Minutes of the Mental Health Legislation and Mental Capacity Act Committee
Held on 30th January 2024
Via MS Teams

Chair:		
Ceri Phillips	CP	Committee Chair / University Health Board Vice Chair
Present:		
Sara Moseley	SM	Committee Vice Chair / Independent Member – Third Sector
Rhian Thomas	RT	Independent Member – Capital & Estates
In Attendance:		
Matt Phillips	MP	Director of Corporate Governance
Rebecca Aylward	RA	Deputy Executive Nursing Director
Daniel Crossland	DC	Director of Operations - Mental Health
David Seward	DS	Mental Health Act Manager
Neil Jones	NJ	Clinical Board Director – Mental Health
Jeff Champney-Smith	JCS	Chair, Powers of Discharge Sub-Committee
Paul Bostock	PB	Chief Operating Officer
Robert Kidd	RK	Interim Clinical Director Psychology & Psychological Therapies
Melanie Bostock	MB	MCA Consent Lead Manager
Catherine Wood	CW	Director of Operations – Children & Women
Observers:		
Secretariat:		
Rachel Chilcott	RC	Corporate Governance Officer
Apologies:		
Jason Roberts	JR	Executive Nurse Director

Item No	Agenda Item	Action
MHLMCA 30/01/001	**Welcome & Introductions** The Committee Chair (CC) welcome everybody to the meeting in English and in Welsh.	
MHLMCA 30/01/002	**Apologies for Absence** Apologies for Absence were noted	
MHLMCA 30/01/003	**Declarations of Interest** The CVC declared that she had joined the Board for MIND Cymru.	
MHLMCA 30/01/004	**Minutes of the Meeting held on 31st October 2023** The Minutes of the Meeting held on 31st October 2023 were received and approved. **The Committee Resolved that:** a) The minutes of the meeting held on 31.10.2023 were agreed as a true and accurate record.	
MHLMCA 30/01/005	**Action Log from the meeting held on 31st October 2023** The Action Log was received and discussed.	

	MHLMCA 23/05/010 – The MHAM noted that there had not been much progress with an e-learning module due to resource and timing reasons, however they were in liaison with the development team. It was agreed that the COO would discuss offline how his team could support. **The Committee Resolved that:** a) The Action Log was noted.	
MHLMCA 30/01/006	**Committee Chair's Actions** **The Committee Resolved that:** a) No Chair's Actions were taken since the last meeting.	
MHLMCA 30/01/007	**Any Other Urgent Business Agreed with the Chair** **The Committee Resolved that:** a) No other urgent business was agreed with the Chair.	
	Mental Capacity Act	
MHLMCA 30/01/008	**Mental Capacity Act Monitoring Report and DoLS Monitoring** The DEND 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. In addition, the benefits of the Mental Health Practitioner roles were highlighted to the Committee. The DEND highlighted that benchmarking with other Health Boards regarding the DoLS compliance and monitoring assurance was difficult as they did not have meaningful data to compare. The CVC asked what the outcome was for the increased uptake in training. The DEND responded that there had been operational pressures with attendance and training, so mental capacity practitioners were walking the wards and providing timely information. Frontline staff had said that the application of mental capacity and DoLS training was beneficial, and they were feeling more confident in making decisions. The DEND added that however, there was a problem with the documentation process and the timeliness of completing the many different assessments required for DoLS. Consent to Examination and Treatment The DEND highlighted that there had been an action taken from the previous committee to provide assurance around the work being undertaken on consent to examination and treatment due to compliance with training around consent not being where it should be, and the publication of the National Review to consent to examination and treatment standards in NHS Wales the previous May, which showed limited assurance for Cardiff and Vale. The MCA-CLM provided a summary of the Consent to Examination and Treatment section highlighted within the Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards (DoLS) Monitoring report, as per Agenda item 8.1, which informed the Committee around the work being undertaken and the action plan going forward.	

