

**Minutes of the Mental Health Legislation and Mental Capacity Act Committee  
Held on 6<sup>th</sup> August 2024  
Via MS Teams**

To view the meeting: [CAVUHB Mental Health Legislation & Mental Capacity Act Committee Meeting 06.08.2024 \(youtube.com\)](https://www.youtube.com/watch?v=CAVUHB-Mental-Health-Legislation-&Mental-Capacity-Act-Committee-Meeting-06.08.2024)

<b>Chair:</b>		
Ceri Phillips	CP	Committee Chair / University Health Board Vice Chair
<b>Present:</b>		
Rhian Thomas	RT	Independent Member – Capital & Estates
Susan Lloyd-Selby	SLS	Independent Member – Local Authority
<b>In Attendance:</b>		
Matt Phillips	MP	Director of Corporate Governance
Daniel Crossland	DC	Director of Operations - Mental Health
David Seward	DS	Mental Health Act Manager
Neil Jones	NJ	Clinical Board Director – Mental Health
Robert Kidd	RK	Interim Clinical Director Psychology & Psychological Therapies
Chloe Evans	CE	MCA & Consent Lead
Katie Simpson	KS	Deputy General Manager – Children, Young People & Family Health Services
Jason Roberts	JR	Executive Director of Nursing
Liz Singer	LS	Vice Chair of the Power of Discharge Sub-Committee
Urvisha Perez	UP	Audit Wales
<b>Secretariat:</b>		
Rachel Chilcott	RC	Corporate Governance Officer
<b>Apologies:</b>		
Sara Moseley	SM	Committee Vice Chair / Independent Member – Third Sector
Paul Bostock	PB	Chief Operating Officer
Catherine Wood	CW	Director of Operations – Children & Women
Richard Skone	RS	Interim Executive Medical Director
Jeff Champney-Smith	JCS	Chair, Powers of Discharge Sub-Committee

Item No	Agenda Item	Action
MHLMCA 06/08/001	<p><b>Welcome &amp; Introductions</b></p> <p>To view the minute: <a href="https://youtu.be/ZDZlqxR7X_0">https://youtu.be/ZDZlqxR7X_0</a></p> <p>The Committee Chair (CC) welcome everybody to the meeting in English and in Welsh.</p>	
MHLMCA 06/08/002	<p><b>Apologies for Absence</b></p> <p>To view the minute: <a href="https://youtu.be/ZDZlqxR7X_0?t=12">https://youtu.be/ZDZlqxR7X_0?t=12</a></p> <p>Apologies for Absence were noted</p> <p><b>The Committee Resolved that:</b></p> <p>a) The Apologies for Absence were noted.</p>	
MHLMCA 06/08/003	<p><b>Declarations of Interest</b></p> <p>No declarations of interest were declared.</p>	

<p><b>MHLMCA 06/08/004</b></p>	<p><b>Minutes of the Meeting held on 30<sup>th</sup> April 2024</b></p> <p>To view the minute: <a href="https://youtu.be/ZDZlqxR7X_0?t=53">https://youtu.be/ZDZlqxR7X_0?t=53</a></p> <p>The Minutes of the Meeting held on 30<sup>th</sup> April 2024 were received and approved.</p> <p><b>The Committee Resolved that:</b></p> <p>a) The minutes of the meeting held on 30.04.2024 were agreed as a true and accurate record.</p>	
<p><b>MHLMCA 06/08/005</b></p>	<p><b>Action Log from the meeting held on 30<sup>th</sup> April 2024</b></p> <p>To view the minute: <a href="https://youtu.be/ZDZlqxR7X_0?t=97">https://youtu.be/ZDZlqxR7X_0?t=97</a></p> <p>The Action Log was received and discussed.</p> <p><u>MHLMCA 23/05/013</u> - the Director of Operations – Mental Health (DO-MH) noted that the new Mental Health Bill had been mentioned in the King’s Speech and suggested that it be brought back to the MH Committee in October 2024.</p> <p><u>MHLMCA 30/04/008</u> - The CC explained that a meeting to discuss staff training had not yet been organised but would bring an update back to the Committee in October 2024.</p> <p><b>The Committee Resolved that:</b></p> <p>a) The Action Log was noted.</p>	
<p><b>MHLMCA 06/08/006</b></p>	<p><b>Committee Chair’s Actions</b></p> <p><b>The Committee Resolved that:</b></p> <p>a) No Chair’s Actions were taken since the last meeting.</p>	
<p><b>MHLMCA 06/08/007</b></p>	<p><b>Any Other Urgent Business Agreed with the Chair</b></p> <p><b>The Committee Resolved that:</b></p> <p>a) No other urgent business was agreed with the Chair.</p>	
<p><b>Mental Health Act</b></p>		
<p><b>MHLMCA 06/08/008</b></p>	<p><b>Mental Health Act Monitoring Exception Report</b></p> <p>To view the minute: <a href="https://youtu.be/ZDZlqxR7X_0?t=183">https://youtu.be/ZDZlqxR7X_0?t=183</a></p> <p>The Mental Health Act Manager (MHAM) presented the Mental Health Act (MHA) Monitoring Exception Report to the Committee which provided a summary of the one fundamentally defective application and the two fundamentally defective reports reported during this quarter.</p> <p>The CC noted that he had raised the issue of wet signatures with other Vice Chairs, who proposed that they discuss the issue with Welsh Government (WG). He asked to what extent WG had engaged in this process.</p> <p>The MHAM responded with the following comments:</p>	

