**Confirmed Minutes of the**

**Mental Health and Capacity Legislation Committee**

**Held on 20 July 2021 – 10am**

**Via MS Teams**

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| **Chair:** |  |  |
| Ceri Phillips | CP | UHB Vice Chair and Committee Chair |
| **Present:** |  |  |
| Jeff Champney-Smith | JCS | Chair, Powers of Discharge sub-Committee |
| Daniel Crossland | DC | Deputy Director of Operations – Mental Health |
| Nicola Foreman | NF | Director of Corporate Governance |
| Michael Imperato | MI | Independent Member - Legal |
| Robert Kidd | RK | Consultant Clinical and Forensic Psychologist |
| David Seward | DS | Mental Health Act Team Lead |
| Ruth Walker | RW | Executive Nurse Director |
| Rose Whittle | RW | Directorate Manager – Child Health |
| Ian Wile | IW | Head of Operations, Mental Health |
| **Secretariat:** |  |  |
| Nathan Saunders | NS | Corporate Governance Officer |
| **Apologies:** |  |  |
| Steve Curry | SC | Chief Operating Officer |
| Akmal Hanuk | AH | Independent Member - Community |
| Scott Mclean | SMc | Director of Operations – Children & Women’s |
| Sara Moseley | SM | Independent Member – Third Sector |
| Sunni Webb | SW | Mental Health Act Manager |

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| **MHCL 21/07/001** | 1. **Welcome & Introductions**   The Committee Chair (CC) welcomed everybody to the meeting. | **ACTION** |
| **MHCL 21/07/002** | 1. **Apologies for Absence**   Apologies for Absence were noted |  |
| **MHCL 21/07/003** | 1. **Declarations of Interest**   No declarations of interest were noted. |  |
| **MHCL 21/07/004** | 1. **Minutes of the Committee Meeting held on 20 April 2021**   The minutes of the meeting held on the 20 April were received.  **The Committee resolved that:**   1. The minutes of the meeting held on 20 April be approved as a true and accurate record of the meeting. |  |
| **MHCL 21/07/005** | 1. **Action Log 20 April 2021**   The action log was received  **The Committee resolved that:**   1. The Action Log taken from 20 April was noted. |  |
| **MHCL 21/07/006** | 1. **Chair’s Action taken since last meeting**   The CC advised the Committee that no Chair’s Action had been taken. |  |
| **MHCL 21/07/007** | 1. **Any Other Urgent Business Agreed with the Chair**   There was no other urgent business shared. |  |
| **MHCL 21/07/008** | 1. **Patient / Staff Story**   The Staff Story – ‘Shielding & My Mental Well-being was received.  Following the staff story, the Executive Nurse Director advised the Committee that Managers would need to listen to staff and also listen to their own mental health and noted that it was important to take the time to talk.  The CC asked the END to convey his thanks to the staff member for sharing their story and experience and asked how the staff member was doing at this time.  The END responded that the staff member was doing well and was well supported by her line management and team.  **The Committee resolved that:**   1. The Staff Story was noted. |  |
| **MHCL 21/07/009** | **9.1 Mental Capacity Act Monitoring Report & DoLs Report – Update**  The Mental Capacity Act Monitoring Report and DoLs Report were received.  The END advised the Committee that at the last Mental Health and Capacity Legislation Committee (MHCLC) it was asked that a set of indicators could be brought to the meeting.  It was noted that the most important thing to highlight was that the whole agenda is changing significantly and that Liberty Protection Safeguards (LPS) was something that would be featured prominently over the coming months.  Formal documentation was expected to be issued in the Autumn and it was noted that implementation plans needed to be put together in relation to the requirements.  The END advised the Committee that she and the Deputy Executive Nurse Director (DEND) had been looking to have training so they would know what would be required and to get a clearer understanding of what was required of Cardiff and Vale University Health Board (CVUHB).  The Independent Member – Legal asked if there would be training for other members of the Committee.  The END responded that there would be and that who required training needed to be identified and noted that there would be a new Mental Capacity Act Manager recruited.  It was noted that Hywel Dda University Health Board had moved further forward in the implementation for a number of reasons and so CVUHB have been in correspondence with them to see what work has been done.  The Consultant Clinical and Forensic Psychologist (CCFP) advised the Committee that there were a number of CVUHB staff who had been trained as best interest assessors and asked if it could be useful to get an up to date list of those staff so that they could be used within the new system of LPS.  The END responded that it was a very helpful point and noted that a lot of people would be required.  The CC asked the Director of Corporate Governance (DCG) about the revision of all relevant health board procedures, policies and strategies in line with LPS and noted that it was a mammoth task in itself.  The DCG responded that policies and procedures were reviewed on a rolling programme and noted that it was constant and recommended that the LPS elements be included as and when required.  The END advised the Committee that an SBAR update would be required at the next Committee meeting.  The CC responded that the SBAR item be added as a standing item on the agenda.  **The Committee resolved that:**   1. The contents of the report and the current compliance with MCA and DoLS indicators (noting that these are incomplete due to a current vacancy in the MCA Manager role) was noted. | NS |
