

**Minutes of the Mental Health Legislation and Mental Capacity Act Committee
Held on 2 May 2023
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:		
Daniel Crossland	DC	Director of Operations - Mental Health
Neil Jones	NJ	Clinical Board Director – Mental Health
Robert Kidd	RK	Interim Clinical Director Psychology & Psychological Therapies
James Quance	JQ	Interim Director of Corporate Governance
Suzanne Rankin	SR	Chief Executive Officer
Jason Roberts	JR	Executive Nurse Director
David Seward	DS	Mental Health Act Manager
Catherine Wood	CW	Director of Operations – Children & Women's
Observers:		
Elizabeth Singer	ES	Deputy Chair of the Powers of Discharge sub-Committee
Secretariat:		
Nathan Saunders	NS	Senior Corporate Governance Officer
Apologies:		
Paul Bostock	PB	Chief Operating Officer
Jeff Champney-Smith	JCS	Chair, Powers of Discharge sub-Committee
Susan Elsmore	SE	Independent Member - Council

Item No	Agenda Item	Action
MHLMCA 23/05/001	Welcome & Introductions The Committee Chair (CC) welcome everybody to the meeting in English and in Welsh.	
MHLMCA 23/05/002	Apologies for Absence Apologies for Absence were noted	
MHLMCA 23/05/003	Declarations of Interest No Declarations of Interest were noted.	
MHLMCA 23/05/004	Minutes of the Meeting held on 31 January 2023 The Minutes of the Meeting held on 31 January 2023 were received. The Committee Resolved that: a) The minutes of the meeting held on 31 January 2023 were agreed as a true and accurate record.	

MHLMCA 23/05/005	<p>Action Log from the meeting held on 31 January 2023</p> <p>The Action Log was received and discussed.</p> <p>The Committee Resolved that:</p> <p>a) The Action Log was noted.</p>	
MHLMCA 23/05/006	<p>Chair's Action taken since last meeting</p> <p>The Committee Resolved that:</p> <p>a) No Chair's Actions were taken since the last meeting.</p>	
MHLMCA 23/05/007	<p>Any Other Urgent Business Agreed with the Chair</p> <p>The Committee Resolved that:</p> <p>a) No other urgent business was agreed with the Chair.</p>	
MHLMCA 23/05/008	<p>Mental Capacity Act Monitoring Report and DoLS monitoring</p> <p>The Mental Capacity Act Monitoring Report and Deprivation of Liberty Safeguards (DoLS) monitoring was received.</p> <p>The Executive Director of Nursing (END) advised the Committee that he would take the paper as read and that the report provided a general overview of the Mental Capacity Act and DoLS compliance.</p> <p>He added that as reported previously, IMCA referrals had increased from January 2023 through to March 2023 and referral rates were noted to have increased 15% overall from last year's average.</p> <p>It was noted that the most notable increase had been in relation to the Relative Persons Representative (Health) which had increased over 25%, from 58 last quarter to 73 referrals in the current quarter.</p> <p>The END advised the Committee that in relation to Mental Capacity Training, whilst booking rates had increased in recent months, the Health Board had experienced low attendance rates on the day which was likely due to ongoing clinical pressures and staffing issues.</p> <p>He added that recruitment was underway for two new Mental Capacity Specialist Practitioners to be in post by June 2023.</p> <p>It was noted that the aim would be for those postholders to be able to deliver training directly within clinical areas to try and improve accessibility and to improve compliance with mandatory training.</p> <p>It was noted that DoLS training had recently been commissioned in order to help raise awareness with regards to what amounted to a deprivation of liberty. The training had been arranged in order to ensure that the Health Board was effectively</p>	

