

# Mental Health & Capacity Legislation Committee Meeting

Tue 19 January 2021, 10:00 - 13:00

## Agenda

10:00 - 10:00 1. Welcome & Introductions  
0 min

Sara Moseley

10:00 - 10:00 2. Apologies for Absence  
0 min

Sara Moseley

10:00 - 10:00 3. Declarations of Interest  
0 min

Sara Moseley

10:00 - 10:00 4. Minutes of the Committee Meeting held on 20th October 2020  
0 min

Sara Moseley

📄 04 - MH CL Draft Minutes - October 2020.pdf (13 pages)

10:00 - 10:00 5. Action Log - 20th October 2020  
0 min

Sara Moseley

📄 05 - Draft Action Log January 2021.pdf (2 pages)

10:00 - 10:00 6. Chair's Action taken since last meeting  
0 min

Sara Moseley

10:00 - 10:00 7. Any Other Urgent Business Agreed with Chair  
0 min

Sara Moseley

10:00 - 10:00 8. Patient Story  
0 min

10:00 - 10:00 9. Mental Capacity Act  
0 min

9.1. Mental Capacity Act Monitoring Report

Saunders Nairn  
01/15/2021 11:03:04

Ruth Walker

- 📄 9.1 Appendix 1 MCA supporting info Jan 2021.pdf (5 pages)
- 📄 9.1 Appendix 2 IMCA Report Jan 2021.pdf (2 pages)
- 📄 9.1 MCA update report Jan 2021.pdf (3 pages)

## 9.2. DoLs Report - Verbal Update

Ruth Walker

10:00 - 10:00

0 min

## 10. Mental Health Act

### 10.1. Mental Health Act Monitoring Exception Report

Ian Wile

- 📄 10.1 Mental Health Act Exception Report (3) (002).pdf (6 pages)

10:00 - 10:00

0 min

## 11. Mental Health Measure

### 11.1. Continued Response to COVID-19 - Verbal Update

Ian Wile

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

Ian Wile

- 📄 11.2 Mental Health Measure (Jan 2021) A.pdf (9 pages)
- 📄 11.2 Mental Health Act Monitoring Report Oct - Dec 2020 B.pdf (45 pages)

10:00 - 10:00

0 min

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

### 12.1. Feedback on Committee Training Session & Review

Nicola Foreman

- 📄 12.1 Feedback on Committee Training Session & Review.pdf (3 pages)

### 12.2.

a) Jeff Champney-Smith b) Robert Kidd

a) Hospital Managers Power of Discharge Minutes

b) Mental Health Legislation and Governance Group Minutes

- 📄 12.2 a Power of Discharge Group Minutes Oct 2020 (2).pdf (7 pages)
- 📄 12.2 b Mental Health Legislation and Governance Group Minutes December 2020 (2).pdf (8 pages)

10:00 - 10:00

0 min

## 13. Corporate Risk Register

### 13.1. Corporate Risk Register – Mental Health Clinical Board Risks

Nicola Foreman / Ian Wile

- 📄 13.1 - MHCLC - Corporate Risk Register Covering Report - January 2021.pdf (4 pages)

**10:00 - 10:00** **14. Items for Approval Ratification**  
0 min

**14.1. Terms of Reference**

*Nicola Foreman*

 14.1 MHCLC ToRs February 2020 jb 040121 (4).pdf (8 pages)

**14.2. Work Plan**

*Nicola Foreman*

**14.3. Committee Annual Report 2020/21**

*Nicola Foreman*

 14.3- MH Annual Report Cover paper (1).pdf (2 pages)

 14.3 MHLC - Annual Report 20-21.pdf (5 pages)

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**10:00 - 10:00** **15. Review of the Meeting**  
0 min

*Sara Moseley*

Saunders Nathan  
01/15/2021 11:03:04

**Unconfirmed Minutes of the  
Mental Health and Capacity Legislation Committee  
Held on 20th October 2020 – 10am until 12pm.  
Via Skype**

**Present:**

Sara Mosely	SM/CC	Interim Chair/Independent Member Third Sector
Eileen Brandreth	EB	Independent Member – ICT
Steve Curry (part)	SC	Chief Operating Officer
Nicola Foreman	NF	Director of Corporate Governance
Akmal Hanuk	AH	Independent Member - Community
Michael Imperato	MI	Independent Member - Legal
Ruth Walker	RW	Executive Nurse Director

**In Attendance:**

Julia Barrell	JB	Mental Capacity Act Manager
Jeff Champney-Smith	JCS	Chair, Powers of Discharge sub-Committee
Robert Kidd	RK	Consultant Clinical and Forensic Psychologist
Amanda Morgan	AM	Service User
Sunni Webb	SW	Mental Capacity Act Manager
Ian Wile	IW	Director of Operations, Mental Health

**Secretariat:**

Nathan Saunders	NS	Corporate Governance Officer
Raj Khan	RK	Corporate Governance Officer

**Apologies:**

Richard Desir	RD	Director of Nursing
Scott McLean	SMc	Director of Operations

<b>MHCL 20/10/001</b>	<b>Welcome &amp; Introductions</b>  The Interim Committee Chair (CC) welcomed everyone to the meeting.	<b>ACTION</b>
<b>MHCL 20/10/002</b>	<b>Apologies for Absence</b>  Apologies for absence were noted.	
<b>MHCL 20/10/003</b>	<b>Declarations of Interest</b>  The CC declared an interest in the meeting as the Director of Mind Cymru.	
<b>MHCL 20/10/004</b>	<b>Minutes of the Committee Meeting held on 21<sup>st</sup> July 2020</b>  The Committee reviewed the minutes from the meeting held on 21 <sup>st</sup> July 2020.  Resolved that:	

	<p>The CC noted one clarification regarding point 20/10/015 – The title of the paper was not correct. This was corrected for the public minutes.</p> <p>(a) The Committee approved the minutes of the meeting held on 21<sup>st</sup> July 2020 as a true and accurate record.</p>	
<b>MHCL 20/10/005</b>	<p><b>Action Log following the meeting held on 21<sup>st</sup> July 2020</b></p> <p>The updates to the action log were noted.</p> <p>Action: MHCL 20/02/005 – Medical compliance. It was noted that the Strategy and Delivery Committee would take this action forward.</p>	
<b>MHCL 20/10/006</b>	<p><b>Chair's Action taken since last meeting</b></p> <p>The CC had spoken to and corresponded with service users.</p> <p>The CC had also linked with Cardiff and Vale Action for Mental Health in specific relation to BAME service users which she would discuss at the end of the meeting.</p>	
<b>MHCL 20/10/007</b>	<p><b>Any Other Urgent Business Agreed with the Chair</b></p> <p>No Urgent Business was noted.</p>	
<b>MHCL 20/07/008</b>	<p><b>Patient Story</b></p> <p>The Executive Nurse Director (END) noted the purpose of Patient Stories.</p> <p>The END advised the Committee that future Patient Stories would be obtained from Cardiff and Vale University Health Board service users.</p>	
<b>MHCL 20/10/009</b>	<p><b>Mental Capacity Act</b></p> <p><b>Mental Capacity Act Monitoring Report</b>– The END advised the Committee that this was a regular report that discussed the activity in Mental Health Legislation.</p> <p>The CC noted that the paper informed the committee that there was no direct assurance of compliance with the Act.</p> <p>The Mental Capacity Act Manager (MCAM) advised the Committee that the only way to ensure compliance was to go through patient notes.</p> <p><b>Resolved that:</b></p> <p>a) The Committee noted the report.</p>	

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**Internal Audit Report on DoLS** – The END advised the Committee that the Internal Audit 2018 raised significant areas of concern with the Mental Capacity Act, particularly DoLS.

The END advised the Committee that she had taken up the responsibility for this in April 2020 and had seen improvements from 2018 but she recognised that there was still more work to do. She noted that it would help to have the new legislation in place but due to COVID-19 there was a delay. She hoped that new legislation would be in place by spring 2020. The END noted that there were challenges progressing without the new legislation.

The END advised that to measure the significance of the system in place a review should be undertaken when a new approach was implemented alongside new legislation and when this is in place. Such a review would be brought to the committee.

The CC asked if there was a date when the new legislation would be in place.

The MCAM responded that the Liberty Protection Safeguards which would replace DoLS, would not be in place until April 2022.

The END responded that due to the increase in her expected timeline, she would go back to the team and have a discussion on how system measures could be put in place without the new legislation. She added that the Executive Medical Director (EMD) and she would work on that together.

The Consultant Clinical and Forensic Psychologist (CCFP) asked about section 49 (S49) reports and how as an organisation we note the demand. He advised the Committee that the quality of S49 reports needed to be developed and asked the END to add this to the work that she would undertake with the EMD.

Independent Member – Legal (IML) asked what other Health Boards do with audits on DoLS.

The END responded that Cardiff and Vale University Health Board (UHB) had a different way of dealing with DoLS in comparison to other Health Boards and noted that she was reluctant to chase something that might change when the new legislation comes into place.

The END advised that the Health Board needed to sharpen up and monitor what was happening to make sure that people understood what their responsibilities were.

Independent Member – ICT (IMI) asked how other health boards assure themselves of compliance.

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	<p>The END responded that the internal audit is not giving the assurance which is why the work alongside the EMD needed to be undertaken.</p> <p>The CC advised the Committee of the mentioned interim actions. A review of the current system. Measuring long term effects and what needed to change to ensure compliance with new legislation.</p> <p>The END advised that an implementation plan would be brought to the Committee when new legislation is in place.</p> <p>The MCAM advised the Committee that there is an issue with clinicians across Wales and parts of England not understanding the Mental Capacity Act.</p> <p>The CC advised the Committee that the audit reports indicate that the Health Board was going in the right direction.</p> <p>The CC noted that appendix 2 in the board papers for the report highlighted that there was a difficulty in engaging professionals with the general understanding and acknowledgement across the UHB in relation to the role of the IMCA.</p> <p>The END noted that it was very clear that if the health Board were not educating people, people could be deprived of their liberty.</p> <p><b>Resolved that:</b></p> <p>a) The Committee noted that further work needed to be undertaken to progress the audit outcomes by the next meeting.</p>	
<p><b>MHCL 20/10/010</b></p> <p>Saunders Nathan 01/15/2021 11:03:04</p>	<p><b>Mental Health Act</b></p> <p><b>Mental Health Act Monitoring Exception Report</b></p> <p>The CC asked what learning had taken place in preparation for the next COVID-19 wave.</p> <p>The Director of Operations, Mental Health (DOMH) responded that due to COVID-19 there had been bed losses within mental health and this meant that the concentration of people detained had risen. There was a focus on people not being detained in hospital and this balanced back out when moving into September and October. For the next COVID-19 wave, there was hope that the system had adjusted accordingly.</p> <p>The CCFP asked for clarity on the position regarding section 136 (S136) and voluntary assessments.</p> <p>IMI also queried S136 in under 18s and the increase noted in these.</p>	

<p>Saunders, Nathan 01/15/2021 11:03:04</p>	<p>The DOMH responded that there had been a 25% increase in young adults going into adult beds and that during the year, the figures continued to reflect that meaning that another 25% increase was expected.</p> <p>IMI asked if the root cause was known for the increase. The DOMH responded that it was a mixture. The UHB had commissioned a steering group consisting of staff from various areas such as CAMHS and Women and Children. The collective aim of the steering group was the prevention of crisis and to understand what a good service looked like.</p> <p>The DOMH advised the Committee that there was Welsh Government Policy in place which legitimises the placement of young adults into adult beds.</p> <p>The DOMH advised the Committee that the number of S136 cases in younger people had increased and that he was involved in an emerging piece of work with the Police Crisis Care Concordat.</p> <p>The END advised the Committee that some of the wording used by South Wales Police was not quite right surrounding Mental Health and that this would be looked at to ensure the correct wording and terminology was being used in documents.</p> <p>The END advised the Committee that it was good to highlight that during that quarter there had not been any fundamentally defective applications. Training and other measures had been reinstated with local authorities.</p> <p>The END advised the Committee that in relation to section 132 (S132) an audit was carried out to measure compliance with the Mental Health Act. Compliance was good and the number of non-compliances was decreasing with an aim of zero.</p> <p>The CC noted that page 78 of the papers indicated an exclusion of visitors due to COVID-19. The CC asked what was being done to keep people in touch with any external support.</p> <p>The END noted that there was good access to iPads and that there was visitation allowed upon the easing of lockdown measures, however this had changed due to new COVID-19 government advice coming into force around local lockdowns and a national lockdown.</p> <p>The END noted that visiting was allowed in certain circumstances. The patient Experience Team coordinated this. There was an ongoing effort with volunteers to help with technology and also by placing Student Nurses into the Patient Experience Team to help with this effort.</p>	
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	<p><b>Resolved that:</b></p> <p>a) The Board supported the approach taken by the Mental Health Clinical Board to ensure compliance with the MHA.</p>	
MHCL 20/10/011	<p><b>Mental Health Measure</b></p> <p><b>Mental Health Measure Monitoring Report including Care and Treatment Plans Update Report</b></p> <p>The DOMH advised the Committee that this was a routine report.</p> <p><b>Part 1 : PMHSS</b></p> <p>The DOMH advised the Committee that Part 1A of the report noted that it has been a “bumpy ride” during the prevalent COVID-19 months. In August the ability to meet targets stopped and it was predicted that the target would be met in November.</p> <p>The DOMH noted that due to the reduction in numbers, people had been getting a much better service however, the Committee was advised that there was potential for a drop in referrals with new lockdown measures in place.</p> <p>The DOMH noted to the Committee that the Primary Care Liaison Team had helped and taken the pressure off other areas.</p> <p><b>Part 2 : Care and Treatment Planning</b></p> <p>The DOMH advised the Committee that it was standard for all relevant service users in secondary care to have an outcomes based holistic co-produced care plan.</p> <p>The DOMH noted that a new policy, RAMP, recognises service users in MH who do not meet relevant status under the Measure and this was currently being monitored to see if it was beneficial to patients.</p> <p>The DOMH advised the Committee that Care Aims had been introduced and involves a number of staff to help transform cultural elements and noted that improvements in quality were expected.</p> <p>The DOMH advised the Committee that the Transformation and Innovation Lead, Daniel Crossland, and a Doctor from South East Cardiff were talking with various consultants about the position patients were in and they were also reviewing care plans.</p> <p>The DOMH advised the Committee that from a compliance view, the team were very close to target.</p> <p><b>Part 3: Right to request an assessment by self –referral.</b></p>	

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	<p>The DOMH noted that by missing just one or two outcome letters being sent to patients, results could be affected. Compliance had been good since January 2020.</p> <p><b>Part 4: Advocacy – standard to have access to an IMHA within 5 working days</b></p> <p>The DOMH advised the Committee that ASC (Advocacy support Cymru) had been unable to meet with clients due to COVID-19, but had offered support virtually. The DOMH noted that they had been missed on the wards but that there was still 100% compliance.</p> <p>The DOMH advised the Committee that the Recovery College was launched in Mental Health and this helped to raise the expectations of service users and promote a better quality of interaction.</p> <p>IMI asked if there was any measure on how service users feel regarding the suitability of care and treatment plans.</p> <p>The DOMH responded that there was partly a measure on this and noted that the delivery unit offered their evaluation template which was being used on a day to day basis.</p> <p>The DOMH advised the Committee that there was a need to give more consideration to audit.</p>	
<p><b>MHCL 20/10/012</b></p> <p>Saunders Nathan 01/15/2021 11:03:04</p>	<p><b>CAMHS Compliance</b></p> <p>The CC asked the Committee if there were any questions that could be fed back to the Children and Women Clinical Board Director of Operations (DO).</p> <p>IML advised the Committee that he had spoken to Rose Whittle (Head of Operations CAMHS). It was noted that referrals would spike in September. It was not known if that was normal due to schools returning as there were no figures for October yet.</p> <p>The CC noted that an update was required at the next meeting.</p> <p>IMI advised the Committee that care and treatment plans seemed to be trending downwards and requested that more information was provided on this at the next meeting including what the profile was for referrals.</p> <p>Amanda Morgan, a Service User (SU) advised the Committee that there had been no activity from the people leading the consultation. The SU requested to have a general understanding regarding the present position at the next meeting.</p> <p>IML again, advised the Committee that he had spoken to Rose Whittle (Head of Operations CAMHS) and discussed the approach</p>	

	<p>to schools and advised that there was a Welsh Government initiative to take a whole school approach and to map out what was on offer in schools.</p> <p>The CC noted that the above point from IML was important but not strictly dealt with by the Committee.</p> <p><b>CAMHS Compliance</b></p> <p>The CC requested an update behind the figures in the report.</p> <p>The Chief Operating Officer (COO) advised the Committee that the figures on primary assessments were good. COVID-19 had provided challenges on the specialist front but gave the primary front an opportunity to catch up during the COVID-19 prevalent months.</p> <p>The COO advised the Committee that the sudden increase was challenging.</p> <p>The COO noted to the Committee that feedback within Patient Mental Health Services had been accepting of virtual and online options.</p> <p>The COO added that the Strategy &amp; Delivery Committee were getting some items in regards to Mental Health picked up on their agenda.</p>	
<p><b>MHCL 20/10/013</b></p> <p>Saunders Nathan 01/15/2021 11:03:04</p>	<p><b>Items to bring to the attention of the Committee for Noting / Information</b></p> <p><b>Sourcing &amp; Supporting Patient Stories Update – RW</b></p> <p>The END advised the Committee that the report was self-explanatory and that she was happy to open it up for discussion.</p> <p>The CC asked if this was the standard format.</p> <p>The END responded that it was.</p> <p>The SU asked for clarification on the Patient Story Submission Form as it was unclear who fills this in.</p> <p>The END responded that the majority of the report involved formal paperwork which was the last piece of the puzzle. The form would be filled in by Staff and it was hoped that good conversations would be had with Patients to find a balance which ensured that stories were told towards the end of a period of care whilst remaining sensitive.</p>	

<p>Saunders, Nathan 01/15/2021 11:03:04</p>	<p>Independent Member – Community (IMC) asked for information on the engagement process, in particular in relation to inclusivity of the BAME community due to not seeing that many examples.</p> <p>The END acknowledged the lack of BAME representation and advised the Committee that there was currently a post out to advert in the Patient Experience team whose role would be to pick up that particular agenda.</p> <p>The END noted that Swansea Bay Health Board had a library of Patient Stories and that the aim of Cardiff and Vale University Health Board was to take a similar approach and to increase the speed in which this was being done.</p> <p>CCFP advised the Committee that there was opportunity within Mental Health to get stories from Patients, who do not necessarily want to be, or see themselves as Patients and noted that this sort of story had not been told before so could prove beneficial to the UHB.</p> <p>The END advised Committee that during the process of Patient Stories there is a natural want to “fix” problems Patients have had but noted that this was not the function of Patient Stories.</p> <p>The CC noted that there were a good set of principles in place and thanked the END for strengthening the team.</p> <p>The CC noted that it was good to see how the DOMH was working with other organisations which could benefit the UHB.</p> <p>The END noted that growing relationships with staff would help with these processes.</p> <p>The Chair, Powers of Discharge sub-Committee (CPDSC) asked if there was a role for the advocacy service to help with Patient Stories. The END responded yes.</p> <p><b>Resolved that:</b></p> <p>a) The Committee noted the work the Patient Experience Team were undertaking in partnership with patients and the Clinical Boards on Patient stories.</p> <p><b>Feedback on Committee Training Session &amp; Review</b></p> <p>The Director of Corporate Governance (DCG) noted to Committee there had been positive feedback from training sessions.</p> <p>CCFP noted that Guardianship under the Mental Health Act was managed by the Local Authority and that they also have involvement with DoLS.</p>	
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<p>10/13</p> <p>Saunders Nathan 01/15/2021 11:03:04</p>	<p>CCFP advised the Committee that it needed to look at the connections the Committee has with the Local Authority.</p> <p>The END confirmed that a discussion needed to be had around who attends the committee and whether a local authority representative was needed. The END requested a conversation outside of Committee with the DCG.</p> <p>The CC requested that a recommendation was made and brought back to Committee in future.</p> <p>The COO noted that training was very helpful and that he learnt a lot from The DOMH's team and added that it highlighted how this had not be done before.</p> <p>The CC advised the Committee that 2 more sessions were planned and that people needed to co-ordinate their diaries to ensure maximum attendance.</p> <p>The DCG responded that this was helpful and would be picked up for the next session.</p> <p>Resolved that:</p> <ul style="list-style-type: none"> <li>a) The Committee noted the feedback on the first Committee training session and the plan for further training and review of Committee Terms of Reference including function and membership.</li> </ul> <p><b>Self Assessment of Committee Effectiveness &amp; Forward Action Plan</b></p> <p>The DCG noted that this report was straight forward and that it is the second time the self-assessment has been done so the committee were able to compare the update with the previous year's report.</p> <p>The DCG advised the Committee that there was a responsibility to do this every year.</p> <p><b>Resolved that:</b></p> <ul style="list-style-type: none"> <li>a) The Committee noted the results of the Committee's self-assessment Effectiveness Review for 2019-20 and approved the action plan for improvement to be completed by March 2021 in preparation for the next annual self-assessment which will feed into the 2020-21 Annual Governance Statement.</li> </ul>	
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	<p><b>Hospital Managers Power of Discharge Minutes</b></p> <p>The CPDSC noted that minutes were self-explanatory and advised the Committee that there were still concerns at the issue of care and treatment plans.</p> <p>The CPDSC noted that there was nothing of pressing attention to be brought to the attention of the Committee.</p> <p><b>2) Mental Health Legislation and Governance Group Minutes</b></p> <p>The CCFP noted that operational issues were discussed.</p> <p>The CC asked how cases were being dealt with where patients are not happy with virtual sessions and/or technology.</p> <p>The CPDSC responded that there had been no issues and feedback implied that people may prefer virtual/online sessions.</p> <p>IMI asked the CPDSC to clarify what “CAMHS RC” meant on page 131 of the board papers. The CPDSC responded that it means “responsible Clinician”.</p>	
<p><b>MHCL 20/10/014</b></p> <p>Saunders,Nathan 01/15/2021 11:03:04</p>	<p><b>Items for Approval Ratification</b></p> <p><b>IMCA Procedure</b></p> <p>The MCAM advised Committee that this item sets out what IMCA is and the circumstances around this in which Clinicians must instruct IMCA.</p> <p>The MCAM advised the Committee that Clinicians need a guide on what they need to do.</p> <p>The CCFP noted that the procedure had been revised slightly and queried whether the Health Board had been advised of the changes.</p> <p>The MCAM responded to assure the CCFP that the procedure had been out to consultation and had been to a Vulnerable Adult risk management working group.</p> <p>IMI asked if Power of Attorney supersedes the IMCA.The MCAM responded that an IMCA is only used if there is not anyone available who knows the patient.</p> <p>The CC advised the Committee that this item had been approved.</p> <p>Resolved that:</p> <p>a) The Committee approved the Independent Mental Capacity Advocacy procedure</p>	

- b) The Committee approved the full publication of the Independent Mental Capacity Advocacy procedure in accordance with the UHB Publication Scheme

### **Lasting Power of Attorney and Court Appointed Deputy Procedure**

The MCAM advised the Committee that this was another aspect of the Mental Capacity Act. The procedure sets out who these people are and then what the Clinicians need to do.

The MCAM advised the Committee that it was an important issue and that there was already mandatory training in place for Clinicians.

IML asked why Aaron Fowler, Head of Risk and Regulation came under the “useful contacts” in the Appendix for this procedure.

The DCG responded that all of the legal aspects have now been centralised through Aaron Fowler. He will source any external legal advice if needed.

The DCG noted that this centralisation has saved the UHB a significant amount of money.

#### **Resolved that:**

- a) The Committee is approved the Lasting Power of Attorney (LPA) and Court Appointed Deputy (CAD) procedure
- b) The Committee approved the full publication of the Lasting Power of Attorney (LPA) and Court Appointed Deputy (CAD) procedure in accordance with the UHB Publication Scheme

The CC advised the Committee that she had one more item to raise in relation to equality and the mental health act.

The CC noted that a background knowledge, awareness and information would be helpful to the Committee. The CC asked the Committee if this could be something for consideration.

IMC responded that it was very important to get this information and that he was happy to support this alongside other organisations.

The CC asked if this was needed to be taken offline or if we could join a different session in future.

The DCG responded that this would be picked up with the Executive Director of Workforce & Organisational Development (EDWOD).

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01/15/2021 11:03:04



	<p>The DCG advised the Committee that a number of other Committees had also expressed interest in addressing this issue and that it needs to be looked at globally.</p> <p>The DCG advised the Committee that she will action this.</p> <p>IMC highlighted that a number of different Committees needed to have Mental Health put into their agendas and for this to be focussed on across the board.</p> <p>IML advised the Committee that at the last S&amp;D meeting, a discussion was had around a draft strategic equality plan and how this could be fed into all areas.</p> <p>IMI noted that the purpose of the Committee was to look at legislation and reports and noted that no figures had been represented in the reports surrounding equality.</p> <p>The COO advised that a meeting he had chaired that morning had the same conversation surrounding equality and the lack of BAME data and he acknowledged that there was something more general about this that needed to be done.</p> <p>The CC noted that a larger conversation had been opened up surrounding this but it was an important one to have.</p> <p>The CC noted that the DOMH had been looking at data tracking issues.</p>	
<b>MHCL 20/10/015</b>	<p><b>Review of the Meeting</b></p> <p>The CC facilitated a review of the meeting. Members confirmed that:</p> <ul style="list-style-type: none"> <li>• It was a very well chaired meeting.</li> <li>• Sharing of video on screen needs to work in future meetings</li> <li>• Skype worked well but an overall preference for Microsoft Teams in future meetings</li> </ul> <p>CCFP asked if one person (administrative) could put each paper up on the screen during the presentation.</p> <p>The DCG responded that she would look into this with the team.</p> <p>The CC thanked the Committee.</p>	
<b>MHCL 20/10/016</b>	<p><b>Date &amp; Time of next Committee Meeting</b></p> <p>19<sup>th</sup> January 2020 – 10am via MS Teams</p>	



**Action Log**  
**Following Mental Health & Capacity Legislation Committee**  
**20<sup>th</sup> October 2020**

MINUTE REF	SUBJECT	AGREED ACTION	DATE	LEAD	STATUS/COMMENT
<b>Actions Completed</b>					
<b>Actions in Progress</b>					
MHCL 20/10/009	DOLS	The END to review DoLS working practices with the EMD and her team and prepare an implementation plan for the introduction of the Liberty Protection Safeguards.	<b>TBC</b>	Ruth Walker	
MHCL 20/10/13	Local Authority Committee Representative	Discussion to be had regarding the inclusion of a local authority representative within the committee.	<b>TBC</b>	Sara Moseley/Nicola Foreman/Ruth Walker	
MHCL 20/10/14	Mental Health and Equality	DCG to liaise with the EDWOD to discuss the possibility of equality training and updates being shared with the committee.	<b>TBC</b>	Nicola Foreman	
<b>Actions referred to committees of the Board</b>					
MHCL 19/10/012	HIW Mental Health Act Report	Bring all Estates concerns together to be reported at a Management Executive Meeting.	TBC	Nicola Foreman	Ongoing.
MHCL 19/06/008	Mental Capacity Act Monitoring Report	To discuss at HSMB whether it would be sensible to link up mandatory training (including MCA) compliance with doctors' access to study leave.	Date to discuss at HSMB	Stuart Walker	Agreement not reached with LNC at present. Discussions are ongoing.

MINUTE REF	SUBJECT	AGREED ACTION	DATE	LEAD	STATUS/COMMENT
MHCL 20/02/005		The issue regarding poor compliance on Medical Training be reviewed by the Strategy and Delivery Committee			This item would be reviewed by the S&D Committee and reported back to a future meeting.

Saunders Nathan  
01/15/2021 11:03:04

**Mental Health & Capacity Legislation Committee****MENTAL CAPACITY ACT ISSUES AND INFORMATION**

January 2021

Information on the use of MCA is as follows –

**1) Queries to Mental Capacity Act Manager**

Period	No of queries
1/10/19 – 31/12/19	45
1/1/20 – 31/3/20	39
1/4/20 – 30/6/20	29
1/7/20 – 30/9/20	34
1/10/20 – 22/12/20	33

There are no obvious themes or trends to the queries. Some are straightforward, whilst more are complex, including obtaining legal advice and responding to court cases.

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## 2) Monitoring reports from the Independent Mental Capacity Advocacy (IMCA) service

Referrals from the UHB to IMCA are as follows:

Decision/Issue	July – Sept 2019	Oct – Dec 2019	Jan – Mar 2020	April – June 2020	July – Sept 2020
<b>Accommodation</b>	14	16	14	4	6
<b>Adult Safeguarding</b>	2	1	0	1	1
<b>Care Review</b>	5	1	1	0	1
<b>Serious Med T/ment</b>	10	9	3	6	3
<b>DoLS s.39A</b>	1	0	0	0	0
<b>DoLS s.39C</b>	0	0	0	0	0
<b>DoLS s. 39D</b>	6	6	7	0	11
<b>DoLS RPR</b>	89	81	90	23	30
<b>TOTAL</b>	<b>127</b>	<b>114</b>	<b>115</b>	<b>34</b>	<b>52</b>

For further information, please see the IMCA service report (Appendix 2)

Referrals to the IMCA service between July and the end of September were low, despite the Mental Capacity Act 2005 being unchanged by Coronavirus legislation. Referrals for the Relevant Person's Representative role (DoLS) were significantly lower than pre-COVID-19.

## 3) Healthcare Inspectorate Wales (HIW) reports

There were three published inspection reports about UHB services in the period October - December 2020 –

- **UHW – T4 HDU**
- **Barry Hospital**
- **UHL, Wards E3&4**

None of the reports made mention of whether clinicians were complying with MCA regarding treatment and care.

#### **4) Complaints from patients/carers**

No complaints regarding clinicians' failure to comply with MCA was brought to the attention of the MCA Manager since the last report.

#### **5) Public Services Ombudsman for Wales reports - <http://www.ombudsman-wales.org.uk/en/publications/The-Ombudsmans-Casebook.aspx>**

The April - June 2020 Casebook has now been published. 3 cases were upheld by the Ombudsman, none of which explicitly mentioned MCA issues. However, there was one case where it wasn't clear in the summary whether or not the patient had impaired mental capacity.

#### **6) Staff MCA training as at 21<sup>st</sup> December 2020**

The following table gives the numbers and percentages of clinical staff who are up to date with their mandatory MCA training. MCA training can be undertaken by completing the all-Wales MCA Level 2 e-learning course on ESR, or by face-to-face (video conferencing) training provided by the MCA Manager.

A couple of MCA training sessions were provided via video conferencing.

The compliance figures for doctors remain disappointing, as MCA is a key part of the legal framework that governs the provision of treatment and care.

Discussions with the Assistant Medical Director for Quality and Safety will be held in order to discuss how to improve doctors' compliance with MCA training.

CLINICAL BOARD	Prof Group	No. required to undertake training	No. who are compliant	Compliance %
<b>Children &amp; Women</b>				
	Allied Health Profs	112	101	90.18
	Nursing & Midwif	1180	995	84.32
	Medical & Dental	195	71	36.41
<b>CD&amp;T</b>				
	Allied Health Profs	763	610	79.95
	Nursing & Midwif	37	33	89.19
	Medical & Dental	89	41	46.07
<b>Medicine</b>				
	Allied Health Profs	3	2	66.67
	Nursing & Midwif	815	615	75.46
	Medical & Dental	245	68	27.76
<b>Mental Health</b>				
	Allied Health Profs	31	26	86.67
	Nursing & Midwif	516	391	75.80

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	Medical & Dental	81	14	17.28
<b>PCIC</b>				
	Allied Health Profs	83	65	78.31
	Nursing & Midwif	354	280	79.10
	Medical & Dental	70	20	28.57
<b>Specialist</b>				
	Allied Health Profs	37	34	91.89
	Nursing & Midwif	850	660	77.65
	Medical & Dental	247	36	14.57
<b>Surgery</b>				
	Allied Health Profs	15	14	93.33
	Nursing & Midwif	443	326	73.59
	Medical & Dental	497	104	20.93

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## APPENDIX 2

### Mental Health and Capacity Legislation Committee

#### **Provision of South East Wales Independent Mental Capacity Advocacy (IMCA)**

#### **Cardiff and Vale University Health Board**

#### **IMCA referrals**

**Total number of referrals received from July – September 2020 – 52 Referrals**

- Serious Medical Treatment – 3
- Long Term Move of Accommodation – 6
- Adult Safeguarding – 1
- Care Review – 1
- Relevant Person's Representative (RPR) – 30
- IMCA 39d – 11
- IMCA 39C – 0
- IMCA 39a – 0

#### **Service issues/Areas of concern**

- General lack of referrals across all decisions.
- General lack of understanding and acknowledgement from professionals across the health board in relation to Court of Protection processes and requirements.
- IMCA was appointed as the RPR for P. On making initial contact with the ward, the IMCA was informed that only NHS and Local Authority professionals were allowed to visit patients on the ward, due to the pandemic. It was also very difficult to speak to P over the phone or video call, as he often liked to spend time in the activity room throughout the day, and did not wish to speak to people when he was engaged in an activity. By the time the issue was addressed, and it was confirmed I could visit the gentleman on the ward, he was discharged.
- IMCAs have come across staff from various wards and settings who are unsure if visits from professionals can take place. The IMCAs have had cases where they have contacted the ward by telephone to arrange a visit, have been told that they can attend, only to be told that they are not able to enter the when they arrive.

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### **Positive practices observed by IMCAs**

- The IMCA team has continued to have very positive experiences with the Patient Experience Team at Llandough Hospital, who have been facilitating conversations between the IMCAs and their clients on the wards.
- IMCAs have been involved with in-depth best interest meetings with some professionals attending in person, and some remotely through video calls. The IMCAs are aware that this can be difficult to manage but has been well executed, and has reduced any delays in decisions being made.

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<b>Report Title:</b>	<b>MENTAL CAPACITY ACT (MCA) 2005 UPDATE REPORT</b>					
<b>Meeting:</b>	<b>Mental Health and Capacity Legislation Committee</b>			<b>Meeting Date:</b>	<b>19/1/21</b>	
<b>Status:</b>	<b>For Discussion</b>		<b>For Assurance</b>		<b>For Approval</b>	<b>For Information</b> ✓
<b>Lead Executive:</b>	<b>Executive Nurse Director</b>					
<b>Report Author (Title):</b>	<b>Mental Capacity Act Manager</b>					

## SITUATION

The Mental Health and Capacity Legislation Committee has requested that information about the use of MCA within the UHB should be tabled at each meeting, in order to retain awareness of this issue.

## REPORT

### BACKGROUND

The Mental Capacity Act 2005 (MCA) has been in force for over 13 years. It was amended to include the Deprivation of Liberty Safeguards (DoLS), which came into force in April 2009.

The MCA covers people aged 16 years and over with three main issues –

- 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 authorizing deprivation of liberty when adult, mentally disordered, incapacitated people are deprived of their liberty in hospitals or care homes (DoLS)

Patients who have impaired decision-making abilities may present in any of the services that the UHB provides. Failure to comply with MCA could lead to the following –

- Patients refusing treatment that they need and their refusal being taken at face value, with no assessment of their capacity to make the decision in question. This could (and does) result in serious harm to vulnerable patients
- Patients not receiving care and treatment tailored to their individual circumstances
- Healthcare professionals and the UHB being sued, prosecuted, complained about and being reported to professional bodies
- Adverse inspection reports and publicity for the UHB

In order to assist UHB staff with using MCA, the following are in place -

### Training (mandatory)

- Face-to-face teaching from the MCA Manager including UHB-wide sessions at various locations, every other month – currently exploring with LED the options for delivering this training mainly through video conferencing

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- “Mandatory May and November” training, Senior Medical Induction and some Clinical Board Nurse Foundation Programmes – currently exploring with LED the options for providing this through video conferencing
- Bespoke training on request
- The All-Wales MCA e-learning course is available for use on ESR

## Information and advice

The MCA Manager provides information and advice to UHB staff on all aspects of MCA. There is also a “Mental Capacity” page on the intranet.

## Policies and procedures

A number of policies and procedures are in place to support UHB staff in using MCA. The Consent Policy includes information about MCA requirements. The MCA Manager also tries to ensure that other policies adequately and accurately reflect MCA where appropriate.

