Mental Health Legislation and Mental Capacity Act Committee

Tue 06 August 2024, 09:00 - 11:00

MS Teams

Agenda

09:00 - 09:10
10 min

1. Standing Items

1.1. Welcome & Introductions

Ceri Phillips

1.2. Apologies for Absence

Ceri Phillips

1.3. Declarations of Interest

Ceri Phillips

1.4. Minutes of the Meeting held on 30 April 2024

Ceri Phillips

1.4 - Unconfirmed Minutes MH Committee_30.04.24 Final.pdf (7 pages)

1.5. Actions from the meeting held on 30 April 2024

Ceri Phillips

1.5 - MH Committee Action Log 30.04.2024.pdf (1 pages)

1.6. Chair's Action taken since last meeting

Ceri Phillips

1.7. Any Other Urgent Business Agreed with the Chair

Ceri Phillips

09:10 - 09:25
15 min

2. Mental Capacity Act

2.1. Mental Capacity Act Monitoring Report and DoLS monitoring

15 mins *Jason Roberts*

2.1 - MHLMCA Report Apr-Jun 2024.pdf (7 pages)

09:25 - 09:45
20 min

3. Mental Health Act

3.1. Mental Health Act Monitoring Exception Report

10 mins *Paul Bostock / Daniel Crossland*

3.1a - Mental Health Act Monitoring Exception Report July 2024.pdf (7 pages)
3.1b - Mental Health Act Monitoring Report April - June 2024.pdf (47 pages)

3.2. Draft Mental Health Bill – Joint Committee Report (verbal update)

10 mins *Paul Bostock / Daniel Crossland*

09:45 - 10:00
15 min

4. Mental Health Measure

4.1. Mental Health Measure Monitoring Report including Care and Treatment Plans Update Report

15 mins *Paul Bostock / Daniel Crossland*

4.1 - Mental Health Measure August 2024 AMS and CAMHS Final.pdf (12 pages)

10:00 - 10:00
0 min

5. Items for Noting / Information

0 mins

5.1. Sub-Committee Meeting Minutes:

i) Hospital Managers Power of Discharge Sub Committee Minutes

ii) Mental Health Legislation and Governance Group Minutes

5.1a - PoD minutes July 2024.pdf (3 pages)
5.1b - MHLGG Minutes and Action Log July 2024.pdf (8 pages)

10:00 - 10:05
5 min

6. Items for Approval / Ratification

6.1. Policies

6.1.1. Restraint in the Care Management of Patients Aged 16 Years and Over with Impaired Mental Capacity – Policy and Procedure (UHB 044)

5 mins

6.1a - covering report for policy.pdf (3 pages)
6.1b - UHB 044 Restraint Policy final 060220.pdf (15 pages)

10:05 - 10:05
0 min

7. Any Other Business

10:05 - 10:05
0 min

8. Review of the Meeting

10:05 - 10:05
0 min

9. Date & Time of Next Meeting

29th October 2024 via Teams

Minutes of the Mental Health Legislation and Mental Capacity Act Committee
Held on 30th April 2024
Via MS Teams
Internal Link – Click Here
YouTube Link – Click Here

Chair:		
Ceri Phillips	CP	Committee Chair / University Health Board Vice Chair
Present:		
Sara Moseley	SM	Committee Vice Chair / Independent Member – Third Sector
Rhian Thomas	RT	Independent Member – Capital & Estates
In Attendance:		
Matt Phillips	MP	Im
Daniel Crossland	DC	Director of Operations - Mental Health
David Seward	DS	Mental Health Act Manager
Neil Jones	NJ	Clinical Board Director – Mental Health
Jeff Champney-Smith	JCS	Chair, Powers of Discharge Sub-Committee
Robert Kidd	RK	Interim Clinical Director Psychology & Psychological Therapies
Catherine Wood	CW	Director of Operations – Children & Women
Chloe Evans	CE	MCA & Consent Lead
Jane Murphy	JM	Director of Nursing
Becci Ingram	BI	General Manager – Acute Child Health
Secretariat:		
Nikki Regan	NR	Corporate Governance Officer
Apologies:		
Jason Roberts	JR	Executive Director of Nursing
Paul Bostock	PB	Chief Operating Officer

Item No	Agenda Item	Action
MHLMCA 30/04/001	**Welcome & Introductions** The Committee Chair (CC) welcome everybody to the meeting in English and in Welsh. To view the minute: https://youtu.be/BXRZctARoF4?list=PLLVdfcKNzmAA7B9lVZC6mznqn8msCNnOV&t=1	
MHLMCA 30/04/002	**Apologies for Absence** Apologies for Absence were noted **The Committee Resolved that:** a) The Apologies for Absence were noted. To view the minute: https://youtu.be/BXRZctARoF4?list=PLLVdfcKNzmAA7B9lVZC6mznqn8msCNnOV&t=21	
MHLMCA 30/04/003	**Declarations of Interest** The IMTS was appointed the Chair for Health and Care Professional's Council which includes psychologists. **The Committee Resolved that:** a) The Declarations of Interest were noted.	

	To view the minute: https://youtu.be/BXRZctARoF4?list=PLLVdfcKNzmAA7B9lVZC6mznqn8msCNnOV&t=58	
MHLMCA 30/04/004	**Minutes of the Meeting held on 30th January 2024** The Minutes of the Meeting held on 30th January 2024 were received and approved. **The Committee Resolved that:** a) The minutes of the meeting held on 30.01.2024 were agreed as a true and accurate record. To view the minute: https://youtu.be/BXRZctARoF4?list=PLLVdfcKNzmAA7B9lVZC6mznqn8msCNnOV&t=94	
MHLMCA 30/04/005	**Action Log from the meeting held on 30th January 2024** The Action Log was received and discussed. **The Committee Resolved that:** a) The Action Log was noted. To view the minute: https://youtu.be/BXRZctARoF4?list=PLLVdfcKNzmAA7B9lVZC6mznqn8msCNnOV&t=118	
MHLMCA 30/04/006	**Committee Chair's Actions** **The Committee Resolved that:** a) No Chair's Actions were taken since the last meeting. To view the minute: https://youtu.be/BXRZctARoF4?list=PLLVdfcKNzmAA7B9lVZC6mznqn8msCNnOV&t=216	
MHLMCA 30/04/007	**Any Other Urgent Business Agreed with the Chair** **The Committee Resolved that:** a) No other urgent business was agreed with the Chair.	
	Mental Capacity Act	
MHLMCA 30/04/008	**Mental Capacity Act Monitoring Report and DoLS Monitoring** The MCA & Consent Lead (MCL) presented the Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards (DoLS) Monitoring report which provided a general update on current issues related to the MCA and DoLS and highlighted the following: • 743 staff took part in training but didn't reflect in the mandatory figures • 17 staff undertaking the Masters Module course with Swansea University • The share point page was a helpful resource with links / helpful articles • A Mental Health Capacity Act policy was being developed • 44 assessments completed in March with 52 new applications The MCL confirmed a pilot was being led by Diane Walker to look at whether the clinical teams should assess a patient's capacity for their care and support needs due to long waits. No end date was confirmed for the pilot and need to evaluate if to roll out elsewhere.	

	Action –The CC to arrange a meeting regarding training with the MCL. The EMD & MCL discussed training & timeframes and want to encourage medical & dental staff to attend training. **The Committee resolved that**: a) The contents of the report and the current compliance and actions with Mental Capacity Act and Deprivation of Liberty indicators were noted. To view the minute: https://youtu.be/BXRZctARoF4?list=PLLVdfcKNzmAA7B9lVZC6mznqn8msCNnOV&t=226	
	Mental Health Act	
MHLMCA 30/04/009	**Mental Health Act Monitoring Exception Report** The MHAM presented the Mental Health Act (MHA) Monitoring Exception Report and highlighted the following: • 2 defective applications this quarter, with the first being a section 2 who was assessed in England and detained • A patient transferred from a private provider to HYC under section 3 and had not been renewed • Talked to WG and they need policy time but have no resources The IMCE noted the resource issue wasn't unique to CAV and asked if the time impacted on patients could be quantified. She questioned if other HB's help emphasised the time wasted and added that it was a compelling argument to WG. The MHAM explained that NHS England had moved to a digital space and was disappointed that CAV hadn't but he would help put a case to WG to push this forward. The DCG asked for the regulations / policies to be shared with him to enable him to help move this work forward. The MHAM highlighted the following: • Lapsed applications – a patient absconded in the final week of section 2 • A patient was transferred to HYC from a private provider and the AMP team emailed a general mailbox on the Friday night (no one seen the email until Monday morning) to confirm they had transferred back and the patient was detained under section 3 • The Wet signature was an issue • The use of section 136 had reduced from 161 to 138 during this quarter • Section 136 in CAMHS rose to 6 this quarter, with 4 discharged and 2 admitted informally • The joint commissioning committee were informed of these issues The IMTS asked if the proportion showed that section 136 was being used inappropriately? The CBDPPT explained that this was the inherent powers of the Police to think if a patient is mentally unfit and needed to go back to the police and their decision making. The DOMH the right care right person has paused. We need to monitor 136 as we are commissioned as a sanctuary and 136 should decrease. We do monitor on several other	