- WG had not changed their stance due to a lack of legal resources to address the matter and asked individual health boards to seek their own legal advice on the use of electronic signatures.
- The MHAM and the Director of Corporate Governance (DCG) had found case law and precedents to say that the use of electronic signatures was permitted, but that other Health Board's disagreed.
- This could result in the transfer of patients to Health Boards that do not accept electronic signatures being hindered.

The Executive Nursing Director (END) emphasised that the use of electronic signatures would improve patient quality, as less patients would be held up in the system.

The DCG informed the Committee that the law required documents to be signed, but that it did not specify the type of signature. He noted that the challenge was to overcome administrative inertia and to reach an agreement across health boards, independent of WG action.

The Independent Member – Local Authority suggested that a policy or procedure which set out the framework for electronic signatures would provide some assurance to other Health Boards.

The Interim Clinical Director Psychology & Psychological Therapies (ICDPPT) queried whether the new NHS Executive might be useful in bringing other Health Boards into agreement.

The CC noted that there was not a legal solution to this, and that a policy or procedural approach might be the best way forward.

The CC suggested that he meet with the DCG and MHAM to discuss the issue around wet ink signatures, and to agree on an approach for the use of electronic signatures.

The MHAM reported that another Health Board was declined the procurement of Adobe Pro (which enables the use of electronic signatures) due to licensing fees.

The MHAM continued with the MCA Monitoring Exception Report and highlighted:

- The number of Section 136s had increased – this was likely due to CAMHS
- Development sessions were ongoing
- There had been a couple of drug errors reported on wards – the ward would be revisited within four weeks to ensure improvement work had been undertaken.

**The Committee resolved that:**

- a) The approach taken by the Mental Health Clinical Board to ensure compliance with the appropriate Mental Health legislation, as set out in the report, was noted.

**Mental Capacity Act**

**MHLMCA  
06/08/008**

**Mental Capacity Act Monitoring Report and DoLS Monitoring**

To view the minute: [https://youtu.be/ZDZlqxR7X\\_0?t=1361](https://youtu.be/ZDZlqxR7X_0?t=1361)

The MCA & Consent Lead (MCA-CL) presented the Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards (DoLS) Monitoring report which provided a general update on current issues related to the MCA and DoLS and highlighted the following:

- There had been an increase in Independent Mental Capacity Advocates (IMCA) referrals – largest area was Relevant Person’s Referrals (RPR) referrals
- The mandatory MCA training was above target – however medical and dental staff had an average of under 40% compliance across the Health Board.
- The MCA practitioner led training over the last quarter had been well received – this would increase to three training sessions a month due to demand. This had also contributed to the Safeguarding Level 2 and 3 training.
- The MCA team had received 73 requests for support and advice this quarter
- DoLS signatory training had been arranged for September to increase the number of signatories.
- DoLS referral figures had increased substantially over the last quarter, likely due to increased awareness and training. However, there was the difficulty of meeting capacity to carry out assessments.
- £35,000 of the WG’s MCA/DoLS funding would be used to increase assessment capacity.
- There was a disconnect between the number of referrals and the number of assessments.

The IM-LA asked for more information around how they would improve mandatory MCA training compliance in medical and dental staff.

The MCA-CL responded that it was a work in progress, and they hoped to make the training more accessible for staff. She suggested the aim to combine the mandatory training and the practical application training, and that they hoped to report improved figures in the following quarter.

The END added that Clinical Boards would be asked to bring their medical compliance training performance to the monthly Executive Reviews for executive oversight.