| **MHCL 21/07/010** | **10.1 Mental Health Act Monitoring Exception Report**  The Mental Health Act Monitoring Exception Report was received.  The CCFP advised the Committee that when the reports were scrutinised it was noted that there was potentially a period in June 2021 where there were more informal patients rather than detained patients and it was unknown why that was and what led to that.  The CC asked for clarity on the work being continued with the Mental Health Review Tribunal for Wales to find a suitable resolution, to ensure that action was taken to mitigate the risks highlighted and protect the patient’s right to a fair hearing and ensure any incidents are reported accordingly.  The Mental Health Act Team Lead (MHATL) responded that the Tribunal had organised a pilot for video conference hearings and CVUHB were due to have one on Older Peoples’ wards but noted that it was cancelled and so the Mental Health Act Manager (MHAM) had gone back to the Tribunal receive an update.  The CC advised the Committee that he had been impressed by the work around the recovery college and asked the Deputy Director of Operations – Mental Health (DDOMH) if there was anything to be added around the Mental Health Act e-learning module.  The DDOMH responded that the Mental Health Act Training was separate to the recovery college but noted that patients had asked for the development of a course around their rights around the Mental Health Act and Mental Health Measure.  The MHATL added that in relation to the Mental Health Training, workshops for patient rights had been provided to staff and these could be extended to patients in future.  The Independent Member – Legal (IML) asked what was being done to move the Tribunal’s technology forward in order to provide a much better virtual service.  The MHATL responded that the MHAM would go back to the Mental Health Tribunal to note those queries raised by the Committee.  The CCFP responded that CVUHB hospital managers had adapted very well to virtual hearings and recommended that the Committee write to the Ttribunal to ask what steps were being taken to improve the Tribunal’s virtual meeting service.  The CC noted that he would contact the MHAM to develop this further as it was not acceptable that virtual hearings had not been happening.  The IML asked for further clarity around the Section 136 legal opinion that had been obtained.  The MHATL responded that following the legal advice, it was noted that the clock started ticking for section 136 in Accident & Emergency (A&E) but advised the Committee that he and the MHAM had been collecting data as to what would happen if the patient was too unwell in A&E to receive the assessment.  The IML asked why further legal advice had not been obtained if the advice given was not favoured.  The CCFP responded that the legal advice had been obtained by Richard Jones and that the advice received had been very clear that what was being done was the correct reading of the law.  It was noted that there had been pressure from outside of the Health Board which is why secondary legal advice was obtained which went against what was originally advised. However the first legal advice was deemed appropriate as it did not alter the code of practice for Wales.  **The Committee resolved that:**   1. The approach taken by the Mental Health Clinical Board to ensure compliance with the MHA was supported. | CP / NS |
| **MHCL 21/07/011** | **10.2 Update on the Reform of the Mental Health Act**  The Reform of the Mental Health Act update was received.  **The Committee resolved that:**   1. The Reform of the Mental Health Act update was noted. |  |