	elements around 136. Its difficult to know the powers and the reasons may vary around detaining a patient. The MHAM highlighted: • A new form was issued for parking • Workshops continue to be run and have undertaken junior doctor training, nurse foundation and RAMP training with Swansea University The CC suggested for the parking issues to be taken to Board. **The Committee resolved that:** a) The approach taken by the Mental Health Clinical Board to ensure compliance with the appropriate Mental Health legislation, as set out in the report, was noted. To view the minute: https://youtu.be/BXRZctARoF4?list=PLLVdfcKNzmAA7B9lVZC6mznqn8msCNnOV&t=1352	
MHLMCA 30/04/010	**Section 117 Supreme Court Ruling Judgement – verbal update** The DOMH gave a verbal update on the Section 117 Supreme Court Ruling Judgement and highlighted the following: • Update to who pays guidance and advice, with the integrated care boards retaining responsibility • Wales remain behind and not in the same position as England The CC noted this could have significant financial implications for the HB and caused concern in Clinical Boards & Finance. What extent are they giving priority to this? The DOMH explained that it was discussed with the Executives and he suggested to raise at the JET meeting. The DCG confirmed this was included in the JET slides submitted to WG on 26.04.24. The CC planned to meet with the new minister for MH and wanted to raise this issue with the politicians to ensure it wasn't ignored. **The Committee resolved that:** a) The Section 117 Supreme Court Ruling Judgement update was noted. To view the minute: https://youtu.be/BXRZctARoF4?list=PLLVdfcKNzmAA7B9lVZC6mznqn8msCNnOV&t=2455	
MHLMCA 30/04/011	**UHB Response to the Consultation on the Mental Health Standards of Care (Wales) Bill** The DOMH noted the UHB Response to the Consultation on the Mental Health Standards of Care (Wales) Bill was submitted to the Senedd and highlighted the following: • Replace the nearest relative with the nearest person • Introduce virtual or remote assessment with second opinion • Extend part 3 rights to include person specified by the patient • Concerns raised around the wet signature • Queries around if greater safeguards were required	

	• Challenges around SOAD and health advocates **The Committee resolved that:** a) The submission of the consultation on behalf of the UHB was noted. To view the minute: https://youtu.be/BXRZctARoF4?list=PLLVdfcKNzmAA7B9lVZC6mznqn8msCNnOV&t=2785	
MHLMCA 30/04/012	**RAMP Protocol and the Part 1 Scheme** The DOMH presented the RAMP Protocol and the Part 1 Scheme and noted the following: • The protocol related to adult patients • RAMP operates with community MH teams • Large numbers of service users are under the care of secondary health providers • The protocol is to provide those patients with good standards of care • RAMP outlines how we would operate patients The CC queried the relationship with the university and referred to the MH liaison service. The DOMH noted the Scheme articulated the provision and the University would not undertake care and treatment planning. **The Committee resolved that:** **a)** The RAMP Protocol and the Part 1 Scheme was discussed and noted. To view the minute: https://youtu.be/BXRZctARoF4?list=PLLVdfcKNzmAA7B9lVZC6mznqn8msCNnOV&t=3183	
	Mental Health Measure	
MHLMCA 30/04/013	**Mental Health Measure Monitoring Reporting including Care and Treatment Plans Update Report** The Mental Health Measure Report which outlined the performance of CAVUHB against the various mental health specific targets was presented with the following highlighted: • 28-day target referral to assessment – performance dropped due to significant demand and lower capacity in team • 120 referrals were received in 1 day during April 2024 • Remain compliant within the adult MH services • 90% received an assessment within 28 days, with a slight dip in January 2024 • A full capacity review was undertaken along with job plans & case loads • A number of LTS in the intervention team but have supplemented with agency staff • A new service was initiated for Psychology Education The IMTS wondered if the collaborations with the universities could be utilised to analyse twhat was behind the surge and demand and evaluate the alternative approaches. The CBDPPT noted the document from the NHS Exec for the rules we are reporting on and more of a steer of what they are expecting for PROM's / PREM's. There were a variety of interventions and the need for digital support to get information out to people speedily. The IMCE reflected on the sickness levels and asked the following:	

	• What proportion of staff were on LTS • What management work was being done to try and resolve these issues • How likely was this number going to increase The GMACH noted 2 of the LTS staff members were maternity related and all LTS were managed by the HR teams. She added that the agency staff supported the Clinical Board and were with the team long term. The CC asked what other support could be offered from the Board to help with the current issues. The DOMH noted the legislated assessors were from a pool and this limited CAV's ability to recruit. Jan – Dec 10.5% increase of demand to the adult MH service. In the pandemic we predicted there would be issues / increase on the well being service. We expected the graph would begin to tail off as the pandemic effects MH. We have put additional resource in to PMS and we have found we need at least 3 WTE staff to support the demand. The IMTS asked what evidence was provided for what was driving this work and what solution was working. The CC suggested to increase the awareness amongst Board members. He planned to speak to the HB Chair to get the Board more involved in this area of work. The DOMH explained the following points: • CAV have the highest case load within NHS Wales • Target performance had slightly improved • Hope to see improvement following the introduction of RAMP The GMACH highlighted the following: • Paediatrics delivered just under the target • The paperwork was challenging as it wasn't child friendly • Additional funds were provided and hope to open a hangout in the Vale The CC suggested to invite the new deputy minister with responsibility for MH to the Hangout. He noted the staffing issues added significant pressures, and the Board need to be aware of these issues. 28 days wasn't a clinical standard validation and this conveyed a sense of what we are doing to try and provide appropriate care in a meaningful timescale. **The Committee Resolved that:** a) The contents of the Mental Health Measure Monitoring Reporting including Care and Treatment Plans Update Report was noted. To view the minute: https://youtu.be/BXRZctARoF4?list=PLLVdfcKNzmAA7B9lVZC6mznqn8msCNnOV&t=3453	
	Items to bring to the attention of the Committee for Noting / Information	
MHLMCA 30/04/014	**Sub-Committee Meeting Minutes:** The following Minutes were noted: 1. Hospital Managers Power of Discharge Sub-Committee Minutes – January 2024 2. Mental Health Legislation and Governance Group (MHLGG) – January 2024 **The Committee Resolved that:**	

	a) The Sub-Committee Meeting Minutes were noted. To view the minute: https://youtu.be/BXRZctARoF4?list=PLLVdfcKNzmAA7B9lVZC6mznqn8msCNnOV&t=5213	
	Items for Approval / Ratification	
MHLMCA 30/04/015	**Policies** The MHAM explained the policy was how to allocate a deputy for people who had been detained. The following policies were approved for publication: i) Allocation of Responsible Clinicians and Nominated Deputy, Mental Health Act, 1983 (UHB 478) **The Committee resolved that:** a) The policy was approved. To view the minute: https://youtu.be/BXRZctARoF4?list=PLLVdfcKNzmAA7B9lVZC6mznqn8msCNnOV&t=5566	
MHLMCA 30/04/016	**Annual Report for the Mental Health Legislation and Mental Capacity Act Committee 2023-24** The Annual Report was approved. **The Committee resolved that:** a) The Annual Report for the Mental Health Legislation and Mental Capacity Act Committee 2023-24 was approved. To view the minute: https://youtu.be/BXRZctARoF4?list=PLLVdfcKNzmAA7B9lVZC6mznqn8msCNnOV&t=5663	
MHLMCA 30/04/017	**Any Other Business** No items.	
MHLMCA 30/04/018	**To note the date, time and venue of the next meeting:** 6th August 2024 at 10:00-12:00 Via MS Teams	

Action Log
Mental Health Legislation and Mental Capacity Act Committee – 30th April 2024
(Updated For 06th August 2024 Meeting).

