

Mental Health Legislation and Mental Capacity Act Committee


Tue 31 January 2023, 10:00 - 12:00


Agenda

10:00 - 10:02 1. Welcome & Introductions
2 min
Sara Moseley

10:02 - 10:04 2. Apologies for Absence
2 min
Sara Moseley

10:04 - 10:06 3. Declarations of Interest
2 min
Sara Moseley

10:06 - 10:08 4. Minutes of the Meeting held on 25 October 2022
2 min
Sara Moseley
 04 Draft MHLMCAC Minutes 25.10.22MD.NF.CP.pdf (13 pages)

10:08 - 10:10 5. Action Log from the meeting held on 25 October 2022
2 min
Sara Moseley
 05 Action LogMDv2.pdf (2 pages)

10:10 - 10:10 6. Chair’s Action taken since last meeting
0 min
Sara Moseley

10:10 - 10:10 7. Any Other Urgent Business Agreed with the Chair
0 min
Sara Moseley

10:10 - 10:40 8. Mental Capacity Act
30 min
Saunders Nathan
27/01/2023 11:20:18
8.1. Mental Capacity Act Monitoring Report and DoLS monitoring (15 Minutes)
Jason Roberts
 8.1 MCA and DoLS report for MHLMCA 31.01.23.pdf (6 pages)

8.2. Liberty Protection Safeguards Monitoring Report (15 Minutes)

Jason Roberts

📄 8.2 Liberty Protection Safeguards Report for MHLCA 31.01.23.pdf (2 pages)

10:40 - 11:10
30 min

9. Mental Health Act

9.1. Mental Health Act Monitoring Exception Report (10 Minutes)

Paul Bostock / Daniel Crossland

📄 9.1 Mental Health Act Monitoring Exception Report January 2023.pdf (8 pages)

📄 9.1a Mental Health Act Monitoring Report Oct- Dec 2022.pdf (49 pages)

9.2. Break (10 minutes)

9.3. HIW MHA Inspection Reports (10 Minutes)

Jason Roberts / Daniel Crossland

📄 9.3 HIW MHA Inspection Report HYC Final v2.pdf (4 pages)

11:10 - 11:25
15 min

10. Mental Health Measure

10.1. Mental Health Measure Monitoring Reporting including Care and Treatment Plans Update Report (10 Minutes)

Paul Bostock / Daniel Crossland

📄 10.1 Mental Health Measure Jan 2023 AMS and CAMHS Jan 23.pdf (12 pages)

10.2. Part 1 Scheme Report Verbal Update (5 Minutes)

Daniel Crossland

11:25 - 11:40
15 min

11. Items to bring to the attention of the Committee for Noting / Information

11.1. Corporate Risk Register (10 Minutes)

Nicola Foreman

📄 11.1 MHCLC Corporate Risk Register Report - January 2023.pdf (3 pages)

11.2. Sub-Committee Meeting Minutes:

Jeff Champney-Smith / Robert Kidd

i) Hospital Managers Power of Discharge Sub Committee Minutes

ii) Mental Health Legislation and Governance Group Minutes

5 minutes

📄 11.2a PoD Minutes January 2023.pdf (3 pages)

📄 11.2b MHLGG minutes January 2023.pdf (9 pages)

11:40 - 11:50
10 min

12. Items for Approval Ratification

Saunders Nathan
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12.1. Committee Annual Report – 2022/23 (5 Minutes)

Nicola Foreman

-  12.1 MHLMCAC Annual Report 2022-23 Cover Report.pdf (2 pages)
-  12.1a MHLMCAC Annual Report 2022-23MDv1_cp.pdf (10 pages)

12.2. Committee Terms of Reference and Work Plan – 2023/24 (5 Minutes)

Nicola Foreman

-  12.2 Cover report for ToR and Work Plan 23.24.pdf (3 pages)
-  12.2a MHCLC ToRs January 2023.pdf (9 pages)
-  12.2b MHL& MCA Work plan 2023.24.pdf (1 pages)

12.3. Policies

No Policies for approval.

11:50 - 11:50 13. Any Other Business 0 min

Sara Moseley

11:50 - 11:50 14. Review of the Meeting 0 min

Sara Moseley

11:50 - 11:50 15. To note the date, time and venue of the next meeting: 0 min

25 April 2023 at 10am via MS Teams

Saunders, Nathan
27/01/2023 11:20:16

**Minutes of the Mental Health Legislation and Mental Capacity Act Committee
Held on 25 October 2022 – 10am
Via MS Teams**

Chair:		
Ceri Phillips	CP	UHB Vice Chair and Committee Chair
Present		
Akmal Hanuk	AH	Independent Member - Community
Sara Moseley	SM	Independent Member – Third Sector
In Attendance:		
Paul Bostock	PB	Chief Operating Officer
Jeff Champney-Smith	JCS	Chair, Powers of Discharge sub-Committee
Daniel Crossland	DC	Deputy Director of Operations - Mental Health
Nicola Foreman	NF	Director of Corporate Governance
Neil Jones	NJ	Clinical Board Director – Mental Health
Robert Kidd	RK	Interim Clinical Director Psychology & Psychological Therapies
Jason Roberts	JR	Executive Nurse Director
David Seward	DS	Mental Health Act Manager
Rose Whittle	RW	Directorate Manager – Child Health
Observers		
Timothy Davies	TD	Head of Corporate Business
Marcia Donovan	MD	Head of Corporate Governance
Secretariat		
Nathan Saunders	NS	Senior Corporate Governance Officer
Apologies:		
Catherine Wood	CW	Director of Operations – Children & Women

Item No	Agenda Item	Action
MHLMCA 22/10/001	Welcome & Introductions The Committee Chair (CC) welcomed everybody to the meeting.	
MHLMCA 22/10/002	Apologies for Absence Apologies for Absence were noted	
MHLMCA 22/10/003	Declarations of Interest No Declarations of Interest were noted.	
MHLMCA 22/10/004	Minutes of the Meeting held on 26 July 2022 The Minutes of the Meeting held on 26 July 2022 were received. The Committee Resolved that: a) The minutes of the meeting held on 26 July 2022 were agreed as a true and accurate record.	
MHLMCA 22/10/005	Action Log from the meeting held on 26 July 2022 The Action Log was received and discussed. The Committee Resolved that:	

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	a) The Action Log was noted.	
MHLMCA 22/10/006	Chair's Action taken since last meeting The Committee Resolved that: a) No Chair's Actions were taken since the last meeting.	
MHLMCA 22/10/007	Any Other Urgent Business Agreed with the Chair The Committee Resolved that: a) No other urgent business was agreed with the Chair.	
MHLMCA 22/10/008	Mental Capacity Act Monitoring Report and DoLS monitoring The Mental Capacity Act Monitoring Report and DoLS monitoring was received. The Executive Director of Nursing (END) advised the Committee that he would take the paper as read. It was noted that the paper outlined the Independent Mental Capacity Advocacy (IMCA) referrals from April 2021 until June 2022 and July 2022 until September 2022. It was noted that Mental Capacity Training had continued to raise anxieties with poor overall compliance and that it had been discussed by the Strategy & Delivery Committee in relation to the issues with overall mandatory training and compliance. The END advised the Committee that the Health Board had utilised Welsh Government (WG) Liberty Protection Safeguards (LPS) funding to provide training from an external provider (Edge Training) which would educate staff on assessing mental capacity and best interest decision making. It was noted that seven sessions had been provided to date and that it had been well received by staff and that due to the training's apparent success, provision had been made to add 4 additional sessions in the New Year. The END advised the Committee that five Health Board staff would begin the Level 7 MSc module provided by Swansea University, entitled 'Assessing Decision Making Capacity', with representation from Mental Health, PCIC, Medicine and Children and Women's Clinical Boards in January 2023. It was noted that following an internal review within the Medicine Clinical Board in late August 2022, it had been identified that there was considerable variability in the practices surrounding DoLS applications and ongoing management. The END added that a large piece of work had been undertaken to address the concerns and that the Clinical Board had worked hard to raise staff awareness and ensure compliance with the Safeguards was going forward. It was noted that due to the raised awareness, there had been a significant increase in the number of DoLS applications, and that in September the	

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<p style="transform: rotate(-45deg); transform-origin: left bottom;">Saunders, Nathan 27/01/2023 11:20:16</p>	<p>Health Board had received 166 DoLS applications which had increased from 76 in previous months.</p> <p>The Independent Member – Third Sector (IMTS) noted that the training compliance had been identified as 27% for Medical and Dental staff. She asked if the END knew where the biggest gaps were in the staff training and if that had any obvious impact or consequences.</p> <p>The IMTS asked for further clarity on the number of breaches identified within the paper around DoLS applications.</p> <p>The END responded that breaches had occurred due to the significant increase in applications as a result of the work in the Medicine Clinical Board and noted that measures were in place to double the assessment capacity to reduce the current backlog.</p> <p>He added that one of the reasons for breaching was due to the very limited number of people who were unable to undertake the approvals which included:</p> <ul style="list-style-type: none"> • the END • The Interim Deputy Executive Nurse Director • The Director of Nursing for PCIC <p>It was noted that the above individuals could not approve DoLS applications for their own respective Clinical Board and that had compounded the issue.</p> <p>The IMTS asked if the delay in legislative change was a cause for the issues being seen within DoLS.</p> <p>The END responded that it was and noted that if Liberty Protection Safeguards (LPS) did not progress in 2023 as planned, the Health Board would have to train more approvers to carry it through the period.</p> <p>The Independent Member – Local Community (IMLC) asked how training was delivered and what mechanisms were in place for the training.</p> <p>The END responded that an LPS lead had been appointed and that they were delivering the MCA training as well as an MCA and Consent Lead who had also been recently appointed to offset the training.</p> <p>He added that face to face training was being held with various Clinical areas and that the Level 2 training formed part of the mandatory training on the Electronic Staff Record (ESR).</p> <p>The IMLC asked if any percentages could be shared to assure the Committee with regards to training compliance.</p> <p>The END responded that he would include the data in the next report for the meeting held in January 2023.</p>	<p>JR</p>
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	<p>The CC noted it would be useful to understand why there was an anomaly with Medicine and Dental compliance in comparison to other areas and asked if there were things that could be done specifically to combat the low compliance level.</p> <p>He added that it could be beneficial for the Strategy & Delivery (S&D) Committee to receive the data for discussion in relation to overall training compliance with the Executive Director of People & Culture leading on the discussion.</p> <p>The END advised the Committee that he could provide assurance from the Clinical Board reviews that had been undertaken with the Executives and noted that there had been an increased focus on staff appraisals and that as a result of increased appraisals there would be an automatic increase in training because it formed part of the appraisal process.</p> <p>The Director of Corporate Governance advised the Committee that she would ensure the S&D Committee would receive the information with relevant data included.</p> <p>The Committee resolved that:</p> <p>a) The contents of the report and the current compliance and actions with Mental Capacity Act and Deprivation of Liberty indicators were noted.</p>	<p>JR</p> <p>NF/RG</p>
<p>MHLMCA 22/10/009</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 he would take the report as read.</p> <p>He added that Members would be aware that LPS was supposed to be implemented and in practice by now, but that there were significant challenges across the whole of Wales which had hindered progress at a national level.</p> <p>It was noted that there were 2 areas that the Committee should focus on which included:</p> <ul style="list-style-type: none"> • An LPS facilitator was now in place and they were currently supporting the Mental Health Act (MCA) training. • The Health Board continued to work with Welsh Government (WG) and Local Authority (LA) colleagues on what LPS would look like. <p>The END advised the Committee that it would be a case of waiting and continuing to move along as best as the Health Board could with the implementation of LPS until advice could be given by WG.</p> <p>He added that the focus on MCA training would be important because once implemented, any health professional would be required to undertake the MCA.</p>	

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	<p>The IMTS noted that the digital solution for recording and monitoring purposes was in the scoping phase of the LPS implementation. She asked if the Health Board had the support and resource in place for that, given that other Committees of the Board had identified issues with a lack of digital capacity.</p> <p>The END responded that LPS had predominantly been funded by WG monies and that the Health Board had received £226k to implement LPS across the Organisation. That sum had been used, but due to the delay in LPS being implemented WG had asked for any unspent monies to be returned.</p> <p>It was noted that the Health Board would be returning the underspend of £16,229.</p> <p>The END advised the Committee that it was too difficult to plan until outcomes from the consultation for LPS were received.</p> <p>The Interim Clinical Director Psychology & Psychological Therapies advised the Committee that the first meeting of the LPS Implementation Board had taken place where a discussion had been held regarding how the Health Board would proceed with the paperwork for LPS. It was noted that the development of a bespoke mechanism would require digital solutions.</p> <p>The CC advised the Committee that the paper mentioned the underspend of funding. He queried whether the underspent money could still be used in a more appropriate manner.</p> <p>The END added that when WG provided funding, it was usually attached to specific spend and assured the Committee that the team would look at how it could legitimately be spent.</p> <p>The Committee resolved that:</p> <p>a) The contents of the report and the current progress to implementation of Liberty Protection Safeguards were noted.</p>	
<p>MHLMCA 22/10/010</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 there had been 1 fundamentally defective Section 2 application.</p> <p>He added that the Patient had been assessed in London by an Approved Mental Health Professional (AMPH) and the application was completed for detention under Section 2 to Hafan Y Coed with the Patient being transferred straight there.</p> <p>It was noted that the English regulations differed to Welsh regulations, and that the application had been signed electronically whereas that electronic</p>	

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<p style="transform: rotate(-45deg); transform-origin: left bottom;">Saunders, Nathan 27/01/2023 11:20:16</p>	<p>signature process was not available in Wales and so the team had tried, unsuccessfully, to get hold of the AMPH.</p> <p>The MHAM advised the Committee that during the quarter there had been 1 fundamentally defective Section 5(2) report.</p> <p>It was noted that the Patient had been on Ward C7 in the University Hospital of Wales (UHW) where a doctor had completed a report under Section 5(2) which was sent to the generic e-mail account of the Mental Health Act Office. It could not be accepted because the doctor had typed their name in the signature box and again, as mentioned, in Wales a 'wet' signature was still required.</p> <p>The CC asked why Wales still required wet signatures.</p> <p>The MHAM responded that he had spoken to WG colleagues about the advancement of the English regulations but noted that WG did not have the resource to look at the issues around electronic and wet signatures.</p> <p>It was noted that the use of Section 136 had increased for the period and that 69% of individuals assessed were not admitted to hospital, with 48.1% being discharged to community services and 20.9% being discharged with no follow up.</p> <p>The Committee was advised that the number of Patients aged under 18 assessed under Section 136 had decreased from 19 in the previous quarter to 8 in the current quarter.</p> <p>The IMTS asked if there was a reason for the increase in Section 136 referrals.</p> <p>The MHAM responded that there was no specific reason but noted that the Section 136 referrals being received were within the appropriate parameters and were all an appropriate use of Section 136.</p> <p>The Committee was advised that discussions had been held with the Senior Operations Manager at the Tribunal and that it had been confirmed that hearings via TEAMS would be provided as a default for all hearings being listed.</p> <p>He added that it had been briefly discussed as to whether observers were allowed to attend hearings, although he was not aware of any requests being made by staff and, as such, was unable to take that further with the Tribunal without any data.</p> <p>It was noted that the MHA office continued to run MHA awareness sessions, including a monthly MHA training day which was available to all staff within the Health Board.</p> <p>The MHAM advised the Committee that there was a high "Did Not Attend" rate at the training which was being looked into by Senior Nurses in order to increase staff attendance.</p>	
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	<p>The Deputy Director of Operations - Mental Health (DDOMH) concluded that when looking at all of the trends and themes within the Mental Health service it was clear that challenges were ongoing. He assured the Committee that all of the data was being considered on a regular basis and would be reported, as appropriate, to the Committee.</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>MHLMCA 22/10/011</p>	<p>HIW MHA Inspection Reports (verbal)</p> <p>The Health Inspectorate Wales (HIW) MHA Inspection Reports verbal update was received.</p> <p>The DDOMH advised the Committee that the Mental Health team had received a “red file” back from HIW and that the Mental Health Clinical Board (MHCB) had provided a response to that.</p> <p>He added that they were awaiting the full report to be published and noted that he would bring that back to the Committee once received.</p> <p>The DCG advised the Committee that HIW recommendations were now being tracked through the Audit Committee and all recommendations were completed through that Committee.</p> <p>The Committee Resolved that:</p> <p>a) The HIW MHA Inspection Reports were received.</p>	<p>DC</p>
<p>MHLMCA 22/10/012</p>	<p>Section 49 Activity Update</p> <p>The Section 49 Activity Update was received.</p> <p>The DDOMH advised the Committee that the Health Board was receiving increasing numbers of Court of Protection Section 49 instructions for Capacity assessments, for which, to date, it had no system in place to either administrate and commission, or undertake internally.</p> <p>It was noted that the Health Board had dealt with requests on an ad hoc basis, with a small number of psychiatrists undertaking the work and that in the case of capacity assessments deemed to require a Learning Disabilities psychiatrist, the Health Board had usually paid for private assessments.</p> <p>The DDOMH advised the Committee that quite often, the person in question was usually not known to the MHCB and that the associated assessment work was considerable and required:</p>	

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	<ul style="list-style-type: none"> • Reading of a court bundle and any separate accompanying assessments, • A review of diagnoses, • Working to agree the information needed to be retained and weighed up by the subject. <p>The Committee was advised that a number of recommendations had been made which included:</p> <p>The Health Board should pursue both internal and external capability for assessments through private providers as for expert reports and by training and supporting its own Clinicians, so they and the Health Board could be assured that reports were of the required quality.</p> <ul style="list-style-type: none"> • Periodic training- It was noted that the MHCB had already provided one round of training with the support network • Time / money – It was noted that the consultant body was approached around an offer of time to do the relevant work or direct payment of extra sessions, with further allowance for any court attendance. • Develop and maintain a list of interested and willing individuals with the appropriate expertise. It was noted that the Health Board may want to consider writing into future job descriptions criteria to reflect the necessity for report preparation, if requests became more frequent • Improved access to legal advice. <p>The Directorate Manager – Child Health (DMCH) advised the Committee that it was slightly different from CAMHs staff but noted that a lot of the staff had to attend court and so access to legal advice would be essential.</p> <p>The DCG advised the MHCB team to get in touch with the Health Board's Head of Risk and Regulation as he led on sourcing legal advice.</p> <p>The CC advised the Committee that they should be kept abreast of court demand that had been put onto Health Board.</p> <p>The DDOMH responded that he would look at comparative data against other Health Boards and that he would coordinate with CAMHs as well and present the data, where appropriate.</p> <p>The Committee Resolved that:</p> <p>a) The Section 49 recommendations were noted.</p>	
MHLMCA 22/10/013	<p>Mental Health Measure Monitoring Reporting including Care and Treatment Plans Update Report.</p> <p>The Mental Health Measure Monitoring Reporting including Care and Treatment Plans Update Report was received.</p>	

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<p style="transform: rotate(-45deg); transform-origin: left bottom;">Saunders, Nathan 27/01/2023 11:20:16</p>	<p>The DDOMH advised the Committee that the report was separated into 4 parts and he would take the report as read.</p> <p>Part 1a – target: 28-day referral to assessment compliance target of 80% (Adult)</p> <p>It was noted that referrals into the service were slightly lower than forecast, with 2866 referrals during quarter 2.</p> <p>It was noted that the service was at full clinical recruitment and sickness absence remained low which had allowed for ongoing high levels of assessment activity. That had meant that that service had maintained Part 1a compliance.</p> <p>Part 1a – target: 28-day referral to assessment compliance target of 80% (Children & Young People)</p> <p>The DMCH advised the Committee that there had been a significant dip and underperformance during the quarter but noted that the CAMHs service was now back to performing at 95% compliance against part 1a.</p> <p>Part 1b – 28 day assessment to intervention compliance target of 80% (Adult)</p> <p>The DDOMH advised the Committee that against Part 1b, the MHCB were 100% compliant and a really good performance had been seen.</p> <p>Part 1b – 28-day assessment to intervention compliance target of 80% (Children & Young People)</p> <p>The DMCH advised the Committee that CAMHs had struggled with Part 1b and noted that compliance against the target had not been achieved since December 2021 as a result of focus on the external waiting list for assessment and reduced capacity over school holiday periods.</p> <p>She added that there were ongoing plans to get back into compliance and noted that a brief intervention pathway would be created to ensure that young people were seen within 28 days of the commencement of their treatment, following assessment.</p> <p>The CC noted that it was really pleasing to see such high compliance in the various areas discussed and thanked the teams for their hard work.</p> <p>Part 2 – Care and Treatment Planning (over 18)</p> <p>The DDOMH advised the Committee that discussions had been held with the Delivery Unit (DU) around how the report was designed and reported.</p> <p>He added that the Committee had received a more accurate report locally which referred to active reports for each individual Patient who was open in the system.</p>	
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	<p>It was noted that to manage, the Part 1 Scheme (a document each Health Board holds to define what services are included as a Part 1 service) needed to be revisited and adjusted and that a multidisciplinary working group had been formed to develop and present the document for ratification at the Committee.</p> <p>Part 2 – Care and Treatment Planning (Children & Young People)</p> <p>The DMCH advised the Committee that the service continued to underperform against the target and that challenges to achievement had included poor engagement from Patients in the CTP process and a high number of new Patients requiring one.</p> <p>She added that work was being undertaken on assessment and that the Intervention Team would make it much clearer as to who should be on a Part 2.</p> <p>Part 3 - Right to request an assessment by self –referral.</p> <p>The DDOMH advised the Committee that the Part 3 target related to self-referred service users receiving a confirmation letter regarding the outcome of their assessment within 10 days.</p> <p>He added that three breaches were reported at 11 days and noted that teams were receiving an automated report indicating eligible Patients for Part 3 sent on a weekly basis and that teams who had breached had been notified for improvement.</p> <p>Part 4 – Advocacy – standard to have access to an IMHA within 5 working days</p> <p>The DDOMH advised the Committee that the MHCB were 100% compliant on Part 4.</p> <p>The Committee Resolved that:</p> <p>a) The contents of the report were noted.</p>	
<p>MHLMCA 22/10/014</p>	<p>Draft Mental Health Bill</p> <p>The Draft Mental Health Bill was received.</p> <p>The MHAM advised the Committee that the paper received highlighted key changes in the draft legislation and that in early 2023, the MHCB would have more knowledge of where it stood in terms of the draft Bill and the changes it covered.</p> <p>He added that one area to highlight was around:</p> <ul style="list-style-type: none"> • Grounds for detention and community treatment orders 	

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	<p>It was noted that the criteria currently stated that the Patient was suffering from a mental disorder of a nature or degree which warranted the detention in hospital for assessment and ought to be so detained;</p> <ul style="list-style-type: none"> - In the interests of the Patient's own health - In the interests of the Patient's own safety - With a view to the protection of other persons. <p>It was noted that two amendments would be made to include:</p> <ul style="list-style-type: none"> • The criteria for detention under Section 2, 3 and 5 and criteria for renewal under Section 20. • Two new tests that must be met to fulfil the criteria for detention: <ul style="list-style-type: none"> a. Firstly, that 'serious harm may be caused to the health or safety of the Patient or of another person'; and b. secondly, that the decision maker must consider 'the nature, degree and likelihood of the harm, and how soon it would occur'. <p>The MHAM concluded that he had attended a Mental Health conference and that the Head of the Reform Group had stated that the new reform would be brought into the system in phases.</p> <p>The Committee Resolved that:</p> <ul style="list-style-type: none"> a) The key legislative changes proposed by the Draft Mental Health Bill, as set out in the report were noted. 	
<p>MHLMCA 22/10/015</p>	<p>Corporate Risk Register</p> <p>The Corporate Risk Register (CRR) was received.</p> <p>The DCG advised the Committee that there was one risk on the CRR for the Mental Health Clinical Board.</p> <p>She added that the Mental Health Team had hoped that the risk would have been de-escalated but noted that the reasons the risk remained at a score of 20 was outlined within the report received.</p> <p>It was noted that as part of their performance reviews, Clinical Boards were being asked what their top 5 risks were which raised the profile risk management across the Health Board.</p> <p>The DCG concluded that the risk would get reported to the Board in November.</p> <p>The Committee Resolved that:</p> <ul style="list-style-type: none"> a) The Corporate Risk Register risk entries linked to the Mental Health Legislation and Mental Capacity Act Committee and the Risk Management development work which was now progressing with Clinical Board were noted. 	

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MHLMCA 22/10/016	<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 Chair of the Powers of Discharge sub-Committee (CPDSC) advised the Committee that in light of the Tribunal it was decided to return to offering Patients the choice of a face to face hearing of a hybrid or a virtual hearing and that one had taken place so far.</p> <p>The MHAM added that another request to do a face to face had been received and that as of beginning of November 2022 the team would be offering those to all Patients.</p> <p>The CPDSC noted that it appeared that Care and Treatment plans had improved and that the Mental Health Act Hospital Managers Power of Discharge Sub Committee were looking forward to seeing the data on it at future meetings.</p> <ul style="list-style-type: none"> • Mental Health Legislation and Governance Group (MHLGG) <p>The Committee Resolved that:</p> <p>a) The Sub-Committee Meeting Minute were noted.</p>	
MHLMCA 22/10/017	<p>Policies</p> <p>The Review of Detention & Community Treatment Order Policy and Procedure were received.</p> <p>The Patient Rights Information to Detained & Community patients' Policy and Procedure were received.</p> <p>Application for Admission under Part II of the Mental Health Act Policy and Procedure were received.</p> <p>The Committee Resolved that:</p> <p>a) The Review of Detention & Community Treatment Order Mental Health Act 1983 Policy and the Review of Detention & Community Treatment Order, Mental Health Act 1983 Procedure were approved.</p> <p>b) The Patient Rights Information to Detained & Community Patients' under Mental Health Act 1983 Policy and & Patient Rights Information to Detained & Community Patients' under Mental Health Act 1983 Procedure were approved.</p>	

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	<p>c) The application for Admission to Hospital under Part II of the Mental Health Act Policy and the application for Admission to Hospital under Part II of the Mental Health Act Procedure were approved.</p> <p>d) The full publication of the Policies and Procedures referred to under recommendation a) above, in accordance with the Health Board's Publication Scheme was approved.</p>	
MHLMCA 22/10/018	<p>Mental Health Legislation and Governance Group Terms of Reference</p> <p>The Mental Health Legislation and Governance Group Terms of Reference were received.</p> <p>The MHAM advised the Committee that in line with the Health Board's Standing Orders, Terms of Reference for Sub-committees of the Board should be reviewed on an annual basis and noted that the report provided the Committee with the opportunity to approve the Terms of Reference after review by the Mental Health Legislation and Governance Group (MHLGG).</p> <p>The Committee Resolved that:</p> <p>a) The Terms of Reference for the Mental Health Legislation Governance Group were approved.</p>	
MHLMCA 22/10/019	<p>Any Other Business</p> <p>MHLMCA 22/10/011</p> <p>He added that he been approached by a number of groups within the community and wished to feedback that work and any opportunities.</p> <p>The DDOMH responded that he would welcome that conversation.</p> <p>The Committee resolved that:</p> <p>a) All other business was noted.</p>	DDOMH
	<p>To note the date, time and venue of the next meeting:</p> <p>January 31 2023 at 10am</p> <p>Via MS Teams</p>	

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ACTION LOG
MENTAL HEALTH LEGISLATION AND MENTAL CAPACITY ACT COMMITTEE – 25 OCTOBER 2022
(UPDATED FOR 31 JANUARY MEETING)

MINUTE REF	SUBJECT	AGREED ACTION	DATE	LEAD	STATUS/COMMENT
ACTIONS COMPLETED					
Actions in Progress					
MHLMCA 22/10/011	HIW MHA Inspection Reports	Awaiting the full report to be published and will bring that back to the Committee once received.	31.01.23	Daniel Crossland	UPDATE on 31.01.23 (See agenda item 9.3)
MHLMCA 22/10/008	Mental Capacity Act Monitoring Report and DoLS monitoring	Medicine/Dental Clinical Board data gaps re staff mandatory training to be identified and received by the Committee in January 2023 via the Mental Capacity Act Monitoring Report and DoLS monitoring report. Further clarity to be provided on the number of breaches identified within the paper around DoLS applications.	31.01.23	Jason Roberts	UPDATE on 31.01.23 (See agenda item 8.1)
MHLMCA 22/10/013	Mental Health Measure Monitoring Reporting including Care and Treatment Plans Update Report	The Part 1 Scheme document (ie the document which each Health Board holds to define what services are included as a Part 1 Scheme service) to be revisited and presented to MHLMCA Committee in January.	31.01.23	Daniel Crossland	UPDATE on 31.01.23 (See agenda item 10.2)

Saunders-Nathan
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MINUTE REF	SUBJECT	AGREED ACTION	DATE	LEAD	STATUS/COMMENT
ACTIONS REFERRED TO COMMITTEES OF THE BOARD / OTHER					
MHLMCA 22/10/008	Mental Capacity Act Monitoring Report and DoLS monitoring	The S&D Committee to receive the information from the report with relevant data included with regards to low compliance levels for mandatory staff training.	15.11.22	Nicola Foreman/Rach el Gidman	Completed The S&D Committee received a deep dive on staff mandatory training, which included data in relation to each Clinical Board's current situation and trajectories to reach a compliance rate of 85% by March 2023.

Saunders Nathan
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Report Title:	Mental Capacity Act (MCA) and DoLS monitoring			Agenda Item no.	8.1
Meeting:	Mental Health Legislation and Mental Capacity Act Committee	Public	x	Meeting Date:	31.01.2023
		Private			
Status <i>(please tick one only):</i>	Assurance	x	Approval		Information
Lead Executive:	Executive Nurse Director				
Report Author (Title):	Interim Deputy Executive Nurse Director				

Main Report

Background and current situation:

The purpose of this report is to provide a general update on current issues relating to the Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards.

The MCA indicators provide a level of detail on number and type of IMCA referrals. The UHB currently has a shared IMCA contract with Aneurin Bevan and Cwm Taf UHBs, this contract is due for renewal in April 2024. In preparation for the implementation of Liberty Protection Safeguards (LPS), Procurement have begun the process of market engagement for renewal of the IMCA contract with a view to making this an All Wales agreement.

The MCA indicators provide an overview of Mental Capacity Act training compliance across the UHB. As previously, there is additional information contained within this report relating to the further training being provided with the use of Welsh Government funding for the implementation of the LPS.

The DoLS indicators detail the number of DoLS applications received, processed and withdrawn.

Executive Director Opinion and Key Issues to bring to the attention of the Board/Committee:

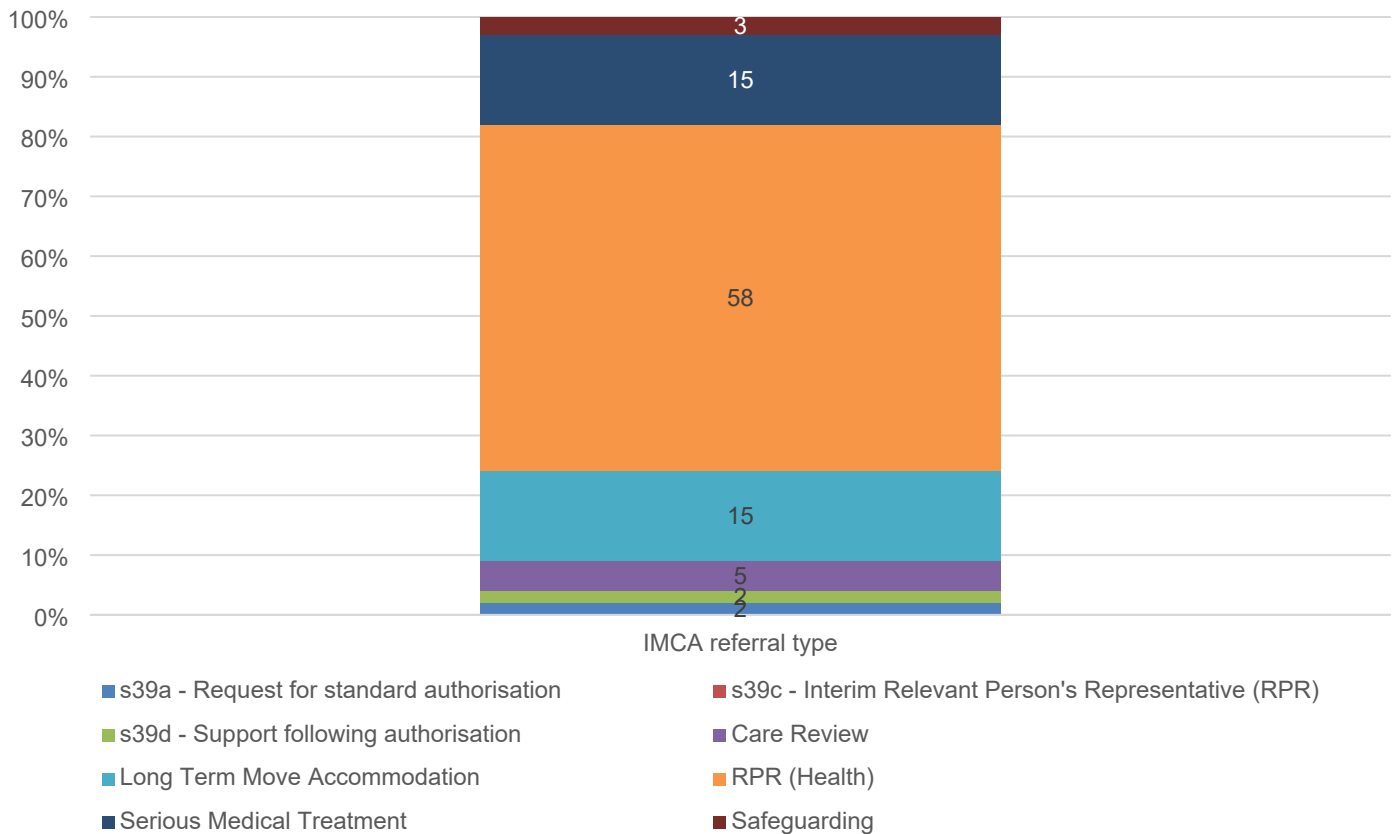
Mental Capacity Act Monitoring actions:

▪ Mental Capacity IMCA Referral type

The MCA Indicators outline the breakdown of IMCA referrals for the period from October – December 2022. Referral rates are noted to have increased from an average of 72.5% over the past two years for the same quarter. There is no clear reason for this however, it is likely due to an increased awareness of the types of decisions that require 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.

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October - December 2022 Total referrals - 100



▪ Mental Capacity Training

The following graph demonstrates overall compliance by staff group, with a comparison of August and December 2022 to outline progress since the last report.

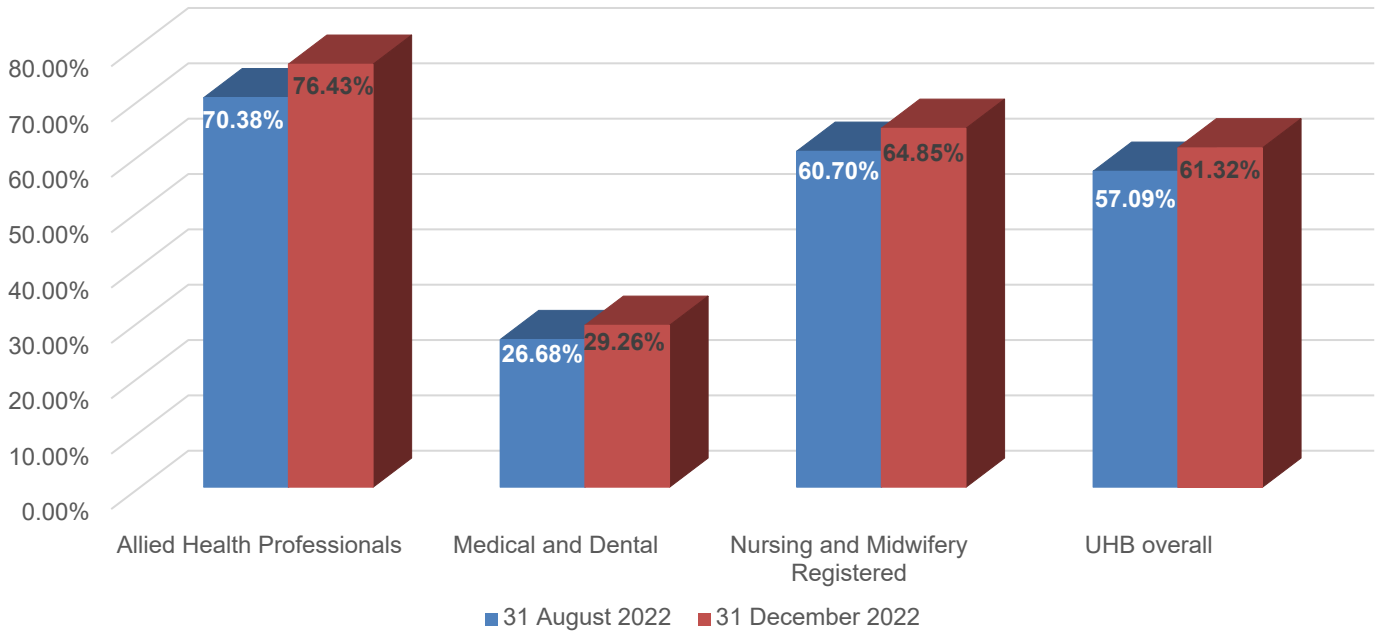
The new MCA and Consent Lead began in post in November 2022 and is in the process of linking in with each Clinical Board to explore how we can make the training more accessible for staff and increase attendance through the provision of bespoke sessions. These will be delivered in addition to the monthly training and Mandatory May and November sessions.

The LPS Project Lead has recently provided an MCA update for the medical workforce within Mental Health Clinical Board and arrangements are in place to support Junior Doctors training.

We are also looking at opportunities to work more closely with Cardiff University and University of South Wales to look at the MCA training provided to student nurses and how we can support this going forward, with a view to support improved knowledge and understanding upon qualification.

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MCA Level 2 training Comparison of compliance from Aug-Dec 22



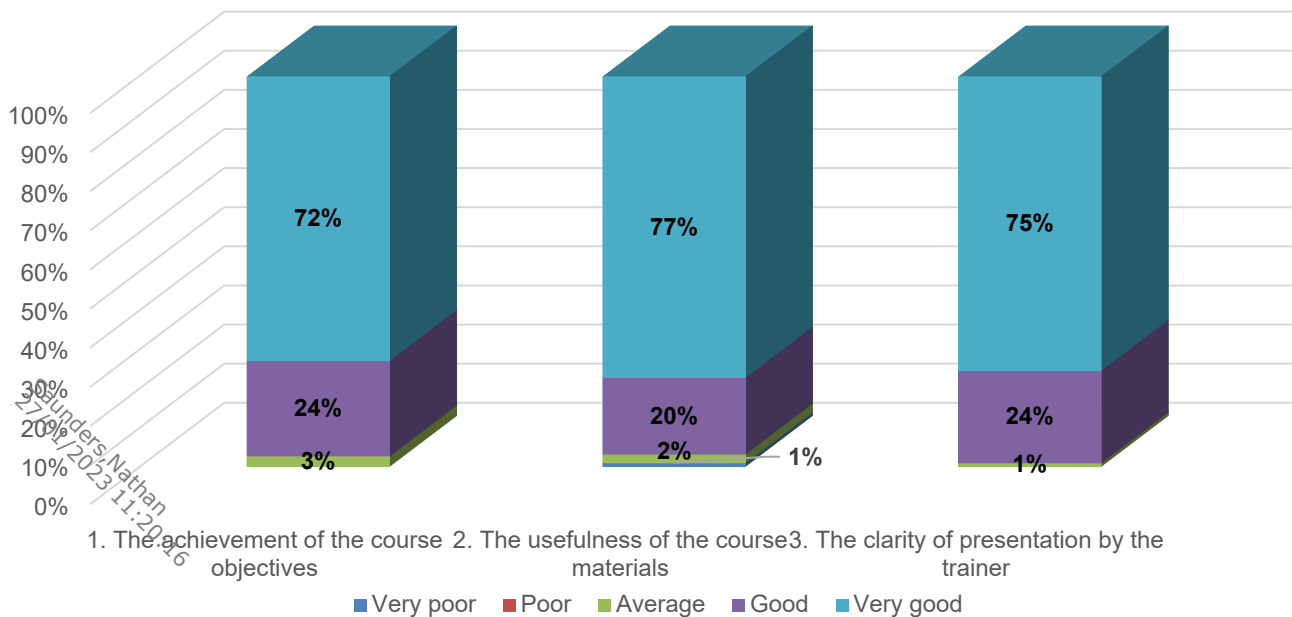
Additional training provision

Mental capacity and best interests training (Edge Training)

This training continues to be well received by staff and as a result four further sessions are being arranged to take place between May and June 2023.

The table below provides data relating to feedback on its perceived quality and usefulness. Attendance rates during the later sessions in December were lower than hoped and appear to have been impacted by some more senior staff being required to cancel at short notice to co-ordinate preparations for the nursing strikes.

Edge training participant survey Total attended to-date = 312



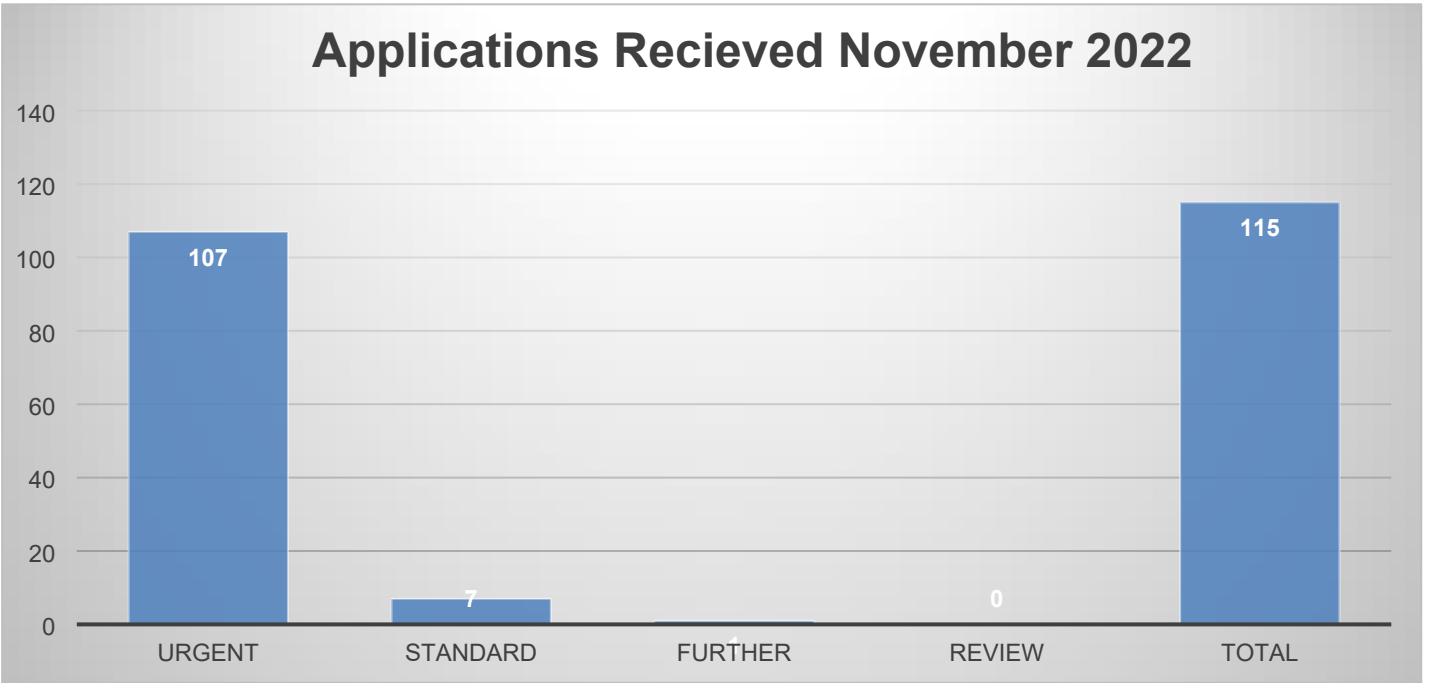
Assessing decision making capacity MSc module

Five UHB staff have recently completed the Level 7 MSc module ‘Assessing Decision Making Capacity’. We are awaiting the return of evaluation forms from staff who have undertaken the course. Five more staff are due to begin this module in February and we are in the process of securing additional places for next year with remaining LPS funding.

▪ **Deprivation of Liberty Safeguards Monitoring actions:**

December 2022 – indicators

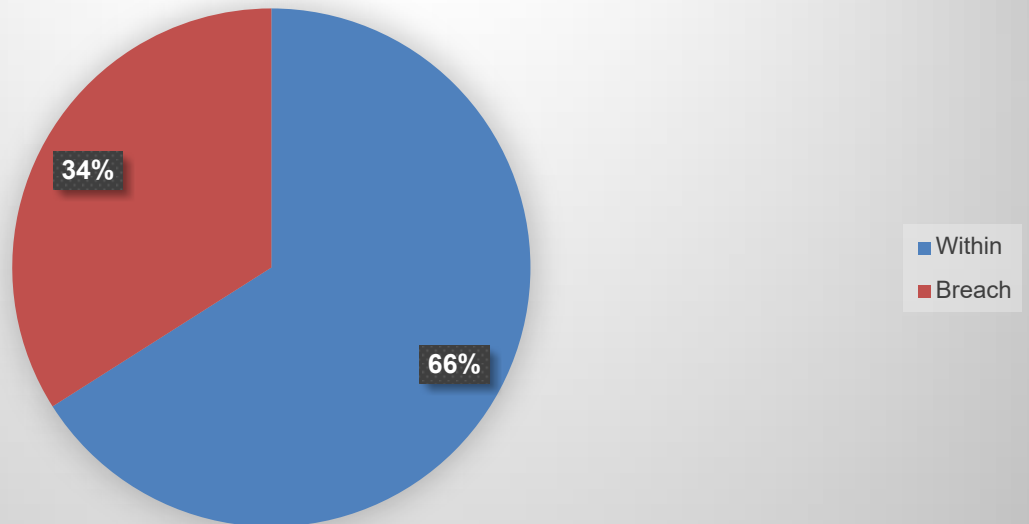
December indicators as below, demonstrate 115 DoLS applications were received; 107 Urgent (7 days), 7 standard (21 days) and 1 further application. This continues to show an upwards trend which could be linked to the work carried out within Medicine Clinical Board and awareness raising initiatives such as the dissemination of posters to ward areas across the UHB.



The below table demonstrates 66% applications were within time and 34% breached. This was expected due to the significant increase in applications as a result of the work in Medicine Clinical Board which has created significant backlog. Agency BIA’s were used to carry out an additional 15 assessments in November using the additional funding made available, figures for agency use in December were not available at the time of writing this report. NB. The average breach % for the year to date is 27%.