## Additional information

### Use of MCA within the UHB

Appendix 1 sets out information that indicates the use of MCA within the UHB.

### Independent Mental Capacity Advocacy (IMCA)

See also the report (Appendix 2) provided by Advocacy Support Cymru (ASC) – the statutory IMCA provider.

### Court cases involving MCA

The UHB has been a respondent in appeals against DoLS authorizations; and has been required to produce s.49 reports – these are reports that are ordered by the Court to be produced on matters relating to the patient, such as the patient’s mental capacity to consent to treatment.

An interesting article on the legal aspects of DNACPR can be found [here](#).

## ASSESSMENT

Whilst there are individual clinicians and service areas that have developed an understanding of MCA and comply with it, the position is not uniform across the UHB: there is still some way to go until MCA is embedded in clinical practice. There remains an issue with regard to Drs’ training compliance and understanding of MCA. This is also confirmed by Advocacy Support Cymru, the statutory Independent Mental Capacity Advocacy (IMCA) provider.

**ASSURANCE** is provided by:

This information does not provide direct assurance about compliance with MCA, which can only be done by scrutinising patients’ notes.

The report of the MCA Manager (appendix one) and IMCA report (appendix two) provide some evidence of adherence to the MCA but only limited assurance.

## RECOMMENDATION

The Committee is asked to:

- Note this report

### Shaping our Future Wellbeing Strategic Objectives

*This report should relate to at least one of the UHB's objectives, so please tick the box of the relevant objective(s) for this report*

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, click [here](#) for more information*

Prevention		Long term		Integration	√	Collaboration		Involvement	
<b>Equality and Health Impact Assessment Completed:</b>		Yes / No / Not Applicable If "yes" please provide copy of the assessment. This will be linked to the report when published.							



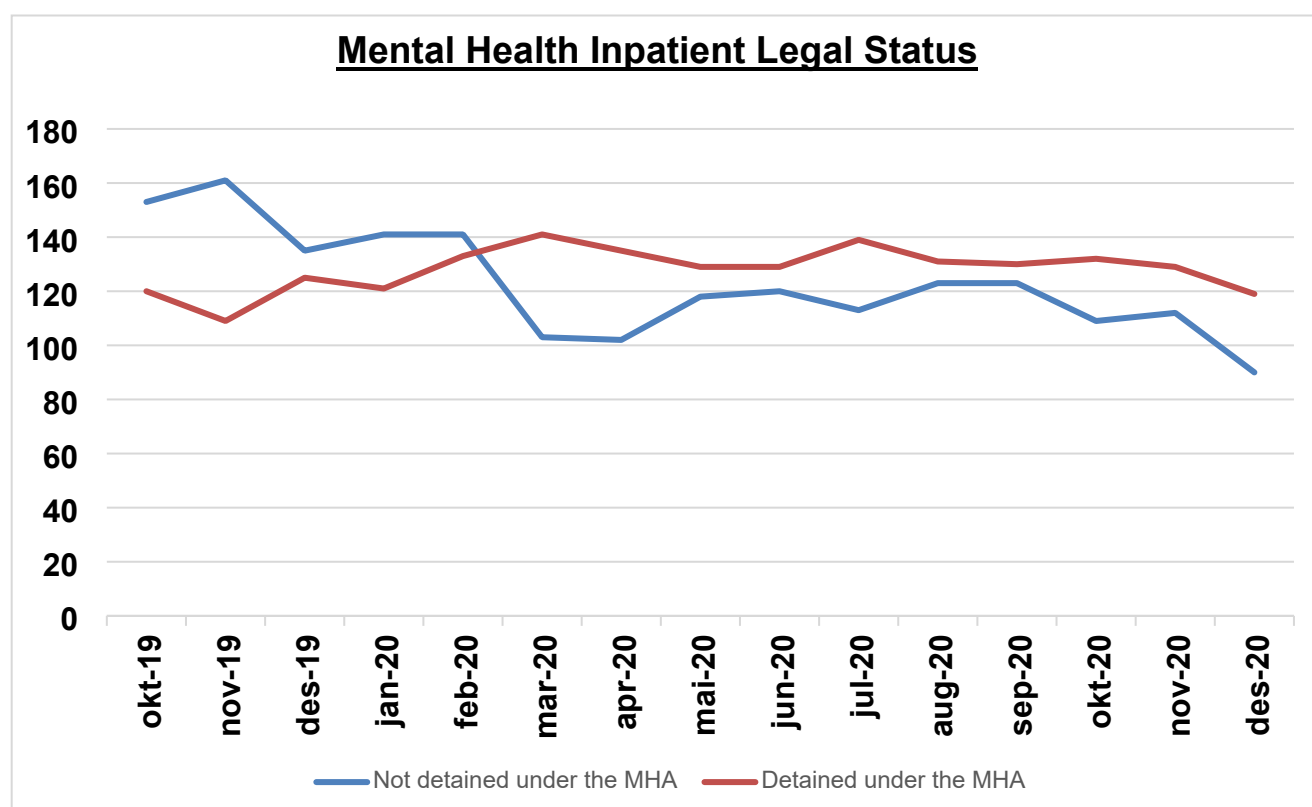
<b>Report Title:</b>	<b>MENTAL HEALTH ACT MONITORING</b>							
<b>Meeting:</b>	<b>Mental Health &amp; Capacity Legislation Committee</b>					<b>Meeting Date:</b>	<b>19 January 2021</b>	
<b>Status:</b>	<b>For Discussion</b>	x	<b>For Assurance</b>	x	<b>For Approval</b>	x	<b>For Information</b>	x
<b>Lead Executive:</b>	<b>Chief Operating Officer</b>							
<b>Report Author (Title):</b>	<b>Mental Health Clinical Board Director of Operations</b>							

### 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.

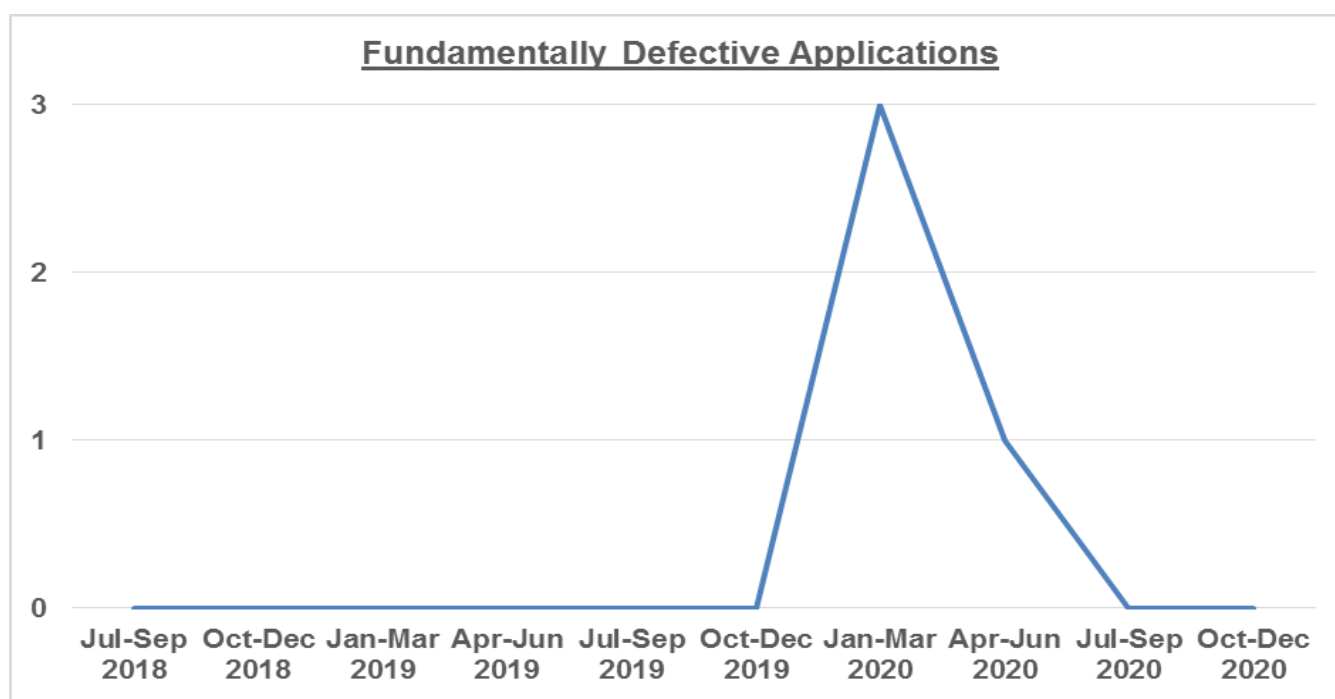
### Executive Director Opinion/Key Issues to bring to the attention of the Board/Committee:

Use of the Mental Health Act has remained fairly consistent. 56% of in patients were detained under the Act the end of Qtr. 3. This is likely to be COVID-19 related due to the closure of some wards and the increase in patients being discharged where possible to accommodate this.



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## Fundamentally defective applications



During the period there were no fundamentally defective applications for detention recorded.

### **Section 136**

The ongoing issue in relation to when the clock starts ticking in A&E remains unresolved. Cardiff and Vale UHB have written to Welsh Government and are awaiting a response.

A paper was submitted to the Director of Operations, Mental Health Clinical Board on behalf of SWP expressing their opinion, which is supportive of the approach for the clock to start ticking upon arrival in A&E. Further legal opinion has been sought from Prof Richard Jones in order for a meeting to take place with the police to continue to work through the issue.

### **Section 136 - Ethnicity reporting**

Concerns have been raised on behalf of Mind Cymru in relation to gaps in data collection on ethnicity, specifically in relation to detentions under s135 and s136.

The ethnicity data for this item is recorded by the police officers undertaking the initial detention, not health staff. This is in general poorly completed. Another contributing factor to this is that the Home Office (police collated) data list for ethnicity on the current electronic, police designed 135/136 form, differs from that of Welsh Government and the data that it publishes.

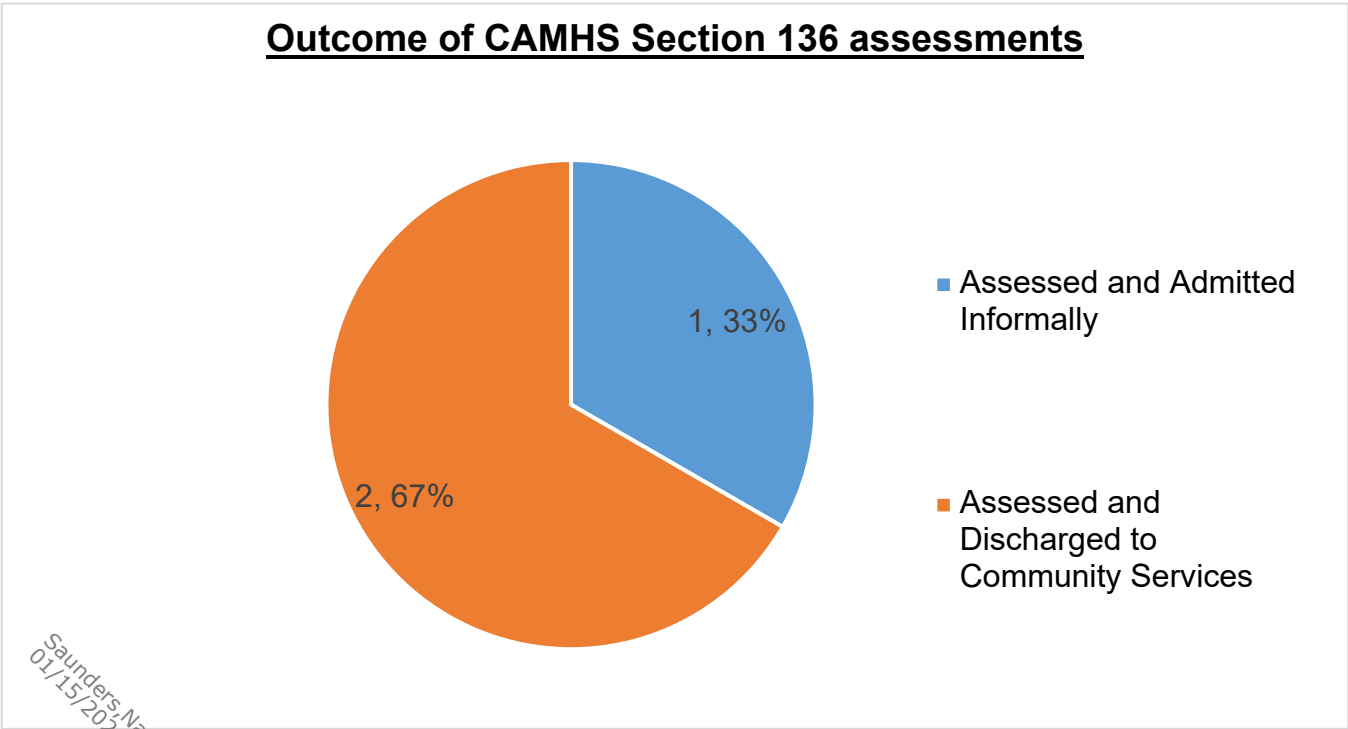
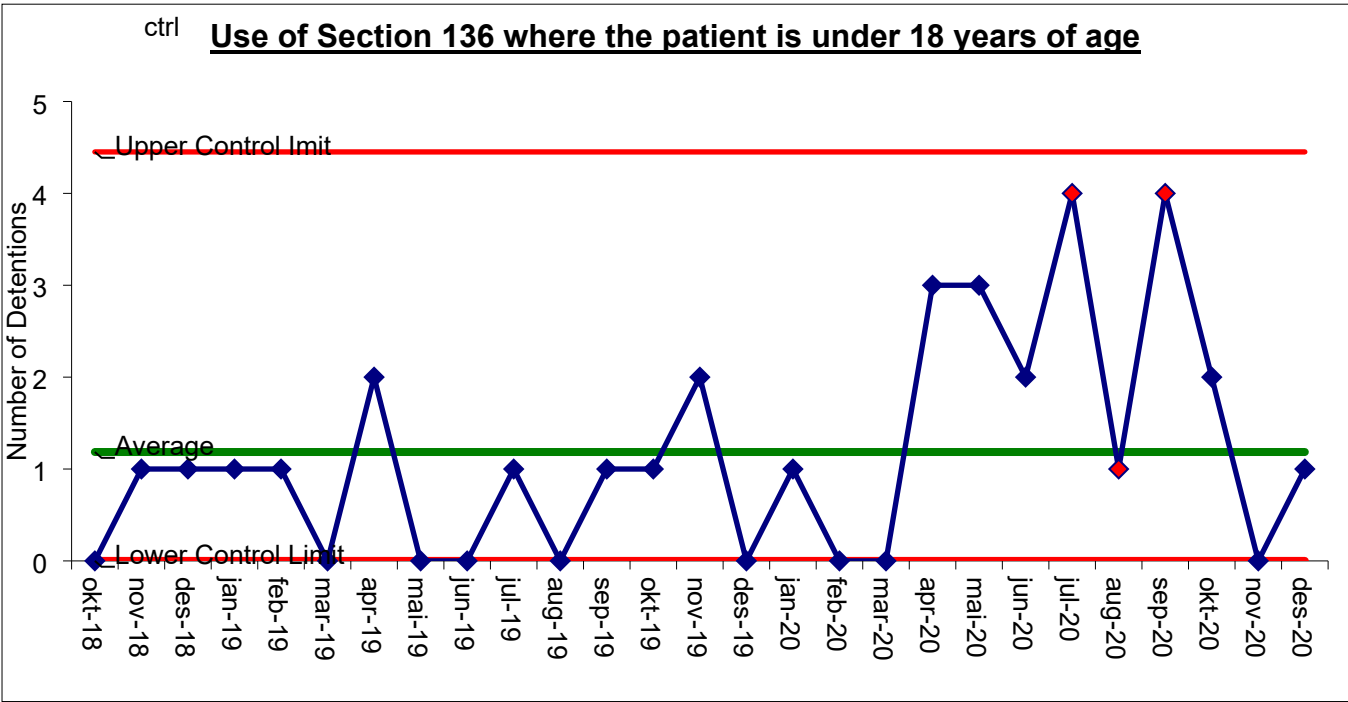
In the past the ethnicity fields were left blank on the submission as it was concerned that trying to fit the Home Office to the Welsh Government data definitions would produce incorrect information, as the data either isn't recorded on the 135/136 police form or isn't directly transferable. We were contacted by Welsh Government regarding this, and instructed rather than leave blank, those fields were to be left as "unknown".

This was raised at a s135/136 meeting hosted by the Welsh Government Mental Health policy

lead Elin Jones in 2019 by Cardiff and Vale, where it was found that the Home Office are using their own data list rather than the official UK wide list.

**Section 136 - CAMHS**

The number of those under 18 assessed under section 136 has decreased in comparison to previous periods.



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

### Fundamentally defective applications

Arrangements between the Local Authority and UHB are working well, communication in relation to receipt of applications for detention under the MHA continues to improve. Development sessions have been reinstated by the Mental Health Act Office. A number of sessions have been delivered to Shift Coordinators who are responsible for receipt and scrutiny out of hours.

### Section 136

The current situation poses challenges for both the UHB and SWP as we are unable to agree on the correct approach to be taken in A&E.

If it is accepted that the clock starts ticking in A&E there is a danger that the UHB could exceed the detention period under certain circumstances, resulting in no authority to conduct a mental health assessment if the patient does not agree to it. For example when the time taken for medical treatment exceeds the 24/36 hour period.

### Section 136 – Ethnicity data

Inaccurate data recording makes it difficult to assess and monitor access to mental health services and determine best health and well-being outcomes for those in protected characteristics and at risk groups.

### Development sessions

Mental Health Act awareness sessions continue to take place on a monthly basis. In addition to the Receipt and Scrutiny workshops the Mental Health Act Department has consent to treatment workshops beginning in February 2021.

During the period the Mental Health Act Department has provided the following development sessions:

Date	Title	Total in attendance	General consensus feedback
01/10/20	Receipt & Scrutiny	3	Excellent/good feedback. Example section papers good. Very informative.
06/10/20	Receipt & Scrutiny	3	Excellent/good feedback. Learnt new information, thorough and brief.
23/10/2020	MHA Training Day	3	Excellent feedback. Clear and concise information. Real life examples useful.
10/11/2020	Receipt & Scrutiny	3	Excellent feedback. Excellent communication and informative.
19/11/2020	Receipt & Scrutiny	4	Excellent feedback. Very informative, answered questions



			and very engaging.
24/11/2020	MHA Training Day	9	Excellent/good feedback. Very engaging with time for questions. Clear information. Well presented.
26/11/2020	Receipt & Scrutiny	4	Excellent feedback. Good social distancing, well presented. Good examples.
04/12/2020	Doctors Induction	2	Excellent feedback. Clear explanation of the MHA.
08/12/2020	MHA Training Day	10	Excellent/good/fair feedback. Very detailed and easy to understand. Good clarity of presenter. Good case studies.
10/12/2020	Receipt & Scrutiny	2	Excellent feedback. Informative, trainer very approachable.
15/12/2020	Receipt & Scrutiny	4	Excellent/good feedback. Good presentation and explanation.

## Recommendation:

### **Fundamentally defective applications**

Continue to ensure effective communication between the Local Authority and UHB and promote Mental Health Act training across the UHB.

### **Section 136**

Continue to monitor in the Mental Health Act Office and work with South Wales Police.

### **Section 136 – Ethnicity data**

A meeting has been arranged to take place with the police to ensure this issue is addressed. The UHB will request a return to the old paper based method, where the data definitions are compatible until such time that the UHB and local police agree on a common electronic format for the data.

### **Section 136 – CAMHS**

Continue to monitor and report accordingly.

### **Development sessions**

Continue to develop a robust rota to ensure that development sessions in relation to all areas of the Mental Health Act are available and easily accessible.

**ASSURANCE** is provided by:

- **The work undertaken by the Mental Health Clinical Board.**

The Committee is asked to: **Support the approach taken by the Mental Health Clinical Board to ensure compliance with the MHA.**

### **Shaping our Future Wellbeing Strategic Objectives**

*This report should relate to at least one of the UHB's objectives, so please tick the box of the*

relevant objective(s) for this report									
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 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	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, click <a href="#">here</a> for more information									
Prevention	x	Long term	x	Integration	x	Collaboration	x	Involvement	x
Equality and Health Impact Assessment Completed:		Yes / No / Not Applicable If “yes” please provide copy of the assessment. This will be linked to the report when published.							

<b>Report Title:</b>	Mental Health Measure (Wales) 2010 incl. Part 2						
<b>Meeting:</b>	Mental Health Legislation Committee				<b>Meeting Date:</b>	19.01.21	
<b>Status:</b>	<b>For Discussion</b>	x	<b>For Assurance</b>	x	<b>For Approval</b>		<b>For Information</b>
<b>Lead Executive:</b>	Chief Operating Officer						
<b>Report Author (Title):</b>	Director of Operations Mental Health						

### Background and current situation:

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

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.

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

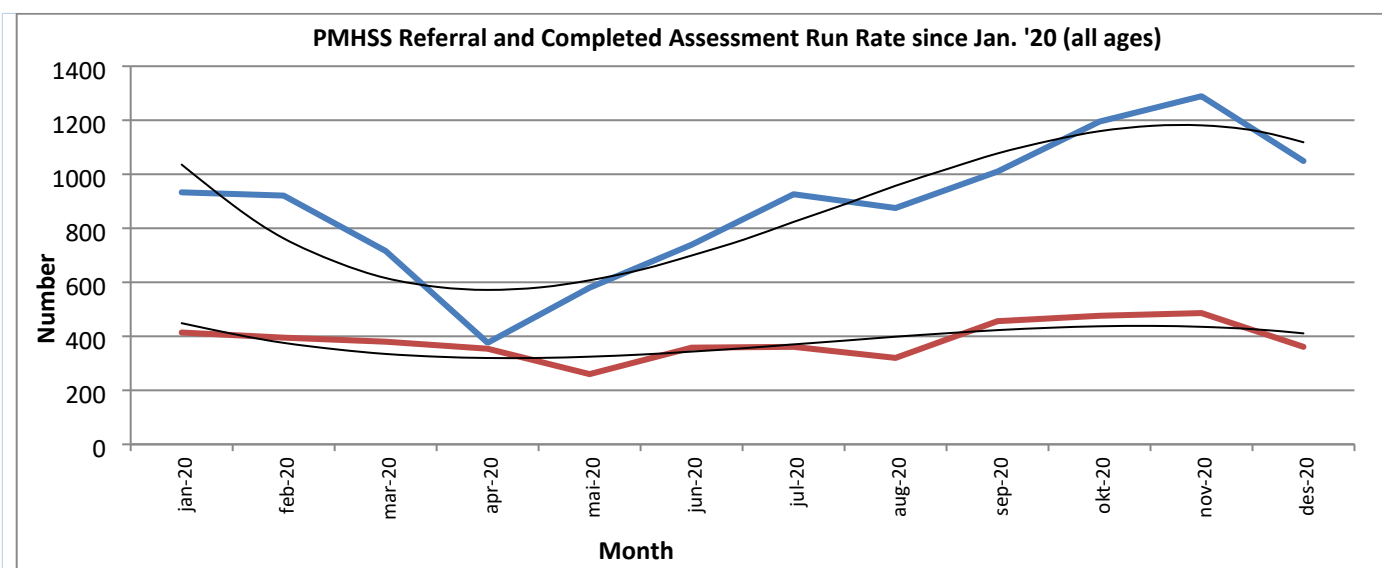
For Parts 1, 2, 3 & 4 of the Measure, local activity and compliance information is collated and submitted to WG via standard reporting templates.

### Part 1 : PMHSS

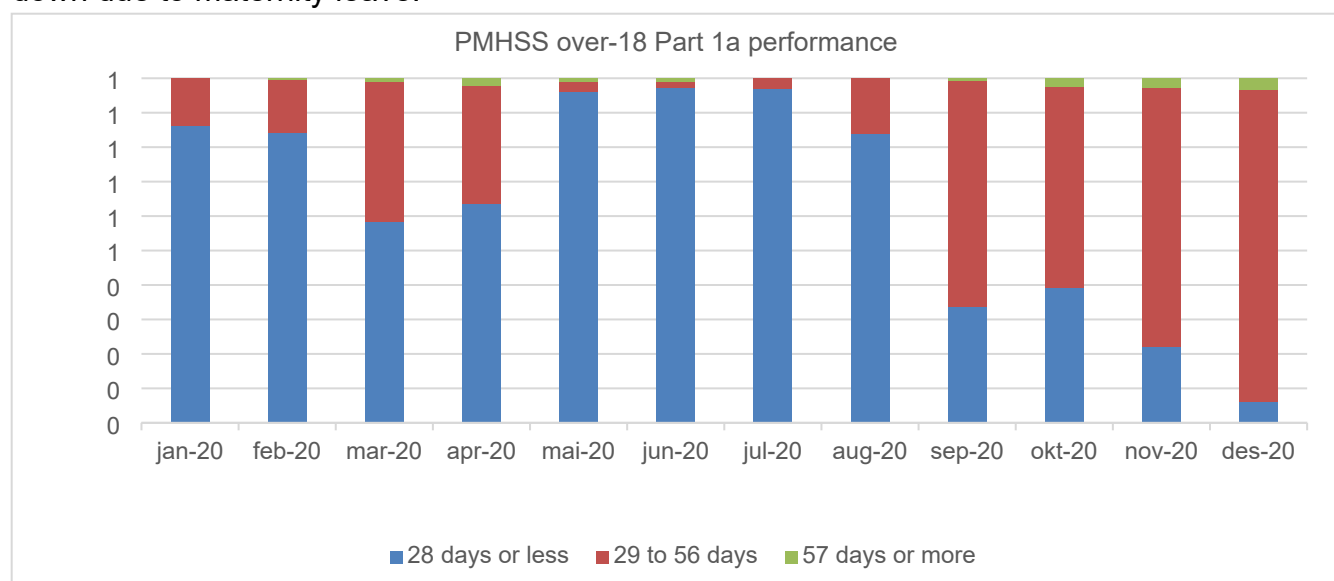
#### Part 1a – target: 28 day referral to assessment compliance target of 80%

Referral activity for Q2 & Q3 2020 has seen a gradual increase in referral rates in October and November beginning to exceed pre-lockdown figures. This will be contributed to by vacancies within the primary care GP liaison team due to staff turnover, covid related absence and general sickness, with referrals are being re-directed to PMHSS. Completed assessment rates have remained fairly uniform looking at the financial year as a whole (See Graph 1).

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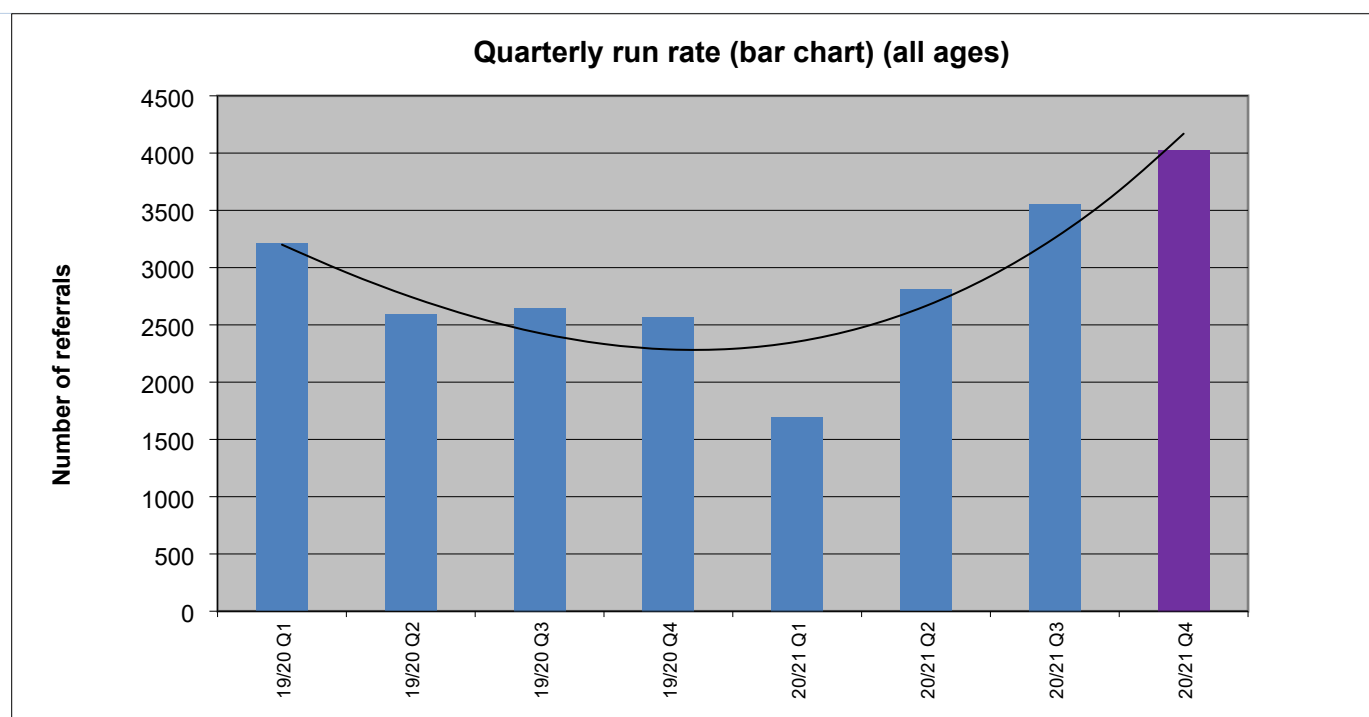


Regarding the over-18 Part 1a performance (see Graph 2), the initial impact of COVID-19 affected performance in the early stages of lockdown but compliance was reinstated quickly before a shortfall in four qualified (3.6wte) staff in August subsequently affected performance going forward. This staffing issue was partly rectified in early September but the service remains 1.0wte down due to maternity leave.



Despite a quite dramatic drop in referral numbers in March and April '20 due to lockdown, referral behaviour has quite markedly increased with forecasts going into Q4 and into the next financial year indicating demand well in excess of pre-COVID monthly averages. (See Graph 3).

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From March 2020 onwards the MHCB took a decision to amalgamate the PMHSS and Primary Care Counselling referrals. This decision was based on the strategic direction of the service to make access to MH services simplified for GPs and Service Users, avoiding referrals to the PCCS going to the back of their waiting lists for up to 6 months. These service users are now screened and triaged by the merged SPOE. The service is monitoring this closely and protecting this new SPOE as it is subject to a Tier 1 target, with investment into the 3<sup>rd</sup> sector and the Primary Care Liaison team.

The early indications are:

- Reduced demand for counselling. Since inception (Apr. '20) referral numbers to PCCS have averaged 165 per month compared with a monthly average of over 550 in 2019/20
- Better uptake of a first appointment for counselling. Approximately 75% of the referrals to PCCS in April '20 had at least one session of counselling. At time of writing it is too early to comment on retention but early indications are it is as good as and certainly no worse than pre-SPOE retention

#### **Actions to restore Part 1 compliance:**

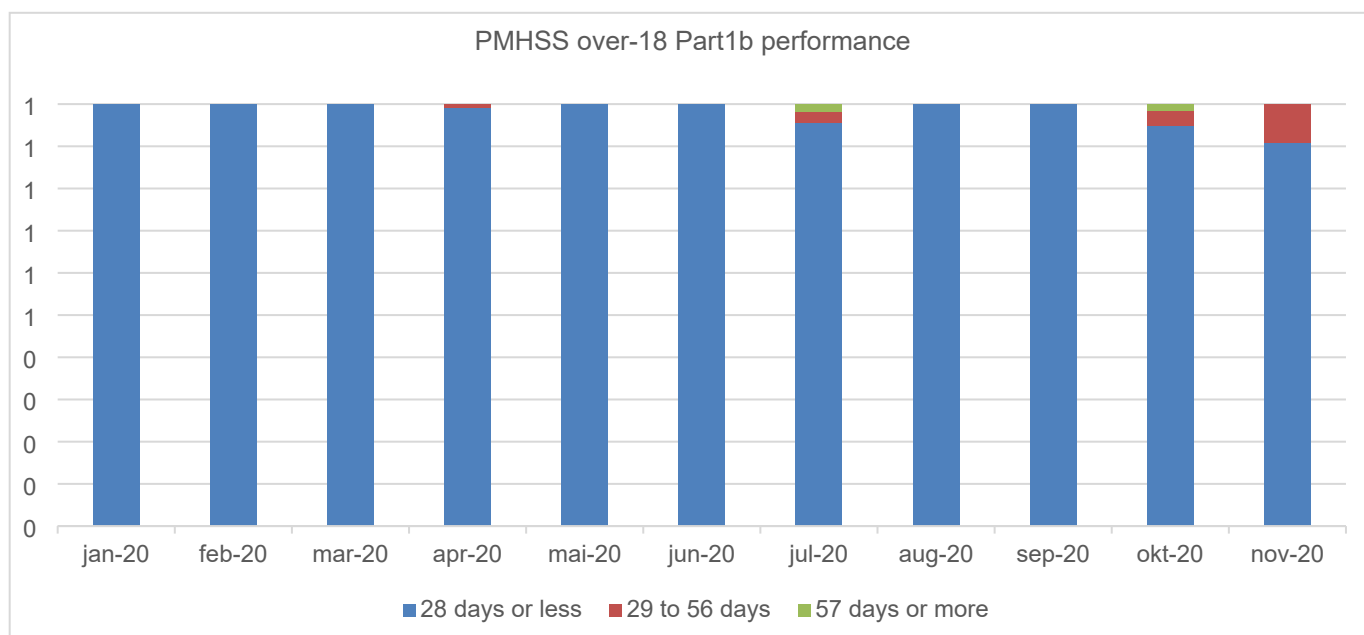
- Ensure all referrals that can be accommodated at Tier 0/1 through intervention of the third sector or the GP PCLT are dealt with there - completed
- Encourage direct referrals by the public into Tier 0 third sector support through advertising and awareness raising on the UHB website and public health advertising - completed
- Encourage Gps to refer directly to the third sector through awareness raising in the PCIC CD forum and via the cluster development managers - completed
- Develop additional capacity within the Primary Care Liaison Team to offer some extra capacity to accommodate staff losses through covid-19 - completed
- Develop additional capacity within the third sector to offer some extra capacity to accommodate staff losses through covid-19 – completed

- Develop temporary capacity within the PMHSS team assessors, through fast track recruitment, agency block booking and exploration of private companies – completed. Interviews commencing 6th January 2021 with an initially poor response.

Revised trajectories currently being developed in light of the impact of the above measures. Currently referrals are being booked in at 37 days

### Part 1b – 28 day assessment to intervention compliance target of 80%

Having clarified reporting processes, PMHSS has been compliant with the Part 1b performance target since August (See Graph 4). This has continued during the Covid 19 period.