MINUTE REF	SUBJECT	AGREED ACTION	DATE	LEAD	STATUS/COMMENT
ACTIONS COMPLETED					
MHLMCA 23/05/010	**Mental Health Act Monitoring Exception Report**	Mental Health Act e-Learning module to be added to ESR as a mandatory module once written.	**30.04.2024**	Jason Roberts / David Seward / Paul Bostock	**COMPLETED** *Update provided in the April 2024 Committee as part of the Mental Health Act Monitoring Report Agenda item.*
MHLMCA 23/05/013	**Draft Mental Health bill - Joint Committee Report**	Update to be provided at a future meeting to include timescales on implementation of the draft Mental Health Bill	**30.04.2024**	Jason Roberts / David Seward	**COMPLETED** *The item has been added to the Forward Plan for the MH meeting on 6th August 2024.*
MHLMCA 30/04/008	**Mental Capacity Act Monitoring Report and DoLS Monitoring**	Ceri Phillips to arrange a meeting with Chloe Evans & Jane Murphy regarding staff training.	**06.08.2024**	Ceri Phillips	*Ceri Phillips to arrange a meeting offline with Chloe Evans and Jane Murphy – update to be provided in August 2024's Action Log section.*
Actions in Progress					
ACTIONS REFERRED TO COMMITTEES OF THE BOARD / OTHER					

eport Title:	**Mental Capacity Act (MCA) and DoLS monitoring**			Agenda Item no.	*2.1*
eeting:	**Mental Health Legislation and Mental Capacity Act Committee**	Public	X	Meeting Date:	06/08/2024
		Private			
tatus *lease tick one ly):*	Assurance	X	Approval	Information	
ead xecutive tle:	Executive Nurse Director				
eport uthor itle):	Mental Capacity Act (MCA) and Consent Lead				

ain Report
ackground and current situation:

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

he MCA indicators provide a level of detail on the number and type of IMCA referrals along with an overview of CA training compliance across the UHB. As previously, there is additional information contained within this repor elating to the further training being provided with the use of additional Welsh Government (WG) funding.

he report also contains detail in relation to the progress made following the appointment of the MCA Practitioners

he DoLS indicators provide an overview of the last year's applications and assessments.

he MCA Project Lead has been working closely with the DoLS Team to identify how we can increase assessmen apacity and address delays in authorisation. As in previous years, Welsh Government MCA/DoLS funding will be sed to help address the backlog. In addition, the UHB has made arrangements to increase the number of DoLS gnatories across all Clinical Boards and training for this is in place for September.

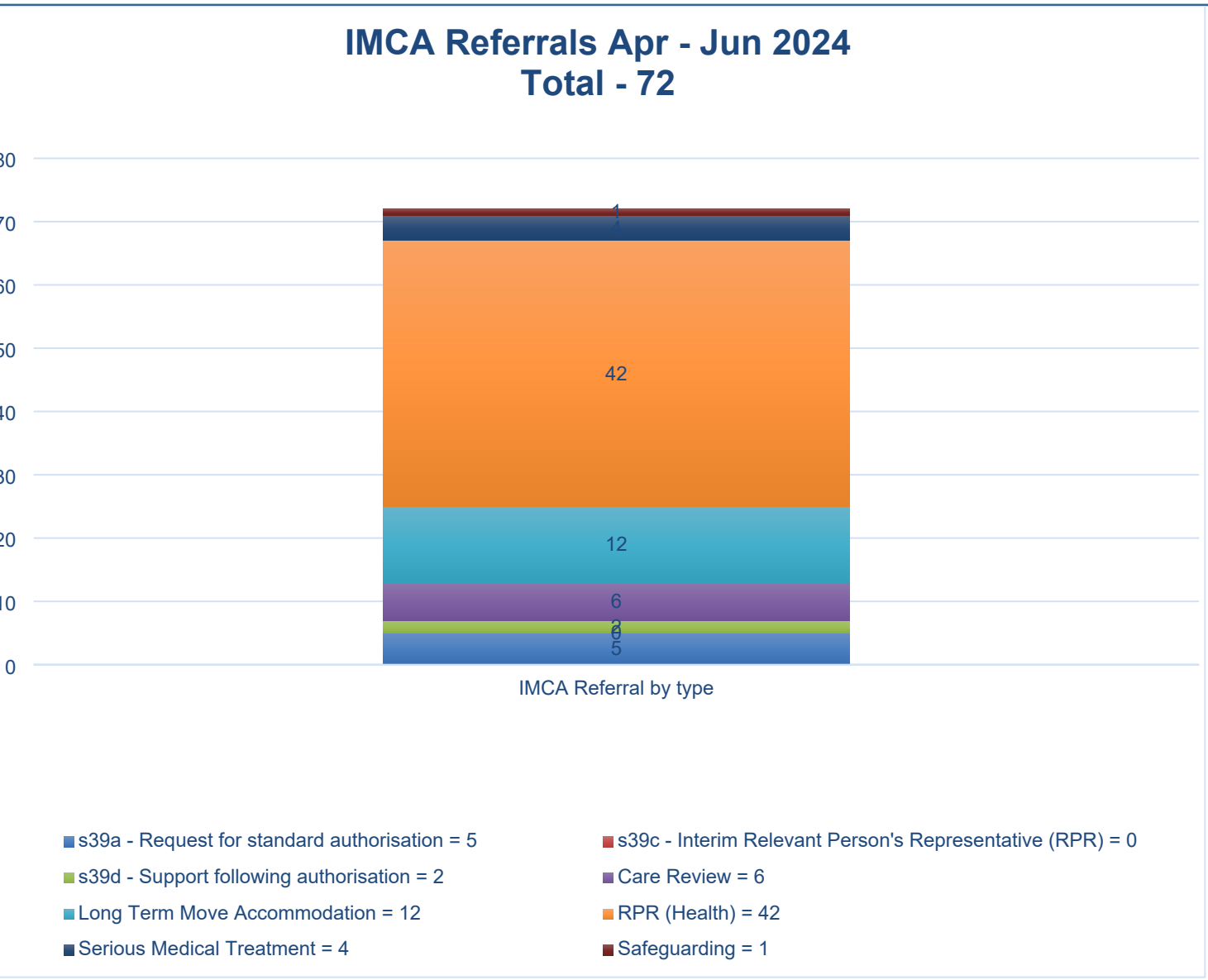
xecutive Director Opinion and Key Issues to bring to the attention of the Board/Committee:

Mental Capacity Act Monitoring Actions:

Mental Capacity IMCA Referral type

The MCA Indicators outline the breakdown of IMCA referrals for the period from April to June 2024. Referral rates are noted to have increased from 56 last quarter. The number of RPR referrals has also decreased this quarter from 26 to 42 last quarter, in keeping with an increase in DoLS referrals (see below). Referrals for Serious Medical Treatment have reduced from 9 to just 4 this quarter.

Referral rates will continue to be monitored as it would be expected that these would increase with training and improved awareness of staff.