Breaches occur due to insufficient resources to complete the assessments within the required timeframe. Assessments are prioritized according to need however, given the significant time required for each assessment (previous research suggests that 1.0 FTE Best Interest Assessor can complete around 2.5 assessments per week on average) it is difficult to avoid breaches altogether; even with the additional capacity of agency BIAs. This is a national problem and one of the main reasons for the development of the new safeguards under the LPS.

Percentage of Breaches Processed and Withdrawn included



Recommendation:

The Mental Health and Capacity Legislation Committee is requested to:

- a) **NOTE** the contents of the report and the current compliance and actions with Mental Capacity Act and Deprivation of Liberty indicators.

Link to Strategic Objectives of Shaping our Future Wellbeing:

Please tick as relevant

1. Reduce health inequalities	✓	6. Have a planned care system where demand and capacity are in balance	
2. Deliver outcomes that matter to people		7. Be a great place to work and learn	
3. All take responsibility for improving our health and wellbeing		8. Work better together with partners to deliver care and support across care sectors, making best use of our people and technology	✓
4. Offer services that deliver the population health our citizens are entitled to expect	✓	9. Reduce harm, waste and variation sustainably making best use of the resources available to us	
5. Have an unplanned (emergency) care system that provides the right care, in the right place, first time		10. Excel at teaching, research, innovation and improvement and provide an environment where innovation thrives	

Five Ways of Working (Sustainable Development Principles) considered

Please tick as relevant

Prevention		Long term		Integration	✓	Collaboration	✓	Involvement	
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Impact Assessment:

Please state yes or no for each category. If yes please provide further details.

Risk: Yes

Risk of Non-compliance to the Mental Capacity Amendment Act 2019

Safety: No

Financial: No

Workforce: Yes	
Risk of inability to recruit to posts	
Legal: Yes	
Risk of Non-compliance to the Mental Capacity Amendment Act 2019	
Reputational: Yes	
Risk of Non-compliance to the Mental Capacity Amendment Act 2019	
Socio Economic: No	
Equality and Health: No	
Decarbonisation: No	
Approval/Scrutiny Route:	
Committee/Group/Exec	Date:

Saunders,Nathan
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Report Title:	Liberty Protection Safeguards progress to implementation			Agenda Item no.	8.2	
Meeting:	Mental Health Legislation and Mental Capacity Act Committee	Public	<input checked="" type="checkbox"/>	Meeting Date:	31.01.23	
		Private	<input type="checkbox"/>			
Status (please tick one only):	Assurance	<input checked="" type="checkbox"/>	Approval	<input type="checkbox"/>	Information	<input type="checkbox"/>
Lead Executive:	Executive Nurse Director					
Report Author (Title):	Interim Deputy Executive Nurse Director					
Main Report						
Background and current situation:						
<p>Background and current situation:</p> <p>We continue 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 is no confirmed date for implementation of the LPS.</p> <p>As a result, the focus for the UHB remains 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.</p> <p>The UHB LPS project plan remains on target and progress is in line with other Welsh Health Boards</p> <p>Executive Director Opinion and Key Issues to bring to the attention of the Board/Committee:</p> <ul style="list-style-type: none"> • A workshop is due to be held by the end of January to bring together key staff to identify what is required for a digital solution for the recording and monitoring of the LPS. Once the correct format for this is identified we may require the recruitment of a data analyst (fixed term post) to progress this work which will be funded by WG LPS funding. • A training strategy is currently in development to outline the process for the roll out of LPS training. WG are in the process of procuring a training package that will be made available for use by Responsible Bodies. It is expected that this will consist of online training for staff requiring awareness level training and for frontline staff undertaking the LPS assessments, this will be delivered by the MCA team within Corporate Safeguarding. • A business case will be submitted in respect of the recruitment of 2.0 permanent MCA Specialist Practitioners, current funding for these posts is WG non-recurrent. These post holders would provide direct support and expert advice and guidance for clinical staff as well as supporting the delivery of training. • Delays in consultation feedback and recruitment mean that it has been difficult to utilise the WG LPS funding as forecast. An underspend of £16,229 has already been reported to WG and there is likely to be some further underspend, though we are looking at all options of how this money could be effectively utilised elsewhere before any additional underspend is confirmed. • Despite best efforts to identify an appropriate use of the IMCA funding available to the UHB from WG there does not appear to be any way for this to be effectively utilised within this financial year so this money will be returned. The current IMCA contract appears to meet current demand and as it has already been extended once there is little room for further expansion within the Procurement Regulations. Assurance has been provided by WG that this will not have any negative impact upon future funding allocation and WG are aware that the IMCA contract is due for renewal in April 2024 when we will need to extensively increase provision of IMCA services. 						
Recommendation:						

The Mental Health and Capacity Legislation Committee is requested to:

- a) **NOTE** the contents of the report and the current progress to implementation of Liberty Protection Safeguards.

Link to Strategic Objectives of Shaping our Future Wellbeing:

Please tick as relevant

1. Reduce health inequalities		6. Have a planned care system where demand and capacity are in balance	✓
2. Deliver outcomes that matter to people		7. Be a great place to work and learn	
3. All take responsibility for improving our health and wellbeing		8. Work better together with partners to deliver care and support across care sectors, making best use of our people and technology	✓
4. Offer services that deliver the population health our citizens are entitled to expect	✓	9. Reduce harm, waste and variation sustainably making best use of the resources available to us	
5. Have an unplanned (emergency) care system that provides the right care, in the right place, first time		10. Excel at teaching, research, innovation and improvement and provide an environment where innovation thrives	

Five Ways of Working (Sustainable Development Principles) considered

Please tick as relevant

Prevention		Long term		Integration	✓	Collaboration	✓	Involvement	
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Impact Assessment:

Please state yes or no for each category. If yes please provide further details.

Risk: Yes

Risk of Non-compliance to the Mental Capacity Amendment Act 2019

Safety: No

Financial: Yes

Risk of Welsh Government Funding of posts is non-recurrent post implementation.

Workforce: Yes

Risk of inability to recruit to posts

Legal: Yes

Risk of Non-compliance to the Mental Capacity Amendment Act 2019

Reputational: Yes

Risk of Non-compliance to the Mental Capacity Amendment Act 2019

Socio Economic: No

Equality and Health: No

Decarbonisation: No

Approval/Scrutiny Route:

Committee/Group/Exec

Date:

Report Title:	Mental Health Act Monitoring Exception Report				Agenda Item no.	9.1	
Meeting:	Mental Health Legislation and Mental Capacity Act Committee	Public	X	Meeting Date:	31 January 2023		
		Private					
Status <i>(please tick one only):</i>	Assurance	X	Approval		Information		
Lead Executive:	Interim Chief Operating Officer						
Report Author (Title):	Mental Health Clinical Board Director of Opertations						

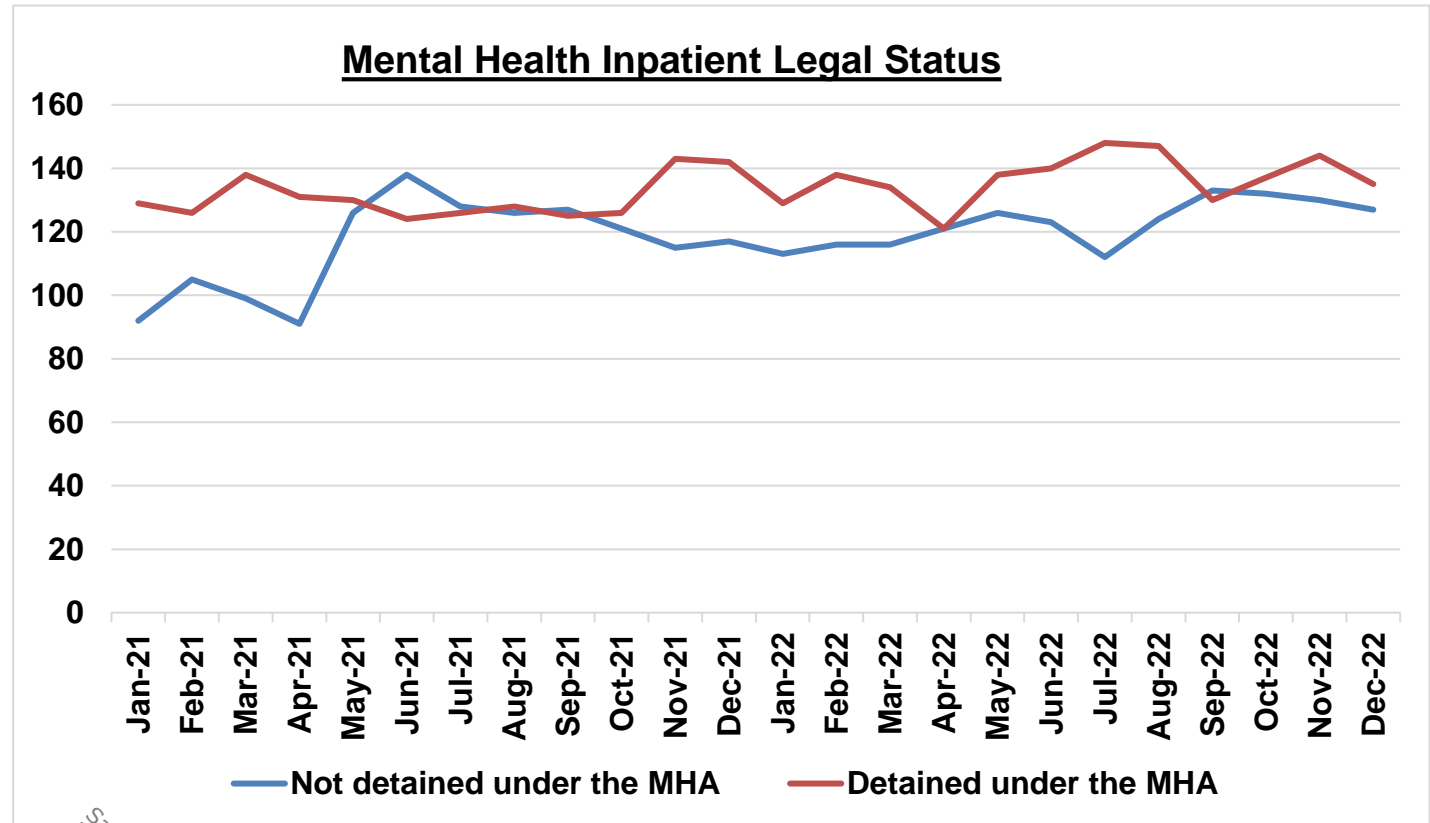
Main Report

Background and current situation:

This report provides the Committee with further information relating to wider issues of the Mental Health Act (MHA). Any exceptions highlighted in the MHA Monitoring report are 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 is only as the MHA allows.

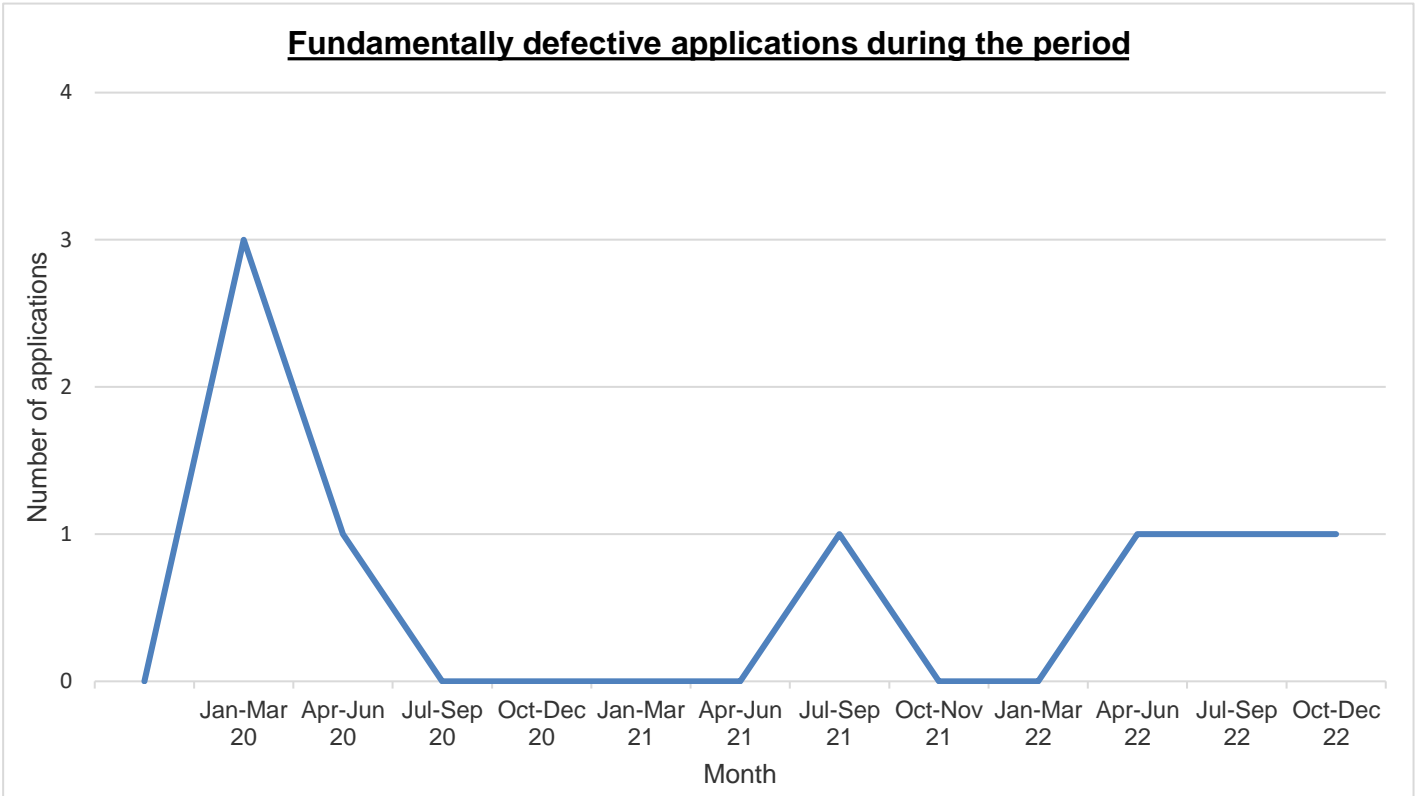
Executive Director Opinion and Key Issues to bring to the attention of the Board/Committee:

Use of the MHA



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Fundamentally defective applications



During the quarter there was 1 fundamentally defective application.

On 08/12/2022 P was detained under section 3 in UHW. The papers were left on the ward as P was meant to be transferring to UHL or HYC that day but didn't end up transferring until 23/12/2022. The papers weren't passed to someone authorised to receive them therefore, they were never formally accepted on behalf of the hospital managers and P was detained without authority for 34 days.

Lapsed Detention

During the quarter 1 section 5(2) lapsed.

On 02/10/2022 P was in UHW after taking an overdose and wanted to leave. The on-call doctor assessed that there would be a risk to P if they were to leave and completed a section 5(2) form. Shortly after P ran away from staff and left the hospital site. The police were called to locate P but unfortunately were unable to do so before the 72 hours expiry therefore, the section 5(2) lapsed before a full assessment could be undertaken.

Invalid use of the MHA

During the quarter there were 2 invalid uses of the MHA.

On 03/11/2022 P was in MEAU in University Hospital Llandough where a doctor completed a report under section 5(2). The report was completed in order to give the patient an IM injection due to his aggression however, this is an invalid use of section 5(2) as the Part 4 (consent to treatment) provisions do not apply to this section, meaning the patient cannot be treated without having capacity and consenting, which this patient didn't.

The doctor and MEAU were advised that it was an invalid use of section 5(2) and the patient wasn't currently held under the MHA and a formal MHA assessment should be arranged if appropriate.

On 30/11/2022 P was recalled from their community treatment order to hospital and assessed by their responsible clinician on the 01/12/2022. P along with their responsible clinician agreed to remain in hospital informally while still being subject to their community treatment order. On the 04/12/2022 P decided they wanted to leave hospital to go back home however, the doctor on the ward felt they would be at risk if they were to leave and completed a report under section 5(2) – this

is an invalid use of section 5(2) as it cannot be used to hold a patient who is subject to a community treatment order.

If the doctor wanted to stop P from leaving hospital, they could have completed a recall form which would have given the clinical team up to 72 hours to assess and decide whether to revoke the community treatment order or not.

Section 136 A&E

There could be instances when treatment under a 136 is related to the mental disorder but the patient is not fit for a mental health act assessment within the 24/36-hour period causing the 136 to lapse, for example,

Patient has taken an overdose which is related to their mental disorder. Needs to go to A&E for physical treatment, therefore the clock starts ticking when they arrive in A&E. Patient receiving physical treatment beyond the 24/36-hour period. 136 has lapsed with no mental health act assessment.

In all instances where the 136 has lapsed due to the patient not being fit for a mental health act assessment, a DATIX will be completed.

Section 136

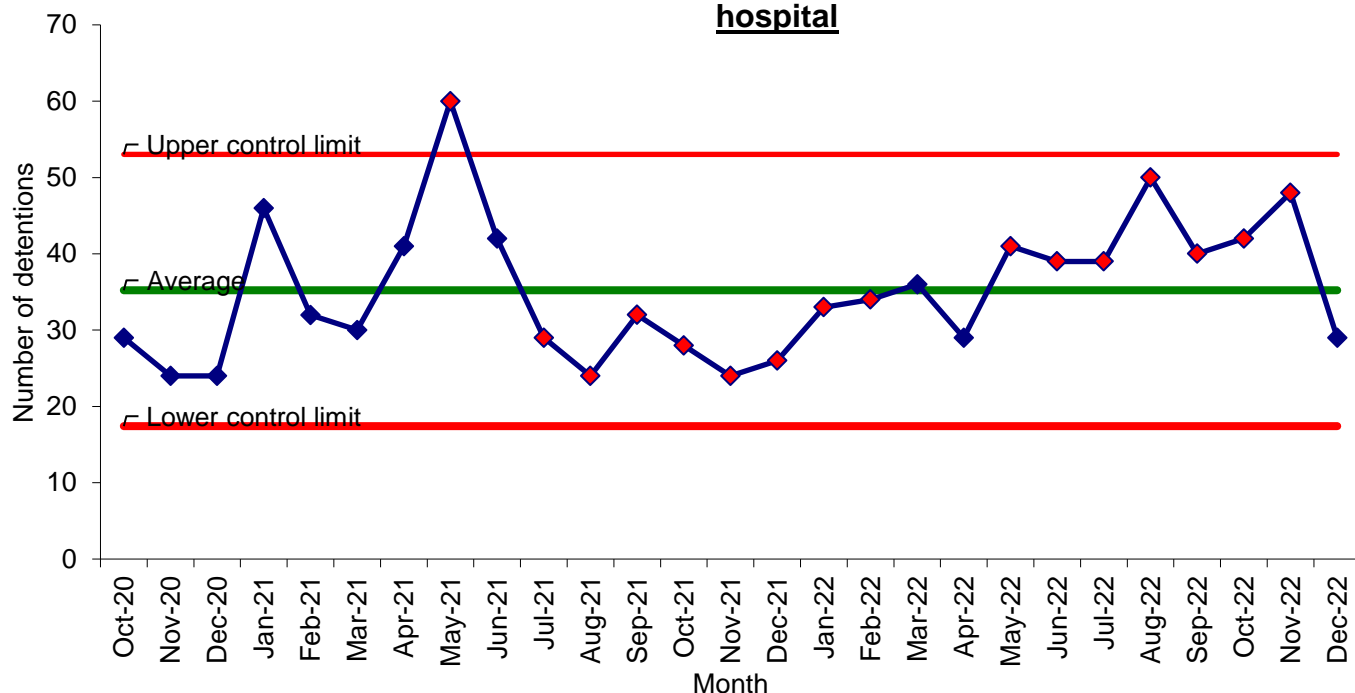
During the period, the use of section 136 has decreased.

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. Overall during the period 26.1% of patients were admitted to hospital following a 136 assessment which is lower than the previous quarter at 30.2%.

Period	% not admitted to hospital
October – December 2022	73.9%
July – September 2022	69.0%
April – June 2022	71.5%
January – March 2022	63.4%
October – December 2021	68.0%
July – September 2021	74.1%
April – June 2021	73.5%
January – March 2021	81.5%
October – December 2020	67.5%

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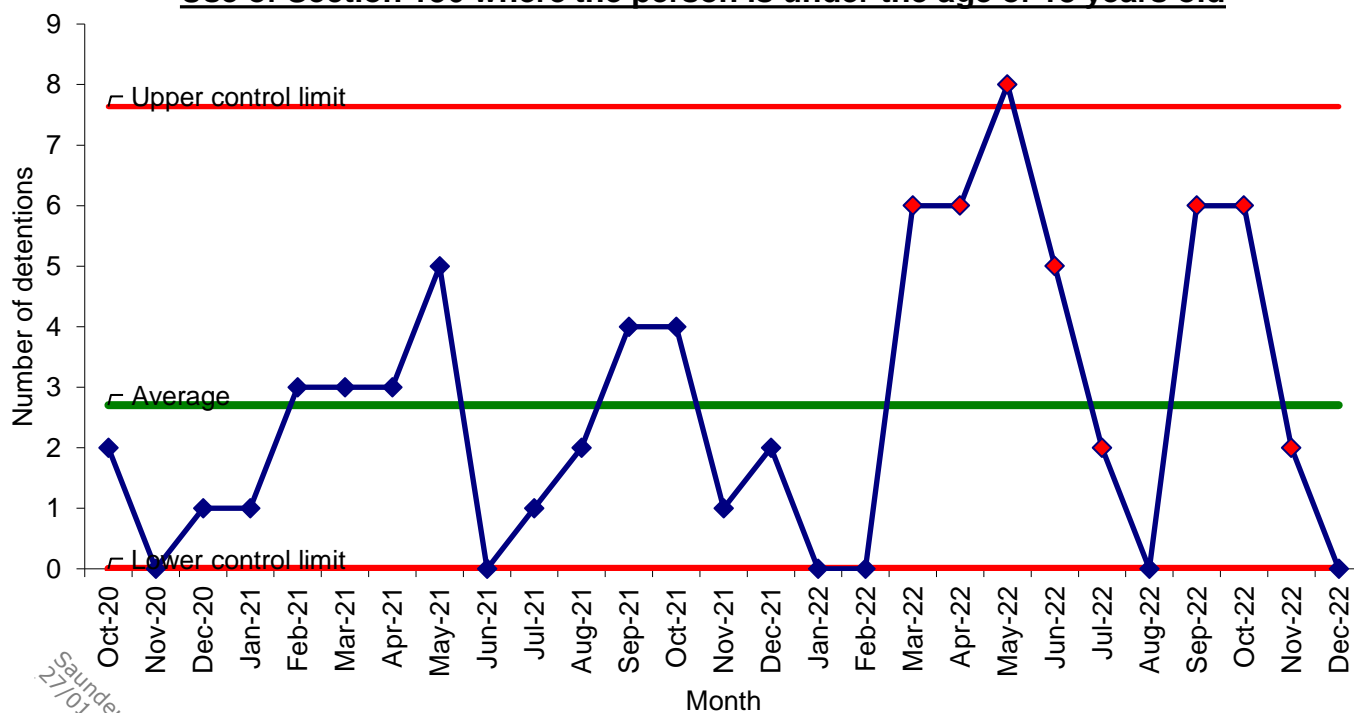
Use of Section 136 Mental Health Act where the assessment took place in hospital



Section 136 - CAMHS

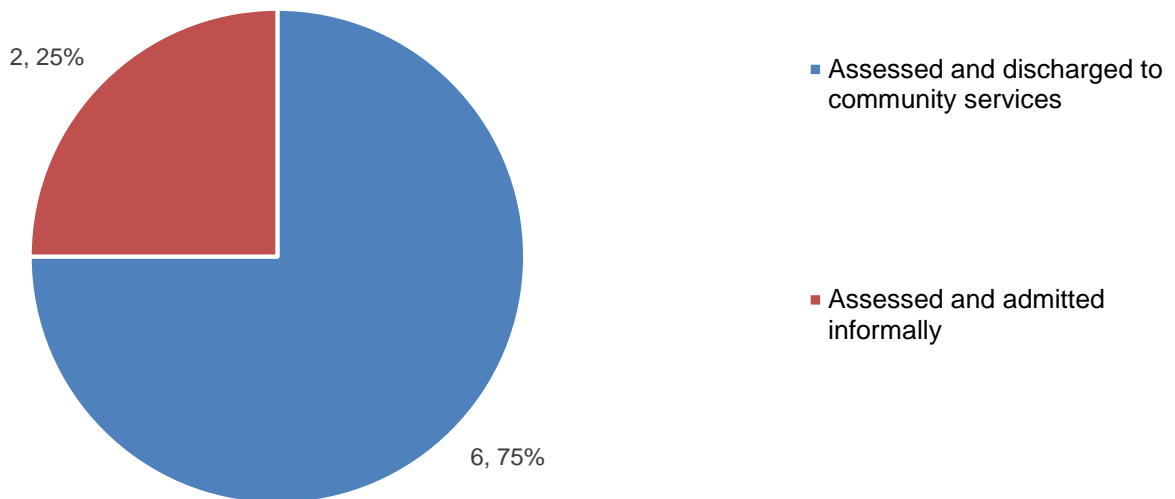
The number of those under 18 assessed under section 136 has remained the same at 8 in the previous quarter and 8 in this quarter. One patient had 3 repeat presentations and another patient had 2.

Use of Section 136 where the person is under the age of 18 years old



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Outcome of CAMHS Section 136 assessments



Mental Health Review Tribunal for Wales (MHRT)

The Senior Operations Manager confirmed that face to face hearings were starting again from 1st March 2023 – the finer details of how this will work and whether the patient will be given a choice is yet to be cascaded to MHA offices but we should have final details shortly.

We recently received a request to observe a hearing from one of our SHO doctors.

Original reason for request: I am the SHO of the patient's responsible clinician. They are directly involved with the patient's care and would like to attend alongside the responsible clinician.

This request was denied on the basis *"Unfortunately, not enough information was provided in this instance. The key requirement is for anyone who is requesting to observe a hearing provides **specific learning objectives**"*

Second reason for request: The specific learning objectives would be as follows-

- I am a core trainee in psychiatry
- I have been one of the ward doctors responsible for the care of the patient since the beginning of my placement in August, working under their responsible clinician (and my clinical supervisor)
- As a psychiatric doctor who may be asked to complete tribunal reports and attend tribunals to provide evidence in as little as 3 years' time, I would like to take any opportunity I can to familiarise myself with the format of a tribunal and when it is permitted for the doctor to share his report and evidence and when this might be cross-examined
- I would also like to gain experience in the general formalities of a tribunal, how one should present themselves, general etiquette etc.

This second request was also denied on the basis *"I have considered the updated information received, but I am not satisfied that the request identifies any specific training objectives in accordance with the MHRT for Wales guidance for observers issued on 22nd August 2019, as opposed to general education, and so the request is refused."*

*The MHRT for Wales guidance is strictly adhered to and his email does not satisfy specific training objectives for **this** hearing as opposed to the general training to observe a hearing."*

I did reply to the Tribunal for further clarity as their guidance states *"Permission is not likely to be granted unless the end objective is for the observer to be directly involved in tribunal hearings in*

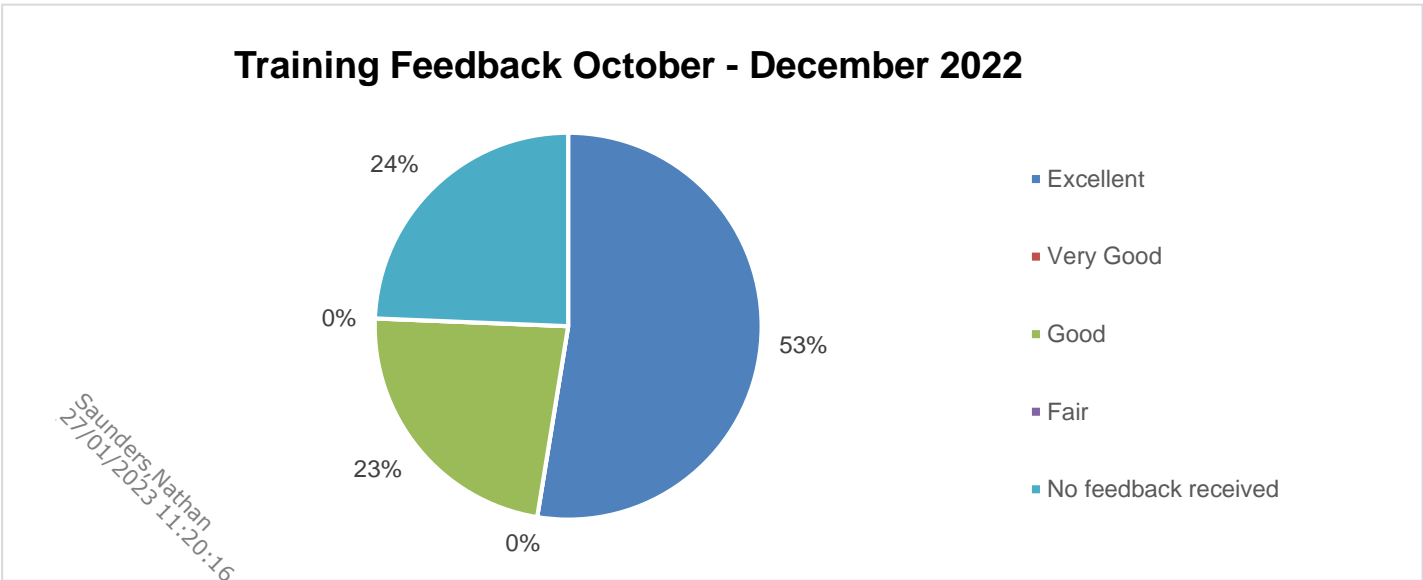
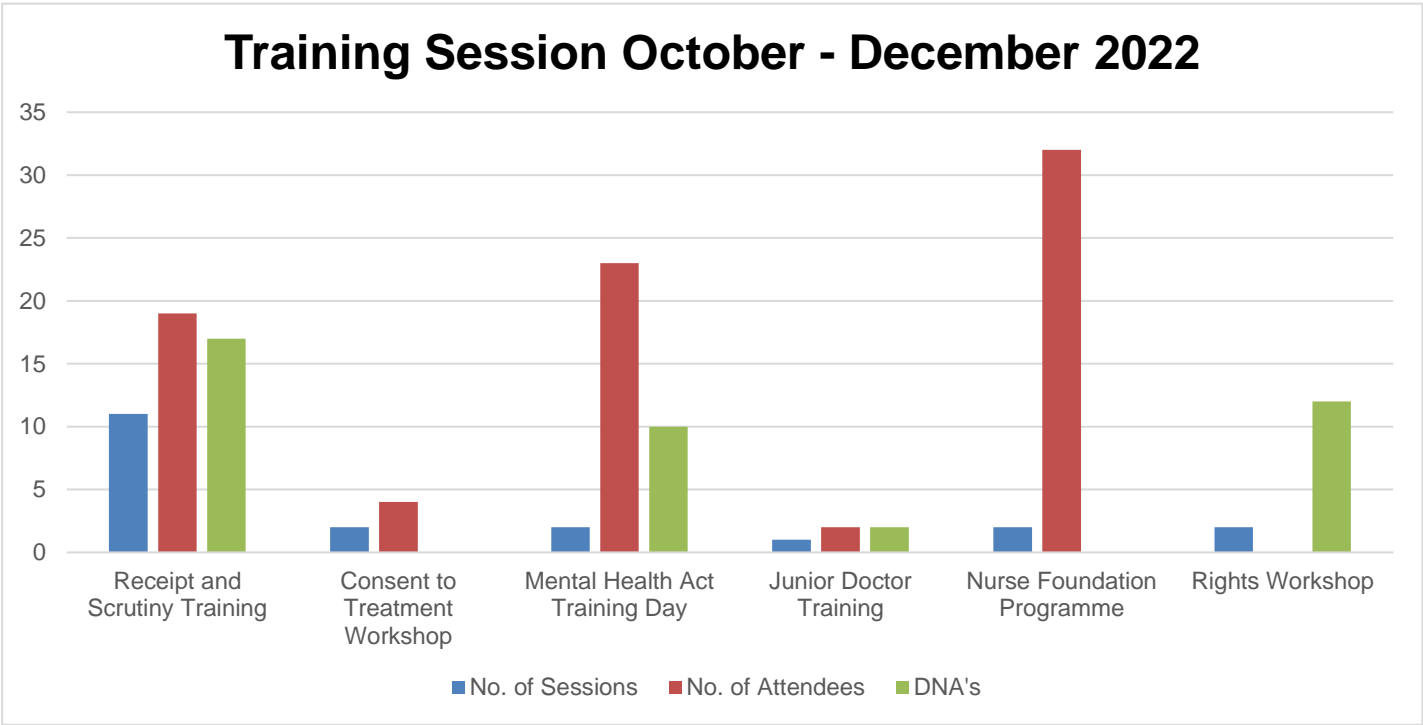
future.” Unfortunately, the only response provided stated that the Tribunal President and Deputies have the final decision and their reasons were given in this instance.

The Senior Operations Manager and I have agreed to ‘catch-up’ every other month to share any issues or trends that we may be seeing on either side which can be discussed further and rectified, however, any urgent matters will be addressed before these meetings.

Development Sessions

The MHA office continues to run awareness sessions including a monthly MHA training day which is available to all staff within the Health Board, a monthly Consent to Treatment workshop and a quarterly Rights workshop. We continue to support the Nurse Foundation Programme and Junior Doctor’s Inductions with MHA training.

The viability of recording MHA training workshops is currently being looked into, these will be accessible from our Intranet page where staff can refer to them at anytime. We will then hold quarterly face to face sessions for anyone who prefers this type of training or if anyone has any ‘real life’ scenarios they wish to run through.



Audits

The MHA office has recently started attending the wards again to conduct audits, as this stopped during Covid. This is to ensure compliance with the MHA and best practices are maintained. We will hopefully be attending CMHT's in the next couple of months. If any issues are found during the audit we will follow up with an e-mail to the ward manager and/or responsible clinician confirming what is needed to rectify the issue and re-audit within 4-6 weeks. Audit data should be provided soon once I have enough to pull together.

The Mental Health Clinical Board continues to take the following approach:

Fundamentally defective applications

Continue to ensure effective communication between the Local Authority and the UHB and promote MHA training across the UHB.

Fundamentally defective reports

Continue to ensure effective communication across the UHB and promote MHA training.

Section 136

Continue to monitor with colleagues in South Wales Police and ensure any incidents related to an assessment not being completed within the 24/36-hour period due to physical health issues are reported accordingly.

Section 136 – CAMHS

Continue to monitor and report accordingly ensuring that at least one of the people involved in the child's formal assessment (i.e. one of the two registered medical practitioners or the approved mental health professional) is an experienced specialist CAMHS practitioner wherever possible.

Mental Health Review Tribunal

Continue to work with the MHRT for Wales to find suitable resolutions to any issues, to ensure that appropriate action is taken to protect the patients' right to a fair hearing and ensure any incidents are reported accordingly.

Development sessions

Continue to develop a robust training rota to ensure that development sessions in relation to all areas of the MHA are available and easily accessible. This will be provided by creating an MHA e-learning module.

Audits

Continue to audit wards and CMHT's, while providing support and guidance on maintaining compliance with the MHA and best practices.

Recommendation:

The Committee is requested to:

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

Link to Strategic Objectives of Shaping our Future Wellbeing:

Please tick as relevant

1. Reduce health inequalities	X	6. Have a planned care system where demand and capacity are in balance	X
2. Deliver outcomes that matter to people	X	7. Be a great place to work and learn	X
3. All take responsibility for improving our health and wellbeing	X	8. Work better together with partners to deliver care and support across care	X

		sectors, making best use of our people and technology	
4. Offer services that deliver the population health our citizens are entitled to expect	X	9. Reduce harm, waste and variation sustainably making best use of the resources available to us	X
5. Have an unplanned (emergency) care system that provides the right care, in the right place, first time	X	10. Excel at teaching, research, innovation and improvement and provide an environment where innovation thrives	X

Five Ways of Working (Sustainable Development Principles) considered

Please tick as relevant

Prevention	X	Long term	X	Integration	X	Collaboration	X	Involvement	X
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Impact Assessment:

Please state yes or no for each category. If yes please provide further details.

Risk: Yes/No

No

Safety: Yes/No

Yes – there is a potential risk that if a 136 lapses with no assessment being completed the patient will be allowed to leave and could harm themselves or others.

Financial: Yes/No

No

Workforce: Yes/No

No

Legal: Yes/No

Yes – communication between the UHB, Local Authority and South Wales Police needs to continue to be monitored to ensure all risks regarding detaining someone without authority are mitigated.

Reputational: Yes/No

No

Socio Economic: Yes/No

No

Equality and Health: Yes/No

No

Decarbonisation: Yes/No

No

Approval/Scrutiny Route:

Committee/Group/Exec Date:

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**Report to the
Mental Health Legislation and Mental Capacity Act Committee
on the use of The Mental Health Act, 1983**

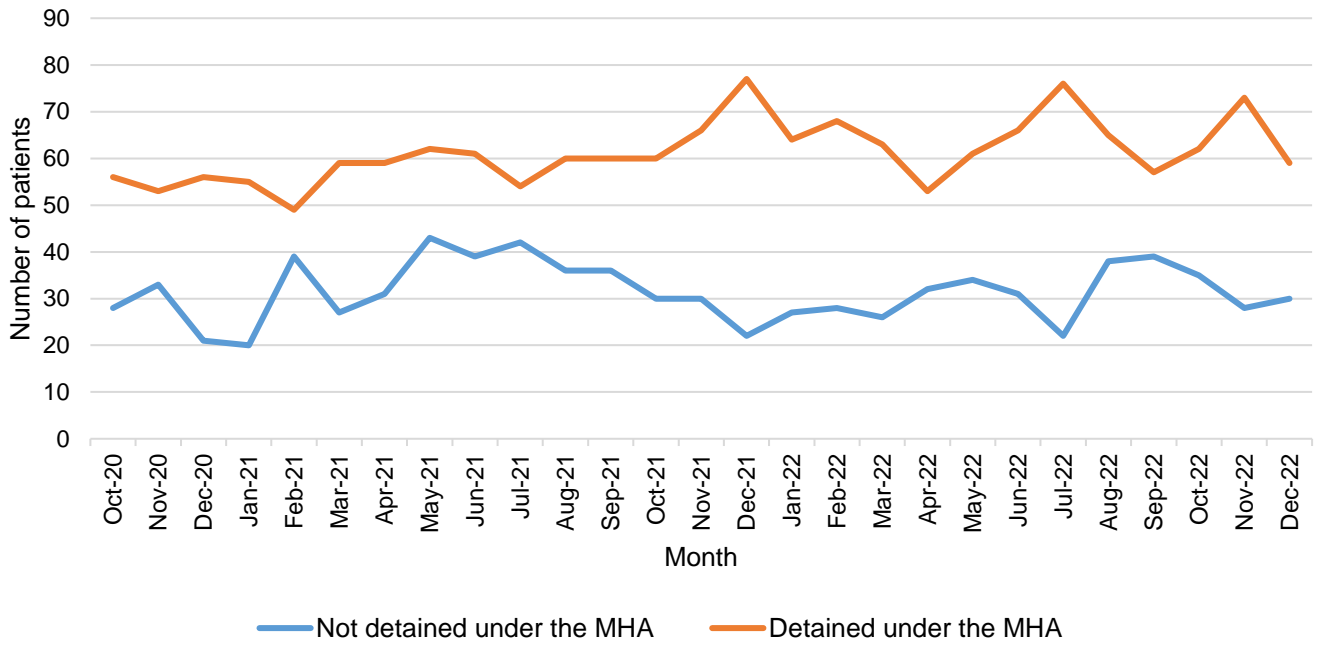
October- December 2022

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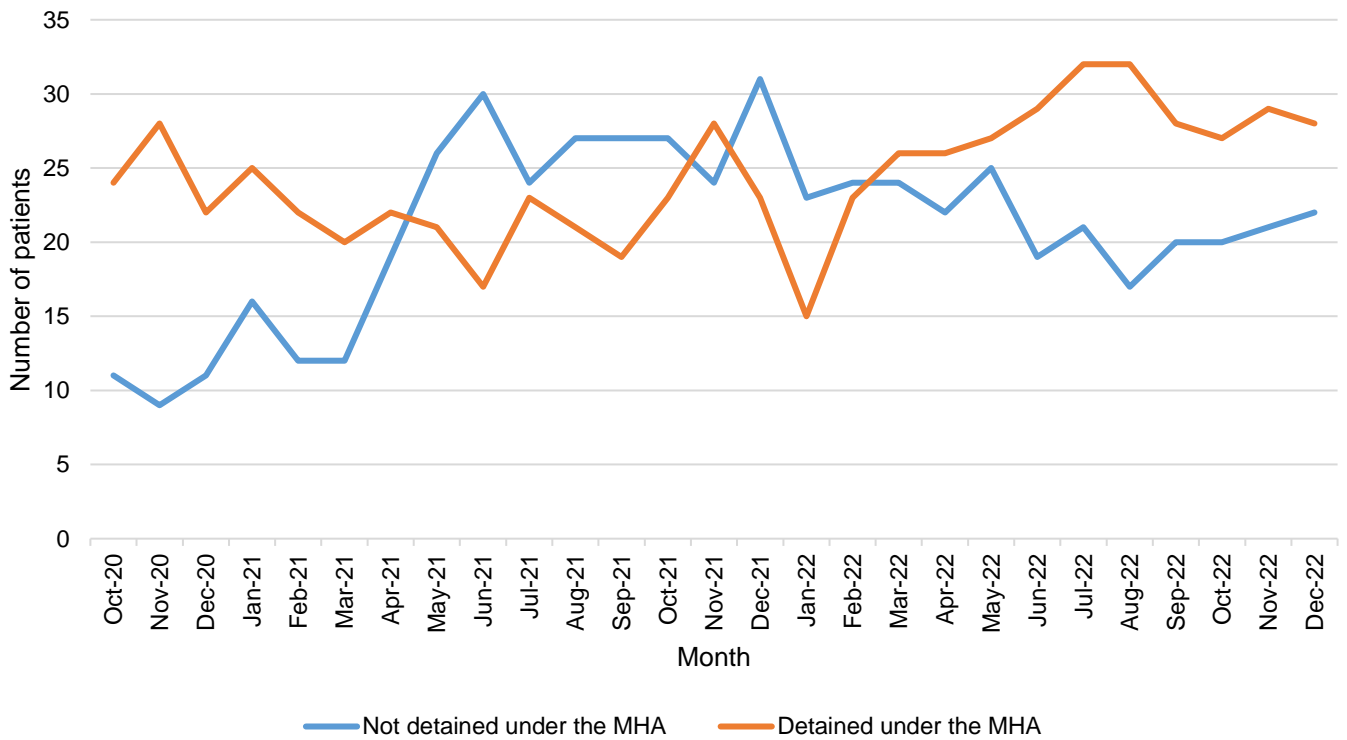
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Adult Acute- detained/ not detained MHA

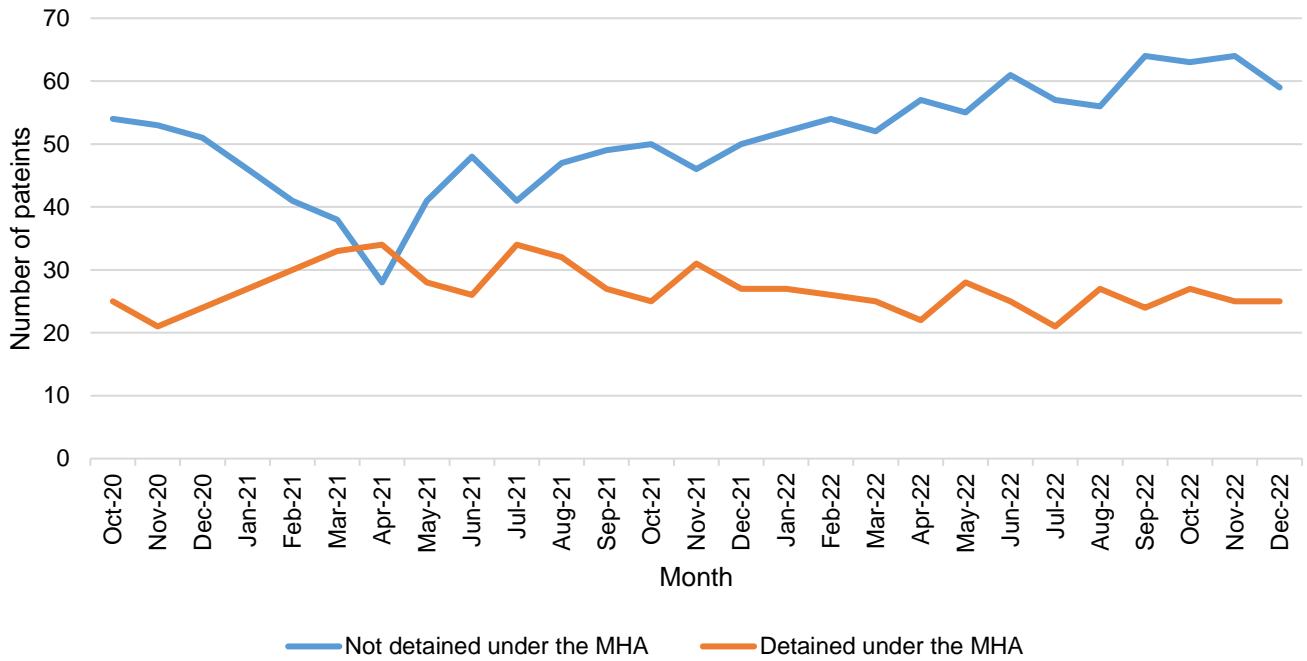


Rehabilitation- detained/ not detained MHA

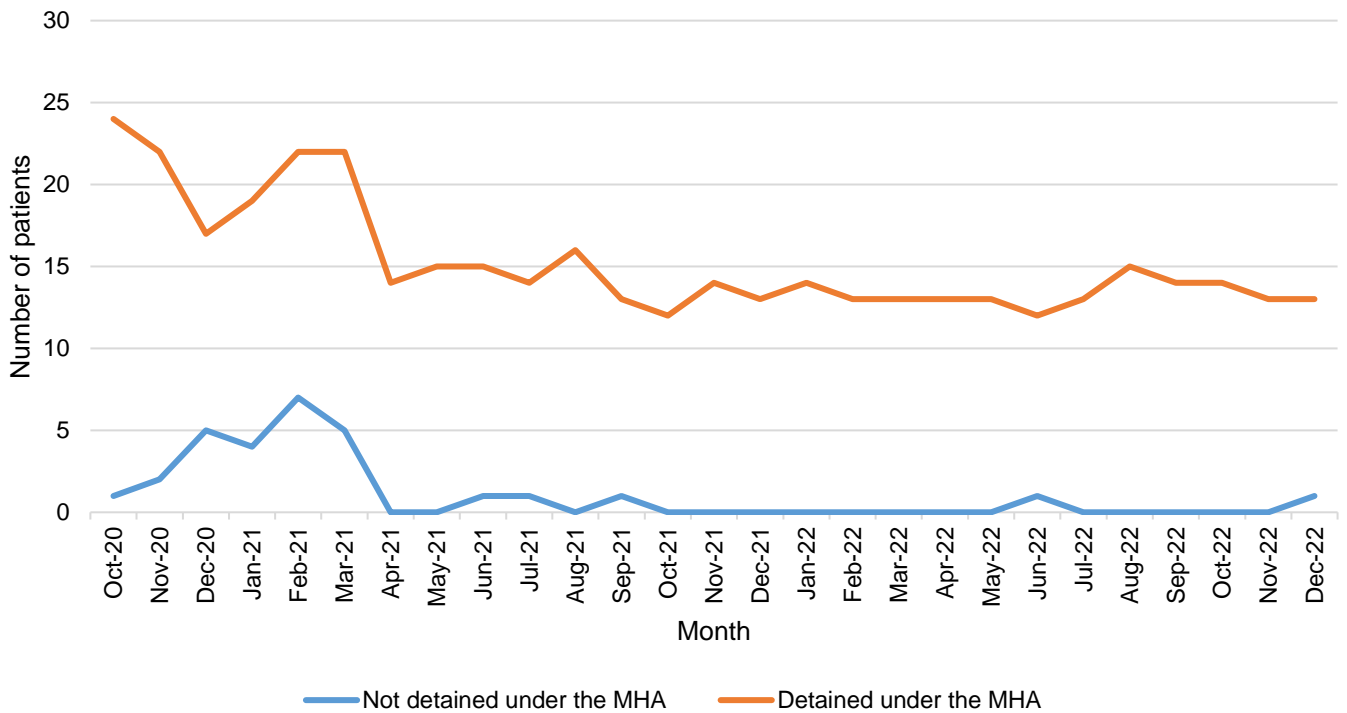


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Mental health services for older people- detained/ not detained MHA