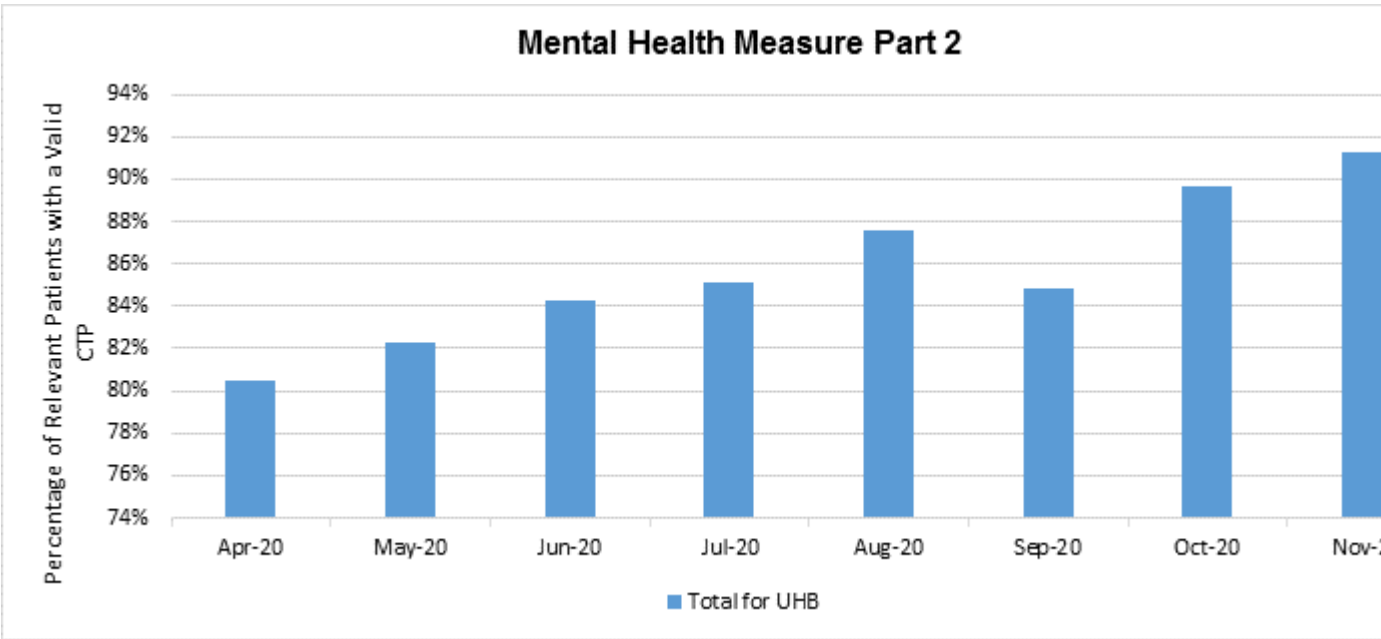
### Part 2 – Care and Treatment Planning

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

Care and Treatment planning is a complex and challenging area to get right, particularly co-producing outcomes based care planning which requires cultural change from services. Prior to the Covid period the service was following an action plan co-written with the Delivery Unit which included a multi-dimensional improvement approach, including commissioned 'Care Aims' training, routine auditing of care and treatment plans, moving SUs expectations into practice through support of the Recovery College, simplifying documentation and defining a 'relevant patient' under the Measure therefore clarifying who and who does not require a formal Care and Treatment Plan. This plan remains relevant.

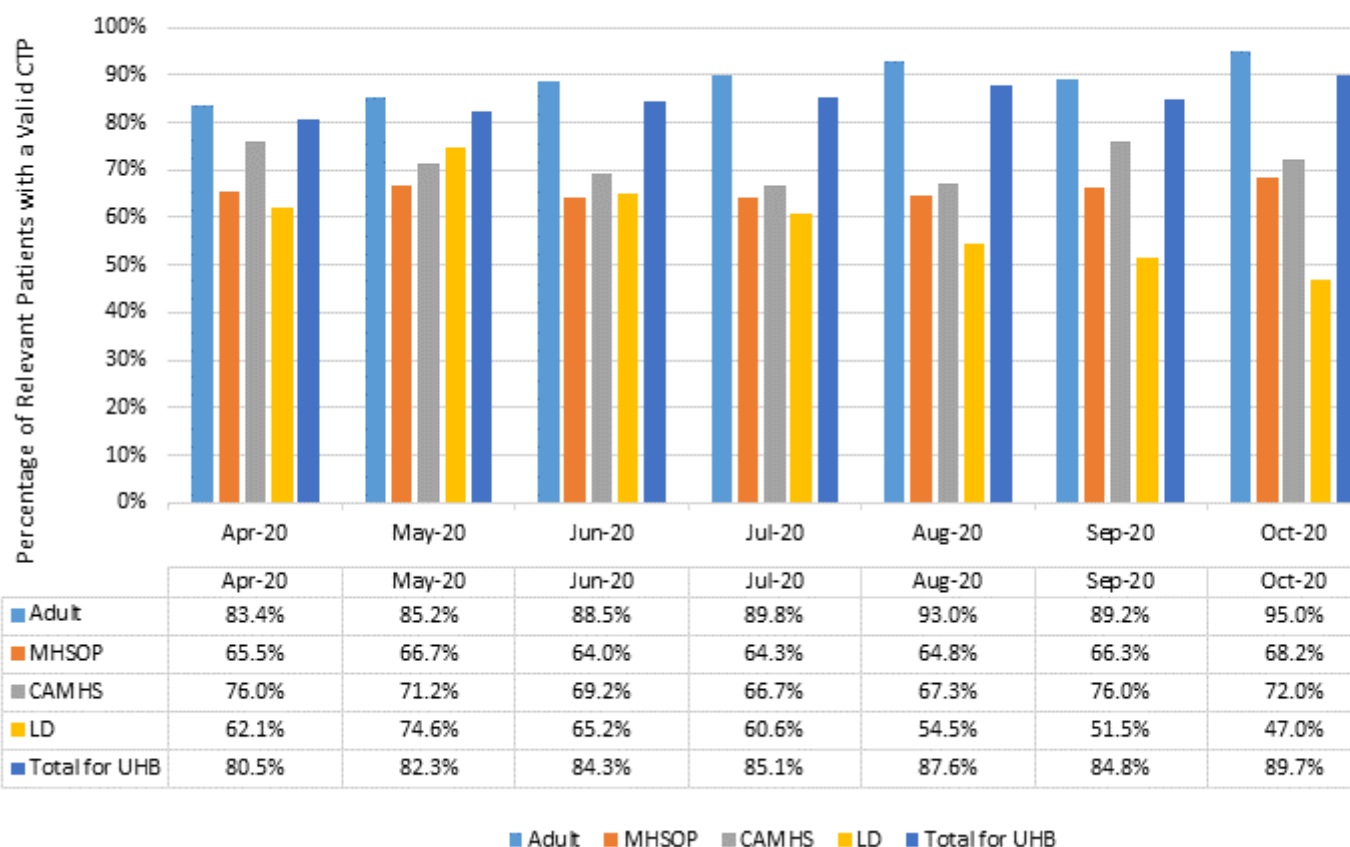
The future success of Care and Treatment planning is also tied to the strategy around out-patient transformation, within which many of the poorer examples of care and treatment planning sit. A program of work has now commenced with Dr Neil Jones leading the work stream and the Director of Operations supporting.

Since the previous Mental Health Legislation Committee meeting Care Aims and Open Dialogue training has continued in spite of the Covid restrictions and compliance with CTP completion has reached over 90%.



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## Mental Health Measure Part 2 by Service

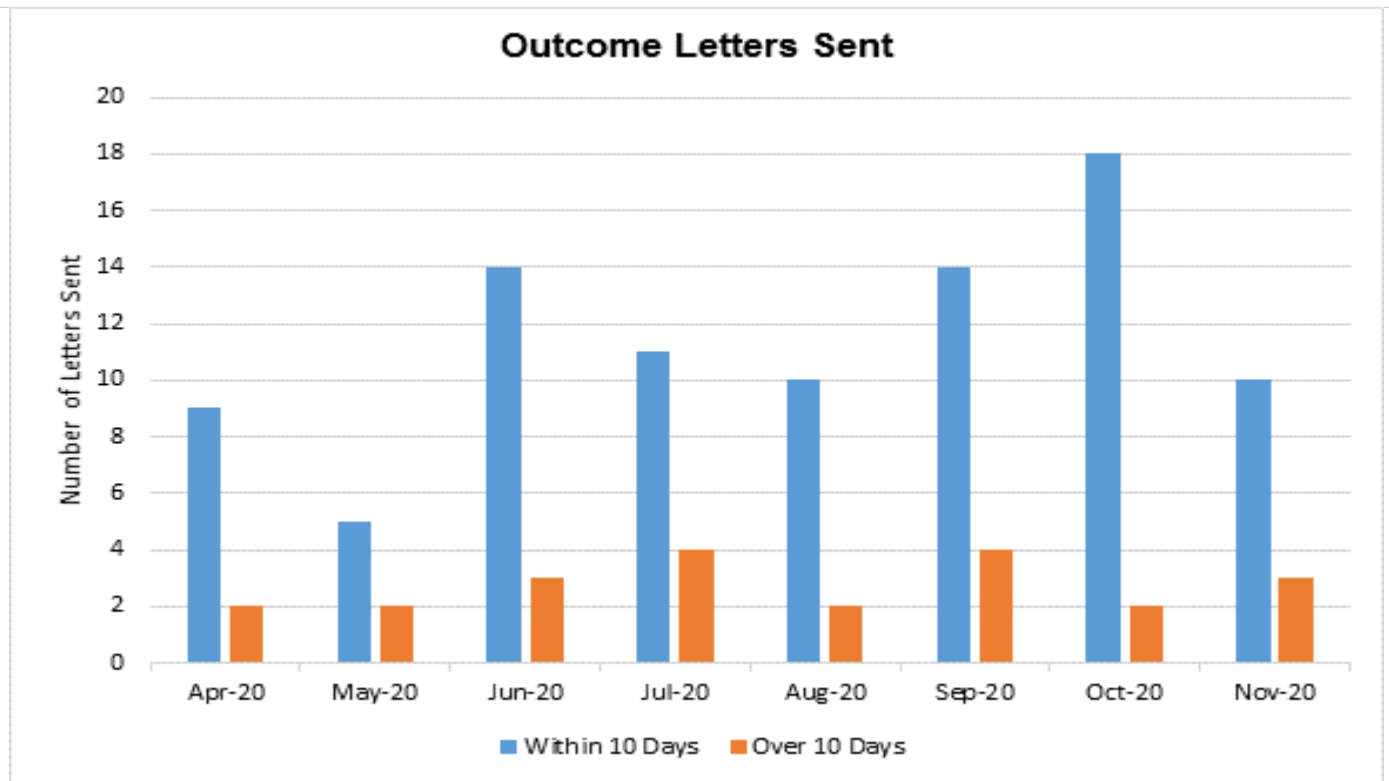


### Part 3 - Right to request an assessment by self –referral.

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

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The performance of the service fluctuates with steady improvement seen between September 19 and December 19 with 100% compliance in January. Since then the teams have seen circa 80% compliance amid the administration pressures of covid 19. No data was collected through the covid period with teams now being supported again to meet this administrative standard.

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

##### **Part 4 continues with 100% Compliance.**

The IMHA services continues to run a reduced service. In response to the pandemic ASC (Advocacy support Cymru) have been unable to meet with clients face to face, but have offered support via skype, phone, text, letters and email. ASC have been able to help clients prepare for meetings and have joined meetings/ward rounds and Managers Hearings remotely.

The referral rate has slowed down, which is to be expected due to the restrictions to conduct open sessions/awareness raising.

ASC continue to receive referrals from the Mental Health Act Office and are also receiving phone calls/emails from existing clients on a daily basis with instruction to act, contact professionals etc.

There has been an increase in referrals post lockdown but the service continues to be compliant with the Measure.

Advocacy Support Cymru have reported that Adult and MHSOP Services have been very helpful

throughout the lockdown period with Advocates increasingly having to rely on staff as they have not been able to access wards to speak with patients face to face, also working with non-instructed patients the majority are unable to talk with over the phone.

The Mental Health Act Office have been proactive and creative in facilitating hearings remotely, to ensure patients legal rights are upheld.

The IMHA agreement expired on the 31st December 2020 and renewal process was halted due to a delay in the recommendations following the review of the Mental Health Act being communicated. As such the existing agreements were extended for 12 months in line with Regulation 72 (1)(c) of the Public Contract Regulations 2015.

The Health Boards are currently meeting with Procurement to agree collaboratively the options beyond December 2021.

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

There is a risk that the Health Board will suffer reputational damage and regulatory penalties should it fail to comply with the Mental Health Measure (Wales) 2010.

### Recommendation:

The Mental Health and Capacity Legislation Committee is asked to:

- **NOTE** the content of this report and the work undertaken by the Mental Health Clinical Board.

### Shaping our Future Wellbeing Strategic Objectives

*This report should relate to at least one of the UHB's objectives, so please tick the box of the relevant objective(s) for this report*

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, click [here](#) for more information

Prevention	x	Long term	x	Integration	x	Collaboration	x	Involvement	X((J
<b>Equality and Health Impact Assessment Completed:</b>		Yes / No / Not Applicable <i>If "yes" please provide copy of the assessment. This will be linked to the report when published.</i>							

Kind and caring  
Caredig a gofudgar

Respectful  
Dangos parch

Trust and integrity  
Ymddiriedaeth ac uniondeb

Personal responsibility  
Cyfrifoldeb personol



NHS  
WALES  
GIG  
CYMRU

Bwrdd Iechyd Prifysgol  
Caerdydd a'r Fro  
Cardiff and Vale  
University Health Board

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

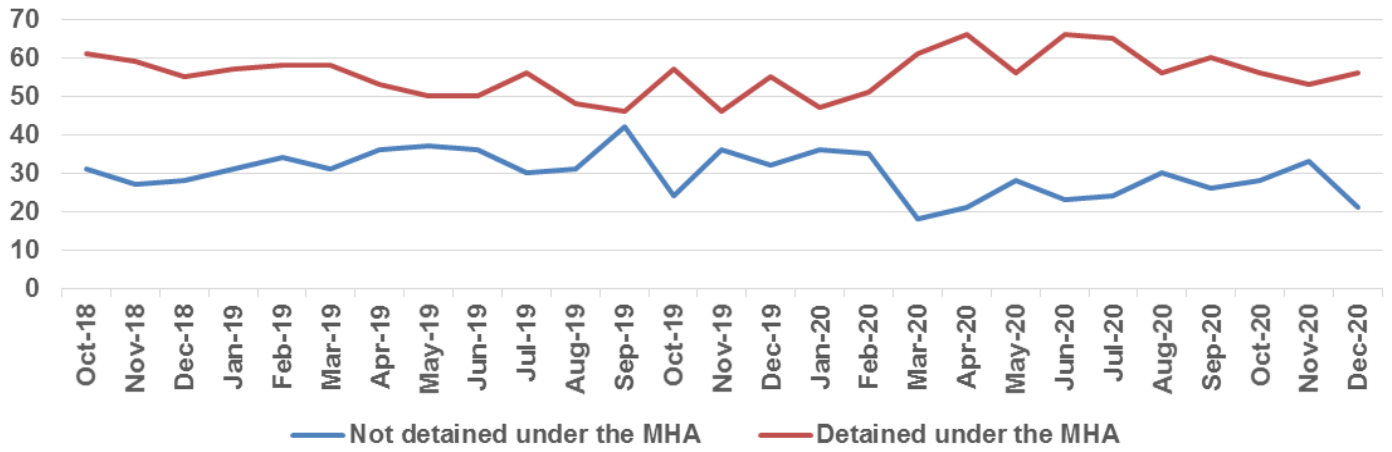
**October – December 2020**

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01/15/2021 11:03:04

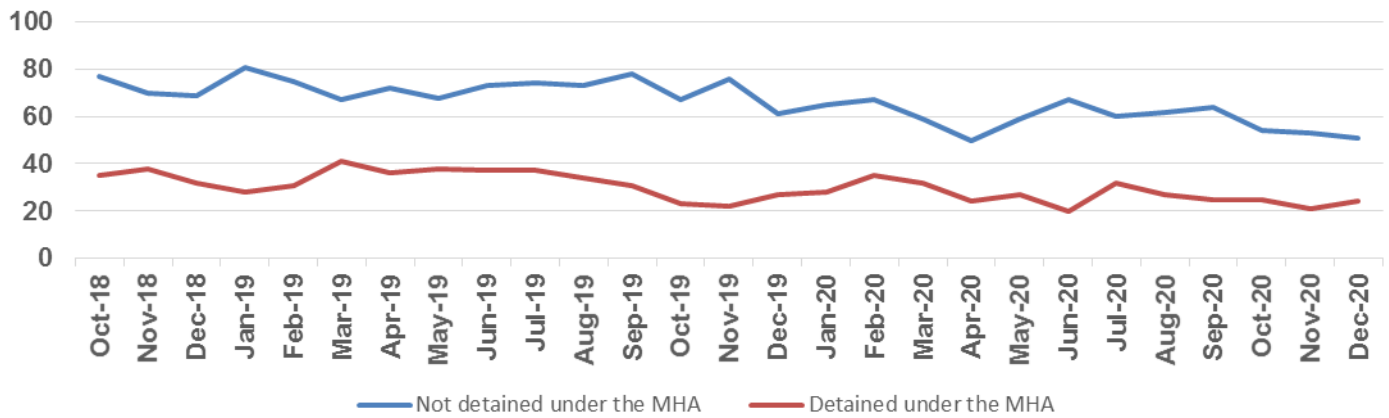
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Voluntary Assessment	6
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01/15/2021 11:03:04

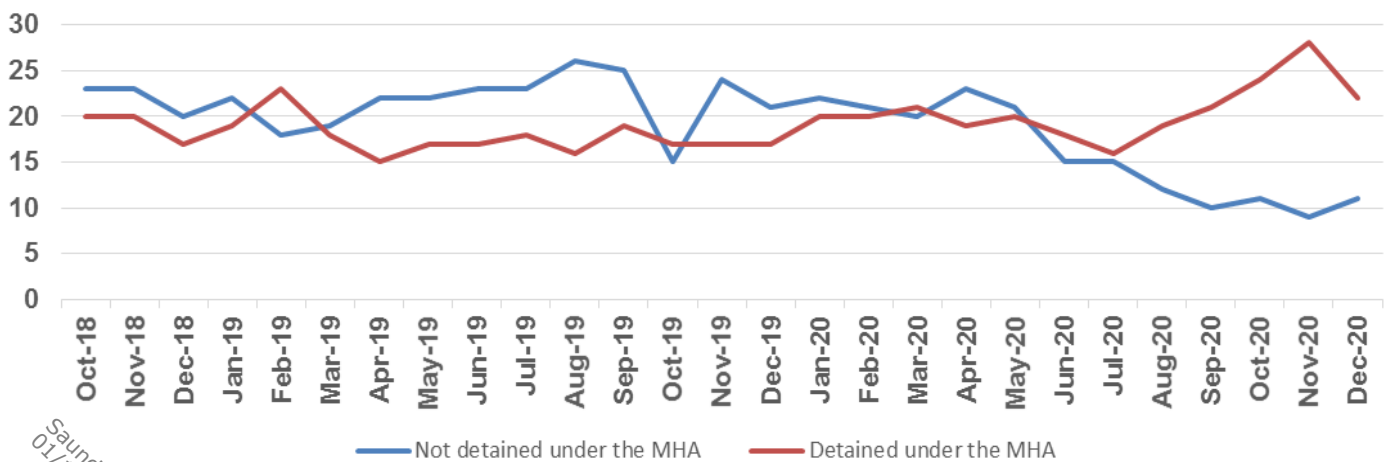
### Adult Acute - Detained MHA/Not Detained MHA



### Mental Health Services for Older People - Detained MHA/Not Detained MHA

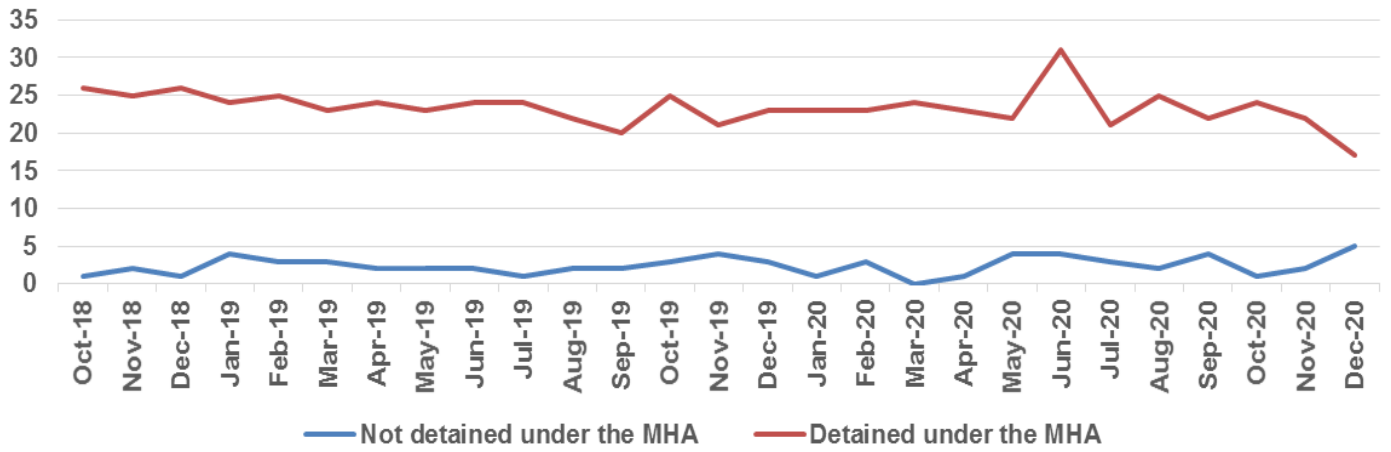


### Rehabilitation - Detained MHA/Not Detained MHA

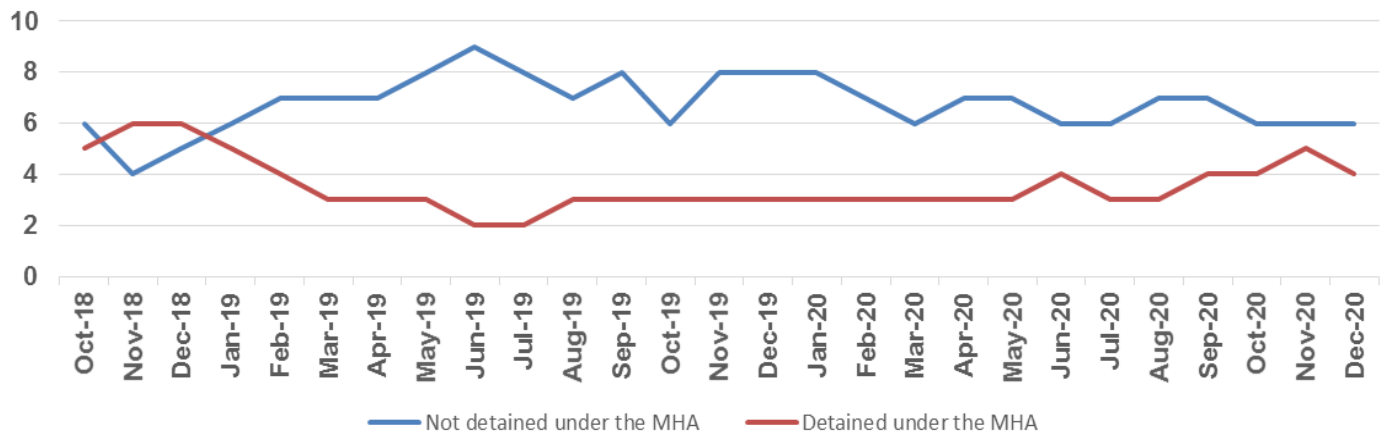


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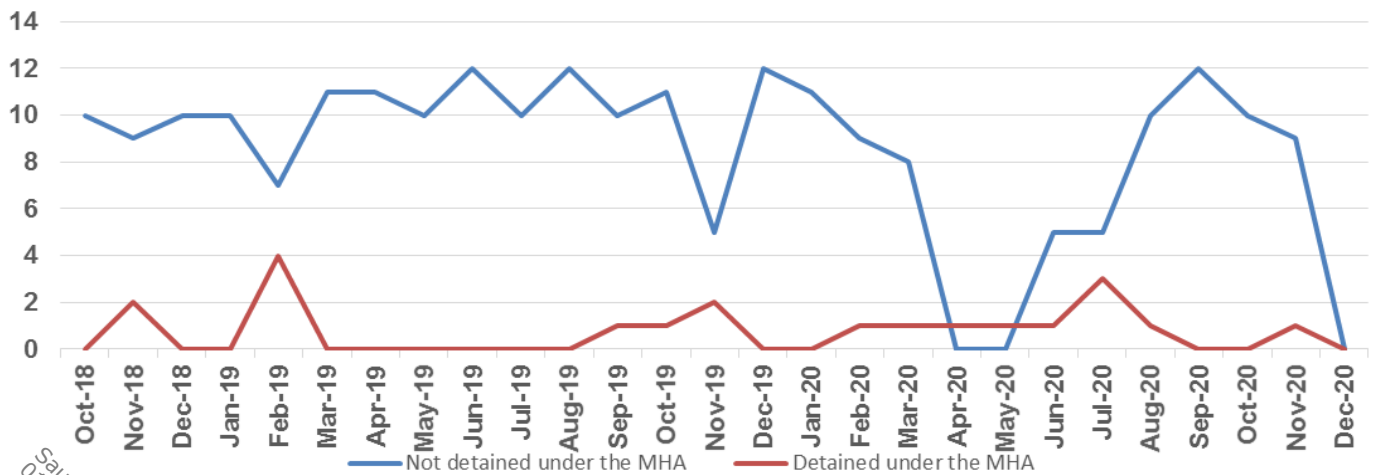
### Low Secure - Detained MHA/Not Detained MHA



### Neuropsychiatry - Detained MHA/Not Detained MHA



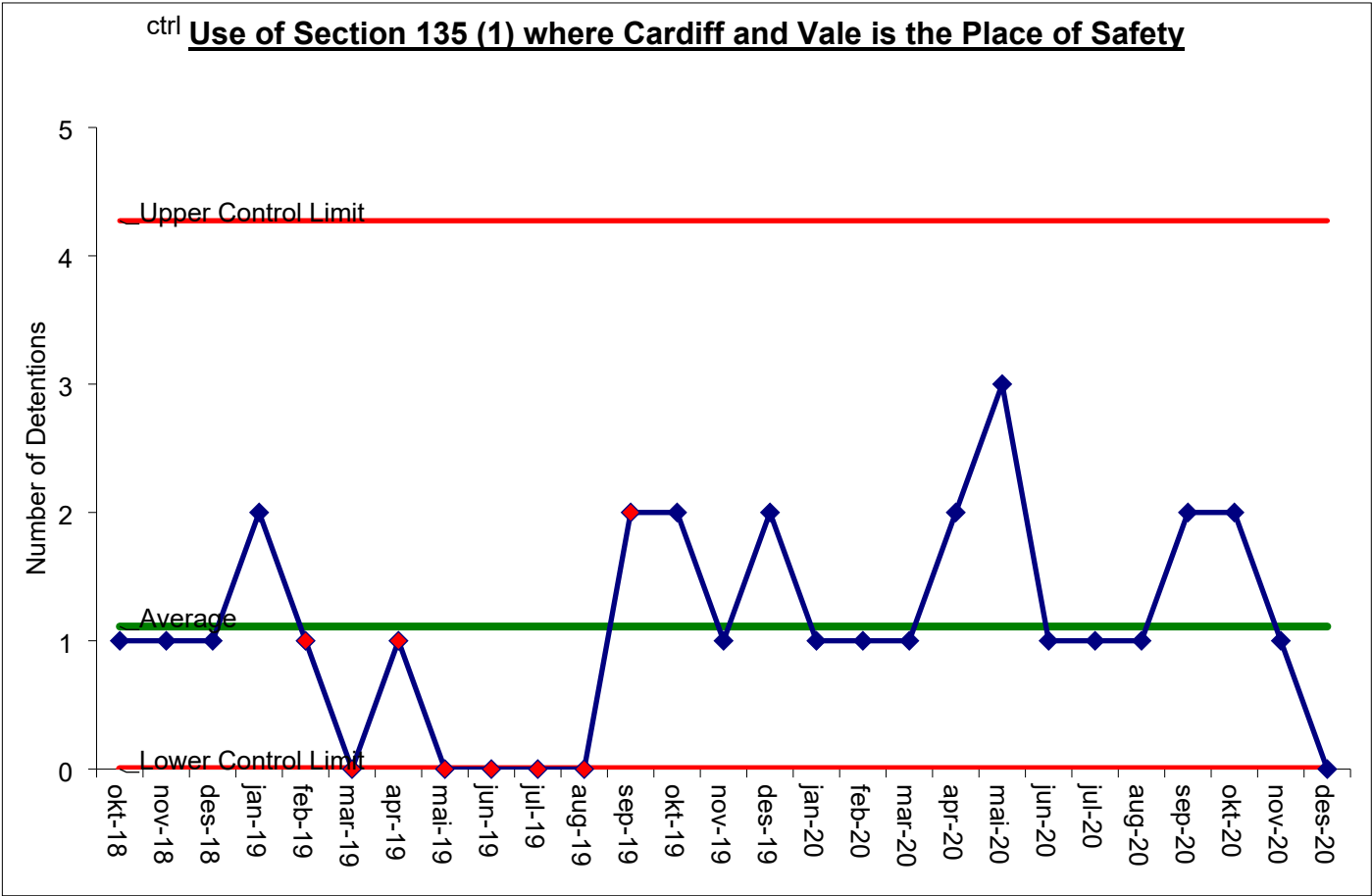
### Addictions - Detained MHA/Not Detained MHA



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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 on three occasions. Two patients were subsequently admitted under Section 2, and one was discharged home.



Section 135(2) powers were not used during the period.

Saunders Nathan  
01/15/2021 11:03:04



## **Voluntary Assessment**

On the 14<sup>th</sup> of July, 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:-

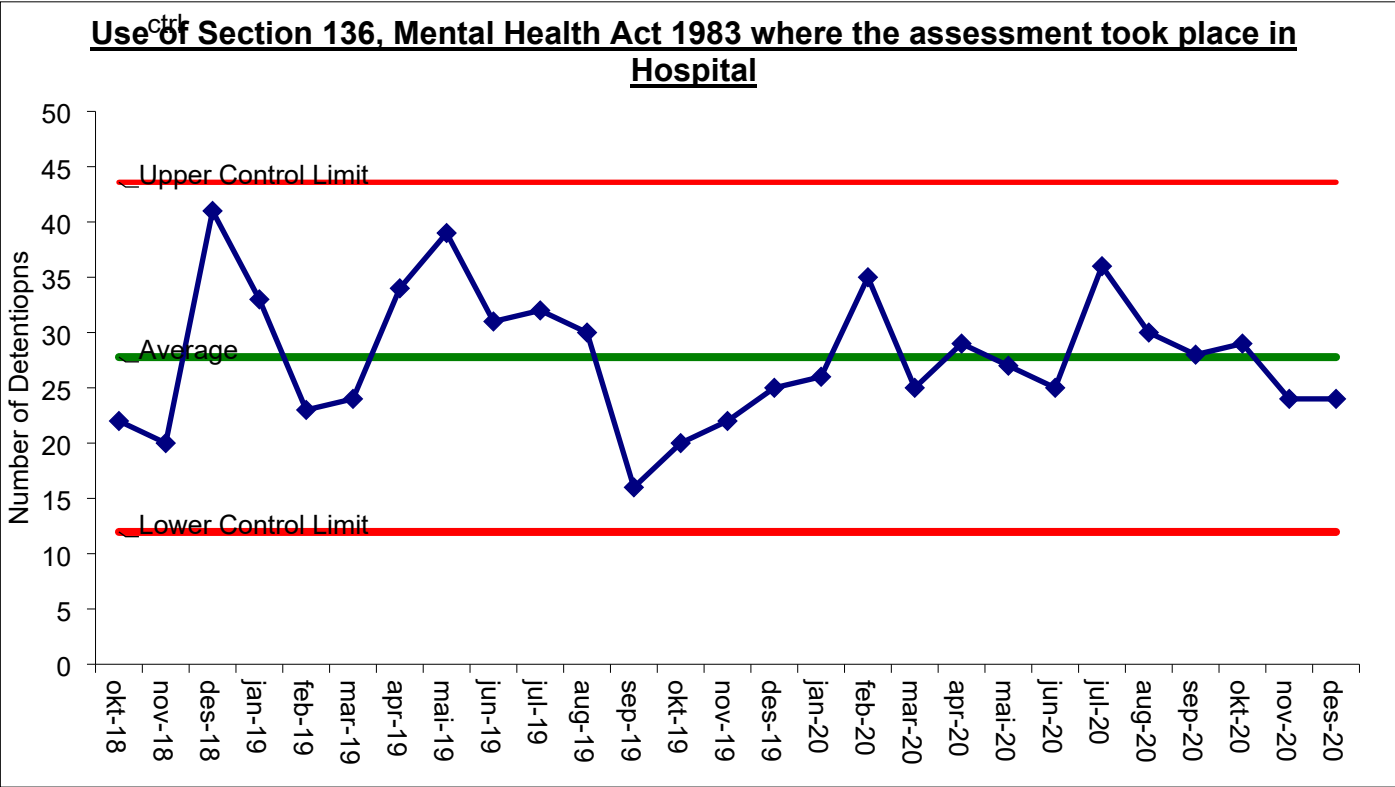
- Use of s135
- Use of s136
- Voluntary Assessment
- Mental Capacity Act

There has been an initial transition period where the AWMF has been underutilised, but this is improving. A number of measures have been put in place to improve compliance, including (at the advice of South Wales Police) our refusal to accept and assess anybody brought by the Police without the attempt of completing an AWMF.

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

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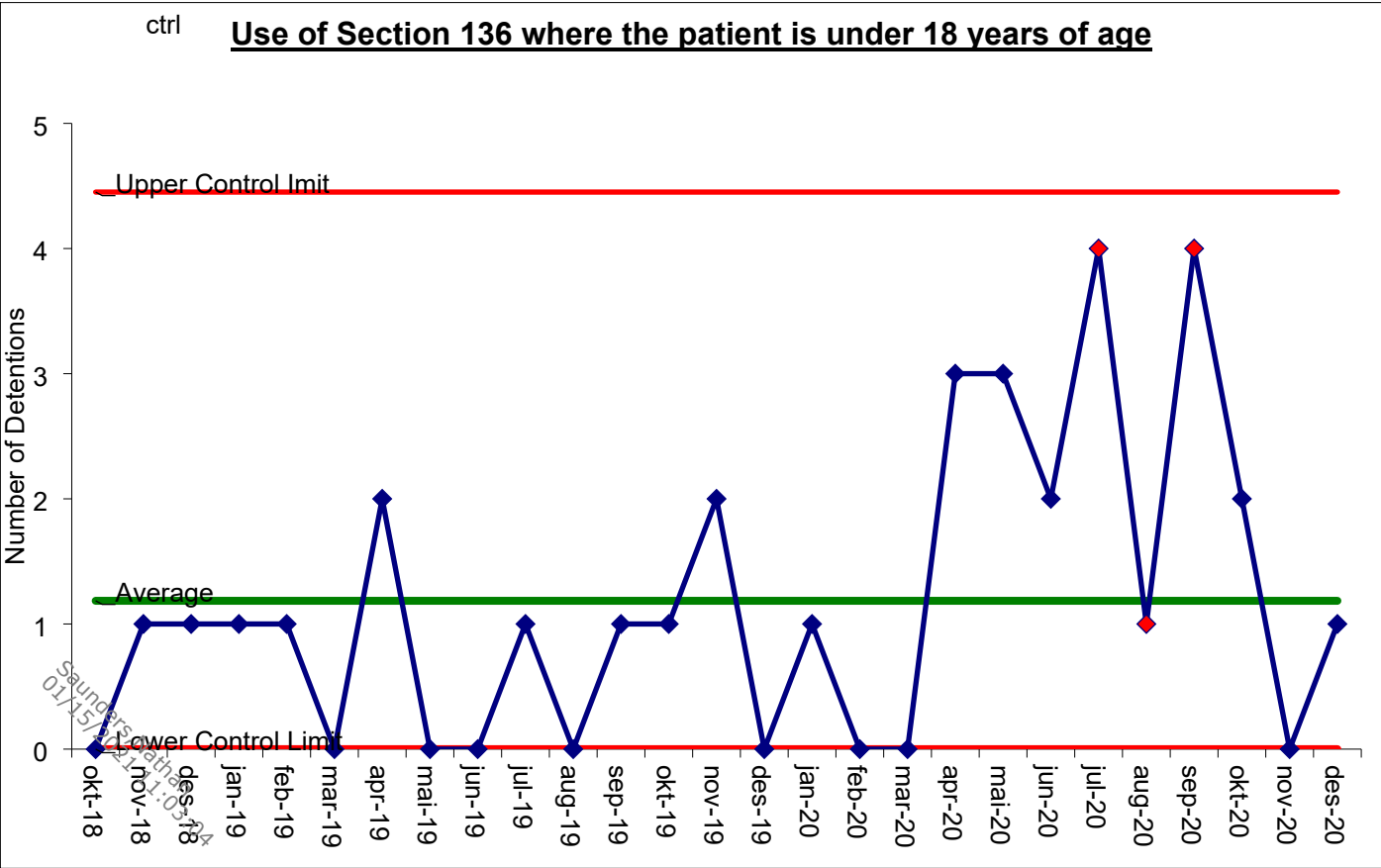
Section 136- Mentally disordered persons found in public places Mental Health Act assessments undertaken within Cardiff and Vale UHB



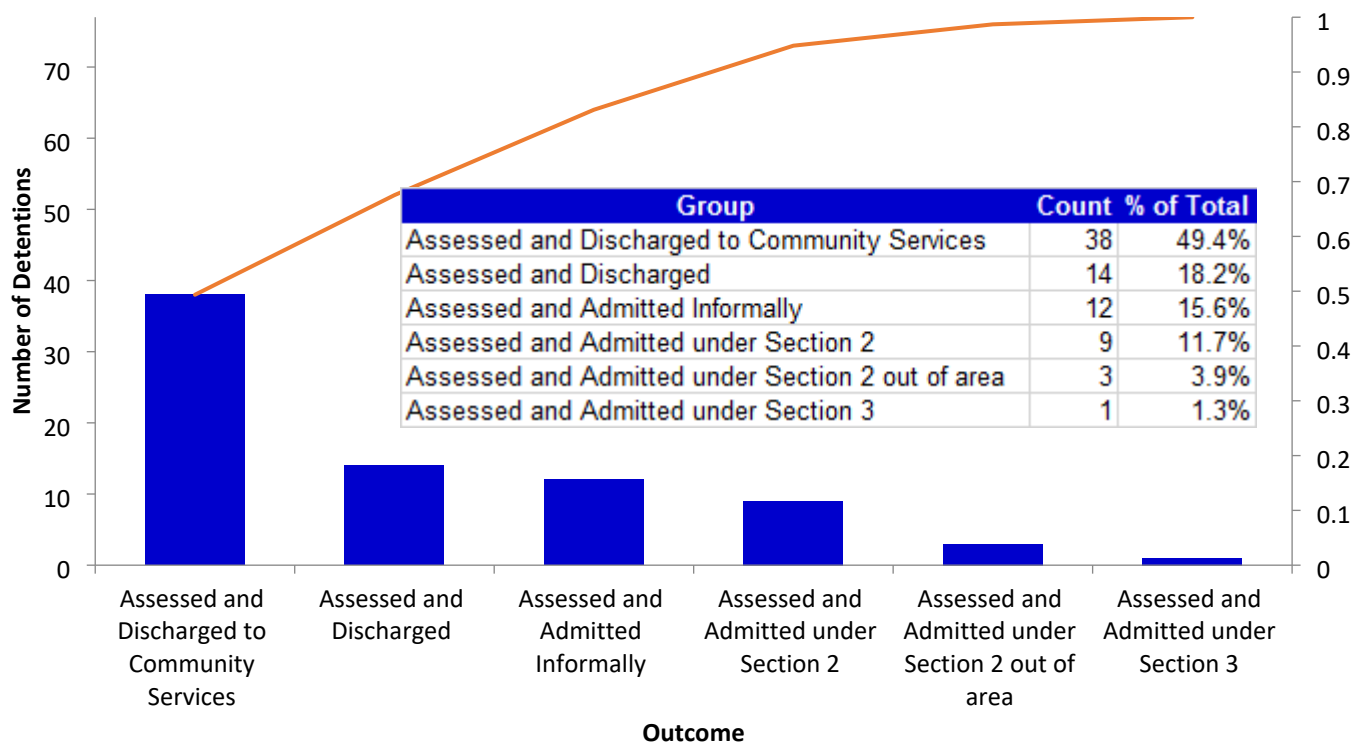
During the period a total of 77 assessments were initiated by Section 136 where the MHA assessment took place in a hospital as the place of safety.