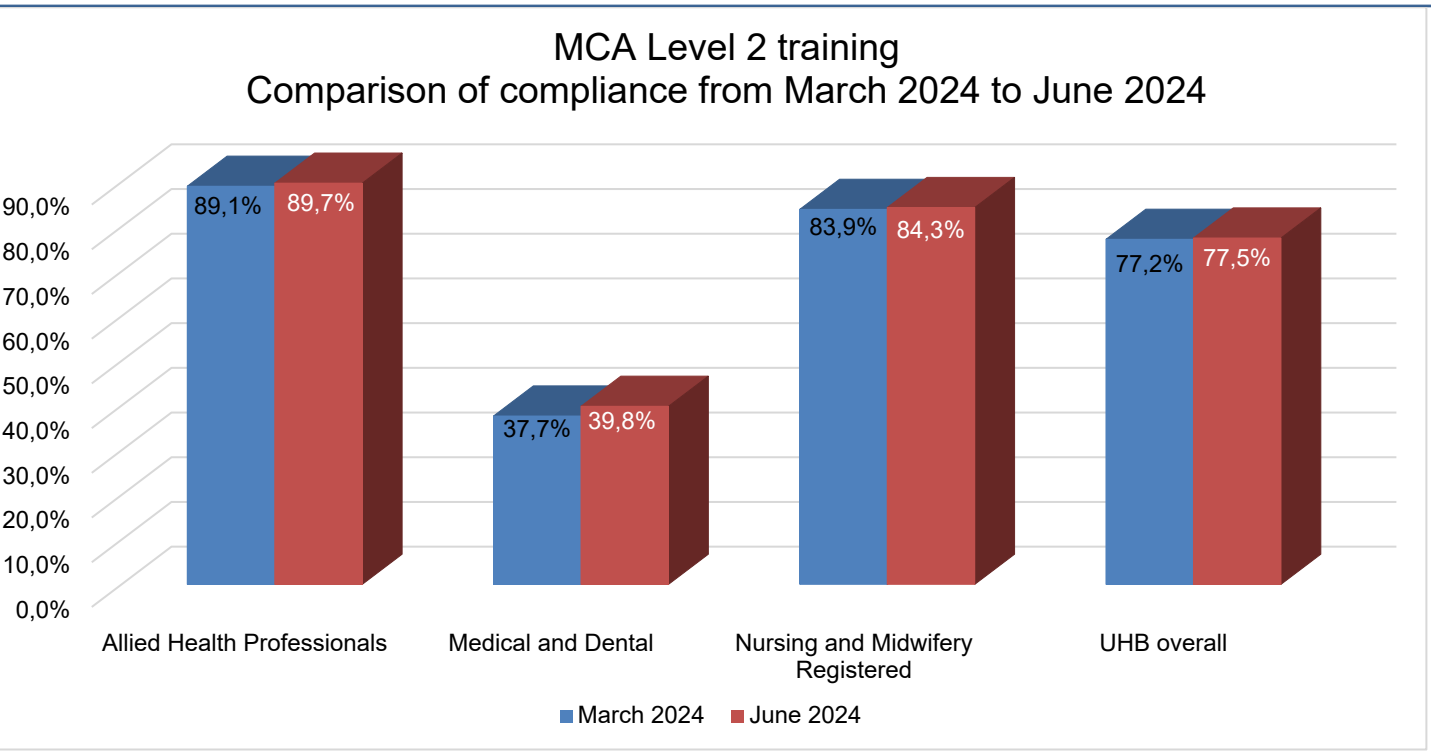
Mental Capacity Training

Mandatory MCA Training

The following graph demonstrates overall compliance by staff group over the last quarter. This appears to have remained stable with a marginal increase. Whilst the compliance of Nursing and Midwifery and Allied Health Professionals remains above target, at 89.7% and 84.3% respectively, Medical and Dental continue to lag behind quite substantially with just 39.9% compliance across the UHB.

Compliance rates are monitored by the Safeguarding Steering Group and are fed back to each clinical board on a monthly basis, which appears to have had a positive impact in some areas.

It has been suggested that the MCA team could provide specific sessions for Medical and Dental which combine the mandatory training content alongside the Practical Application of the MCA training to support compliance, which we will look to provide from the Autumn once the second MCA Practitioner is in post.



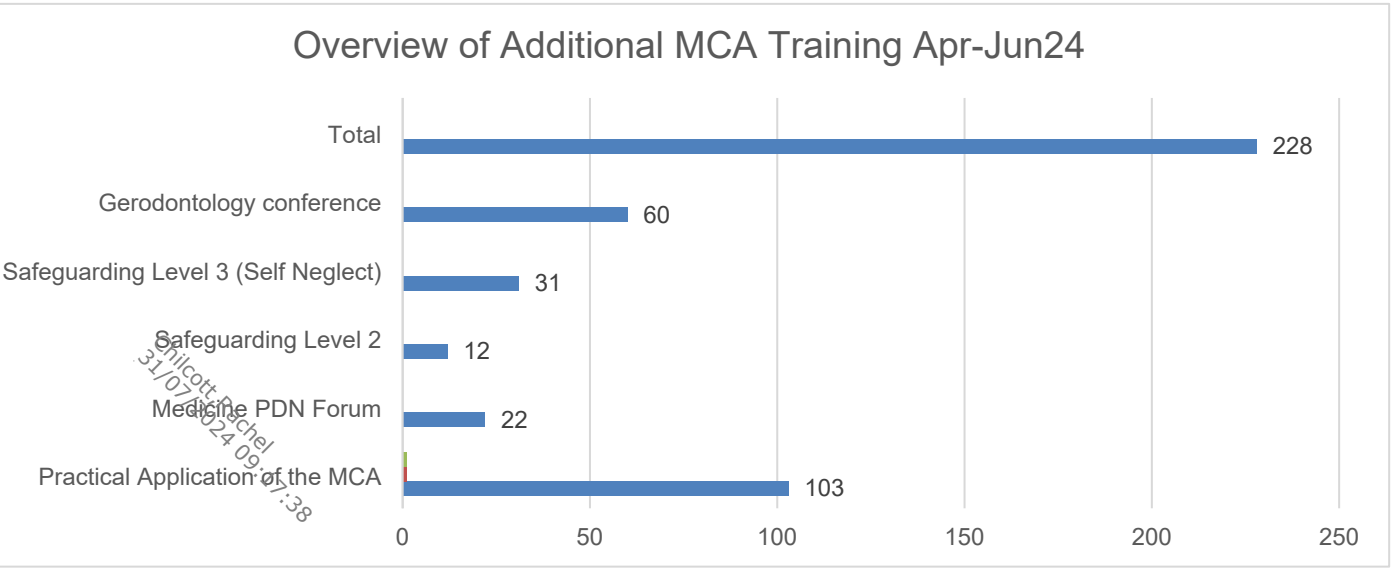
MCA Practitioner led training: April – June 2024

The Practical Application of the MCA training continues to be well received by staff. The MCA team have delivered 7 sessions this quarter and due to increased demand class sizes have been increased going forward and an additional session has been added, meaning that there will be 3 sessions per month from September.

The MCA team continue to support Safeguarding Level 2 and 3 training and have provided two bespoke practical sessions for Medicine.

Our MCA Practitioner PJ has also had the opportunity to be a guest speaker at two national conferences; SLT Clinical Excellence Network 'Patient Perspective of the MCA' and Gerodontology 'Supporting decision making in older people'.

The below chart shows outlines the number of staff who attended our additional MCA training sessions outside of the mandatory training. The total of 228 is up from 100 staff last quarter.



Training Feedback	% Agree or strongly agree	% Neutral, disagree or strongly disagree
My learning outcomes were met	100%	0%
Training was effective and easy to understand	97%	3%
I feel confident about applying principles of MCA to practice	95%	5%
Helped with practical application of MCA as well as theory	95%	5%
I feel confident in knowing how to access MCA support	92%	8%

The focus of training this quarter has continued to be to support staff to understand the steps to take prior to assessing mental capacity, how to frame the question and advice on how to undertake an assessment, through the training package *Practical Application of the MCA: How to Assess & Support Decision Making.*

Assessing Decision Making Capacity MSc module

Following positive feedback from staff, the MCA team have secured a further 4 places on this module starting in September. This will include a member of staff from Mental Health, Medicine and Specialist Clinical Boards, along with the second MCA Practitioner who is due to start in the Autumn.

MCA Team Advice and Support

The MCA Team have received 73 requests for advice and support this quarter, of these 15 have been generic queries and 58 patient specific. To date these queries have taken, on average, 1.7 hours per case. The level of complexity varies but there appears to be representation from across all clinical boards which is positive and suggests staff are becoming increasingly aware of the support available.

Deprivation of Liberty Safeguards Monitoring Actions:

DoLS Signatories

Training has been arranged for the Directors of Nursing and their Deputies to attend DoLS Signatory training in September. This will increase the number of signatories from approximately 5 to 15 which should help ease pressure on individual signatories, speed up the sign off process and encourage participation and understanding across Clinical Boards.