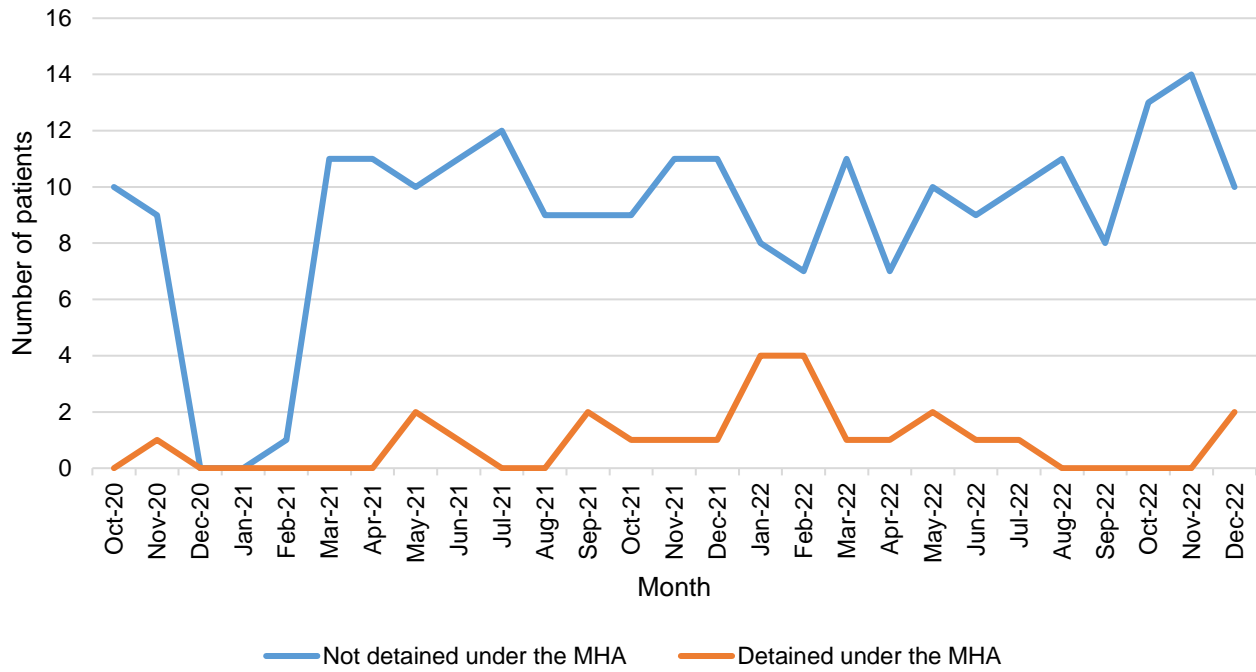


Low Secure- detained/ not detained MHA

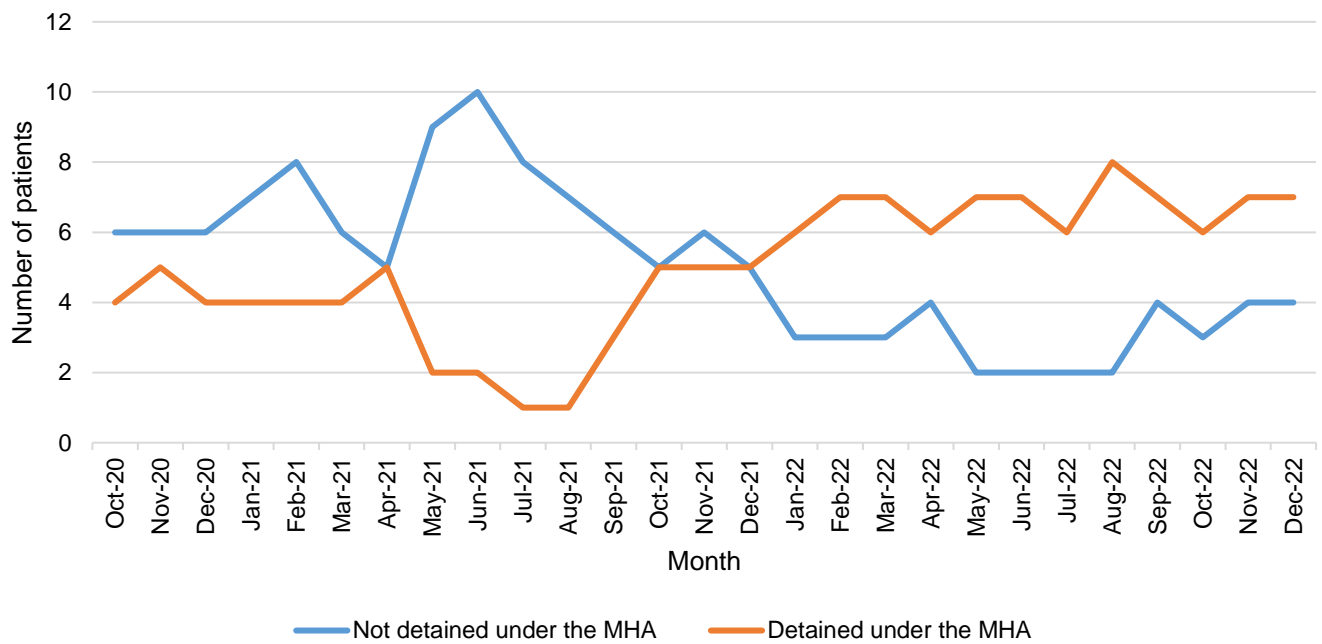


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Addictions- detained/ not detained MHA



Neuropsychiatry- detained/ not detained MHA

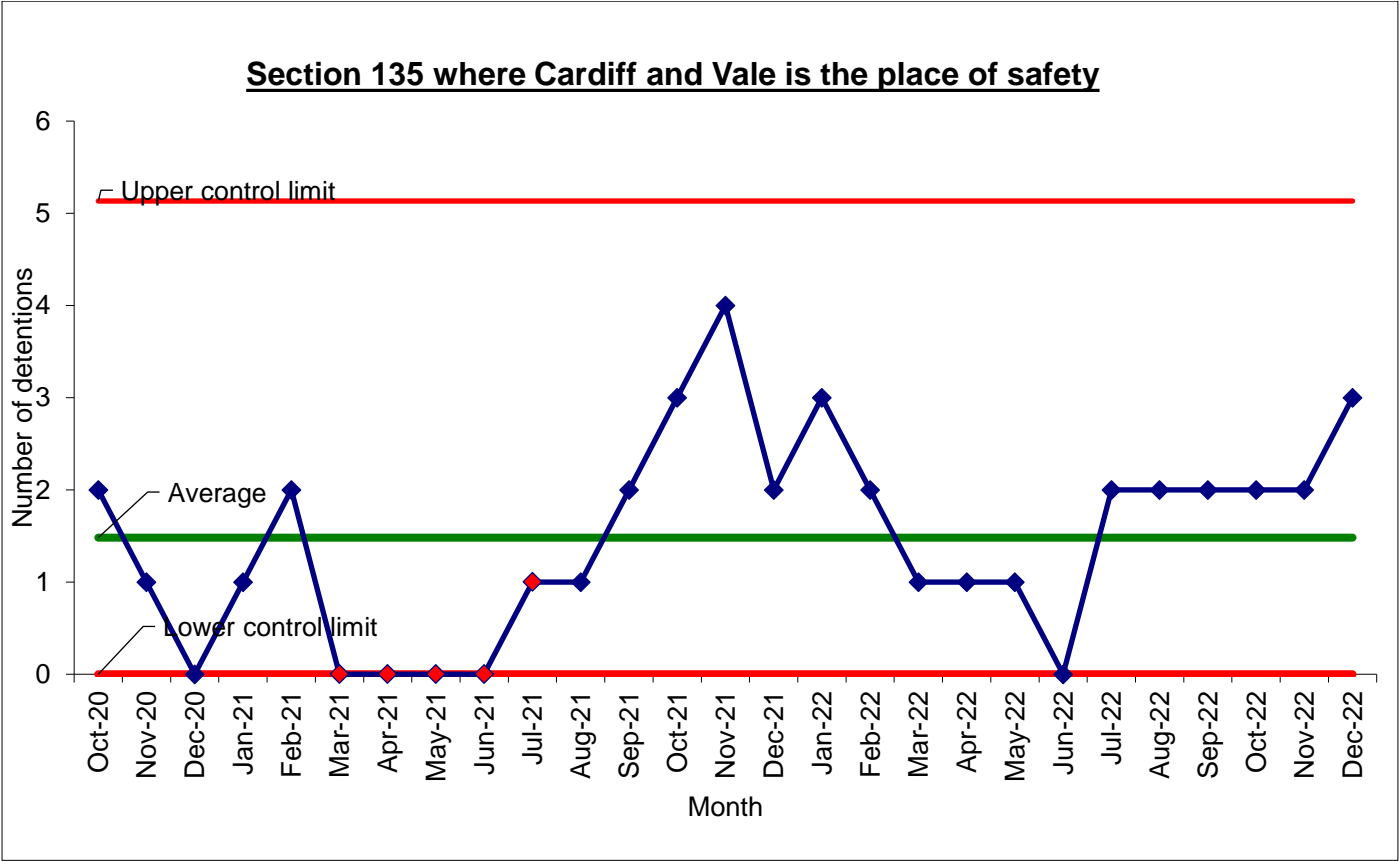


Saunders Nathan
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Section 135 – Warrant to search for and remove a mentally disordered person/patient from private premises to a place of safety

During the period Section 135 (1) powers were used five times. Three uses resulted in a Section 2. One use resulted in the patient being discharged. One use resulted in the subsequent use of Section 135(2).

During the period Section 135(2) powers were twice. Both patients were brought back into hospital under Section 2.



Saunders Nathan
27/01/2023 11:20:16

Voluntary Assessment

During Summer 2020, the electronic All Wales Monitoring Form (AWMF) was put into use. This is an electronic form that should be completed by Police Officers for every occasion that they bring a patient to Hospital for a Mental Health Assessment. The reasons for this can be;-

- Use of s135
- Use of s136
- Voluntary Assessment
- Mental Capacity Act

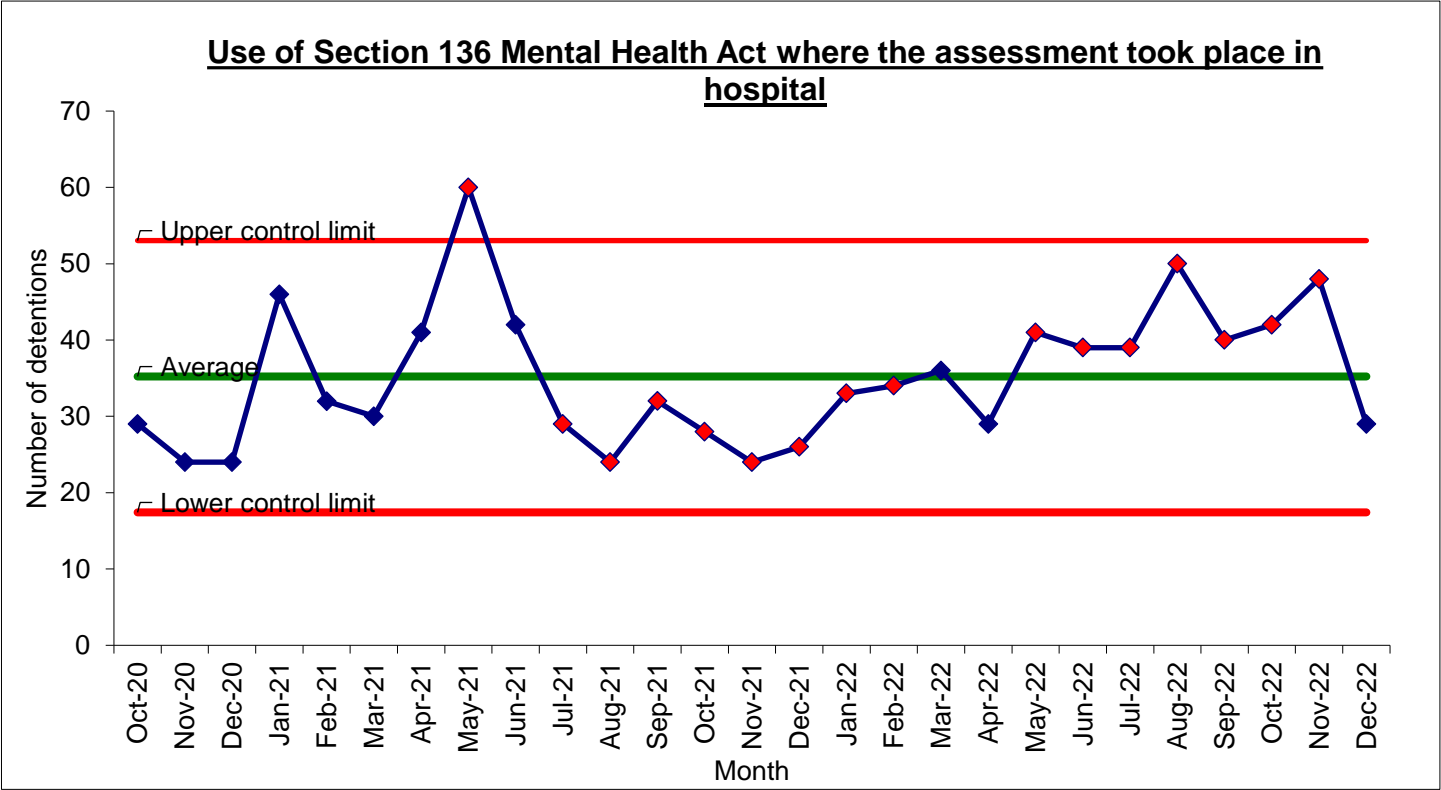
We continue to work with South Wales police to ensure the AWMF is completed each time a person is brought to hospital for an assessment and hope to see an improvement in the use of the electronic form going forward.

For this period we have seen eight people for a Voluntary Assessment and one was brought into hospital under the Mental Capacity Act.

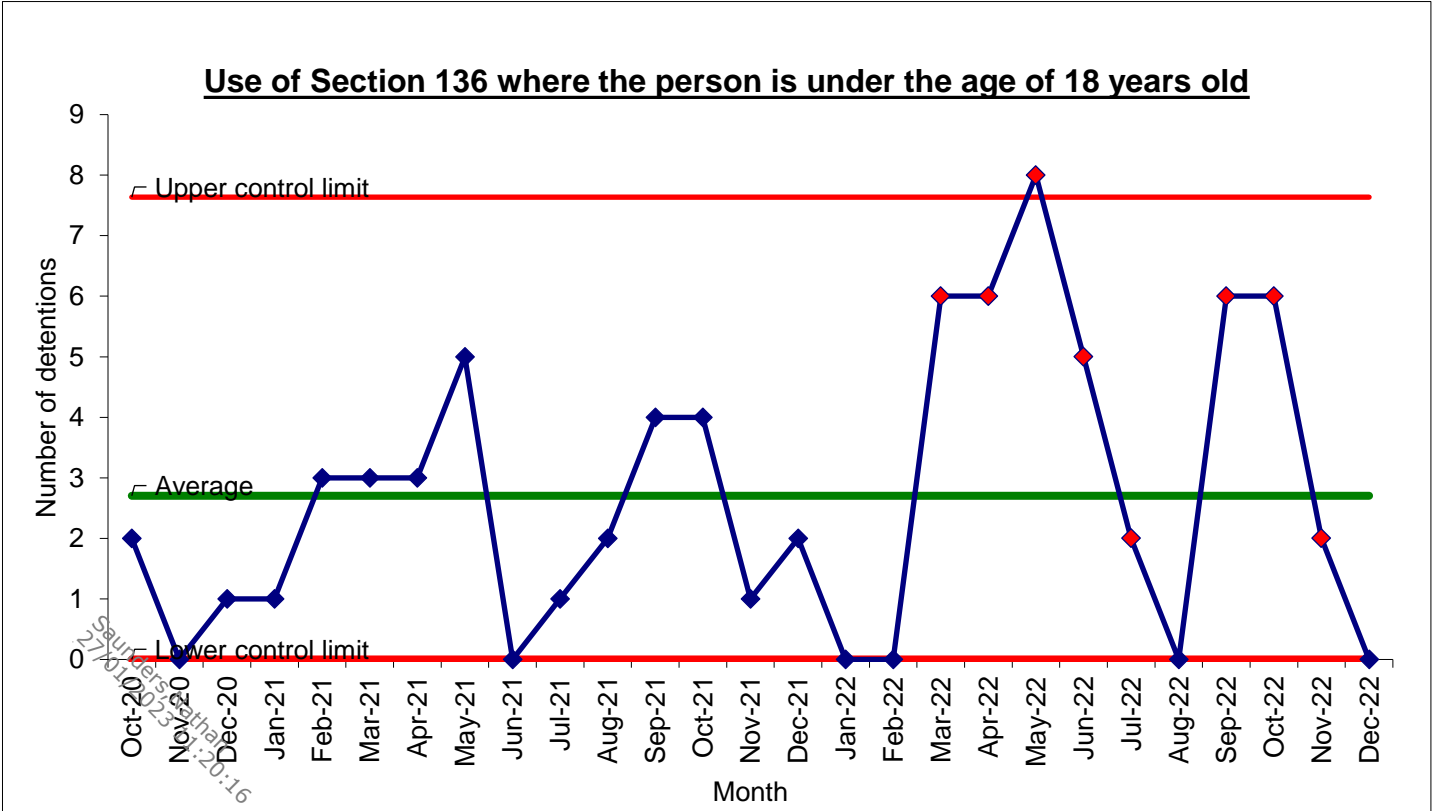
Saunders, Nathan
27/01/2023 11:20:16

Section 136- Mentally disordered persons found in public places Mental Health Act assessments undertaken within Cardiff and Vale UHB

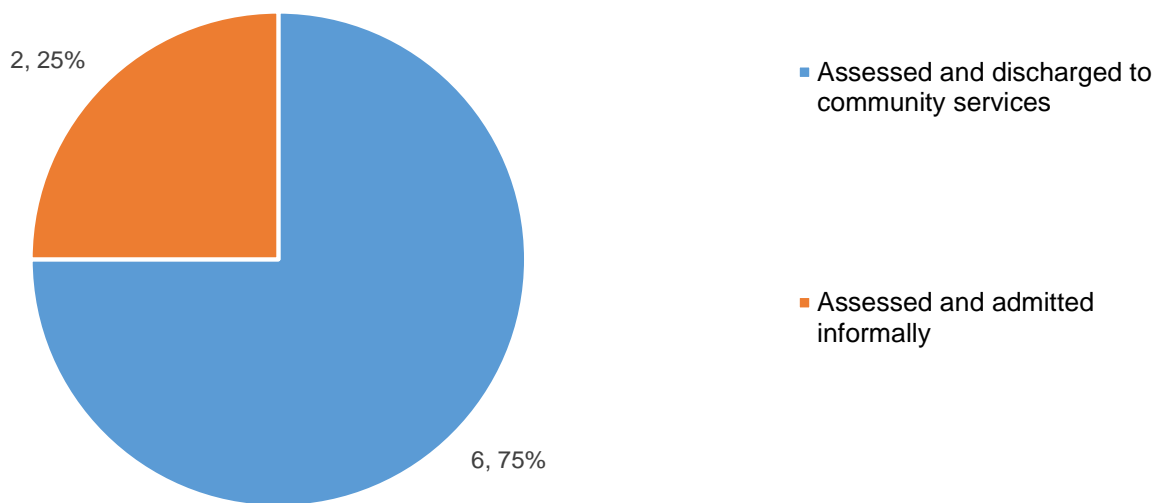
During the period a total of 119 assessments were initiated by Section 136 where the MHA assessment took place in a hospital as the place of safety.



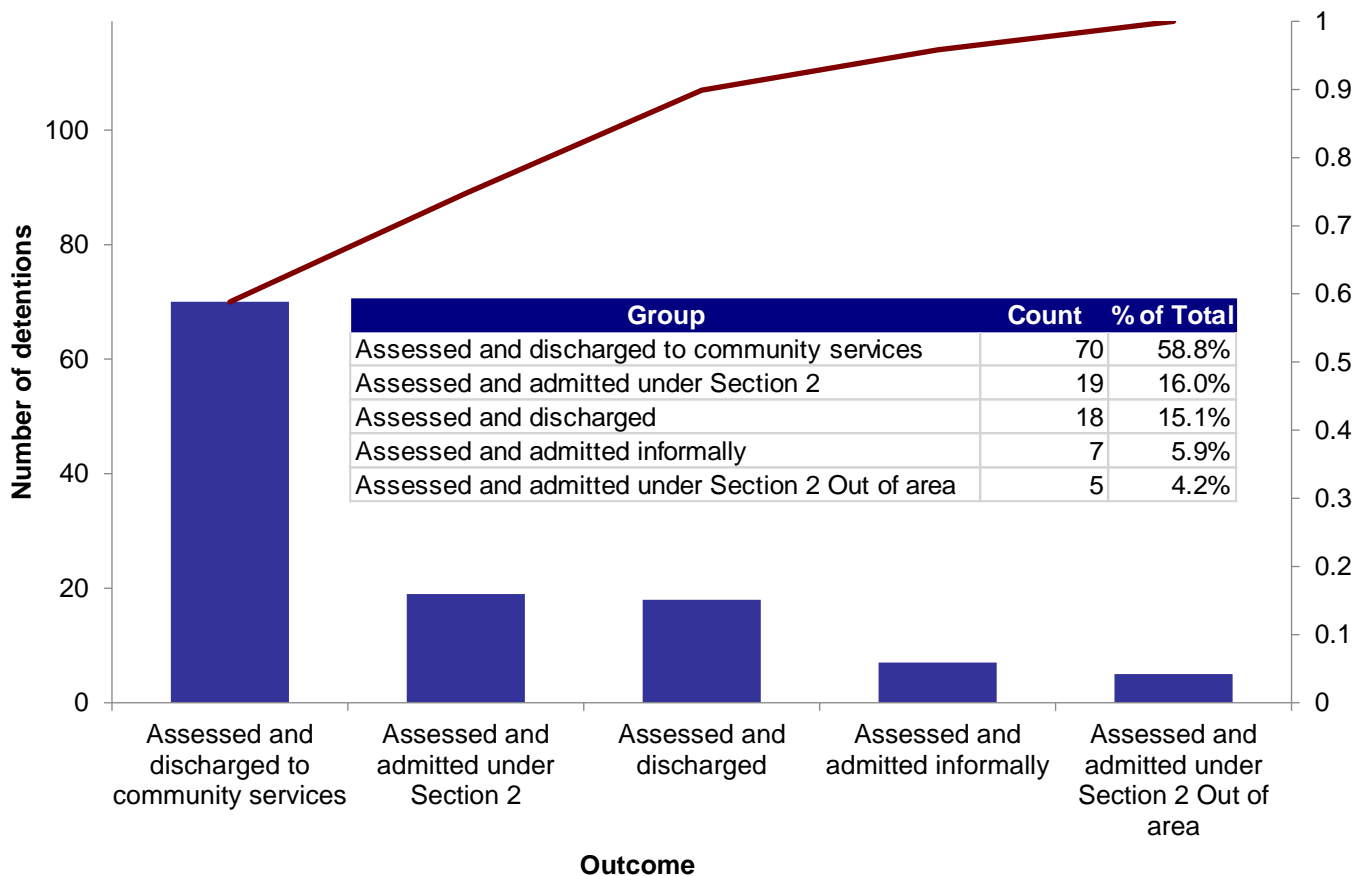
Eight of those assessments were carried out on patients under the age of 18. Included in the above data are those under 18 years of age. This is extracted below;-



Outcome of CAMHs Section 136 assessments



Outcome of Section 136 assessments which took place in hospital during the period October- December 2022

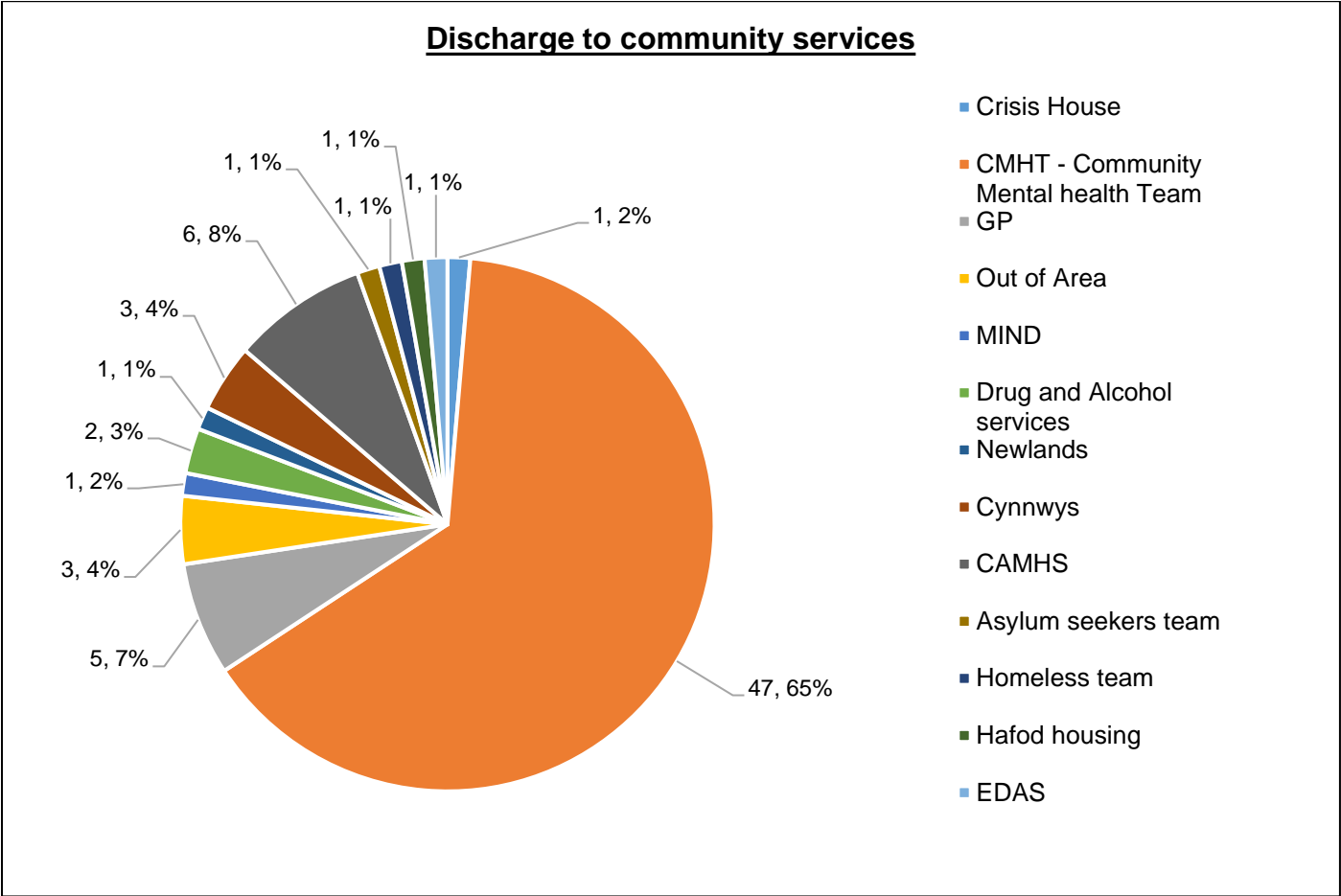


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The pareto chart highlights that 73.9% of individuals assessed in hospital under Section 136 were not admitted to hospital. Those individuals who are not admitted or discharged to another service are provided with information on Mental Health support services for possible self-referral.

Included in the above data are the outcomes for those under 18 years of age.

The below chart is a breakdown of the referrals to Community Services as a result of a s136 assessment. Please note that patients can be referred to multiple Community Services, so it is possible that the numbers below are higher than the total number of s136 used.

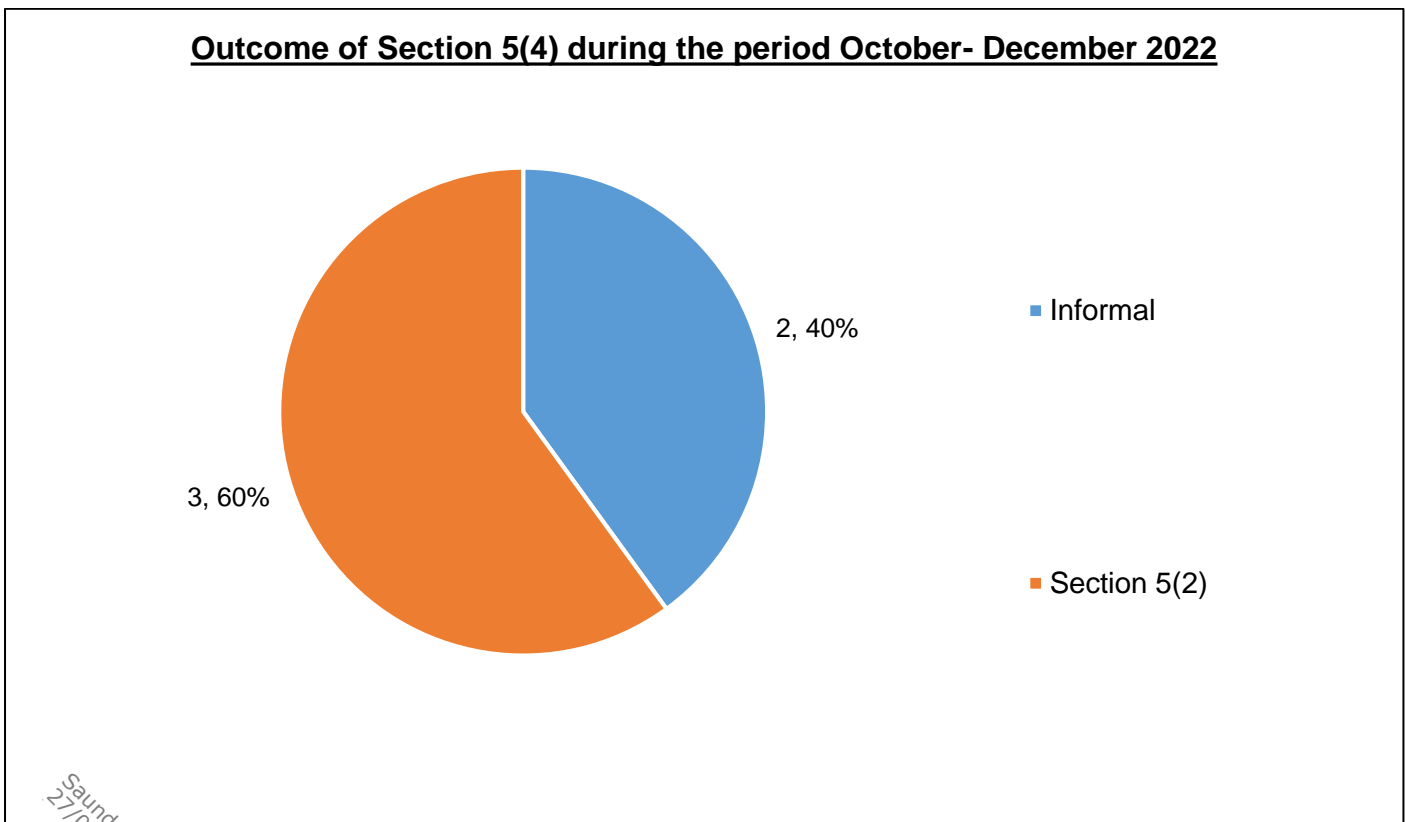
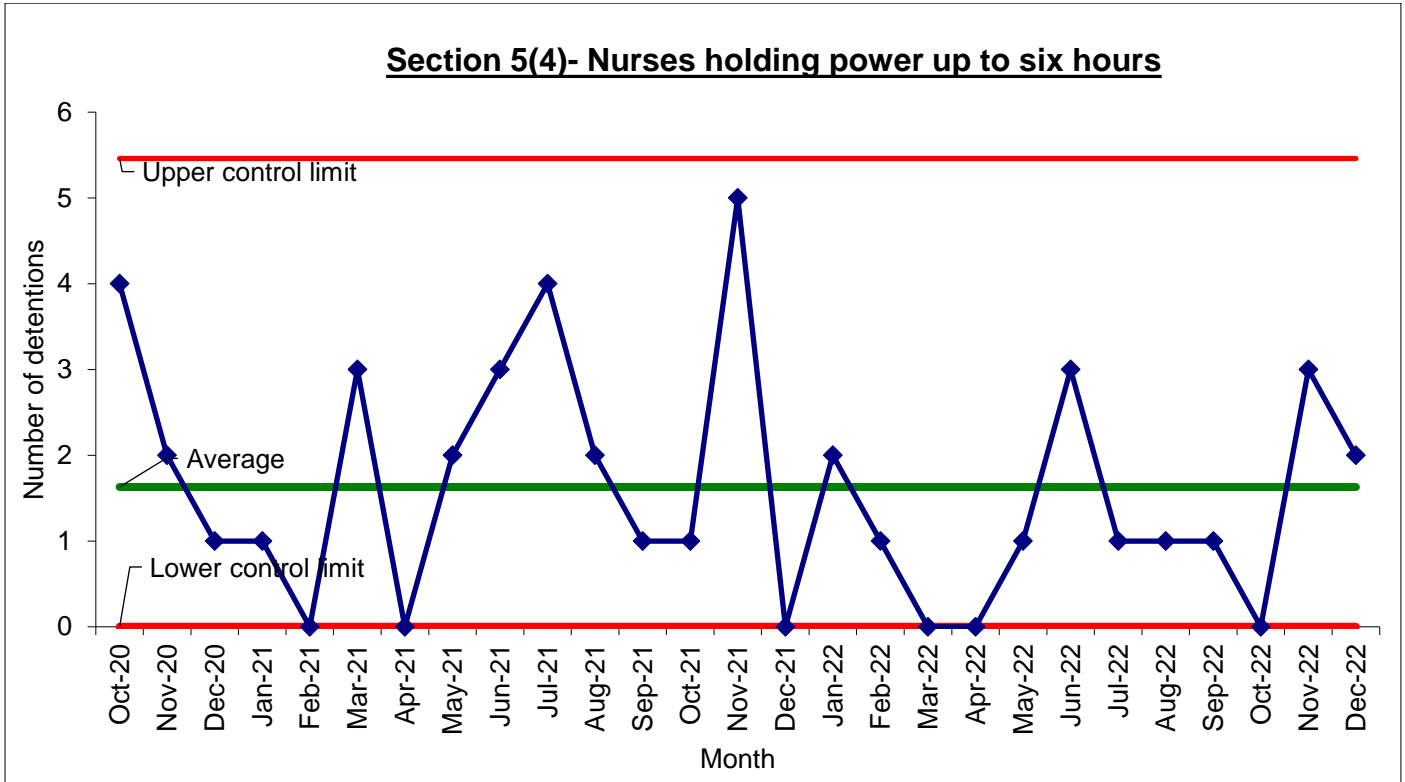


Section 136- Mentally disordered persons found in public places Mental Health Act assessments undertaken within a Police Station

During the period there were no assessments initiated by Section 136 powers where the MHA Assessment took place in Cardiff Bay Custody Suite.

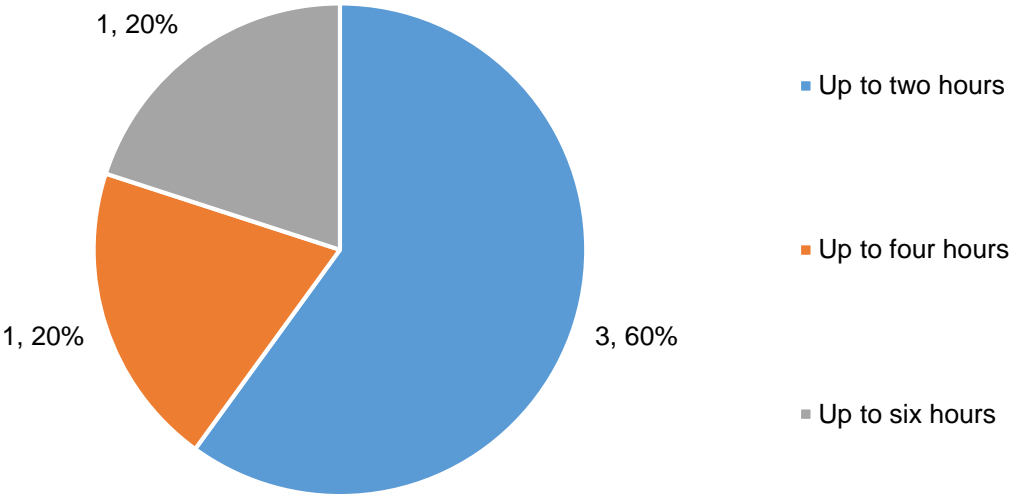
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Section 5(4) - Nurses Holding Power



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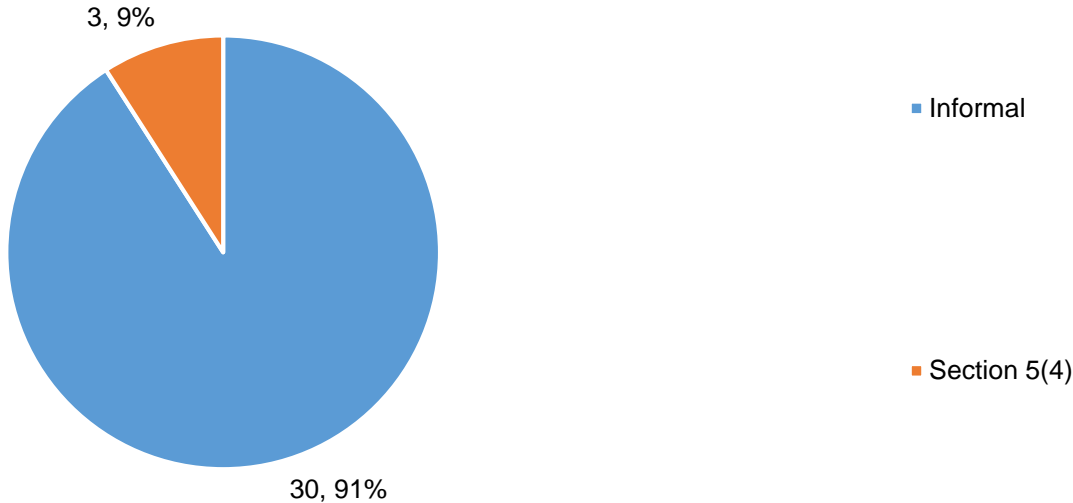
Number of hours patients were detained under Section 5(4) during the period October- December 2022



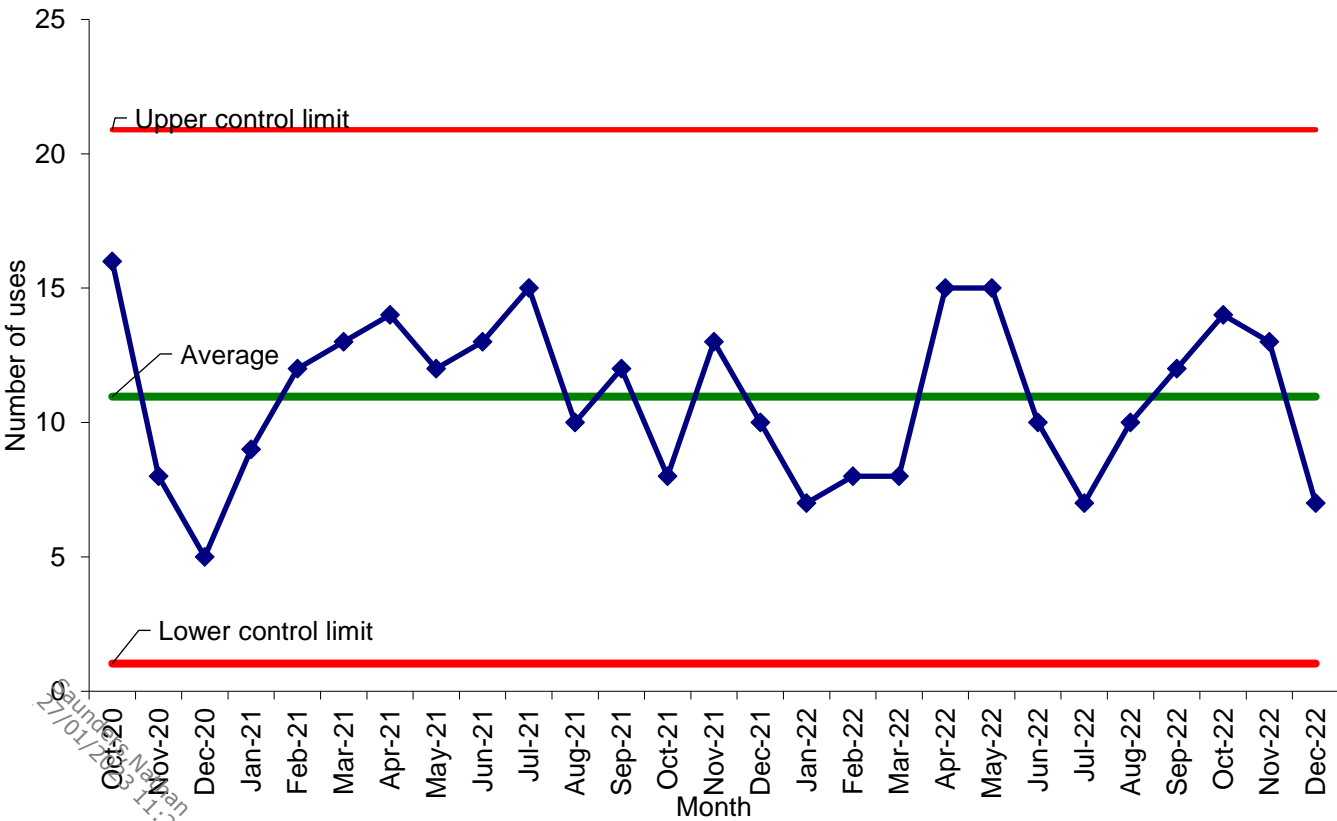
Saunders, Nathan
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Section 5(2) - Doctors holding power

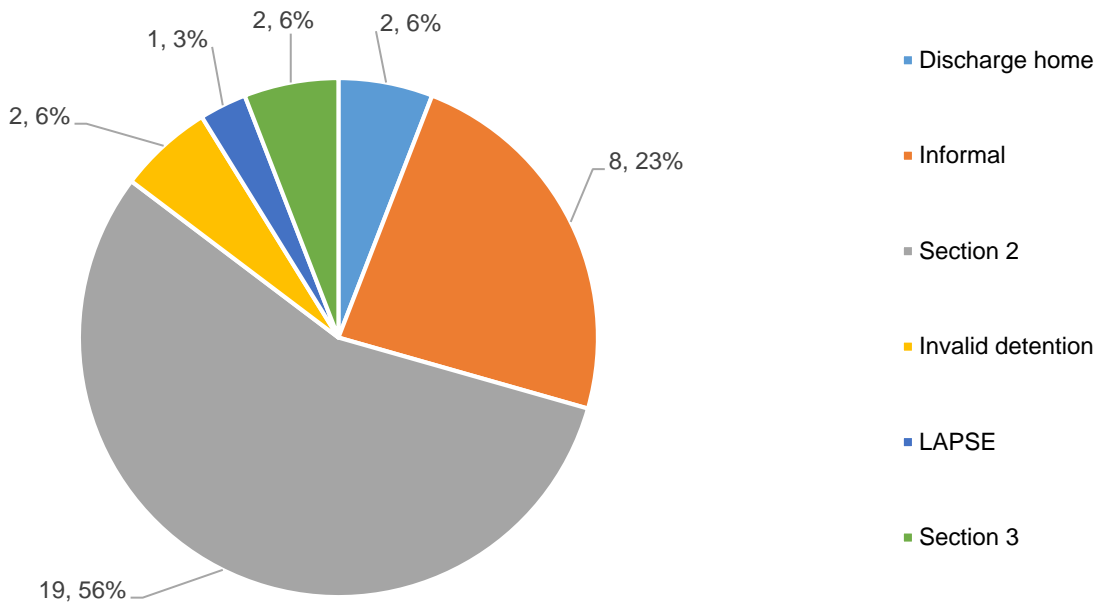
Legal status prior to Section 5(2) during the period October- December 2022



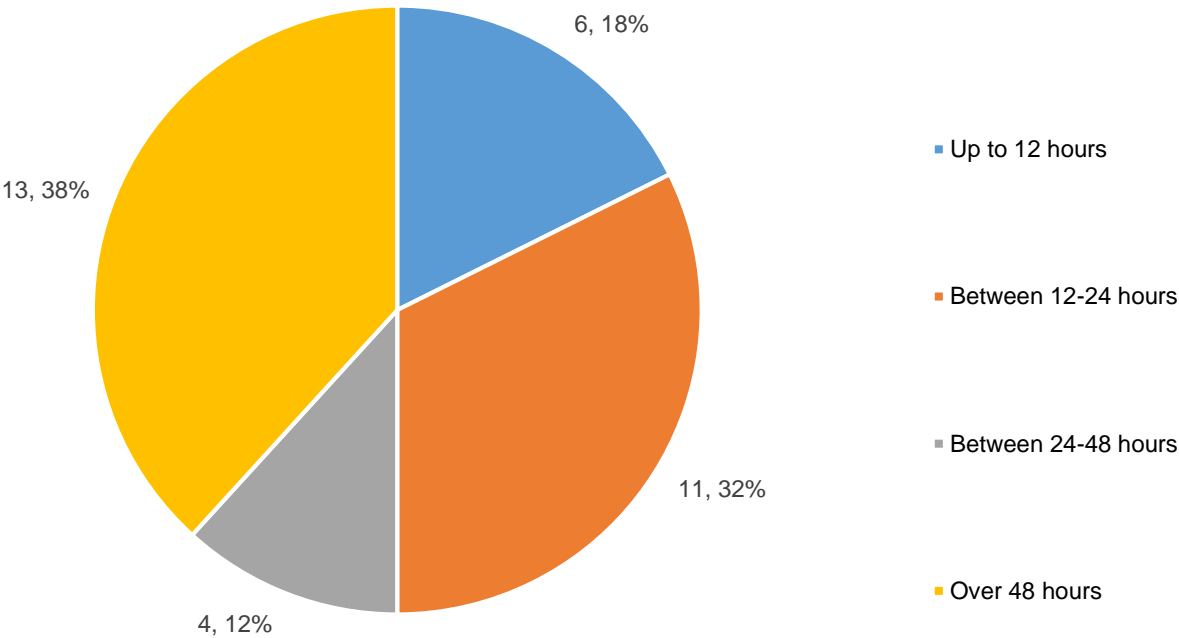
Section 5(2)- Doctors holding power up to 72 hours



Outcome of Section 5(2) during the period October- December 2022



Number of hours patients were detained under Section 5(2) during the period October- December 2022



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During the period there were:

Lapse x1

- Patient absconded and not returned prior to expiry of detention.