| **MHCL 21/07/012** | **11.1 Mental Health Measure Monitoring Reporting including Care and Treatment Plans Update Report**  The Mental Health Measure Monitoring Reporting including Care and Treatment Plans Update Report was received.  The DDOMH provided assurance to the Committee on Part 1 of the Measure.   * Part 1a : Adult and Children PMHSS   It was noted thatreferral activity for Q4 2020 & Q1 2021 had seen a gradual decrease in referral rates following the initial steep rise in referrals in the first two quarters after the first lockdown but with a notable spike in referrals in March 2021.  The DDOMH advised the Committee that a recovery plan was in place to return to compliance and noted that an update would be provided to the July Board meeting.  It was noted that the Did Not Attend (DNA) rate had shot up during the period of good weather which could help with a return to target.  Regarding the over-18 Part 1a performance, the initial impact of COVID-19 had affected performance in the early stages of lockdown but compliance was reinstated quickly before a shortfall in four qualified staff in August subsequently had affected performance going forward.  It was noted that the staffing issue had been partly rectified in early September but further vacancies had seen the service remain understaffed. However after a recent successful recruitment drive, an additional 2 staff had started in June 2021.  The Directorate Manager – Child Health (DMCH) advised the Committee that an unprecedented amount of referrals had been received and, as a result, Child Health were not compliant.  Compliance against the part 1 target had not been achieved since October 2020 and following a decline in referrals during the height of Covid, referral levels significantly increased during October 2020 and November 2020 following the re-opening of schools.  It was noted that this had sharply increased from March 2021 and remained significantly higher than pre-Covid levels.   * Part 1b – 28 day assessment to intervention compliance target of 80% - Adult and Children   The DDOMH advised the Committee that by having clarified reporting processes, PMHSS (adults) had been compliant with the Part 1b performance target since August 2020 and this has continued during the Covid 19 period.  It was noted that compliance against Part 1b of the target for children had been achieved in 6 of the last 10 months and within 10% of 3 months. January was a challenging month for the service with significantly reduced capacity due to sickness, maternity leave and annual leave.  It was noted that the team continued to work to ensure that young people were seen within 28 days for the commencement of their treatment, following assessment.   * Part 2 Care and Treatment Planning – Adult and Children.   The DDOMH advised the Committee that since the previous MHCLC meeting, Care Aims and Open Dialogue training had continued in spite of the Covid restrictions.  It was noted that compliance had reduced in April and May 2021. This was due to an 18.8% increase in patients in receipt of secondary care services between April 2020 and May 2021 and a 74.5% decrease in discharges comparing to April 2020 to May 2021.  The DMCH advised the Committee the Child Health had worked hard around compliance with part 2 of the Measure.  It was noted that the service continued to underperform against the target and that challenges to achievement included:   * Poor engagement from patients in the CTP process. * A high number of new patients requiring the CTP process. * Complex cases that required a CTP where those have been unable to be facilitated as a result of wider system issues e.g. social care placements not being agreed which led to delays in completion.   The Chair, Powers of Discharge sub-Committee (CPDSD) advised the Committee that the quality of Care and Treatment Planning remained the hospital managers biggest concern and in particular, the lack of outcome and focus and noted that a number of the care and treatment plans did not reflect the current care of the patient.  The CC invited the DDOMH to provide information around the work that Dr Neil Jones had been doing.  The DDOMH responded that the future success of Care and Treatment planning was also tied to the strategy around out-patient transformation, within which many of the poorer examples of care and treatment planning sat. A program of work had now commenced with Dr Neil Jones leading the work stream and the Director of Operations supporting that.  The IML asked if there was one area that caused the greatest concern.  The DDOMH responded that in terms of where the service was breaching, the areas with a large demand had been the mild stress demands of Covid-19 which created a large amount of referrals.  It was noted that the areas that caused the most concern clinically was protecting part 2 services and upwards from individuals who carried much higher risks. Red flags such as eating disorders and individuals who were physically compromised due to having long term mental health conditions.  The DMCH added that Children and Young People in Crisis was also a clinical concern along with the eating disorders and noted that there was unprecedented demand on those areas.  The END advised the Committee that she would add that a clinical concern were the number of children who were inpatients in inappropriate settings and noted that it was not the right environment to be caring for them and asked the Committee to focus on that area in future.  **The Committee resolved that:**   1. The content of the Mental Health Measure (Wales) 2010 incl. Part 2 update was noted. |  |