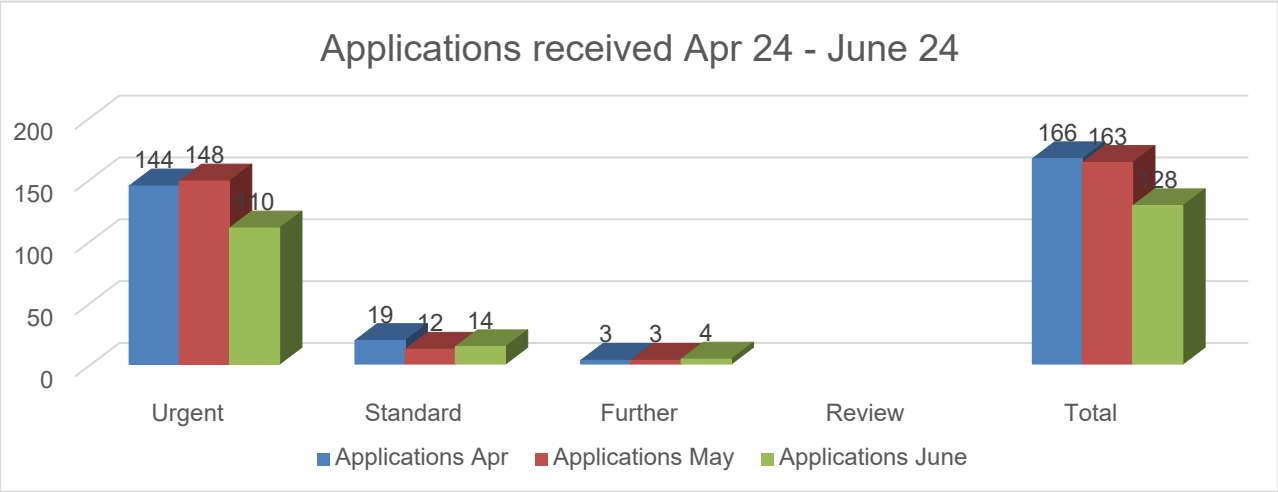
Quarterly overview from April to June 2024

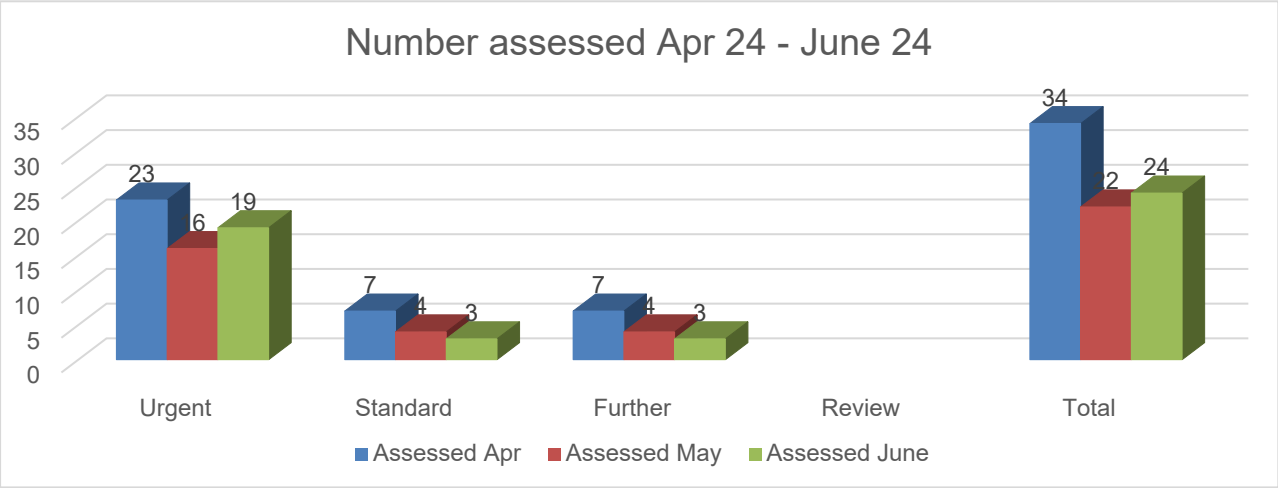
The below charts provide an overview of the DoLS activity for the last quarter (data provided by DoLS Team, Vale Local Authority).

As you will see, the number assessed per month fall far below the number of referrals received. Current arrangements allow for just under 8 assessments to be carried out for the UHB per week, on average. Assessment numbers for May and June are slightly lower than this due to annual leave and a shortage of BIAs within the Team but recruitment for additional BIAs is in process and assessment capacity will be increased over the next quarter to ensure that the UHB receives the contracted number of assessments.

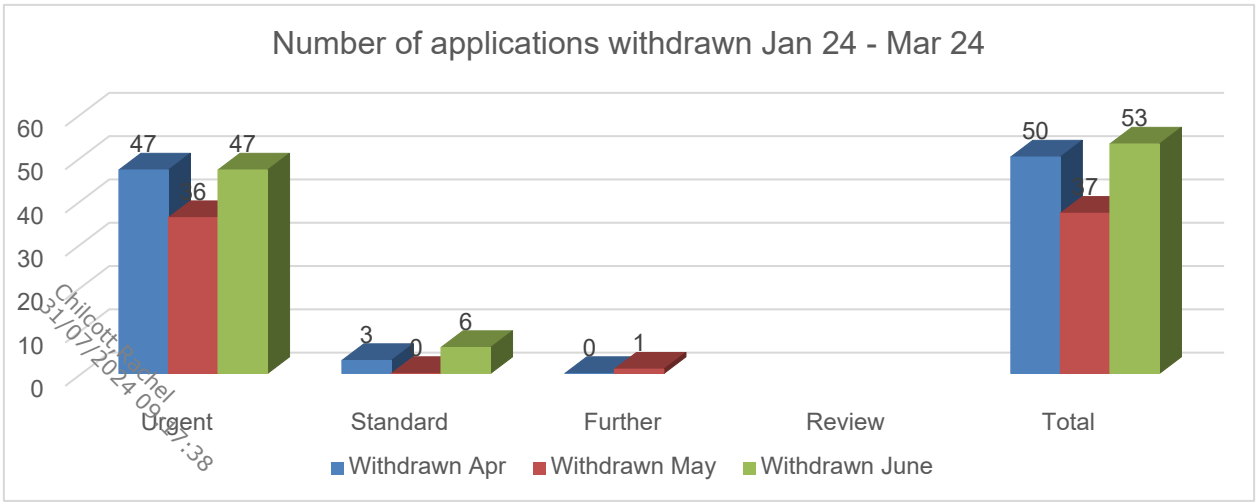
The mean number of referrals per month was 134, up from an average of 67.5 over the last financial year. This appears to be due to increased awareness and knowledge of the Safeguards.

n order to go some way to address the backlog, £35,000 of the Welsh Government MCA/DoLS unding will be provided to increase assessment capacity over the next 3 months.





The below chart outlines the number of assessments withdrawn prior to assessment. The reasons or this vary. Occasionally withdrawal will be due to the person regaining capacity but usually it will be due to a move to another ward, discharge from hospital or death. It should be noted that where here are delays in assessment, this increases the likelihood that a referral will be withdrawn so withdrawal rates are higher than would be expected should assessments be carried out within statutory timeframes.



As highlighted previously, limitations on assessment capacity mean that the 7 day timeframe for urgent assessments is routinely unachievable however, it is hoped that the work being conducted both locally and nationally to streamline the DoLS process will help to address this in the not too distant future.

The MCA Project Lead continues to work in collaboration with the DoLS Team Manager to identify areas for improvement within the DoLS Framework and ensure that clinical areas are provided with timely feedback in relation to assessment time frames and delays.

ecommendation:

he Committee is requested to:

a)

nk to Strategic Objectives of Shaping our Future Wellbeing:

ease place an "X" in the below boxes as relevant.

Putting People First **Click the objective above to view more detail.**		2. Providing Outstanding Quality **Click the objective above to view more detail.**	
Delivering in the Right Places **Click the objective above to view more detail.**		4. Acting for the Future **Click the objective above to view more detail.**	

Five Ways of Working (Sustainable Development Principles) considered

*Please place an "**X**" in the below boxes as relevant*

Prevention		Long term		Integration		Collaboration		Involvement	

npact Assessment:

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

isk: Yes/No

/A

afety: Yes/No

/A

nancial: Yes/No

/A

/orkforce: Yes/No

/A

egal: Yes/No

/A

eputational: Yes/No

/A

ocio Economic: Yes/No

/A

quality and Health: Yes/No

/A

ecarbonisation: Yes/No

/A

pproval/Scrutiny Route *(please note anywhere else this paper has been before):*

ommittee/Group/Exec	Date:

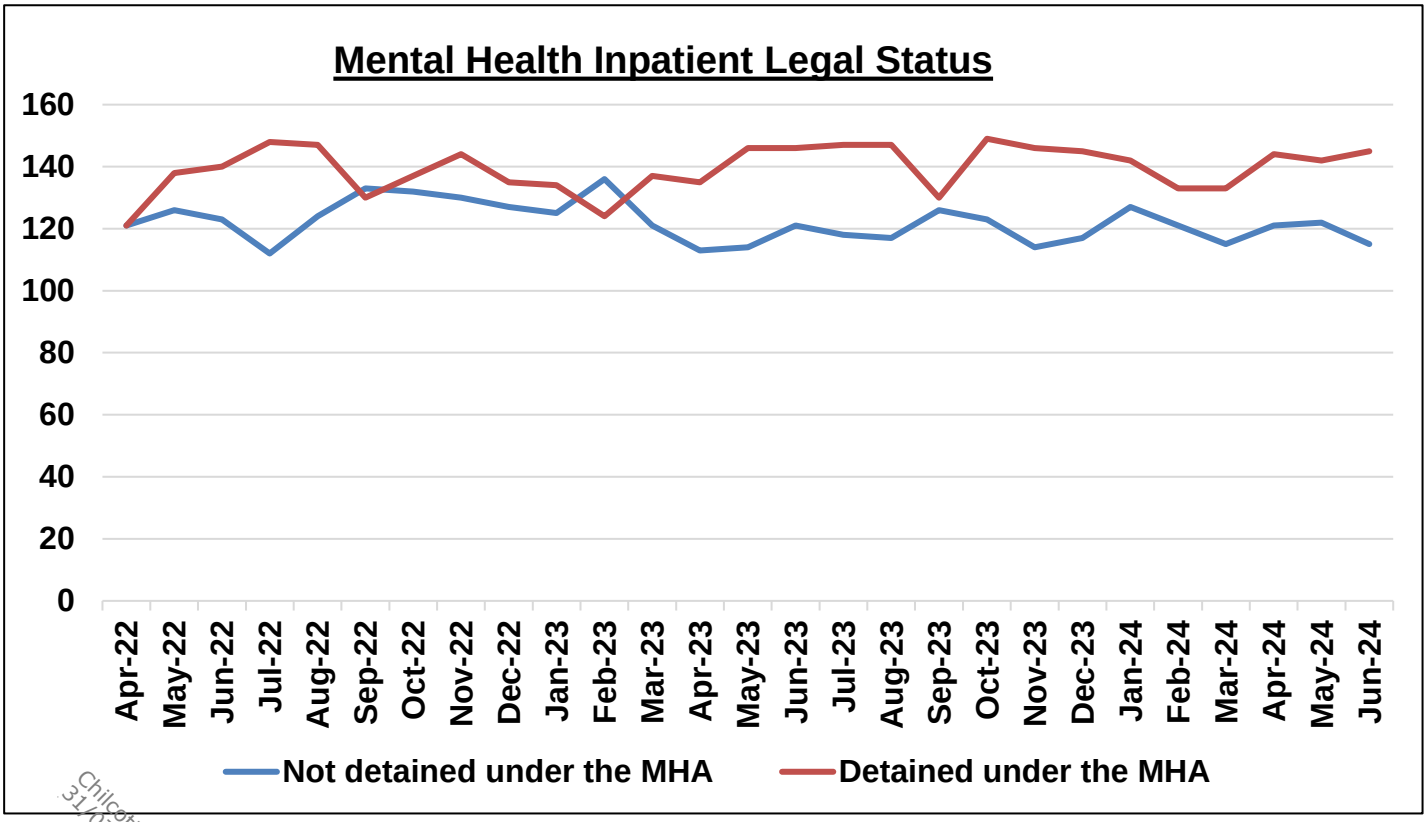
Report Title:	Mental Health Act Monitoring Exception Report				Agenda Item no.	3.1
Meeting:	Mental Health Legislation and Mental Capacity Act Committee		Public	X	Meeting Date:	6 August 2024
			Private			
Status *(please tick one only):*	Assurance	X	Approval		Information	
Lead Executive:	Interim Chief Operating Officer					
Report Author (Title):	Mental Health Clinical Board Director of Opertations					

Main Report
Background and current situation:

This report provides the Committee with further information relating to wider issues of the Mental Health Act (MHA). Any exceptions highlighted in the MHA Monitoring report are intended to raise the Committee's awareness of matters relating to the functions of hospital managers and give assurance that the care and treatment of patients detained by Cardiff and Vale University Health Board and those subject to a community treatment order is only as the MHA allows.

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

Use of the MHA



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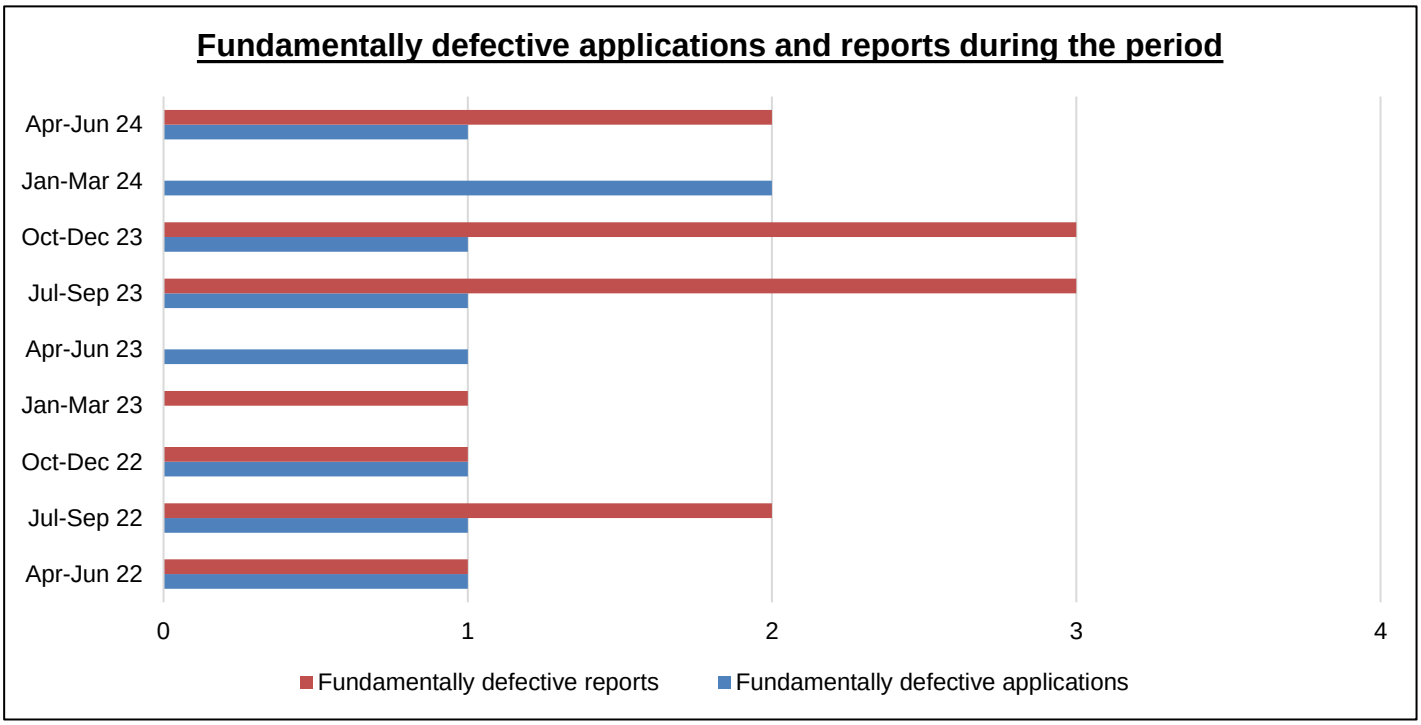
Fundamentally defective applications and reports



During the quarter there was one fundamentally defective application.
P was assessed in England and detained on a Section 2 straight to HYC. The correct Welsh AMHP application was used however, the AMHP typed their name instead. This was picked up by the shift coordinator after receiving the paperwork via e-mail to scrutinise. AMHP was informed to provide a wet signature however, P was transferred without the correction being made. Silver on call was contacted who advised we couldn't accept and it was marked as fundamentally defective. The patient was advised, re-assessed and detained under a Section 2.

During the quarter there were two fundamentally defective reports.
P was assessed in UHW and a Section 5(2) was completed however, it was completed on an English form. We tried to contact the ward to ask the doctor to complete a Welsh form but could not get hold of them. We informed the ward it was fundamentally defective and they should advise P of this. They would need to get another doctor to complete one if appropriate. P later detained under Section 2.

P was assessed in UHW and a Section 5(2) was completed however, it was completed on an English form and it wasn't formally furnished to the Hospital Manager's. The ward contacted our office on the Monday morning and sent us through the form. We advised it was fundamentally defective and they should advise P of this. Another 5(2) was completed.