	<p>safeguarding vulnerable patients and that staff were completing DoLS referrals where appropriate.</p> <p>The Committee was advised of the DoLS monitoring actions which included:</p> <ul style="list-style-type: none"> • Annual overview from April 2022- March 2023 - A general increase in applications since August 2022 was reported. Up until 31st July 2022, the mean number of applications was 80 per month, compared with 116 per month from 1st August 2022 onwards. • December 2022 assessment figures were reduced due to increased annual leave and bank holidays. It was noted that the last quarter had shown an increase in capacity using additional funds to address the DoLS backlog. • 78% of applications were within time and 22% had breached for the last quarter (January – March 2023). It was noted that it was an improvement upon the last report's figures, when 34% of applications had breached (November 2022). <p>The END advised the Committee that, as previously outlined, breaches had occurred due to insufficient resources to complete the assessments within the required timeframe. For the last financial year, £90,000 of the LPS funding had been put towards increasing resource for assessments through the use of agency and overtime to address the significant backlog.</p> <p>He added that whilst it appeared to have had a positive effect, the Health Board would need to explore how it could address the need for increased resource over the longer term and maximise use of funding now that the LPS had been delayed indefinitely.</p> <p>The Independent Member – Capital & Estates (IMCE) asked what had contributed to the increase in people undertaking the training.</p> <p>The END responded that the DoLS lead specialist had been implemented 12 months ago and had increased the awareness of the training across the whole organisation.</p> <p>The IMCE noted that the consent to examination e-learning package would be monitored and asked what plans were being held in relation to that.</p> <p>The END responded that the e-learning package was still new and that the teams were still working through the plan on how best to achieve relevant compliance.</p> <p>The Committee resolved that:</p> <ul style="list-style-type: none"> a) The contents of the report and the current compliance and actions with Mental Capacity Act and Deprivation of Liberty indicators were noted. 	
<p>MHLMCA 23/05/009</p>	<p>Liberty Protection Safeguards Monitoring Report</p> <p>The Liberty Protection Safeguards (LPS) Monitoring Report was received.</p>	

	<p>The END advised the Committee that the UK Government had recently announced their decision not to progress the Liberty Protection Safeguards (LPS) or implement the Mental Capacity (Amendment) Act 2019 within the current Parliament.</p> <p>He added that further to the announcement, the Welsh Government had expressed its disappointment to the decision and had committed to continue to provide increased funding to protect the rights of those who lacked mental capacity.</p> <p>It was noted that the focus for the Health Board would remain upon improving understanding and application of the MCA in clinical practice, strengthening the current Deprivation of Liberty Safeguards arrangements and improving ongoing monitoring and reporting.</p> <p>The Interim Clinical Director Psychology & Psychological Therapies (ICDPPT) noted that it could mean that the Health Board was left with the DoLS system for up to 15 years and asked how and where would the Health Board want to review the workforce for that system because over the past few years, a few Best Interest Assessors had stepped away from the service.</p> <p>The END responded that the Health Board's focus would be on the fundamental foundations of the 2 systems, and consent Mental Capacity Act training and all of the relevant legislation.</p> <p>He added that it required a unique bespoke area of training and that the unique knowledge required was not held by many staff and so work would need to be undertaken on workforce.</p> <p>It was noted that this would be received by the Committee at a later date.</p> <p>The CC advised the Committee that the Welsh Government's (WG) response to UK Government's abandonment of LPS was one of disappointment and noted that the Health Board should move towards an enhanced DoLS system, even if LPS would not materialise in the future.</p> <p>He added that as a Health Board, work had been undertaken in looking at the workforce requirement for LPS and so that work should continue.</p> <p>It was noted that the recommendations would require amendment due to the implementation of the LPS being halted.</p> <p>The Committee resolved that:</p> <p>a) The contents of the report were noted.</p>	<p>JR</p>
<p>MHLMCA 23/05/010</p>	<p>Mental Health Act Monitoring Exception Report</p> <p>The Mental Health Act Monitoring Exception Report was received.</p> <p>The Mental Health Act Manager (MHAM) advised the Committee that that there had been no fundamentally defective applications for the quarter but noted that there had been one fundamentally defective report of a Section 5(2) and one invalid use of the Mental Health Act and provided details on those.</p>	