	The IM-CE highlighted the potential risk on their indemnification profile if they were to be seen by the Welsh Risk Pool (WRP) as not being compliant with the training expectations. She asked what the potential impact would be if the training was to be made mandatory. The MCA-CLM responded that they offered an ESR training, and a bespoke face-to-face training tailored more for nurses who would be consenting for the first time. There was a big commitment to mandate the training, and the WRP had asked for it to be looked at as part of the compliance around indemnity. She added that once the training was mandated, there would be leverage to make a bigger push for compliance. The IM-CE asked if the WRP would give them a grace period to meet the compliance measures, given the large numbers involved. The MCA-CLM believed that there would be some leeway given by the WRP in meeting the compliance measures, as the same pressures would be faced across Wales. With 8000 staff to train, the MCA-CLM noted that it would not be possible to be compliant straight away. The CC noted that consent was not an issue specific to mental health, and suggested that consent to examination and treatment would better fit being discussed in the QSE Committee to provide a broader level of assurance and scrutiny. The MCA-CLM informed the Committee that she had highlighted the need for consent training and the use of EIDO leaflets during the Clinical Board's Quality & Safety meetings. The MCA-CLM highlighted that consent related to all staff, not just those undertaking formal consent from patients. She noted that there were time constraints in completing the training, whereas time would be allocated if it was made mandatory. <u>Action:</u> 1. For Consent to Examination and Treatment to be added onto the Quality, Safety & Experience Committee Agenda for assurance. **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.	
	Mental Health Act	
MHLMCA 30/01/010	**Mental Health Act Monitoring Exception Report** The MHAM presented the Mental Health Act (MHA) Monitoring Exception Report which provided the Committee with further information relating to wider issues of the MHA. The CVC suggested whether there was an induction opportunity for doctors coming into the Welsh system from elsewhere. The MHAM responded that an induction is undertaken with doctors in Mental Health around 136s and 5(2)s, however, the turnover is so high and it is used so infrequently that the information gets lost. He offered to undertake inductions, and noted that there was posters and information on their dedicated SharePoint page.	

	The CC asked where staff could access the forms. The MHAM explained that the documents were on the MHA SharePoint page. He highlighted that staff don't always know that there is a different form for Wales and England. The CBD-MH informed the Committee that he would be happy to link in with Martin Edwards to see if more could be done, despite the inherent difficulties which had been highlighted. He suggested the need to look at their SharePoint pages with junior doctors to understand how to make the information more accessible. The CC and the MHAM estimated that around 10% of their reports/applications were fundamentally defective. The CVC asked what the implications were for defective applications for the patients. The MHAM responded that the ward would be informed that the patient was no longer detained, and if the patient still met the criteria, another doctor must be called to complete another Section 5(2) form. The patient must be informed that they had not been detained lawfully, and that it would be up to them to seek legal advice if they wished to do so. The IM-CE asked for more context around what drove the Did Not Attend (DNA) rates for training, and what was being done to resolve the issue. The MHAM noted that managers were informed that staff must have refresher training yearly, and that managers were informed if staff did not as they would be unable to accept any detention papers. The MHAM additionally highlighted the process for individuals who had not attended the MHA training day. He hoped that changes to the frequency of the workshops would help with attendance. The ICD-PPT noted an unusual exception where a sentenced prisoner was subject to the civil parts of the MHA. He noted that a letter from the Director of Mental Health Nursing would be sent to the prison governor, to ask for advice on the process of their investigation into the way the events unfolded. **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.	
MHLMCA 30/01/011	**Right Care, Right Person Update** The DO-MH presented the briefing note around Right Care Right Person (RCRP) to the Committee, and provided the following summary: - Right Care Right Person (RCRP) launched in Humberside to develop an approach to move away from police responding in the main to welfare calls. The findings were that for many service users, police attendance was not appropriate - Benefits for the police included the release of time to focus on their key priorities more promptly. - The four phases of RCRP were outlined: Phase 1: Concerns for welfare of people Phase 2: AWOL and walkouts of people with mental health needs from other health facilities	

