Minutes of the Mental Health Legislation and Mental Capacity Act Committee
Held on 31 October 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
Susan Elsmore	SE	Independent Member - Council
In Attendance:		
Matt Phillips	MP	Director of Corporate Governance
Francesca Thomas	FT	Head 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
Katie Simpson	KS	Deputy General Manager for Children, Young People & Family Health Services (DGM-CYPFS)
Mark Doherty	MD	Director of Nursing – Mental Health
Observers:		
Secretariat:		
Rachel Chilcott	RC	Corporate Governance Officer
Apologies:		
Paul Bostock	PB	Chief Operating Officer
Meriel Jenney	MJ	Executive Medical Director
Suzanne Rankin	SR	Chief Executive
Jason Roberts	JR	Executive Nurse Director
Rhian Thomas	RT	Independent Member – Capital & Estates

Item No	Agenda Item	Action
MHLMCA 23/10/001	**Welcome & Introductions** The Committee Chair (CC) welcome everybody to the meeting in English and in Welsh.	
MHLMCA 23/10/002	**Apologies for Absence** Apologies for Absence were noted	
MHLMCA 23/10/003	**Declarations of Interest** No Declarations of Interest were noted.	
MHLMCA 23/10/004	**Minutes of the Meeting held on 1 August 2023** The Minutes of the Meeting held on 1 August 2023 were received. **The Committee Resolved that:** a) The minutes of the meeting held on 1 August 2023 were agreed as a true and accurate record.	
MHLMCA 23/10/005	**Action Log from the meeting held on 1 August 2023**	

	The Action Log was received and discussed. MHLMCA 23/05/010 – it was noted that the module was not ready to be put onto ESR as of yet. An update would be deferred to the January 2024 Committee. MHLMCA 23/05/013 – an update would be provided in the April 2024 Committee. **The Committee Resolved that:** a) The Action Log was noted.	
MHLMCA 23/10/006	**Chair's Action taken since last meeting** **The Committee Resolved that:** a) No Chair's Actions were taken since the last meeting.	
MHLMCA 23/10/007	**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 23/10/008	**Mental Capacity Act Monitoring Report and DoLS Monitoring** The DEND presented the Monitoring report which provided a general update on current issues relating to the Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards. A summary of the updates can be found in the report alongside the papers received for the Mental Health Committee on the 31.10.2023 for Agenda item 8.1. The IM-C asked when the memorandum of understanding between LAs and the Health Board would be in place. The DEND responded that it would be in place by the following Mental Health Committee in January 2024. The IM-C asked how long this would take to have an impact. The DEND responded that the work programme from the peer review would create a lot of recommendations, and that while there would be incremental improvements, it could be around 12-18 months before they saw any real results. The CC commented that the Consent Lead seemed to be a busy part-time role. The DEND responded that the individual was on a 12-month secondment which was up for review in June 2024. In terms of compliance, the CVC noted that it would be interested to know how they compared to other Health Boards. The DEND responded that for Deprivation of Liberty, they were on par with other Health Boards, however she was unsure from a consent perspective. <u>Action:</u>	

	1. For a comparative benchmarking piece of work on the Deprivation of Liberties and Consent across the Welsh Health Boards to be presented to the following Committee (RA / DS). **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 23/10/009	**Mental Health Act Monitoring Exception Report** The MHAM presented the Exception report which provided further information relating to the wider issues of the Mental Health Act (MHA). He highlighted that they had a few fundamentally defective reports, with one application and three 5(2) reports. A summary of these incidents is available to view in detail in the report alongside the papers received for the Mental Health Committee on the 31.10.2023 for Agenda item 9.1. The MHAM explained that these incidents highlighted the need for training within UHW. He had worked with colleagues in EU and wards and they had produced a training package, and a list of the main wards they received 5(2)s from had been pulled together. The MHAM explained that in the new year, he would provide training on 5(2)s in these wards. The CC commented that it was alarming to have 3 fundamentally defective reports in one quarter, but that the responsibility did not just lie with the MHAM. The CBD-MH confirmed that he would liaise with the EMD given the level of basic errors highlighted in the incidents, and that it would be brought to the following Clinical Board Directors meeting. The IM-C noted that the correct attention was not given to these legal forms. The MHAM agreed, and explained that he would impress the urgency and importance of these situations onto the professionals who were responsible for these forms. He added that people might not know that the contact information and the help was there if needed. The CC noted the team had their full support, and he asked for an update to be brought to the following Committee. <u>Action:</u> 1. To spread awareness and increase education on the process for completing the necessary legal documentation, and for an update to be brought to the following Committee (DS). In terms of Section 136, the MHAM provided the following summary: - The use of Section 136s had decreased within the previous quarter; - They had 3 Section 136's which had lapsed with no assessments – two were due the patient having taken an overdose and so they were not medically fit for assessment, and the other incident they had classed as a lapse because the assessment team had arrived late; - The number of CAMHS assessments remained the same at 12; - There had been 9 repeat presentations.	