Three 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 Section 136 where the Assessment took place in Hospital during the period October - December 2020

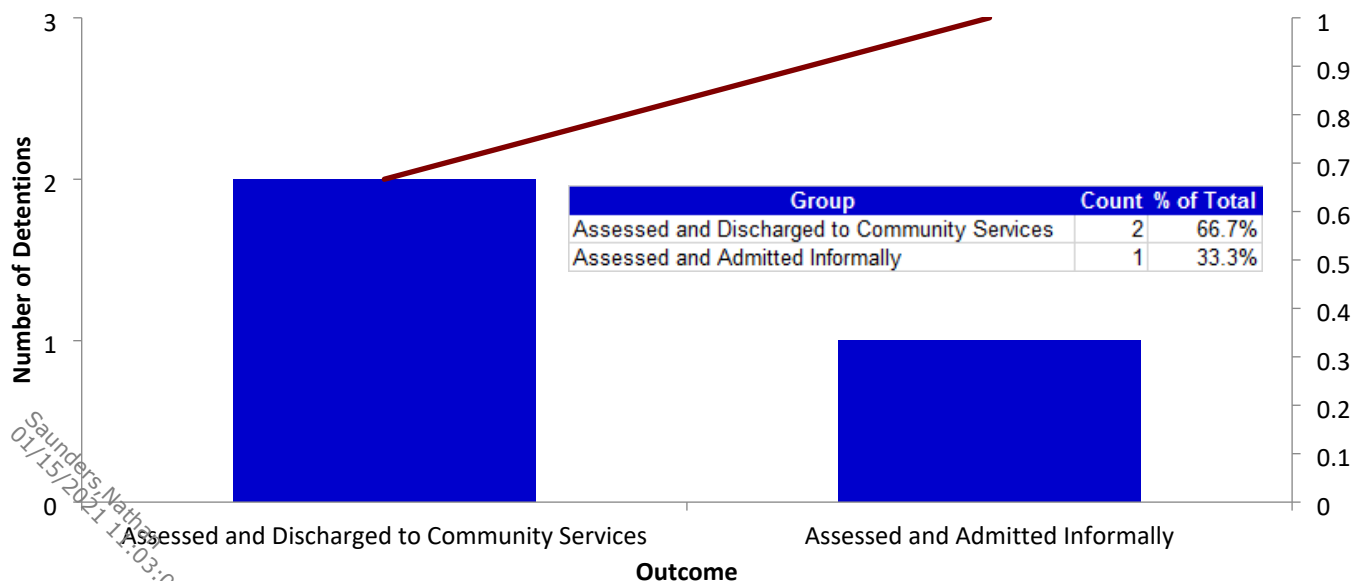


The pareto chart highlights that 67.5% of individuals assessed in hospital under Section 136 were not admitted to hospital. Those individuals who are not admitted or discharged to another service are provided with information on Mental Health support services for possible self-referral.

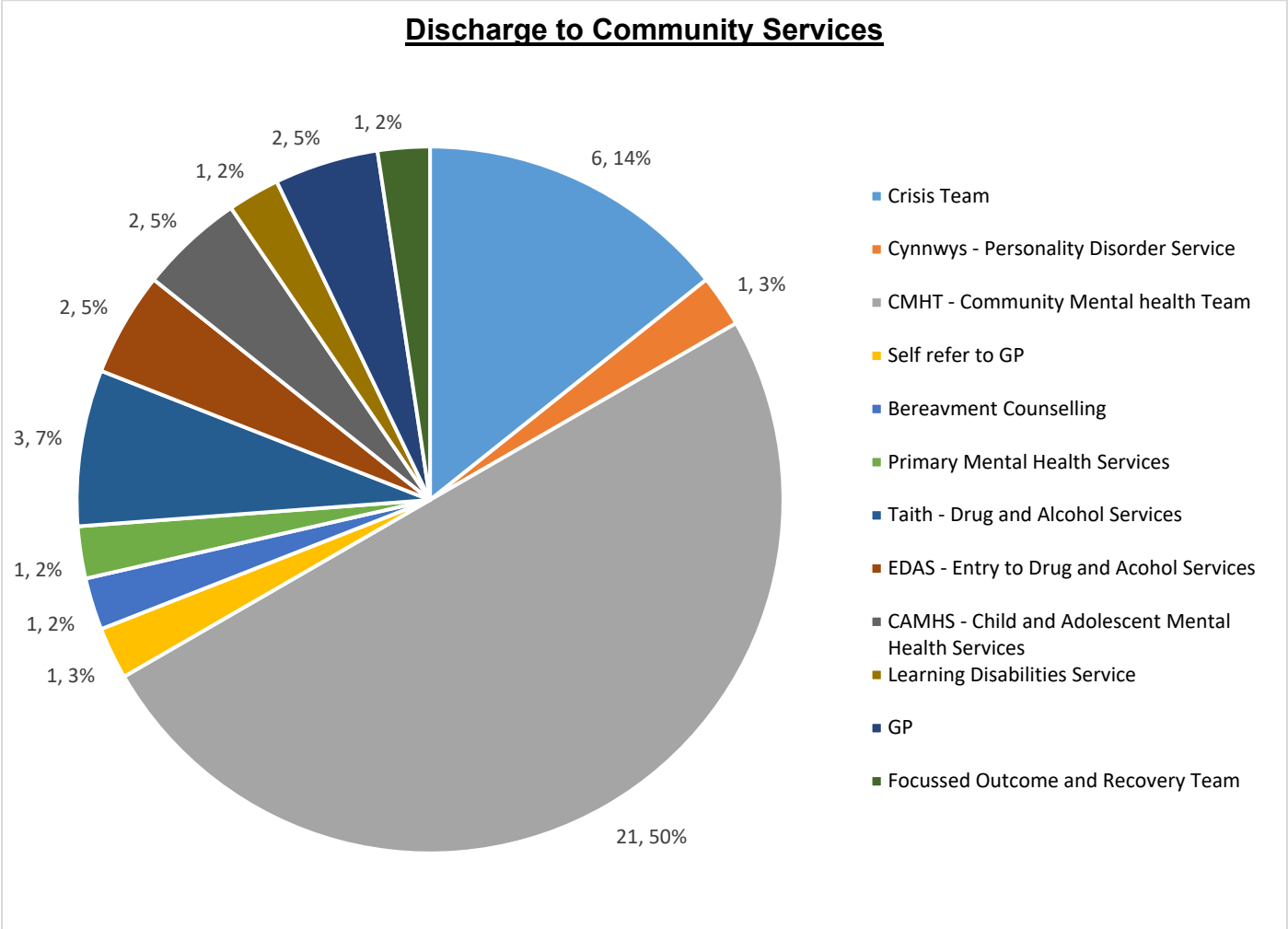
Three of those assessed were detained under Section 2 and admitted to a hospital under a different set of Managers.

Included in the above data are the outcomes for those under 18 years of age. Those outcomes are as follows;-

### Outcome of Section 136 where the patient is under 18 years of age

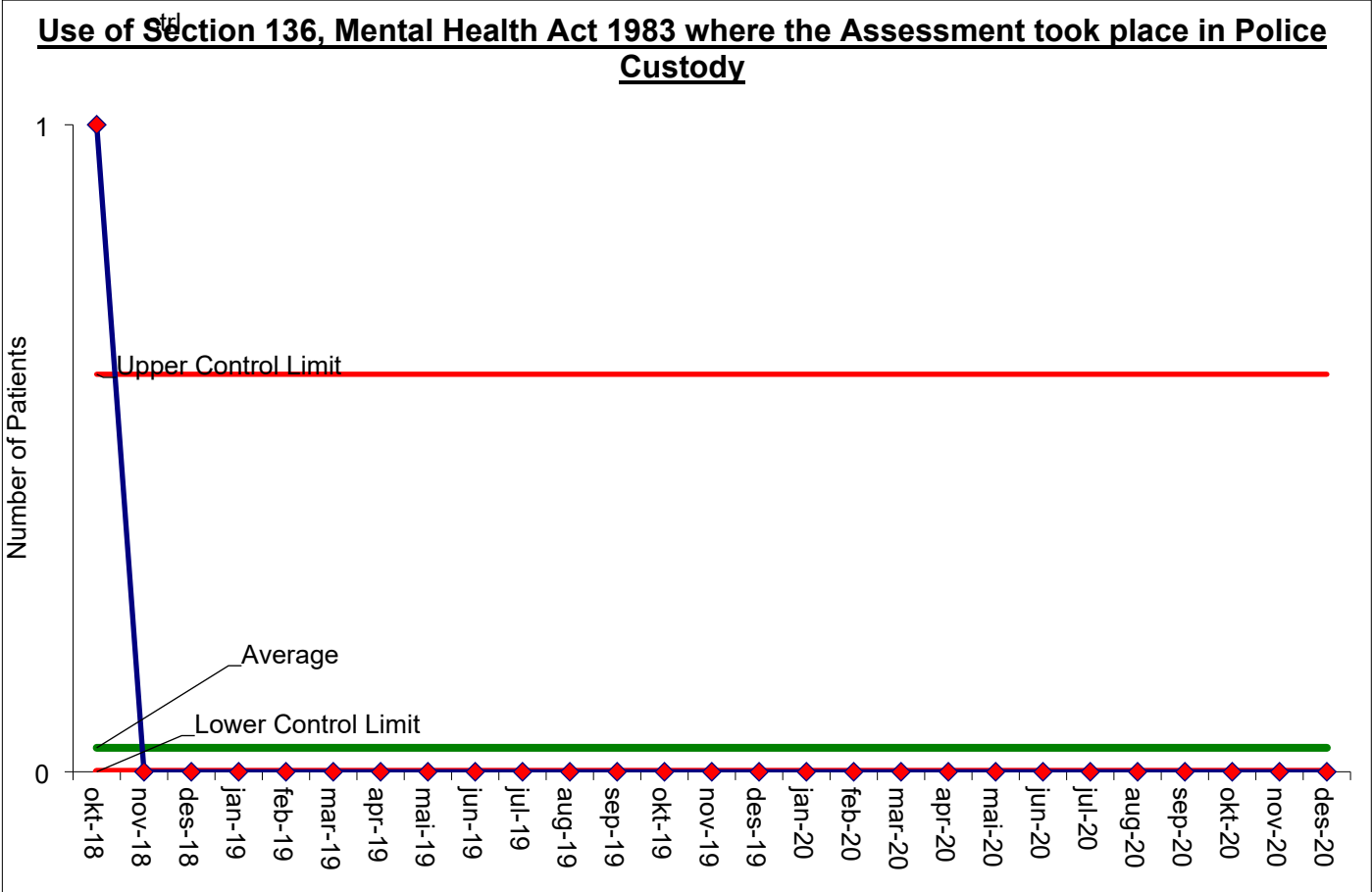


The below chart is a breakdown of the referrals to Community Services as a result of a s136 assessment. Please note that patients can be referred to multiple Community Services, so it is possible that the numbers below are higher than the total number of s136 used.



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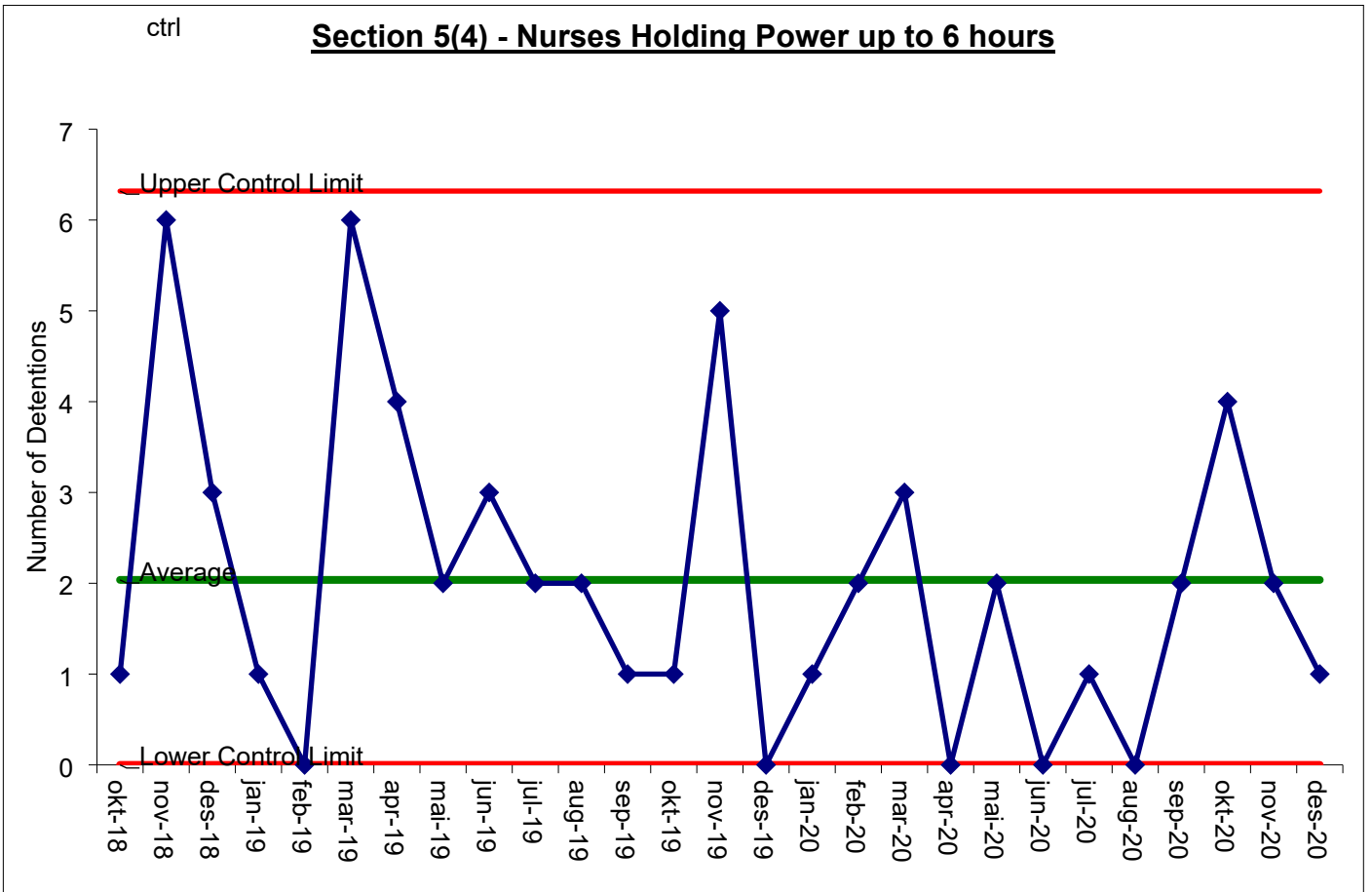
Section 136- Mentally disordered persons found in public places Mental Health Act  
assessments undertaken within a Police Station



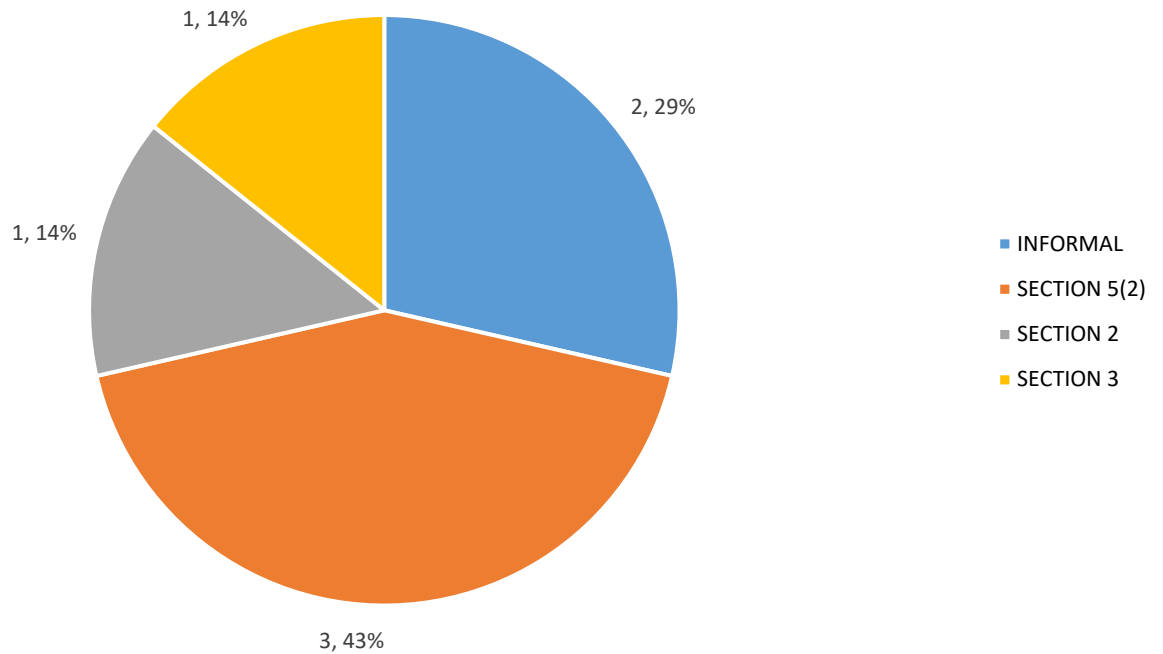
During the period there were no assessments initiated by Section 136 powers where the MHA Assessment took place in Cardiff Bay Custody Suite.

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## Section 5(4) - Nurses Holding Power



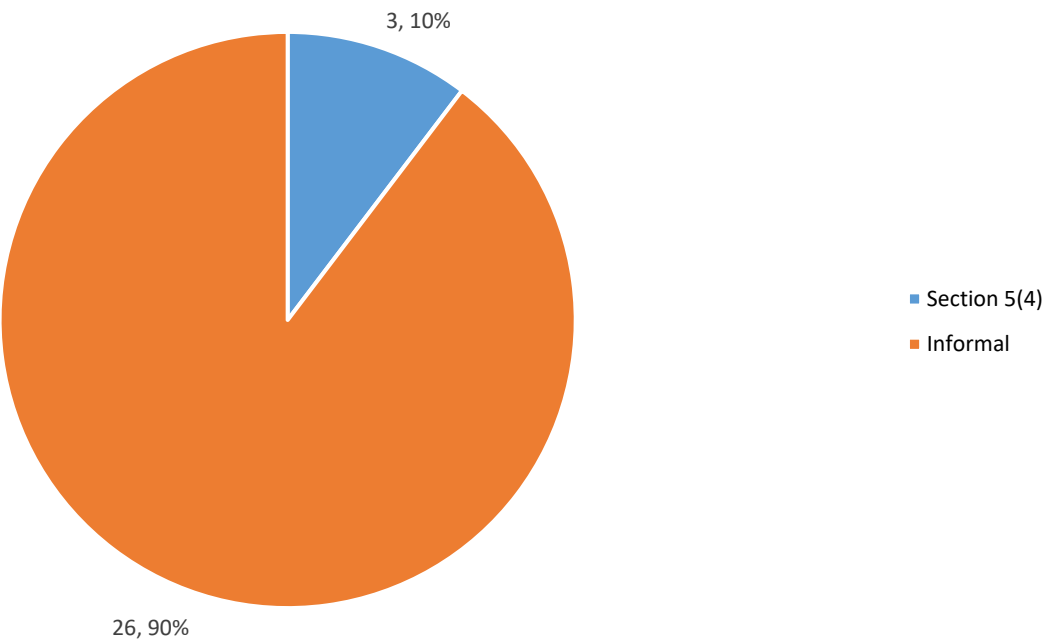
### Outcome of Section 5(4) during the period October - December 2020



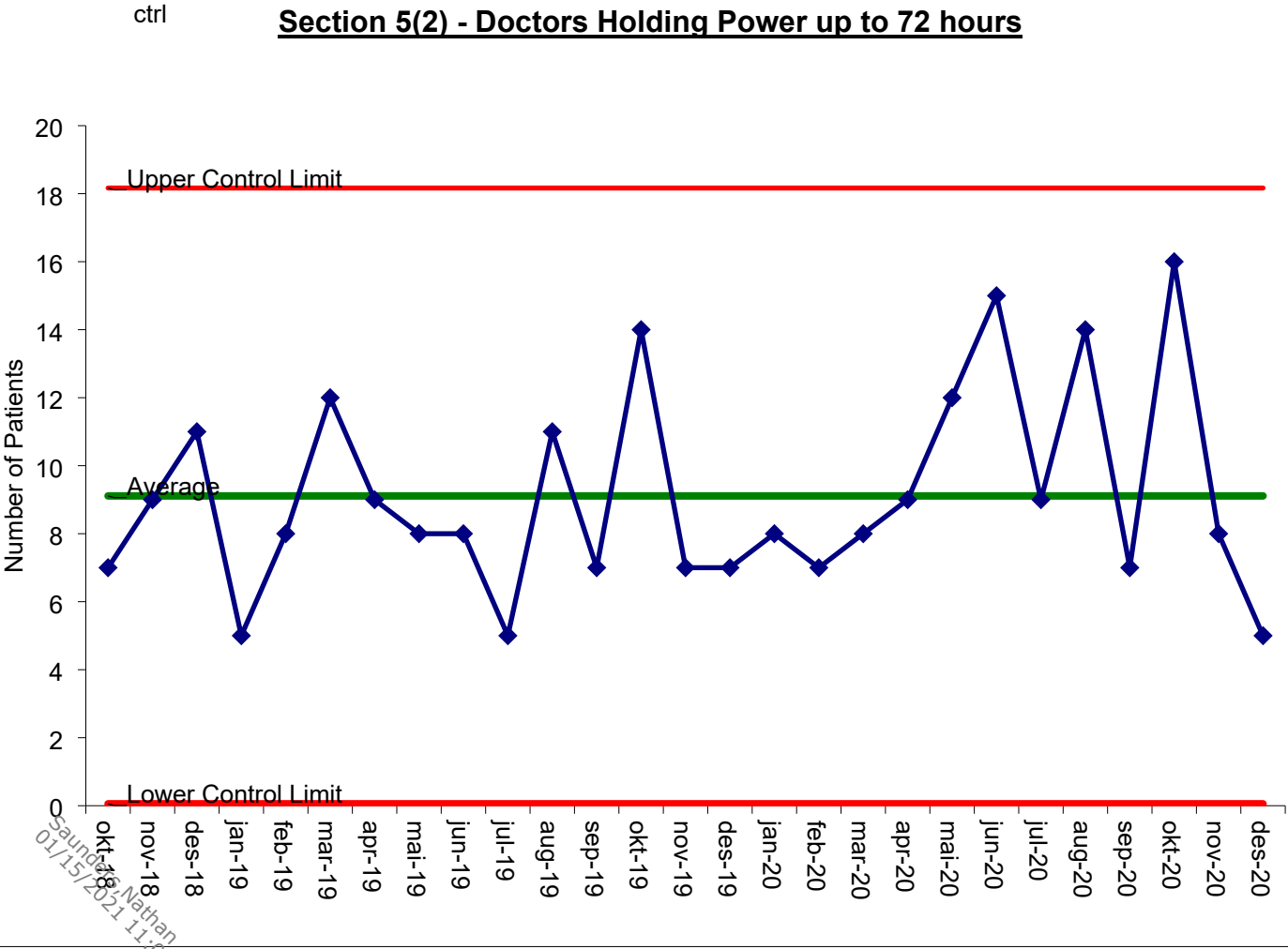
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**Section 5(2) - Doctors holding power**

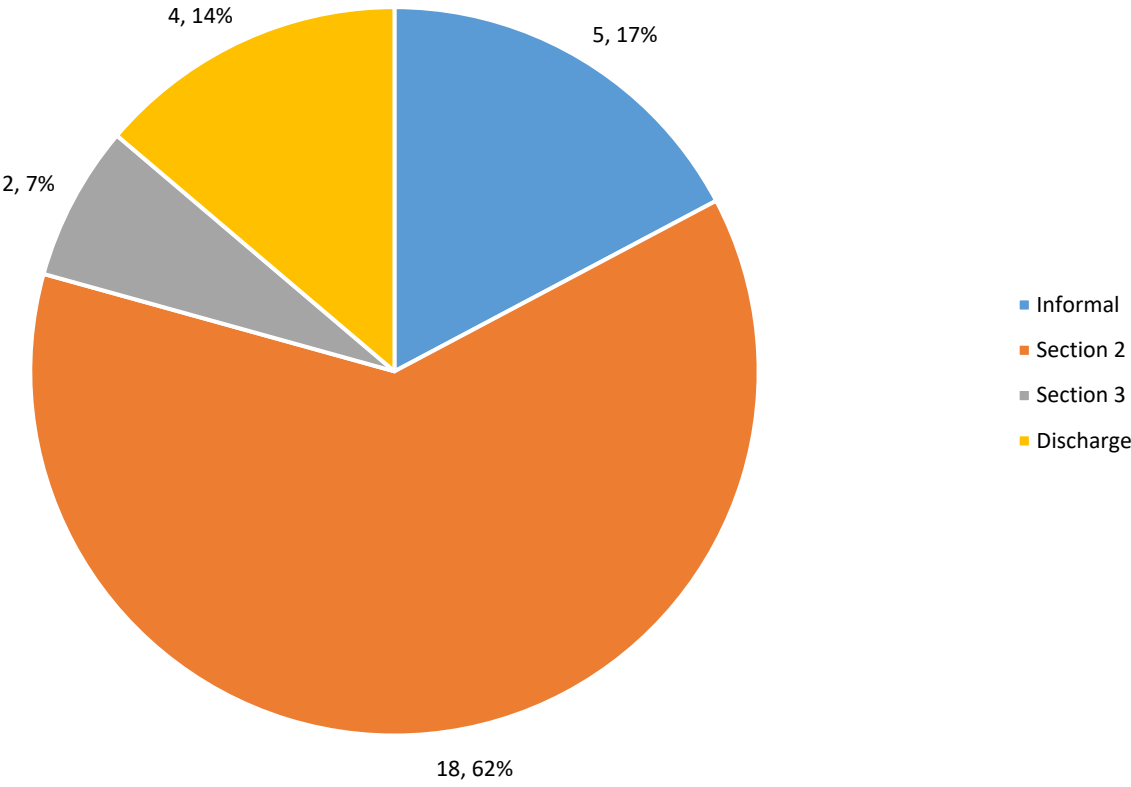
**Legal status prior to Section 5(2) during the period October - December 2020**



**Section 5(2) - Doctors Holding Power up to 72 hours**



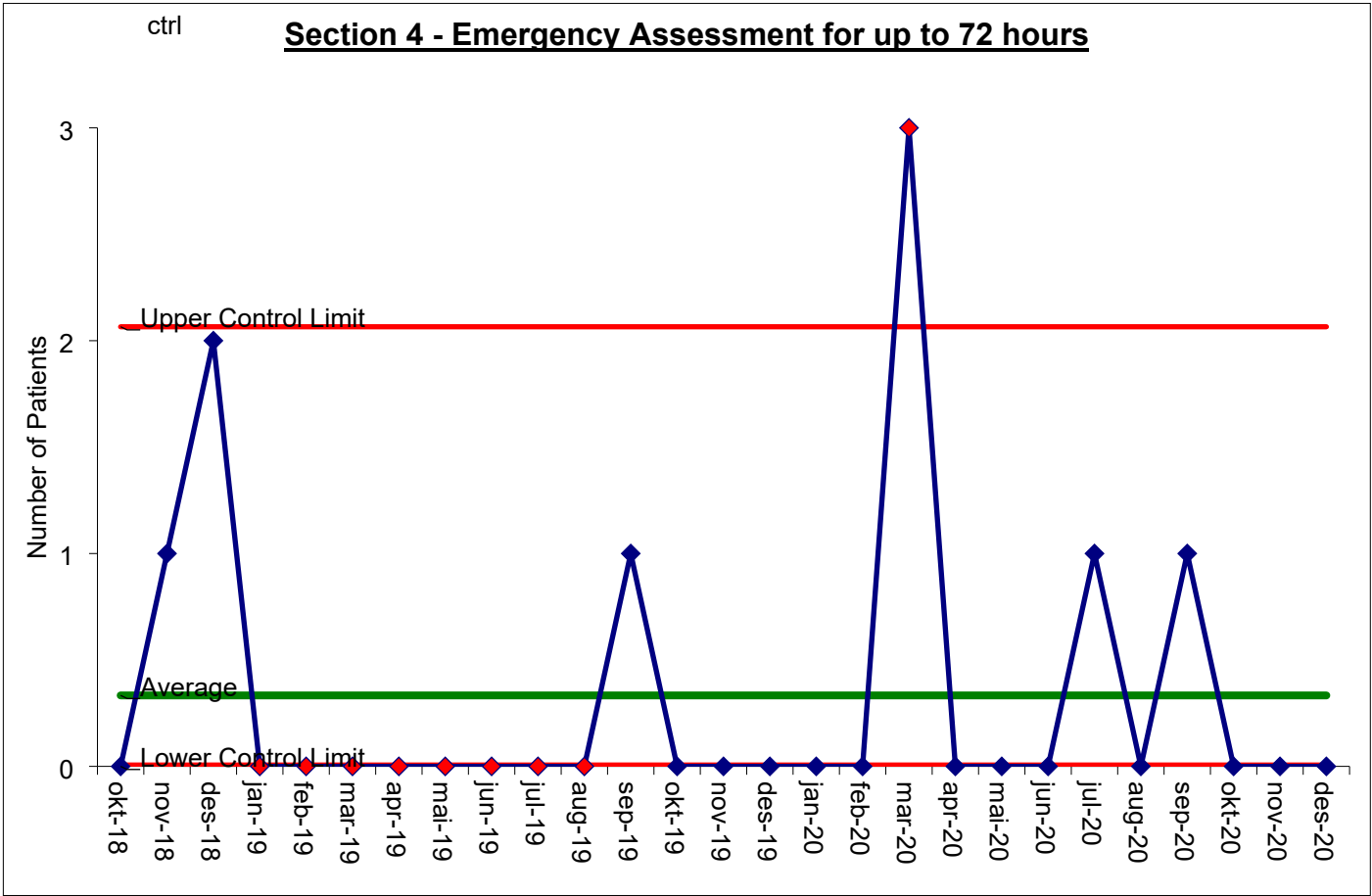
**Outcome following Section 5(2) during the period October - December 2020**



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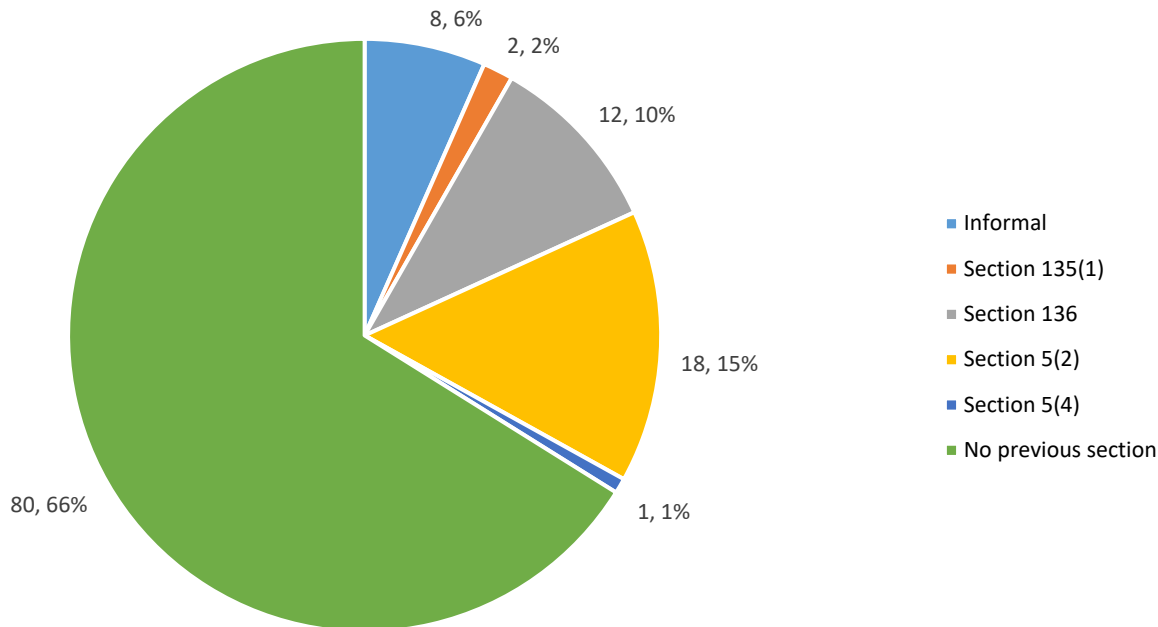
Section 4 - Admission for Assessment in Cases of Emergency