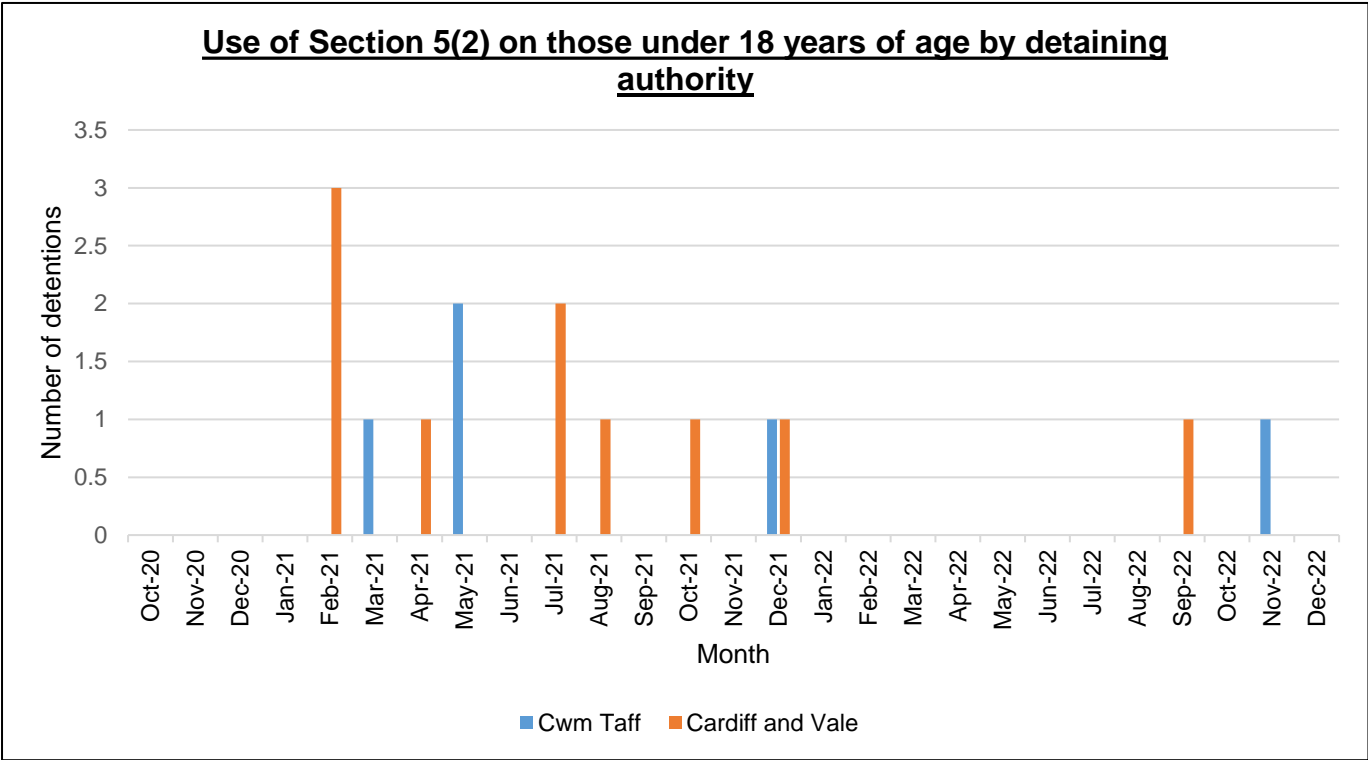
Invalid use x 2

- The patient was on a CTO when the Section 5(2) was implemented
- The doctor completed the Section 5(2) for the purpose of medicating the patient

CAMHS Commissioned Inpatient Data

Cwm Taf Morgannwg UHB are commissioned to perform the role of Inpatient CAMHS for Cardiff and Vale UHB area patients.

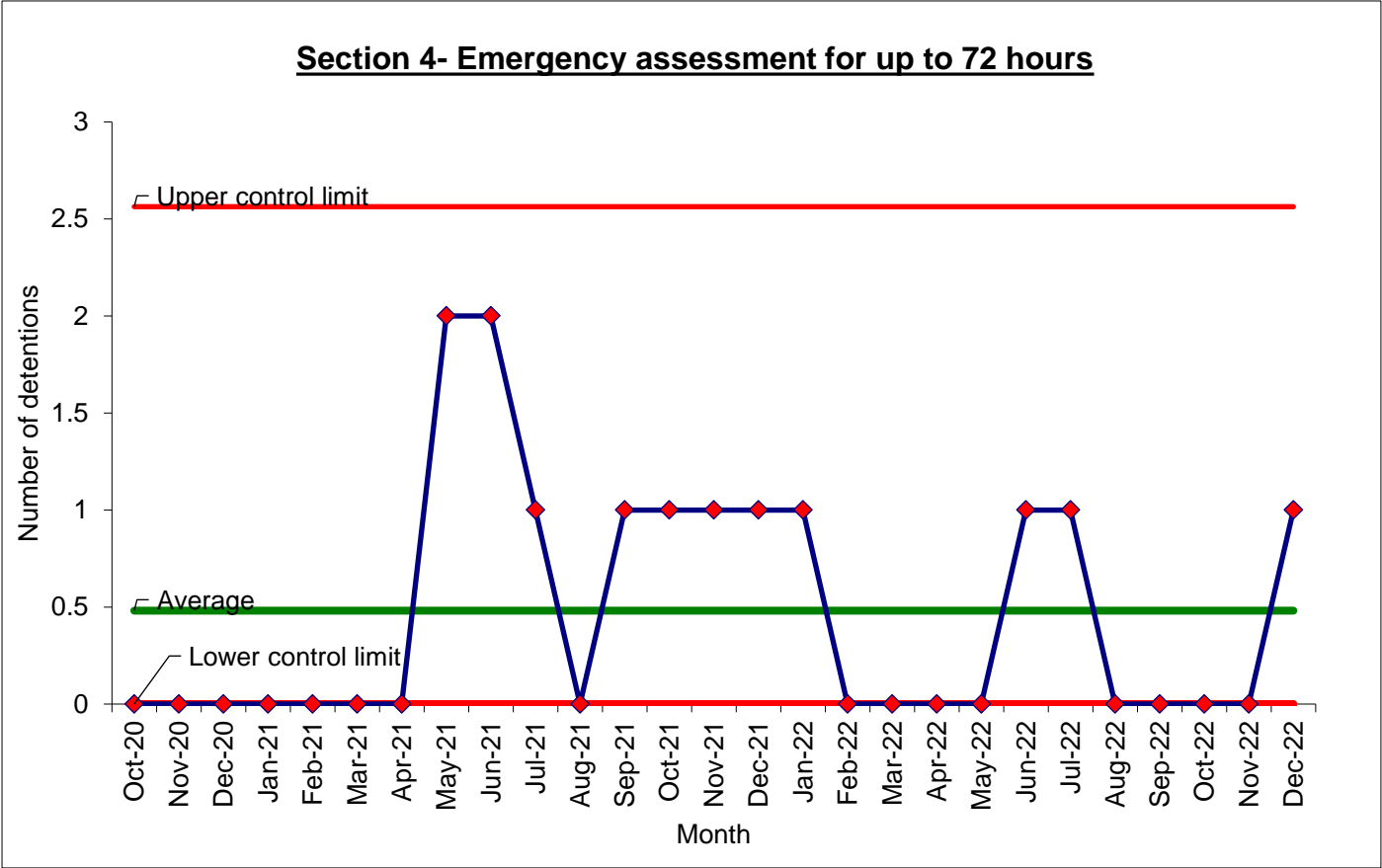
During the period there was one use of Section 5(2) or Section 5(4) holding powers on patients under the age of 18 in either Cardiff and Vale UHB or Cwm Taf Morgannwg UHB. The patient was subsequently discharged to informal status.



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Section 4 - Admission for Assessment in Cases of Emergency

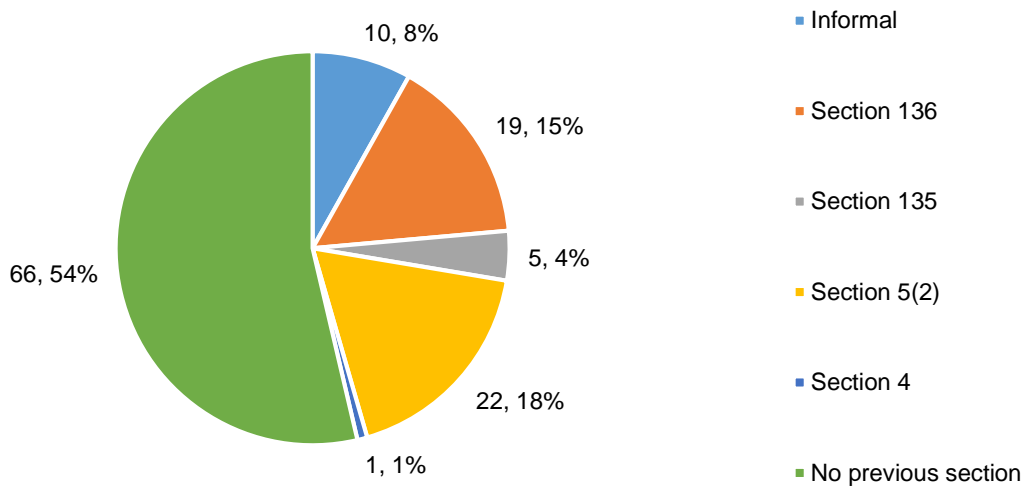
Section 4 was used on one occasion during the period due to an immediate and significant risk of mental or physical harm to the patient or others. The patient was detained under Section 2.



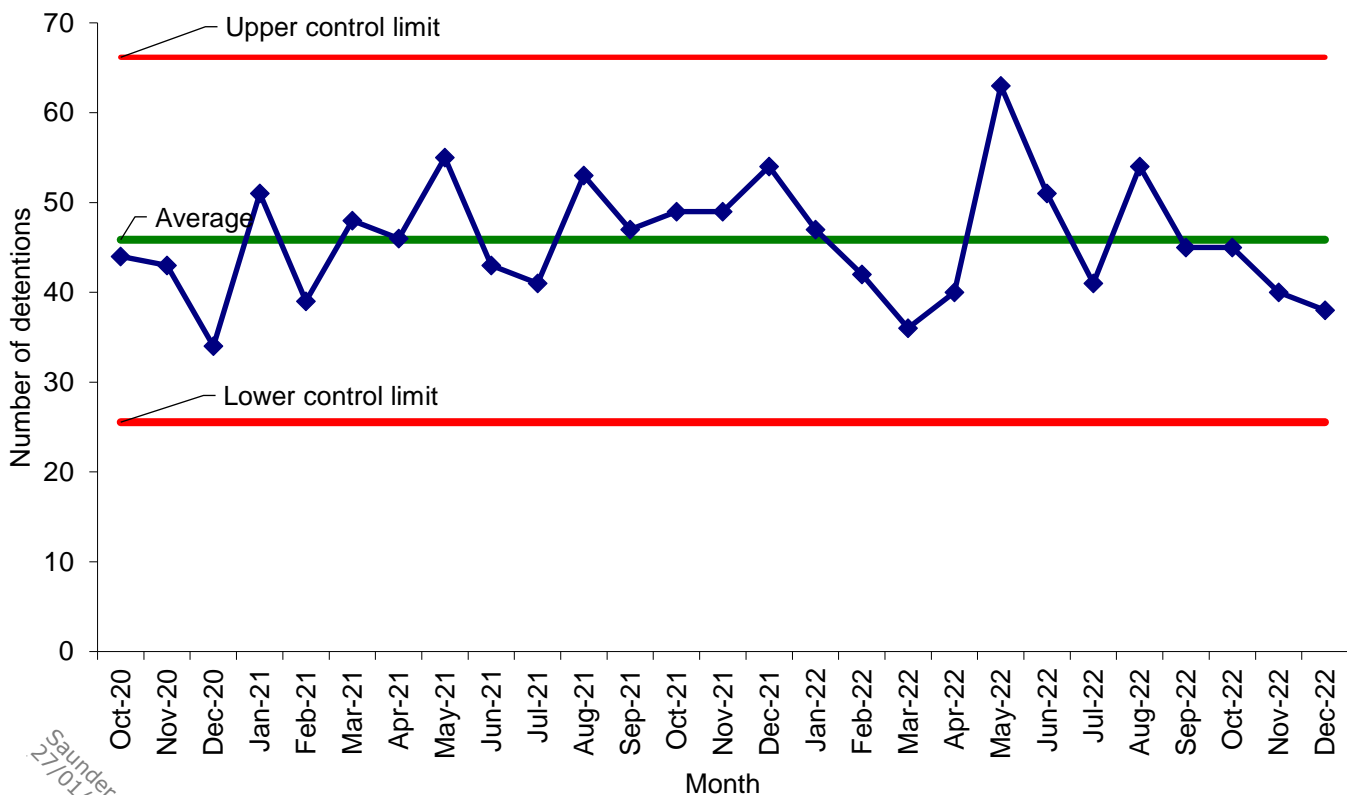
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Section 2 – Admission for Assessment

Legal status prior to Section 2 during the period October- December 2022

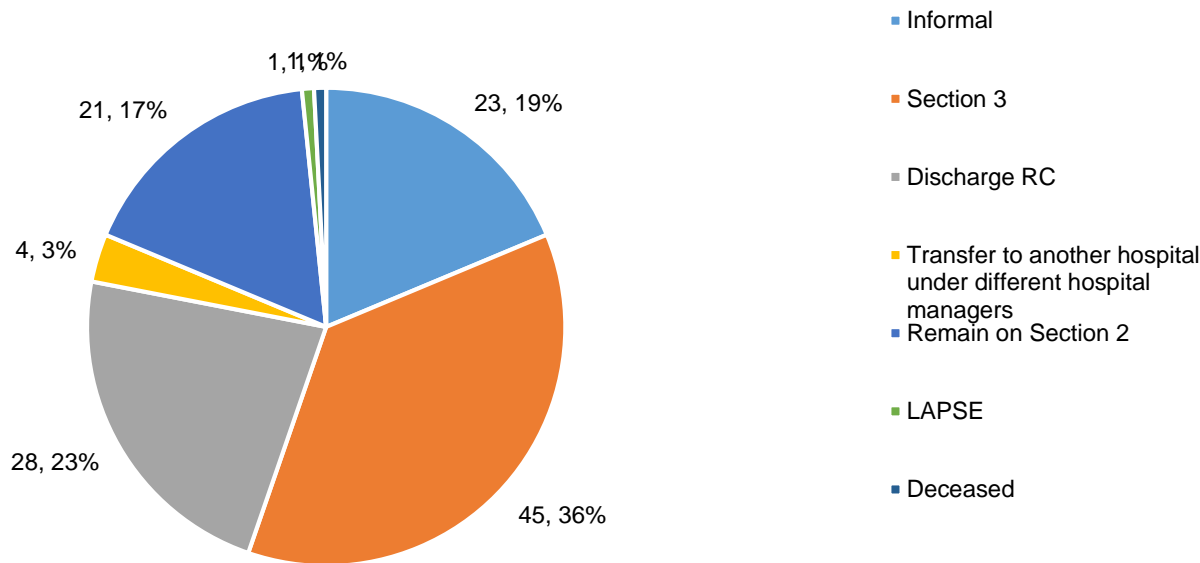


Section 2- Admission for assessment up to 28 days



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Outcome following Section 2 during the period October- December 2022

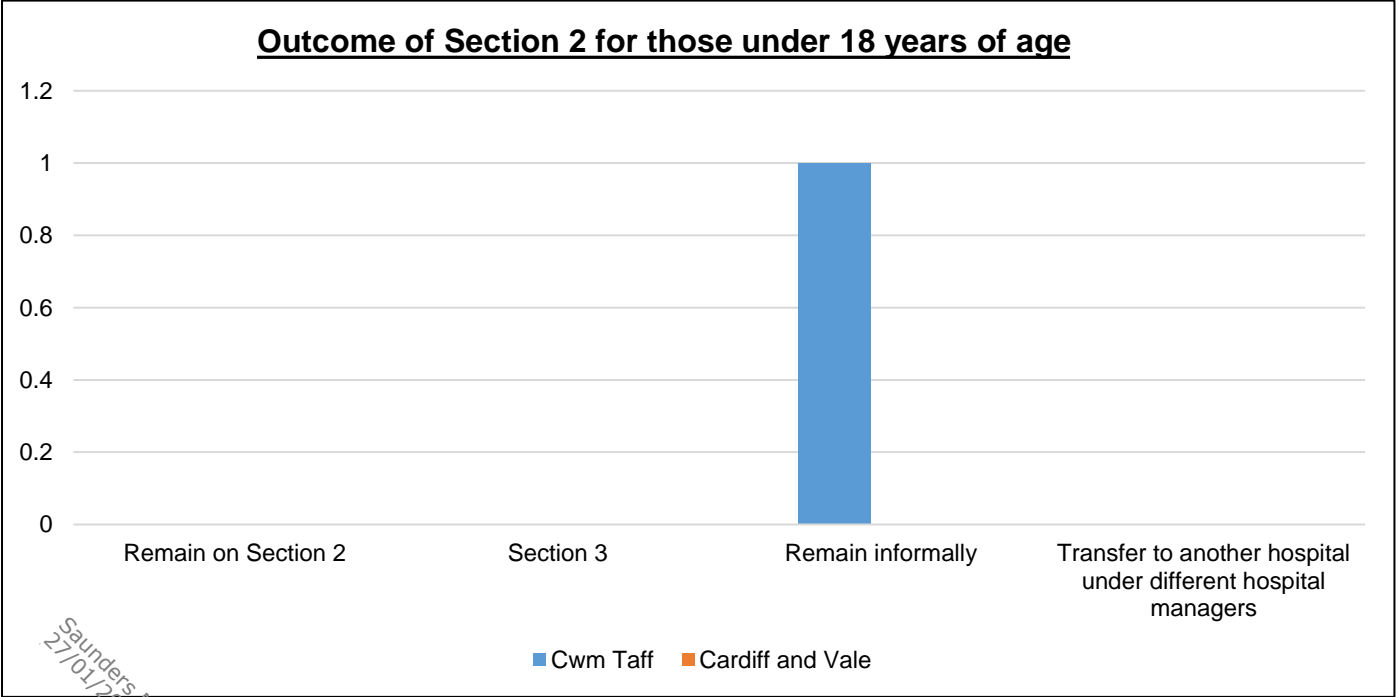
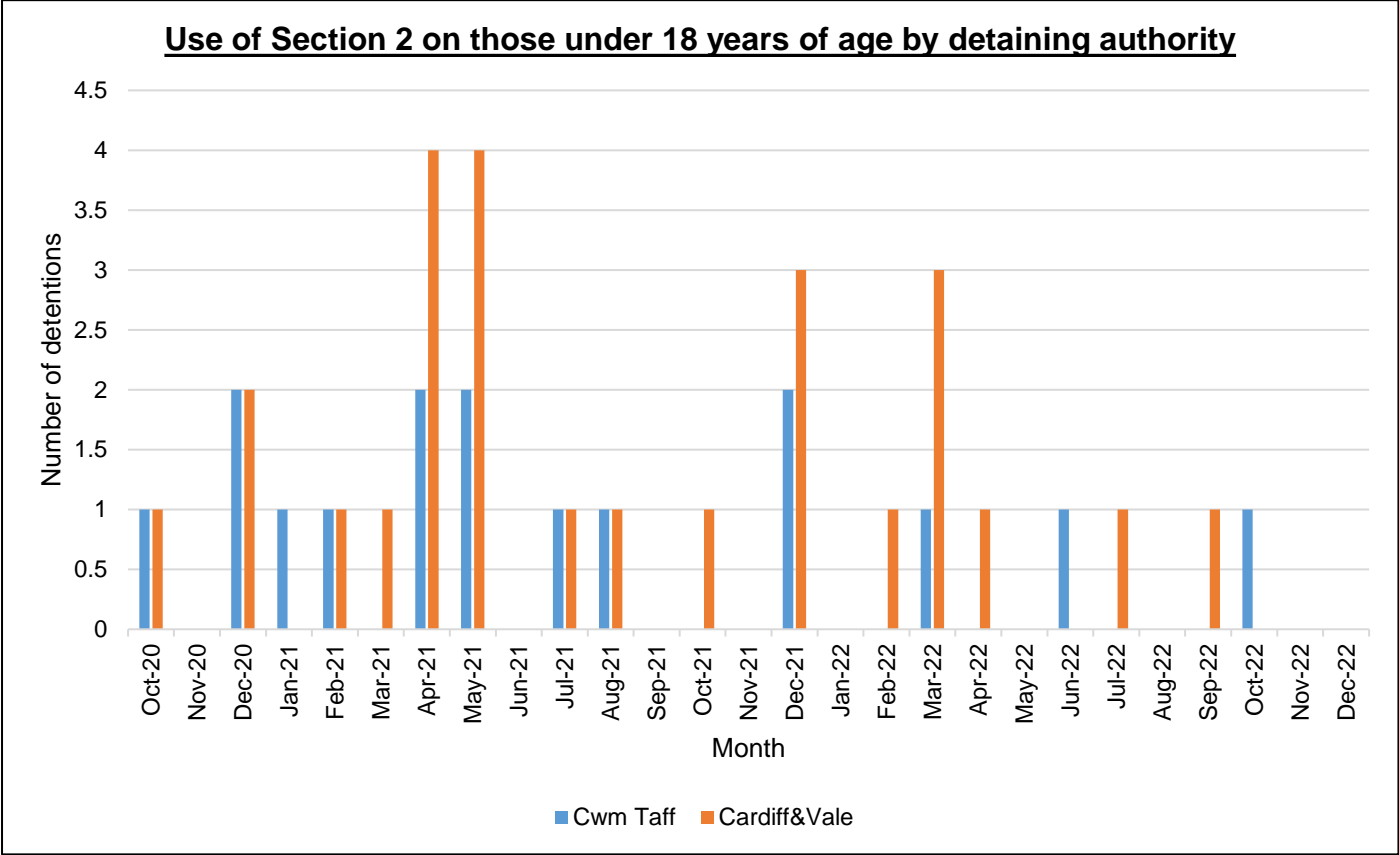


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CAMHS Commissioned Inpatient Data

Cwm Taf Morgannwg UHB are commissioned to perform the role of Inpatient CAMHS for Cardiff and Vale UHB area patients.

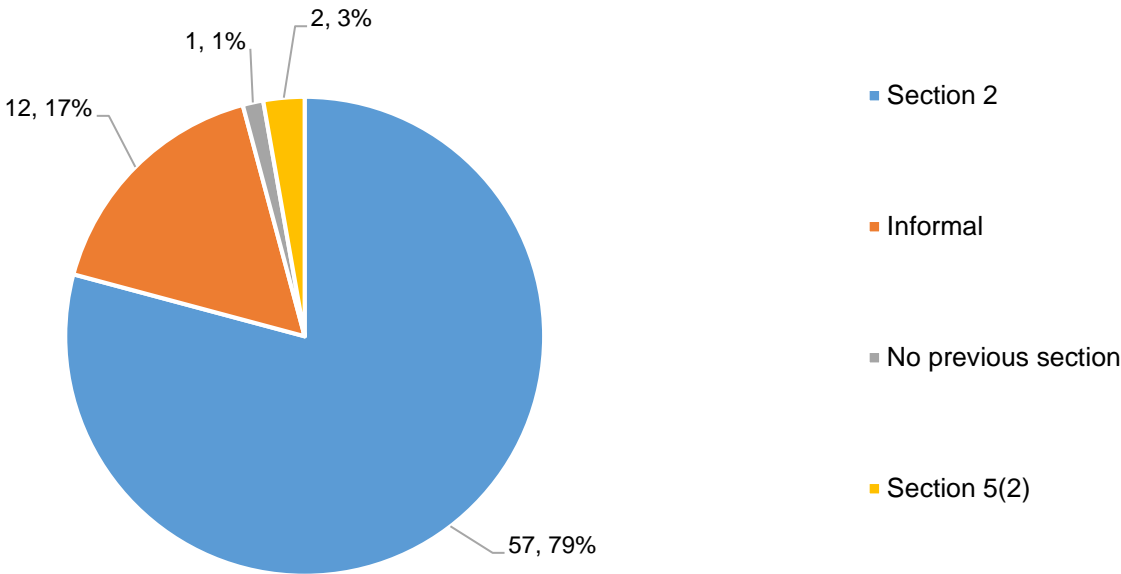
Included in the above data are those under 18 years of age. This is extracted below;-



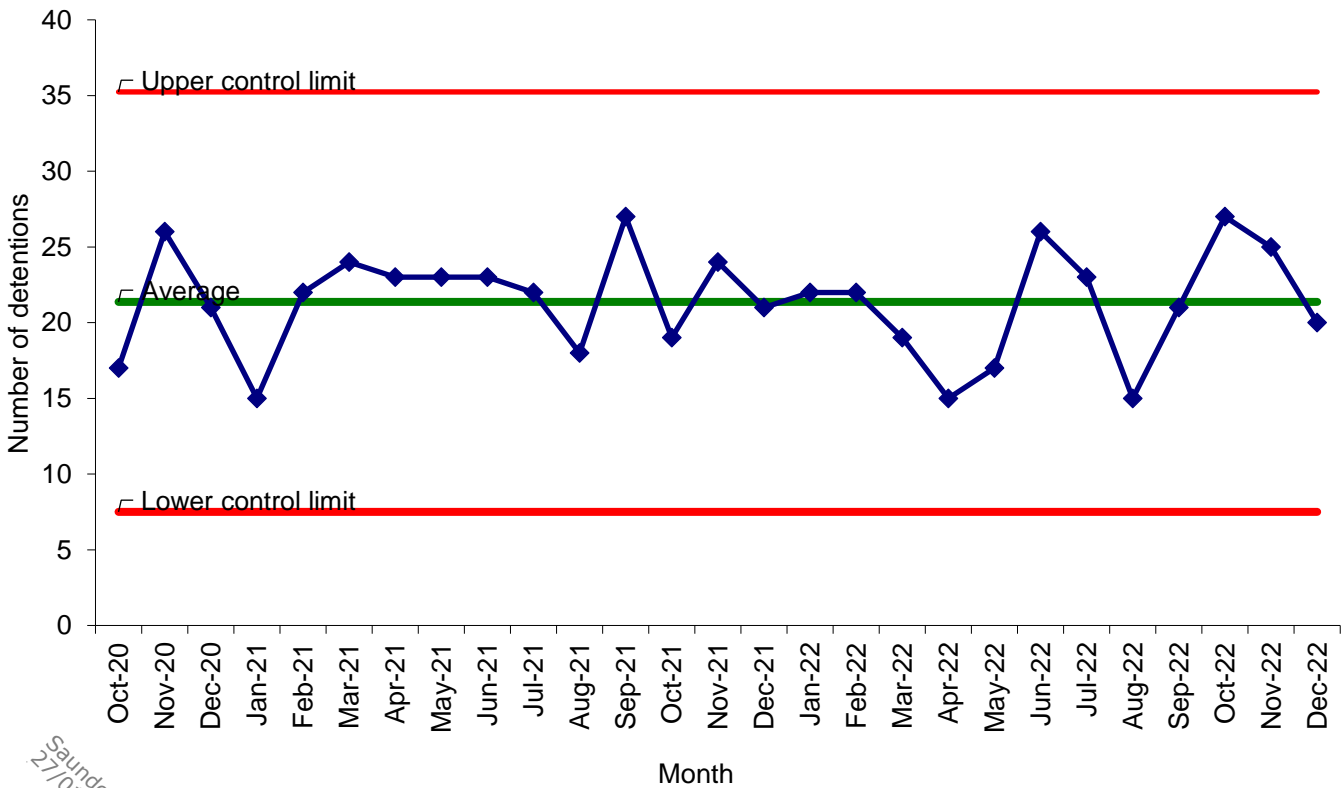
Saunders Nathan
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Section 3 – Admission for Treatment

Legal status prior to Section 3 during the period October- December 2022

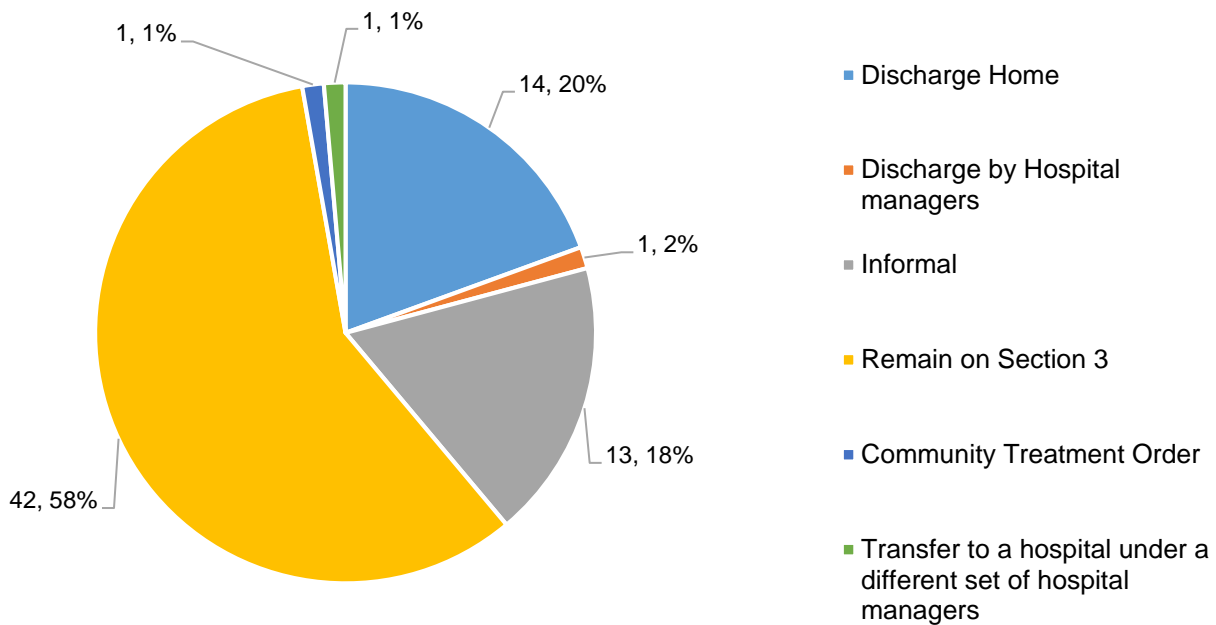


Section 3- Admission for treatment



The above data would include those under 18 years of age.

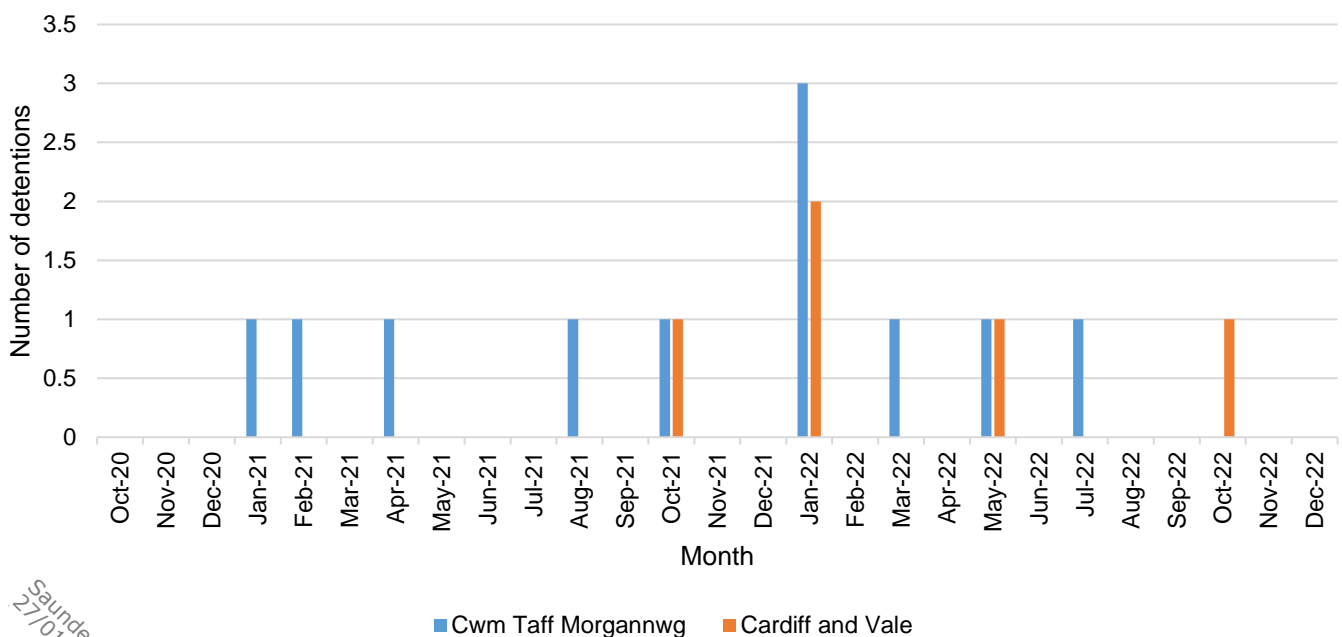
Outcome following Section 3 during the period October- December 2022



CAMHS Commissioned Inpatient Data

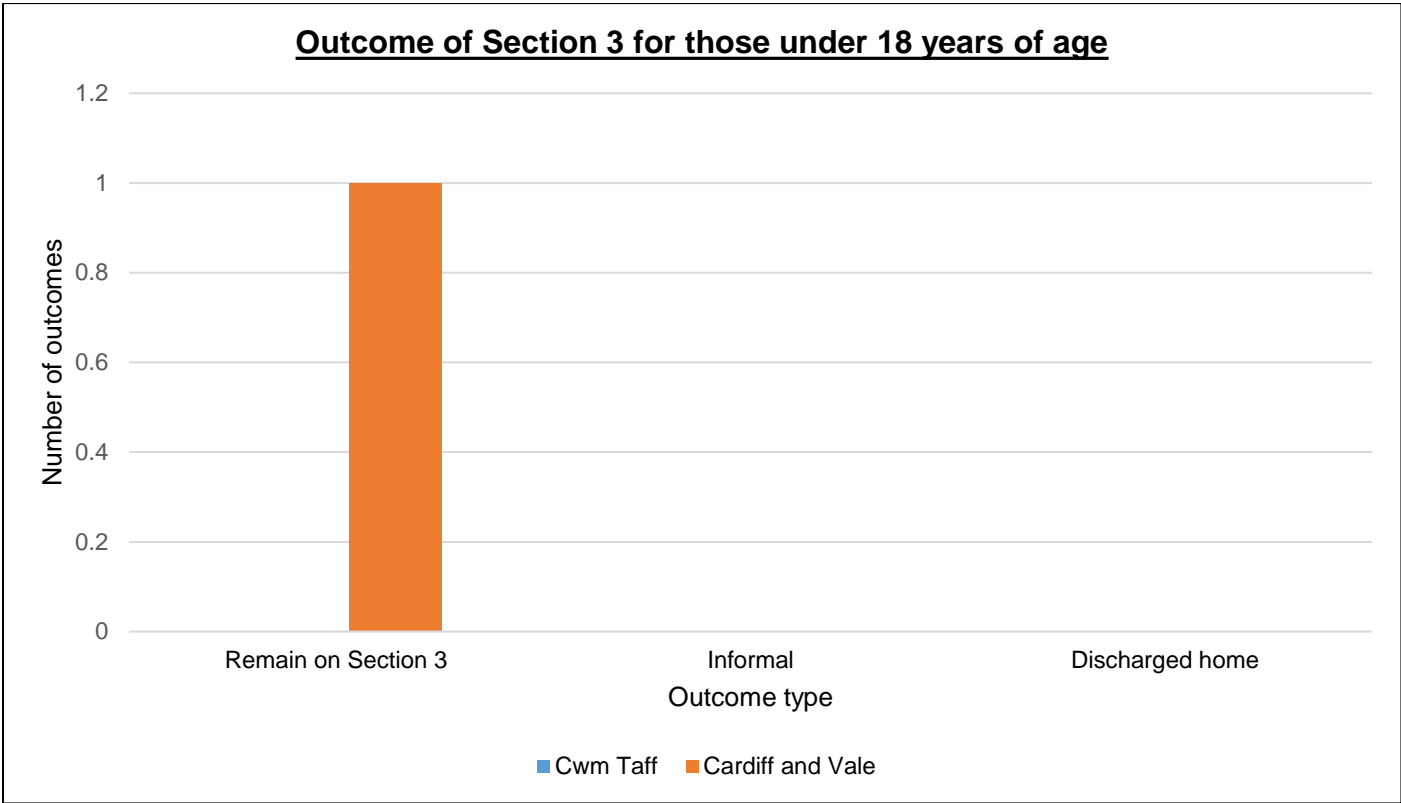
Cwm Taf Morgannwg UHB are commissioned to perform the role of Inpatient CAMHS for Cardiff and Vale UHB area patients.

Use of Section 3 on those under 18 years of age by detaining authority



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Outcome of Section 3 for those under 18 years of age

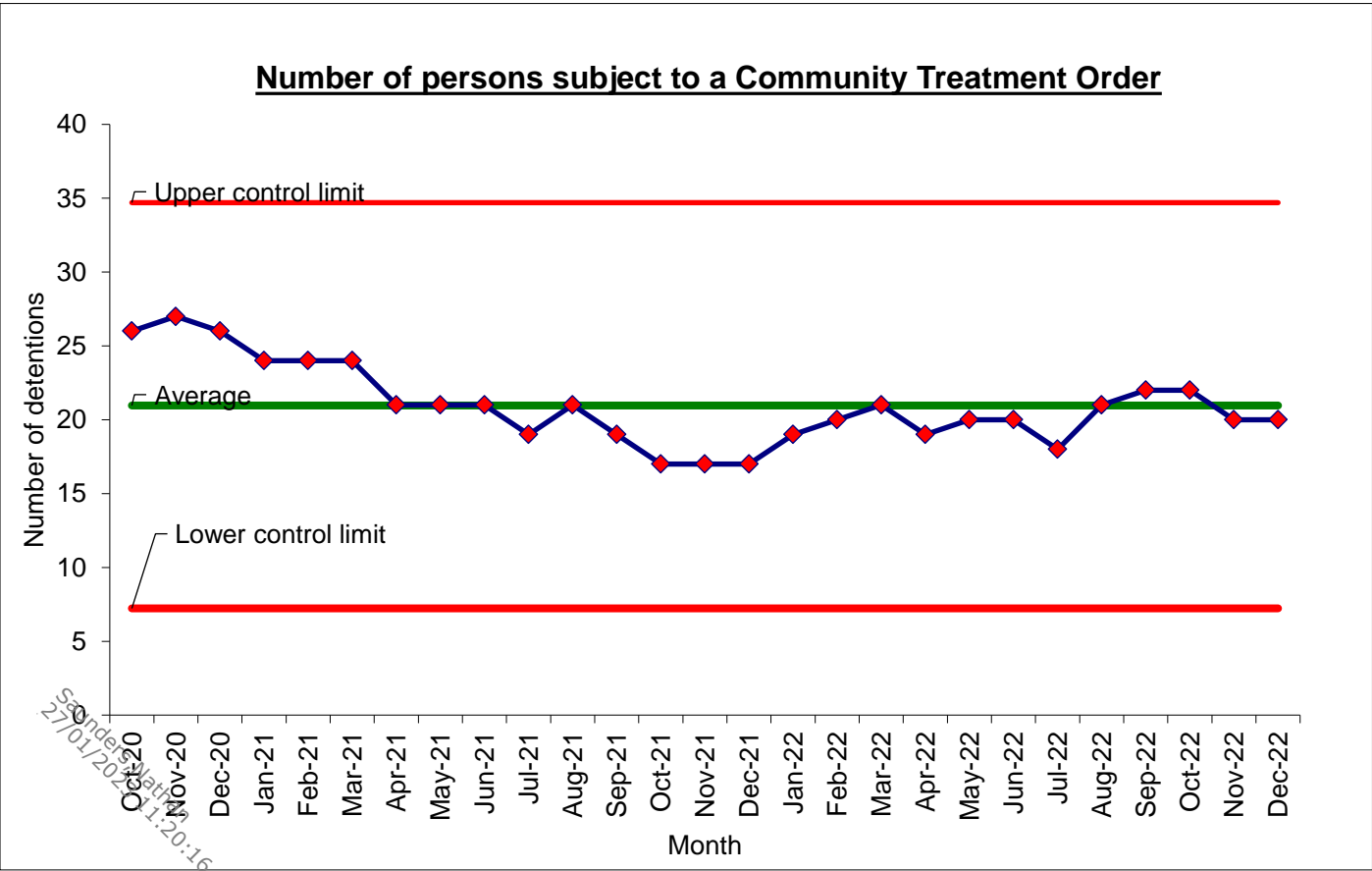
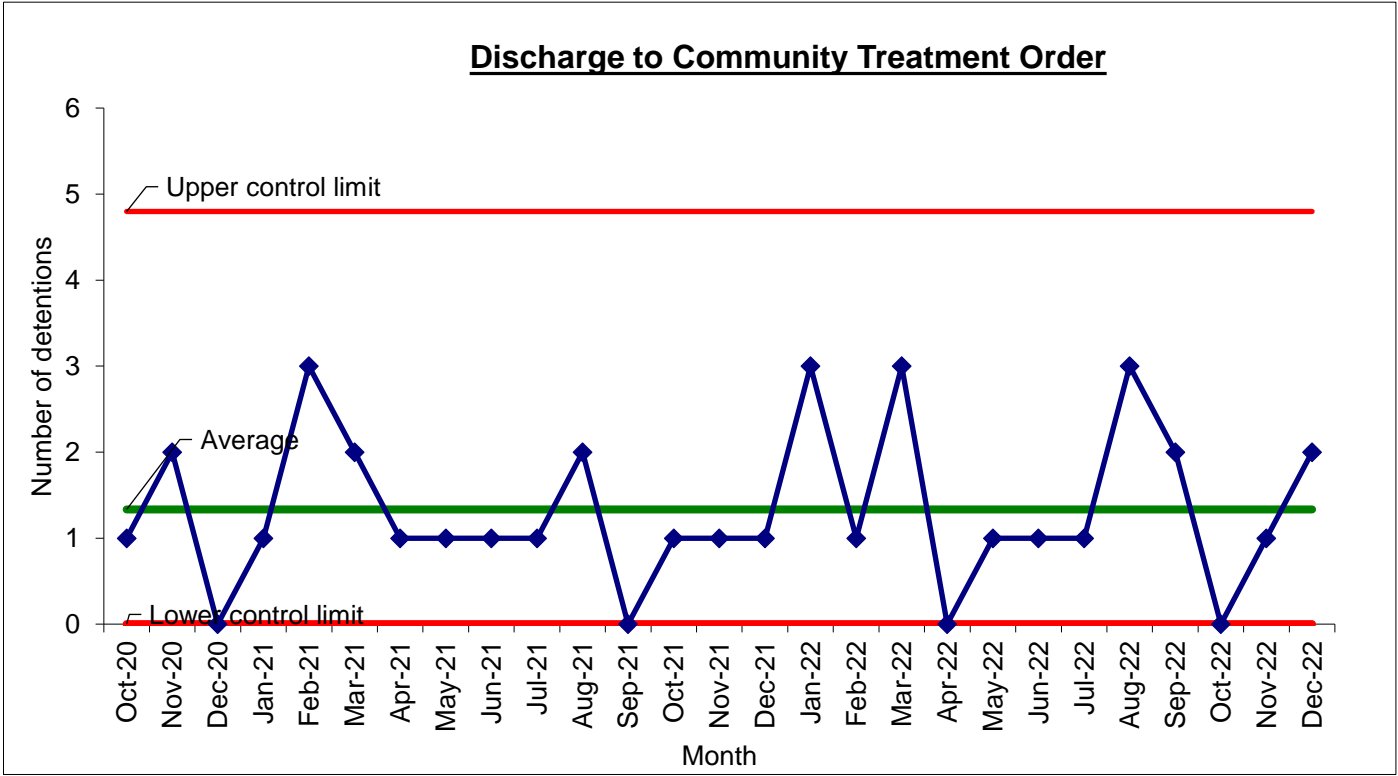


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Community Treatment Order

During the period October - Decemer 2022 three patients were discharged to Community Treatment Order.

As at 31st December 2022, 20 patients were subject to a Community Treatment Order (CTO).



Recall of a community patient under Section 17E

During the period, the power of recall was used twice on the same person. On one occasion the patient was subsequently admitted informally under their CTO. On the other occasion the CTO was revoked and they were returned to hospital.