Section 136 A&E

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

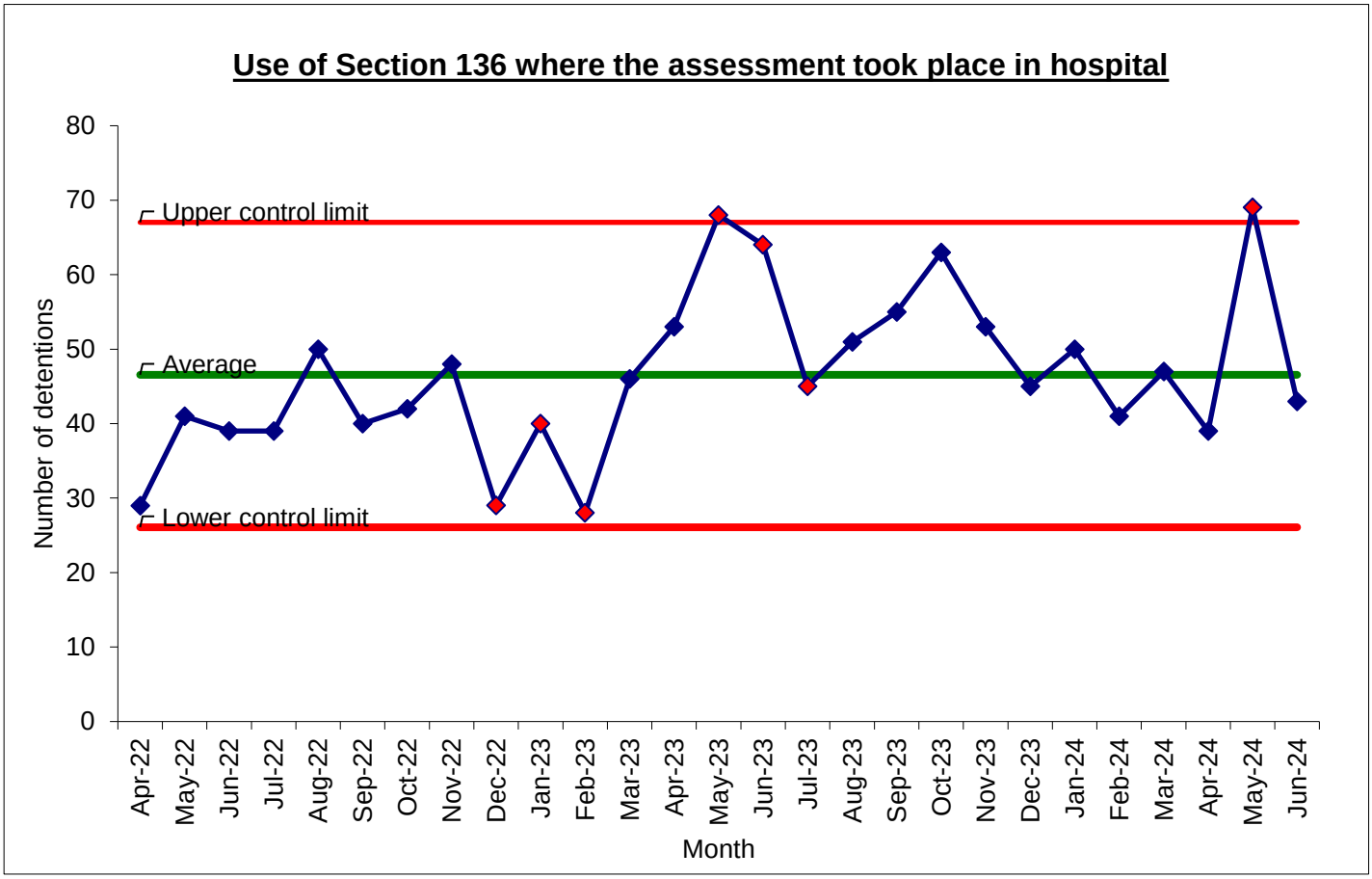
> *Patient has taken an overdose which is related to their mental disorder. Needs to go to A&E for physical treatment, therefore the clock starts ticking when they arrive in A&E. Patient receiving physical treatment beyond the 24/36-hour period. 136 has lapsed with no mental health act assessment.*

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

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

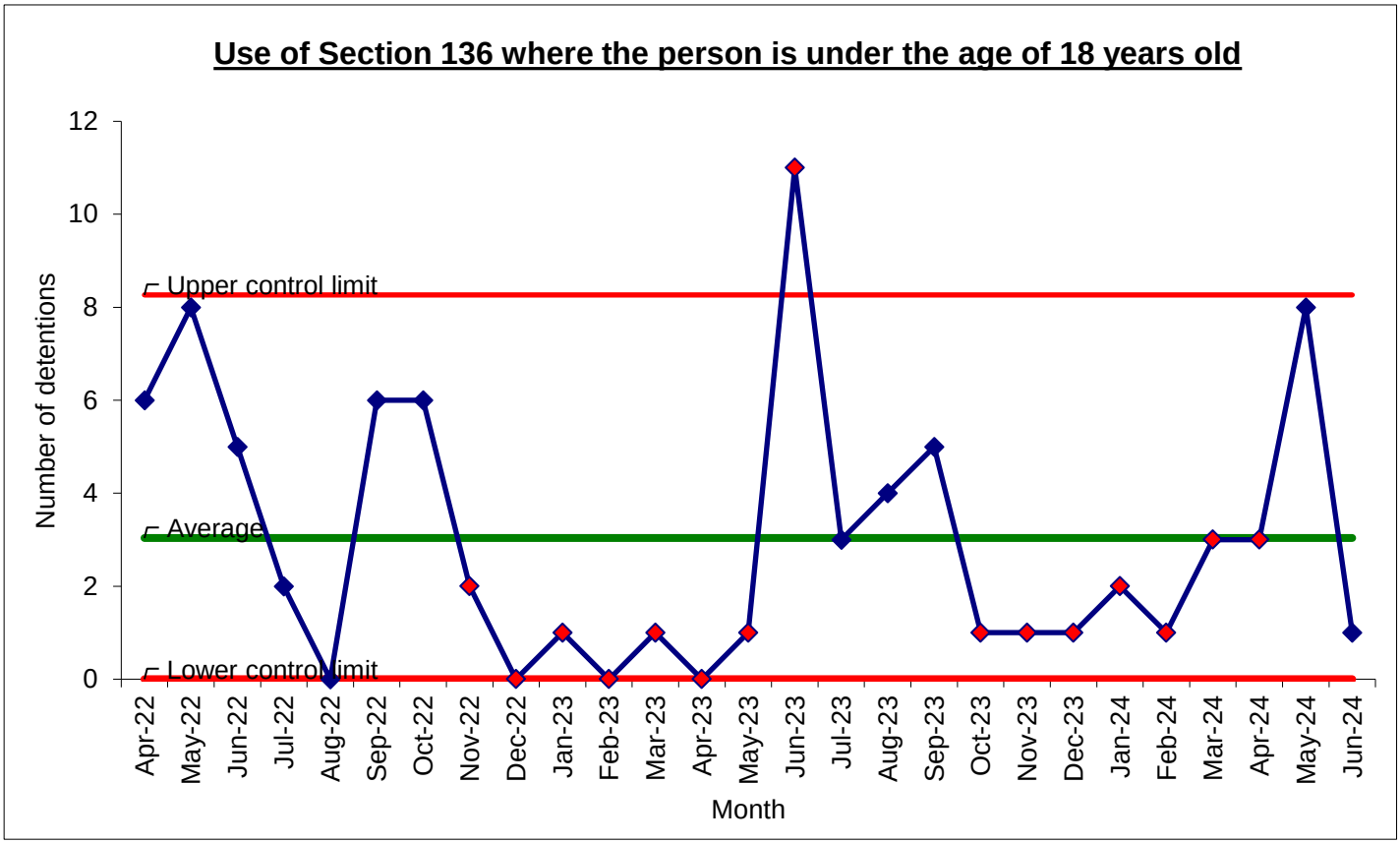
It was noted that 79.5% of individuals assessed were not admitted to hospital, with 49.7% being discharged to community services and 29.8% were discharged with no follow up. Overall during the period 19.3% of patients were admitted to hospital following a 136 assessment which is higher than the previous quarter at 15.9%. One patient's 136 lapsed with no assessment taking place.