	<p>He added that during the period, the use of 136 Sections had decreased from 119 in the previous quarter to 114 in the current reporting quarter.</p> <p>It was noted that from those 114, 71% were not admitted to hospital and only two were patients of the Child and Adolescent Mental Health Services (CAMHS) which was a decrease from the 8 reported in the previous quarter.</p> <p>The Director of Operations - Mental Health (DOMH) advised the Committee that some cross-validation work had been undertaken with South Wales Police in relation to the 136 Sections to check that the numbers were correct and accurately reported.</p> <p>He added that the only variation seen was around ethnicity recording with the Police having a better recording system for that.</p> <p>The MHAM advised the Committee that face to face hearings had commenced successfully from 01/03/2023. The President of the Mental Health Review Tribunal (MHRT) had confirmed that patients would have a choice via the appeal application form on whether they wished to have a face to face hearing, a virtual hearing or had no preference. However, it did state that although the MHRT would seek to facilitate the patient's choice, it could not always be guaranteed.</p> <p>The Committee Vice Chair (CVC) noted the improvement in the MHRT and asked if the training issue was also resolved.</p> <p>The MHAM responded that there were not issues in training at present.</p> <p>The Committee was advised that the MHA office had continued to run awareness sessions including a monthly MHA training day which was available to all staff within the Health Board, a monthly Consent to Treatment workshop, a quarterly Rights workshop and a quarterly Forensic workshop.</p> <p>The MHAM added that an e-learning module would be created around the Summer time and asked for the Committee's help in ensuring that could be put onto the Electronic Staff Record (ESR) as a mandatory training module.</p> <p>The CC asked for that to be noted as an action.</p> <p>The ICDPPT advised the Committee that it was useful to note that a reduction of repeat 136 Sections had been observed in CAMHS and that was due to greater collaboration between the Adult Mental Health Services and CAMHS.</p> <p>The Committee resolved that:</p> <p>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.</p>	<p>NS</p>
<p>MHLMCA 23/05/011</p>	<p>HIW MHA Inspection Reports (verbal)</p> <p>The Health Inspectorate Wales (HIW) MHA Inspection Reports update was received.</p>	

	<p>The DOMH advised the Committee that since the previous report, a further 2 reports had been received for Ash Ward and Pine Ward and a further 2 inspections had taken place on East12 and East16 Wards.</p> <p>It was noted that the HIW inspection covered a range of areas of interest to the Committee:</p> <ul style="list-style-type: none"> • Quality of patient experience • Delivery of safe and effective care which included: • Record keeping • Mental Health Act Monitoring • Monitoring of the Mental Health (Wales) Measure 2010 • Quality of management and leadership <p>It was noted that the summary reports included Action Plans, and Immediate Action Plans and that there were no Immediate Actions required.</p> <p>The DOMH advised the Committee that reports from Ash and Pine Wards would be provided at the next meeting.</p> <p>He added that an inspection report had been completed in Adult Services from Cwm Taf Morgannwg University Health Board in relation to discharge for inpatient and community services and that the Health Board would be required to respond by 5th May 2023.</p> <p>The CVC asked if HIW had explained why they were visiting so frequently and asked if they were joining up their findings on what they were seeing across the service.</p> <p>The DOMH responded that the question had been asked as to why the frequency in visits had appeared to increase and HIW had responded that there were no specific concerns and that the East 12 and East 16 Ward visits had been delayed to provide the service with extra time.</p> <p>He added that the HIW had responded that there were no particular concerns and themes across all visits and had noted the quality of care and positive attitudes of staff.</p> <p>The DOMH thanked the MHAM and their team because the feedback on the Mental Health Act Team had been very positive.</p> <p>The CVC asked if the Cwm Taf Morgannwg report was regional.</p> <p>The DOMH responded that the learning was undertaken in Cwm Taf Morgannwg but that the recommendations from that report would be applied nationally across Wales and so each Health Board would be required to supply a response by 5th May 2023.</p> <p>The Committee Resolved that:</p> <p>a) The verbal HIW MHA Inspection Reports were noted.</p>	DC
<p>MHLMCA 23/05/012</p>	<p>Mental Health Measure Monitoring Reporting including Care and Treatment Plans Update Report.</p>	

The Mental Health Measure Monitoring Reporting including Care and Treatment Plans Update Report was received.

The DDOMH advised the Committee that the report was separated into 4 parts and he would take the report as read.

Part 1A – target: 28-day referral to assessment compliance target of 80% (Adult)

It was noted that referrals into the service in March 2023 were the highest ever seen with 1523 referrals. However it was also noted that it was a decrease on the number seen in the previous year Q4 referrals by 2.2%.

The DOMH noted that the high number of referrals had affected target compliance with a breach in the compliance target. As of 21st April 2023, the average waiting time was 29 days, with that predicted to reduce to 27 days by the end of May 2023.

He added that the longest wait in April 2023 was 42 days, the predicted wait for May was 39 days and a target recovery was predicted for July 2023. Bank Holidays during the period could affect target performance by increasing the waits due to absence of available slots.