CAMHS Commissioned Inpatient Data

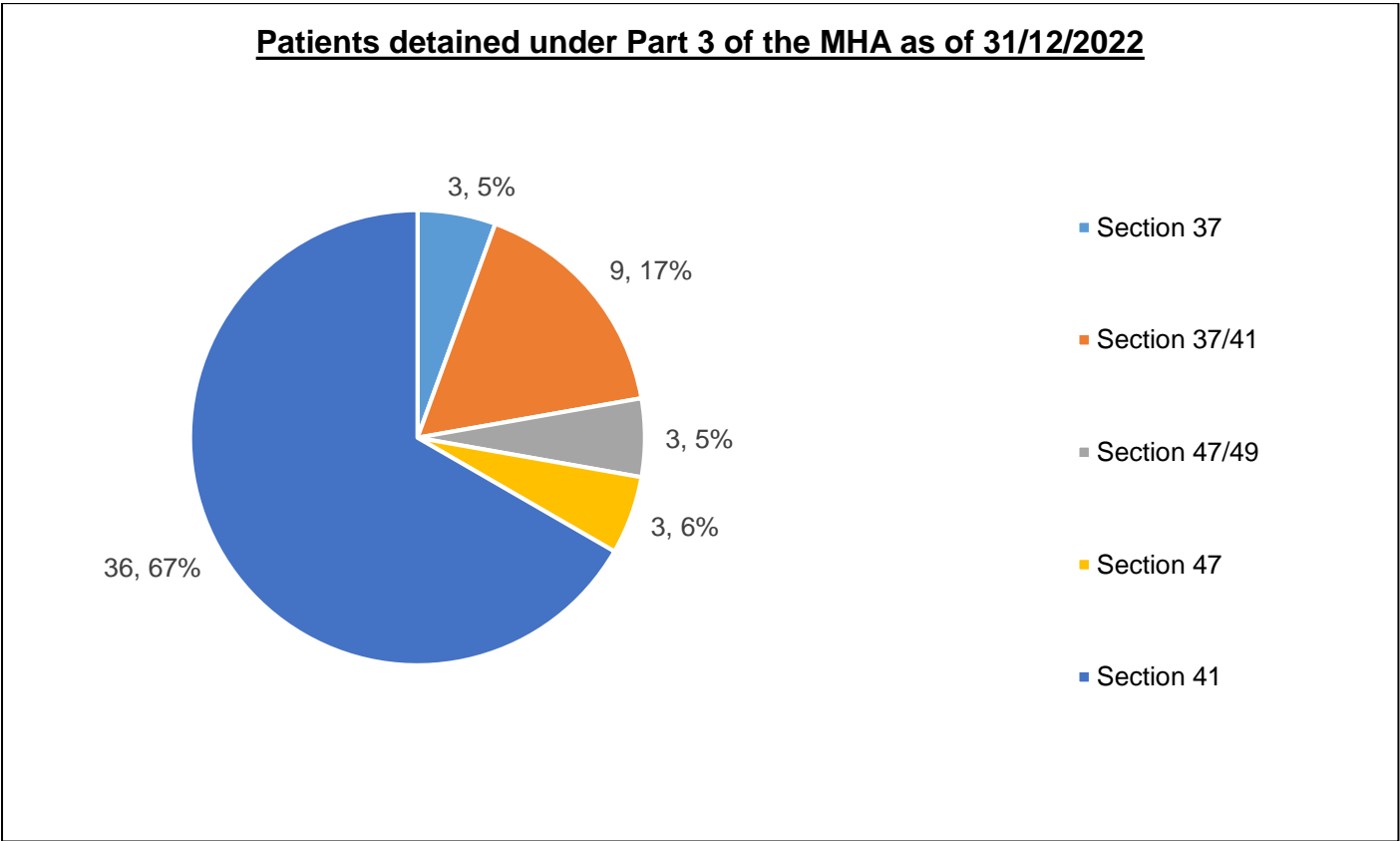
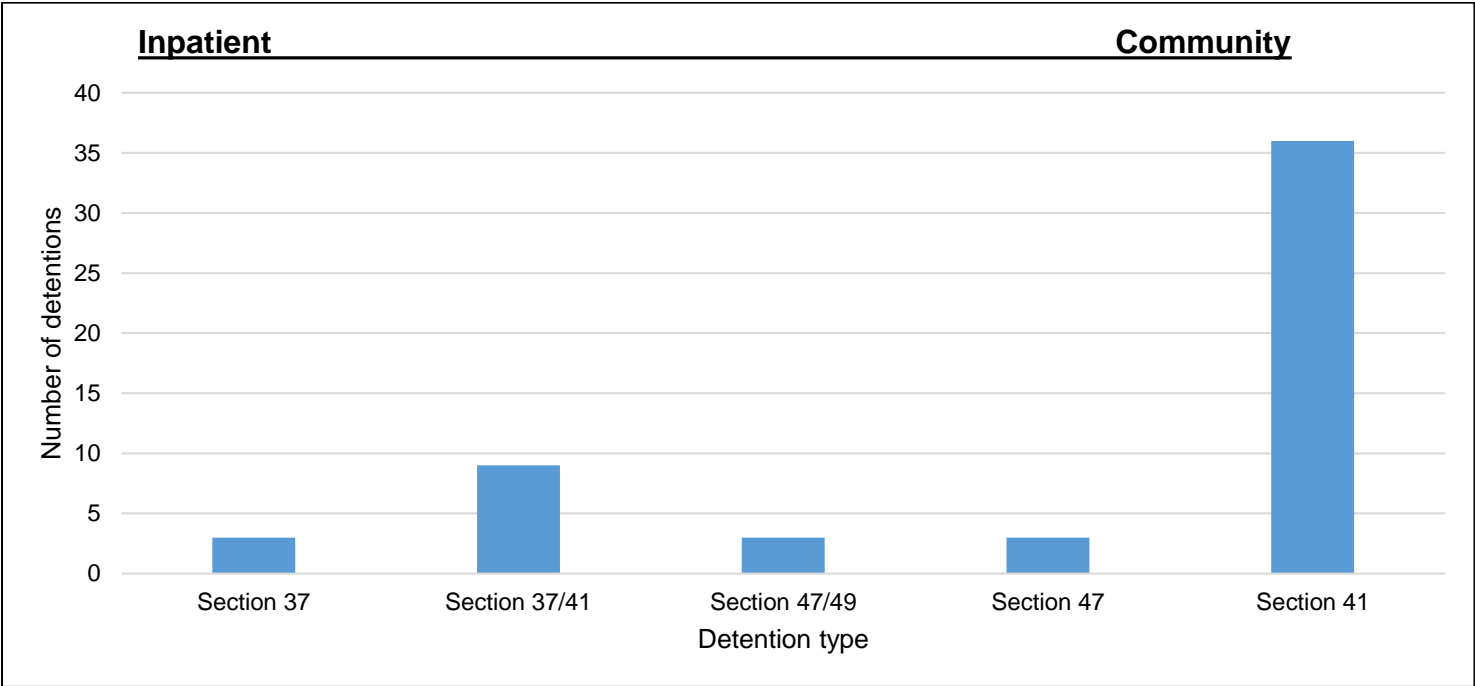
Cwm Taf Morgannwg UHB are commissioned to perform the role of Inpatient CAMHS for Cardiff and Vale UHB area patients.

During this period there were no CAMHS patients who became subject to a Community Treatment Order.

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Part 3 of the Mental Health Act 1983

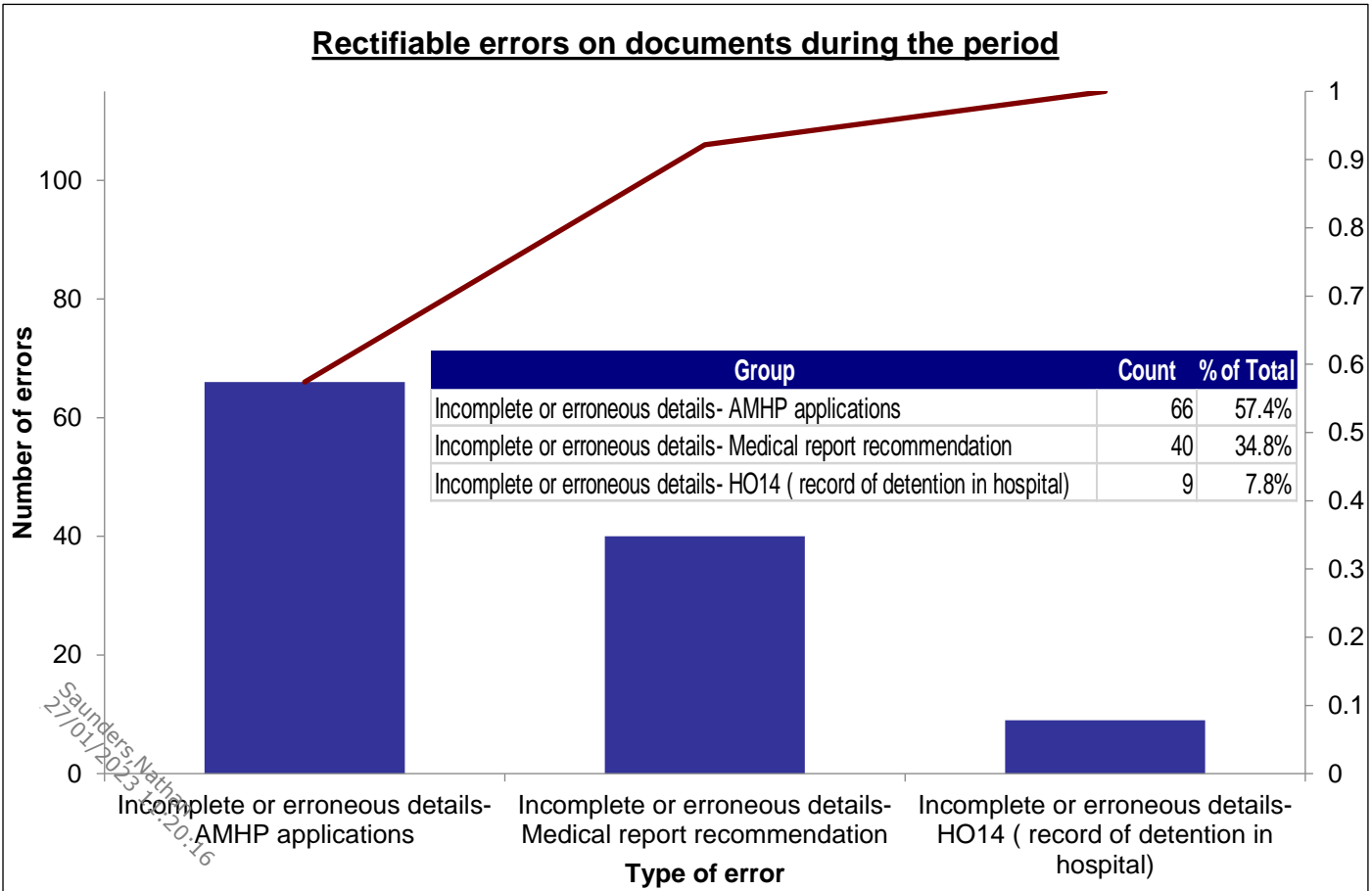
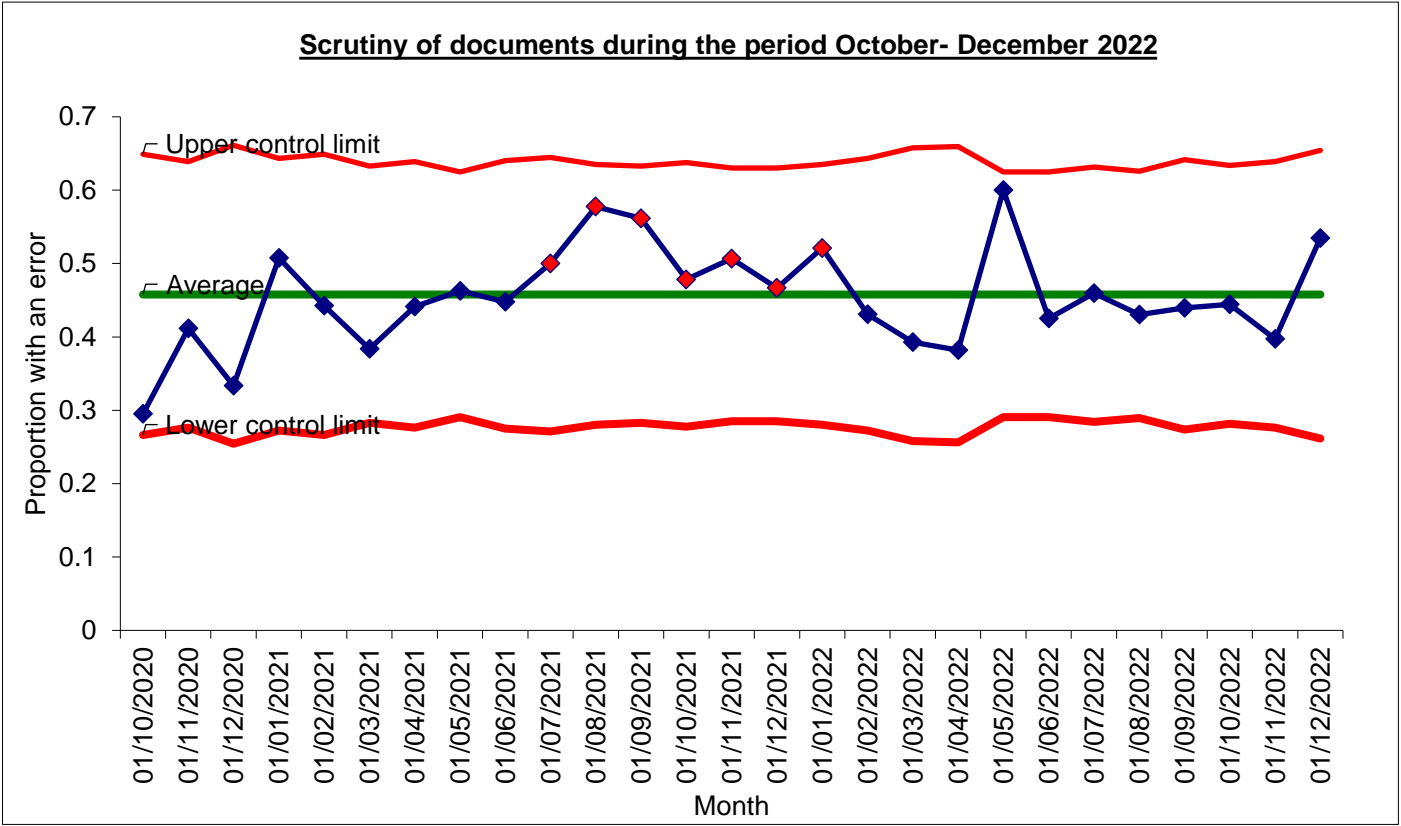
The number of Part 3 patients detained in Cardiff and Vale University Health Board Hospitals or subject to Community Treatment/Conditional Discharge in the community as at 31st December 2022.



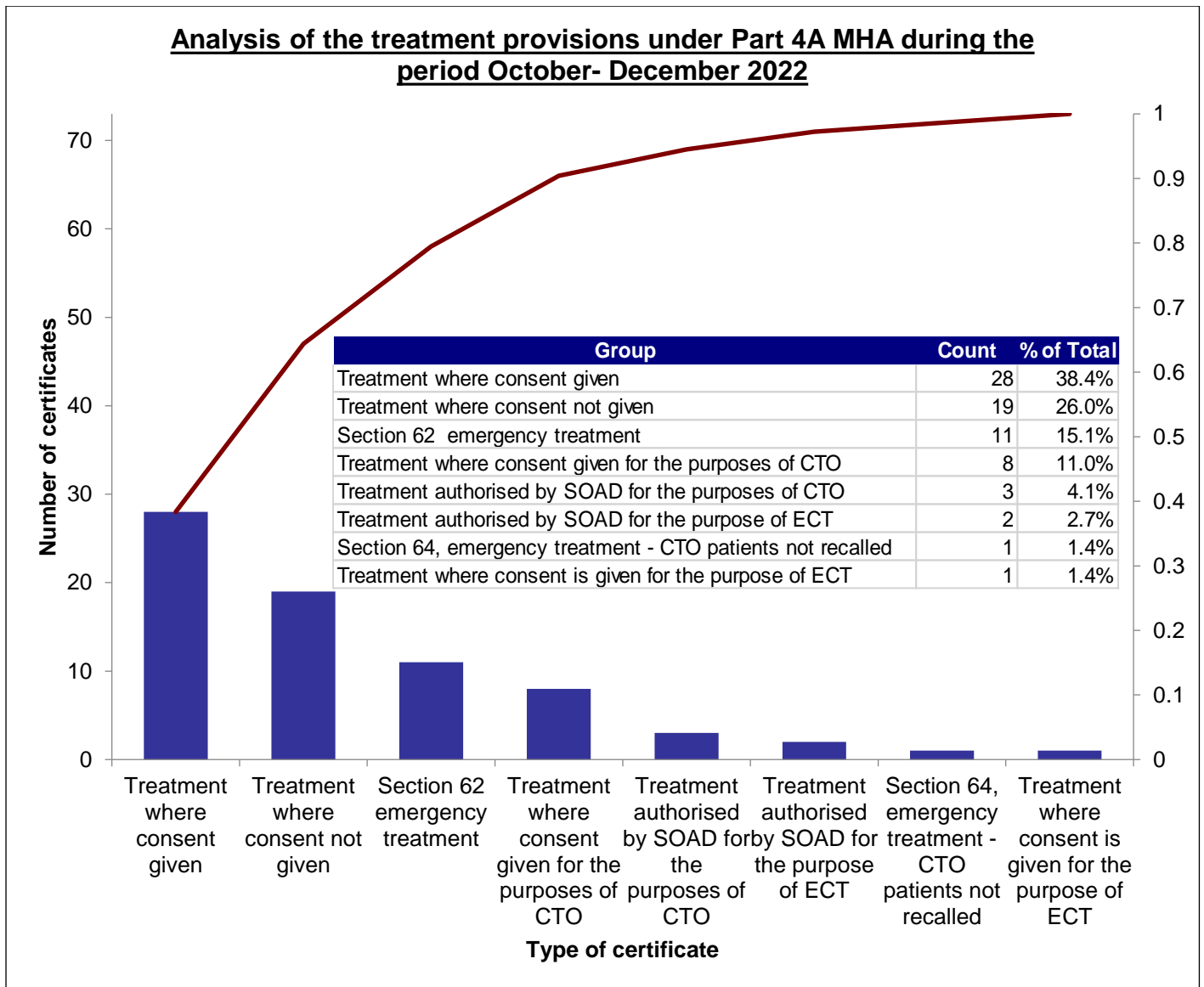
Saunders, Nathan
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Scrutiny of documents during the period

The chart above is a different type of control chart (P Chart) which looks at the proportions. The width of the control limits is dictated by the size of the denominator, so a larger denominator will have a narrower limit.



Consent to Treatment



Urgent Treatment

There are some circumstances in which the approved clinician may authorise a detained patient's urgent treatment under section 62 however this applies only to patients whose treatment is covered by Part 4 of the Act which is concerned with the treatment of detained patients and Part 4A supervised community treatment patients recalled to hospital.

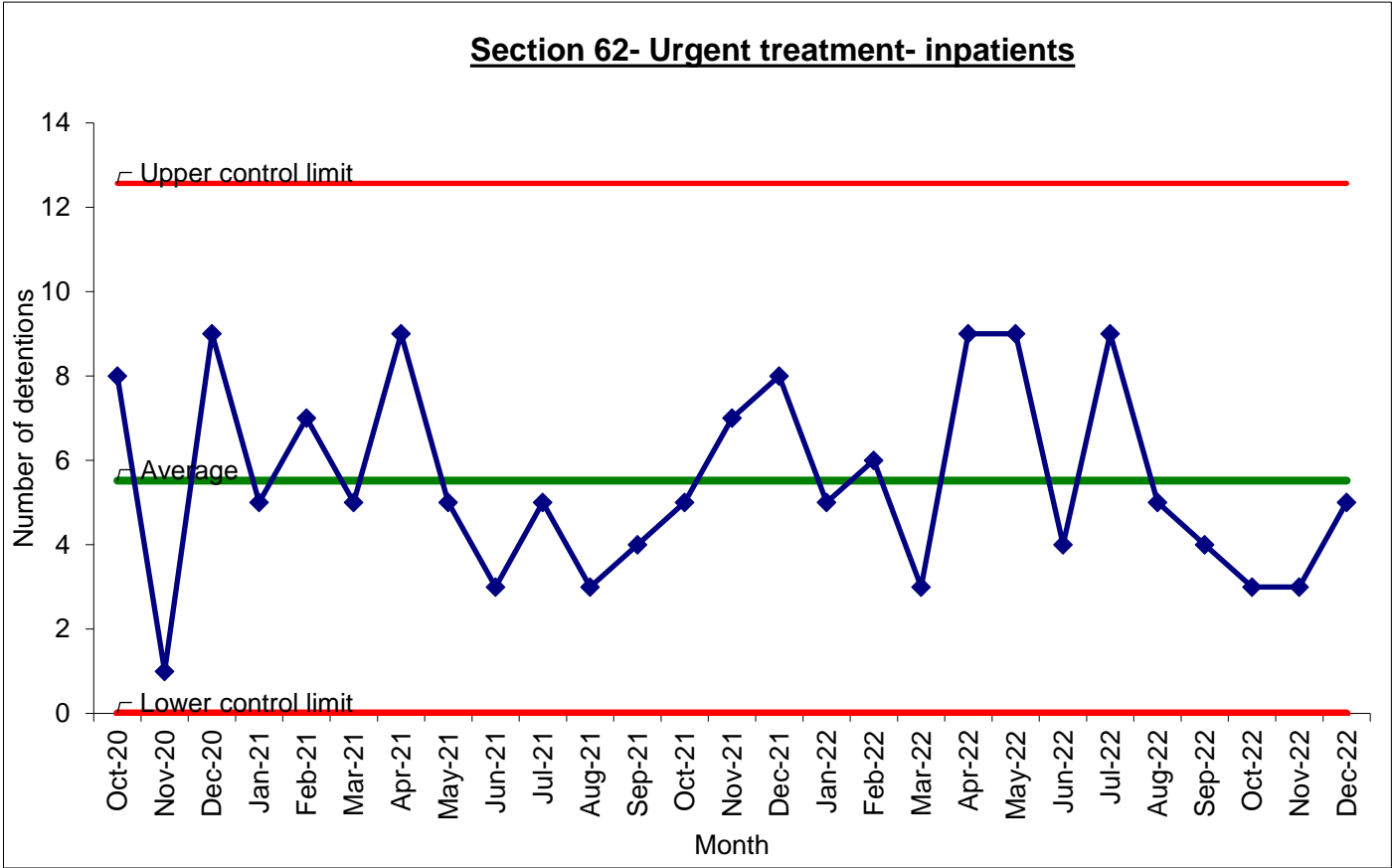
Urgent treatment is defined as treatment that is:

- Immediately necessary to save the patient's life; or
- That is not irreversible but is immediately necessary to prevent a serious deterioration of the patient's condition; or
- That is not irreversible or hazardous but is immediately necessary to alleviate serious suffering by the patient; or
- That is not irreversible or hazardous but is immediately necessary and represents the minimum interference to prevent the patient from behaving violently or being a danger to himself or others.

A patient’s treatment may be continued pending compliance with s.58, if discontinuation would cause serious suffering to the patient.

Urgent treatment can be used in any of the following instances:

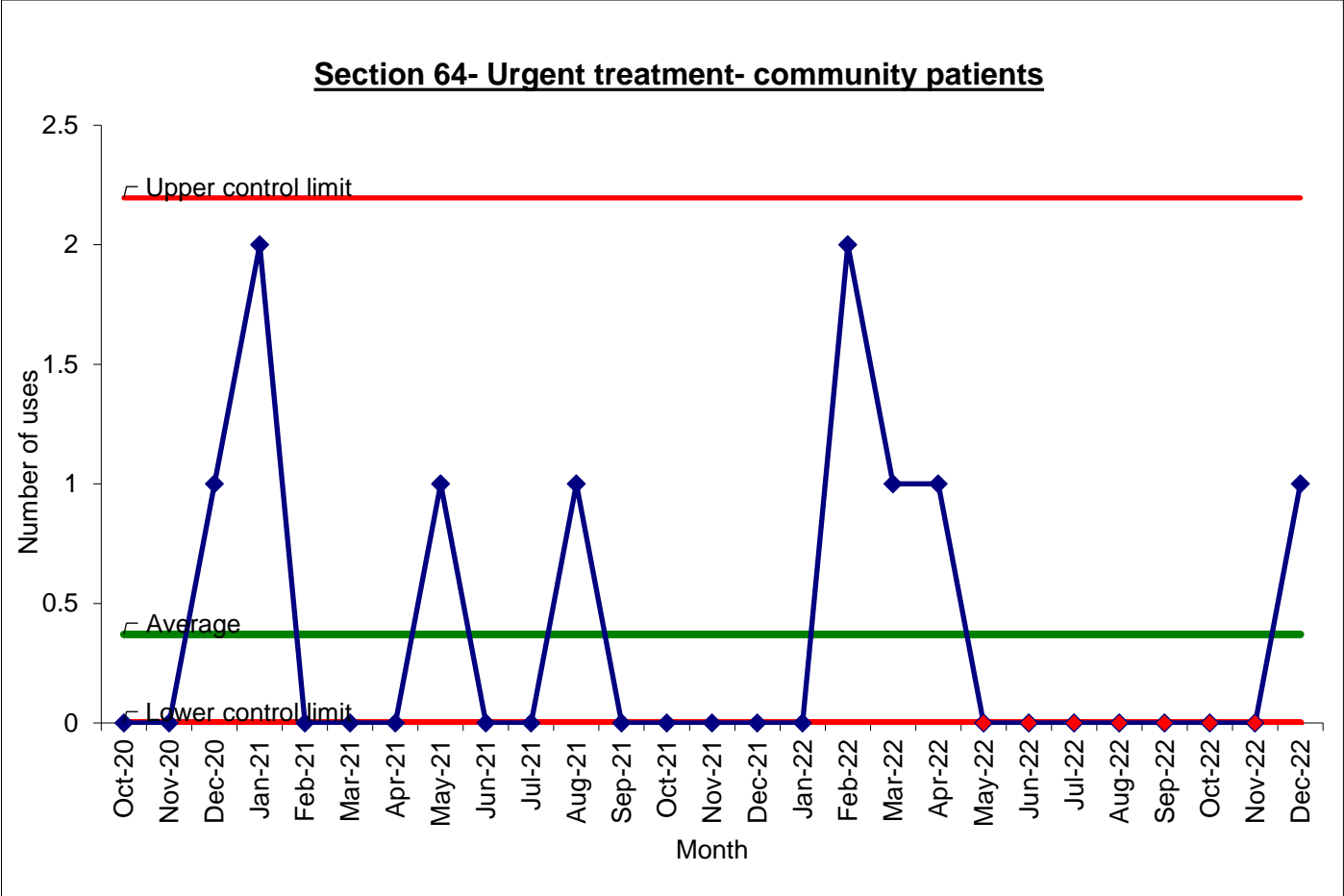
- Where the SOAD has not yet attended to certify treatment within the statutory timeframe.
- Where the SOAD has not yet certified treatment for ECT which needs to be administered as a matter of urgency.
- Where medication is prescribed outside of an existing SOAD certificate.
- Where consent has been withdrawn by the patient and the SOAD has not yet attended to certify treatment.
- Where the patient has lost capacity to consent to treatment and the SOAD has not yet attended for certification purposes.



The above chart highlights that Section 62 was used on eleven occasions for the following reasons:

- Pending SOAD – 3 month rule x 9
- Consent withdrawn x 1
- Transfer in- awaiting SOAD x 1

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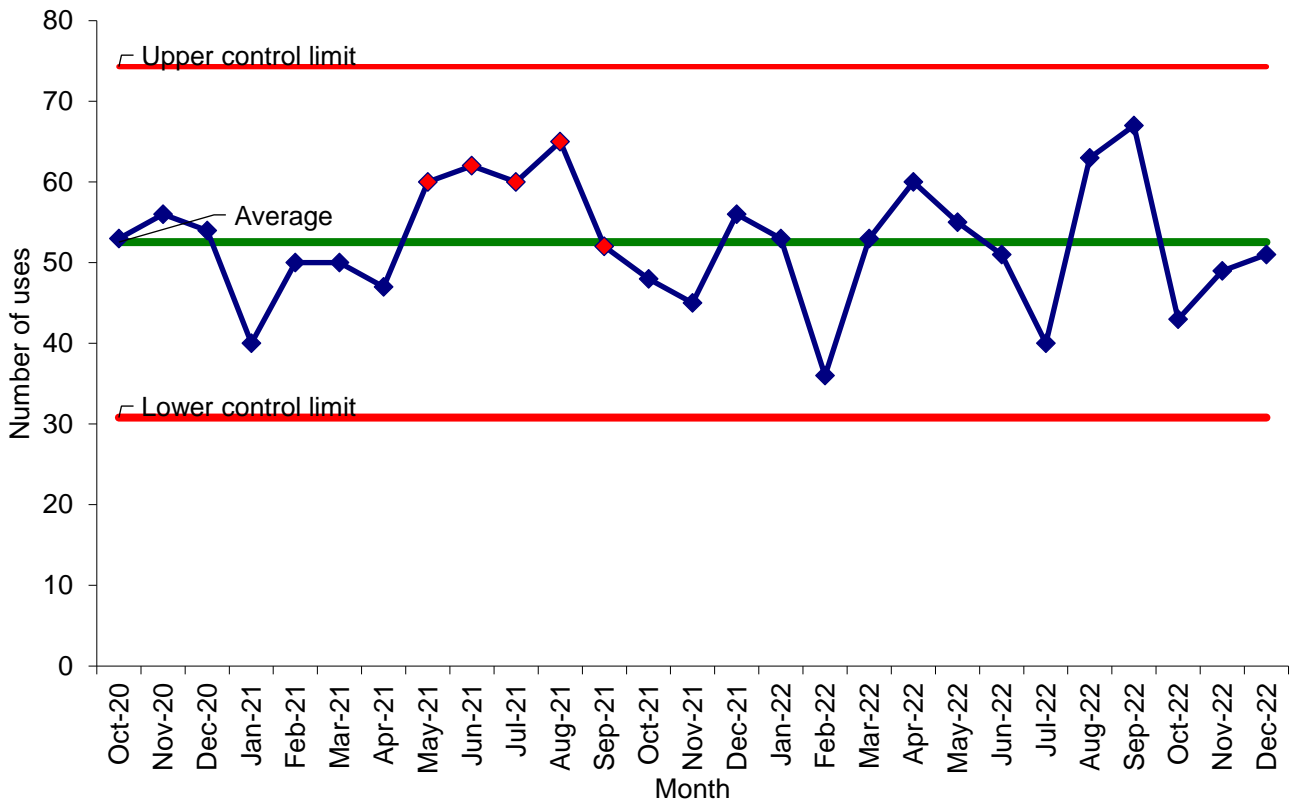
The above chart highlights that Section 62 was used on eleven occasions for the following reasons:

- Pending SOAD 1 month rule x 1

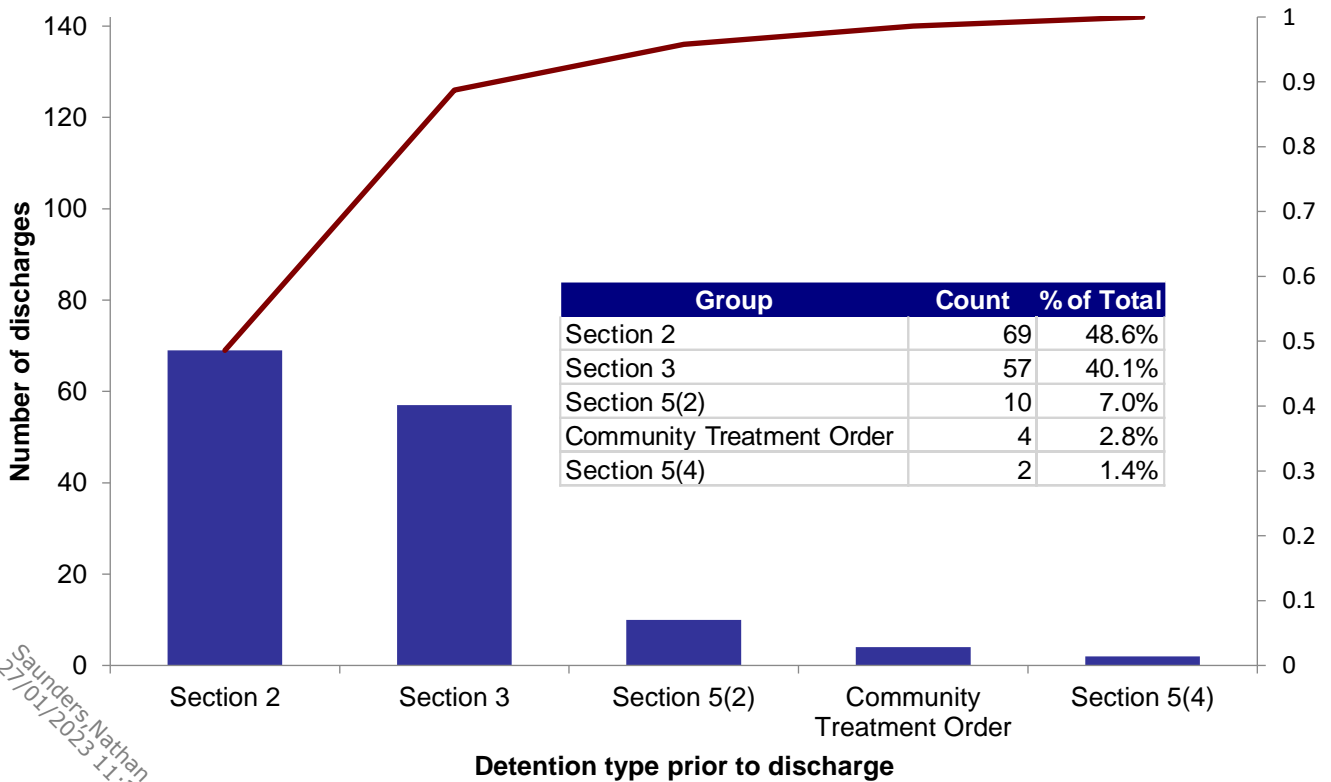
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Discharge

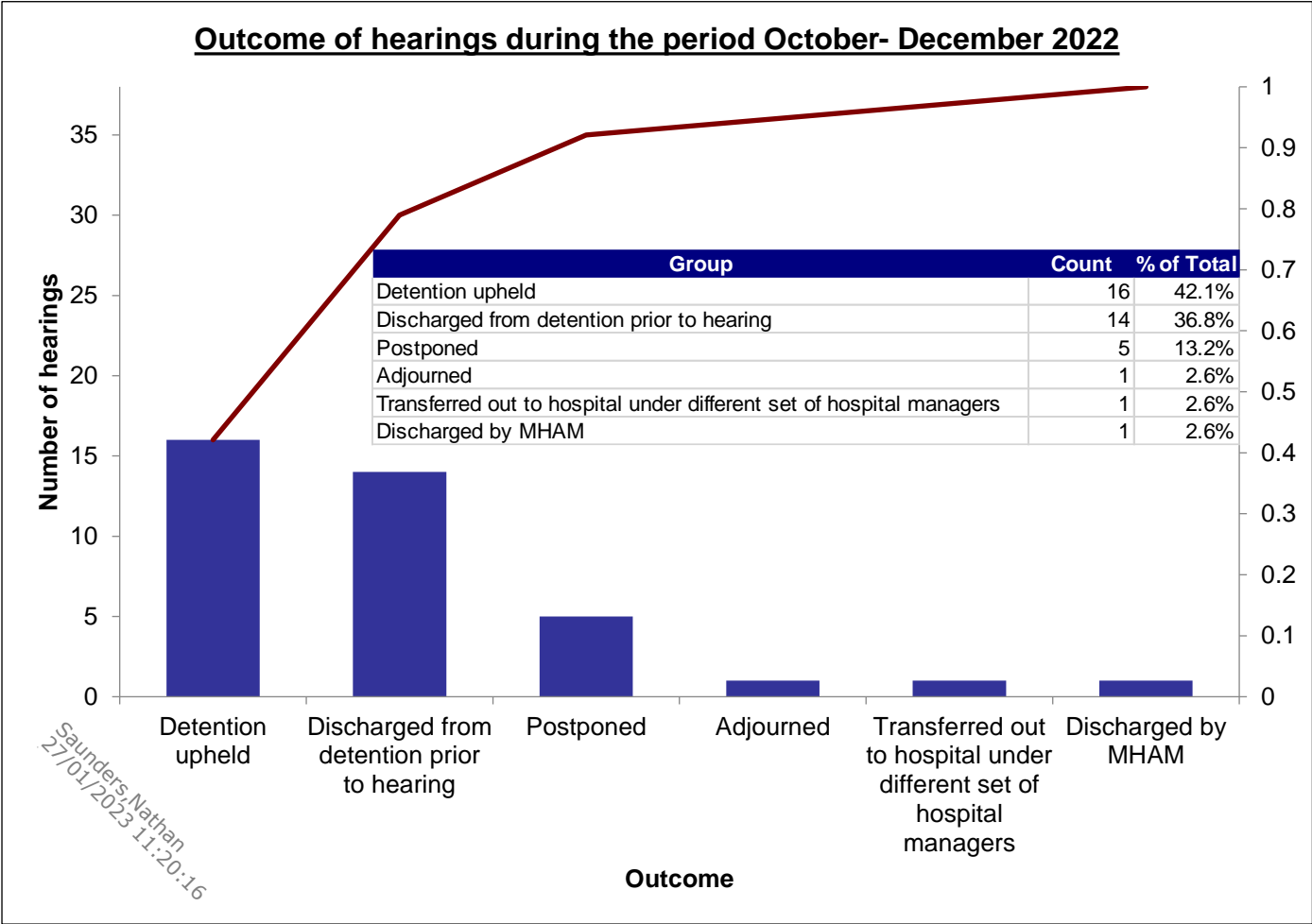
Discharge from detention by responsible clinician



Discharge from detention by RC during the period October- December 2022



Hospital Managers – Power of Discharge

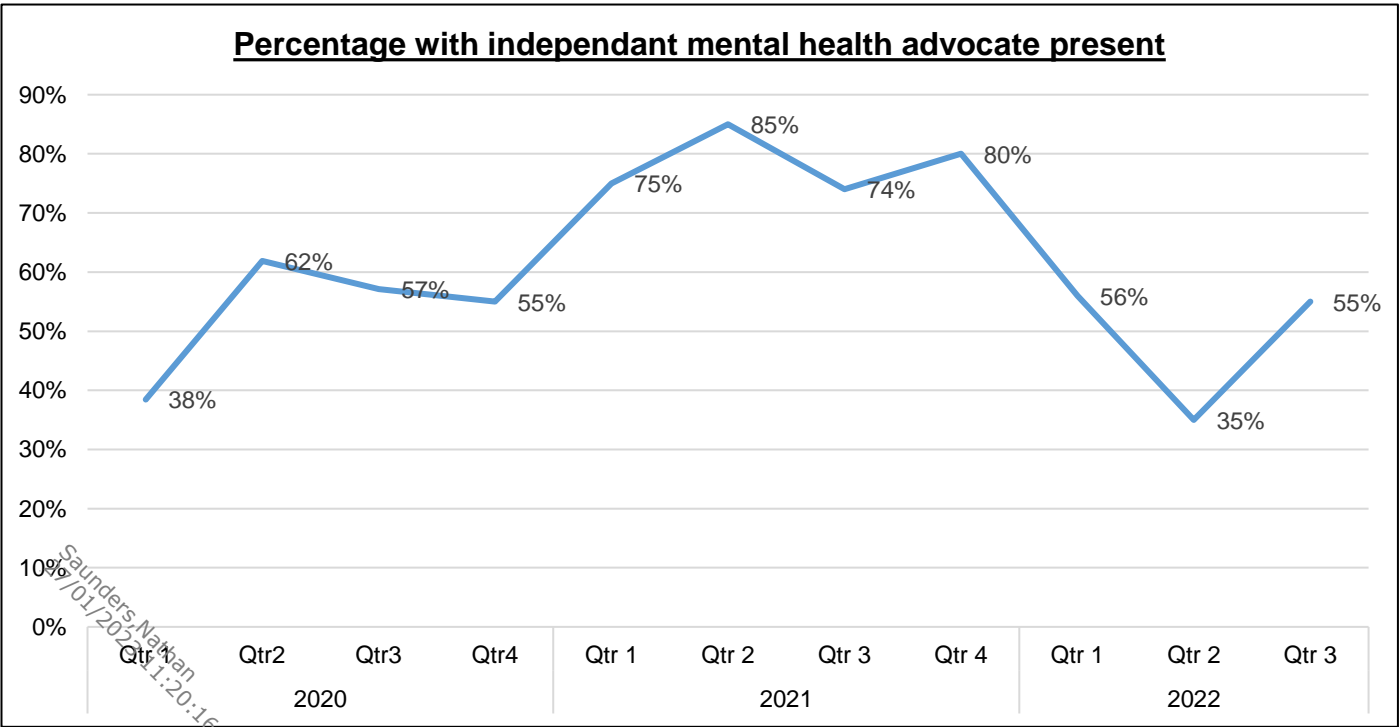
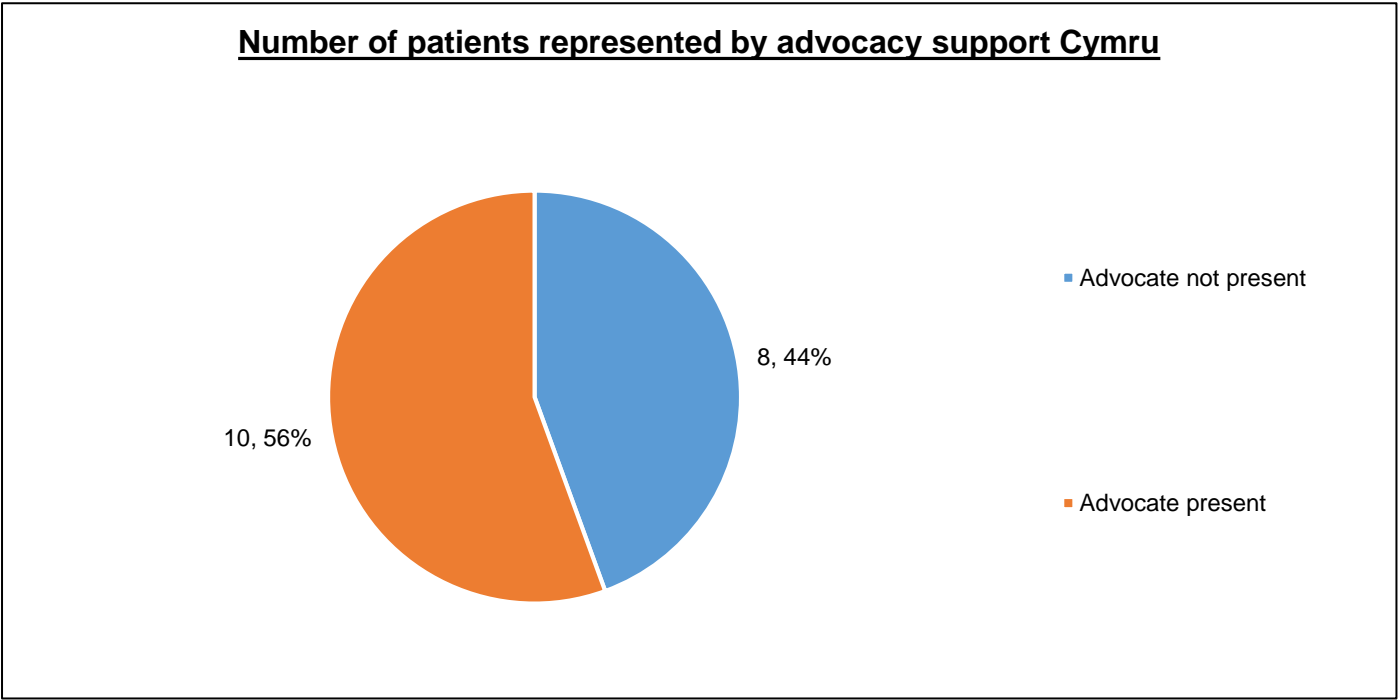


Five hearings were postponed for the following reasons:

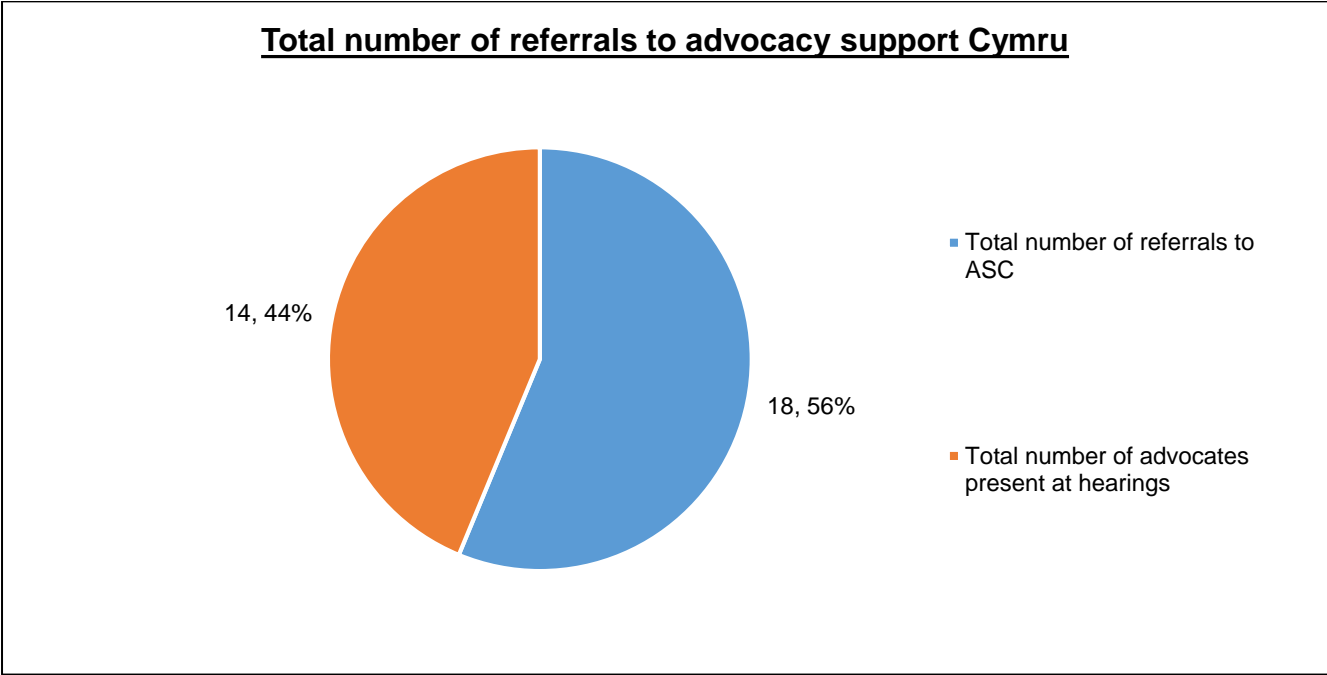
- No RC report provided x2
- Conflict with patient’s court hearing x1
- NHS strike action x1
- NR had no time to go through reports with their solicitor x1

One hearing was adjourned for the following reasons:

- NR views different from RC and SW who weren’t present to contest x1



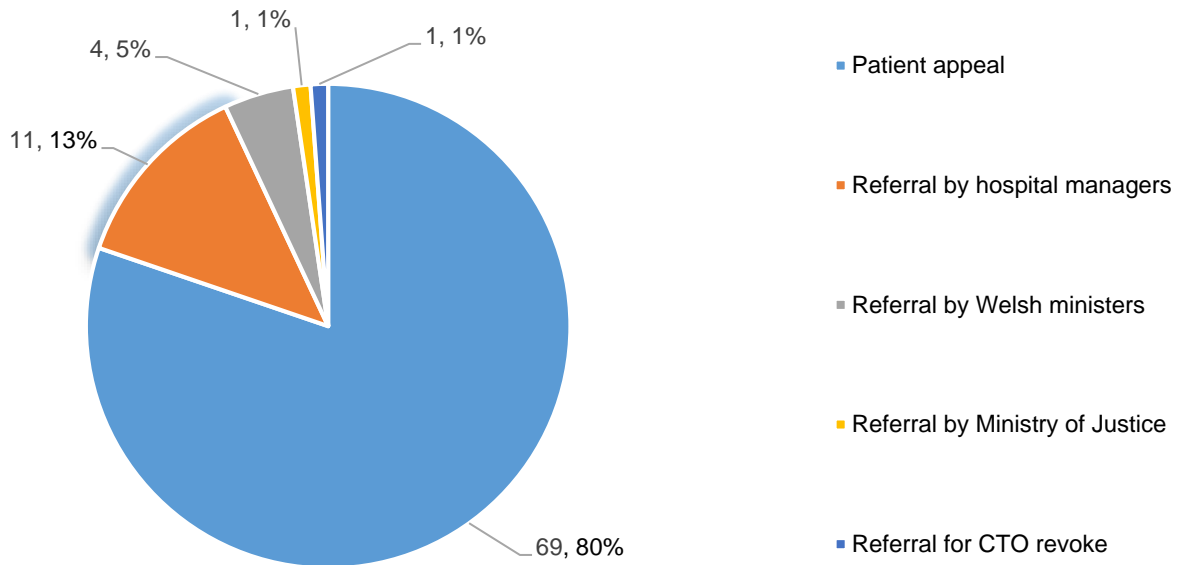
During the period the Mental Health Act Office made eighteen referrals to Advocacy Support Cymru where the patient was deemed not to have capacity to make this decision. Four of the hearings were either postponed/cancelled and therefore weren't attended by an advocate.