	Phase 3: Transportation in police vehicles Phase 4: Handover of Section 136s and voluntary mental health patients - The UHB was in a good position and they had met with RCRP twice. The launch for welfare was in February 2024, and data had already started being collected and interpreted. The UHB had a sanctuary provision and a local 136 policy that reflected the RCRP initiative. A WASPI (Welsh Accord on Sharing Personal Information) had been developed with the police and other providers. - There had been no mention of police resources or finances being transferred to Welsh health and local authority partners, which could present some challenges. - CAVUHB had commissioned both a children's sanctuary and an adult sanctuary, There was an expectation to engage with these partners further in long-term commissioning, as they were likely to benefit from the RCRP initiative. The DEND noted that the communication training lead from South Wales Police (SWP) would conduct an online training session that week, and offered to share the link with those interested. The DO-MH added that it came on the 1st December 2023 launched in Betsi Cadwaladr UHB for local implementation. The CVC noted concern around transportation and the potential implications of not transferring resources, and queried the potential implications for risk management. The DO-MH responded that over recent years, there had been a decline in welfare checks, which had made it more difficult to obtain them. This had led to an almost gradual implementation of the RCRP approach. He added that transportation had been a long-standing challenge, and that the National Collaborative Commissioning Unit (NCCU) had commissioned St John's ambulance cars across all regions in Wales to help mitigate these challenges. The DO-MH agreed that there had been several high-profile cases in the previous weeks which related to welfare checks, conveyancing, and communication. **The Committee resolved that:** a) The contents of the report were noted.	
MHLMCA 30/01/012	**Section 117 Supreme Court Ruling Implications Update** The DO-MH presented the Supreme Court Judgement – Section 117 of the Mental Health Act (MHA) report which provided the Committee with a summary of the ruling and the potential implications for Cardiff and Vale UHB. The ICD-PPT acknowledged that providers had historically developed in Cardiff and had taken many English patients over the years, which might make their position slightly different from other Welsh Health Boards. The DO-MH agreed and noted that English provider collaboratives had more experience in commissioning and planning for cross-border arrangements with Wales, which put CAVUHB in a vulnerable position as they were more likely to be commissioned due to their location and skillset. He suggested that it could be cheaper for English Integrated Care Boards (ICBs) to purchase placements in their area.	

	The CVC queried whether there had been any financial or planning implications from the increase in Section 117s post-COVID. She suggested this be considered outside of the meeting. The CC asked for a financial estimate of what the two current cases represented. The DO-MH responded that both cases were likely to be around low secure provision, which could be minimum £250,000 per person per year. As time progressed, the number of cases was expected to increase. He explained that often patients were unknown to CAVUHB and the local services, and so there was disruption between the commissioning arrangements and what CAV can deliver at short notice. The DO-MH concluded that this presented a real challenge clinically, operationally, and financially. The CBD-MH referred to the Supreme Court landmark ruling, and explained that the significance was that there was no onus on the placing authority to support someone in a placement that may be struggling. He added that all future bills would fall to the local area, and that Wales happened to be a popular place for these placements. The DO-MH summarised that: - The legal advice obtained had helped to clarify ownership around usual residence, but it was not particularly favourable to CAVUHB - There were challenges around the obligations legally/morally/ethically of other Health Boards to properly fund placements to prevent disincentives – however, the legal advice and guidance received was not relevant in any of the challenges or proceedings against the ICBs - Discussions were ongoing around usual residence and what qualified for ordinary residence in local areas - Further cases would be presented to the Committee to give an idea of how many Section 117 transfers were likely to be recommissioned in the local area for assurance and to develop a better perspective. **The Committee resolved that:** a) The potential impact of the ruling was noted.	
MHLMCA 30/01/013	**HIW Annual Report** The DO-MH presented the Health Inspectorate Wales (HIW) Annual Report from a mental health perspective, and provided the following summary: - Immediate assurance was used in Mental Health across Wales, which represented 35% of all HIW immediate assurances. - The quality of mental health interactions was high, but there were issues with managing violence and aggression training, and records of restraint and observation were not always up to date. - There continued to be long-standing access difficulties for people wanting to access mental health services. - The system was highly complex, and the flow between services impacted on care. - The 40 recommendations were highlighted in relation to discharge arrangements in Cwm Taf Morgannwg UHB, some of which related to electronic record systems. - CAVUHB wasin a better position with the PARIS system for mental health, and had provided positive reassurance and responses to many of the recommendations. - A mental health HIW annual report was expected within the next few months. **The Committee resolved that:**	