It was noted that in relation to current performance, CAMHS remained 100% compliant and that the Adult Services for patients aged 18 to 64 was 48% and those aged over 65 was 60%.

Part 1A – target: 28-day referral to assessment compliance target of 80% (Children & Young People)

The Director of Operations – Children & Women's (DOCW) advised the Committee that the CAMHS service had exceeded the 80% target sustainably since November 2022.

She added that, like the Adult Service, a 42% increase in referrals during March 2023 had been observed. Those had now stabilised and that the service had remained compliant without the use of external agency staff, which was positive.

Part 1B – 28-day assessment to intervention compliance target of 80% (Adult)

The Committee was advised that Primary Mental Health Support Services continued to be 100% compliant with the Part 1B performance target.

Part 1B – 28-day assessment to intervention compliance target of 80% (Children & Young People)

The Committee was advised that the service continued to face challenges with Part 1B compliance and that the waiting list initiative had focused on both internal and external waiting lists.

The DOCW noted that an online intervention would be implemented in May 2023 which would provide an alternative intervention for a number of children and young people suffering with anxiety.

Part 2 – Care and Treatment Planning (CTP) - Over 18.

The DOMH advised the Committee that compliance had started to slowly decline with Adult services but with an improvement in Mental Health Services for older people performance following focused attention during performance meetings with teams.

He added that a concurrent quality audit had been restarted on a quarterly basis using the NHS Executive audit tool.

Part 2 – Care and Treatment Planning (Children & Young People)

The DOCW advised the Committee that in Quarter 4 2022-23, compliance against the Part 2 target had been consistently maintained as a result of active focus on CTPs within the service.

She added that the service still faced challenges in relation to achievement including poor engagement from patients in the CTP process and a high number of new patients who required one.

The CVC asked if increased compliance was due to use of online interventions.

The DOCW responded that there were multiple reasons for increased compliance which included:

- The online interventions
- The change of the CAMHS offer to more group-based intervention
- Absolute focus on process rather than procedure.

The CVC asked if outcomes could be received to provide assurance.

The ICDPPT responded that outcomes would be received by the Psychological Therapy Management Committee (PTMC) because they had the correct vehicle to hold the outcomes and compare.

He added the Independent Members could be invited to that Committee.

The IMCE noted that despite the increase in referrals in CAMHS for Part1A, the compliance measure had been consistently met and asked if the reduction in compliance in Part1B had any correlation to that and what risks were carried in that arena.

The DOCW responded that there was risk in that cohort but performance was where it had always been with a lot of actions in place to reduce the backlog and noted that there was a blueprint to turn the Part1B compliance around.

Part 3 - Right to request an assessment by self –referral.

The Committee were advised of 4 breaches since the last reporting period.

	<p>The DOMH advised that 2 of those were at 11 days and that teams were receiving an automated report indicating eligible patients for Part 3 sent on a weekly basis and that teams breaching had been notified for improvement.</p> <p>He added that the allocation rate following re-assessment during the period was 16% of Part 3 requests accepted back into Part 2 treatment in February 2023.</p> <p>Part 4 – Advocacy – standard to have access to an IMHA within 5 working days</p> <p>The Committee was advised that the service was 100% compliant with no further actions required.</p> <p>The Committee Resolved that:</p> <p>a) The contents of the report were noted.</p>	
<p>MHLMCA 23/05/013</p>	<p>Draft Mental Health Bill - Joint Committee Report</p> <p>The Draft Mental Health Bill - Joint Committee Report was received.</p> <p>The MHAM advised the Committee that in July 2022, the UK Government established a joint committee to provide pre-legislative scrutiny of the draft Mental Health Bill. The joint committee had provided a response to the UK Government in December 2022.</p> <p>He added that the Health Board was still waiting for a response from the UK Government on that and that within the report he had outlined the key recommendations, some of which included:</p> <ul style="list-style-type: none"> • The overall approach of the draft Mental Health Bill and its place within the wider picture of Mental Health Act reform – It was noted that the Bill wanted the UK Government to learn and have continuous redevelopment of legislations and codes of practice. • The approach to tackling the racial and ethnic inequalities that were key to the Government's Independent Review. – It was noted that the draft Bill had recommended that there should be a responsible person for each Health organisation whose main role would be to collect and monitor data on the number, the cause and the duration of detentions which would then be broken down by ethnicity and other demographic information. • Community Treatment Orders (CTOs) – It was noted that the draft Bill had recommended that CTOs were abolished for patients under Part 2 of the Mental Health Act and potentially abolished for Part 3 unrestricted patients within 3 years. • The resourcing and implementation plan the Government had laid out to support it – It was noted that the draft Bill wanted a new revised impact assessment because they felt that it not relate to the amount of future resources required to implement the reform as whole. 	