| **MHCL 21/07/013** | **12.1 HIW MHA Inspection Reports:**  The HIW MHA inspection reports were received.  a) Hazel Ward  b) East 12 Ward  The END provided assurance to the Committee that all HIW reports were discussed at the Quality, Safety and Experience (QSE) Committee and noted that the reports had been brought for information.  It was noted that progress had been made in the areas and that it should be discussed in future to highlight good practice and to provide assurance.  **The Committee resolved:**   1. The HIW MHA Inspection Reports were noted. |  |
| **MHCL 21/07/014** | **12.2 Hospital Managers Power of Discharge Sub Committee Annual Report**  The Hospital Managers Power of Discharge Sub Committee Annual Report was received.  The Chair, Powers of Discharge sub-Committee (CPDSC) advised the Committee that the Hospital Managers had learnt a new skill set during the pandemic with the help of the Mental Health Act Office and noted that Patient and Relative feedback had been mostly positive around the virtual hearings.  It was noted that a hybrid model would be looked at moving forward when face to face hearings could be reinstated.  **The Committee resolved:**   1. The Hospital Managers Power of Discharge Sub Committee Annual Report was noted. |  |
| **MHCL 21/07/015** | **12.3 The Hospital Managers Power of Discharge Minutes**  The Hospital Managers Power of Discharge Minutes were received   1. **Hospital Managers Power of Discharge Minutes** 2. **Mental Health Legislation and Governance Group Minutes**   The CCFP advised the Committee that the Mental Health Legislation and Governance group (MHLGG) had met just one week prior to the MHCLC meeting and noted that a Local Authority representative had raised the UK Government’s proposed changes to the Mental Health Act in England and Wales.  The CCFP noted that the proposed changes mean that the inability to detain persons with a learning disability under section 3 could pose difficulties as there was not the resource to provide adequate care to those patients in the community at present.  It was noted that the MHLGG still wanted to pursue the issue of repeat 136 assessments and that there was still an issue around a change that South Wales Police had made about the creation of the voluntary assessment whereby the person would agree to go to hospital but the relevant 136 paperwork was not completed.  It was noted that over the Summer, there had been 2 meetings between Mental Health Services and Liaison staff to talk about the issue regarding assessments for people who had been engaging in suicidal behaviours.  The CCFP advised the Committee that the Mental Health Clinical Board had trained 2 trainers into a system called “Connecting with People” and it was hoped that it would lower some of the variability in Mental Health assessments.  It was concluded that the LPS had been looked at by the MHLGG and what that meant for the Mental Health Services.  **The Committee resolved:**   1. The Hospital Managers Power of Discharge Minutes were noted. 2. The Mental Health Legislation and Governance Group Minutes were noted. |  |
| **MHCL 21/07/016** | **12.4 Self-assessment of effectiveness**  The DCG advised the Committee that the self-assessment of effectiveness results had been reported to the Board.  **The Committee resolved:**   1. The results of the Annual Board Effectiveness Survey 2020-2021, relating to the Mental Health Legislation Capacity Committee were noted. 2. The action plan developed for 2020-2021, which would be progressed via Board Development sessions, was noted. |  |
| **MHCL 21/07/017** | **12.5 Corporate Risk Register**  The Corporate Risk Register was received.  The DCG advised the Committee that there were 2 risks from the Corporate Risk Register that sat with the MHCLC and noted that in the future all risks with a score of 20 or above would be reported to the Board.  The Committee was advised that the 2 risks were around (i) poor patient conveyancing and (ii) young people being placed in adult mental health areas.  The CCFP advised the Committee that the conveyancing situation was much improved when discussed the previous week at the MHLGG meeting.  The DCG responded that there would always be a little lag due to when the Risk Registers were updated and when reports were written.  The DDOMH advised the Committee that after the latest review, it was deemed that it could be removed from the Corporate Risk Register.  The DCG noted the update.  The CC asked if the LPS should be considered on the Corporate Risk Register.  The END responded that it should be but was unsure as to what the risk was at this time.  **The Committee resolved that:**   1. The Corporate Risk Register risk entries linked to the Mental Health Capacity and Legislation Committee and the work which was now progressing was noted |  |
| **MHCL 21/07/018** | **14. Review of the Meeting**  The CC opened the Committee to review the meeting. |  |
| **MHCL 21/07/019** | **15. Date & Time of next Committee Meeting**  The CC thanked everyone for their attendance and contribution to the meeting and confirmed that the next meeting would be held on Tuesday 19 October 10am via MS Teams. |  |