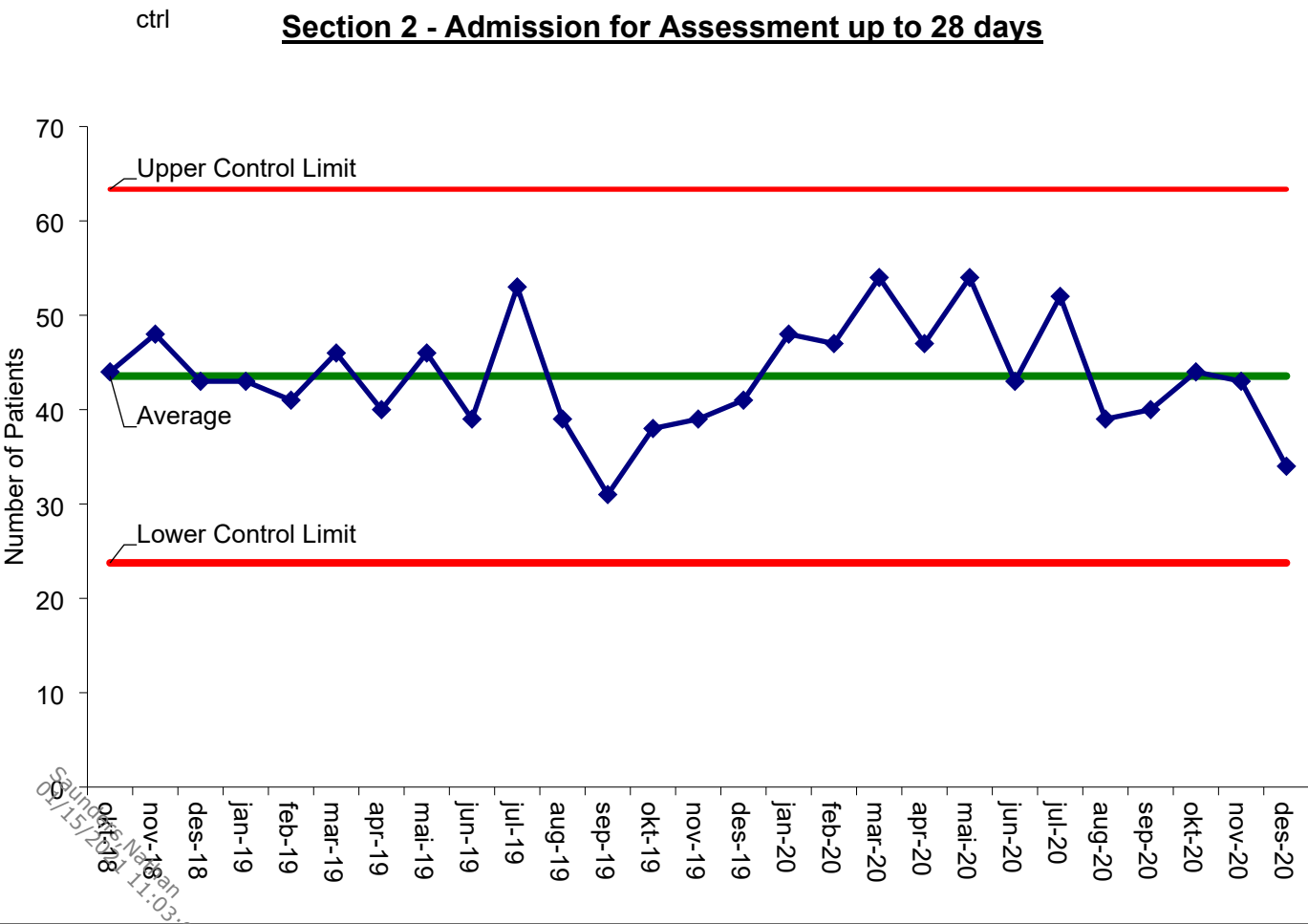
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**Section 2 – Admission for Assessment**

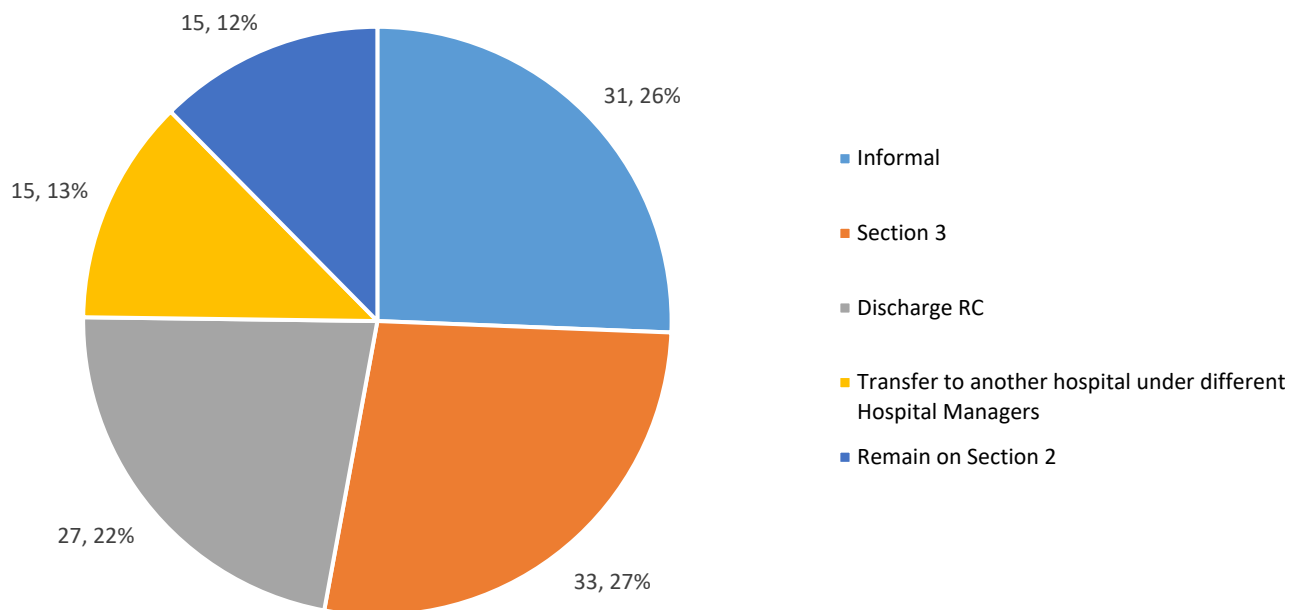
**Legal status prior to Section 2 during the period  
October - December 2020**



**Section 2 - Admission for Assessment up to 28 days**



**Outcome following Section 2 detention during the period October - December 2020**

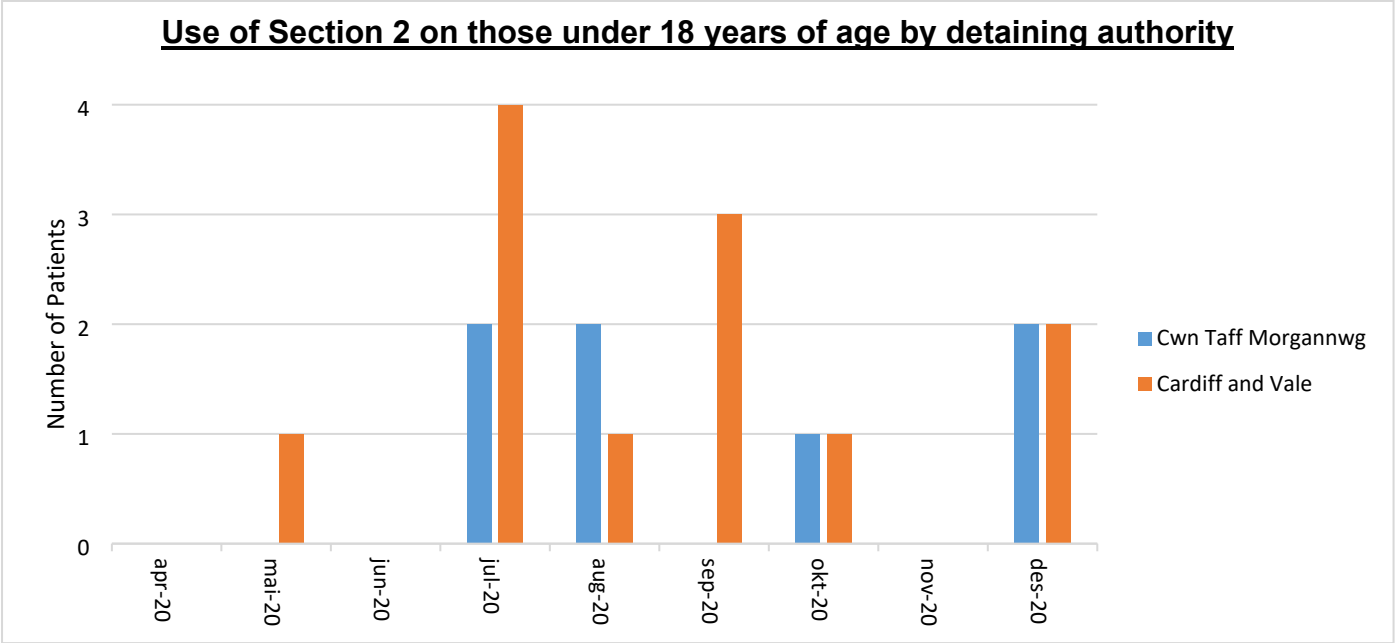


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CAMHS Commissioned Inpatient Data

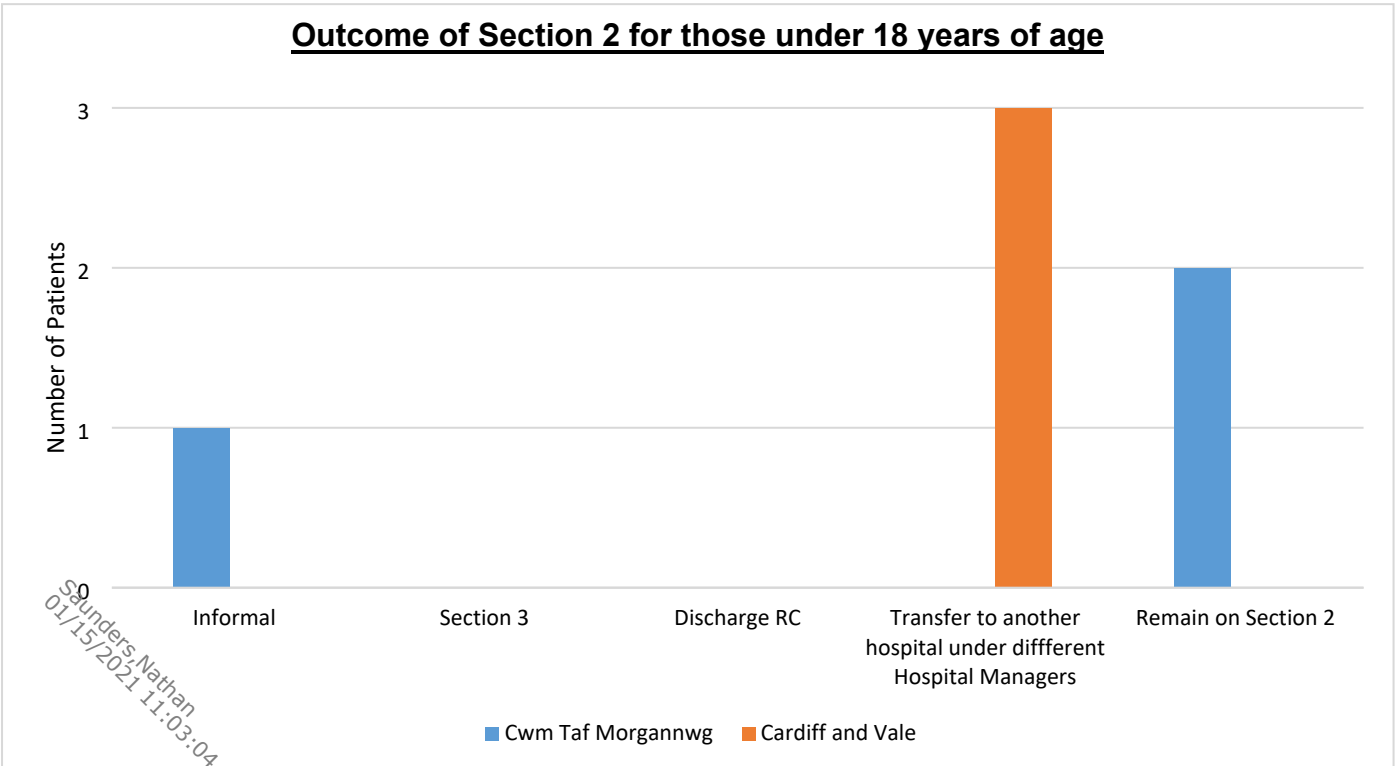
Cwm Taf Morgannwg UHB are commissioned to perform the role of Inpatient CAMHS for Cardiff and Vale UHB area patients.

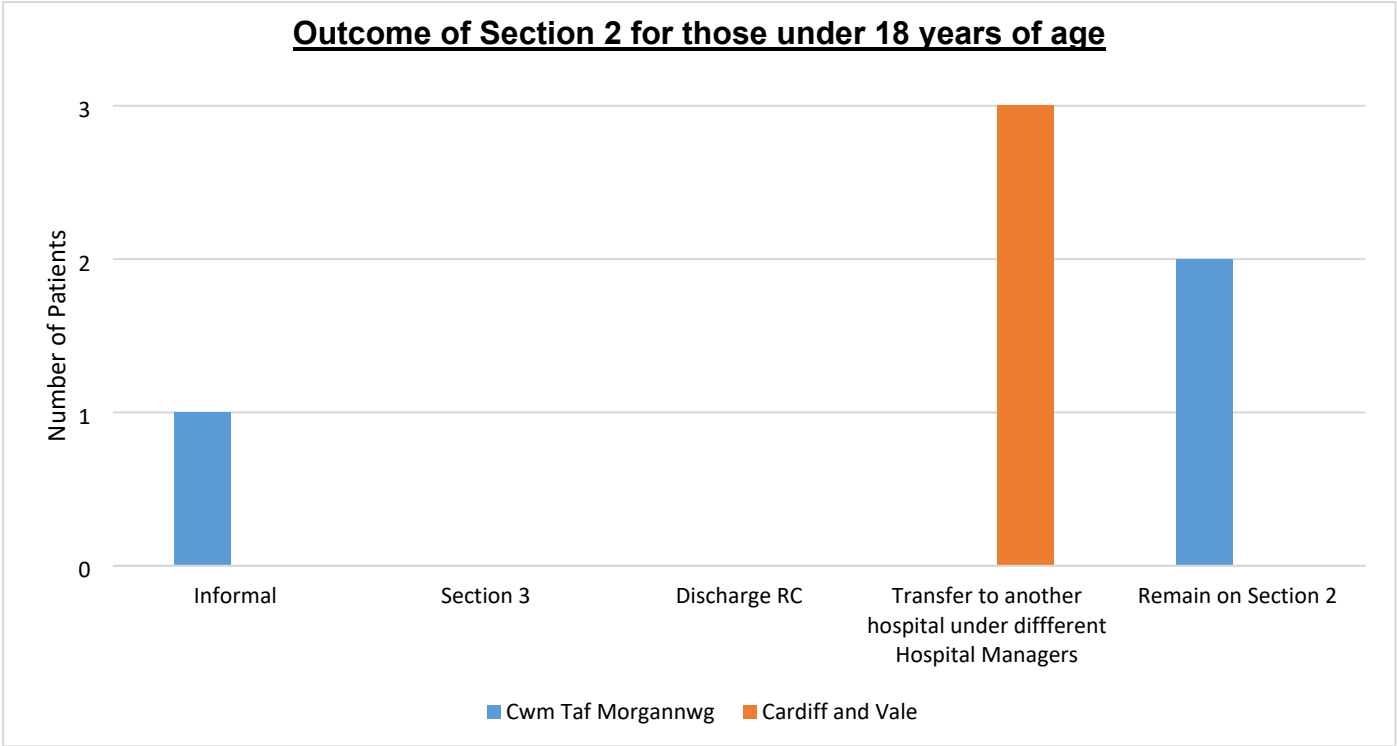
Included in the above data are those under 18 years of age. This is extracted below;-



The above chart counts some individuals on more than one occasion. This is due to the transfer of those patients between UHBs. Those are listed below.

- 1 x July 2020
- 1 x August 2020
- 1 x October 2020
- 2 x December 2020





Of those transferred out from Cardiff and Vale UHB;-

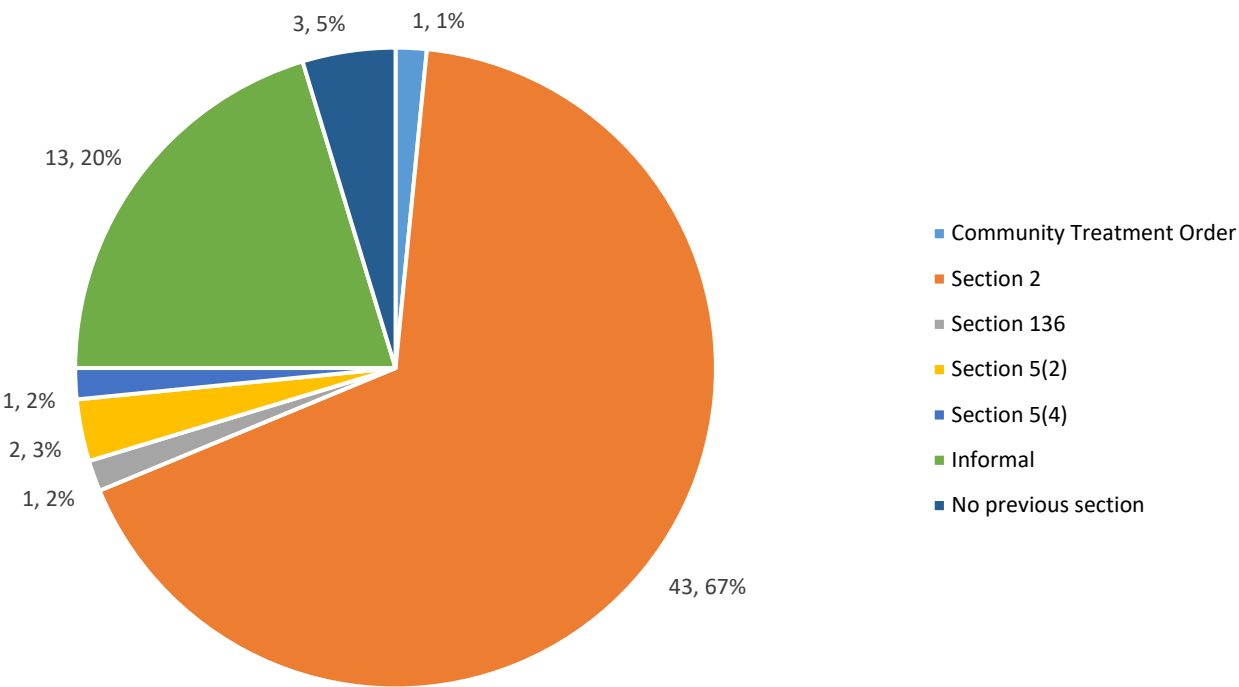
- Three to commissioned services in Ty Llidiard, Cwm Taff Morgannwg UHB

Three patients appear on both Cwm Taff Morgannwg and Cardiff and Vale as they were transferred, so that would be a detention that was new to that authority.

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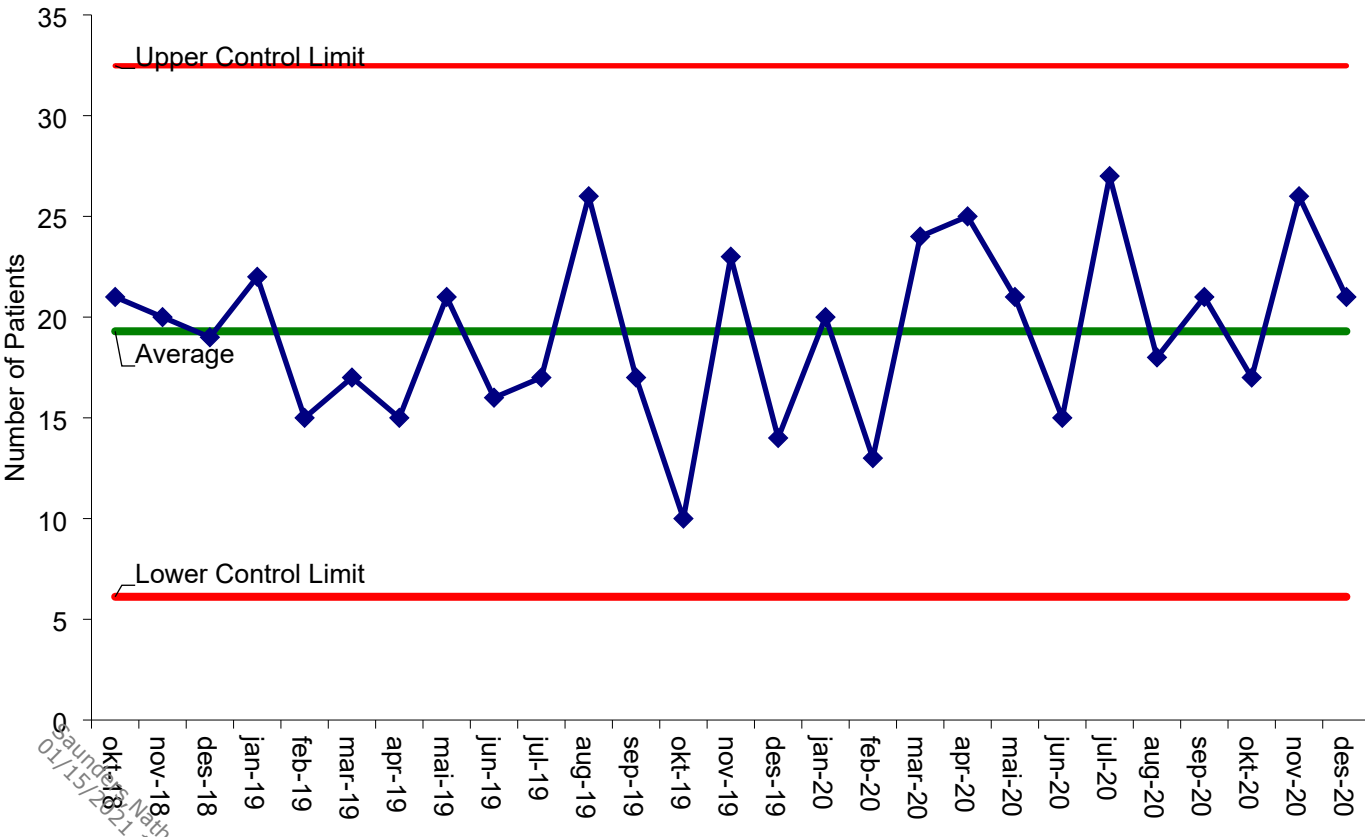
**Section 3 – Admission for Treatment**

**Legal status prior to Section 3 during the period October - December 2020**

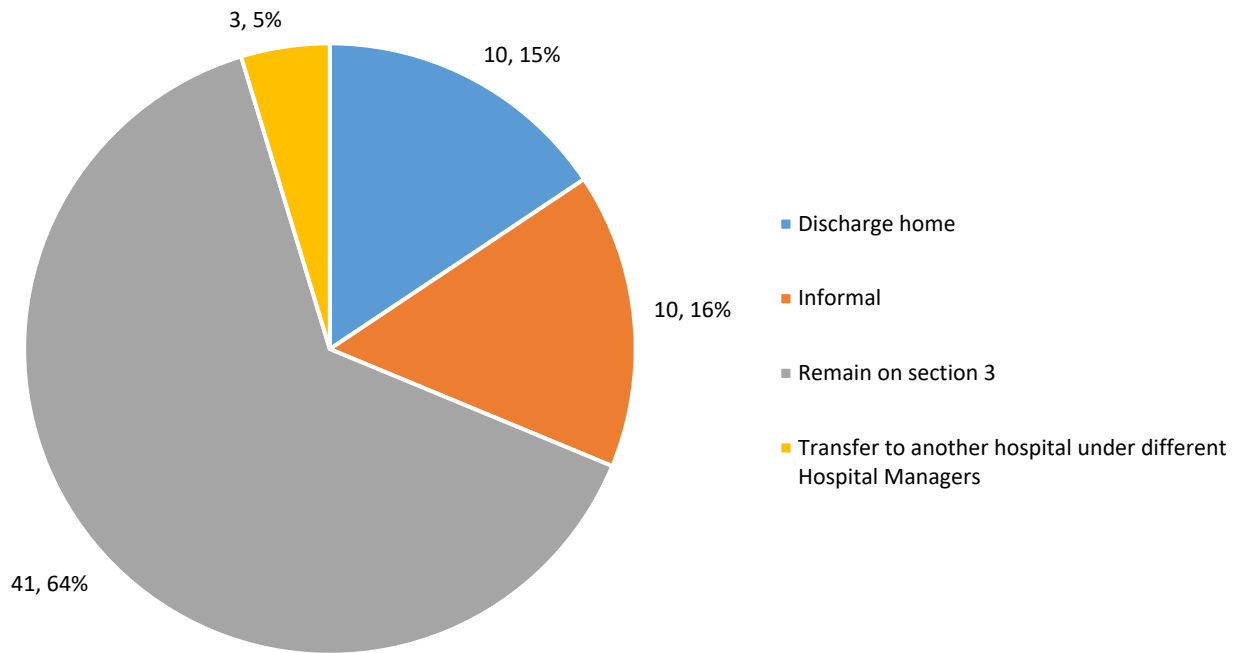


ctrl

**Section 3 - Admission for Treatment**



### Outcome following Section 3 during the period October - December 2020



### **CAMHS Commissioned Inpatient Data**

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

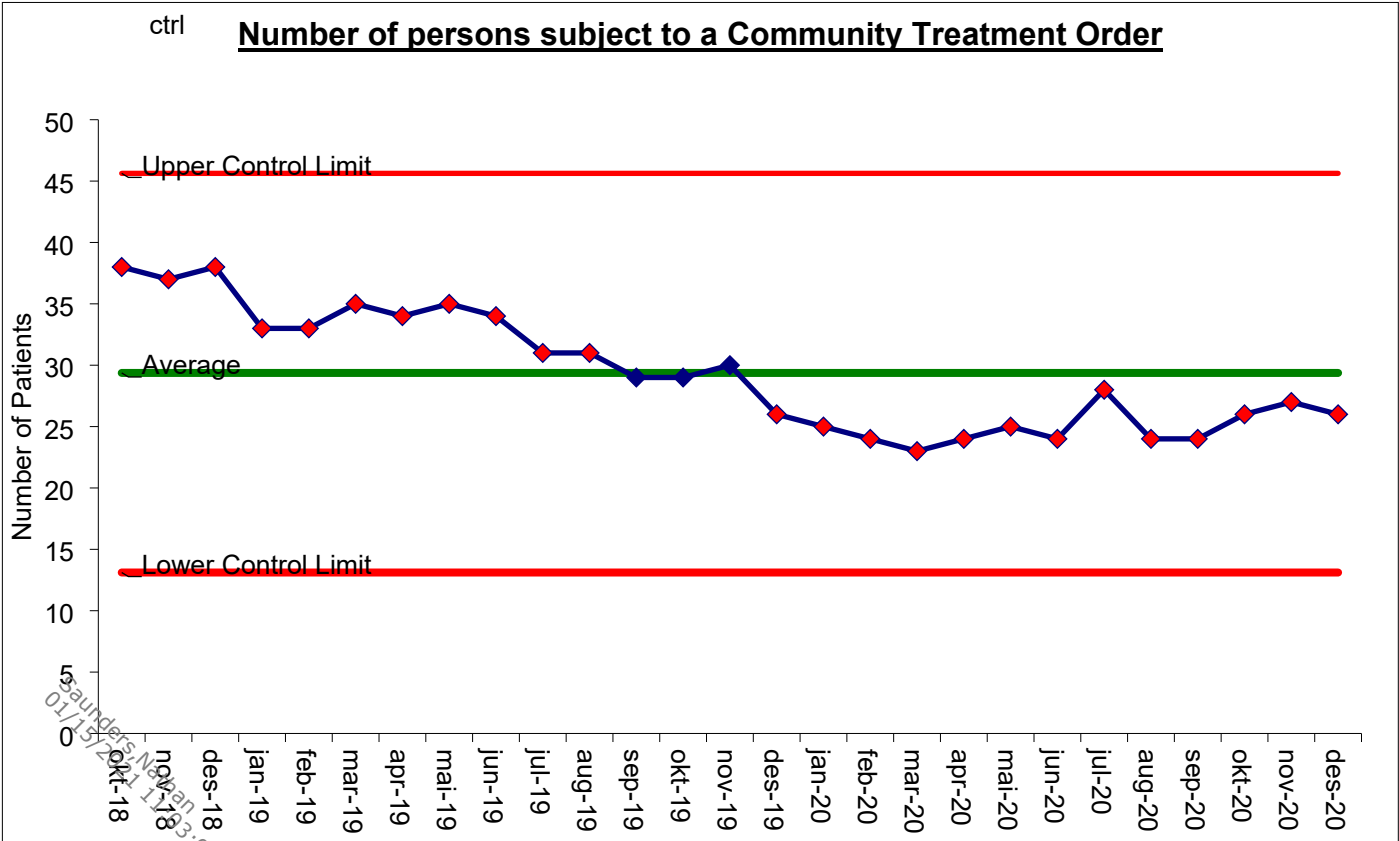
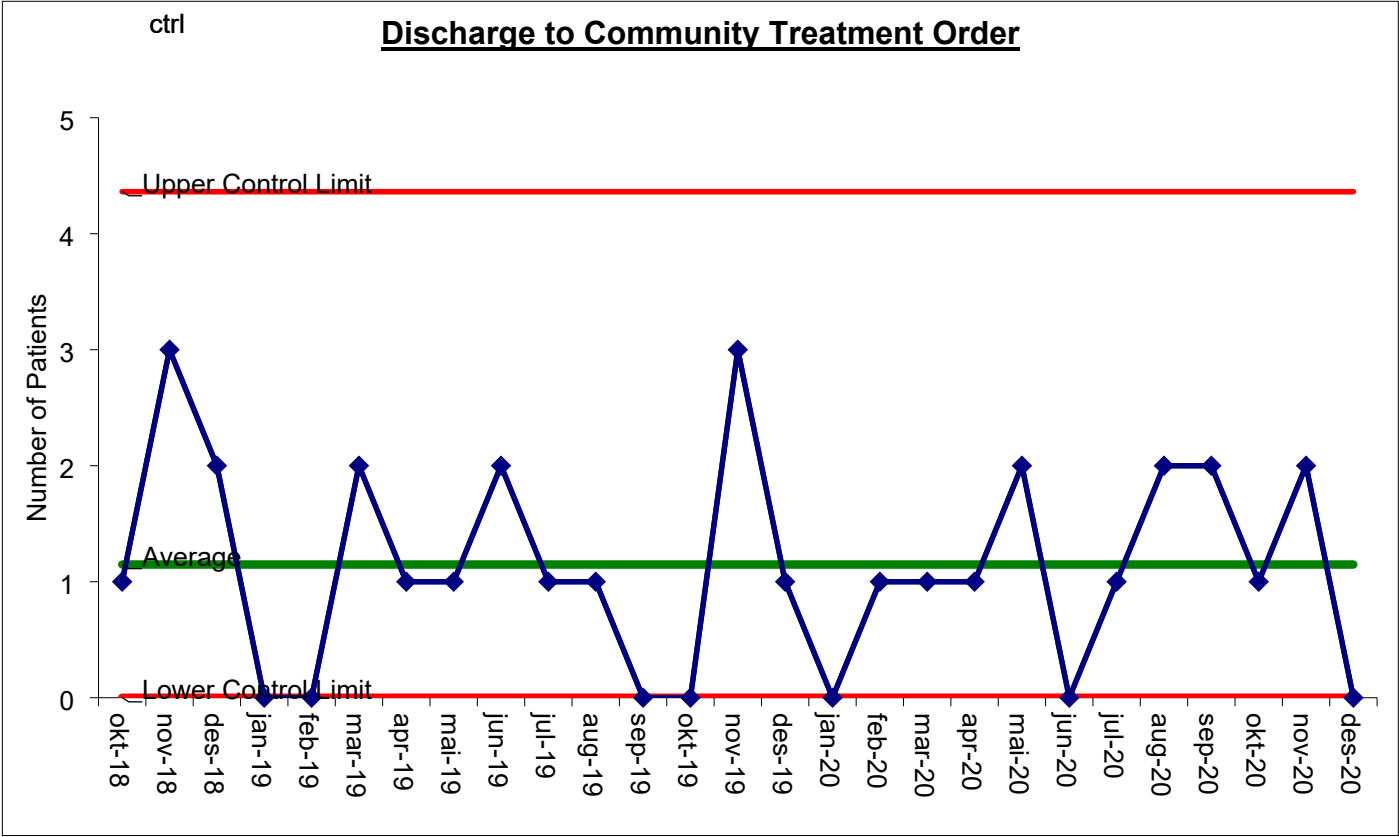
The above data would include those under 18 years of age. There has been no Section 3 activity for CAMHS patients during the period.

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**Community Treatment Order**

During the period October - December 2020, three patients were discharged to Community Treatment Order.

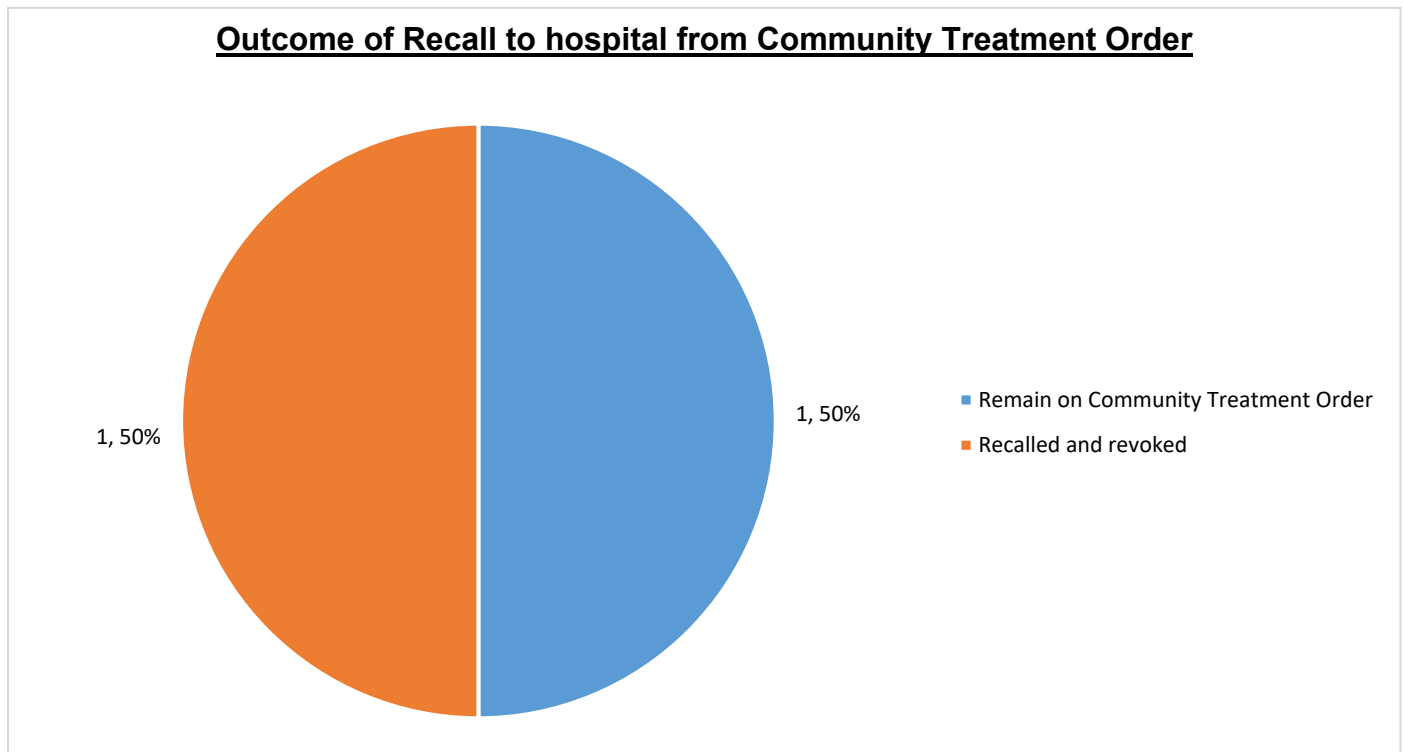
As at 31 December 2020, 25 patients were subject to a Community Treatment Order (CTO).