	<p>The CVC noted that ethnicity data was a real driver for the draft Bill due to the disproportionality in terms of the use of legislation and asked if there was any way the Health Board could get ahead of any legislative change and if there were timescales in place.</p> <p>The MHAM responded that the issue had been raised at the Mental Health Legislation and Governance group on how the data could be best collected on ethnicity.</p> <p>He added that at the moment in the patient system PARIS, there was no mandatory field for ethnicity but that the digital lead for PARIS would be looking at that.</p> <p>He added that in terms of timescales there were none at present and that a summary had been written on the draft Bill and would be brought to the Committee once received.</p> <p>The CC advised the Committee that a lot of the proposed recommendations and changes outlined in the draft Bill were areas that the Health Board was already looking at which was a positive note.</p> <p>The ICDPPT noted that the Act was the primary legislation but the Code of Practice was just as important.</p> <p>He added that it was worth acknowledging that the investment in workforce for NHS England was substantial and ongoing.</p> <p>The CC noted that the Committee would welcome an update position update at future meetings.</p> <p>The Committee Resolved that:</p> <p>a) The key legislative changes proposed by the Joint Committee Report on the draft Mental Health Bill as set out in the report, were noted.</p>	<p>DS</p> <p>DS</p>
<p>MHLMCA 23/05/014</p>	<p>Committee Self-Assessment of Effectiveness</p> <p>The Committee Self-Assessment of Effectiveness was received.</p> <p>The Interim Director of Corporate Governance (IDCG) advised the Committee that he would take the paper as read.</p> <p>He added that 3 responses had been received and that comments had been positive. A particular comment had noted around targeted training or coaching for individual members.</p> <p>The CVC added that one of the areas the Committee had raised previously was that new members should be able to access training on the legislation because the Committee was quite technical and it would be important to empower and enable every new member.</p> <p>The Committee Resolved that:</p>	

	<p>a) The results of the Annual Board Effectiveness Survey 2022-2023 relating to the Mental Health Legislation and Mental Capacity Act Committee were noted.</p>	
<p>MHLMCA 23/05/015</p>	<p>Corporate Risk Register</p> <p>The Corporate Risk Register (CRR) was received.</p> <p>The IDCG advised the Committee that the report was for noting and that no risks have been identified above the threshold and that the report was to provide assurance that the relevant procedures were in place to monitor risks.</p> <p>The Committee Resolved that:</p> <p>a) The Corporate Risk Register update was noted.</p>	
<p>MHLMCA 23/05/016</p>	<p>Sub-Committee Meeting Minutes:</p> <p>The Committee received copies of the Sub-Committees' meeting minutes:</p> <ul style="list-style-type: none"> • Mental Health Act Hospital Managers Power of Discharge Sub Committee <p>The Deputy Chair of the Powers of Discharge sub-Committee advised the Committee that an incident had occurred in the previous reporting quarter where a paper had been submitted for non-disclosure but the information was disclosed in a report that the patient had received.</p> <p>The DOMH added that a not for disclosure element had been added to the weekly MDT meetings which was rolled out across all teams.</p> <ul style="list-style-type: none"> • Mental Health Legislation and Governance Group (MHLGG) <p>The ICDPPT advised the Committee that the MHLGG had met on 13th April 2023 and that it was the first meeting which had included the new South Wales Police Liaison Officer.</p> <p>He added that an issue around Section 135 warrants was raised which would potentially be brought back to the Committee via Chairs Actions.</p> <p>The Committee Resolved that:</p> <p>a) The Sub-Committee Meeting Minutes were noted.</p>	
<p>MHLMCA 23/05/017</p>	<p>Any Other Business</p> <p>No further business was raised.</p>	
	<p>To note the date, time and venue of the next meeting:</p> <p>1 August 2023 at 10am Via MS Teams</p>	