The END asked if there was a possibility to pay for individuals to undertake the Assessing Decision Making Capacity MSc module, with the expectation for them to train others within the organisation and asked for this to be monitored going forward.

The MCA-CL responded that the individuals trained in the MSc module would act as ‘champions’ in their clinical areas as a point of contact for advice.

The ICDPPT asked how the organisation tracked the frequency of Section 49 requests from the Court of Protection, and the extent to which internal staff versus external commissions respond to them.

The DCG responded that ongoing work was being undertaken with his team and the Court of Protection lawyers to review the process around decision-making. He suggested that more work was needed around this in the mental health space.

The END suggested that he meet with the DCG to clarify the Court of Protection process and to provide an update to the following Committee.

**The Committee resolved that:**

- a) The contents of the report and the current compliance and actions with Mental Capacity Act and Deprivation of Liberty indicators were noted.

MHLMCA  
06/08/010

## Mental Health Measure Monitoring Reporting including Care and Treatment Plans Update Report

To view the minute: [https://youtu.be/ZDZlqxR7X\\_0?t=2262](https://youtu.be/ZDZlqxR7X_0?t=2262)

The DO-MH and the Deputy General Manager – Children, Young People & Family Health Services (DGM-CYPFHS) presented the Mental Health Measure Report which outlined the performance of CAVUHB against the various mental health specific targets, which included:

- Part 1a - target: 28-day referral to assessment compliance target of 80% (Adult) and (Children & Young People)
- Part 1b – 28-day assessment to intervention compliance target of 80% (Adult) and (Children & Young People)
- Part 2 – Care and Treatment Planning (over 18) and (Children & Young People)
- Part 3 – Right to request an assessment by self-referral
- Part 4 – Advocacy – standard to have access to an IMHA within 5 working days

Regarding the care and treatment planning for Children and Young People (CYP), the Independent Member – Capital & Estates (IM-CE) asked how much progress had been made over the past 12 months, and whether meaningful change was likely to be made.

The DGM-CYPFHS responded that little progress had been made and highlighted the challenge of the Care and Treatment Planning (CTP) legal framework being inaccessible for children and young people.

The IM-CE noted that self-referrals to SilverCloud relied on people's knowledge of the service existing, and asked how strong awareness of this service had been.

The DGM-CYPFHS responded that self-referral had been advertised through their single point of access, the website, TV screens within the centre, and clinicians informing children and young people directly. It had been observed that parents were engaged in the parent programmes, which suggested that targeting parents might be effective. The DGM-CYPFHS noted that self-referral and professional referral would become part of the service offer.

The CC suggested that the new Health Minister may wish to hear plans to address the lack of compliance regarding Part 1a and 1b.

The DO-MH provided the following comments:

- The Primary Mental Health Support Service (PMHSS) faced a higher level of demand than anticipated, with capacity and demand modelling showing no signs of a decrease post-pandemic, contrary to initial expectations.
- The PMHSS team professionals were required by legislation to come from specific professional groups, which presented a challenge due to a diminishing pool of candidates and anticipated future recruitment difficulties.
- Modelling suggested the need for up to four professionals to restore compliance – with three being a likely sufficient number if recruited by December. Adverts for the required positions were currently out.

The DGM-CYPFHS noted that recruitment challenges persisted within the CYP space, but that significant work had been undertaken around demand and capacity, particularly concerning interventions. Whilst the complexity of cases had increased, the DGM-CYPFHS provided reassurance that significant improvements were being made, with a trajectory towards compliance by September 2024.