### **Recall of a community patient under Section 17E**

During the period, the power of recall was used on two occasions. On 1 occasions the patients CTO was revoked, on one occasion the patient remained under their Community Treatment Order.



### **CAMHS Commissioned Inpatient Data**

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

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

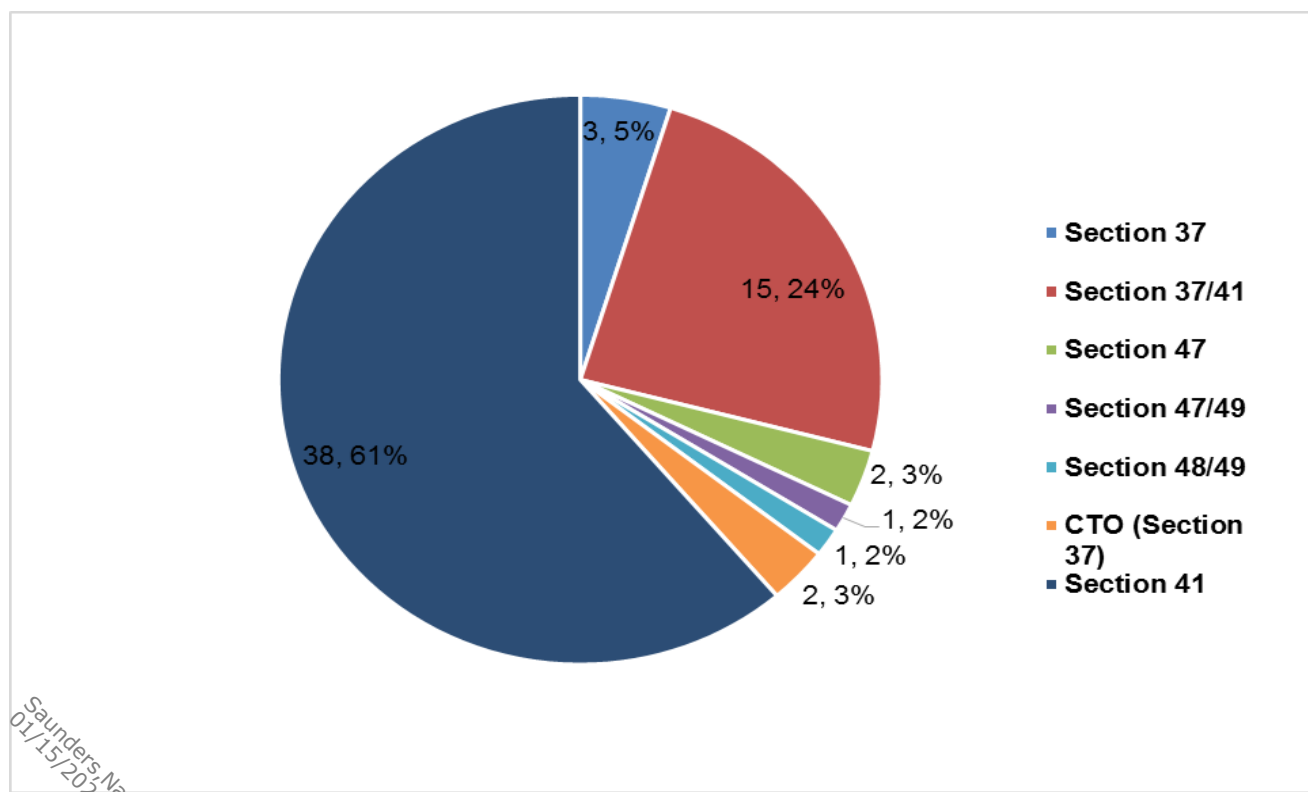
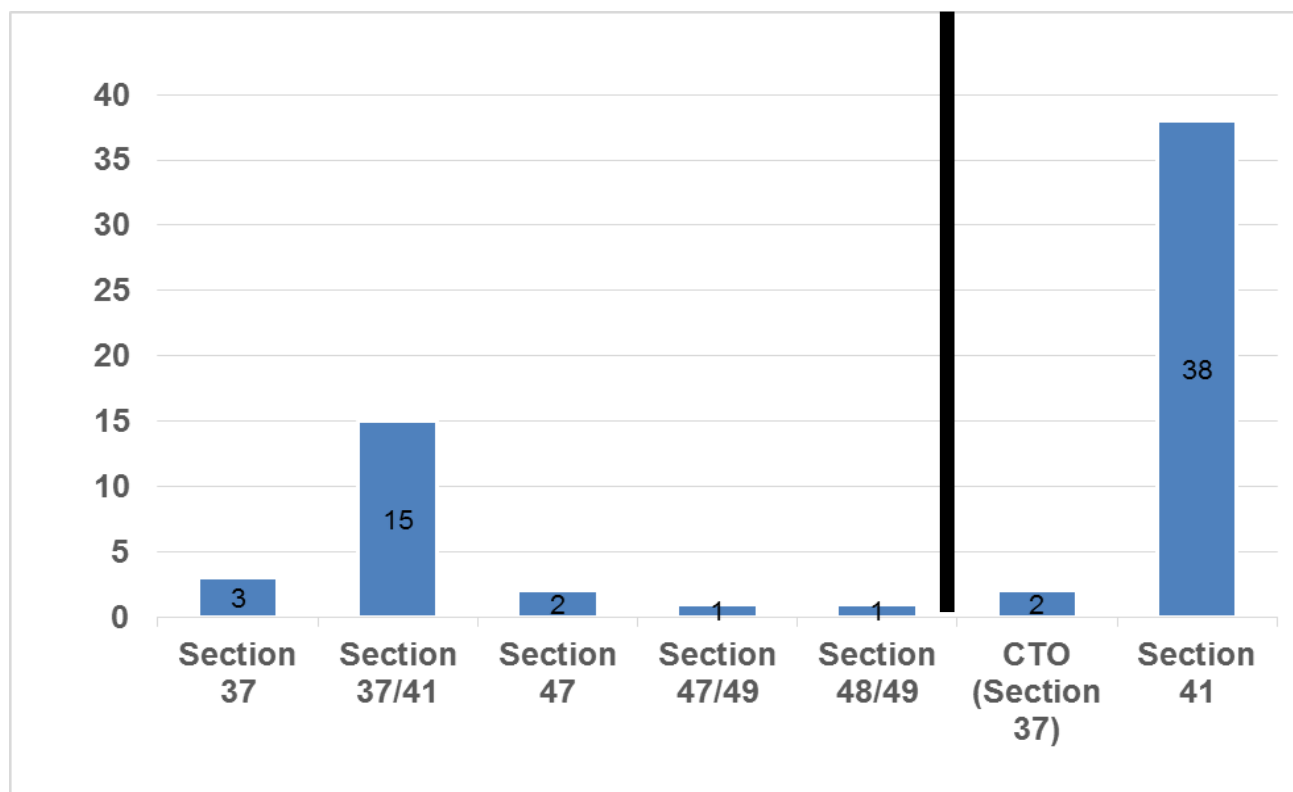
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### Part 3 of the Mental Health Act 1983

The number of Part 3 patient detained in Cardiff and Vale University Health Board Hospitals or subject to Community Treatment/Conditional Discharge in the community as at 31 December 2020.

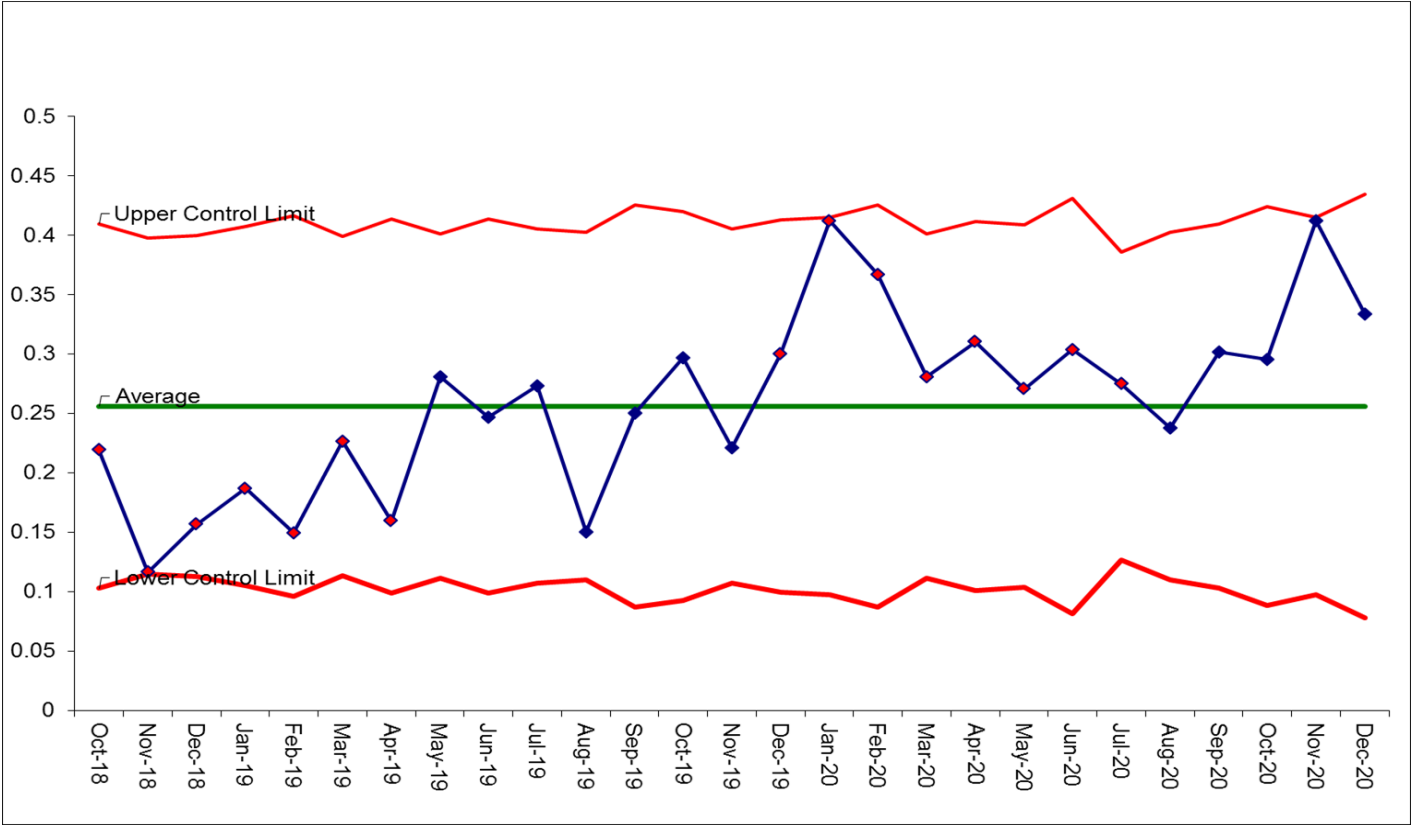
#### Inpatients

#### Community

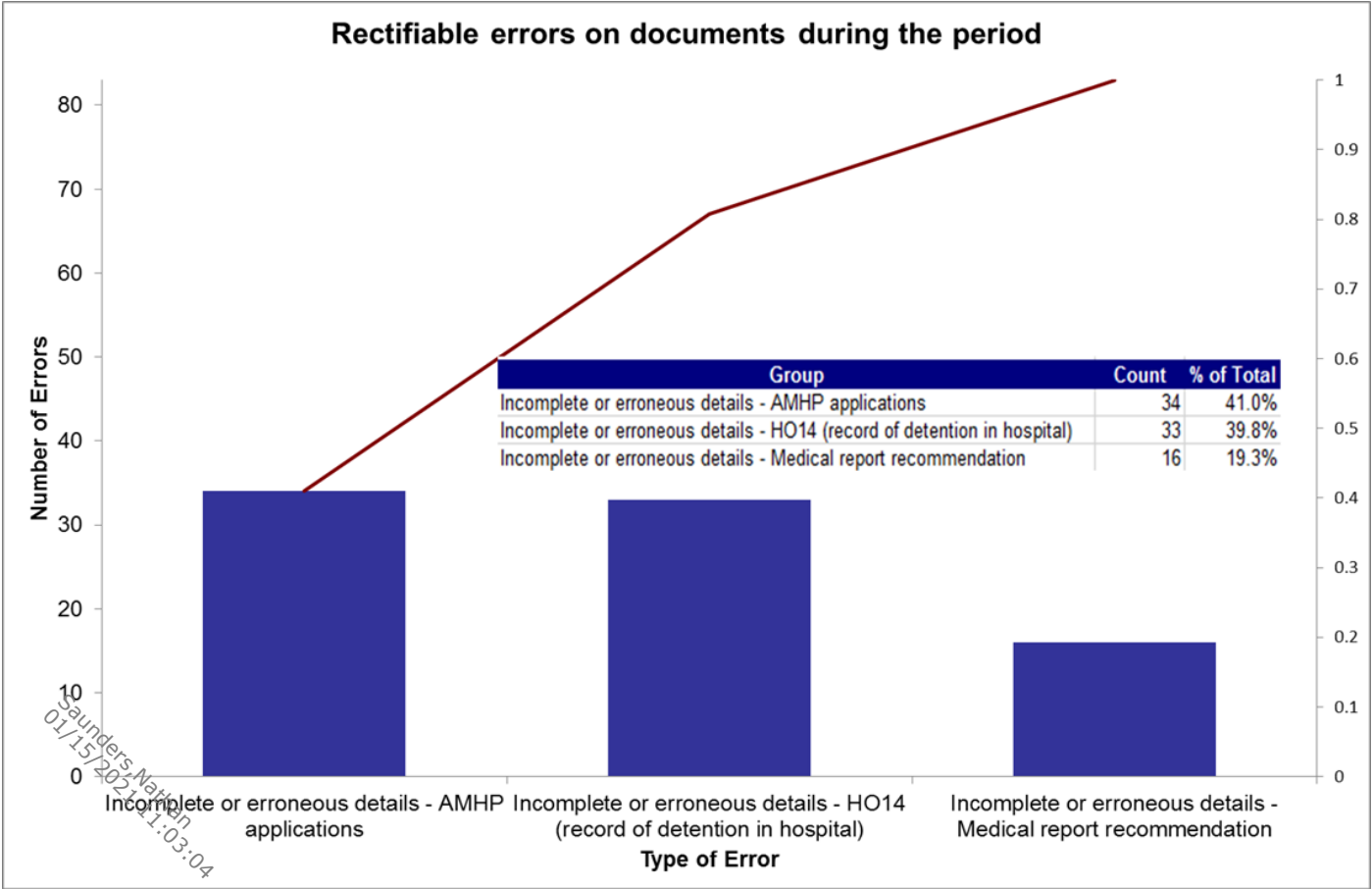


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Scrutiny of documents during the period

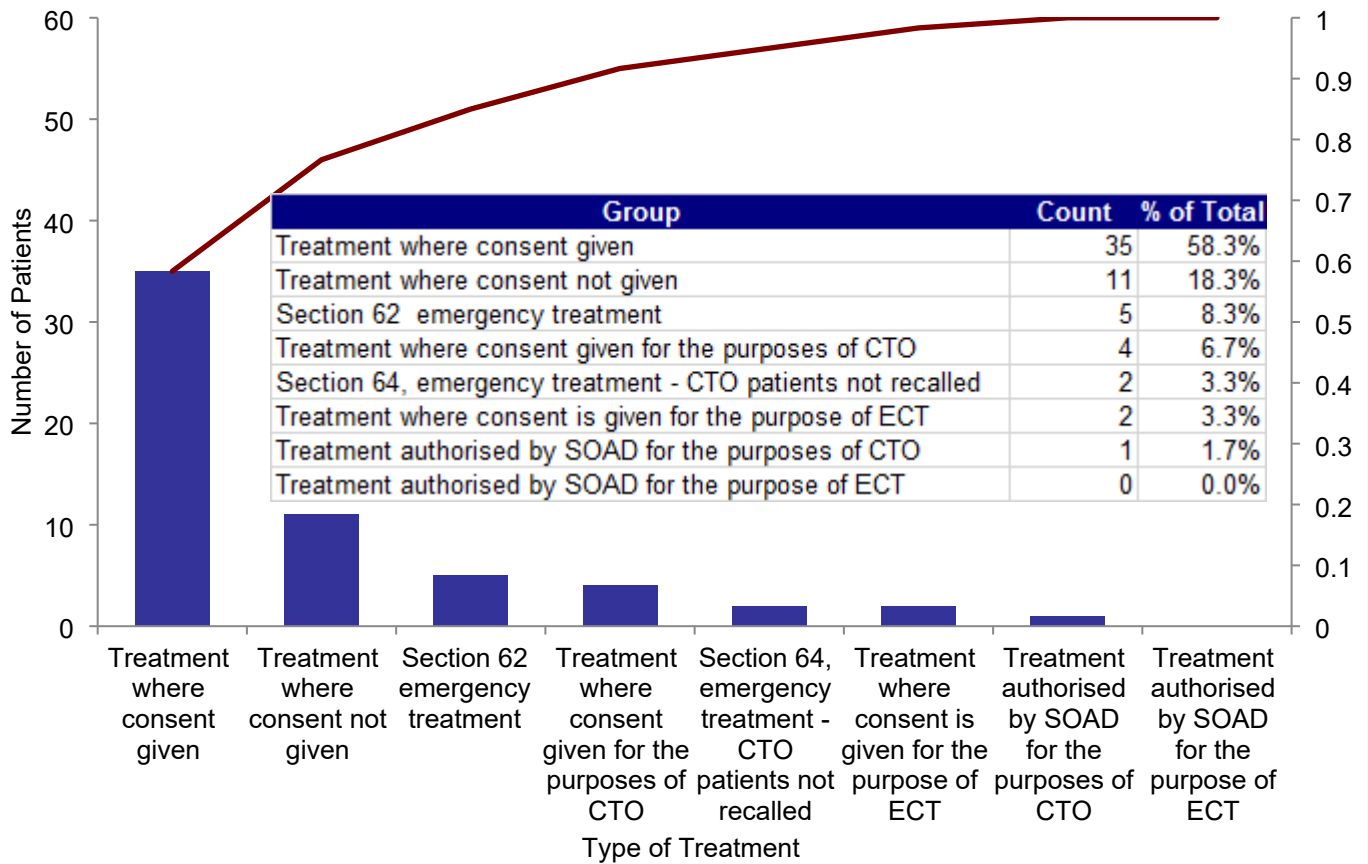


The chart above is a different type of control chart (P Chart) which looks at the proportions. The width of the control limits is dictated by the size of the denominator, so a larger denominator will have a narrower limit.



## Consent to Treatment

### Analysis of the treatment provisions under Part 4 and Part 4A, MHA during the period



## 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.

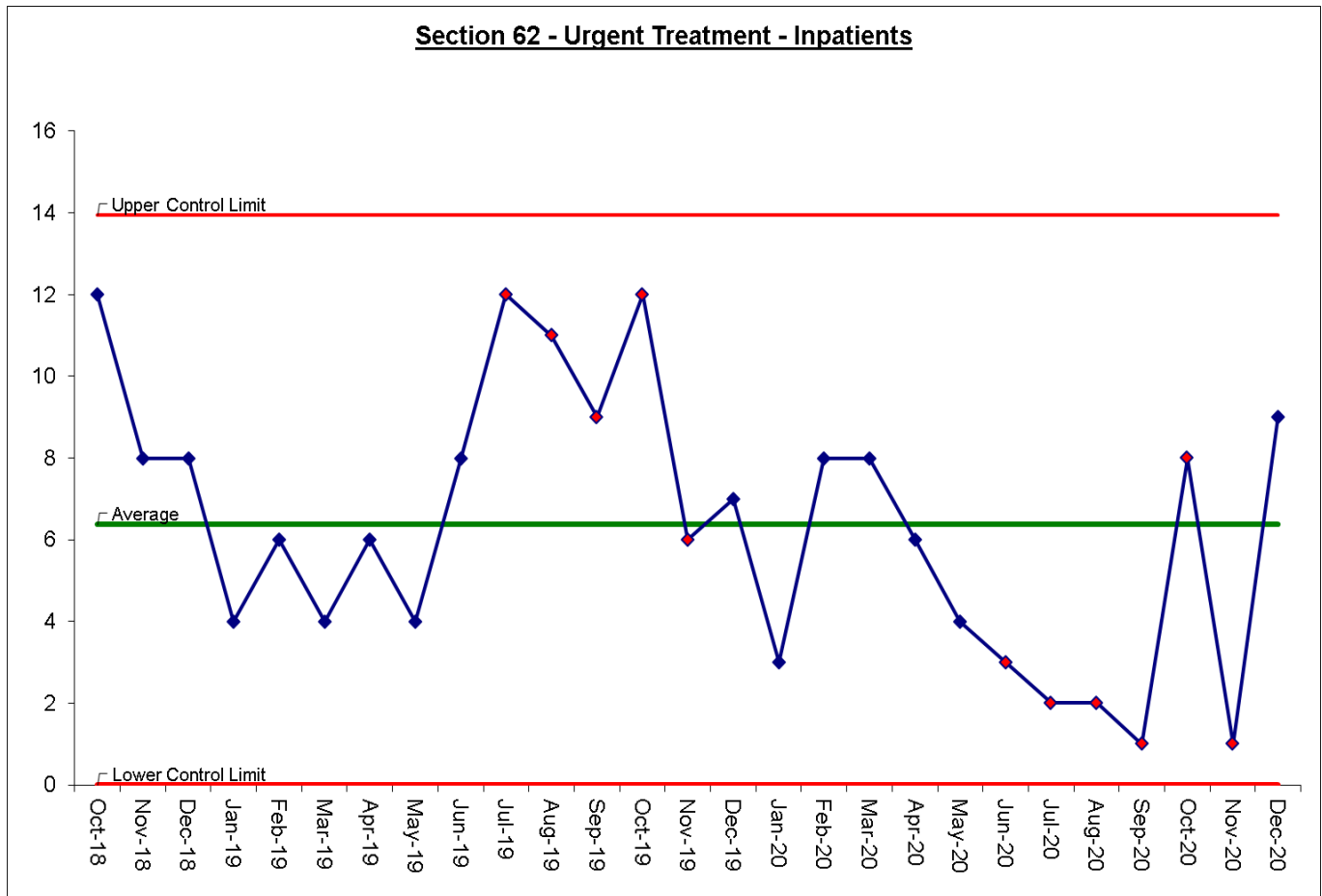
Urgent treatment is defined as treatment that is:

- 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.

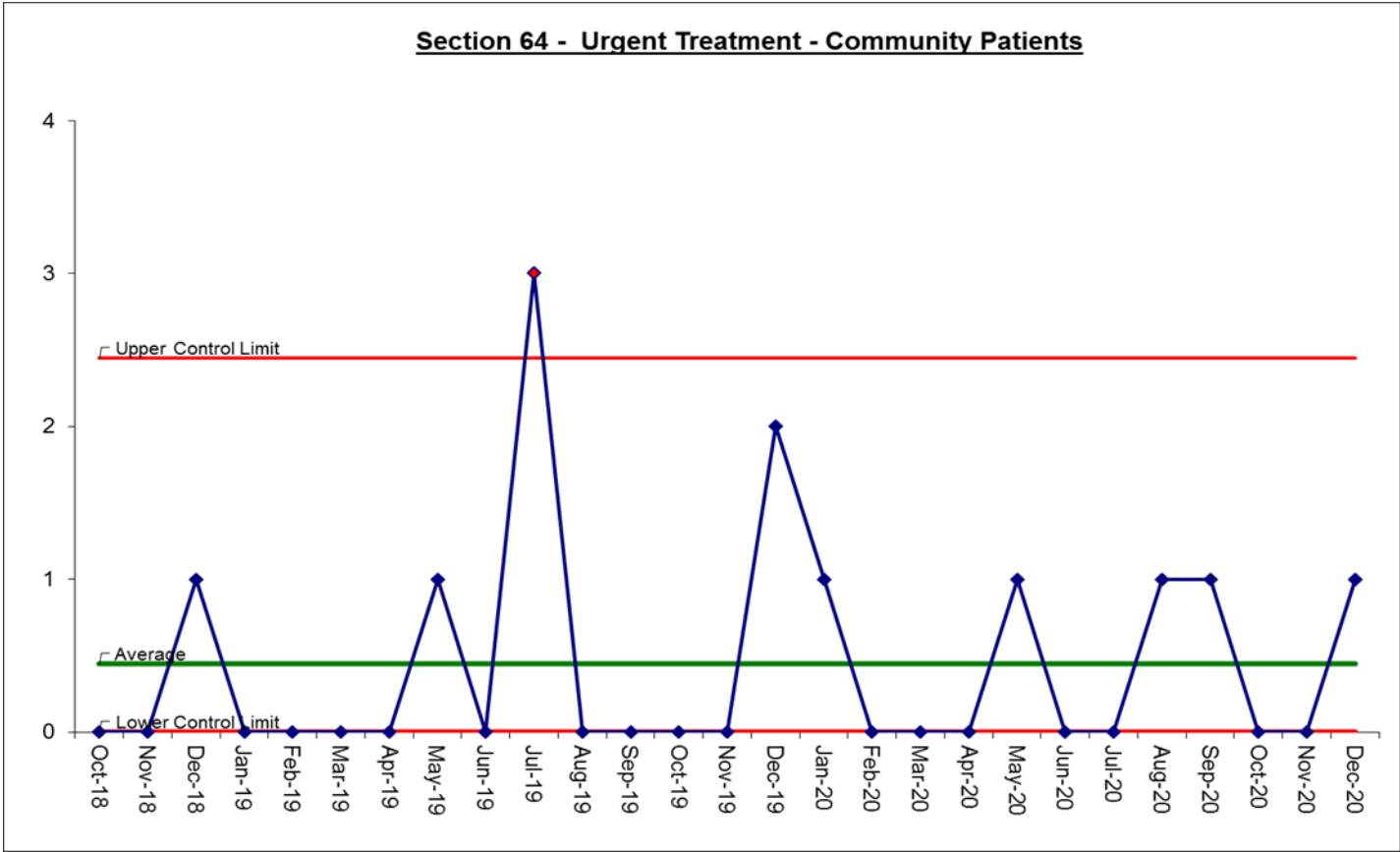


The above chart highlights that Section 62 was used on eighteen occasions for the following reasons:

- Pending SOAD – 3 month rule x 9
- Pending SOAD – No longer consenting x 3
- Pending SOAD – No longer has capacity to consent x 3
- Pending SOAD – Change of medication x 2
- Pending SOAD – ECT

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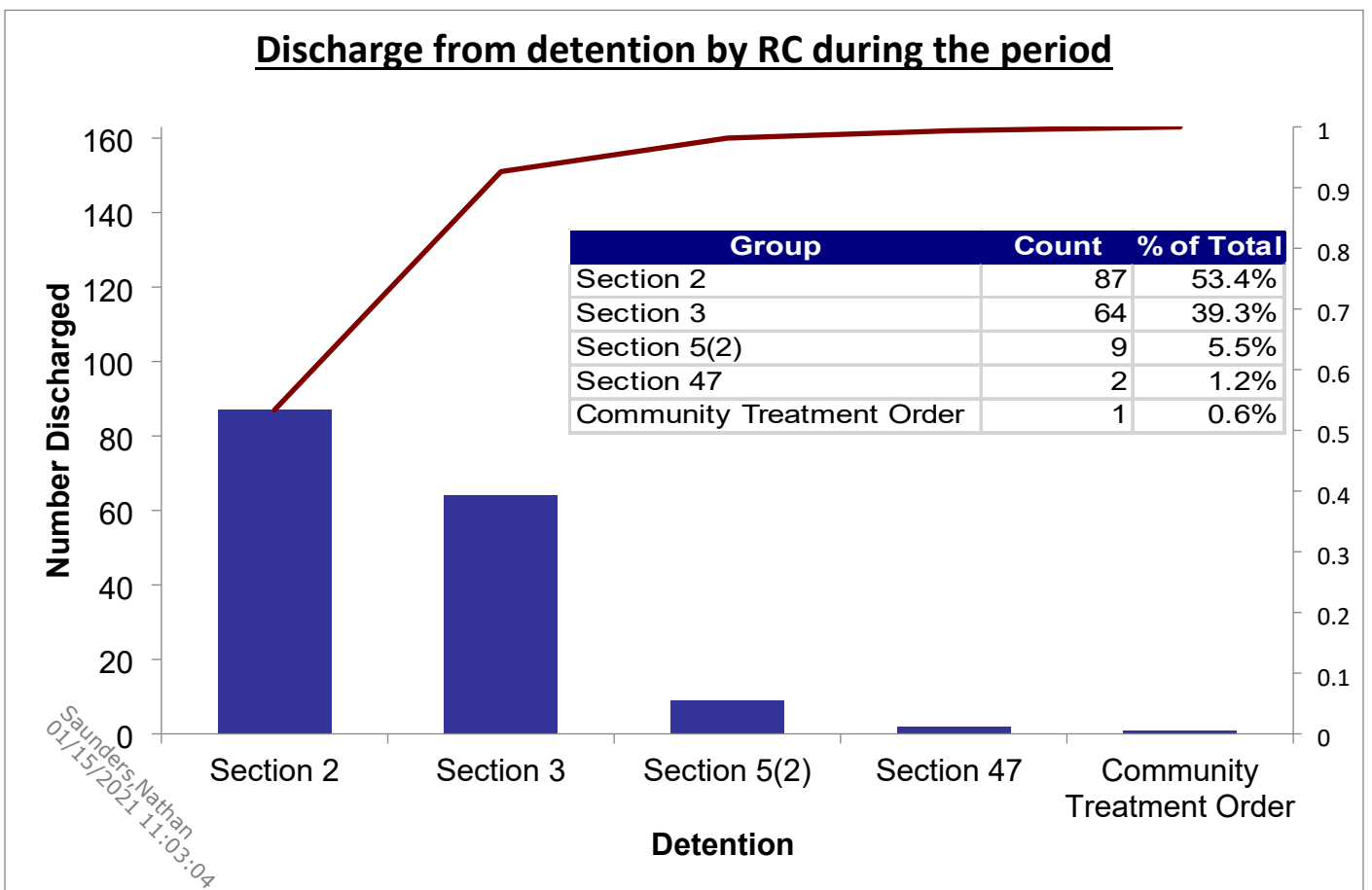
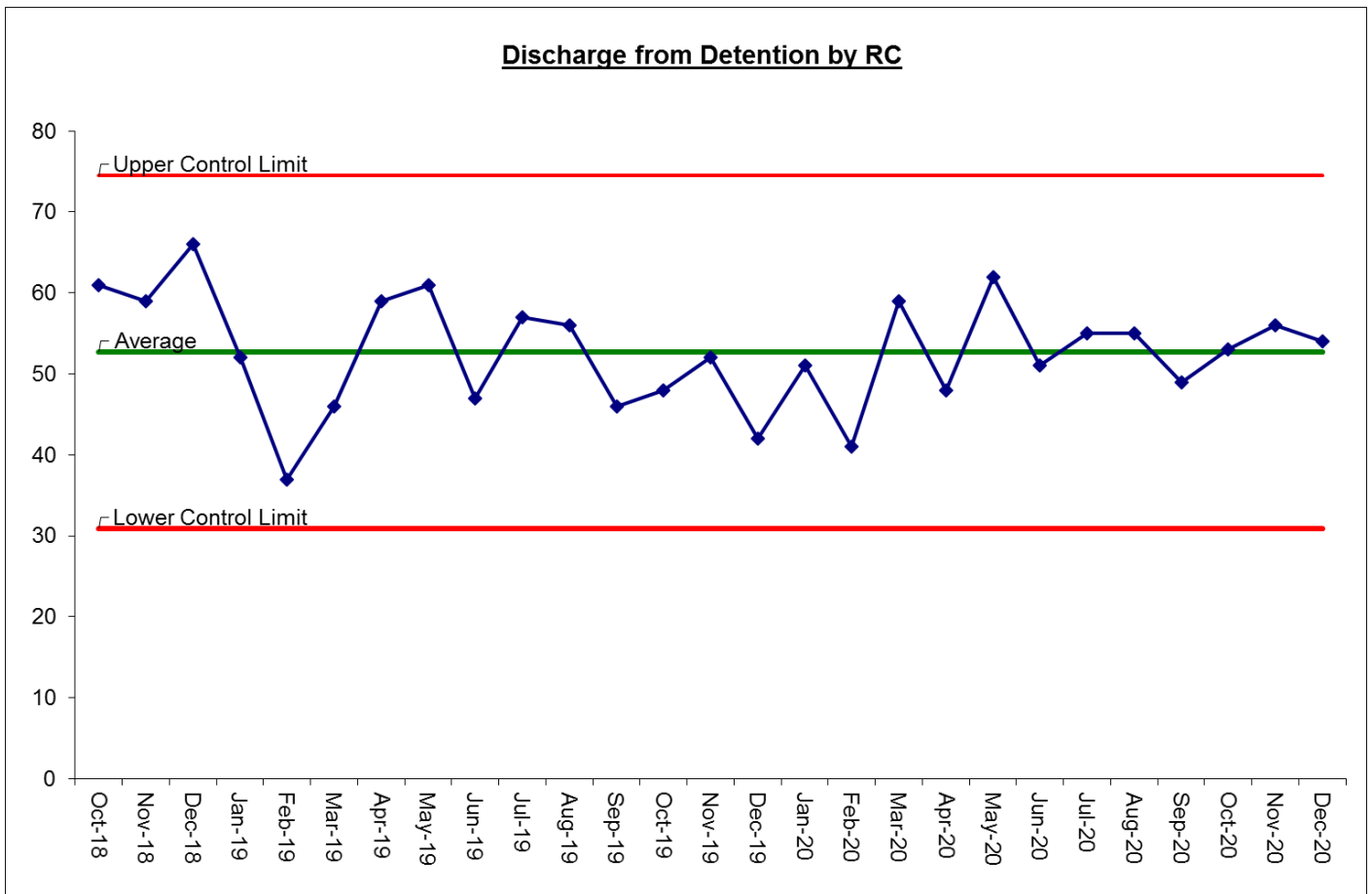
**Section 64 - Urgent Treatment - Community Patients**



