.
- xi) During the quarter there were 2 invalid uses of the MHA.
- xii) During the period, the use of section 136 had decreased. It was noted that 73.9% of individuals assessed were not admitted to hospital, with 58.8% being discharged to community services and 15.1% were discharged with no follow up and overall during the period 26.1% of patients were admitted to hospital following a 136 assessment.

- **Mental Health Measure Monitoring Report including Care and Treatment Plans Update Report**

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.

At its meeting in April 2022, the Committee were advised that: -

- i) Regarding the over-18 Part 1a performance, every referral was being seen in under 56 days and referrals were moving steadily towards overall compliance. Performance on 08/04/22 was 69% compliant.
- ii) The average waiting times for assessment was 29 days on 31/03/21 which had decreased to 28 days at the time of the meeting.
- iii) The position within the Children and Adolescent Mental Health Service (CAMHS) was similar and that the impact of Covid19 across teams was significant. Referrals were at an all-time high and it was noted that the number of referrals received in March 2022 was the highest number received in over 2 years.

At its meeting in July 2022, the Committee were advised that: -

- iv) Meeting the compliance target rates for CAMHS continued to be challenging due to a number of factors, which included:
 - A significant increase in referrals in comparison with 2021;
 - The volume of referrals had increased and had remained significantly higher than pre-Covid levels;
 - Within the core service, capacity has been reduced by long term sickness.

The Committee were advised that a number of initiatives were underway to mitigate the challenging factors.

At its meeting in October 2022, the Committee were advised that: -

- v) Challenges and areas of concern continued to be seen in the CAMHS service due to a number of factors which included the number of referrals which had increased significantly since April 2021, and staff capacity due to sickness, maternity and annual leave (at 66% since December 2020). In order to combat those challenges, the Committee was advised that:
 - The team was focussing upon internal waiting lists as part of a new waiting list initiative with dedicated capacity;
 - A Joint Assessment model which would combine CAMHS and PMH would be implemented to create dedicated assessment capacity (anticipated to be fully operational in April 2023);

- Active sickness monitoring and wellbeing support to staff working within this service;
- Additional capacity by working in partnership with Healios to deliver Part 1 assessments and the use of agency staff to continue to deliver the waiting list initiative.

At its meeting in January 2023, the Committee were advised that: -

- vi) The part 1a – target: 28-day referral to assessment compliance target of 80% (Adult) referrals into the service were slightly lower than forecast, with 2866 referrals during Q2, 2870 in Q3. It was noted that as of 09/01/2023 there were 188 people waiting for assessment and the average wait time for assessment was 9 days. The Committee was advised that the forecast for Q4 activity was comparable to the previous year and for PMHSS to maintain target compliance.
- vii) Compliance against the Part 1A for Children & Young People had been improved since August 2022 as a result of a waiting list initiative supported by agency staff which was being undertaken in the service. It was noted that the initiative would be coming to an end in March 2023 and the service would fully operationalise a 'Joint Assessment Team' model which would see CAMHS and PMH come together as an integrated service to offer children and young people a standard assessment.

- **Health Inspectorate Wales (HIW) MHA Inspection Reports**

Health Inspectorate Wales (HIW) regulates and inspects NHS and independent Mental Health Services. This Committee was provided with reports summarising inspections undertaken by HIW between April 2022 and March 2023.

The HIW inspection covers a range of areas of interest to the Committee:

- Quality of patient experience
- Delivery of safe and effective care which includes:
 - Record keeping
 - Mental Health Act Monitoring
 - Monitoring of the Mental Health (Wales) Measure 2010
 - Quality of management and leadership

The summary reports included any Action Plans, and Immediate Action Plans.

At its meeting in April 2022, the Committee received the HIW MHA Inspection Reports for Cedar Ward, Oak Ward and Willow Ward at Hafan Y Coed. It was noted that the Health Board had received the draft report but not the final version and that no improvements required had been highlighted within the initial findings.

At its meeting in October 2022, the Committee was advised that the Mental Health team had received a “red file” from HIW and that the Mental Health Clinical Board had provided a response to that. Members were informed that the Audit Committee would track all HIW inspection recommendations.

At its meeting in January 2023, the Committee received a summary report from HIW of the inspection of Beech, Willow and Cedar wards at Hafan Y Coed Hospital, Llandough between 14th and 16th February 2022. The summary reports included Action Plans, and Immediate Action Plans. It was noted that there was no Immediate Action required and the action plan was shared with HIW.

PUBLIC MENTAL HEALTH, CAPACITY AND LEGISLATION COMMITTEE – AD HOC AGENDA ITEMS

SECTION 49 UPDATE

At its October 2022 meeting, the Committee was advised that the Health Board was receiving increasing numbers of Court of Protection Section 49 instructions for Capacity assessments, for which, it had no system in place to either administrate and commission, or undertake internally. In mitigation, it was proposed that the Health Board should use both internal and external capability for assessment and implement better training and support for its own staff to ensure that the reports were of the appropriate quality, together with improved access to legal advice.

DRAFT MENTAL HEALTH BILL

At its October 2022 meeting, the Committee was provided with an update in relation to the key changes in the draft Mental Health Bill. The draft Bill was intended to reform the Mental Health Act 1983 and to improve the way that people with a learning disability and autistic people were treated in law.

PART 1 SCHEME UPDATE

At its January 2023 meeting, the Committee was provided an update on the part 1 scheme.

It was noted that the part 1 scheme was defined by Health Boards across Wales as to what had constituted part 1 services and that the scheme had been in place since 2005.

It was noted that the scheme had evolved and developed since 2005 and so discussions were now ongoing as to what constituted a part 2 scheme.

The Committee was advised that a piece of work was being undertaken where by the Clinical Board had been approached by Clinicians who had asked whether their services would be considered relevant for patients for a care and treatment plan under part 2 of the measure and that a report would be received once formal engagement had begun.

POLICIES / PROCEDURES

Six policies and six procedures were reviewed and approved by the Committee during the period April 2022 – March 2023:

- i) Consent to Examination or Treatment under The Mental Health Act 1983 Policy & Procedure.
- ii) Hospital Managers' Scheme of Delegation Policy & Procedure.
- iii) Community Treatment Order Policy & Procedure.
- iv) The Review of Detention & Community Treatment Order Mental Health Act 1983 Policy and Procedure.
- v) The Patient Rights Information to Detained & Community Patients' under Mental Health Act 1983 Policy and Procedure
- vi) The application for Admission to Hospital under Part II of the Mental Health Act Policy and Procedure

COMMITTEE GOVERNANCE

Reports submitted to the Committee for review in January 2023 and to refer to Board for approval at the Board meeting in March 2023 included:-

1. Committee Annual Report 2022/23
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

6.0 REPORTING RESPONSIBILITIES

The Committee has reported to the Board after each of the Mental Health, Capacity and Legislation Committee meetings by presenting a summary report of the key discussion items at the Mental Health, Capacity and Legislation Committee. The report is presented by the Chair of the Mental Health, Capacity and Legislation Committee.

7.0 OPINION

The Committee is of the opinion that the draft Mental Health, Capacity and Legislation Committee Report 2022/23 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

Vice Committee Chair