	The CVC asked if there was a reason for the spike in Section 136s in hospital assessments above the control limit. The MHAM responded that within the previous quarter, it was due to a very young new presentation which took them above the control limit. He confirmed that the patient had been moved to a placement out of area. Regarding Tribunals, the MHAM highlighted that: - They had received new guidance which set out new timescales of when an application for observation needed to be put into the tribunal, and what constituted as an observer. - They had received three observer requests – two had been approved, and one was declined due to it being submitted outside of the timescale. - A list of accredited Mental Health Solicitors used to be issued in the wards, however the tribunal had stopped this with immediate effect. Now the expectation was on the Mental Health Act Administrators to complete this task on behalf of the Tribunal, and they had stopped sending Clerks to Section 2 Tribunal hearings. - This had put a lot of added pressure onto administrators to do a clerk's role, and it had caused a lot of difficulty for the UHB. - There had been no discussion or consultation with colleagues, and all Health Boards were in the same position. The CC suggested that he would bring the issue to the Vice Chairs Group who could take it to the attention of Welsh Government (WG). The CVC asked whether the administration of the tribunal was devolved to WG, or if this was a UK-wide arrangement. The MHAM responded that the tribunal had been devolved to WG, however the President and Deputies were separate as they were part of the judicial system. The MHAM added that he was in the process of reconfiguring how their team could support the training due to a key team member going on maternity leave. **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 23/10/010	**Feedback and Next Steps from the Community Mental Health Summit (verbal)** The DO-MH provided the following summary from the Community Mental Health Summit: - PCIC, Mental Health, and Children & Women's Clinical Boards were involved in this; - They discussed the key challenges that community mental health teams were facing; - ADHD referrals had increased over recent years. These referrals required a psychiatrist to prescribe, and so the demand had largely fallen into secondary care (CMHT). - In turn, this had an impact on their compliance with the Part 2 targets, as Part 1 individuals who were seen within a Part 2 service were automatically made a Part 2 patient.	

- ‘Stable severe’ provision was also legislated as being a Part 1 service was still being seen within Part 2 services;
- These both contributed to provide the highest caseloads in Wales – in C&V, they currently had 838 people per 100,000 on a Part 2 Caseload (whereas the average in Wales was around 600 per 100,000 people).

The CVC asked if there was a creative way to train and support nurse prescribers and non-psychiatry staff to fill the prescribing role more.

The DO-MH responded that there were three issues with ADHD referrals:

1. The assessments were quite in depth and took around 1-2hrs to complete, plus the time to write up.
2. Individuals transferring from CAMHS or from prison, where they might have received a diagnosis from elsewhere, would come into secondary services and require allocation.
3. There had sometimes been concern in the quality of private assessments and diagnoses, and on occasion they had felt that they did not compare to NHS assessments.

The DO-MH responded that given the demand they had recently experienced, they would need a completely different way of managing the assessment and prescribing process. He added that there had been extensive discussions around this, and GP providers were happy to engage, however this would be a large piece of work.

The DO-MH continued with the Verbal Update, and summarised that:

- Pathways – patients had complained over recent years around the multiple assessments and entry points.
- They had a new service provision with 111 press 2.
- There were particular risks and pinch points with community provision across the services, and the Summit resulted in productive discussions. They had proposed a number of possible solutions, and discussions would be held around the next steps;
- They talked about large scale workforce and service changes – therefore there would need to be decent consultation and discussion around planning before this work progresses.

In terms of Children & Women Clinical Board, the DGM-CYPFS added that:

- They had received positive recognition from PCIC in terms of the structural changes made within the Clinical Board, for example the single point of access and their restructured assessment team.
- More work was needed around early intervention and prevention, and how they utilised their schools in the REACH team and with GPs.
- One of the biggest challenges in relation to young people was around suitable places across the Health Board estate for those aged between 16-17 years old who were in emotional distress or crisis – they hoped for resolution with Clinical Boards over the coming months.

The CC explained that the atmosphere in the summit was one of collaboration between primary care providers and the respective Clinical Boards. It was agreed at the Summit that there was not a need for a follow-up meeting, as they had developed action plans which were underway.

The Committee resolved that:

	a) The contents of the report were noted.	
MHLMCA 23/10/011	**Section 117 Supreme Court Ruling Implications** The DO-MH introduced the report and summarised that: - An SBAR had been produced and submitted; - Following a Secretary of State decision, the key change was that Section 117 responsibility of an individual changes at the point of a Section 3; - This could provide a potential challenge to the UHB – C&V was at particular financial and clinical risk due to the very high number of placements and individuals placed here by other Health Boards and Local Authorities. There was a degree of uncertainty around the number and quality of these placements, and the responsibility of the provider; - They had sought legal advice to clarify queries about the retrospective implications of the ruling; - The NCCU had also sought legal advice – The DO-MH had met with peer leads across Wales to have an open discussion about the Section 117 ruling. Discussions were also had with LA leads across Wales around the legal ruling and implications. Further actions included to develop a Freedom of Information (FoI) request to go into English and Welsh Health Boards to understand the degree to which the risk sits with CVUHB. The IM-C noted that prior to the Supreme Court ruling, the responsibility had been with the LAs, and she asked what CVUHB thought. The DO-MH responded that C&V was concerned. Part of the challenge was that while they were aware of a number of providers that offered/commissioned work within Cardiff, they were unsure quite how many there were. He added that they would have to guard against being entirely financially driven as it might be divisive between the UHB and LAs – they had to be unified to manage the risks. The DO-MH explained that this had been discussed with the finance team to ensure they were fully aware of the implications and that it formed part of their risk register. Additionally, conversations had started with the DCG and his team around the risk score. <u>Actions:</u> 1. For an update on any new developments and for clarity over the potential risks regarding the Section 117 rulings to be brought to the following Committee (DC). **The Committee resolved that:** a) The report was noted.	
	Mental Health Measure	
MHLMCA 23/08/012	**Mental Health Measure Monitoring Reporting including Care and Treatment Plans Update Report** The DO-MH and the DGM-CYPFS presented the Monitoring report which provided further information on the UHB Mental Health Measure performance. The report is available to view alongside the papers received by the MH Committee on 31.10.2023 for Agenda item 10.1.	