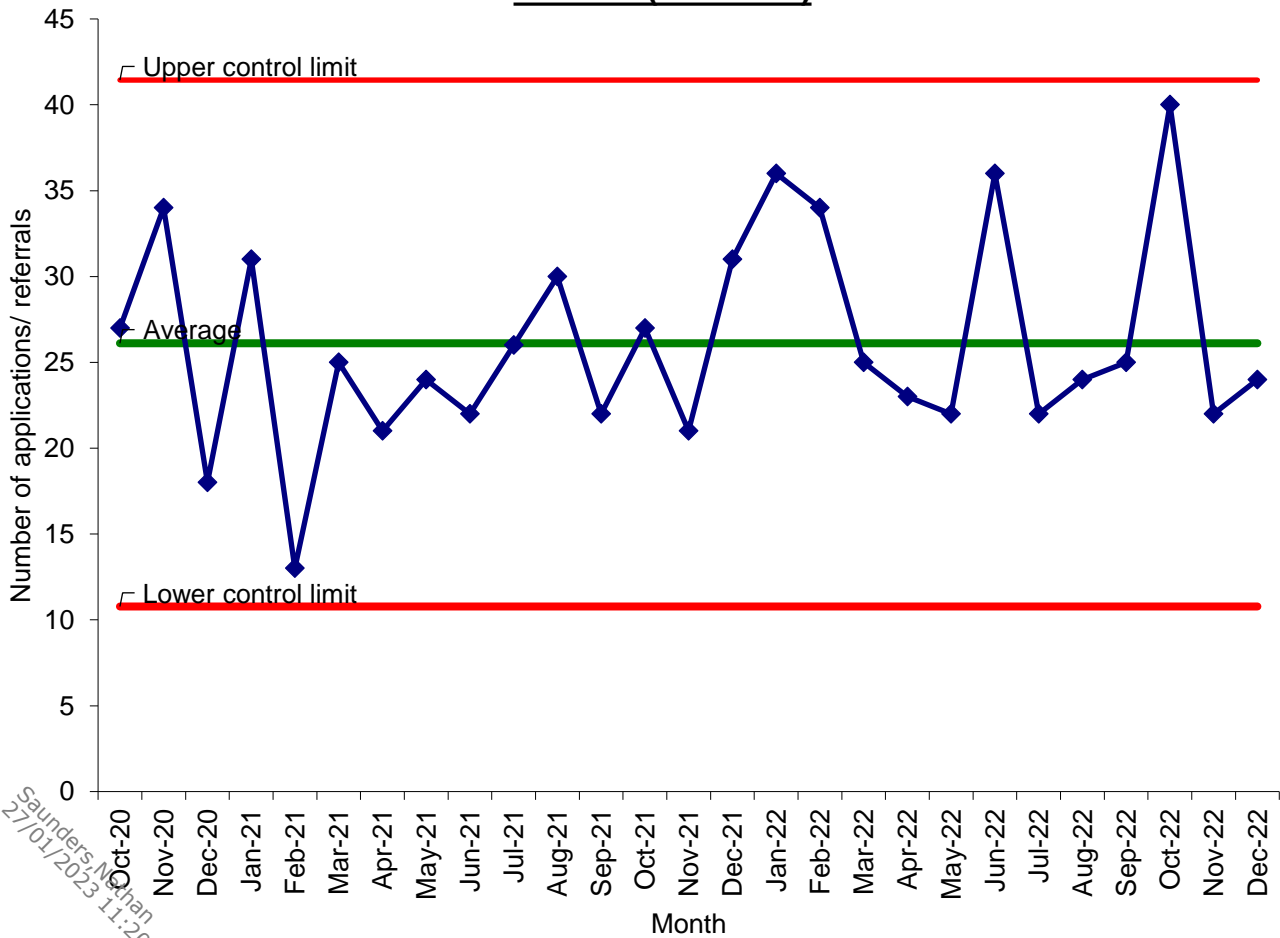
Saunders, Nathan
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Mental Health Review Tribunal (MHRT) for Wales

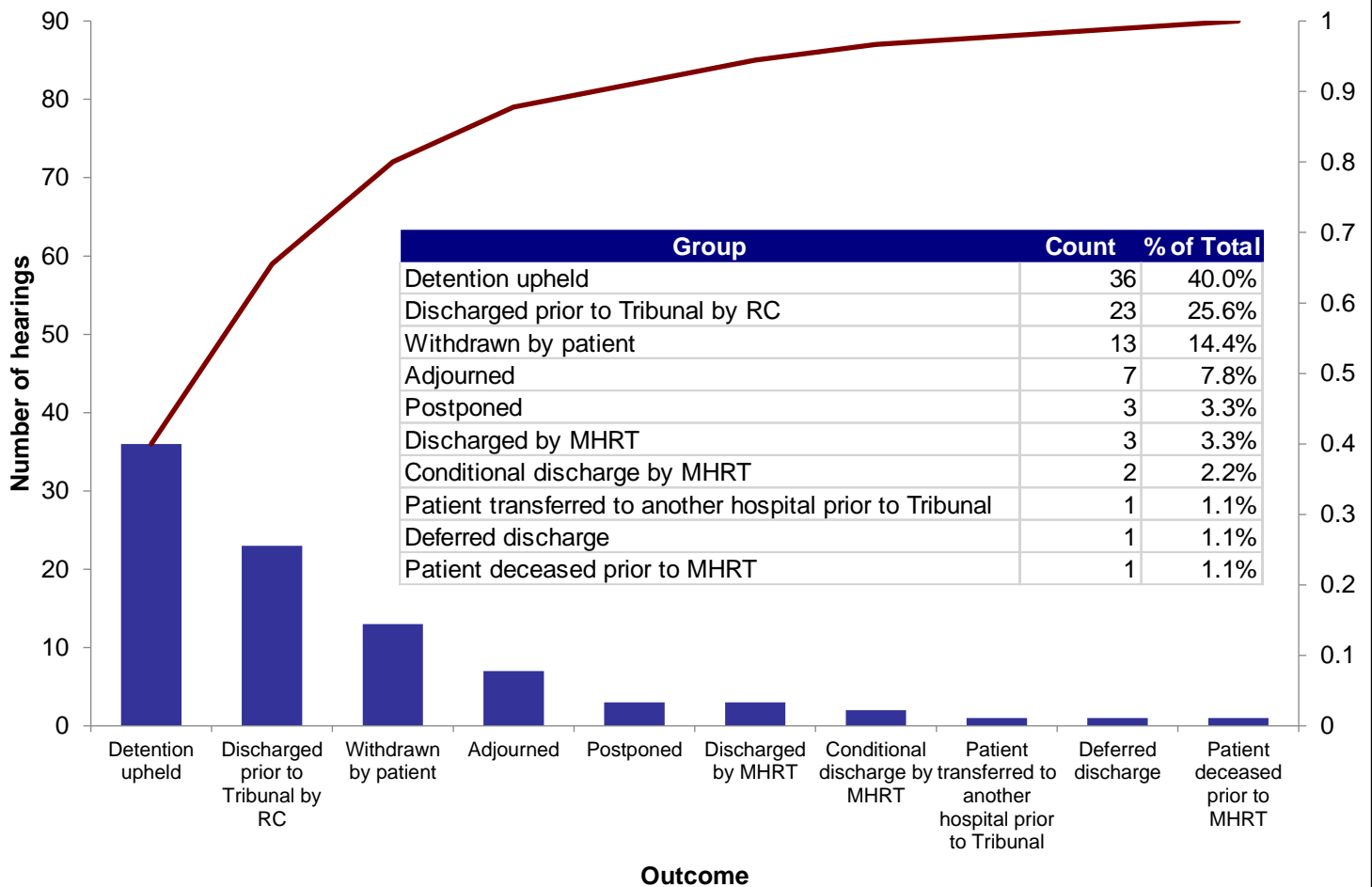
Source of applications to the Mental Health Review Tribunal for Wales



Number of applications and referrals to the Mental Health Review Tribunal (for Wales)



Outcome of Mental Health Review Tribunals (for Wales)



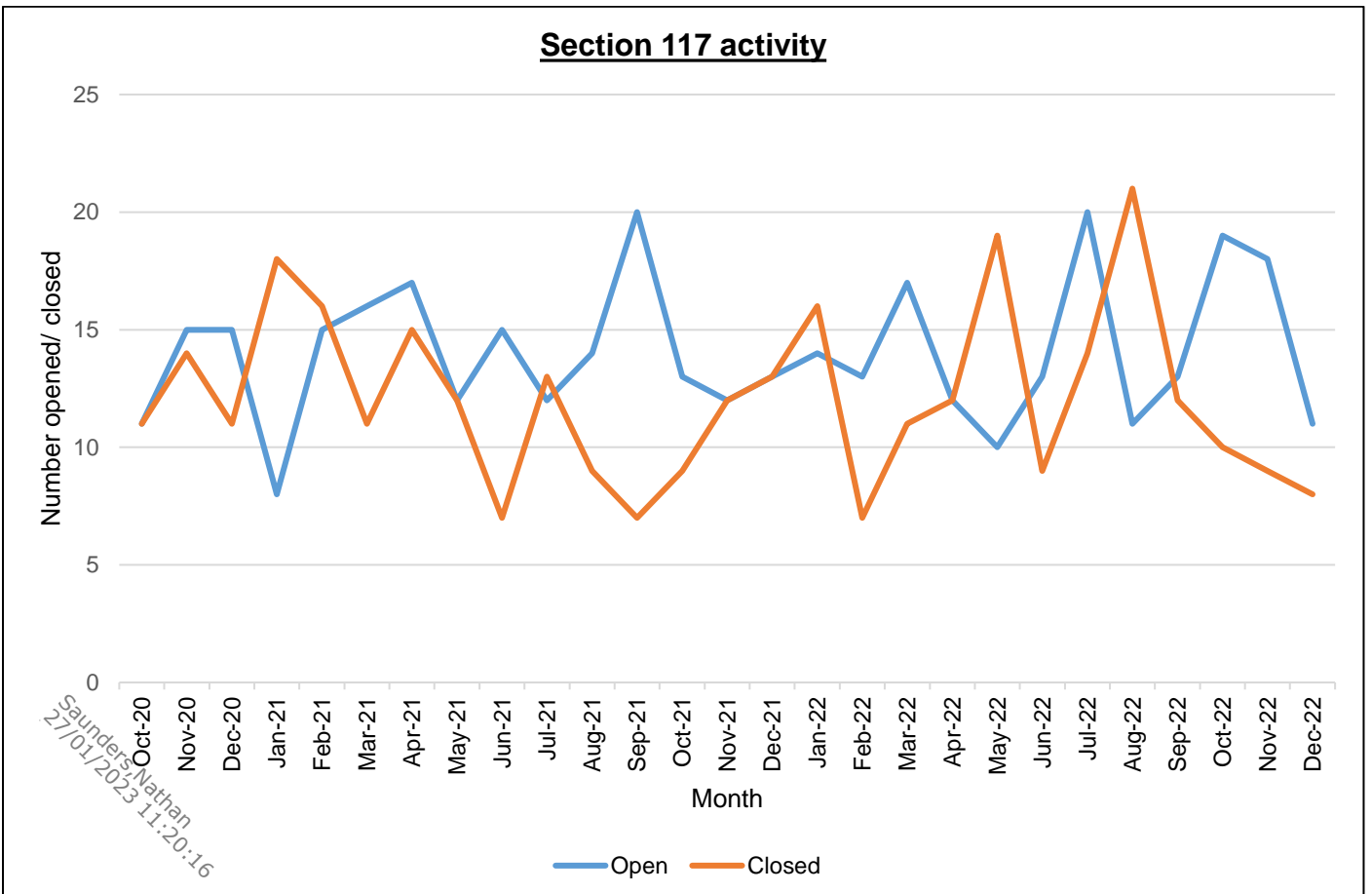
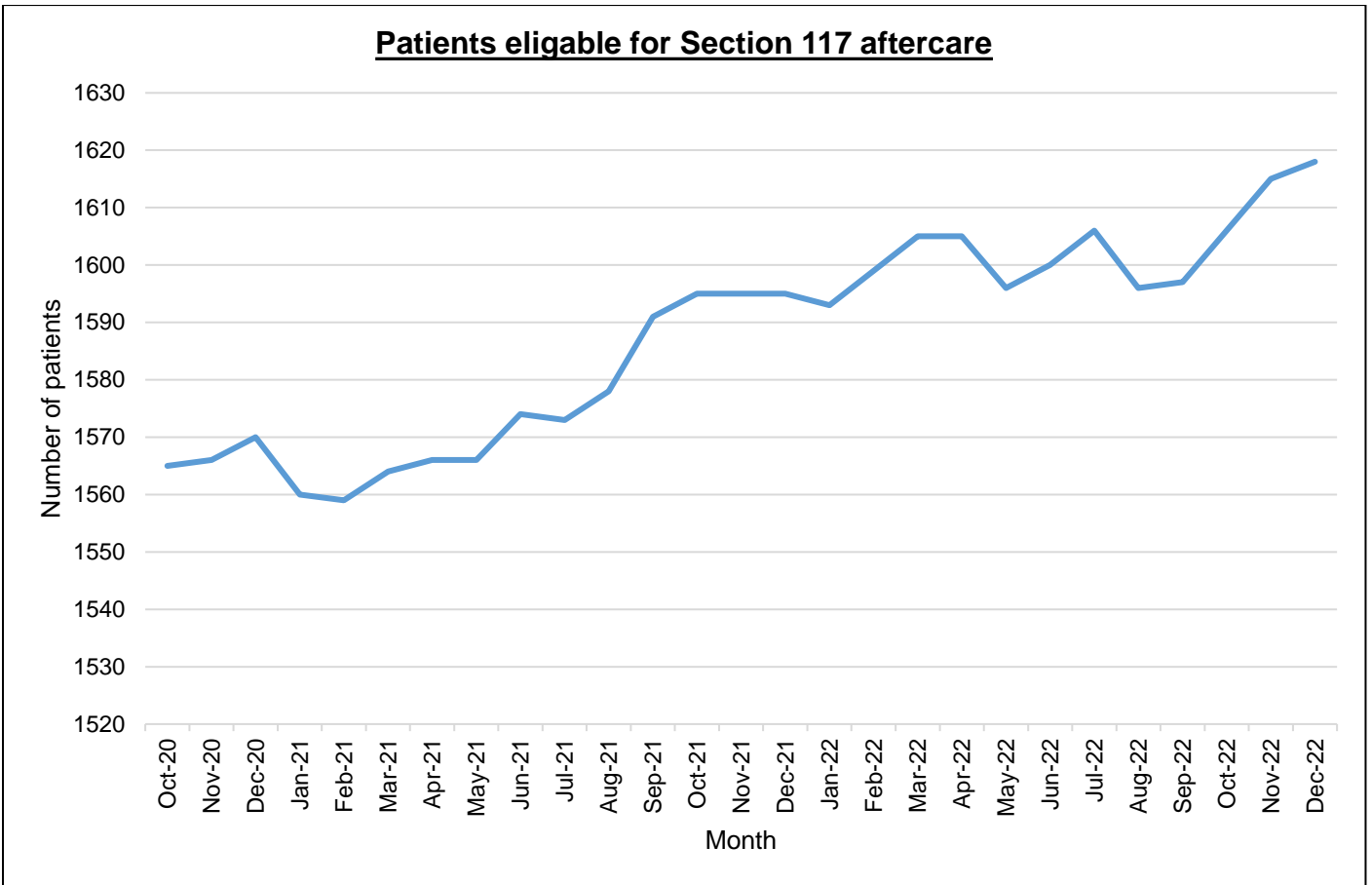
Seven hearings were adjourned for the following reasons:

- RC didn't provide report x1
- Patient didn't have enough time to read reports x1
- Update on placement needed from RC and CC x1
- Patient discharged onto CTO - solicitor unable to contact patient x1
- Social circumstances report not received – Out of area LA refused to complete report x1
- Social worker didn't attend x1
- More information needed regarding risks x1

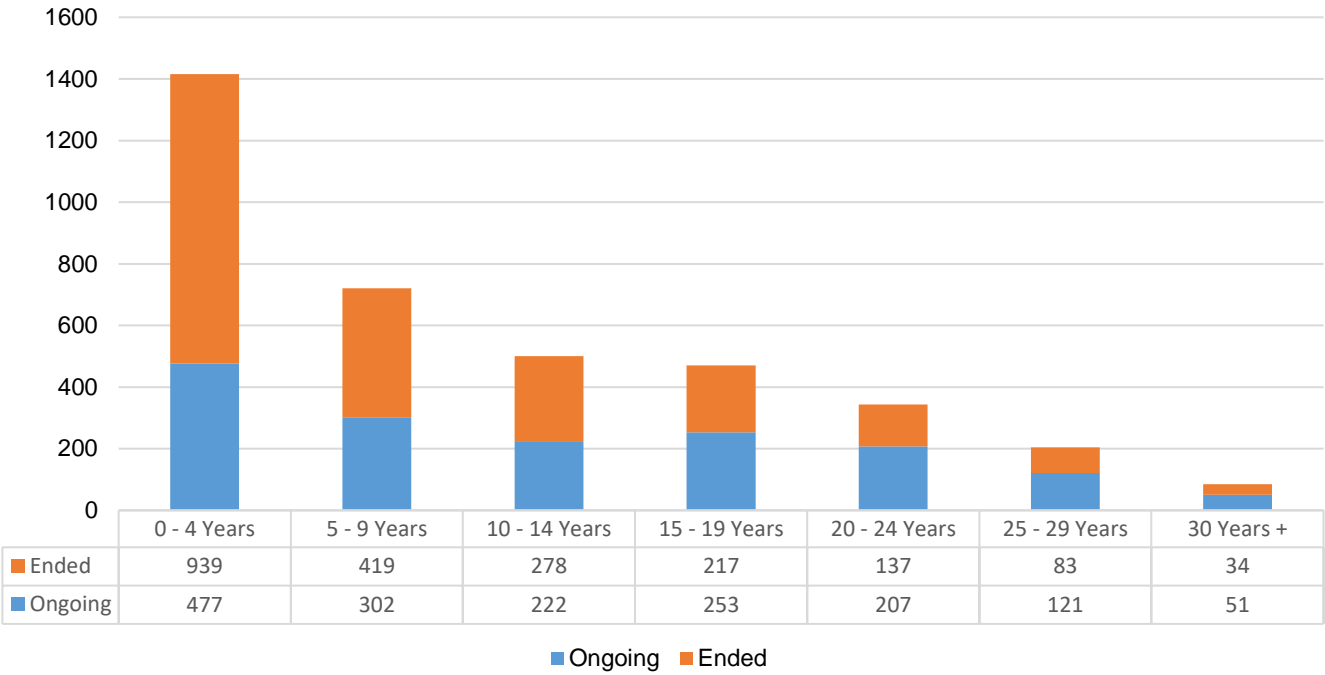
Three hearings were postponed for the following reasons:

- Patient's RC no longer available x1
- Capacity assessment and addendum report needed from RC x1
- Technical issues x1

Section 117 Aftercare



Periods of time that patients remain eligible for Section 117 aftercare



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Section 19 transfers to and from Cardiff and Vale UHB

During the period:

Nine patients detained under Part 2 of the Mental Health Act were transferred from Cardiff and Vale UHB to a hospital under a different set of Managers for the following reasons:

- One to return to their home area
- One to a specialist placement
- Seven to an out of area PICU bed

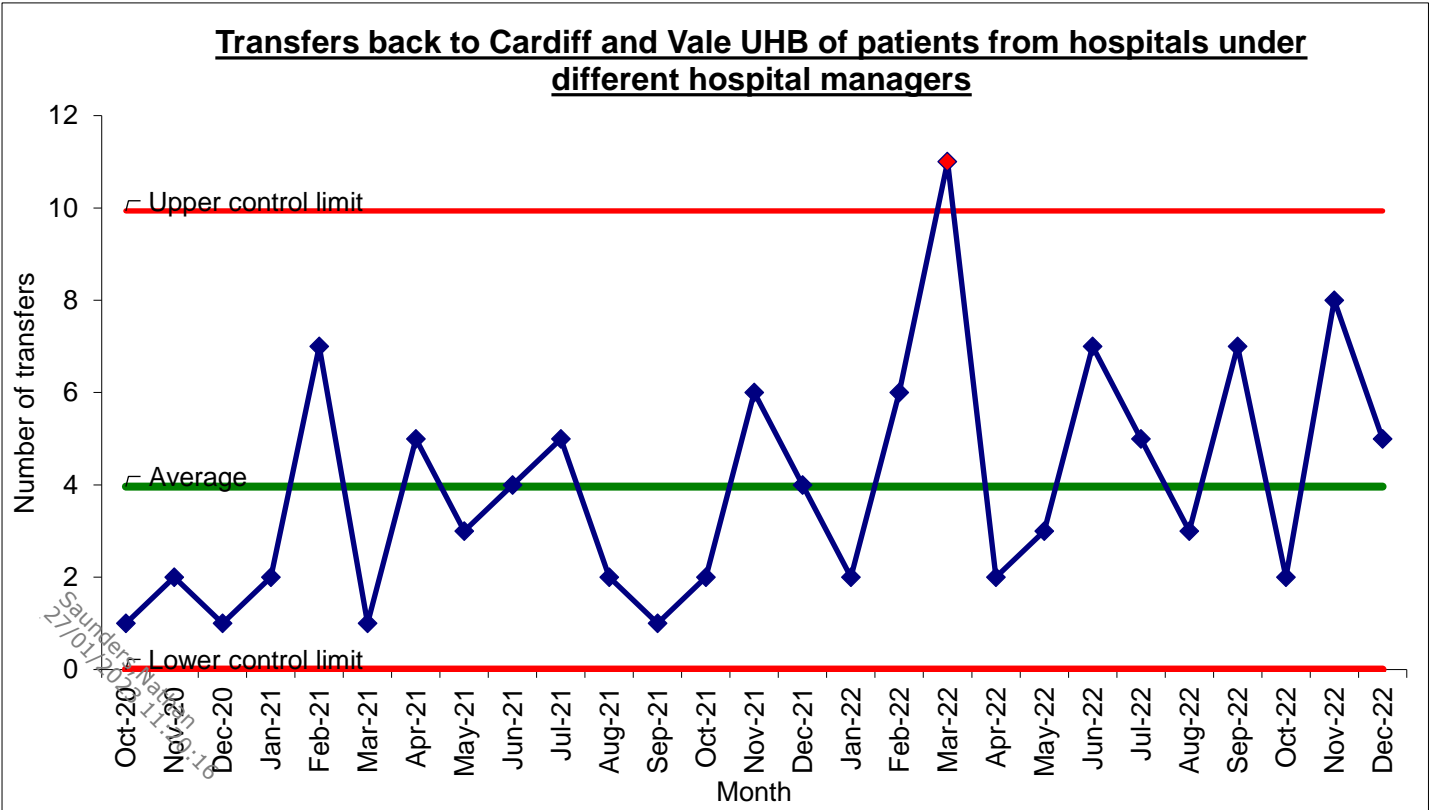
Two patients detained under Part 3 of the Mental Health Act were transferred from Cardiff and Vale UHB to a medium secure unit.

Eleven patients detained under Part 2 of the Mental Health Act were transferred into Cardiff and Vale UHB from a hospital under a different set of Managers for the following reasons:

- Seven from an out of area PICU bed
- One to a specialist ward
- Three back to home area from out of area placement

Four patients detained under Part 3 of the Mental Health Act were transferred into Cardiff and Vale UHB from a hospital under a different set of Managers for the following reasons:

- One step down from medium secure
- One step down from low secure
- One back to home area rehabilitation ward



Summary of other Mental Health Activity which took place during the period

October- December 2022

Exclusion of visitors

Visiting on wards at Hafan Y Coed are allowed but by strict appointment only. This is managed through a booking in system. This is due to the ongoing global pandemic.

Death of detained patients

During the period there were three deaths of detained patients.

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Glossary of Terms

Definition	Meaning
Informal patient	Someone who is being treated for mental disorder in hospital and who is not detained under the Act.
Detained patient	A patient who is detained in hospital under the Act or who is liable to be detained in hospital but who is currently out of hospital e.g. on section 17 leave.
Section 135	Allows for a magistrate to issue a warrant authorising a policeman to enter premises, using force if necessary, for the purpose of removing a mentally disordered person to a place of safety for a period not exceeding 72 hours, providing a means by which an entry which would otherwise be a trespass, becomes a lawful act.
Section 135(1)	Used where there is concern about the well being a person who is not liable to be detained under the Act so that he /she can be examined by a doctor and interviewed by an Approved mental Health Professional in order that arrangements can be made for his/her treatment or care.
Section 135(2)	Used where the person is liable to be detained, or is required to reside at a certain place under the terms of guardianship, or is subject to a community treatment order or Scottish legislation. In both instances, the person can be transferred to another place of safety during the 72 hour period.
Section 136	Empowers a policeman to remove a person from a public place to a place of safety if he considers that the person is suffering from mental disorder and is in immediate need of care and control. The power is available whether or not the person has, or is suspected of having committed a criminal offence. The person can be detained in a place of safety initially for up to 24 hours so that he /she can be examined by a doctor and interviewed by an Approved mental Health Professional in order that arrangements can be made for his/her

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	<p>treatment or care. The detention can be extended by a further 12 hours by a Registered Medical Professional. The detained person can be transferred to another place of safety as long as the maximum time period has not expired.</p>
<p>Part 2 of the Mental Health Act 1983</p>	<p>This part of the Act deals with detention, guardianship and supervised community treatment for civil patients. Some aspects of Part 2 also apply to some patients who have been detained or made subject to guardianship by the courts or who have been transferred from prison to detention in hospital by the Secretary of State for Justice under Part 3 of the Act.</p> <p>A part 2 patient is a civil patient who became subject to compulsory measures under the Act as a result of an application for detention by a nearest relative or an approved mental health professional founded on medical recommendations.</p>
<p>Section 5(4)</p>	<p>Provides for registered nurses whose field of practice is mental health or learning disabilities to invoke a holding power for a period of not more than 6 hours by completing the statutory document required.</p> <p>During this period, the medical practitioner or approved clinician in charge, or his or her nominated deputy should examine the patient with a view to making a report under section 5(2).</p> <p>Alternatively a patient can be detained under section 2 or 3 if a full Mental Health Act assessment is achieved during the 6 hour period.</p>
<p>Section 5(2)</p> <p>Saunders, Nathan 27/01/2023 11:20:16</p>	<p>Enables an informal inpatient to be detained for up to 72 hours if the doctor or approved clinician in charge of the patient's treatment reports that an application under section 2 or 3 ought to be made.</p> <p>The purpose of this holding power is to prevent a patient from discharging him/herself from hospital before there is time to arrange for an application under section 2 or</p>

	<p>section 3 to be made. As soon as the power is invoked, arrangements should be made for the patient to be assessed by a potential applicant and recommending doctors.</p>
Section 4	<p>In cases of urgent necessity, this section provides for the compulsory admission of a person to hospital for assessment for a period of up to 72 hours.</p> <p>An application under this section should only be made when the criteria for admission for assessment are met, the matter is urgent and it would be unsafe to wait for a second medical recommendation i.e. where the patient's urgent need for assessment outweighs the alternative of waiting for a medical recommendation by a second doctor.</p> <p>A psychiatric emergency arises when the mental state or behaviour of a patient cannot be immediately managed. To be satisfied that an emergency has arisen, there must be evidence of:</p> <ul style="list-style-type: none"> • An immediate and significant risk of mental or physical harm to the patient or to others • And/or the immediate and significant danger of serious harm to property • And/or the need for physical restraint of the patient. <p>Section 4 cannot be renewed at the end of the 72 hour period. If compulsory detention is to be continued, the application must either be converted into a section 2 (admission for assessment) with the addition of a second medical recommendation, in which case the patient can be detained for a maximum of 28 days under that section beginning with the date of admission under section 4 or an application for treatment under section 3 should be made.</p> <p>The Act does not provide for a section 4 to be converted into a section 3 because the criteria for admission under each of these sections are different.</p>

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<p>Section 2</p>	<p>Authorises the compulsory admission of a patient to hospital for assessment or for assessment followed by medical treatment for mental disorder for up to 28 days. Provisions within this section allow for an application to be made for discharge to the Hospital Managers or Mental Health Review Tribunal for Wales.</p> <p>If after the 28 days have elapsed, the patient is to remain in hospital, he or she must do so, either as an informal patient or as a detained patient under section 3 if the grounds and criteria for that section have been met.</p> <p>The purpose of the section is limited to the assessment of a patient's condition to ascertain whether the patient would respond to treatment and whether an application under section 3 would be appropriate.</p> <p>Section 2 cannot be renewed and there is nothing in the Act that justifies successive applications for section 2 being made.</p> <p>The role of the nearest relative is an important safeguard but there are circumstances in which the county court has the power to appoint another person to carry out the functions of the nearest relative:</p> <ul style="list-style-type: none"> • The patient has no nearest relative within the meaning of the Act • It is not reasonably practicable to find out if they have such a relative or who that relative is • The nearest relative is unable to act due to mental disorder or illness • The nearest relative of the person unreasonably objects to an application for section 3 or guardianship. • The nearest relative has exercised their power to discharge the person from hospital or guardianship without due regard to the persons welfare or the public interest <p>This procedure may have the effect of extending the authority to detain under section 2 until the application to the county court to appoint another person is finally disposed of.</p>
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	Patients admitted under section 2 are subject to the consent to treatment provisions in Part 4 of the Act.
Section 3	<p>Provides for the compulsory admission of a patient to a hospital named in the application for treatment for mental disorder. Section 3 provides clear grounds and criteria for admission, safeguards for patients and there are strict provisions for review and appeal.</p> <p>Patients detained under this section are subject to the consent to treatment provisions contained in Part 4 of the Act below.</p>
Community Treatment Order (CTO)	Provides a framework to treat and safely manage suitable patients who have already been detained in hospital in the community. CTO provides clear criteria for eligibility and safeguards for patients as well as strict provisions for review and appeal, in the same way as for detained patients.
Section 17E (recall of a community patient to hospital)	<p>Provides that a Responsible Clinician may recall a patient to hospital in the following circumstances:</p> <ul style="list-style-type: none"> • Where the RC decides that the person needs to receive treatment for his or her mental disorder in hospital and without such treatment there would be a risk of harm to the health or safety of the patient or to other people. • Where the patient fails to comply with the mandatory conditions set out in section 17B (3).
Revocation	Is the rescinding of a CTO when a patient needs further treatment in hospital under the Act. If a patients' CTO is revoked the patient is detained under the powers of the Act in the same way as before the CTO was made.
Part 3 of the Act	Deals with the circumstances in which mentally disordered offenders and defendants in criminal proceedings may be admitted to and detained in hospital or received into guardianship on the order of the court. It also allows the Secretary of State for Justice to transfer

	<p>people from prison to detention in hospital for treatment for mental disorder.</p> <p>Part 3 patients can either be "restricted", which means that they are subject to special restrictions on when they can be discharged, given leave of absence and various other matters, or they can be unrestricted, in which case they are treated for the most part like a part 2 patient.</p>
Section 35	Empowers a Crown Court or Magistrates Court to remand an accused person to hospital for the preparation of a report on his mental condition if there is reason to suspect that the accused person is suffering from a mental disorder.
Section 36	Empowers a Crown Court to remand an accused person who is in custody either awaiting trial or during the course of a trial and who is suffering from mental disorder, to hospital for treatment.
Section 37	Empowers a Crown Court or magistrates' court to make a hospital or guardianship order as an alternative to a penal disposal for offenders who are found to be suffering from mental disorder at the time of sentencing.
Section 38	Empowers a Crown Court or Magistrates Court to send a convicted offender to hospital to enable an assessment to be made on the appropriateness of making a hospital order or direction.
Section 41	<p>Empowers the Crown Court, having made a hospital order under s.37, to make a further order restricting the patients discharge, transfer or leave of absence from hospital without the consent of the Secretary of State for Justice.</p> <p>Section 41 can also operate as a community section for people who were originally on section 37/41. When a section 37/41 is conditionally discharged it leaves the power of Section 41 in place. This means that the person</p>

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	can leave hospital and live in the community but with a number of conditions placed upon them.
Section 45A	This is a court sentence to hospital for someone with a mental disorder at any time after admission, if the Responsible Clinician considers that treatment is no longer required or beneficial, the person can be transferred back to prison to serve the remainder of their sentence.
Section 47	Enables the Secretary of State to direct that a person serving a sentence of imprisonment or other detention be removed to and detained in a hospital to receive medical treatment for mental disorder.
Section 48	Empowers the Secretary of State for Justice to direct the removal from prison to hospital of certain categories of unsentenced mentally disordered prisoners to receive medical treatment.
Section 49	Enables the Secretary of State for Justice to add an order restricting the patients discharge from hospital to a s.47 or s.48.
CPI Act	<p>Criminal Procedure (Insanity) Act 1964. This Act as amended by the Criminal Procedures (Insanity and Unfitness to Plead) Act 1991 and the Domestic Violence, Crime and Victims Act 2004 provides for persons who are found unfit to be tried or not guilty by reason of insanity in respect of criminal charges. The court has three disposal options:</p> <ul style="list-style-type: none"> • To make a hospital order under section 37 of the MHA 1983 which can be accompanied by a restriction order under section 41. • To make a supervision order so that the offenders responsible officer will supervise him only to the extent necessary for revoking or amending the order. • Order the absolute discharge of the accused.
CTO (section 37)	Once an offender is admitted to hospital on a hospital order without restriction on discharge, his or her position

	is the same as if a civil patient, effectively moving from the penal into the hospital system. He or she may therefore be suitable for CTO
Administrative scrutiny	The University Health Board has formally delegated its duty to administratively scrutinise admission documents to officers identified in the scheme of delegation. Medical scrutiny is undertaken by Consultant Psychiatrists.
	<p>Compliance with the Consent to Treatment provisions under Part 4 & 4A of the Act is related to treatments requiring the patient's consent or a second opinion.</p> <p>If a patient has capacity but refuses treatment a Second Opinion Appointed Doctor (SOAD), i.e. a Registered Medical Practitioner appointed for the purposes of Part 4 of the Act can authorise treatment having consulted two Statutory Consultee's who have been professionally concerned with the medical treatment of the patient for mental disorder.</p> <p>If the patient lacks capacity to consent SOAD authorisation is required.</p>
Section 58(3)(a)	Certificate of consent to treatment (RC)
Section 58(3)(b)	Certificate of second opinion (SOAD authorisation)
Section 58A(3)(c)	Certificate of consent to treatment, patients at least 18 years of age (RC)
Section 58A(4)(c)	Certificate of consent to treatment and second opinion, patients under 18 years of age (SOAD)
Section 58A(5)	Certificate of second opinion (patients not capable of understanding the nature, purpose and likely effects of the treatment). (SOAD)
Part 4A	Certificate of appropriateness of treatment to be given to a community patient (SOAD)

<p>Section 62 – Urgent treatment</p>	<p>Where treatment is immediately necessary, a statutory certificate is not required if the treatment in question is:</p> <ul style="list-style-type: none"> • To save the patient's life • Or to prevent a serious deterioration of the patients condition, and the treatment does not have unfavourable physical or psychological consequences which cannot be reversed • Or to alleviate serious suffering by the patient, and the treatment does not have unfavourable physical or psychological consequences which cannot be reversed and does not entail significant physical hazard • Or to prevent the patient behaving violently or being a danger to themselves or others, and the treatment represents the minimum interference necessary for that purpose, does not have unfavourable physical or psychological consequences which cannot be reversed and does not entail significant physical hazard.
<p>Section 23</p>	<p>Provides for the absolute discharge from detention, guardianship or from a community treatment order of certain patients, by the Responsible Clinician, the Hospital Managers (or Local Social Services Authority for guardianship patients) or the patients nearest relative. The discharge must be ordered; it cannot be affected by implication.</p> <p>Section 23 does not apply to patients who have been remanded to hospital by the courts or to patients subject to interim hospital orders.</p> <p>The Secretary of State for Justice has powers to discharge restricted patients under section 42(2).</p> <p>If at any time Responsible Clinicians conclude that the criteria justifying the continued detention or community treatment order are not met, they should exercise their power of discharge and not wait until such time that the detention order or CTO is due to expire.</p>

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Section 117	Services provided following discharge from hospital; especially the duty of health and social services to provide after-care under section 117 of the Act following the discharge of a patient from detention for treatment under the Act. The duty applies to CTO patients and conditionally discharged patients as well as those who have been absolutely discharged.
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Report Title:	HIW Mental Health Service Inspection (Unannounced) Hafan Y Coed				Agenda Item no.	9.3
Meeting:	Mental Health Legislation and Mental Capacity Act Committee (MHLMCAC)	Public	X	Meeting Date:	31.01.2023	
		Private				
Status (please tick one only):	Assurance	X	Approval		Information	
Lead Executive:	Chief Operating Officer					
Report Author (Title):	Dan Crossland - Director of Operations Mental Health Clinical Board					

Main Report

Background and current situation:

Health Inspectorate Wales (HIW) regulates and inspects NHS and independent Mental Health Services. This report is a summary of the inspection of Beech, Willow and Cedar wards at Hafan Y Coed Hospital, Llandough between 14th and 16th February 2022.

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

1. Quality of patient experience
2. Delivery of safe and effective care which includes:
 - a) Record keeping
 - b) Mental Health Act Monitoring
 - c) Monitoring of the Mental Health (Wales) Measure 2010
3. Quality of management and leadership

The summary reports include Action Plans, and Immediate Action Plans. There was no Immediate Action required and the action plan was shared with HIW. This report contains an update on progress for Committee assurance.

Executive Director Opinion and Key Issues to bring to the attention of the Board/Committee:

The summary of the report states:

"We found a dedicated staff team that were committed to providing a high standard of care to patients. We observed that staff interacted with patients respectfully throughout the inspection. There was evidence of strong and supportive leadership on each ward and at the hospital. We found the service provided safe and effective care. Care plans drew on Individual patient's strengths and evident that patients' views were considered with balanced input from all members of the multi-disciplinary team."

The summary goes on to state:

"This is what we found the service did well:

- All staff were observed to interact and engage with patients respectfully
- Provided care that followed comprehensive multidisciplinary patient-centred care plans
- Established governance arrangements that provided safe and clinically effective care.
- Provided supportive leadership on each ward and at the hospital.

This is what we recommend the service could improve:

- The range of information available for patients across each of the wards
- The structural damage to the ward flooring and walls
- Sufficient staffed wards with appropriate skill mix to support therapeutic patient engagement and prevent staff fatigue."

HIW undertake scrutiny around the Mental Health Act 1983 (MHA), Mental Health (Wales) Measure 2010 (MHM), Mental Capacity Act 2005, Health and Care Standards (2015) and Deprivation of Liberty Safeguards. In relation to the MHA 1984 the report found:

- improvements in Mental Health Act monitoring,
- detentions compliant with both the Act and following the Code of Practice for Wales
- detentions reviewed by MHRT and at Hospital Manager Hearings where required.
- Section 17 leave forms up to date and well recorded.

In relation to the MHM 2010:

- Care plans reflected domains and were regularly reviewed
- extensive range of patient assessments and risk assessments
- strengths based care plans and evidence of patient views being included
- no evidence of excessive use of medications or PRN medications, though when used there were clear records and justification
- good health promotion and standardised physical health monitoring documentation.

In relation to governance, leadership and accountability, the report states:

"We observed a committed staff team who had a good understanding of the needs of the patients at the hospital. There was dedicated and passionate leadership displayed at ward level and senior management. We found that staff were committed to providing patient care to high standards. However, staff did raise concerns around being stretched and fatigued with the ongoing impact of the Covid 19 pandemic upon services."

Assessment and Risk Implications (Safety, Financial, Legal, Reputational etc.):

Quality impact: The HIW report outlines in the action plan:

1. Consistent ward information required across wards.

Our most recent actions: we are implementing training via the I&I team to improve the information on wards available to make sure this is helpful, current, accessible and consistent.

2. Ward information displayed must be bilingual.

We will link the work about to the Welsh Language Officer to ensure it is compliant with law and best practice.

3. Consider introducing *Getting to know you* boards on each ward.

A review of this is currently underway and will link to the I&I work.

4. Ensure patients are cared for on their locality ward, as far as possible.

'Sleeping out' practice initially improved during covid due to ward cohorting but consequently led to footprint expansion. The number of patients 'sleeping out' is reviewed a weekly bed management meetings hosted by the MH Clinical Board to ensure greater scrutiny and action to resolve.

5. Rectify structural damage to flooring and walls.

This issue relates to the underfloor heating leaking into the walls of Cedar and the Emergency Assessment Suite. This issue has been raised with Capital, Estates and Facilities who have escalated this issue to Laing O'Rourke during the handover period of the new build but remains unresolved.

6. The health board must repair any damage to beverage bay areas.

This issue has now been resolved.

7. Consider how to ease patient concerns regarding electronic bedroom observation screens.

This issue will be addressed within patient information and admission packs.

8. Consider installation of nurse call points within patient bedrooms.
The Clinical Board has reviewed this and responded back to HIW that call points will not be used.
9. Availability of laundry facilities.
Washing machines have been purchased, industrial machines are expensive and will require careful consideration as to whether it is therapeutic and normalising for patients to use these.
10. Ensure all patients are able to have a choice at each mealtime.
Currently the menus are agreed with dietetics and at present Facilities are running a limited menu. Central food processing unit is shut whilst extensive works are undertaken to satisfy the EHO. Production aims to re-commence shortly and that from April patients will be receiving UHB internally provided meals once again. In the meantime, the Health Board is purchasing meals from an external supplier, all following discussion with the dieticians, from Appetito, but this is not a long-term intention of the Health Board. The MHCB is in continued contact with the Facilities team about this issue as there have been continued complaints particularly from long stay wards about the variety, quantity and quality of meals. In addition, the issue was raised again in a recent HIW inspection and Neuropsychiatry have advised that meal flexibility and quality is a patient safety issue for people with diabetes.
11. Log books for medication charts for controlled drugs remain intact and replaced when required.
Director of Nursing has corresponded with all wards to ensure this.
12. Ensure all consent to treatment certificates are maintained with medication charts.
These are in place.
13. Ensure registered nurses refer to the consent to treatment certificate with administering medication.
This is no part of preceptorship training for nurses and audited on a rolling 6-9 month basis by the MHA Office.
14. Ensure wards are sufficiently staffed with appropriate skill mix to support therapeutic engagement and prevent staff fatigue.
As the Nurse Staffing Act for Mental Health has been indefinitely paused, the nursing establishments remain an issue for resolution. However, the People and Culture Plan and the work of the MHCB to support staff retention, recruitment and wellbeing is ongoing with a number of initiatives within the Safety and Stabilisation Programme Plan.
15. Ensure that ward managers have sufficient supernumerary management time to undertake their core duties and responsibilities as ward managers.
This issue remains unresolved while the Nurse Staffing Act remains paused. Currently Ward Managers have 0.2 WTE supernumerary time as full time members of staff. This presents an ongoing issue for assurance to HIW.

Recommendation:

The Board / Committee are requested to:

- a) **NOTE** the content of the HIW Mental Health Inspection.

Link to Strategic Objectives of Shaping our Future Wellbeing:

Please tick as relevant

1. Reduce health inequalities		6. Have a planned care system where demand and capacity are in balance	
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2. Deliver outcomes that matter to people	X	7. Be a great place to work and learn	
3. All take responsibility for improving our health and wellbeing		8. Work better together with partners to deliver care and support across care sectors, making best use of our people and technology	X
4. Offer services that deliver the population health our citizens are entitled to expect	X	9. Reduce harm, waste and variation sustainably making best use of the resources available to us	
5. Have an unplanned (emergency) care system that provides the right care, in the right place, first time		10. Excel at teaching, research, innovation and improvement and provide an environment where innovation thrives	

Five Ways of Working (Sustainable Development Principles) considered

Please tick as relevant

Prevention	X	Long term	X	Integration	X	Collaboration	X	Involvement	X
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Impact Assessment:

Please state yes or no for each category. If yes please provide further details.

Risk: No

Safety:

Financial: No

Workforce: Yes

Nursing establishments remain an issue for resolution.

Ward Managers have 0.2 WTE supernumerary time as full time members of staff. This presents an ongoing issue for assurance to HIW.

Legal: Yes

Ward information displayed must be bilingual.