	a) The content of the HIW Mental Health Hospitals, Learning Disability Hospitals and Mental Health Act Monitoring Annual report 2020-2021 was noted.	
	Mental Health Measure	
MHLMCA 30/01/014	**Mental Health Measure Monitoring Reporting including Care and Treatment Plans Update Report** The DO-MH and the DO-CW presented the Mental Health Measure Report which outlined the performance of CAVUHB against the various mental health specific targets. The IM-CE asked for an update on the work being undertaken by both clinical boards on the 16-25 age group. The DO-MH provided the following summary in response: - Both clinical boards had worked closely together on key priorities, using the service improvement money from Welsh Government (WG) to address challenging priorities with significant clinical impact. - Transition workers had been put in place for eating disorder services, and there were regular joint planning meetings between Children and Women's services and the Mental Health Clinical Board. - The headroom service provided early intervention for psychosis starting at age 14, and work was being undertaken with the Cynnwys service for emotionally unstable personality disorders. - A big challenge was the alignment and agreement on a pathway between these services to ensure a continuity of treatment. The CC noted that it was both the number and the level of complexity of patients which had increased the demand, and so he acknowledged that the demand capacity modelling exercise would be challenging. The CBD-MH agreed, and highlighted the hard work undertaken around inpatient stays for challenging individuals with high complexity between the ages of 16-18 as they moved into adult services. There had been an increased number of those individuals, and the working relationships between staffing groups to support them had improved significantly. The DO-MH noted that the Delivery Unit had visited the previous week to engage in demand and capacity modelling workshops with clinical and directorate teams. The Committee was reassured that the Clinical Board was engaged with this work. **The Committee Resolved that:** a) The contents of the report were noted.	
	Items to bring to the attention of the Committee for Noting / Information	
MHLMCA 30/01/015	**Sub-Committee Meeting Minutes:** <u>Hospital Managers Power of Discharge Sub-Committee Minutes – January 2024</u> The C-PDSC highlighted the following: - A debate had started around capacity and representation, with discussions with Advocacy around what that looked like - Feedback had been received about sticking to the strict criteria for detention and the use of discretionary powers	

	- Discussions were ongoing about dangerousness in terms of barring hearings – the topic would be discussed at the All Wales Conference on the 29th February 2024. The DO-MH noted that: - The issue of dangerousness and how this was defined was a challenge for mental health managers, the Power of Discharge Group, and clinicians. - They had met with clinicians and written to them around how to work together and come to a general consensus about what information was required to provide to MHA managers and hospital managers. - A national discussion would take place on the 29th February, and a lessons learnt would be brought back to the meeting. <u>Mental Health Legislation and Governance Group (MHLGG) – January 2024</u> The ICDPPT highlighted the following: - They discussed the activity monitoring report and the exceptions - They also discussed the need to make further progress using the AMaT software to order their activity, and an ongoing issue with starting MHA assessments towards the end of the day. - They discussed the Section 117 ruling and concerns amongst staff about what this meant, where they noted an issue with children's services' understanding of Section 117 aftercare. - It was decided that they would not continue to monitor the reform of the 1983 MHA. **The Committee Resolved that:** a) The Sub-Committee Meeting Minutes were noted.	
	Items for Approval / Ratification	
MHLMCA 30/01/016	**Policies** The following policies were approved for publication: i) Receipt of Applications for Detention under the Mental Health Act Procedure ii) Mental Health Review Tribunal Procedure and Guidance **The Committee resolved that:** a) The two policies were approved.	
MHLMCA 30/01/017	**Any Other Business** No items.	
MHLMCA 30/01/018	**To note the date, time and venue of the next meeting:** 30th April 2024 at 10:00-12:00 Via MS Teams	