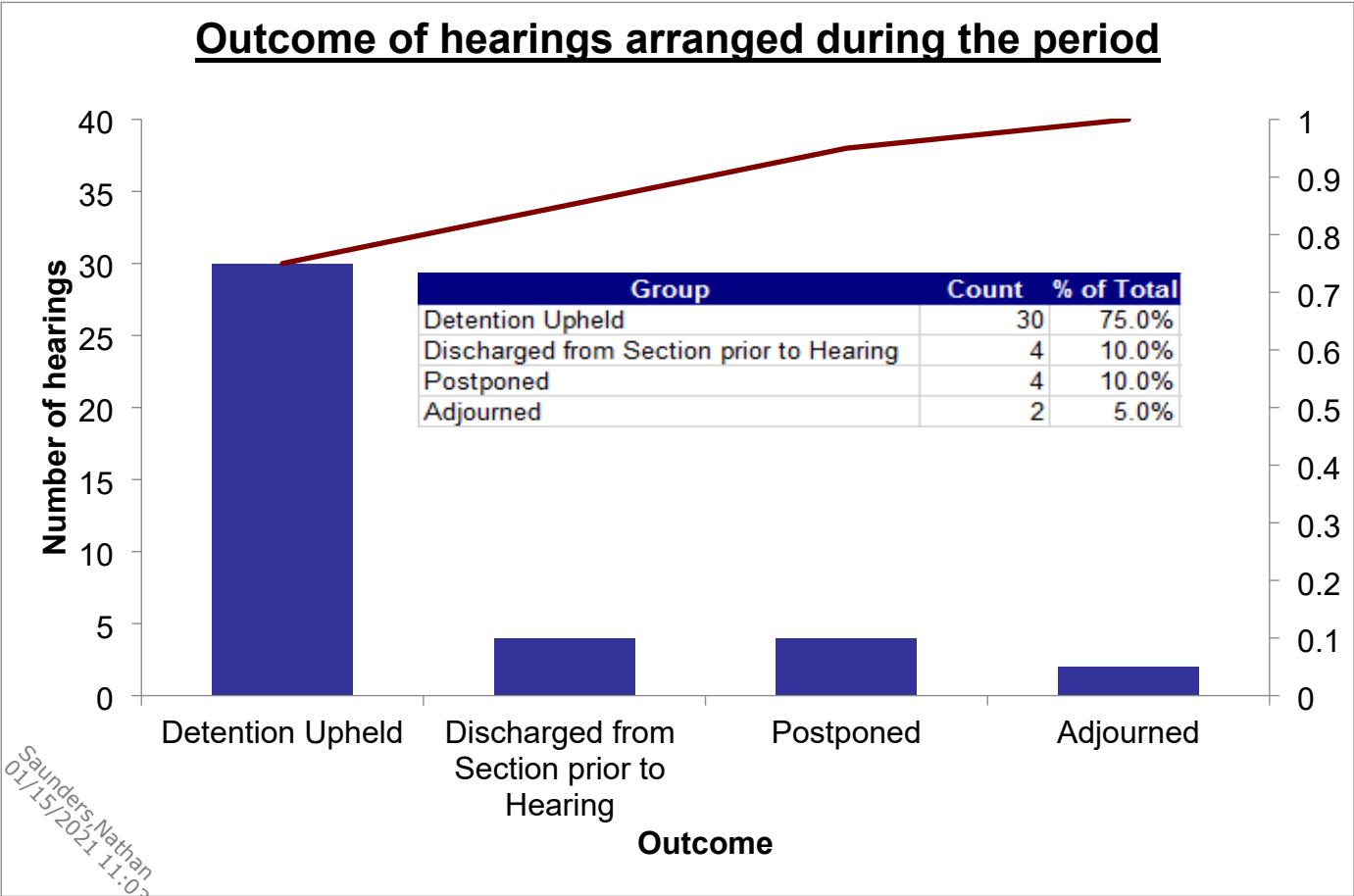
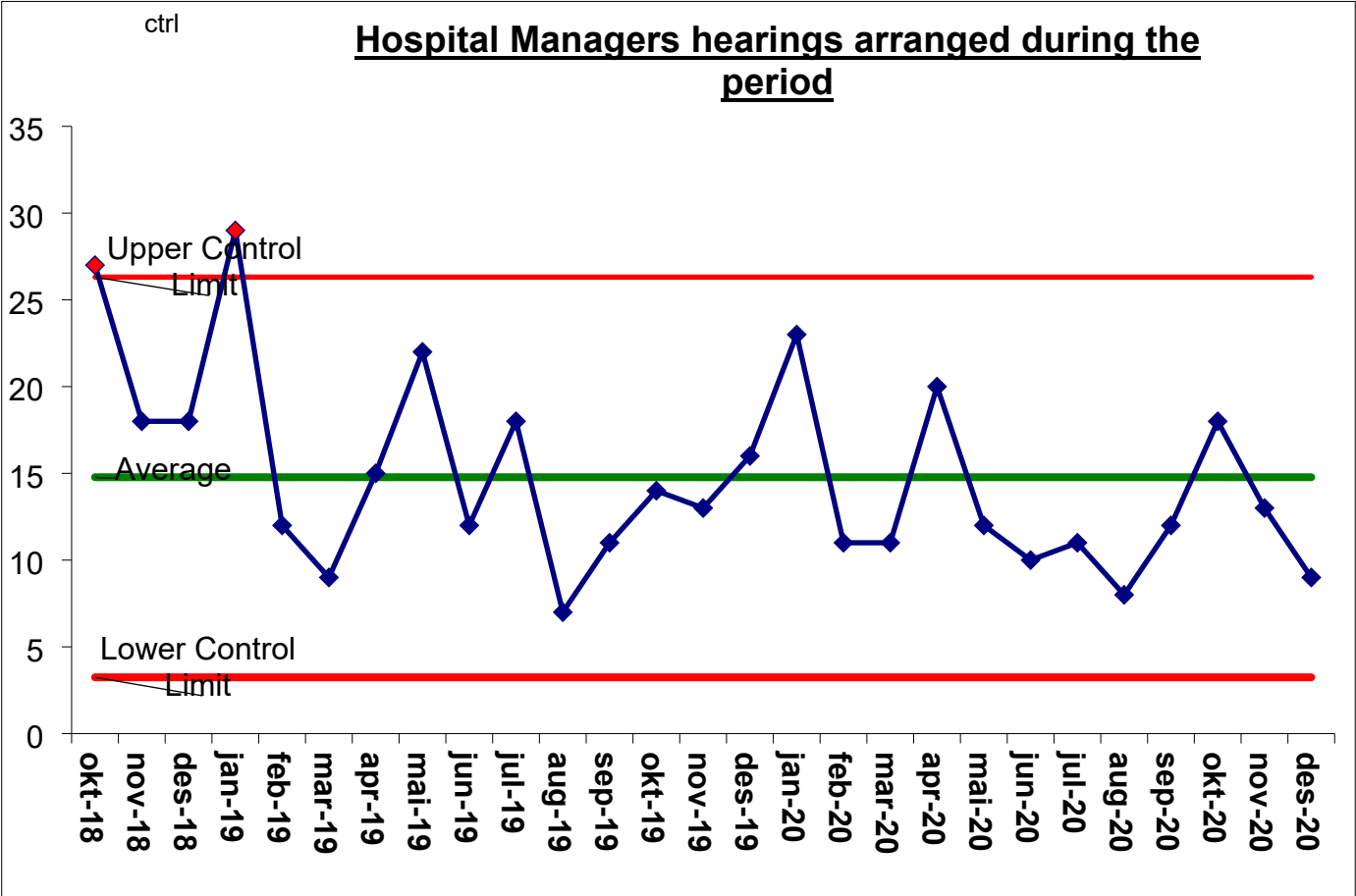
The above chart highlights that Section 64 was used on one occasion during the period. This was pending SOAD certificate due to a change in mental capacity status.

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## Discharge



Hospital Managers – Power of Discharge



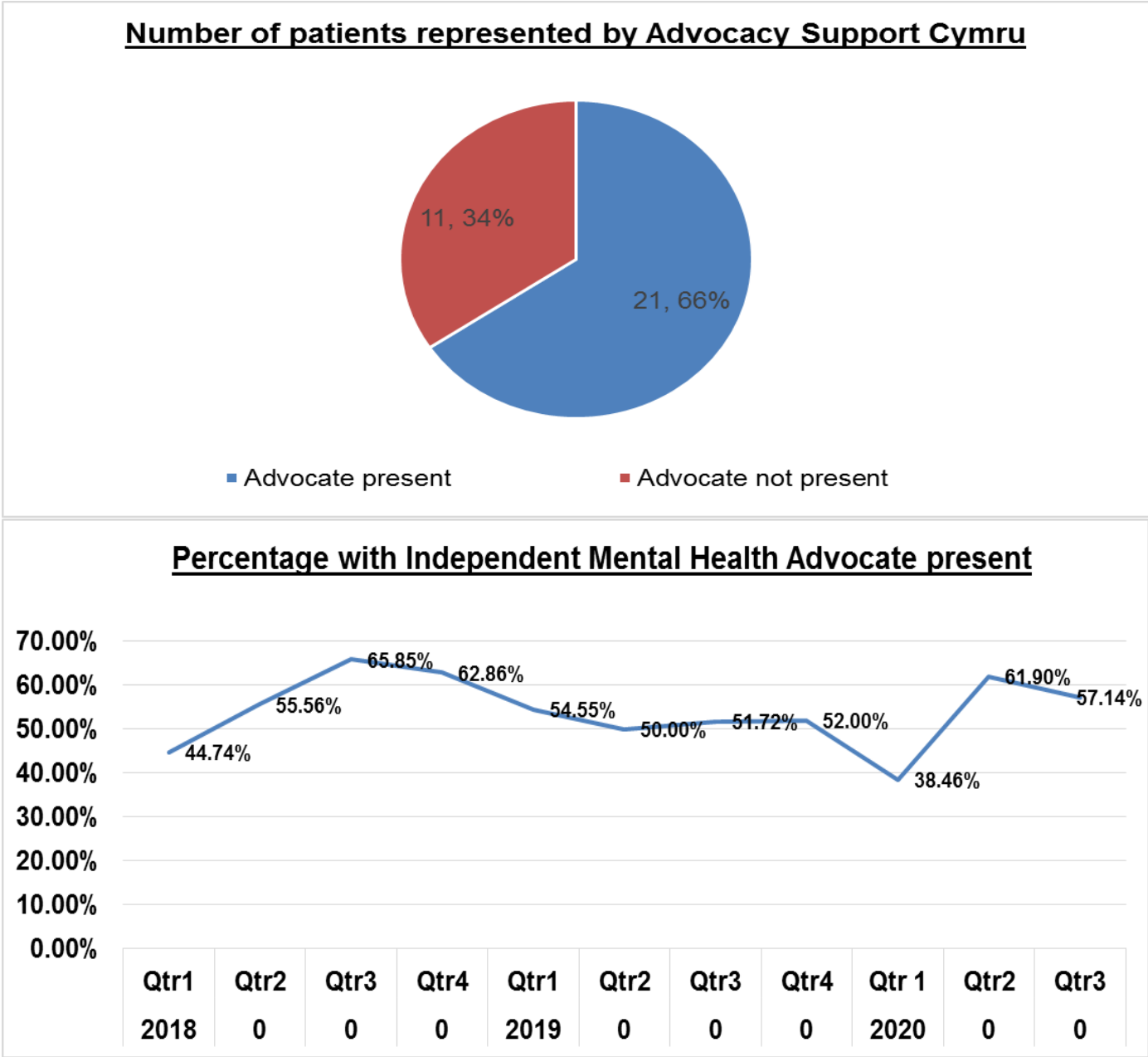


Three hearings were adjourned for the following reasons:

- No nursing representation available
- Further information required

Four hearings were postponed for the following reasons:

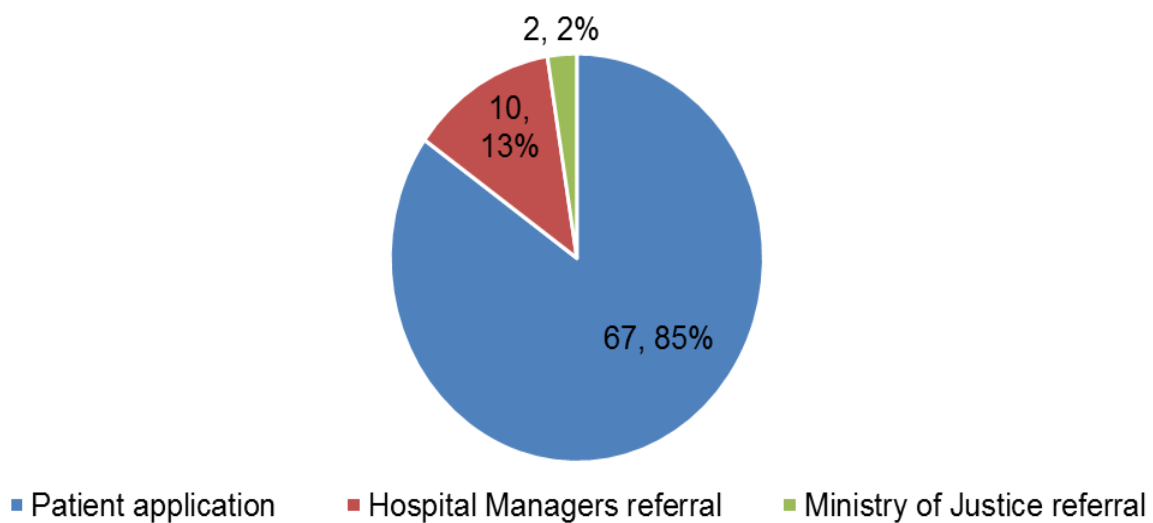
- Advocate unavailable to attend
- Patient too unwell to attend
- Patient unable to attend due to transport not booked by CMHT
- RC sick



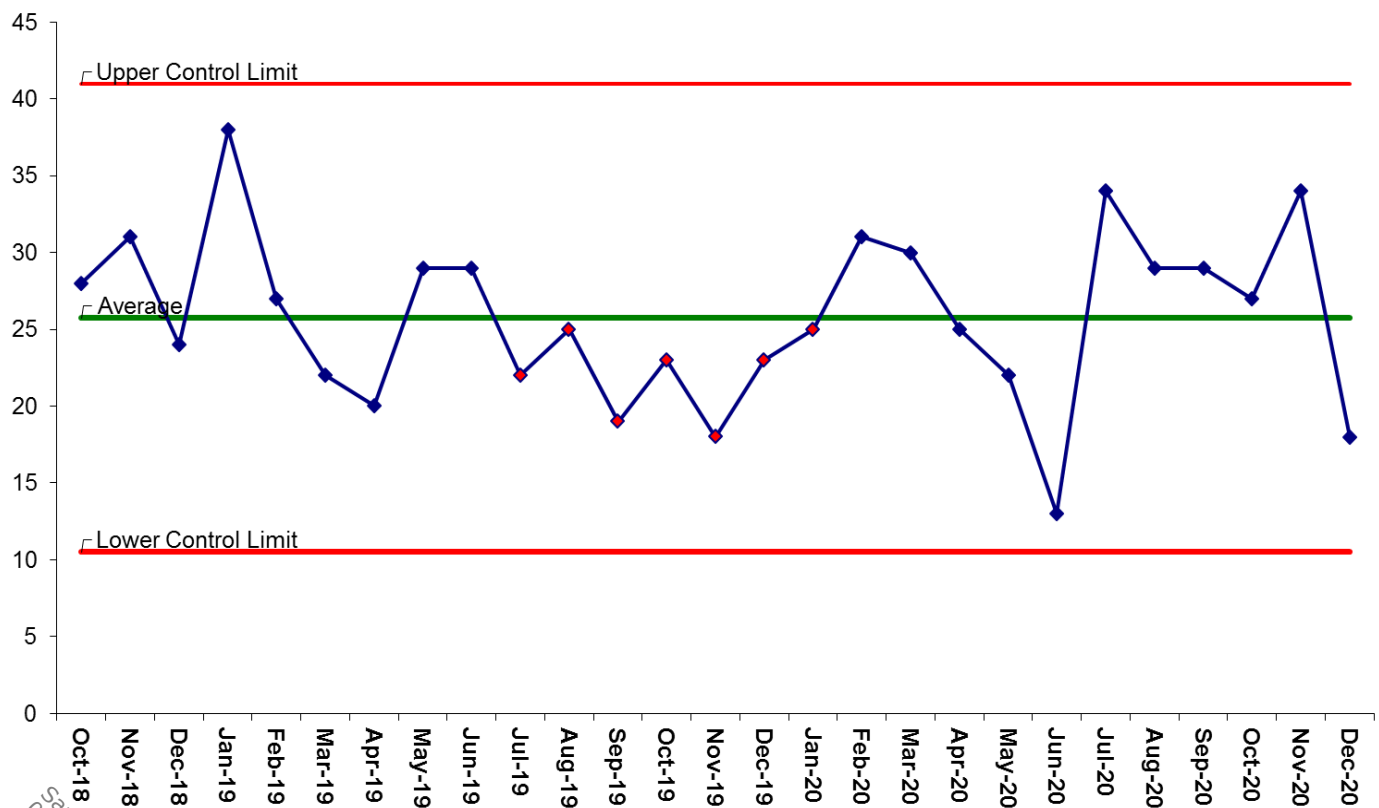
During the period the Mental Health Act Office made fifteen referrals to Advocacy Support Cymru where the patient was deemed not to have capacity make this decision. All fifteen referrals resulted in advocacy support at the hearing. On six occasions an advocate was instructed by the patient.

## Mental Health Review Tribunal (MHRT) for Wales

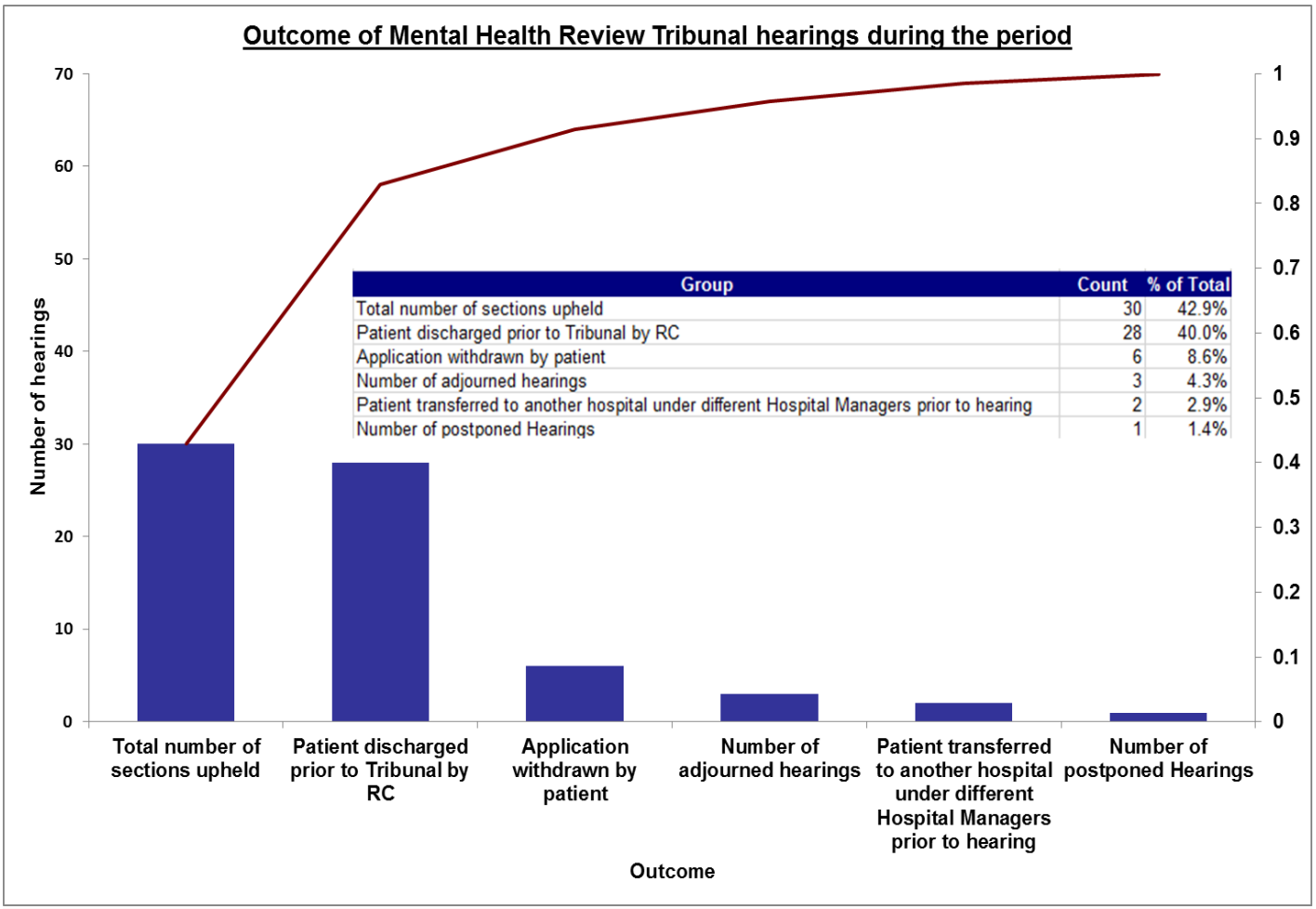
### Source of applications to the Mental Health Review Tribunal during the period



### Number of applications and referrals to the Mental Health Review Tribunal during the period



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Three hearings were adjourned for the following reasons:

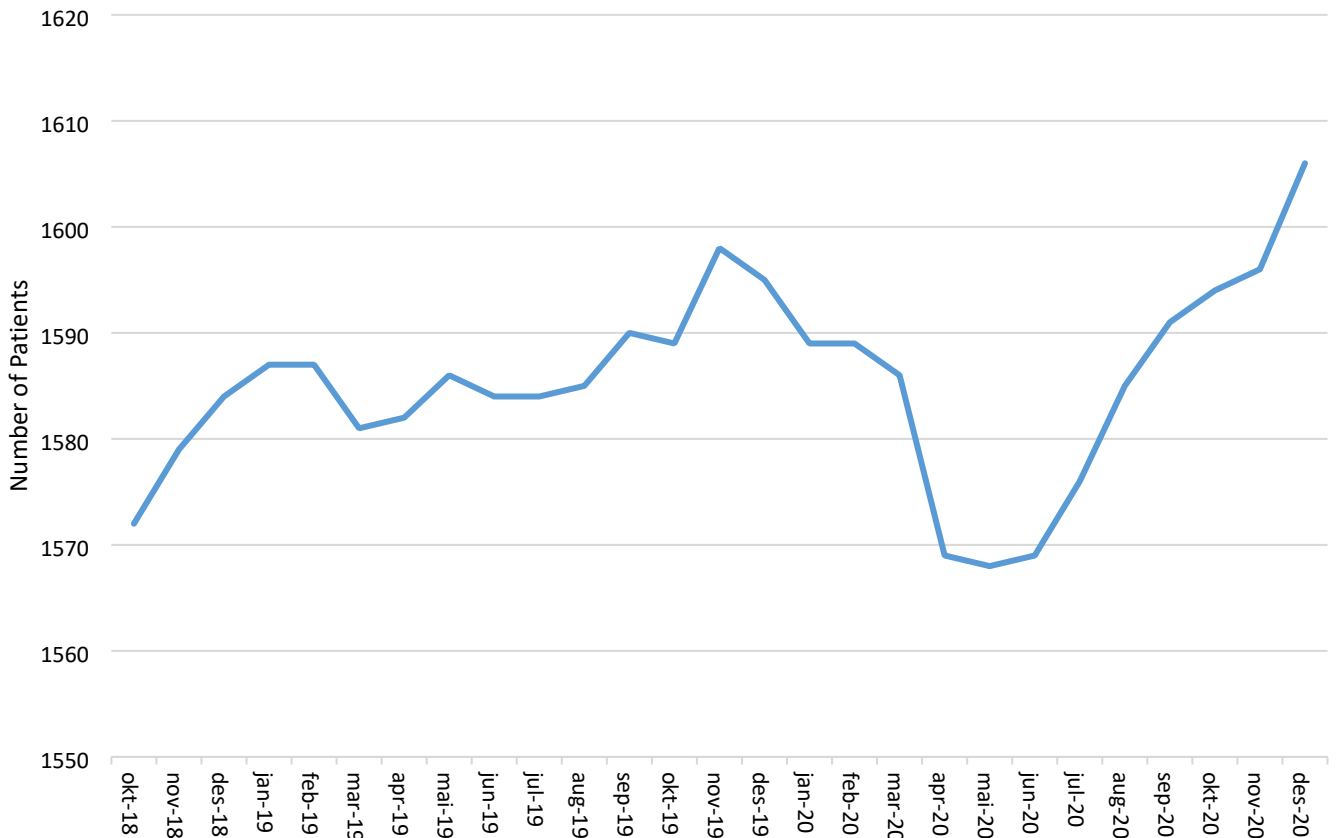
- Patient and nurse unable to attend
- Reports not received prior to hearing
- Legal Representative unable to access medical records and poor telephone service/reception

One hearing was postponed due to availability of phone lines in the Tribunal Office.

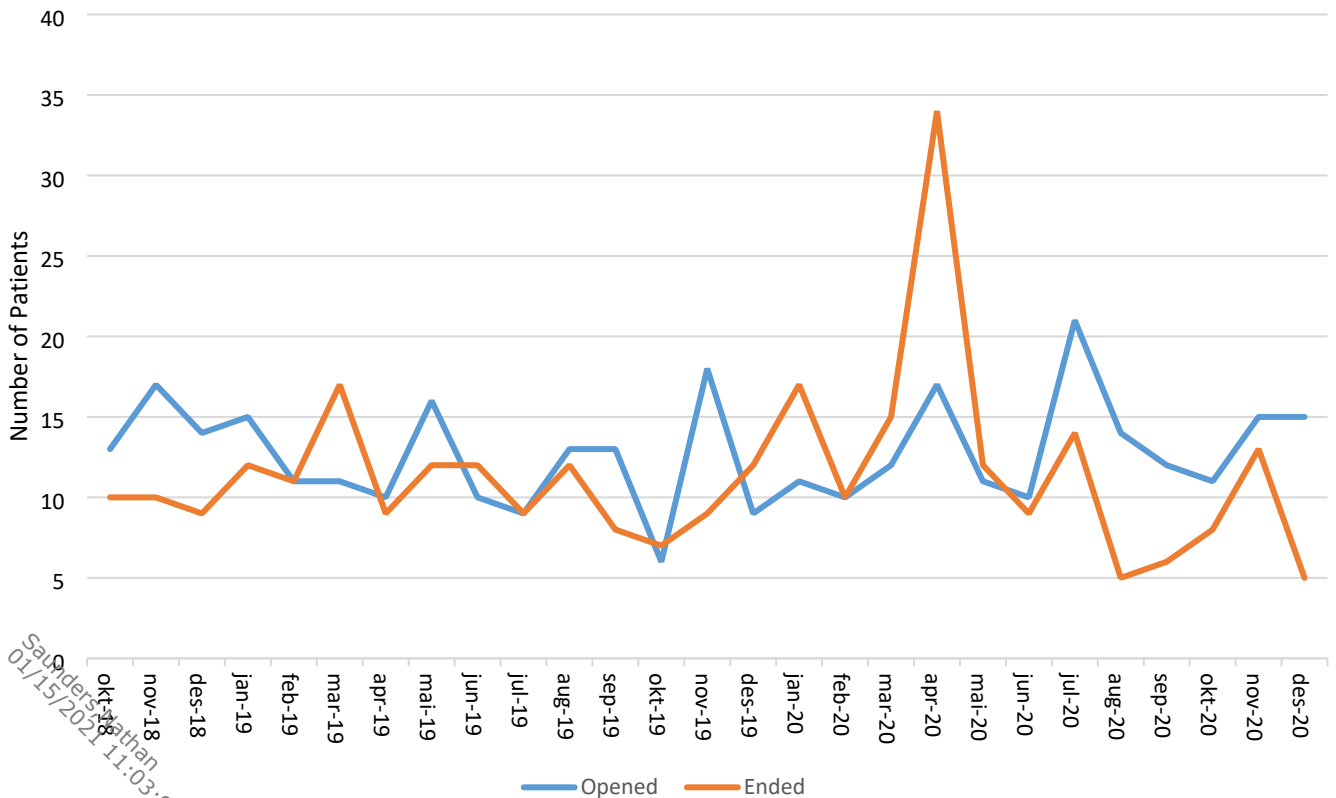
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## Section 117 Aftercare

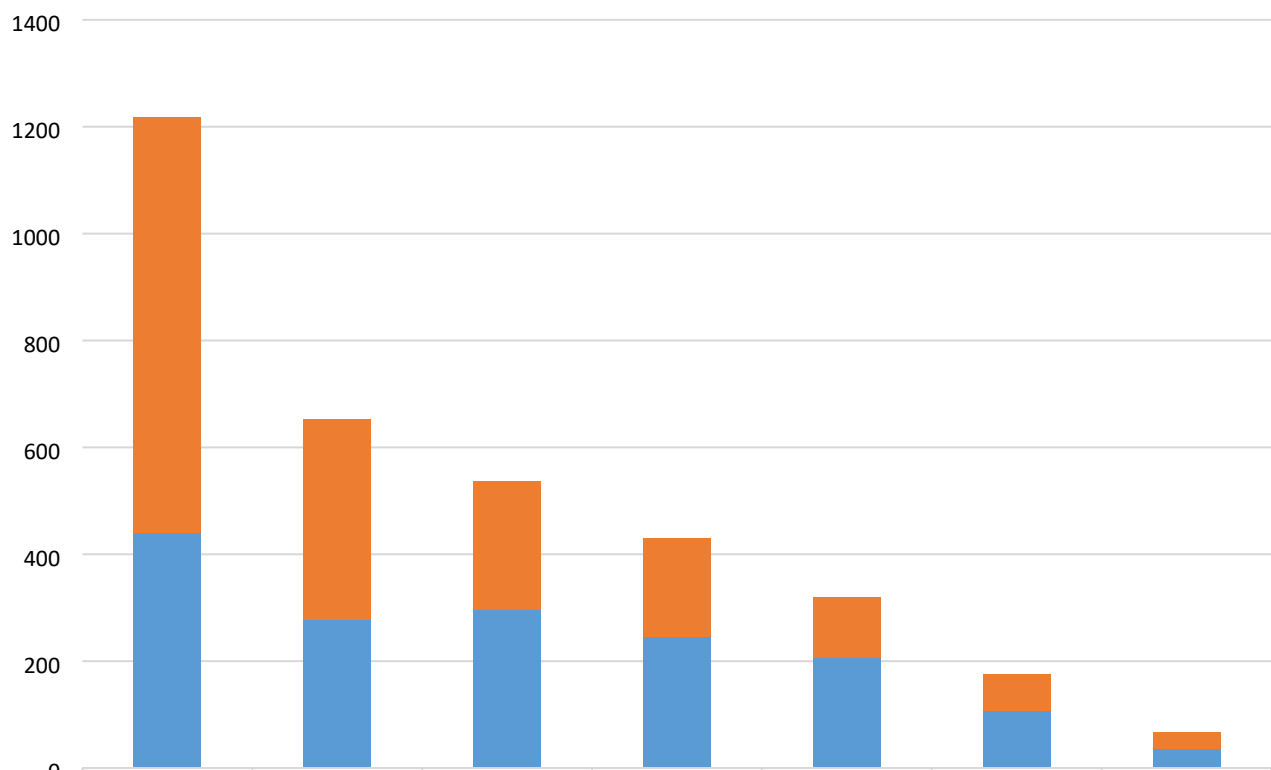
### Patients eligible for Section 117 aftercare



### Section 117 Activity



**Periods of time that patients remain eligible for Section 117 aftercare**



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01/15/2021 11:03:04

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

**October – December 2020**

### **Exclusion of visitors**

Due to COVID -19 there is no visiting allowed on any of our mental health wards at present.

### **Section 19 transfers to and from Cardiff and Vale UHB**

During the period:

- Twelve 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
  - Two to a specialist unit
  - Three to CAMHS
  - Six to a private PICU bed

Three 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:

- Two from PICU bed
- One to return to their home area

One patient subject to a Community Treatment Order under Part 2 of the Mental Health Act was transferred back to Cardiff and Vale UHB from a specialist placement.

### **Death of detained patients**

During the period there were no 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 01/15/2021 11:03:04</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"> <li>• An immediate and significant risk of mental or physical harm to the patient or to others</li> <li>• And/or the immediate and significant danger of serious harm to property</li> <li>• And/or the need for physical restraint of the patient.</li> </ul> <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"> <li>• The patient has no nearest relative within the meaning of the Act</li> <li>• It is not reasonably practicable to find out if they have such a relative or who that relative is</li> <li>• The nearest relative is unable to act due to mental disorder or illness</li> <li>• The nearest relative of the person unreasonably objects to an application for section 3 or guardianship.</li> <li>• 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</li> </ul> <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"> <li>• 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.</li> <li>• Where the patient fails to comply with the mandatory conditions set out in section 17B (3).</li> </ul>
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"> <li>• To make a hospital order under section 37 of the MHA 1983 which can be accompanied by a restriction order under section 41.</li> <li>• 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.</li> <li>• Order the absolute discharge of the accused.</li> </ul>
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 &amp; 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"> <li>• To save the patient's life</li> <li>• 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</li> <li>• 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</li> <li>• 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.</li> </ul>
<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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<b>Report Title:</b>	<b>Feedback on Committee Training Session and Review</b>					
<b>Meeting:</b>	<b>Mental Health and Capacity Legislation Committee</b>			<b>Meeting Date:</b>	19/01/21	
<b>Status:</b>	<b>For Discussion</b>		<b>For Assurance</b>		<b>For Approval</b>	
<b>Lead Executive:</b>	<b>Director of Corporate Governance</b>					
<b>Report Author (Title):</b>	<b>Head of Corporate Governance</b>					
	<b>For Information</b>					<b>x</b>

## SITUATION

The Committee's Terms of Reference are due for review and it was agreed that it would be valuable to undertake this exercise as part of a Committee Development Session which would also include up to date training on key legislation for the Committee.

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

The paper provides the Committee with a summary of the second Committee Development Session held on 2 December 2020.

The final session focused on the Committee Terms of Reference, function and patient involvement and took place on 13 January; the reviewed Terms of Reference are presented to this Committee meeting.

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

The Committee has a very clear role in advising the Board of any areas of concern relating to the UHB's responsibilities under mental health legislation, and provides assurance that the UHB is discharging its statutory duties under the relevant legislation.

The Committee Development Sessions have been designed to provide Committee members with up to date training around the relevant legislation and provide an opportunity for consideration of the existing Terms of Reference and discussion around any changes that may be required.

The second session was well attended by Committee members, UHB Executives and a service user. The session was devoted to the remaining key areas of legislation i.e. the Mental Capacity Act 2005 (MCA), DoLS and Mental Health (Wales) Measure 2010.

The following points were made at the Development Session:

### MCA

- There has been a lack of clinical understanding of the MCA;
- There is not currently a mechanism in our system to flag if there is a POA / Deputyship in place;

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- How do we let people know about their ability to make an Advanced Decision - template is available on the intranet;
- Training and POA statistics could be brought back to inform the Committee;
- CPNs are keen on treatment plans but there is little mention of Advanced Decisions.

#### Mental Health (Wales) Measure

- Targets are being met but it would be good to consider where we place import, the linkages between guiding principles and what we are measuring, the narrative link in what is being scrutinised;
- Can we report targets in a way that reflects what is happening and is understandable to the public;
- The real detail comes out through audit of data, there can be a Care and Treatment Plan in place but what is its quality;
- There is no domain for carers or drug and alcohol use in the Care and Treatment Plan;
- Valuable to work with the team to consider the nuance in what we receive.

#### RECOMMENDATION:

The Committee is asked to:

**NOTE** the summary of the second Committee training session.

#### Shaping our Future Wellbeing Strategic Objectives

*This report should relate to at least one of the UHB's objectives, so please tick the box of the relevant objective(s) for this report*

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		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	x
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, click [here](#) for more information*

Prevention	x	Long term	x	Integration	x	Collaboration	x	Involvement	x
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**Equality and Health Impact Assessment**

Not Applicable

Completed:

Kind and caring  
Caredig a gofudog

Respectful  
Dangos parch

Trust and integrity  
Ymddiriedaeth ac uniondeb

Personal responsibility  
Cyfrifoldeb personol

CARING FOR PEOPLE  
KEEPING PEOPLE WELL



GIG  
CYMRU  
NHS  
WALES

Bwrdd Iechyd Prifysgol  
Caerdydd a'r Fro  
Cardiff and Vale  
University Health Board



NHS  
WALES  
GIG  
CYMRU

Bwrdd Iechyd Prifysgol  
Caerdydd a'r Fro  
Cardiff and Vale  
University Health Board

Attachment 1

**MINUTES OF THE MEETING OF THE MENTAL HEALTH ACT HOSPITAL  
MANAGERS POWER OF DISCHARGE SUB COMMITTEE HELD AT 10 AM ON 27  
OCTOBER 2020 VIA SKYPE**

**Present:**

Jeff Champney-Smith  
Elizabeth Singer  
Michael Imperato  
Alan Parker  
Alex Nute  
Carol Thomas  
Dr John Copley  
Huw Roberts  
Mair Rawle  
Mary Williams  
Mike Lewis  
Patricia Hallett  
Peter Kelly  
Sarah Vetter  
Sharon Dixon  
Teresa Goss  
Wendy Hewitt-Sayer

Chair, PoD Group  
Vice Chair, Pod Group  
Independent Member - Legal  
PoD member  
PoD member  
PoD member  
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PoD member  
PoD member  
PoD member

**In attendance:**

Simon McDonald  
Sunni Webb

Mental Health Act Deputy Manager  
Mental Health Act Manager

**Apologies:**

Amanda Morgan  
John Owen  
Rashpal Singh

PoD member  
PoD member  
PoD member

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## 1 Welcome and Introductions

The meeting was held via Skype and the Chair welcomed all to the meeting.

## 2 New Members and Independent Members

There were no new members.

## 3 Apologies

All apologies were received and noted.