Reputational: No

Socio Economic: No

Equality and Health: No

Decarbonisation: No

Approval/Scrutiny Route:

Committee/Group/Exec

Date:

Saunders, Nathan
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Report Title:	Mental Health Measure (Wales) 2010 incl. Part 2			Agenda Item no.	10.1
Meeting:	Mental Health Legislation and Mental Capacity Act Committee	Public	X	Meeting Date:	31 st January 2023
		Private			
Status <i>(please tick one only):</i>	Assurance	X	Approval	Information	
Lead Executive:	Chief Operating Officer				
Report Author (Title):	Director of Operations, Mental Health				

Main Report

Background and current situation:

The UHB Mental Health Measure performance is reported to and monitored by the Welsh Government on a monthly basis, with reports back to the UHB Performance Monitoring Committee. For the information of the Committee the Delivery Unit has restarted its 90-day cycle of mental health services reviews across Wales to discuss performance against the various mental health specific targets. Cardiff and Vale has been visited with no exceptional issues to report.

The Mental Health (Wales) Measure 2010 (the Measure), is a National Assembly for Wales law that has similar legal status to an Act of Parliament. The Measure introduces a number of important changes to the assessment and treatment of people with mental health problems in Wales. Parts 1 to 4 of the Measure set the main legislative requirements relating to Mental Health service provision and are supported by subordinate legislation and guidance

Executive Director Opinion and Key Issues to bring to the attention of the Board/Committee:

Parts 1 to 4 of the Measure set the main legislative requirements relating to Mental Health service provision and are supported by subordinate legislation and guidance

Assessment and Risk Implications (Safety, Financial, Legal, Reputational etc.):

For Parts 1, 2, 3 & 4 of the Measure, local activity and compliance information is collated and submitted to WG via standard reporting templates.

Part 1: PMHSS

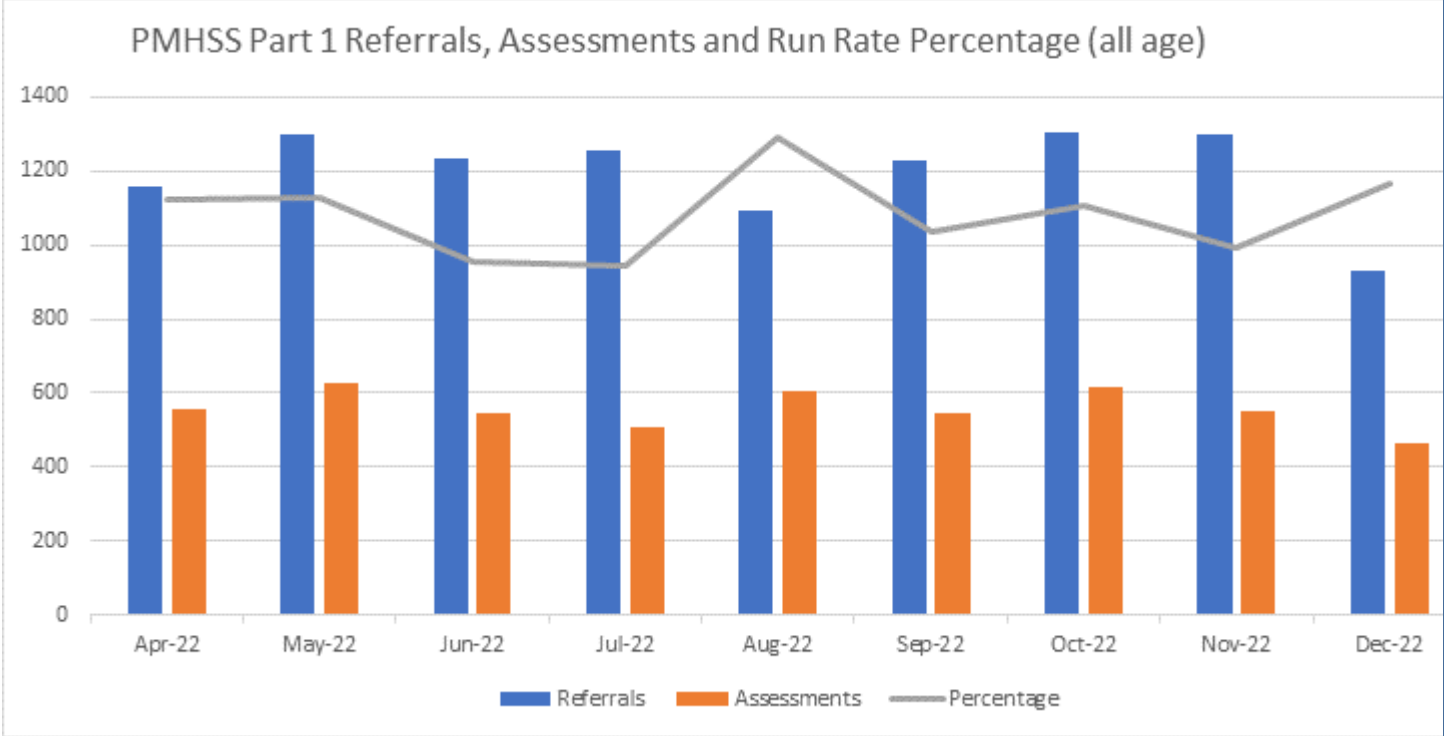
Part 1a – target: 28-day referral to assessment compliance target of 80% (Adult)

Referrals into the service were slightly lower than forecast, with 2866 referrals during Q2. This is a 3.5% increase on last year's Q2 referrals (adult only). The service is at full clinical recruitment and sickness absence remains low; this allows for ongoing high levels of assessment activity – PMHSS assessed 1420 (adults) in Q2, very similar to Q1 (graph 1).

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

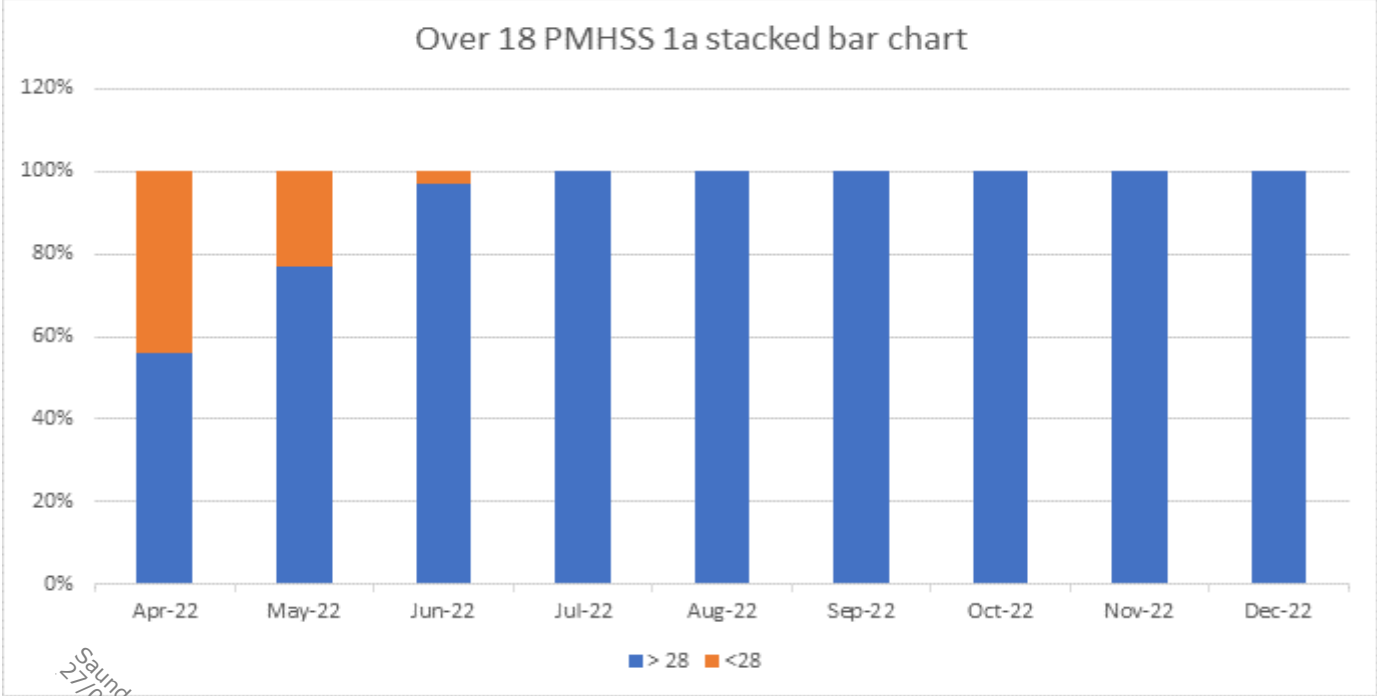
Q3 with 2870 referrals (adults only) continues the trend of lower numbers than predicted. This is a 12% decrease on last year's Q3 referrals (adult only). The service is at full clinical recruitment and sickness absence has been manageable during this period; allowing for ongoing high levels of assessment activity – PMHSS assessed 1332 people (adults) in Q3, very similar to Q2 (graph 1).

Graph 1:



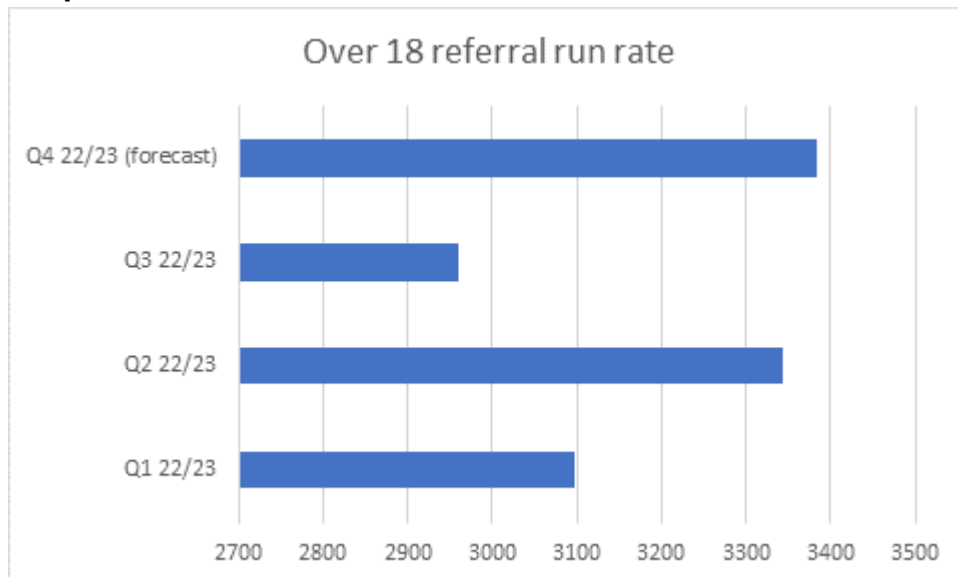
Adult PMHSS continues to be part 1a compliant (graph 2). As of 09/01/2023 there are 188 people waiting for assessment and the average wait time for assessment is 9 days. We have now reported 100% compliance to target for seven months. Our forecast is for Q4 activity comparable to last year and for PMHSS to maintain target compliance.

Graph 2



Referral rates dropped just under 3000 in Q3 but are forecast to stabilise into Q4 (Graph 3).

Graph 3



Actions to maintain compliance

- Investment into Tier 0 providers to deliver Tier 0 interventions commencing in 2023 (Stress Control and ACTION for Living) at scale to reduce referrals into PMHSS
- Developed automated opt in letter and immediate text message prompt for all referrals into PMHSS – started September 2022
- Successful transformation bid of 1.0 WTE band 6 Practitioners and 1.0 WTE band 3 administrator to main compliance. Band 3 is in post, band 6 dropped out shortly prior to enrolment, job is going back out to advert.

Counselling waiting times have increased but remain under the 26 week Psychological Therapies waiting time target.

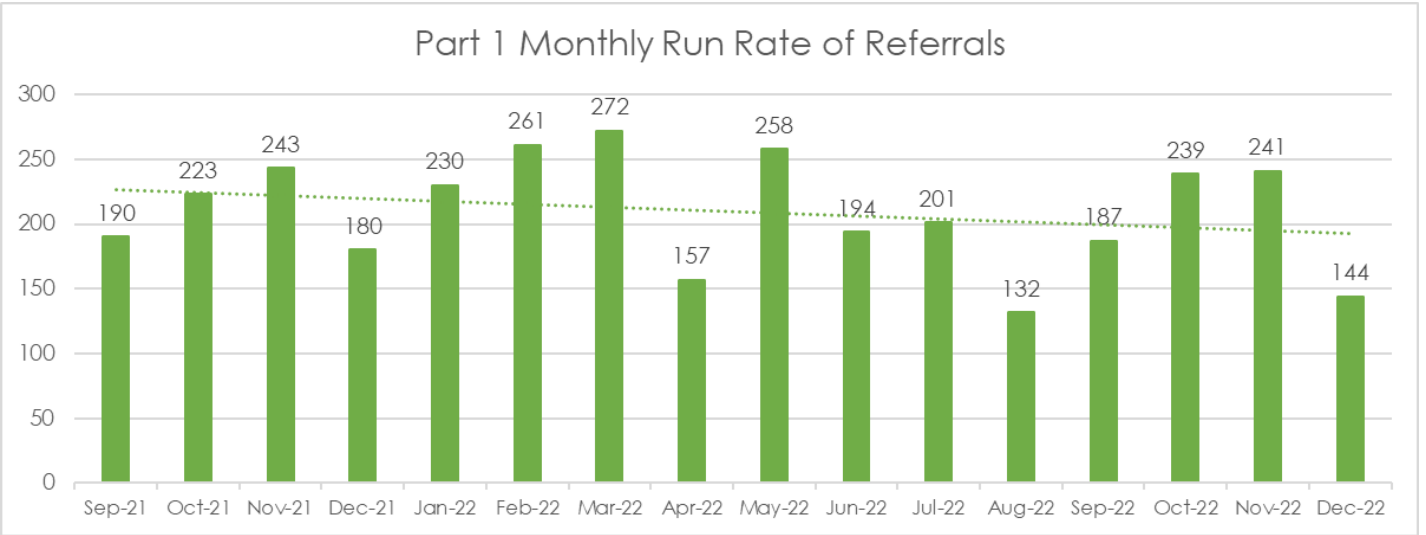
Part 1a – target: 28-day referral to assessment compliance target of 80% (Children & Young People)

Compliance against the Part 1A MHM target has been improved since August 2022 as a result of a waiting list initiative supported by agency staff which is being undertaken in the service. This initiative will be coming to an end in March 2023 and the service will fully operationalise a 'Joint Assessment Team' model which will see CAMHS and PMH come together as an integrated service to offer children and young people a standard assessment. The team is now fully recruited to but not all staff are in post in yet.

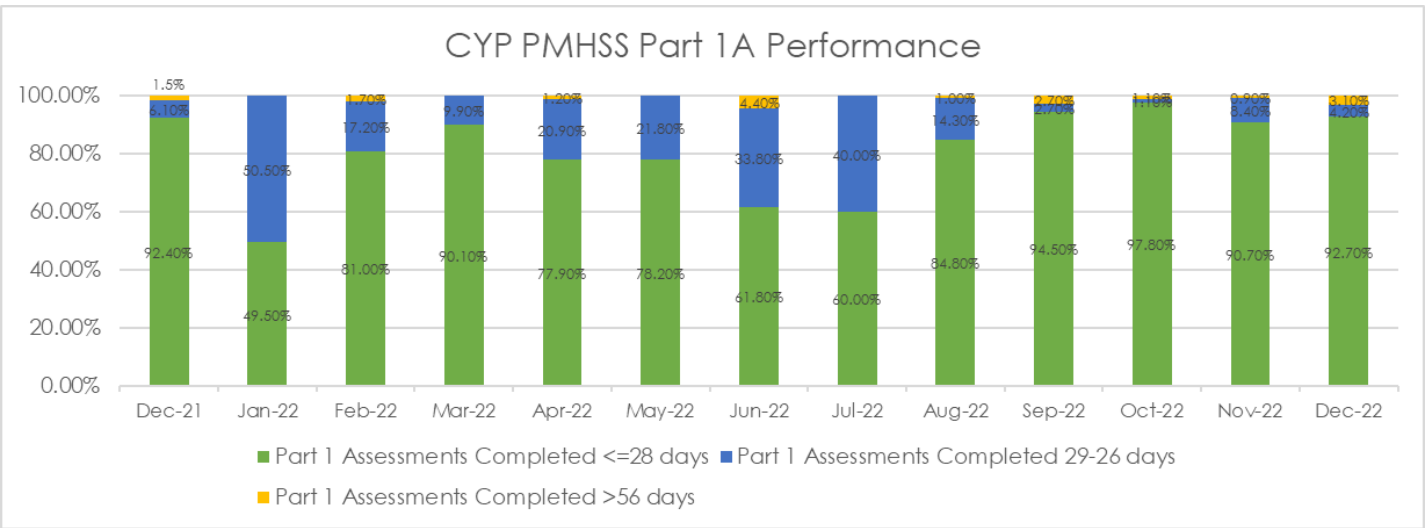
Since April 2021, the volume of referrals has increased and have remained significantly higher than pre-Covid levels. As expected, there is a seasonal fluctuation in demand which tends to decrease during school holiday periods but significantly increase following return to school.

The average wait for assessment is currently 28 days. The average wait has increased slightly over the festive period where there was more annual leave etc than usual. However, we are continuing to assess children and young people within 28-days.

Graph 4



Graph 5

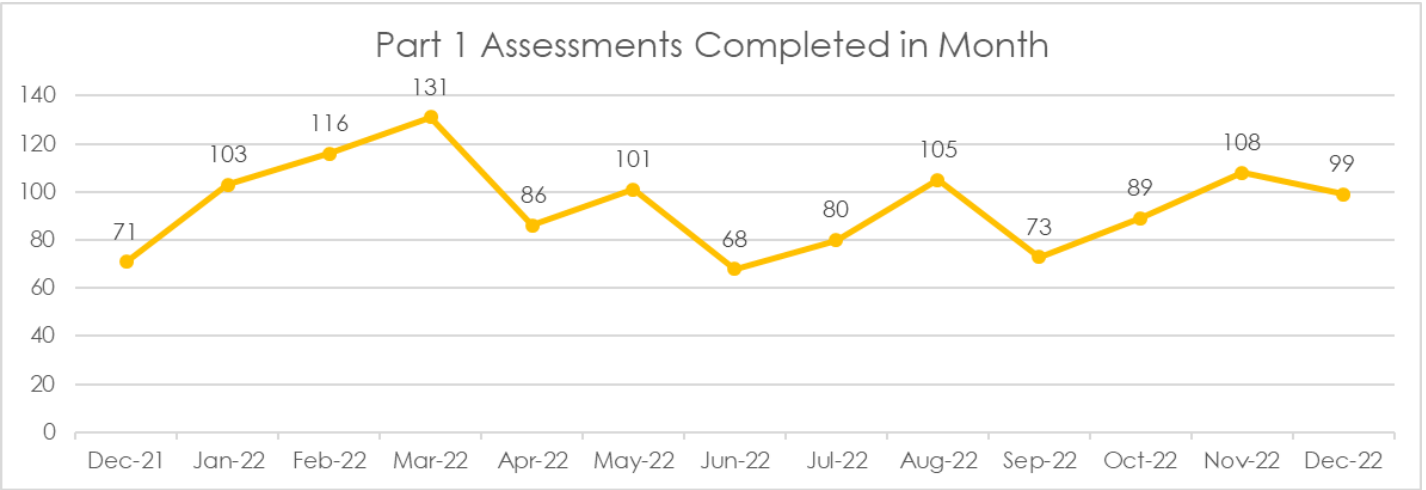


Capacity has been a challenge for the team, with a mixture of short and long-term sickness, maternity and ongoing recruitment challenges which have largely been alleviated by the waiting list initiative.

The service is continuing to deliver its full offer via virtual (telephone and video) and face-to-face means and expects to continue to utilise these mediums as part of a blended service offer to better meet the needs of children and young people requiring support from the service. The service continues to closely monitor its capacity in order to meet the incoming demand.

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Graph 6



Actions to improve compliance against the target include:

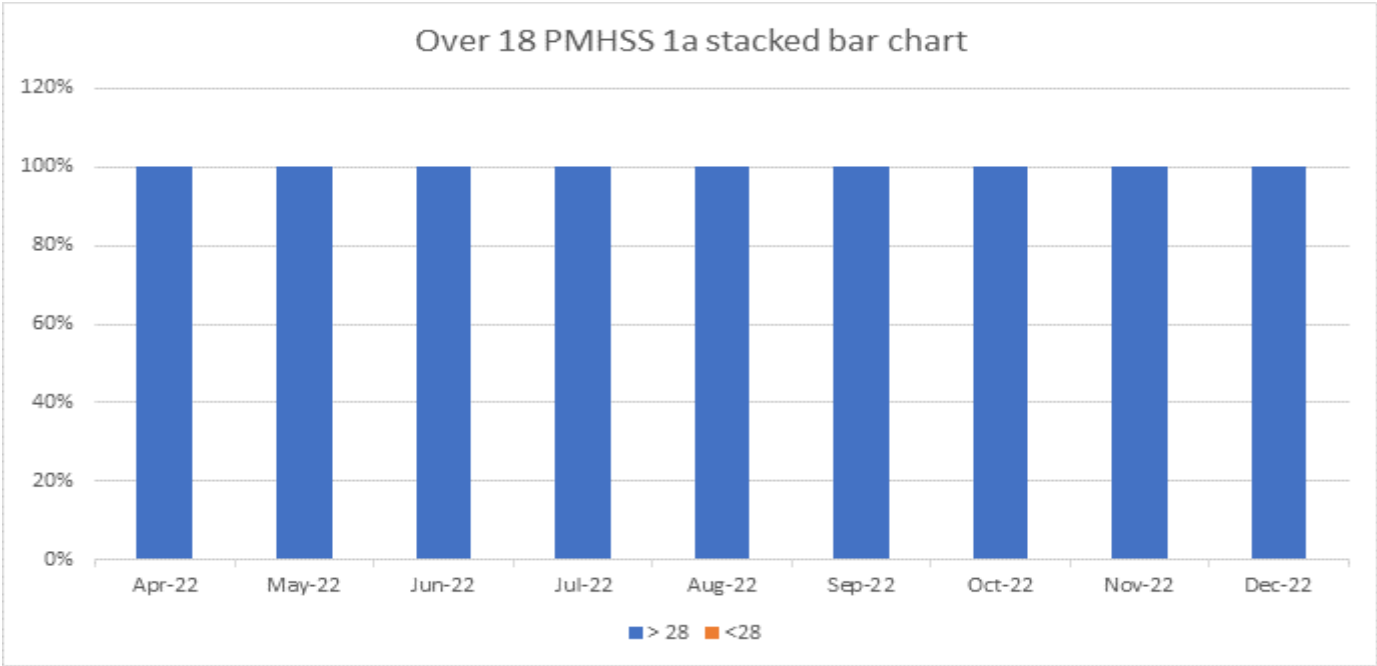
- Active sickness monitoring and wellbeing support to the team
- Additional capacity through the use of agency staff to continue delivering the waiting list initiative.
- Full launch of the assessment team model in April 2023 when all staff in post

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

PMHSS continues compliance with Part 1b performance target (See Graph 7). Overall a range of interventions for around 150 participants are running this reporting period. Group interventions include our CBT Living Life to the Full group – the team runs over 30 of these groups per calendar year. We also run Behavioural Activation, Anger Awareness and Understanding Me (a compassion focused group) on a quarterly basis. Due to strong achievement on the 1a target we have developed and are launching an ACT Skills Group in Q4 of this year. ACT Skills and Understanding Me are both aiming to have a poster presentation at the BABCP conference here in Cardiff later in the year. Clinicians from the team support both the trauma and depression pathways in the service by offering time to deliver one to one SPRING, CBT and EMDR therapy in conjunction with the counselling and the traumatic support services.

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Graph 7:



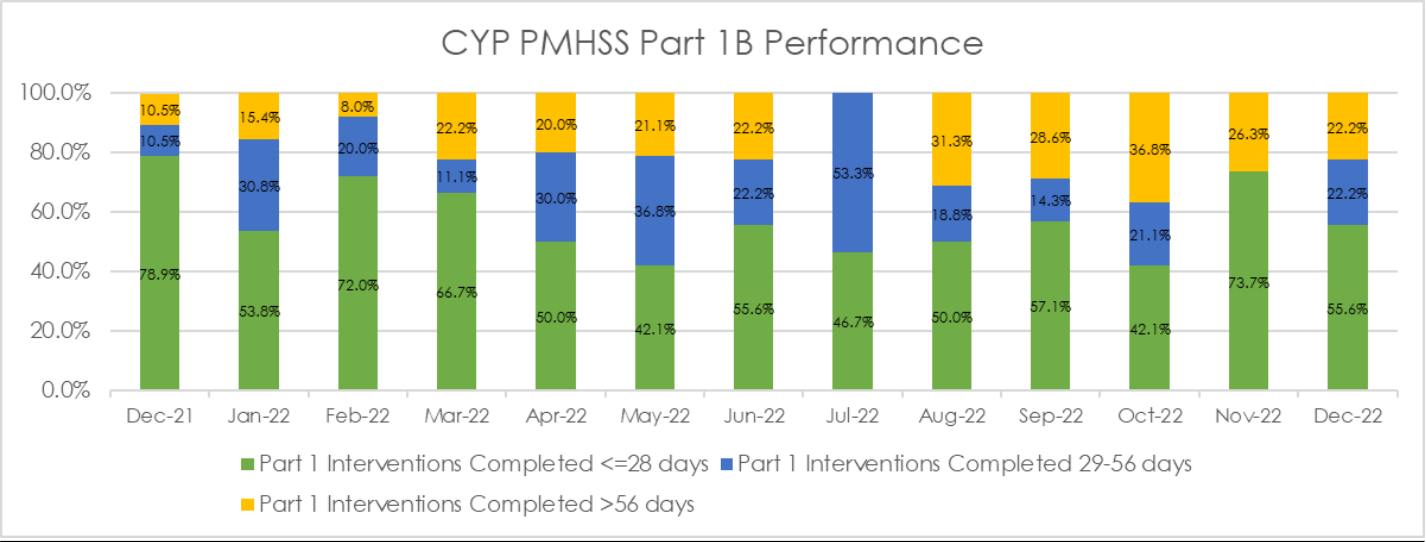
Part 1b – 28-day assessment to intervention compliance target of 80% (Children & Young People)

The service continues to face challenges in its achievement of compliance against Part 1B. The waiting list initiative has focused on both internal and external waiting lists, but due to the volume of assessments currently being undertaken within the service, a previous focus on the external waiting list only and vacancy within the team, there has unfortunately been limited improvement in performance. In Quarter 3 22-23, the service was also impacted by long term sickness which has left the team depleted in number as well as facing periods of short-term sickness. As part of the move towards a Joint Assessment Team model, a brief intervention pathway will be created to ensure that young people are seen within 28 days of the commencement of their treatment, following assessment.

For Quarter 4, we will be working with Healios to reduce the number of children and young people waiting for intervention as much as possible.

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Graph 8



Actions to improve compliance against the target include:

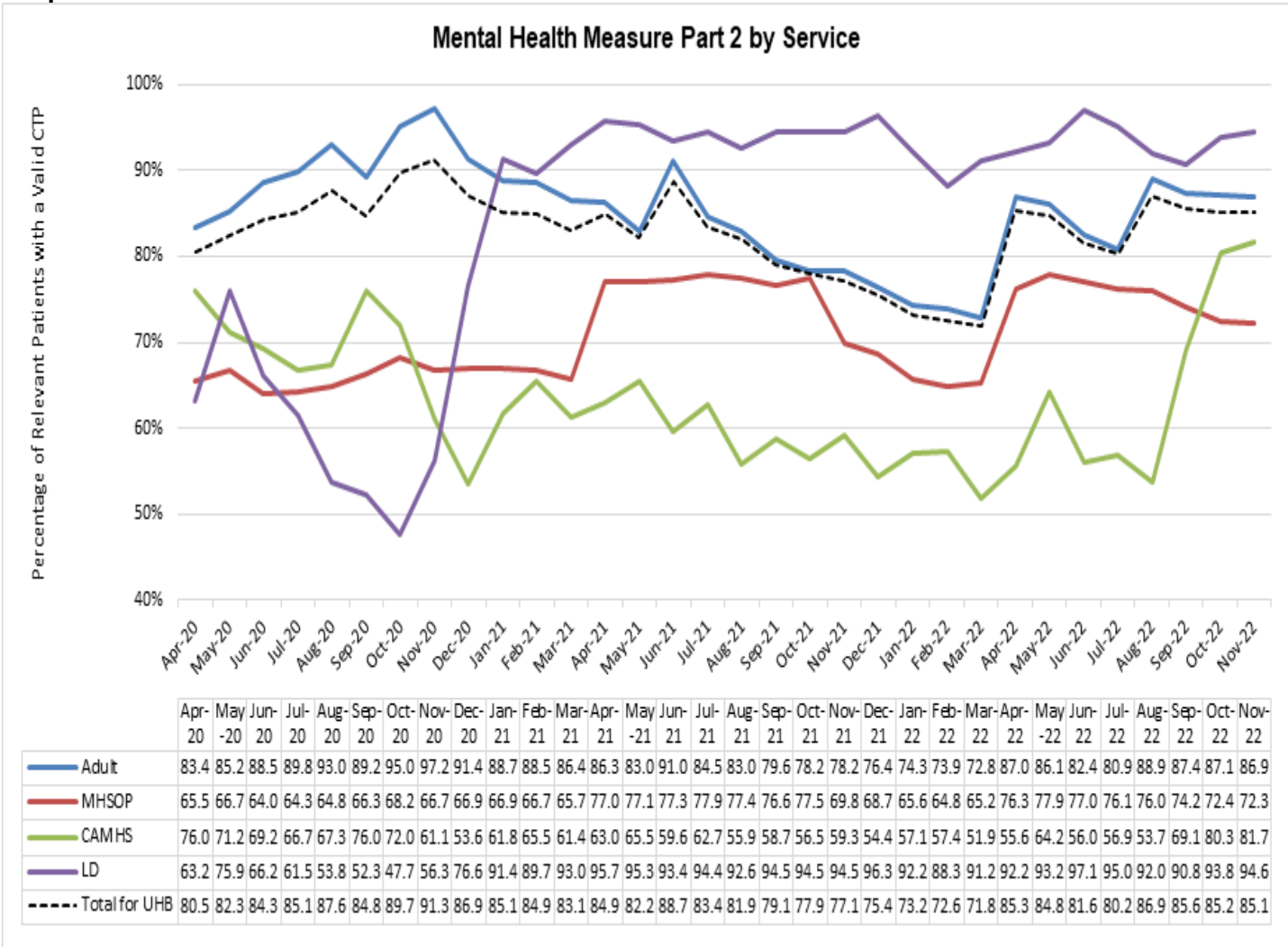
- Active sickness monitoring and wellbeing support to the team
- Regular monitoring of caseloads to ensure that young people are discharged when appropriate
- Regular triage of the internal waiting list and waiting list validation
- Additional capacity through the use of agency staff to continue delivering the waiting list initiative.
- Regular monitoring of job planning requirements to ensure that capacity meets demand
- Development of a clear and standardised service offer for children and young people
- Recruitment to vacant posts

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Part 2 – Care and Treatment Planning (over 18)

Standard for all relevant service users in secondary care to have an outcome based holistic co-produced care plan

Graph 9



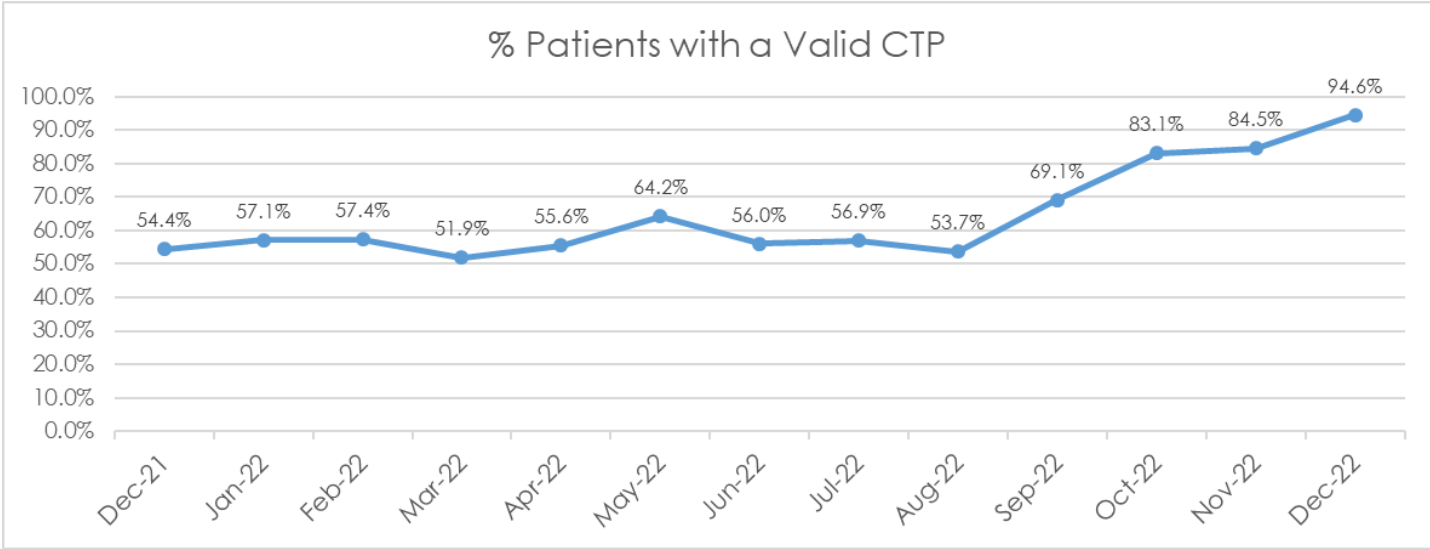
Compliance remains steady in Adult with a slight decline in MHSOP performance (possibly due to the calculation methods referred to at the previous committee meeting). A concurrent quality audit has been restarted on a quarterly basis using the Delivery Unit audit tool.

Work within the Mental Health Clinical Board across services has started to develop and approach to altering the Part 1 Scheme (a document each Health Board holds to define what services are included as a Part 1 service). A set of principles have been developed, however, service user and carer engagement is critical in developing an approach that supports service efficiency while ensuring there are safeguards to rights under the Mental Health (Wales) Measure and that the spirit of the Measure as it is referred to in policy documents is adhered to. multidisciplinary working group has been formed to develop this and present for ratification at the MHMCLC.

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

Graph 10



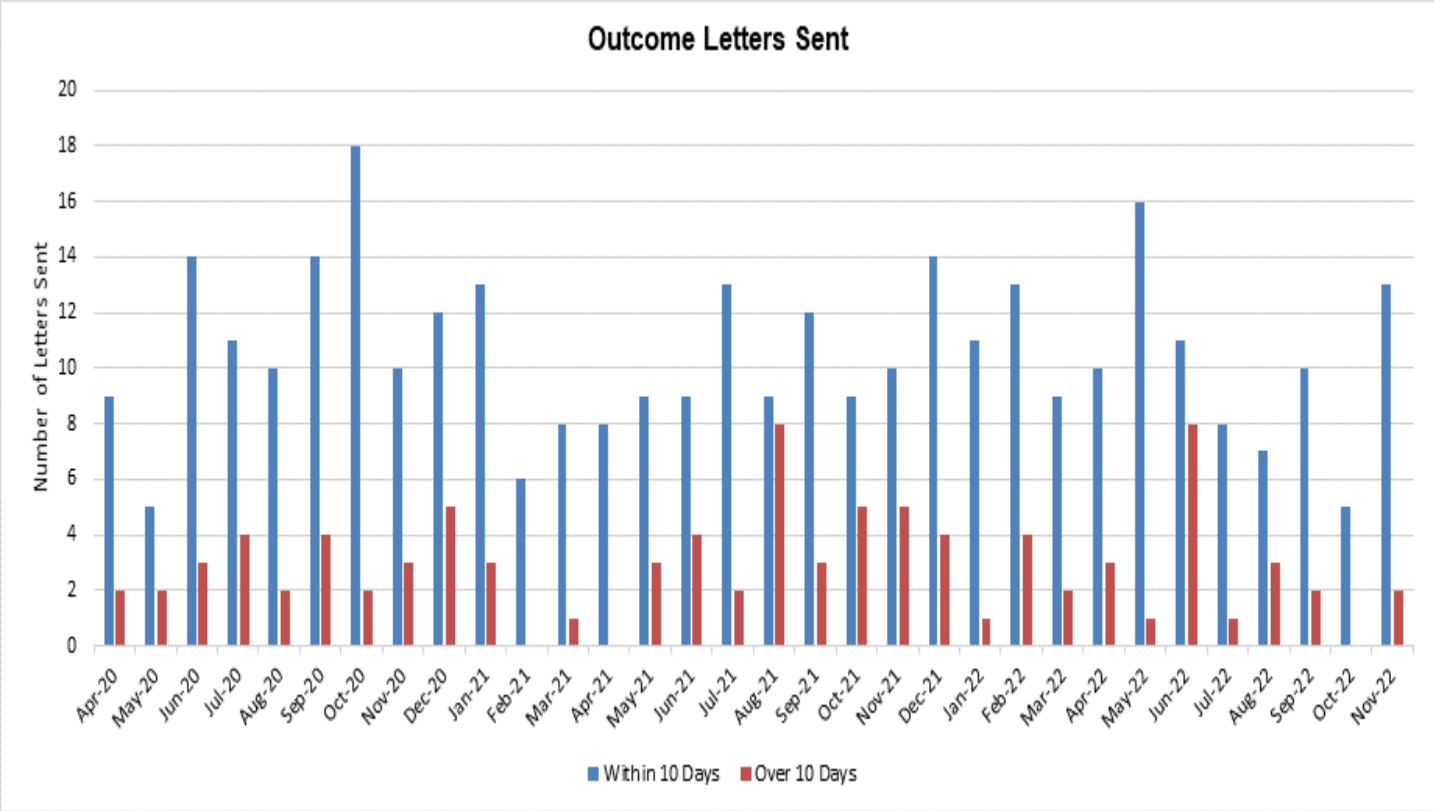
In Quarter 3 22-23, compliance against the Part 2 target has seen significant improvement and the target was achieved in December 2022. The service still faces challenges in relation to achievement including poor engagement from patients in the CTP process and a high number of new patients requiring one. There are number of particularly complex cases that require a CTP where these have been unable to be facilitated as a result of wider system issues e.g. social care placements not being in agreed leading to delays in completion. The team are working hard to ensure that the process can be completed in a meaningful manner through a range of options including face to face, telephone and VC where appropriate and in a supportive multi-agency approach. Sustaining compliance remains a priority for the service.

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

The target relates to service users who have self-referred, having a confirmation letter regarding the outcome of their assessment within 10 days. Graph 11 details our compliance of the target time of within 10 working days for an assessment outcome letter to be sent to the patient.

Saunders Nathan
27/01/2023 11:20:16

Graph 11



4 breaches occurred since last reporting period. These represent 12.5% of the total number during this 3-month period, compared to 33% in the last quarter. Teams are receiving an automated report indicating eligible patients for Part 3 sent on a weekly basis. Teams breaching have been notified for improvement. The allocation rate following re-assessment during this period was 37.5% of Part 3 requests accepted back into Part 2 treatment.

Part 4 – Advocacy – standard to have access to an IMHA within 5 working days

Part 4 continues with 100% Compliance.

The table below reflects the quarterly submission to Welsh Government Sept 2022.

Number of new qualifying patients accepted into IMHA services during the quarter: [quarterly count]	Compulsory patients	83
	Informal/voluntary patients	32
	Total number of new qualifying patients accepted into IMHA services during the quarter	115
Number of qualifying patients currently in receipt of IMHA services at the end of the quarter - i.e. the caseload: [end of quarter snapshot]	Compulsory patients	41
	Informal/voluntary patients	10
	Total number of qualifying patients currently in receipt of IMHA services at the end of the quarter	51
Number of qualifying patients discharged from IMHA services during the quarter: [quarterly count]	Compulsory patients	30
	Informal/voluntary patients	5
	Total number of qualifying patients discharged from IMHA services during the quarter	35
Of the qualifying compulsory patients who had their first	Up to and including 5 working days following their request for an IMHA	83

contact with an IMHA during the quarter, how many had waited: [quarterly count]	6 working days or more following their request for an IMHA	0
	Total number of qualifying compulsory patients who had their first contact with an IMHA during the quarter	83
Of the qualifying informal/voluntary patients who had their first contact with an IMHA during the quarter, how many had waited: [quarterly count]	Up to and including 5 working days following their request for an IMHA	32
	6 working days or more following their request for an IMHA	0
	Total number of qualifying informal/voluntary patients who had their first contact with an IMHA during the quarter	32

With regards to Part 1-4 of the Measure, Committee Members are updated as follows:

Part 1:

Maintain progress and monitor performance.

Text Notification system now in place in Adult. Quality Measures integrated in this through *My Clinical Outcomes*.

Part 2:

PARIS report changes now being reviewed. A Part 1 Scheme Task and Finish group has been set up to support future compliance.

Part 3:

Continue to flag any performance issues to teams locally for improvement.

Part 4:

100% compliance, no further actions.

The following comments provided by Advocacy Support Cymru for June to September 2022

- Proactive staff, referring clients and recommending advocacy support whilst in hospital.
- Ward staff being helpful and flexible and assisting the work of the advocate, as advocates have been unable to visit some clients face to face due to Covid.
- Some psychiatrists informing IMHAs of ward round times to enable clients to have IMHA for support.
- MHAO continue to provide good communication with Advocacy.

All concerns raised continue to be shared with appropriate staff directly by ASC and through monitoring of services.

Recommendation:

The Committee is requested to:

- a) **NOTE** the contents of the report

Link to Strategic Objectives of Shaping our Future Wellbeing:

Please tick as relevant

1. Reduce health inequalities	X	6. Have a planned care system where demand and capacity are in balance	
2. Deliver outcomes that matter to people	X	7. Be a great place to work and learn	

3. All take responsibility for improving our health and wellbeing	X	8. Work better together with partners to deliver care and support across care sectors, making best use of our people and technology	X
4. Offer services that deliver the population health our citizens are entitled to expect	X	9. Reduce harm, waste and variation sustainably making best use of the resources available to us	
5. Have an unplanned (emergency) care system that provides the right care, in the right place, first time	X	10. Excel at teaching, research, innovation and improvement and provide an environment where innovation thrives	

Five Ways of Working (Sustainable Development Principles) considered

Please tick as relevant

Prevention	X	Long term	X	Integration	X	Collaboration	X	Involvement	X
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Impact Assessment:

Please state yes or no for each category. If yes please provide further details.

Risk: No

Safety: No

Financial: No

Workforce: No

Legal: No

Reputational: Yes

within report

Socio Economic: No

Equality and Health: No

Decarbonisation: Yes/No

n/a

Approval/Scrutiny Route:

Committee/Group/Exec	Date:

Saunders, Nathan
27/01/2023 11:20:16

Report Title:	Corporate Risk Register			Agenda Item no.	11.1
Meeting:	Mental Health Legislation and Mental Capacity Act Committee	Public	x	Meeting Date:	31.01.2023
		Private			
Status (please tick one only):	Assurance		Approval		Information
Lead Executive:	Director of Corporate Governance				
Report Author (Title):	Head of Risk and Regulation				

Main Report

Background and current situation:

The Corporate Risk Register ('the Register') has been developed to enable the Board to have an overview of the key operational risks from the Health Board's Clinical Boards and Corporate Directorates. Whilst the Register and the overarching Board Assurance Framework and Risk Management Policy ("the Policy") were embedded in practice and consistency in application developed, the Register included those risks which were rated 15 and above to provide the Board and it's committees with an overview of the Health Board's extreme Operational Risks.

Since the July 2021 Board meeting, where an updated version of the Policy was agreed, the Register has recorded those risks scoring 20 and above and those scoring 15 or above where they demonstrate a wider trend that may impinge on the delivery of Health Board strategy and objectives.

Each of these risks are linked to a Committee of the Board and the Board Assurance Framework. Those risks which are linked to Mental Health Capacity and Legislation Committee are attached at Appendix A for further scrutiny and to provide assurance to the committee that relevant risks are being appropriately recorded, managed and escalated.

Executive Director Opinion and Key Issues to bring to the attention of the Board/Committee:

The Risk and Regulation Team continue to work with clinical and corporate colleagues to refine risk descriptors, controls and actions within Risk Registers. Since the September 2021 Board meeting the Risk and Regulation Team have undertaken a 'Check and Challenge Process' with all Clinical Board and Corporate Directorate risk leads to ensure that those risks recorded within the Register are correctly recorded in line with the Risk Scoring Matrix detailed within the Policy.

This ensures that the Board and its Committees can take assurance that the risks detailed in the Register are consistent with agreed procedures and are a true reflection of the operational risks that the Health Board continues to manage.

Alongside this process the Risk and Regulation Team continue to provide ongoing support and training to risk leads across the Health Board.

At the November 2022 Board meeting 1 Extreme Risk reported to the Board was linked to the Mental Health Capacity and Legislation Committee for assurance purposes. The reported risk is summarised as follows:

Risk Description Summary	Risk Score (1 to 25)
Risk to the health and wellbeing of a minor inpatients following admission to adult mental health services	15

This risk had remained on the Clinical Board risk register with a score of 20 for a significant period of time and November was the first time the risk had reported a reduced score for reporting to the Board.

Whilst it positive that recorded controls are de-escalating this risk the committee should note that this is a risk that continues to be monitored locally and remains susceptible to escalation due to a number of additional contributory factors, including:

- 1. Increasing numbers of CAMHS admissions.
- 2. A lack of available beds and no external providers accepting CAMHS patients leading to delays in admission.
- 3. Staffing issues impacting on safety (each CAMHS patient requires 1:1 staffing).
- 4. Highly complex individuals with specific conditions that are unsuited to any environment in Hafan Y Coed or other facilities in the UHB.

As is accepted practice, the Corporate Risk Register does not record scoring below 20 and the committee should not that the Mental Health Clinical Board reported no risks scoring 20 or Higher at the January Board meeting.

The Risk and Regulation team will continue to work with the Mental Health Clinical Board (and other areas) to further integrate the Health Board’s Risk Management policies and procedures to ensure that those entries detailed on the Register provide an accurate indication of the risks that the Health Board is dealing with operationally.

ASSURANCE is provided by:

- Ongoing discussions with the Mental Health Clinical Board regarding the scoring of risk.
- The provision of Risk Management training and support that the Head of Risk and Regulation and his team continue to deliver.

Recommendation:

The Committee is requested to:

NOTE the Corporate Risk Register risk entries linked to the Mental Health Legislation and Mental Capacity Act Committee and the Risk Management development work which is now progressing with Clinical Board.