**The Committee Resolved that:**

	a) The contents of the Mental Health Measure Monitoring Reporting including Care and Treatment Plans Update Report was noted.	
	<b>Items to bring to the attention of the Committee for Noting / Information</b>	
<b>MHLMCA 06/08/011</b>	<p><b>Sub-Committee Meeting Minutes:</b></p> <p>To view the minute: <a href="https://youtu.be/ZDZlqxR7X_0?t=3661">https://youtu.be/ZDZlqxR7X_0?t=3661</a></p> <p><u>Hospital Managers Power of Discharge Sub-Committee Minutes – April 2024</u></p> <p>The Vice Chair of the Power of Discharge Sub-Committee (VC-PDSC) highlighted:</p> <ul style="list-style-type: none"> <li>• The Chair and Vice Chair of the Committee attended the Recovery and Wellbeing College Care and Treatment Plan (CTP) training</li> <li>• A yearly report would be presented at the following MH Committee, with CTPs likely to be a significant point of discussion.</li> <li>• It was concluded that interpreter hearings should default to face-to-face unless a patient specifically requested a virtual hearing.</li> <li>• The number of barring hearings had increased over the past year.</li> </ul> <p><u>Mental Health Legislation and Governance Group (MHLGG) – July 2024</u></p> <p>The ICDPPT highlighted:</p> <ul style="list-style-type: none"> <li>• The MHA Activity Report was scrutinised, and it was noted that the peak in Section 136s was due to accommodation issues amongst a small number of young people.</li> <li>• An increase in the use of Section 62s for urgent treatments was noted, attributed to the difficulty in accessing second opinion appointed doctors.</li> <li>• A discussion was revisited around informal patients and the DoLS process – the decision was for the current framework to remain in place.</li> <li>• The Section 140 Policy was nearly complete, pending additional medical comments.</li> <li>• There was a discussion on the protocol for South Wales Police (SWP) when bringing in someone under Section 136, particularly concerning prior contact with services.</li> <li>• A productive conversation took place around advocacy, focusing on how to facilitate advocate’s participation in ward rounds or multidisciplinary team (MDT) meetings to enhance patient support.</li> </ul> <p><b>The Committee Resolved that:</b></p> <p>a) The Sub-Committee Meeting Minutes were noted.</p>	
	<b>Items for Approval / Ratification</b>	
<b>MHLMCA 06/08/012</b>	<p><b>Policies</b></p> <p>To view the minute: <a href="https://youtu.be/ZDZlqxR7X_0?t=3901">https://youtu.be/ZDZlqxR7X_0?t=3901</a></p> <p><u>Restraint in the Care Management of Patients Aged 16 Years and Over with Impaired Mental Capacity – Policy and Procedure (UHB 044)</u></p> <p><b>The Committee resolved that:</b></p> <p>a) The policy was approved.</p>	
<b>MHLMCA 06/08/013</b>	<b>Any Other Business</b>	

To view the minute: [https://youtu.be/ZDZlqxR7X\\_0?t=3986](https://youtu.be/ZDZlqxR7X_0?t=3986)

### SBAR - Psychiatrist Managing Inpatient Care Without Approved Clinician (AC) Status

The Clinical Board Director – Mental Health (CBD-MH) provided the following summary:

- The situation involved a local psychiatrist, acting as a consultant who was not AC approved, incorrectly identifying themselves as the responsible clinician during a tribunal, which led to an adjournment.
- The individual attended three tribunals between February and July 2024, misnaming themselves in two reports.
- The individual had since left for a neighbouring Health Board, acknowledged their mistake, and now sought AC approval.
- The tribunal that raised the issue had received a written response and was reportedly satisfied with the explanation provided.

The END asked whether there was any risk to the organisation that the other two tribunals had not picked up on the fact that the individual was not AC approved.

The CBD-MH responded that he was not aware of any risk as there were no concerns around the decisions made in the care of the patient.

The IM-LA asked what steps were being taken to ensure this did not happen again.

The CBD-MH responded that he had spoken with the Clinical Directors around the need to provide information to future employees to prevent the misuse of the term. However, he hoped that in the future they would not employ doctors without AC approval.

### Nearest Relative Discharge Requests:

The MHAM explained that between 2020-23, they received 17 nearest relative discharge requests, whereas so far in 2024 they had received 13. Nowhere else in Wales had this demand, it was only CAVUHB.

The CC asked if any analysis had been undertaken to understand why this was happening.

The MHAM responded that no different information had been provided to patients and their relatives, so they were unsure why there had been a sudden increase in demand.

The MHAM suggested he keep the Committee informed on this matter through the Mental Health Act Monitoring Exception Report.

### Fees for Cancelled Hearings:

The MHAM provided the following summary:

- Currently a half fee was charged to the UHB if a hearing was cancelled on the same day.
- Several other Health Boards charged a full fee if the hearing was cancelled within 24 hours.
- The Power of Discharge Group requested that the policy be extended to charge a half fee for cancellations made within 24 hours.

The CC asked what the financial implications of this were.

	<p>The MHAM responded that based on this year, the UHB had paid out £75 (£25 per member). Had the 24-hour policy been applicable, the UHB would have had to have paid an extra £225.</p> <p>The DO-MH was supportive and acknowledged the considerable work that tribunals must do in advance of a hearing. Whilst there was an additional cost involved, the DO-MH believed it was important to align with practices across Wales.</p> <p>The Committee was supportive of a decision being made at the operational level.</p>	
<p><b>MHLMCA 06/08/014</b></p>	<p><b>To note the date, time and venue of the next meeting:</b> 29<sup>th</sup> October 2024 via MS Teams</p>	