## 4 Members points for open discussion

Two matters were raised by members:

- **Fourth Member** – There was a lengthy discussion regarding the role of the fourth member. Although essentially introduced because of concerns that some of the home connections were unstable this hasn't proved to be a problem since all members are using laptops provided by the Health Board. On two occasions the fourth member had been used to provide a majority decision, one resulting in the discharge of a patient. However, on another occasion the fourth member hadn't been canvassed for their view and the hearing was adjourned. A vote indicated the majority of members wished to see the continuation of the fourth member. It was generally agreed that the fourth members should be fully involved in discussions at the start of the Hearing in the event that they needed to step in. However, there was no consensus as to whether the fourth members should be involved in the signing off of the minutes or whether they should be visible throughout the Hearing. Currently, there was no consistency on the use of the fourth member across Hearings. The Chair agreed to develop a position paper to reflect the discussions and members would be invited to comment.

***Action – Chair to develop position paper***

- **Members log in time prior to a Hearing** – After a brief discussion it was agreed that the log in time prior to a Hearing would be 30 minutes rather than the current 45 minutes.

***Action – MHA Office to adjust process***

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## 5 Minutes of Meeting held on 4th August 2020

These were agreed as an accurate record of the meeting with the following amendments:

- Patient's written statement - replace the words an other with another and sort with sought
- Relatives attendance at Hearing (first bullet point) insert the word has before been
- Laptop damage insert the word it after replace

### ***Action – MHA Deputy Manager to make amendments***

Members agreed that in future they would be asked to confirm the accuracy of the minutes after they were sent out to ensure any errors were corrected prior to them being sent to the other Groups/Committee.

### ***Action – All***

## 6 Matters Arising

- **Patient written statement** – The chair informed the meeting that this matter had been referred to MHLGG and he was still awaiting a response. In the meantime, as patient has a right to speak to the panel privately, they should also be able to provide a written statement without an obligation to share with the professional team.
- **Action – All**
- **Disclosure of reports to the Nearest Relative** – the MHA Manager confirmed that it was entirely up to the patient whether information is to be shared with the Nearest Relative. Even when a Barring Application is made by the Nearest Relative they are not entitled to receive the written reports if the patient has refused to consent to information being shared.
- **Relatives attendance at a hearing** – the Chair reminded the meeting that this issue had been raised in respect of a patient without capacity and that currently the advice being given under the Mental Capacity Act conflicts with the guidance contained in the guidance within the Mental Health Act 1983 Code of Practice for Wales Revised 2016. Until resolved each Hearing must make an assessment based on the following:

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- If a best interest assessment been completed what was the outcome? The Panel should proceed on the basis of that outcome.
- If there is no Best Interest Assessment the relatives can be invited into the Hearing at the discretion of the Panel. They should be advised that they may be excluded if they are disruptive or the Hearing could be adjourned.
- At the discretion of the Panel the evidence of the family could be heard at the start of the Hearing. The meeting would then proceed with just the Nearest Relative.

The panel to make the best judgement at the time. PoD members to notify the Chair/MHA Manager if there are any issues.

***Action – Chair and PoD members.***

- **Acoustics in the meeting and tribunal suites** – This is in hand and will be funded by the Covid monies. The deputy MHA Manager was arranging for a firm to attend the hospital in order to provide a quote.

***Action Deputy MHA Manager to take forward***

- Hearings in Welsh- The MHA Manager reported that none of the current PoD members had informed her that they could speak Welsh. Should a patient ask for their Hearing to be conducted in Welsh the MHA Office will requested help from neighbouring Health Boards.

***Action – MHA Office if the situation arises***

- **Digital Data Protection** – Members were asked to ensure their laptops were password protected and to let the Deputy Mental Health Act Manager know when this had been completed.

***Action – PoD members***

- **Holding a Hearing S3 to CTO.** – The MHA Manager confirmed the arrangements when a patient was transferred from a Section 3 to a CTO.
- **Future Venue for Business Meetings** – Once it becomes possible for the PoD committee to meet in person then venues other than Hafan Y Coed will be sought. The meeting in January is likely to be via SKYPE.

***Action – MHA Manager***

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- **Template-** This having been discussed at the last meeting it was agreed that there was no longer a need for one.
- **Reply All** – training to be held after the meeting for those managers who feel they would benefit.  
**Action** – Deputy MHA Manager and PoD members
- **Mental Health Act Monitoring** – ASC - since the use of advocacy services had returned to baseline levels no further action required.
- **Mental Health Act Monitoring** – MHRT - since the number of MHRT had returned to baseline levels no further action required.
- **Concern response** – further to the last meeting a response had been forthcoming from the ward manager that wasn't entirely satisfactory. It was further discussed as to whether a primary ward nurse had sufficient authority to ensure the CTP was acted upon. MHA manager agreed to discuss with Mark Warren.

**Action – MHA Manager**

- **Training** – funding for the all Wales training had been secured for 2021. MHA Manager considering booking the event for April. TBC.

**Action – MHA Manager**

- **Annual Review** – the Chair provided a summary of the work to date and the membership of the working group. A paper had been attached and PoD members were invited to feedback their comments. The Chair will arrange a further meeting so that we can progress a new approach to the annual review process. The MHA manager had introduced a questionnaire for patient feedback. The information will be used to improve the patient's experience and it was agreed that the PoD business meeting will be further appraised of developments.

**Action – MHA Manager**

## **Virtual Managers Hearings**

- **Laptops** – nothing further to add

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- **Protocols** – these had been updated and circulated to PoD members
- **General Discussions** – there was a general discussion amongst Panel Members. The MHA staff were commended for their actions over what had been a difficult year to date. To date all Hearings had been held within time and patient's rights upheld.

## 8 MHA Activity Monitoring Report

The activity was noted for both the Managers Hearings and the Mental Health Review Tribunal for Wales. Activity is broadly in line with previous quarters. All referrals to advocacy from the MHA office had resulted in the patient being represented at either Tribunal or Manager's Hearings.

## 9 Concerns/compliments from Power of Discharge group Hearings

These were noted. The Chair remained dissatisfied with the response given to a concern regarding the CTP. This is being escalated to Mark Warren.

### **Action MHA Manger**

PoD members noted the quality of recent Social Workers Reports. PoD members are encouraged to make use of the compliment section to feedback to the teams.

### **Action – All**

**Feedback Analysis 2019/2020** – The paper was noted. The quality of the CTP were the most common reason for Panels raising a concern. There was a training programme in place now and it was hoped improvements would soon be seen in the quality of the CTP. The Chair continues to raise the issue at MHLG.

### **Action – All**

## 10 Committee and Sub-Committee Feedback

**Mental Health Legislation and Governance Group** – there is nothing to feedback.

**Mental Health and Capacity Legislation Committee** – the chair confirmed the funding provided for training on the writing on care plans

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## **11 Training**

Training is suspended until the group was able to meet in person. Unconscious bias training will be held next year, probably on line with small groups. The MHA Manager was asked to find out whether Members would be exempt if they undertook this in other institutions. This will be mandatory training for all members.

***Action – MHA Manager***

## **12 Any Other Business**

**Introduction of Teams** – this is to go ahead. The MHA office will arrange some practise sessions. Reassurance that skills were transferable from SKYPE.

## **13 Date and time of next meeting**

To be held at 10:00 hrs on 26th January 2021, venue to be confirmed.

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**Minutes of the Mental Health Legislation and Governance Group held at 10:00 on 17th December 2020 via Microsoft Teams**

**Present**

Robert Kidd	(Chair) Consultant Forensic Clinical Psychologist
Jeff Champney-Smith	Chair of the Power of Discharge Group
Sunni Webb	Mental Health Act Manager
Simon McDonald	Deputy Mental Health Act Manager
David Seward	Mental Health Act Team Lead
Bianca Simpson-Lepore	Mental Health Act Admin Team Lead
William Adams	Specialist Liaison Nurse
Julia Barrell	Mental Capacity Act Manager
Keri Lovell	Team Leader CAMHS Liaison Team
Lynda Woodley	Operation Manager (OM) Vale
Emma Powderhill	Crisis Team Leader
Mary Lawrence	Approved Clinician Representative

**Apologies**

Emily Harrington	Consultant psychiatrist
Simon Amphlett	Senior Nurse Manager Liaison Services
Mark Warren	Director of Nursing in Mental Health
Katie Fergus	Consultant Psychiatrist in Rehabilitation Services
Charles Janewski	Vice Chair, Cardiff and Vale University Health Board
Matthew Russell	Operational Manager (OM) Cardiff
Jane Jones	Clinical Lead Child and Adolescent Mental Health Services
Alex Allegretto	Independent Mental Health Advocacy Manager
Mike Ivenso	Consultant Mental Health Services for Older People
Adeline Cutinha	Consultant Adult Mental Health Services
Suganda Kumar	Consultant Psychiatrist

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## **1 Welcome and Introductions**

The chair welcomed members and those in attendance especially those from outside of the Mental Health Clinical Board and external agencies.

## **2 Apologies for Absence**

Apologies were accepted and noted.

## **3 Minutes of meeting held on 10th September 2020**

The MCA manager queried whether she had given advice at the previous meeting to say non capacitous patients NR's could not attend hearings. She agreed to submit what she believes is the correct description of the meeting to the minute taker to amend accordingly.

## **4 MHA Activity July - Sept 2020**

### **Virtual Meetings**

The chair of the panel feels that since moving online for these meetings it's much easier for attendees to scrutinise the monitoring reports. The Committee is keen for this group to thoroughly scrutinise these reports

### **Exceptions Report**

The MHA Manager walked the group through the exceptions report. Item of note were;-

### **Number of patients detained under MHA vs not detained under MHA**

The Mental Health Act Manager informed attendees that 51% of patients on our wards are detained under the Mental Health Act and the remainder are either informal or are detained under another piece of legislation (as of the date that the PARIS report was created). There were no fundamentally defective detentions during the quarter.

### **Section 136 – Harm to Self**

The group discussed the issues the health board are having with regard to recording whether the level of self harm in Section 136 patients may have increased. There doesn't appear to be a consistent way of recording this between the police forms being either paper or online and the Welsh Government pro-forma recording self harm in slightly different ways again. There will be a meeting convened in early 2021 between our deputy Mental Health Act manager and our police liaison officer. Hopefully these issues can

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be improved upon

***ACTION – Deputy MHA Manager to follow up***

### **Section 136 – CAMHS**

The use of Section 136s on CAMHS patients has increased but this is due to the same patients being detained repeatedly. This is often the case with increases in CAMHS Section 136's.

### **Voluntary Assessments**

The use of voluntary assessments is still not being recorded properly which was of concern to all those present. The online police form should be completed by officers every time they bring somebody to hospital for a MH assessment.

### **Section 62**

The use of Section 62 emergency treatment has reduced significantly since the Covid Pandemic as SOADs are now conducting assessments remotely, which has reduced delays in certificates being completed. We are currently unaware of whether face to face consultations will be reintroduced after the pandemic. The Mental Health Act manager queried whether remote consultations were robust enough given that the consent to treatment rules are there to provide a safeguard to service users. The consultant representative felt that this will largely be down to the SOAD themselves and how conscientious they are. In this way the service is no different to when it was face to face. The group were informed that the new process has created more work for the Mental Health Act Office. The consultant representative did agree to take these concerns back to the consultants group and feedback to the next meeting.

***ACTION – Consultant Representative to gain feedback from the Consultants Group.***

### **Rights**

The number of service users discharged without their rights being read has decreased but the Mental Health Act Office will continue to monitor this. Community Treatment Order rights being read was highlighted as an area of concern and the attendees were informed that this has been raised to Tara Robinson and Phillip Ball who will hopefully help to ensure rights are read with CTO patients on a regular basis.

***ACTION – Chair to arrange meeting with Adult Directorate community quality and safety to be arranged to ensure improvements with CTO rights are made.***

### **Fundamentally Defective Applications**

There were no fundamentally defective detentions the last quarter but there will be one during October- December statistics. This was caused by the lack

of available conveyance.

## **Training**

The Mental Health Act Team Lead continues to build on the health boards training package and so far training has been provided to new shift coordinators and band 6's. It is hoped this will be rolled out to band 5's soon. The training rota is sent to senior management to disseminate to relevant staff. Training is as interactive as possible and the positive feedback received afterwards is sent to the committee.

It was agreed that if attendees of the MHLGG could read the papers well in advance of the meeting this would be advantageous in terms of highlighting areas within the report to be further discussed in the exception report.

## **5 Matters Arising**

### **CAMHS Data Control Charts**

Control charts have now been included so this agenda item can be removed going forward. The chair of the meeting queried whether if the reason why CAMHS data had increased was due to the same person presenting repeatedly, then this could be highlighted. The use of control charts in the CAMHS data is being reviewed. The police use 1 month as far as monitoring repeated detentions. The chair suggested we use the same time scale to provide us with parity. We were informed that Claire Humphries is working on a report on CAMHS patients who were then admitted, it was suggested it may be useful for the Mental Health Act Manager to link in with her.

***ACTION – Deputy Mental Health Act Manager to include in the data set***

### **Voluntary Assessment data**

As the date isn't being collected properly at present we don't know how many people are being brought in for voluntary assessments. The Mental Capacity Act manager voiced her concern that it should be made clear to people brought here voluntarily that they are free to leave at any point. She and others present felt that even though that is true for people in that situation, the reality is that they may find it difficult to make such a decision in front of figures of authority. When brought in voluntarily the police are free to leave once the patient has been safely brought to hospital; this is unlike when a person is detained under a section 136 and there was suggestion that voluntary assessments were being used for this purpose. There are times when tracking a patients journey through hospital has become a significant challenge. The alternatives to taking someone to HYC are deemed to potentially be risky and inappropriate. As there was no police representative present the group was unable to ascertain their views on this matter.

***Action – Deputy MHA Manager emergency unit meeting to be re-set up***

### **Information to detained patients**

Data regarding this has been included in the papers for the meeting and there will now be a push for CTO rights to be looked into vigorously.

### **Duty psychiatrist**

There was some discussion in regard to when the clock started/ stopped ticking for the on duty psychiatrist/ AMHPs. The consultant representative informed the group that when on duty, psychiatrists don't plan any routine work and should therefore be available for MHA assessments. CMHT's will try and see their own patients but this isn't always possible. There isn't a blanket rule with regard to the clock ticking, it should be worked on a case by case basis. This item can be removed from the agenda.

### **Silver on Call training**

No progress as yet, to be kept on the agenda

### **Action – Chair to continue to follow up**

### **Care and Treatment plans**

There are two items which will hopefully improve the quality of Care and treatment plans going forward. Staff members have received Care aims training, and a more open dialogue with service users is being encouraged. Coupled together the chair of the PoD group and others are looking forward to seeing an improvement in the written care plans so that they match the verbal updates they often receive at hearings. This item is ongoing and should be kept on the agenda.

## **6 Feedback on operational issues and incidents**

### **Covid**

Virtual hearings are going well. The Mental Health Act Manager is investigating how these are impacting on service users/ their nearest relatives. The reserve panel member is being dropped as of January 2021.

The Mental Capacity Act manager confirmed that the health board are still receiving court orders on various matters but she is unsure of whether the closure of care home is making any difference.

AMHP's feel they have adequate guidance when conducting face to face assessments. The small number of AMHPs, especially in the Vale of Glamorgan could become a resource issue.

### **Information to detained patients**

Discussed earlier in the meeting

### **SI Review**

There have been two serious incident reviews. Both service users are deceased and therefore were reported to Welsh Government. Improvement plans have been made and disseminated to the relevant professionals. The

first incident surrounded risk assessments not being up to date or available for patients not admitted and with capacity and there being no alert on PARIS for patients subject to Section 117. Will Adams has contacted PARIS to try and resolve this but the MHA Deputy Manager agreed to investigate this further as he believed the automatic report should already have been in place. Risk assessments are an ongoing issue.

***ACTION – Deputy MHA Manager to investigate the lack of s117 alert***

***ACTION – Specialist Liaison Nurse to send closure form to Welsh Government***

The second incident was in relation to a Section 136 assessment for a service user that was not detainable. The service users proceeded to take their own life once discharged. The assessors didn't query whether they could contact the patient's family prior to discharge and it was queried whether there is a routine set of questions asked at 136 assessments. The operational manager for the Vale didn't feel there was set questions at each assessment but confirmed she would take this incident back to the AMHPs to learn from it.

### **Repeat s136 admissions**

The group discussed repeat s136 admission, and whether PARIS could alert us to these so that they could be identified at the time of assessment. South Wales Police classify a repeat as within a month, ie 28 days. It was decided that the UHB would use the same timescale for parity. The group were informed that Natalie Williams is reviewing the use of s136.

***ACTION – MHA Manager - Natalie Williams to be invited to the next meeting***

***ACTION – Deputy MHA Manager to ask Paris team if this was possible***

### **Transport issues**

Conveyancing has been an ongoing issue for a long time. The operational manager has recently spoken to the COO ( Steve Curry) and it is hoped that progress with shortly be made with St Johns ambulance having been approached again to see if there is any help they can provide. There is no time frame set for this but there is positivity that the correct people have now been communicating to improve the current situation. There was recently a Care Inspectorate Wales inspection in the health board which may explain why progress is now being made.

### **CAMHS RC issue**

This is still being worked on- Dr Jane Jones is taking a lead on this.

### **Digital signatures**

No substantial progress made - still in testing.

### **Feedback from other meetings**

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## **AMHP Forum**

No feedback

## **Consultants Meeting**

There is an ongoing query in regard to whether patients can be discharged from a CMHT but still be eligible for 117. It's believed the clinical director has queried this with Richard Jones but the Mental Health Act manager will chase this up. It was also confirmed that a person can be discharged from 117 if they have moved away and reasonable attempts have been made to contact them.

***ACTION – MHA Manager and Deputy MHA Manager to investigate legal advice around s117 discharge***

## **Power of Discharge Group**

No feedback

### **8 Power of Discharge Group comments/ compliments and feedback- July-September 2020**

PoD Comments/ compliments- PoD will continue to comment on grammatical errors if they feel it impacts of the accuracy of reports.

Police power upon discharge- cuckooing was highlighted as a potential problem and this is being looked into as the person involved potentially lacked capacity. The response from the police will be discussed.

### **9 External Reviews**

No reviews have taken place.

### **10 Interface MHA/MCA/DoLs:**

#### **Review of the Mental Health Act**

The Government white paper on these is due to be released in the new year.

#### **MHA/ MCA/ Suicide meetings**

This needs to be reviewed and the action plan from the last face to face meeting chased up on. This involved EU staff as well as others. Practical issues discussed with regard to assessing capacious people and then subsequent discharges. EU staff worried about capacious people with risky behaviours and whether they are deemed detained under the MHA 1983.

***ACTION – Chair to chase for action plan from meeting.***

### **11 Quality indicators and audit activities**

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This will be discussed with Dr Neil Jones- there is some auditing at present but it is not consistent. This item should be kept on the agenda.

***ACTION – Chair to follow up.***

## **12 Any other business**

### **Section 136 Powers in a hotel**

The north Wales bulletin was shared with the group. The crisis team lead queried what the definition of temporary may be. The MCA manager felt that the purpose of using a hotel should be used accounted for rather than the time a person is there. The deputy mental health Act manager agreed to look into this with the police.

### **Pharmacy**

An issue has arisen with pharmacists being recognised as statutory consultees who don't know patients sufficiently well. RC's don't always approach statutory consultees beforehand but this will be discussed with other RC's.

***ACTION – The Approved Clinician representative to take to the Consultants Group***

### **S136 Emergency Unit Place of Safety**

A meeting with the police has been arranged for 4th January 2021 to discuss the place of safety issue. The health board's position will not change in that the Emergency Unit is not automatically a Place of Safety.

## **13 Date of future meetings**

11 March 2021

08 July 2021

07 October 2021

06 January 2022

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<b>Report Title:</b>	<b>Corporate Risk Register</b>					
<b>Meeting:</b>	Mental Health Capacity and Legislation Committee			<b>Meeting Date:</b>	19/01/2021	
<b>Status:</b>	<b>For Discussion</b>	✓	<b>For Assurance</b>	✓	<b>For Approval</b>	<b>For Information</b> ✓
<b>Lead Executive:</b>	<b>Director of Corporate Governance</b>					
<b>Report Author (Title):</b>	<b>Head of Risk and Regulation</b>					

### 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 and has, since November 2019, been shared with the Board at its Private meetings. The Register has historically been shared in private to enable the Corporate Governance team to develop its content and embed the Health Board's Risk Management Procedure within the Clinical and Corporate Directorates prior to the risks being shared publically.

The Register includes those risks which are rated 15 and above and provides the Board and its committees with an overview of the Health Board's extreme Operational Risks.

A new Risk and Regulation Officer was appointed to the Corporate Governance Team in October 2020. Following that appointment the team have been able to further develop the register so that it will, from January 2021, be shared at Public Board meetings.

Each risk within the Register is linked to a Committee of the Board and the Board Assurance Framework. From January 2021 onward the risks allocated to each committee will also be shared at the public meetings of relevant committees.

The entries within the Corporate Risk Register which are linked to the Mental Health Capacity and Legislation Committee for assurance are attached at Appendix 1.

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

The Register will continue to develop over the following months and to kick start this process, the Risk and Regulation team have, since November's Board meeting met or communicated with all risk leads to review and amend (where appropriate) each risk recorded on the Register.

Alongside this process the Risk and Regulation Team have also introduced a Risk Management Training programme that is being delivered to risk leads across the Health Board. The intention of this training is to embed the Health Board's Risk Management Strategy and Procedure into everyday practice and to ensure that Clinical Boards and Corporate Directorates are able to describe and score risks in a consistent manner.

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

At November's Board meeting a total of 5 (from a total of 48) Extreme Risks reported to the Board were linked to the Mental Health Capacity and Legislation Committee for assurance purposes. The risks reported can be summarised as follows:

Risk Description Summary	Risk Score (1 to 25)
Nursing establishments and staffing levels - below the 60:40 registered to unregistered ratios for in-patient areas.	16
Poor quality of accommodation for community services bases at Park Road, Pendine CMHT, Gabalfa CMHT, Datt dispensing service and CAU on the CRI site.	20
Staff are exposed to persistently high levels of violence and aggression, particularly in in-patient care.	16
Poor WAST response to MH services with conveyancing of 1) detained patients to hospital from community and 2) transferring medically unwell patients on the UHL site from MH to Physical health facilities	20
Risk to the health and wellbeing of a minor inpatient following admission to adult mental health services	25

Following November's Board meeting the Risk and Regulation met with the Director of Operations for Mental Health to review the scoring of these risks so that they, and other non-extreme risks, were congruent with the Health Board's Risk Management Policy and scoring matrix.

Following those discussions revised Register entries were agreed which are attached at Appendix 1. A summary of the revised entries is as follows:

Risk Description Summary	Revised Score (1 to 25)	Trend following review:
Nursing establishments and staffing levels - below the 60:40 registered to unregistered ratios for in-patient areas.	12	Down
Poor quality of accommodation for community services bases at Park Road, Pendine CMHT, Gabalfa CMHT, Datt dispensing service and CAU on the CRI site.	12	Down
Staff are exposed to persistently high levels of violence and aggression, particularly in in-patient care.	12	Down
Poor WAST response to MH services with conveyancing of 1) detained patients to hospital from community and 2) transferring medically unwell patients on the UHL site from MH to Physical health facilities	15	Down
Risk to the health and wellbeing of a minor inpatient following admission to adult mental health services	20	Down

Those Register entries scored below 15 will be removed from the Register following January's Board Meeting and will be managed locally thereafter. Whilst 'extreme' Mental Health risks continue to be noted on the Register, it is pleasing to note that the risks included on the Register have reduced (with appropriate scoring).

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 Clinical Boards and the Corporate Directorates regarding the scoring of risk.
- The programme of education and training that will be rolled out by the Head of Risk and Regulation to ensure that the Health Board's Risk Management policy is engrained and followed within Clinical Boards and Corporate Directorates.

**RECOMMENDATION**

The Committee is asked to:

**NOTE** the Corporate Risk Register risk entries linked to the Mental Health Capacity and Legislation Committee and the work which is now progressing.

Shaping our Future Wellbeing Strategic Objectives									
This report should relate to at least one of the UHB's objectives, so please tick the box of the relevant objective(s) for this report									
1. Reduce health inequalities			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 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						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						
Five Ways of Working (Sustainable Development Principles) considered									
Please tick as relevant, click <a href="#">here</a> for more information									
Prevention	x	Long term		Integration		Collaboration		Involvement	

Equality and Health Impact Assessment Completed:	Not Applicable
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CORPORATE RISK REGISTER NOVEMBER 2020

Clinical Board/Corporate Directorate	Risk Reference	Date risk added	Risk	Initial Risk Rating			Controls	Current Risk rating			Actions	Target Risk rating			Date of next review	Assurance Committee	Link to BAF
				Consequence	Likelihood	Total		Consequence	Likelihood	Total		Consequence	Likelihood	Total			
Mental Health Clinical Board	1	Nov-11	<b>MHSOP Nursing Staff Recruitment</b> There are significant challenges to the recruitment of registered nurses in MHSOP. This results in nursing staff levels below the 60:40 registered to unregistered ratios for in-patient areas and creates a necessary diversion of ward managers role in order to cover ward shift work. This creates a risk of inadequate registered nursing supervision of care. There are potential adverse impacts on patient safety and quality of care, and regulatory non-compliance (EWT Directive).	4	4	16	Rolling recruitment of registered and unregistered staff. ADP for registered staff. All Wales pilot of nursing workload and professional judgement tool. MHSOP bed reductions in progress in line with RCP National benchmarking. Staff cover continuously risk assessed to minimise impact on patient safety. Nursing observation prescription in MHSOP under review. Recruitment effort to Northern Ireland	4	3	12	Business case to UHB for 'perfect safe staffing ward'	4	2	8	Dec-20	Mental Health and Capacity Legislation Committee	Workforce
	2	Jan-14	<b>Poor Clinical Environment</b> Accommodation for community services bases at Park Road, Pendine CMHT, Gabalfa CMHT, Datt dispensing service and CAU on the CRI site are in a deteriorating and potentially unsafe condition. This could adversely impact on safety of staff, service users, contractors and members of the public.	4	5	20	Maintenance efforts to slow the deterioration of the premises. Routine Health and Safety inspections and escalation of risks via corporate Health and Safety Meetings. Case accepted for inclusion in Health and Well Being Hubs for the CMHT bases with uncertain timescales. Alternatives sought by the clinical board for Park Road Housing which is limited by its 'ward in the community' status and no means of collaborating with a housing provider due to income.	4	3	12	Constant monitoring and escalation of condition	4	2	8	Dec-20	Mental Health and Capacity Legislation Committee	Capital Assets
	3	Jan-14	<b>Violence and Aggression</b> Staff are exposed to persistently high levels of violence and aggression, particularly in in-patient care. This risks physical and emotional injury with potential impact on staff safety, compliance with statutory duty and compensation.	4	4	16	All staff trained in accordance with the All Wales Passport scheme. Incident reporting encouraged where staff are exposed to V&A. Improved working with the Case Manager to secure prosecution where appropriate. V&A training team now increased to 10 trainers to ensure adherence to training standards. Pinpoint electronic response system in place to ensure prompt support from mental health teams. Information given to service users on admission with standards of behaviour explained. Service to explore the principle of 'seclusion' in 2020. Post incident support offered to staff.	4	3	12	Ongoing monitoring	4	2	8	Dec-20	Mental Health and Capacity Legislation Committee	Patient Safety
	4	Jan-20	<b>Patient Conveyancing</b> There is a poor (delayed) WAST response to MH services with conveyancing of 1) detained patients to hospital from community and 2) transferring medically unwell patients on the UHL site from MH to Physical health facilities. This risks rapid deterioration of patients' mental and/or physical symptoms with a potentially adverse impact on patients safety, quality of service and reputation.	5	4	20	Attempts made to performance manage WAST response with no improvement. Escalation of risks through local WAST meets. Use of costly private transport providers for most urgent and high risk cases.	5	3	15	Ongoing monitoring and escalation	4	2	8	Dec-20	Mental Health and Capacity Legislation Committee	Patient Safety
	5	Aug-20	<b>Young Person in Adult Mental Health Placement</b> Young person with complex needs required admission to adult mental health services as no suitable alternative available. There is a risk that the patient will be in a sub-optimal clinical environment which will adversely impact on the patient's safety and wellbeing. There is a further risk of staff having to act outside their competencies which may adversely impact on statutory duty and reputation.	5	5	25	Additional staff allocated to the care of the patient.	5	4	20	Safeguarding discussions ongoing with private care providers with no realistic placement available for the foreseeable future.	5	2	10	Dec-20	Mental Health and Capacity Legislation Committee	Patient Safety

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Cardiff and Vale  
University Health Board

# Mental Health Legislation and MentalCapacity Act Committee

## Terms of Reference

Reviewed by Committee: 19<sup>th</sup> January 2021  
Approved by the Board: 25th March 2021

CARING FOR PEOPLE  
KEEPING PEOPLE WELL



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Caerdydd a'r Fro  
Cardiff and Vale  
University Health Board



## 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](#) ~~Supervised Community Treatment (CTO/SCT)~~, the Hospital Managers are those of the hospital where the patient was detained immediately before going on to [SCT-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.

## 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 issues-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 to the Board 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

### 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, ~~etc~~ that the Committee deems appropriate.

**Commented [MOU1]:** This would include the training we have just done and inducting new members

#### 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.

- 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 [SCTCTO](#).

[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 four (4) 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.	

**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)
- Director of Corporate Governance
- Executive Nurse Director
- Clinical Board Director - Mental Health Clinical Board
- Director of Nursing - Mental Health Clinical Board
- Director of Operations- Mental Health Clinical Board
- Service users [and carers](#)

The Director of Operations – Womens 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.

**Commented [MOU2]:** There are others on the list who we felt should attend for some items e.g. primary care etc. I will open this up for discussion at the meeting of the committee

4.3. By invitation:

The Committee Chair may [also](#) 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.

**Commented [MOU3]:** Is this right?? Is it not the committee / chair who deernies?

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).

**Commented [MOU4]:** Same – is it not the committee Chair?

#### 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 Workforce and Organisational Development.

## 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.

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

## **9. REVIEW**

### **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.**

<b>Report Title:</b>	Draft Annual Report 2020/21 – Mental Health and Capacity Legislation Committee				
<b>Meeting:</b>	Mental Health and Capacity Legislation Committee			<b>Meeting Date:</b>	19.01.2021
<b>Status:</b>	<b>For Discussion</b>		<b>For Assurance</b>	<b>For Approval</b>	<b>For Information</b>
<b>Lead Executive:</b>	Director of Corporate Governance				
<b>Report Author (Title):</b>	Corporate Governance Officer				

### Background and current situation:

The purpose of the report is to provide Members of the Mental Health and Capacity Legislation Committee with the opportunity to discuss the attached Annual Report prior to submission to the Board for approval.

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.

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

The Committee has achieved an overall attendance rate of 100% and has met on 3 occasions during the year 2020/2021 (assuming full attendance at January's meeting). The Committee also met for three Committee Development Sessions in September and December 2020 and January 2021.

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

The attached Annual Report 2020/21 of the Mental Health and Capacity Legislation Committee demonstrates that the Committee has undertaken the duties as set out in its Terms of Reference.

### Recommendation:

The Mental Health and Capacity Legislation Committee is asked to:

- **REVIEW** the draft Annual Report 2020/21 of the Mental Health and Capacity Legislation Committee.
- **RECOMMEND** the Annual Report to the Board for approval.

### Shaping our Future Wellbeing Strategic Objectives

*This report should relate to at least one of the UHB's objectives, so please tick the box of the relevant objective(s) for this report*

Saunders Nathan  
01/15/2021 11:03:07



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, click [here](#) for more information

Prevention		Long term		Integration		Collaboration		Involvement	
<b>Equality and Health Impact Assessment Completed:</b>		Yes / No / Not Applicable <i>If "yes" please provide copy of the assessment. This will be linked to the report when published.</i>							

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Kind and caring  
Caredig a gofudgar

Respectful  
Dangos parch

Trust and integrity  
Ymddiriedaeth ac uniondeb

Personal responsibility  
Cyfrifoldeb personol



**GIG**  
CYMRU  
**NHS**  
WALES

Bwrdd Iechyd Prifysgol  
Caerdydd a'r Fro  
Cardiff and Vale  
University Health Board

# **Annual Report of Mental Health, Capacity and Legislation Committee 2020/21**

Saunders, Nathan  
01/15/2021 11:03:04

## 1.0 INTRODUCTION

In accordance with best practice and good governance, the Mental Health, Capacity and Legislation 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 2020/21 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) 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 three times during the period 1 April 2020 to 31 March 2021. This is in line with its Terms of Reference. The Mental Health, Capacity and Legislation Committee achieved an attendance rate of 100% x(80% is considered to be an acceptable attendance rate) during the period 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021 as set out below:

	21.07.20	20.10.20	19.01.21	Attendance
Eileen Brandreth	✓	✓	✓	100%
Akmal Hanuk	✓	✓	✓	100%
Michael Imperato	✓	✓	✓	100%
Sara Moseley	✓	✓	✓	100%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

## 4.0 TERMS OF REFERENCE

The Terms of Reference were reviewed and approved by the Committee on 19<sup>th</sup> January 2021 and are to be approved by the Board on 25 March 2021.

## 5.0 WORK UNDERTAKEN

During the financial year 2020/21 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 2019/20.

### PUBLIC MENTAL HEALTH, CAPACITY AND LEGISLATION COMMITTEE – SET AGENDA ITEMS

April 2020 - March 2021

## PATIENT STORY

The Patient Stories presented are as below:

1. In October 2020 a service user shared the story of their experiences using the Mental Health Services.
2. For January 2021 – **Patient Story information to be added following January 19<sup>th</sup> Meeting.**

## MENTAL CAPACITY ACT

At each meeting the Committee was provided with updates on the Mental Capacity Act 2005 (MCA) which has been in force for over 12 years and covers people aged 16 years and over. It 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 IMCA Procedure had been slightly revised which was approved by the Vulnerable Adult risk management working group.

- **Deprivation of Liberty Safeguards (DoLS)**

Updates were also provided on the Deprivation of Liberty Safeguards (DoLS) in regard to compliance. The Cardiff and the Vale DOLS / MCA team operate the Supervisory Body responsibilities of the Deprivation of Liberty Safeguards on behalf of Cardiff & Vale UHB, Cardiff City Council and the Vale of Glamorgan Council, through a Partnership Management Board consisting of senior representatives of each Supervisory Body.

At the October 2020 meeting the Committee was provided with updates on new legislation that will see Liberty Protection Safeguards replace DoLS with effect from April 2022.

## MENTAL HEALTH ACT

- **Mental Health Act Monitoring 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. In July 2020 the Committee was provided with an update on the number of people detained. The figures had risen slightly due to the ongoing COVID-19 pandemic

- **Child and Adolescent Mental Health Service**

In October 2020 the Committee was advised of care and treatment plan trends which incorporated the pressures of the COVID-19 pandemic and were provided with assurance on the parts of the Mental Health Measure applicable to children and young people (those aged <18). A report provided further assurance that compliance against 28 day referral to

assessment had been achieved and sustained since May. In August, the service achieved its compliance target for the first time in 16 months and the position was sustained in September. The service continues to monitor their capacity for the delivery of interventions.

## **MENTAL HEALTH MEASURE**

### **• Mental Health Monitoring Report**

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.

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 introduced 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. Parts 1 to 4 of the measures relate as follows:

- Part 1a – 28 day referral to assessment compliance target of 80%
- Part 1b – 28 day assessment to intervention compliance target of 80%
- Part 2 – Care and Treatment Planning Within Secondary Mental Health Services
- Part 3 - Right to request an assessment by self –referral
- Part 4 – Advocacy – standard to have access to an IMHA within 5 working days

The committee was also presented with a report on the parts of the mental health measure application to children and young people under the age of 18.

### **• Care and Treatment Plans**

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.

In January 2021 the Committee was 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.

### **• Policies / Procedures**

1 policy and 1 procedure were approved by the Committee as follows:

1. July 2020 - Joint Section 117, Mental Health Act, 1983, Policy and Procedure
2. October 2020 - The Independent Mental Capacity Advocacy procedure

### **• Committee Governance**

Reports submitted to the Committee for review and approval:

1. Committee Self-Assessment: an overview of the findings arising from the self-assessment
2. Committee Annual Report 2020/21

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3. Committee Terms of Reference
4. 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
3. Annual Review of Comments Raised by Members of Power of Discharge

## **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 2020/21 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.

**SARA MOSELEY**

**Interim Committee Chair**