Link to Strategic Objectives of Shaping our Future Wellbeing:
Please tick as relevant

1. Reduce health inequalities		6. Have a planned care system where demand and capacity are in balance	
2. Deliver outcomes that matter to people		7. Be a great place to work and learn	x
3. All take responsibility for improving our health and wellbeing	x	8. Work better together with partners to deliver care and support across care sectors, making best use of our people and technology	
4. Offer services that deliver the population health our citizens are entitled to expect		9. Reduce harm, waste and variation sustainably making best use of the resources available to us	
5. Have an unplanned (emergency) care system that provides the right care, in the right place, first time		10. Excel at teaching, research, innovation and improvement and provide an environment where innovation thrives	

Five Ways of Working (Sustainable Development Principles) considered
Please tick as relevant

Prevention		Long term		Integration		Collaboration	x	Involvement	x
Impact Assessment:									
Please state yes or no for each category. If yes please provide further details.									
Risk: Yes									
Ongoing risk management discussions and support provided to the Mental Health Clinical Board will strengthen the Clinical Board's risk management processes.									
Safety: Yes/No									
N/A									
Financial: Yes/No									
N/A									
Workforce: Yes/No									
N/A									
Legal: Yes/No									
N/A									
Reputational: Yes/No									
N/A									
Socio Economic: Yes/No									
N/A									
Equality and Health: Yes/No									
N/A									
Decarbonisation: Yes/No									
N/A									
Approval/Scrutiny Route:									
Committee/Group/Exec					Date:				
N/A									

Saunders,Nathan
27/01/2023 11:20:16

MINUTES OF THE MEETING OF THE MENTAL HEALTH ACT HOSPITAL MANAGERS
POWER OF DISCHARGE SUB COMMITTEE HELD AT 10 AM ON JANUARY 10th 2023
Mental Health Act office and via TEAMS

Present:

Jeff Champney-Smith Chair, PoD Group
Elizabeth Singer - Vice Chair, PoD Group
Alex Nute - PoD member
Carol Thomas- PoD member via TEAMS
Peter Kelly – PoD member
John Copely – PoD member via TEAMS
Margaret Jones – PoD member
Sarah Vetter - PoD member via TEAMS
Mair Rawle - PoD member
Mary Williams – PoD member via TEAMS
Mike Lewis – PoD member
John Owen - PoD member via TEAMS
Alan Parker - PoD member
Amanda Morgan - PoD member

In attendance:

David Seward – Mental Health Act Manager
Georgia Walsh – Assistant Mental Health Act Administrator
Nicola Jones – Assistant Mental Health Act Administrator
Sheila Hunt – PoD member
Gerrie Hughes – PoD member

Apologies:

Sharon Dixon - PoD member
Wendy Hewitt-Sayer - PoD member
Rashpal Singh – PoD member

1. Welcome and Introductions

The meeting was held both in the MHA office and via Teams and the Vice – Chair welcomed all to the meeting.

2. New Members and Independent Members

Since the last meeting two new hospital managers had been appointed and the vice- chair welcomed both Sheila Hunt and Gerrie Hughes to the meeting and the group.

3. Apologies

Apologies were received and noted.

4. Members points for open discussion

Confidentiality when Hearings are virtual – there was a wide-ranging discussion as to whether it was acceptable for members of the professional team to participate in a Hearing whilst using a communal office. It was generally agreed that:

Confidentiality for patients was paramount

It was distracting for all concerned when people were moving around in the background

That the patient had a right to know who was privy to the proceedings and that their consent was needed if other people could overhear all or part of the Hearing

Following the discussion, it was agreed that the Chair would take the matter to the Mental Health Legislation and Governance Group, **Action – Chair**

Barring the Nearest Relative from a Hearing – a panel brought an interesting scenario to the group following a recent Hearing. It concerned whether the Nearest Relative could be barred from a Hearing if it was felt that they weren't acting in the best interest of the patient and that the patient was unduly influenced by them. In the particular scenario the Local Authority had started proceedings to displace the NR. The Panel had felt able to bar the NR due to safeguarding concerns. It was agreed that it might be necessary in future to seek legal advice if a similar situation arose.

Complex Care and Commissioning Team (CCCT) – two recent Hearings were adjourned so that a report could be provided by the CCCT and for a member of that team to attend the adjourned Hearing. The patients had waited a long time for either a community placement or a package of care to allow for a safe discharge. The panels were concerned as to whether the current detention was justified and was the “least restrictive” option. It was a reminder to POD members that they can request the attendance of other professionals who are involved in the patient's care. **Action All**

5. Minutes of Meeting held on 4th October 2022

The minutes were confirmed as an accurate record of the meeting.

6 Matters Arising

- **Feedback after hearings** –the Chair agreed to review the feedback forms submitted since the last Business Meeting and to reconvene the working group. **Action Chair and Working Group**
- **Face to Face Hearing** – there had been no problems with the face to face hearing that had been convened and 4 more were scheduled. All patients are offered the opportunity for face to face hearing. If they don't state their preference the default position is a virtual hearing.
- **Paper Review** – the Chair provided the background to this review. This is an exceptional case with the patient having been under section for many years. The Hearing had proceeded as a paper review with the agreement of the patient's advocate and Nearest Relative.

7. Operational Issues

There were none.

8. Lessons Learnt

There had been two discharges following barring Hearings and there was a discussion regarding the threshold for barring.

9. MHA Activity Monitoring Reports

Activity reports were provided for the periods July to September 2022 and October to December 2022 for both Hospital Managers and Tribunals. It was noted that representation by advocacy in the period July to September 2022 had fallen to **35%** but had risen to 55% in the last period. The Mental Health Act Manager advised that there had been a number of nearest relative discharges. The number of postponed and adjourned hearings remains fairly constant. There was nothing further to report.

10. Concerns/compliments from Power of Discharge group Hearings

These were noted and discussed. The quality of risk assessments and CTP's remain one of the most common areas of concerns. The MHA administrator advised that the risk assessment form has now been phased out and in future all patients will have a WARNN risk assessment. **Action ALL**

11. Committee and Sub-Committee Feedback

The Chair had nothing further to add. It was noted that the Tribunal representative had stated that there had been no requests to observe a Tribunal Hearing. This was not correct and the Chair agreed to raise this at the next meeting. The Mental Health Act Manager noted that the Tribunal had refused to allow Doctors in training and student nurses to observe their Hearings. **Action Chair.**

12. Training

Training on Human Rights and Acquired Brain Injuries will be delivered by Alex Nute at one of the Business Meetings. Training on S117 has yet to be determined. The MHA Manager agreed to organise some WARNN training. **Action Chair and MHA Manager**

13. A.O.B

Expenses – The MHA Manager advised that it wasn't possible to enter any expenses after **31/12/2022** as the system is being updated. All PoD members will receive an individual email when the system is functional again with login details and how to confirm their account. The Mental Health Act Manager advised the group he would send out an e-mail confirming contact details for the expenses team as any issues need to go through them as he cannot support. **Action MHA Manager**

Parking – A number of members struggled to park in Llandough for the meeting. Tuesday mornings are the busiest times for parking. The Chair and Mental Health Act Manager will discuss moving future meetings to a different time/day. **Action Chair and MHA Manager**

Date and time of next meeting – TBC

Saunders, Nathan
27/01/2023 11:20:16



Minutes of the Mental Health Legislation and Governance Group held at 10:00 on 13 January 2023 via Microsoft Teams

Present

Robert Kidd	(Chair) Consultant Psychologist
David Seward	Mental Health Act Manager
Bianca Simpson Lepore	Deputy Mental Health Act Manager
Morgan Bellamy	Deputy Mental Health Act Manager
Louise Gibbons	South Wales Police Representative
Claire Louise Thomas	South Wales Police Representative
Katherine Lewis	Consultant Social Worker DOLS/ AMHP Lead
Noel Martinez Walsh	AMHP Lead, Vale of Glamorgan
Roisin Budina	AMHP Lead, Vale of Glamorgan
Phillip Ball	Senior Nurse Manager, Cardiff North West Locality
Marianne Seabright	Lead Nurse, MHSOP
Jeff Champney-Smith	Chair, PoD Group
Callista Hettiarachichi	Consultant Representative, CAMHS
Kelle Al-Shayei	Shift Coordinator Representative, Adult Mental Health
Ceri Lovell	CAMHS Representative
Lisa Walters	Lead Nurse, Adult Mental Health
Andrea Sullivan	Senior Nurse for Quality, Safety & Education

Apologies

Katie Fergus	Consultant Representative
Mary Lawrence	Consultant Representative
Lynda Woodley	Operational Manager, Vale of Glamorgan
Catherine Morris	Emergency Unit Representative
Ceri Phillips	Vice Chair, Cardiff and Vale UHB
Chloe Evans	Mental Capacity Act Lead
Victoria Gimson	Mental Health Lead Pharmacist
Natalie Williams	Locality Service Manager, Cardiff South & East Locality

Cardiff and Vale University
Local Health Board

Mental Health Legislation and Governance Group
13th January 2023

Saunders, Nathan
27/01/2023 11:20am

1 Welcome and Introductions

The terms of reference for the group have recently been updated to include changes to the locality structure. These changes have been approved by the Mental Health Legislation & Mental Capacity Act Committee (MHLMCAC) and are therefore the up to date and approved terms. These were disseminated with the information for today so people can have sight of them.

2 Apologies for absence

These were noted for the group.

3 Minutes of meeting held on 06 October 2022

No points of correction have been highlighted from the previous minutes.

4 MHA Activity

The Chair of the group confirmed that the MHLMCAC is a statutory body of the Health Board and it is grateful for the groups input into looking at the data.

During this quarter there has been nothing of significance in terms of Mental Health Act Activity and the numbers of detentions.

One AMHP representative confirmed that AMHPs felt the use of Section 135 of the MHA may have increased. The MHA office confirmed that it had only increased by one but that we only capture the executed warrants rather than applications as a whole. The MHA office has previously asked to be informed of all applications for Section 135s in order for us to be confident that we are capturing every use. It was confirmed that AMHPs have been reminded to inform the MHA office.

The exception report was discussed. There has been one fundamentally defective application this quarter. It has been reiterated by the Consultant Social Worker DOLS/AMHP Lead for Cardiff LA how important it is for AMHPs to follow the agreed process - especially when detaining people to non-mental health wards. The MHA Manager has raised this issue within the Adult Quality and Safety group as well to try and ensure it is raised in all appropriate avenues.

There has also been a lapsed holding power this quarter- this was within a non-mental health ward and it felt that this was potentially an unavoidable situation in the circumstances.

There have been two invalid uses of holding powers this quarter. These were discussed and it felt that there is a training need associated with both of these. It is hoped that the MHA office will be able to attend non-mental health wards this coming year to deliver training. The AMHP Lead for Vale of Glamorgan queried whether this incident had been raised appropriately via E-Datix and it was agreed this will be looked into.

Action- MHA Manager to further investigate inappropriate use of 5(2).

The other invalid use of Section 5(2) was also discussed. Training for shift coordinators has been updated. An email has also been disseminated to all relevant professionals to remind them of the correct process in these instances.

The use of Section 136 has slightly decreased this quarter and the prevalence of CAMHs 136's has stayed in line with what is expected.

It is still anticipated that Mental Health Review Tribunals (MHRT) will resume being face to face as of 1st March 2023 but so far, we haven't received any further operational guidance in relation to this. The MHA Manager has a meeting with the Senior Operations Manager in the MHRT shortly and it is hoped that clarity will be provided. The other issue regarding the MHRT is the ceasing of observers throughout the pandemic. The MHRT have so far refused to allow observers but it is felt this stance may well cause issues in the longer term if not reversed. This issue will be taken to the MHLMCAC by the MHA Manager as so far there has been no movement from the MHRT. This affects several different professionals across the whole of Wales so is not particular to Cardiff and Vale. The MHA Manager asked those present to let him know if they know of any refusals of observations so that they can be tracked and monitored more effectively throughout the year.

Development sessions are going well and are being held regularly. Feedback from training is good and the possibility of recording training sessions so that people can access them at a suitable time themselves is being looked into. Training on forensic sections is being rolled out and we continue to support with nurse foundation and doctor's induction training.

It was explained the reason for rolling out a forensic workshop was, historically there had been lulls in the use of prison to hospital transfers but over the last year there have been an increase in these transfers, it was therefore felt a workshop would benefit professionals.

Ward audits are progressing on a rota basis which are going well. The aim over the next few months is to attend CMHTs. There have been some issues on certain wards and communication is provided to the appropriate professionals where these are picked up.

The use of voluntary assessments was also highlighted and it is felt that a piece of work needs to be done regarding this. The AMHP Lead for the Vale felt that this issue should be covered in this group, which the Chair agreed.

5 Matters for Action

The action log was discussed as follows:

How to record repeat 136's on PARIS- still outstanding

Using digital/electronic signatures on MHA documentation- still outstanding

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Mental Health Legislation and Governance Group
13th January 2023

Create an easy to follow 136 checklist- still outstanding though this is a piece of work that seems to be evolving.

Section 12 workforce- can be marked as completed. SBAR completed which will be submitted to the MHLMCAC.

E-Datix forms- is now being used to track MHA documentation issues but AMHPS will need to report any conveyancing issues themselves. AMHPs only have partial access to E-Datix which has the potential to deviate from the pathway used within the Health Board. A separate meeting needs to be arranged surrounding this with the Senior Nurse for Quality, Safety & Education.

Process of E-Datix- can be marked as completed as per above.

Secure transport- work still ongoing to gain access to more secure transport providers. At present there are four providers but there are definitely still gaps within the system which can end up very costly. Chair to liaise with the Deputy Director of Nursing for progress.

Section 140 discussion- a draft procedure has been completed by the Health Board and a further meeting with Cardiff and Vale LA needs to be arranged to progress further.

Scrutinising consent to treatment certificates- can be marked as completed. One of the consultants is leading on this and for some time a proforma has been used to tried and capture as much relevant information as possible.

The length of time that CAMHs are in HYC- can be marked as completed as the Chair of the group does now have this information.

117 knowledge gaps in CAMHs team- there is still a perceived knowledge gap and Cardiff LA responsibility to it. This will need to remain on the action log.

117 no CMHT allocations- can be marked as completed as the final 17 patients have been passed onto their relevant locality Senior Nurses/Service Managers to chase and either allocate to a CMHT or discharge the 117.

RC responsibility for CAMHs patients in HYC- continues to be discussed as CAMHs RC's will be responsible for patients depending on what day of the week they're admitted. The Consultant Representative for CAMHs will discuss with the MHA Manager.

Tribunal face to face hearings - these are due to resume on 1st March 2023 but at present we have not been provided any guidance surrounding this. MHA Manager is due to speak to the Senior Operations Manager shortly and will discuss this.

Understanding the AMaT software- The Deputy Mental Health Act Manager has now attended AmAT software training and will focus some time on understanding how this can work for ward audits and to pull useful data from AMaT.

Produce list of 135 warrants- can be marked as completed as the Deputy Mental Health Act Manager continues to put together a list of S135 warrants each quarter. Any issues can be raised again if and when necessary.

6 Feedback on operational issues and incidents

Covid 19 remains on the agenda and there has been recent Government guidance relating to working from home and remaining cautious.

There is no update regarding digital signatures.

Further meetings are to be held in relation to the use of locked doors within Hafan Y Coed and whether someone informally on a locked ward is defacto detained and how much we ensure they are aware of their right to leave. Further meetings will be held about this by the Deputy Director of Nursing.

There is no update regarding recording of repeat Section 136's on PARIS.

Progress has been swift in relation to the Health Boards proposed Section 140 procedure. Adult services have had sight of the document and the next phase is for it to go out to consultation to all relevant stakeholders.

7 Feedback

Feedback from the AMHP forum was mentioned when discussing MHA Activity. A process checklist has been created and shared with all AMHPs on what they must do on assessment and when they detain someone. Reminding AMHPs to notify the MHA office of all S135 applications. It was discussed that a procedure is already in place relating to who can apply for S135(1)'s and S135(2)'s as AMHP's are often being asked to complete this but it is not their responsibility, although they are willing to support if able. It was agreed that this procedure will be disseminated to all relevant professionals again as its unclear how many people are already aware of this. CMHTs should also be included within this.

Action – MHA Manager to disseminate process on applying for S135(2) warrants to all wards and CMHT's.

The Consultant Representative for CAMHs confirmed that there has been movement regarding the allocation of Responsible Clinicians to young persons detained in Cardiff and Vale. Two doctors have been named and there is discussion as to how responsibility should be allocated between them. It is proposed that allocation may be according to the day the person is admitted to hospital but this decision will need to be made by the CAMHs consultants themselves. At present there are still issues regarding the recording on PARIS of the correct responsible clinician. The Digital Lead for Mental Health knows more about this and will be contacted to seek clarity on what the problem is and how to resolve it.

Action – Deputy MHA Manager to liaise with the Digital Lead to find a solution for recording CAMHs RC's on PARIS.

Learning gaps surrounding Section 117 and the knowledge of it within CAMHs persist and the chair of the meeting will progress this. There is now a link between Adult Mental Health and children's services. One of the CAMHs representatives has a meeting planned shortly with this person. This will also be raised at that meeting.

The AMHP Lead for Vale of Glamorgan discussed an issue with cross border agreements for some of their patients. People from Western Vale are often taken to an alternative A&E outside of Cardiff and Vale and this has caused some problems recently. One instance involved an AMHP being left for a prolonged period of time in a potentially vulnerable position. The AMHPs will submit an incident to the concerned hospital so see if any resolution can be sought. AMHPs being left on their own has happened on several occasions even within the Hafan Y Coed. The Chair has asked for this incident to be inputted to the Datix system so that learning can be progressed. Another incident was discussed whereby a lack of cross border agreements regarding patients has the potential to cause difficulties for both the LA and the Health Boards concerned. It was agreed that the Lead Nurse for MHSOP will put some thought into this particular issue and where it should be raised.

No consultants present to offer feedback.

No feedback from the All Wales AC Approval Panel since last MHLAG meeting.

Although Advocacy were not present at the meeting they did submit the following information to the MHA Manager to relay. Advocacy have commented that referrals have increased over the last couple of months and they feel that they have a really good rapport with nurses across mental health services. The only negative comment from advocacy was that advocates often find it hard to support clients at ward rounds as nursing staff are unsure of when doctors will be in attendance on wards.

The feedback from the SWP Representative was mainly from medical wards where a patient under 5(2) has gone missing, staff are unaware they can stop them from leaving or bring them back but often they are letting them go and calling the police to bring them back. It is already being addressed by the MHA office.

8 Power of Discharge Group comments, compliments and feedback

The Chair of the PoD group commented that there has been a decrease in the proportion of advocates in attendance at hospital managers hearings. The Chair of the PoD group confirmed that the ongoing concerns regarding CTPs and identification of nearest relatives remains.

The use of shared rooms for people attending hearings was raised as a potential concern to the hospital managers. The Chair of the PoD group asked the people use private rooms. The MHA Manager will send a reminder to all relevant professionals to remind them of the need to ensure patients privacy during managers hearings.

Action – MHA Manager to send privacy reminder to all professionals attending hearings.

9 External reviews

Healthcare Inspectorate Wales visited HYC very recently and provided largely positive feedback. All but one consent to treatment certificate were in place. Record keeping was recognised as being good. They did pick up that our section 17 leave forms lack description as to someone's risk although, this is not statutory it was identified as best practice and the MHA Manager will be looking into whether this is feasible going forward. The MHA Manager is also looking into whether a MHA champion can be allocated to each ward to help support with the rights and consent process.

10 Interface MHA/MCA/DOLS

A recent meeting in relation to the LPS's did not go ahead as planned. It is now thought that the changes may progress in 2024. Cardiff LA has employed a project lead for the implementation of the LPS. The Chair of the group has highlighted the demand professionals are under in relation to section 49 requests which was reported to the MHLMCAC at the last meeting.

11 Quality indicators and audit activities

Not discussed at this meeting.

12 Any other business

The UK Government appointed a legislative committee in December 2022 to review the draft Mental Health Bill but so far nothing has come out of this in terms of written feedback. Concerns in relation to the nominated person were mentioned during this meeting.

As a group there is no formal response to the race and ethnic inequalities report but it has been agreed that work will be done to identify any trends that exist within Cardiff and Vale UHB. Gathering data in relation to ethnicity was discussed at the recent Adult quality and safety group. In particular the Headroom service presented data around ethnicity in their service and around 50% of patients are from a BAME background. It was mentioned that PARIS can only pull data that has been entered and a lot of the ethnicity data hasn't been completed so we can never get any accurate data on this.

Action – Deputy MHA Manager to think about pulling ethnicity data.

13 Date of future meetings

13th April 2023

13th July 2023

12th October 2023

Cardiff and Vale University
Local Health Board

Mental Health Legislation and Governance Group
13th January 2023

Mental Health Legislation & Governance Group Action Log

Key:	Red: Outstanding	Amber: In progress	Green: Completed
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ACTIONS FROM PREVIOUS MEETINGS

STATUS	SUBJECT	AGREED ACTION	ACTION BY
	How to record repeat section 136 admissions on PARIS	Digital Lead to look into how repeat 136 presentations can be recorded in PARIS	SM
	Using digital/electronic signatures on MHA documentation	Digital Lead will look into the use of digital/electronic signatures	SM
	Create an easy to follow flow chart for the 136 process	MHA Manager to arrange to meet with SWP to discuss and create flow chart	DS, C-LT
To be removed	S12 workforce	Chair to discuss the s12 workforce issue with relevant colleagues and escalate as appropriate	RK
To be removed	DATIX forms	Ensure completion of DATIX forms for transportation/conveyancing problems in order to monitor the situation	RK
To be removed	Process of DATIX forms	MHA Manager to investigate the DATIX hierarchy system.	DS
Revised below	Secure transport	Deputy Director of Nursing is looking into alternative secure transport. Colleagues are encouraged to complete DATIX forms for transportation/conveyancing problems in order to monitor the situation	RK/TR
Revised below	S140 discussion	Cardiff/Vale LA to share their work on s140 with Lead Nurse Adult/MHSOP and to discuss further together.	MS/KL/LW
To be removed	Scrutinising consent to treatment certificates	MHA Manager to attend ward rounds to ensure certificates are being checked and to see how the inpatient review forms are being used in reality.	DS
To be removed	Length of time CAMHS patients are in HYC	Chair to investigate the data received from SW Senior Locality Nurse on how long CAMHS patients are in HYC and if informal patients are included	RK
	117 knowledge gaps in CAMHS teams	CAMHS rep to raise the issue again with her seniors and the Lead AMHP for Cardiff will also raise the issue with her seniors to try and progress the issue	CH/KL/RK

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To be removed	117 no CMHT allocations	Deputy MHA Manager to liaise with Senior Locality Nurses to ensure task has been escalated	BS-L
Revised below	RC responsibility for CAMHS patients in HYC	Ward staff are to check with CAMHS who the RC is before allocating on PARIS. NW Senior Locality Nurse to inform wards	PB
	Tribunal face to face hearings	MHA Manager to speak to Senior Operations Manager at the Tribunal to get finer details for returning to face to face	DS
	Understanding the AMaT software	Deputy MHA Manager to go on the AMaT training and understand how to use it	MB
To be removed	Produce list of 135 warrants	Deputy MHA Manager to produce list of 135 warrants and send to LA leads monthly to confirm numbers.	BS-L

ACTIONS FROM THIS MEETING – 13TH January 2023

STATUS	SUBJECT	AGREED ACTION	ACTION BY
	S140 procedure	Cardiff and Vale LA to discuss final draft of procedure and send to all appropriate stakeholders for review	MS/LW/KL/MR/LW/NM-L
	Secure transport providers	Chair to liaise with Deputy Director of Nursing to confirm all providers that are available to LA/Health Board	RK/TR
	Allocating CAMHS RC on PARIS	Deputy MHA Manager to discuss PARIS issue with recording CAMHS RC with the Digital Lead and CAMHS consultant	BL/SM/CH
	Inappropriate use of S5(2)	MHA Manager to investigate the incident re: IM injection and E-Datix if necessary	DS
	Applying for 135(2) warrant	MHA Manager to disseminate the process for applying for a 135(2) warrant to all wards and CMHT's	DS
	Ethnicity data on PARIS	Deputy MHA Manager to think about best way to pull ethnicity data from PARIS	BL

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Report Title:	Draft Mental Health Legislation & Mental Capacity Act Annual Report 2022/23			Agenda Item no.	12.1
Meeting:	Mental Health Legislation & Mental Capacity Act Committee	Public	X	Meeting Date:	31.01.2023
		Private			
Status (please tick one only):	Assurance		Approval	X	Information
Lead Executive:	Director of Corporate Governance				
Report Author (Title):	Senior Corporate Governance Officer				
Main Report					
Background and current situation:					
<p>The purpose of the report is to provide Members of the Mental Health Legislation & Mental Capacity Act Committee with the opportunity to discuss the attached Annual Report prior to submission to the Board for approval.</p> <p>It is good practice and good governance for the Committees of the Board to produce an Annual Report from the Committee to demonstrate that it has undertaken the duties set out in its Terms of Reference and provides assurance to the Board that this is the case.</p>					
Executive Director Opinion and Key Issues to bring to the attention of the Board/Committee:					
<p>The Mental Health Legislation & Mental Capacity Act Committee achieved an attendance rate of 100% so far (80% is considered to be an acceptable attendance rate) during the period 1st April 2022 to 31st March 2023 as set out in the annual report.</p>					
Recommendation:					
<p>The Board / Committee are requested to:</p> <ul style="list-style-type: none"> REVIEW the draft Annual Report 2022/23 of the Mental Health Legislation & Mental Capacity Act Committee RECOMMEND the Annual Report to the Board for approval. 					
Link to Strategic Objectives of Shaping our Future Wellbeing:					
Please tick as relevant					
1. Reduce health inequalities		6. Have a planned care system where demand and capacity are in balance			
2. Deliver outcomes that matter to people	X	7. Be a great place to work and learn			
3. All take responsibility for improving our health and wellbeing		8. Work better together with partners to deliver care and support across care sectors, making best use of our people and technology			
4. Offer services that deliver the population health our citizens are entitled to expect		9. Reduce harm, waste and variation sustainably making best use of the resources available to us			
5. Have an unplanned (emergency) care system that provides the right care, in the right place, first time		10. Excel at teaching, research, innovation and improvement and provide an environment where innovation thrives			

Five Ways of Working (Sustainable Development Principles) considered									
Please tick as relevant									
Prevention		Long term		Integration		Collaboration		Involvement	
Impact Assessment:									
Please state yes or no for each category. If yes please provide further details.									
Risk: Yes/No									
n/a									
Safety: Yes/No									
n/a									
Financial: Yes/No									
n/a									
Workforce: Yes/No									
n/a									
Legal: Yes/No									
n/a									
Reputational: Yes/No									
n/a									
Socio Economic: Yes/No									
n/a									
Equality and Health: Yes/No									
n/a									
Decarbonisation: Yes/No									
n/a									
Approval/Scrutiny Route:									
Committee/Group/Exec					Date:				

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NHS
WALES

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

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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 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 x% (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	✓	✓	✓	X	
Akmal Hanuk	✓	✓	✓		
Sara Moseley (Vice Chair)	✓	✓	✓		
Total	100%	100%	100%		

Commented [NS(aVU-CG1): To be completed following January's meeting

Commented [NS(aVU-CG2): To be completed following January's meeting

4.0 TERMS OF REFERENCE

The Terms of Reference were reviewed and ratified 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.

Commented [NS(aVU-CG3): To confirm following January's meeting.

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

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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: -

- i) 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.

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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: -

- i) 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: -

Commented [NS(aVU-CG4): To be updated following January's meeting

- **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: -

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- 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: -

Commented [NS(aVU-CG5): To be updated following January's meeting

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

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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

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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: -

Commented [NS(aVU-CG6]: To be updated following January's meeting

• 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,

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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: -

Commented [NS(aVU-CG7): To be updated following January's meeting

• 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.

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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

Commented [NS(aVU-CG8): To be added following January's meeting

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 and approval in January 2023.

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

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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

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Report Title:	Mental Health Legislation and Mental Capacity Act Committee – Terms of Reference and Workplan			Agenda Item no.	12.2
Meeting:	Mental Health Legislation and Mental Capacity Act Committee	Public	<input checked="" type="checkbox"/>	Meeting Date:	31 st January 2023
		Private	<input type="checkbox"/>		
Status <i>(please tick one only):</i>	Assurance <input type="checkbox"/>	Approval <input checked="" type="checkbox"/>	Information <input type="checkbox"/>		
Lead Executive:	Interim Director of Corporate Services				
Report Author (Title):	Interim Director of Corporate Services				
Main Report					
Background and current situation:					
<p>In line with the UHB's Standing Orders, Terms of Reference and Work Plans for Committees of the Board, should be reviewed on an annual basis to ensure they are up to date and comply with any new requirements either statutory or from Welsh Government.</p> <p>This report provides Members of the Mental Health Legislation and Mental Capacity Act Committee (MHLMCAC) with the opportunity to review the Terms of Reference and Work Plan prior to submission to the Board for approval.</p> <p>The work plan for the Mental Health Capacity and Legislation Committee has been developed based upon the requirements set out in its Terms of Reference to ensure the Committee achieves what is set out in the Terms of Reference.</p>					
Executive Director Opinion and Key Issues to bring to the attention of the Board/Committee:					
<p>The Terms of Reference and Work Plan for the MHLMCAC were last reviewed in February 2022. Prior to that a thorough review of the Committee and its purpose was undertaken alongside training for Committee Members hence there are no changes to the Terms of Reference presented. However, they have been reviewed by the Director of Corporate Governance.</p>					
Recommendation:					
<p>The Committee are requested to:</p> <p>(a) Review the Terms of Reference and work plan 2023/24 for the MHLMCAC; (b) Ratify the Terms of Reference and work plan 2023/24 for the MHLMCAC and (c) Recommend the changes to the Board for approval on 30th March 2023.</p>					
Link to Strategic Objectives of Shaping our Future Wellbeing:					
<i>Please tick as relevant</i>					
1. Reduce health inequalities	<input checked="" type="checkbox"/>	6. Have a planned care system where demand and capacity are in balance	<input type="checkbox"/>		
2. Deliver outcomes that matter to people	<input checked="" type="checkbox"/>	7. Be a great place to work and learn	<input type="checkbox"/>		
3. All take responsibility for improving our health and wellbeing	<input type="checkbox"/>	8. Work better together with partners to deliver care and support across care sectors, making best use of our people and technology	<input type="checkbox"/>		

4. Offer services that deliver the population health our citizens are entitled to expect		9. Reduce harm, waste and variation sustainably making best use of the resources available to us	
5. Have an unplanned (emergency) care system that provides the right care, in the right place, first time		10. Excel at teaching, research, innovation and improvement and provide an environment where innovation thrives	

Five Ways of Working (Sustainable Development Principles) considered

Please tick as relevant

Prevention	x	Long term		Integration		Collaboration		Involvement	
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Impact Assessment:

Please state yes or no for each category. If yes please provide further details.

Risk: Yes/No

Please include the detail of any Risk Assessments undertaken when preparing and considering the content of this report and, where appropriate, the nature of any risks identified. (If this has been addressed in the main body of the report, please confirm)

Safety: Yes/No

Are there any Staff or Patient safety implications associated with the content and proposals contained within this report? If so, have these been fully considered and have plans been put in place to mitigate these? (If this has been addressed in the main body of the report, please confirm)

Financial: Yes/No

Are there any Financial implications associated with the content and proposals contained within this report? If so, have these been fully considered and have plans been put in place to mitigate these? (If this has been addressed in the main body of the report, please confirm)

Workforce: Yes/No

Are there any Workforce implications associated with the content and proposals contained within this report? If so, have these been fully considered and have plans been put in place to mitigate these? (If this has been addressed in the main body of the report, please confirm)

Legal: Yes/No

Are there any legal implications that arise from the content and proposals contained within this report? If so, has advice been sought and what was the outcome? (If this has been addressed in the main body of the report, please confirm)

Reputational: Yes/No

Are there any reputational risks associated with the content and proposals contained within this report? If so, have these been fully considered and have plans been put in place to mitigate these? (If this has been addressed in the main body of the report, please confirm)

Socio Economic: Yes/No

The Socio-Economic Duty is designed to encourage better decision making, ensuring more equal outcomes. Do the proposals within this report contain strategic decisions, such as setting objectives and the development of services. If so has consideration been given to how the proposals can improve inequality of outcome for people who suffer socio-economic disadvantage? Please include detail.

Useful Guidance on the application of the Socio-Economic Duty can be found at the following link: [The Socio-economic Duty: guidance | GOV.WALES](#)

(If this has been addressed in the main body of the report, please confirm)

Equality and Health: Yes/No

Equality Health Impact Assessments (EHIA) are typically undertaken when developing or reviewing Health Board strategies, policies, plans, procedures or services. Do the proposals contained within the report necessitate the requirement for an EHIA to be undertaken? If so, please include the detail of any EHIA undertaken, or the plans are in place to do so.

Useful guidance on the completion of an EHIA can be found at the following link: [EHIA toolkit - Cardiff and Vale University Health Board \(NHS. Wales\)](#)

(If this has been addressed in the main body of the report, please confirm)

Decarbonisation: Yes/No

If appropriate, has consideration been given to the delivery of proposals in accordance with NHS Wales Decarbonisation Plans. If so, please confirm the detail of issues considered and plans made.

(If this has been addressed in the main body of the report, please confirm)	
Approval/Scrutiny Route:	
Committee/Group/Exec	Date:

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Caerdydd a'r Fro
Cardiff and Vale
University Health Board

Mental Health Legislation and Mental Capacity Act Committee

Terms of Reference

Reviewed by Committee: **31st January 2023**

Approved by the Board:

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1. INTRODUCTION

- 1.1 The University Health Board's (UHB) Standing Orders provide that *"The Board may and, where directed by the Welsh Government must, appoint Committees of the UHB Board either to undertake specific functions on the Board's behalf or to provide advice and assurance to the Board in the exercise of its functions. The Board's commitment to openness and transparency in the conduct of all its business extends equally to the work carried out on its behalf by committees"*.
- 1.2 In line with Standing Orders (and the UHB Scheme of Delegation), the Board shall nominate annually a Committee to be known as the **Mental Health Legislation and Mental Capacity Act Committee**. The detailed terms of reference and operating arrangements agreed by the Board in respect of this Committee are set out below.
- 1.3 The principal remit of this 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)) (MCA) and the Mental Health (Wales) Measure 2010 (the Measure) and any subsequent amendments to the legislation.

Mental Health Act

- 1.4 The Mental Health Act 1983 covers the detention of people deemed a risk to themselves or others. It sets out the legal framework to allow the care and treatment of mentally disordered persons. It also provides the legislation by which people suffering from a mental disorder can be detained in hospital to have their disorder assessed or treated against their wishes.
- 1.5 The MHA introduced the concept of "Hospital Managers" which for hospitals managed by a Local Health Board are the Board Members. The term "Hospital Managers" does not occur in any other legislation.
- 1.6 Hospital Managers have a central role in operating the provisions of the MHA; specifically, they have the authority to detain patients admitted and transferred under the MHA. For those patients who become subject to a Community Treatment Order (CTO), the Hospital Managers are those of the hospital where the patient was detained immediately before going on to CTO - i.e. the responsible hospital or the hospital to which responsibility has subsequently been assigned.
- 1.7 Hospital Managers must ensure that patients are detained only as the MHA allows, that their treatment and care is fully compliant with the MHA and that patients are fully informed of and supported in exercising their statutory rights. Hospital Managers must also ensure that a patient's case is dealt with in line with associated legislation.
- 1.8 With the exception of the power of discharge, arrangements for authorising day to day decisions made on behalf of Hospital Managers have been set out in the UHB Scheme of Delegation.

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Mental Health Measure

1.9 The Mental Health (Wales) Measure received Royal Assent in December 2010 and is concerned with:

- providing mental health services at an earlier stage for individuals who are experiencing mental health problems to reduce the risk of further decline in mental health;
- making provision for care and treatment plans for those in secondary mental health care and ensure those previously discharged from secondary mental health services have access to those services when they believe their mental health may be deteriorating;
- extending mental health advocacy provision.

Mental Capacity Act

1.10 The MCA came into force mainly in October 2007. It was amended by the Mental Health Act 2007 to include the Deprivation of Liberty Safeguards (DoLS). DoLS came into force in April 2009.

1.11 The MCA covers three main areas –

- The process to be followed where there is doubt about a person's decision-making abilities and decisions may need to be made for them (e.g. about treatment and care)
- How people can make plans and/or appoint other people to make decisions for them at a time in the future when they can't take their own decisions
- The legal framework for caring for adult, mentally disordered, incapacitated people in situations where they are deprived of their liberty in hospitals or care homes (DoLS)

Thus the scope of MCA extends beyond those patients who have a mental disorder.

2. PURPOSE

2.1 The purpose of the Mental Health Legislation and Mental Capacity Act Committee (the Committee) is to 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

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3. DELEGATED POWERS AND AUTHORITY

3.1 The Committee will:

- ensure that those acting on behalf of the Board in relation to the provisions of Mental Health Act and Capacity legislation, have the relevant skills, competencies and knowledge to discharge the Board's responsibilities;
- identify matters of risk relating to Mental Health and Capacity legislation and seek assurance that such risks are being mitigated;
- consider and approve relevant policies and control documents in support of the operation of Mental Health and Capacity legislation;
- monitor the use of the legislation and consider local trends and benchmarks;
- consider matters arising from the Hospital Managers' Power of Discharge sub-committee;
- ensure that **all** other relevant associated legislation is considered in relation to Mental Health and Capacity legislation;
- consider matters arising from visits undertaken by Healthcare Inspectorate Wales Review Service relating to legislation issues and get assurance that actions identified have been responded to appropriately in particular, issues relating to Mental Health Act 1983;
- The Quality, Safety and Experience Committee will advise the Mental Health Act and Capacity Legislation Committee of any complaints in relation to the Mental Health Act and Capacity legislation received from within reports from Public Services Ombudsman for Wales;
- consider any other information, reports related to the legislation that the Committee deems appropriate.

Authority

3.2 The Committee is authorised by the Board to investigate or have investigated any activity within its terms of reference, concentrating on the governance systems in place and indicators of their effectiveness, particularly in the management of risk. In doing so, the Committee shall have the right to inspect any books, records or documents of the UHB relevant to the Committee's remit, ensuring patient/client and staff confidentiality, as appropriate. It may seek any relevant information from any:

- employee (and all employees are directed to cooperate with any reasonable request made by the Committee); and
- other Committee, sub-committee or group set up by the Board to assist it in the delivery of its functions.

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- 3.3 The Committee is authorised by the Board to obtain outside legal or other independent professional advice and to secure the attendance of outsiders with relevant experience and expertise if it considers it necessary, in accordance with the UHB's procurement, budgetary and other requirements.

Sub Committees

- 3.4 In accordance with Regulation 12 of the Local Health Boards (Constitution, Procedure and Membership) (Wales) Regulations 2003 (SI 2003/149 (W.19), the Board has appointed a Sub-Committee, to be known as the Power of Discharge Sub-Committee. Three or more members drawn from the Sub-Committee will constitute a panel to consider the possible discharge or continued detention under the MHA of unrestricted patients and those subject to CTO.

The Mental Health Legislation and Governance Group is also a sub Committee. The purpose of this group is to monitor use of the MHA and deal with operational issues. Therefore allowing the MHACLC to focus on policy.

- 3.5 The Committee has authority to establish short life working groups which are time limited to focus on a specific matter of advice or assurance as determined by the Board or Committee.

Retention of Board Responsibility

- 3.6 The Board retains final responsibility for the performance of the Hospital Managers' duties delegated to particular people on the staff of Cardiff and Vale University Health Board, as well as the Power of Discharge Group.

4. MEMBERSHIP

Members

- 4.1 A minimum of **three (3)** members, comprising:

Chair	Vice Chair of the Board
Vice Chair	Chosen from amongst the Independent Members on the Committee
Members	A minimum of two other Independent Members of the Board

The Committee may also co-opt additional independent 'external' members from outside the organisation to provide specialist skills, knowledge and expertise.

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Attendees

- 4.2. The following officers and partners are expected to be in attendance so that the Committee can obtain appropriate assurances on compliance with mental health and mental capacity legislation across its breadth of statutory responsibilities:

- Chief Operating Officer (Lead Executive)
- **Chief Executive Officer**
- Executive Nurse Director
- **Executive Medical Director**
- Director of Corporate Governance
- Clinical Board Director - Mental Health Clinical Board
- Director of Nursing - Mental Health Clinical Board
- Director of Operations- Mental Health Clinical Board

The Director of Operations – Women’s and Children’s Clinical Board and the Mental Capacity Act Manager will attend the Committee in relation to specific items on the agenda as and when required.

- 4.3. By invitation:

The Committee Chair may extend invitations to attend Committee meetings to others from within or outside the organisation who the Committee considers should attend, taking account of the matters under consideration.

Secretariat

- 4.4 The Director of Corporate Governance shall attend every meeting and the meeting will be serviced by a member of the Corporate Governance team.

Member Appointments

- 4.5 The membership of the Committee shall be determined by the Board, based on the recommendation of the UHB Chair, taking account of the balance of skills and expertise necessary to deliver the Committee’s remit and subject to any specific requirements or directions made by the Welsh Government.
- 4.6 Terms and conditions of appointment, (including any remuneration and reimbursement) in respect of co-opted independent external members are determined by the Board, based upon the recommendation of the UHB Chair (and, where appropriate, on the basis of advice from the UHB Remuneration and Terms of Service sub-committee).

Support to Committee Members

- 4.8 The Director of Corporate Governance, on behalf of the Committee Chair, shall:

- Arrange the provision of advice and support to Committee members on any aspect related to the conduct of their role; and
- ensure the provision of a programme of organisational development for Committee members as part of the UHB overall OD programme developed by the Director of People and Culture.

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5. COMMITTEE MEETINGS

Quorum

- 5.1 Two Independent Members, one of whom should be the Committee Chair or Vice Chair.

Frequency of Meetings

- 5.2 Meetings shall be held no less than three times a year or as the Chair of the Committee deems necessary – consistent with the UHB Annual Plan of Board Business.

Withdrawal of individuals in attendance

- 5.3 The Committee may ask any or all of those who normally attend but who are not members to withdraw, to facilitate open and frank discussion of particular matters.

Format of agenda

- 5.4 The agenda for the meeting will be split into three parts comprising:
- Mental Health Act 1983;
 - Mental Health Measure (Wales) 2010;
 - and Mental Capacity Act 2005.

The proportion of time to be spent at each meeting on the respective parts will be set out in the Committee meeting planner, alternating the focus during the cycle of meetings and according to need.

6. RELATIONSHIP & ACCOUNTABILITIES WITH THE BOARD AND ITS COMMITTEES/GROUPS

- 6.1 Although the Board has delegated authority to the Committee for the exercise of certain functions as set out within these terms of reference, it retains overall responsibility and accountability for the safety, security and use of information to support the quality and safety of healthcare for its patients through the effective governance of the organisation.
- 6.2 The Committee is directly accountable to the UHB for its performance in exercising the functions set out in these Terms of Reference.
- 6.3 The Committee, through its Chair and Members, shall work closely with the Board's other Committees and groups to provide advice and assurance to the Board through the:

- joint planning and co-ordination of Board and Committee business; and
- sharing of information.

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In doing so, it will contribute to the integration of good governance across the organisation, ensuring that all sources of assurance are incorporated into the Board's overall risk and assurance framework.

- 6.4 The Committee shall embed the UHB values, corporate standards, priorities and requirements, for example equality and human rights, through the conduct of its business.

7. REPORTING AND ASSURANCE ARRANGEMENTS

- 7.1 The Committee Chair shall:

- report formally, regularly and on a timely basis to the Board on the Committee's activities. This includes verbal updates on activity, the submission of Committee minutes and written reports, as well as the presentation of an annual report;
- bring to the Board's specific attention any significant matters under consideration by the Committee;
- ensure appropriate escalation arrangements are in place to alert the UHB Chair, Chief Executive or Chairs of other relevant Committees/groups of any urgent/critical matters that may affect the operation and/or reputation of the UHB.

- 7.2 The Board may also require the Committee Chair to report upon the Committee's activities at public meetings, for example the Board's Annual General Meeting, or to community partners and other stakeholders, where this is considered appropriate, for example where the Committee's assurance role relates to a joint or shared responsibility.

- 7.3 The Director of Corporate Governance, on behalf of the Board shall oversee a process of regular and rigorous self-assessment and evaluation of the Committee's performance and operation, including that of any Sub-Committees established.

8. APPLICABILITY OF STANDING ORDERS TO COMMITTEE BUSINESS

- 8.1 The requirements for the conduct of business as set out in the UHB Standing Orders are equally applicable to the operation of the Committee, except in the following areas:

- Quorum
- Notifying and equipping Committee members – Committee members shall be sent an Agenda and a complete set of supporting papers at least seven (7) clear days before a formal Committee meeting (unless specified otherwise in law).
- Notifying the public and others – at least seven (7) clear days before each Committee meeting a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed on the Health Board's website together with the papers supporting the public part of the agenda (unless specified otherwise in law).

9. REVIEW

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- 9.1 These Terms of Reference shall be reviewed annually by the Committee with reference to the Board or sooner if required e.g. change in legislation.

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Mental Health Legislation and Mental Capacity Act Committee Work Plan 2023- 24					
App. -Approval Ass.- Assurance Inf.- Information	Exec Lead	02-May	01-Aug	31-Oct	30-Jan
Agenda Item					
Mental Health Act					
MHA Monitoring Exception Report	PB	Ass.	Ass.	Ass.	Ass.
Section 17 Compliance	PB	Ass.	Ass.	Ass.	Ass.
Section 138 Partnership Arrangements	PB	Ass.	Ass.	Ass.	Ass.
Policies in support of operation of MHCL	PB	Ass.	Ass.	Ass.	Ass.
Hospital Managers Power of Discharge Sub Committee Minutes	PB	Ass.	Ass.	Ass.	Ass.
Mental Health Measure Act Monitoring					
Mental Health Measure Monitoring Report	PB	Ass.	Ass.	Ass.	Ass.
Care and Treatment Plans Update Report	PB	Ass.	Ass.	Ass.	Ass.
Mental Capacity Act					
MCA Monitoring Report	PB	Ass.	Ass.	Ass.	Ass.
DOLs Monitoring Report	PB	Ass.	Ass.	Ass.	Ass.
DOLs Audit	PB			Ass.	
Inspection Reports					
HIW MHA Inspection Reports (where they relate to legislative compliance)	PB	Ass.	Ass.	Ass.	Ass.
Public Service Ombudsman Wales Reports (where they relate to legislative compliance)	PB	Ass.	Ass.	Ass.	Ass.
Annual Reports					
Hospital Managers Power of Discharge Sub Committee Annual Report	PB		Ass.		
HIW MHA Annual Report	PB		Ass.		
MHCL Committee Governance					
Annual Work Plan	JQ				App.
Self assessment of effectiveness	JQ	Ass.			
Review Terms of Reference	JQ				App.
Produce Committee Draft Annual Report	JQ				App.
Minutes of MHL&MCA Committee Meeting	JQ	App.	App.	App.	App.
Action log of MHL&MCA Committee Meeting	JQ	Ass.	Ass.	Ass.	Ass.

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