	Regarding the CMHT caseloads within Part 2, the IM-C asked what the impact this had on staff morale. The DO-MH responded that this was tricky to answer, but noted that: - The number of vacancies within community and mental health terms was significant, with some areas at around 40% vacancy rate – this had improved more recently however; - Vacancies were potentially due to the risks/level of responsibility that the teams face, as well as the additional caseload due to other vacancies within the team. In addition, the cost of living may be an issue as there was no shift allowance or weekend working – as a result, the number of applications for Part 2 services had been low on occasions, however there was variation across teams. - They had listened and engaged with staff to think about reasonable alternatives – they conducted an equality audit of Care and Treatment Plans each quarter, which had indicated that there were some performance issues in some areas. - The Recovery College's approach suggested that they would like to develop a course around care and treatment planning for staff, users and carers to engage with – this was a particularly challenging environment. The IM-C congratulated the Mental Health Clinical Board for their level of compliance and advocacy standards in terms of Part 4. The CC reiterated that figure that the average CMHT caseload within Cardiff was 838 per 100,000 population, and asked to what extent there was variation within C&V. The DO-MH responded that they did not see a huge variation as they did not have a Part 1 'stable severe' or RAMP provision currently in place – this was universally an issue across all teams, particularly with ADHD and 'stable severe' provision. Additionally, they had a challenge around the digital approach. **The Committee Resolved that:** a) The contents of the report were noted.	
MHLMCA 23/10/013	**Development of a Recovery and Maintenance Protocol as part of a Part 1 Scheme under the Mental Health (Wales) Measure 2010** The DO-MH provided the Committee with a summary of the Recovery and Maintenance Provision (RAMP) which aimed to resolve some of the challenges around that particular Part 2 issue. He summarised that: - The protocol was that Part 1 service users were attending a Part 2 service, and therefore were being counted in the numbers of their Part 2 compliance; - A draft of the RAMP had been produced and they were receiving comments/feedback from various services. They would need to undertake an equality health impact assessment to ensure they did not disadvantage anyone with protected characteristics. The pathway would also need work to ensure people were clear on how it would be used; - There had been significant work around this and it had been discussed in some of the locality implementation groups with service users present. They aimed to have a completed draft by the following Controlled Oversight Group meeting; - They had hoped to implement this as soon as possible – they felt that this was material in their long-term improvement in their Part 2 possession to achieve the 7% a month growth.	

	The Committee resolved that: a) The Development of a Recovery and Maintenance Protocol as part of a Part 1 Scheme under the Mental Health (Wales) Measure 2010 was noted.	
	Items to bring to the attention of the Committee for Noting / Information	
MHLMCA 23/08/014	**Sub-Committee Meeting Minutes:** The Committee received copies of the Sub-Committees' meeting minutes: • Hospital Managers Power of Discharge Sub-Committee Minutes – October 2023 • Mental Health Legislation and Governance Group (MHLGG) – October 2023. The C-PDSC highlighted that: - Their main concern was the quality of care and treatment plans; - They were concerned with the drop in the percentage of advocacy managers hearings – this had been taken to M-LAG to determine the cause and what could be done about this; - They were returning to face-to-face hearings which had gained some traction. The DO-MH offered to discuss whether specific areas fit in with their audit documentation. The MH-AM commented that he had had a meeting with the Advocacy Team leader and manager the previous week to see if they could streamline the service for referral traffic. **The Committee Resolved that:** a) The Sub-Committee Meeting Minutes were noted.	
	Items for Approval / Ratification	
MHLMCA 23/10/015	No items for approval.	
MHLMCA 23/08/016	**Any Other Business** The CC noted that the WG were in the process of developing a new Mental Health strategy which would be in parallel with the Suicide and Self-Harm Strategy for Wales. The CC added that the Mental Health Wales Bill had been proposed and accepted as one of the Private Member's bills to be taken forward by the Senedd in the forthcoming year. The CC acknowledged that this was the IM-C's final meeting, and he expressed thanks for her commitment to the Mental Health Agenda.	
MHLMCA 23/10/017	**To note the date, time and venue of the next meeting:** 30th January 2024 Via MS Teams	