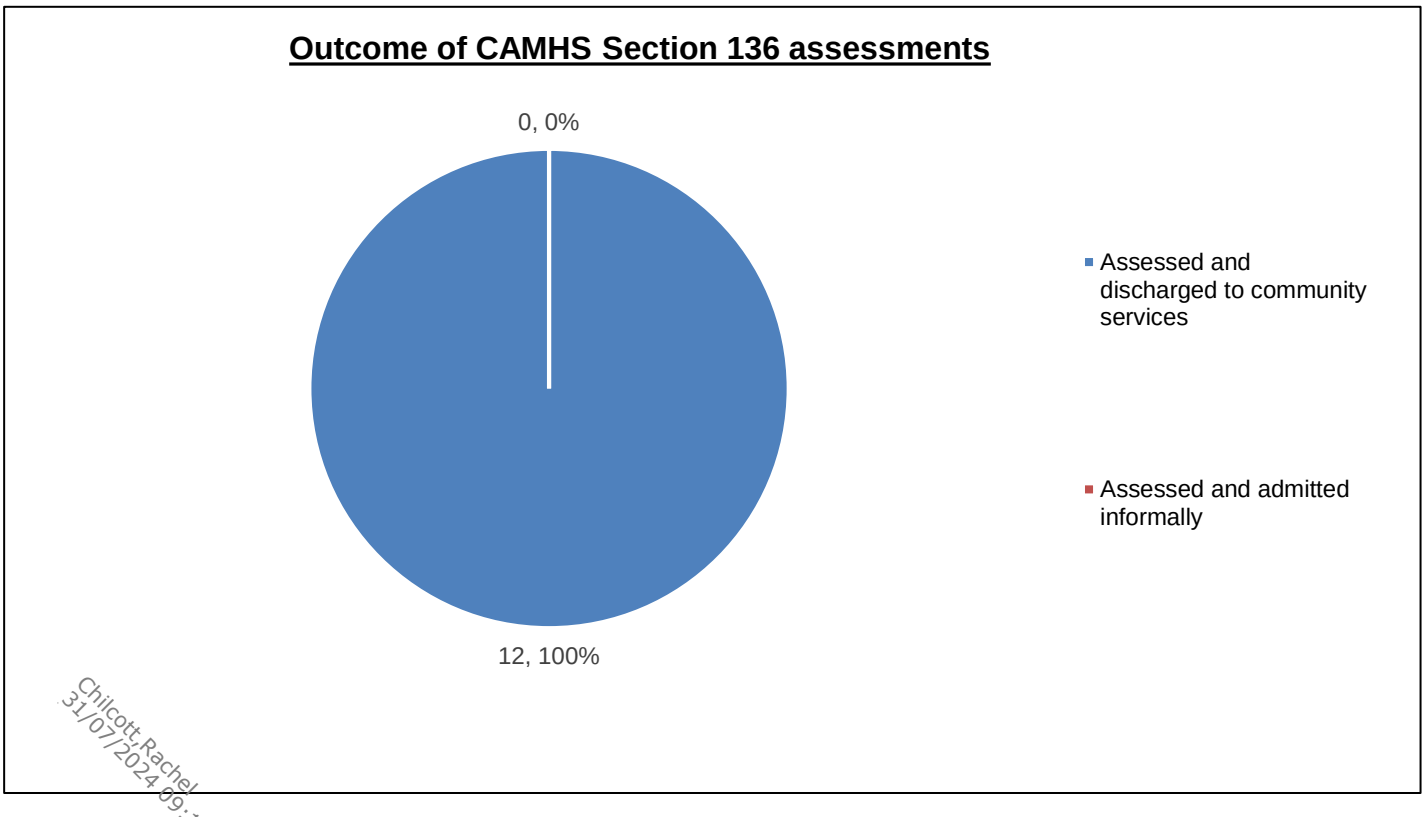
Period	% not admitted to hospital
April – June 2024	79.5%
January – March 2024	83.3%
October – December 2023	80.1%
July – September 2023	83.5%
April – June 2023	80.4%
January – March 2023	71.1%
October – December 2022	73.9%
July – September 2022	69.0%
April – June 2022	71.5%



Section 136 - CAMHS

The number of those under 18 assessed under section 136 has increased from 6 in the previous quarter to 12 in this quarter. 8 of these were repeat presentations by 2 service users.





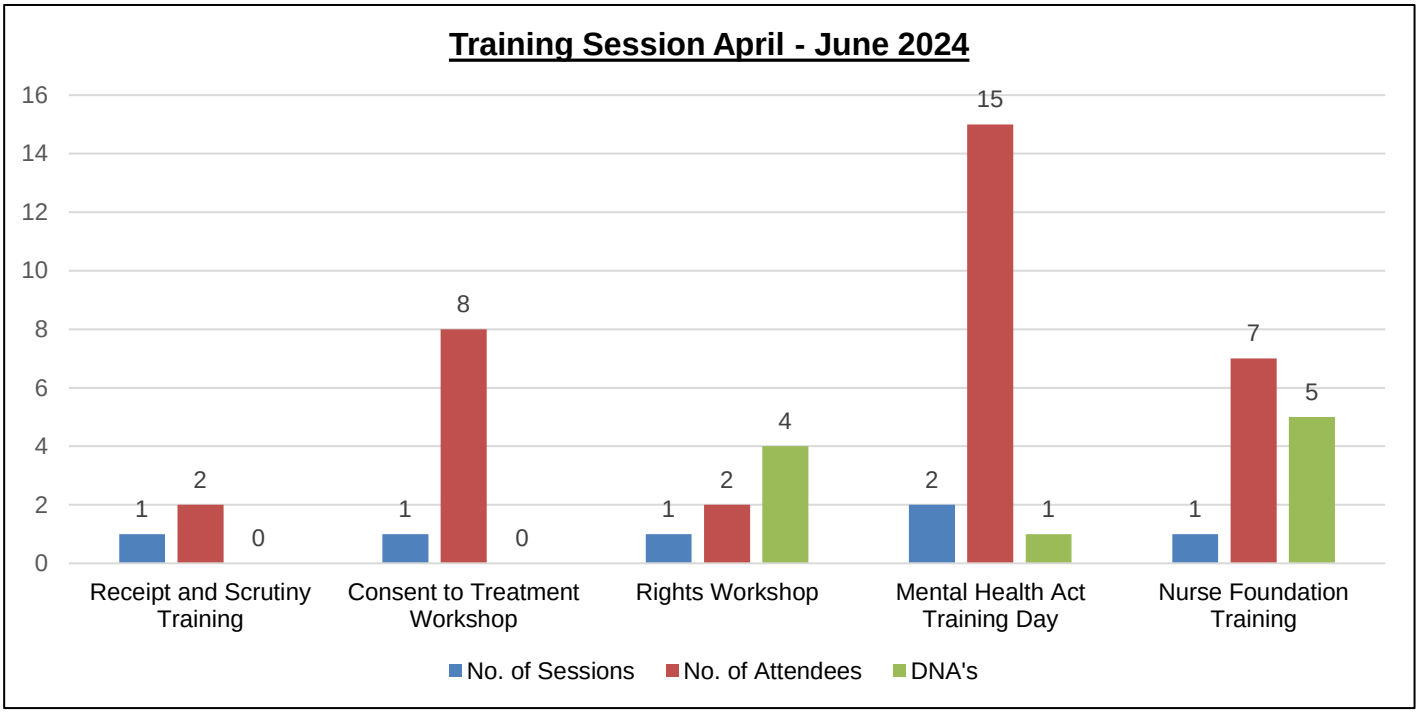
Development Sessions

The MHA office continues to run the below awareness sessions available to all staff within the Health Board:

- Bi monthly MHA training day
- Quarterly consent to treatment, rights and forensic workshops
- Yearly refresher receipt and scrutiny training for all shift coordinators

We also continue to support the below training programmes as and when required:

- Nurse foundation programme
- Junior Doctor's MHA inductions
- AMHP programme



Audits

The MHA office continue to audit all the wards and CMHT's within the UHB. This is to ensure compliance with the MHA and best practices are maintained. If any issues are found during the audit we will follow up with an e-mail to the ward manager and/or responsible clinician confirming what is needed to rectify the issue and re-audit within 4-6 weeks.

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

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

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

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

Section 136
Continue to monitor with colleagues in South Wales Police and ensure any incidents related to an assessment not being completed within the 24/36-hour period due to physical health issues are reported accordingly.

Section 136 – CAMHS
Continue to monitor and report accordingly ensuring that at least one of the people involved in the child's formal assessment (i.e. one of the two registered medical practitioners or the approved mental health professional) is an experienced specialist CAMHS practitioner wherever possible.

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

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

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

Recommendation:

The Committee is requested to:

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

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

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

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

Risk: Yes/No

No

Safety: Yes/No

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

Financial: Yes/No

No

Workforce: Yes/No

No

Legal: Yes/No

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

Reputational: Yes/No

No

Socio Economic: Yes/No

No

Equality and Health: Yes/No

No

Decarbonisation: Yes/No

No

Approval/Scrutiny Route:

Committee/Group/Exec	Date:

Chilcott Rachel
31/07/2024 09:17:38

Report to the

Mental Health Legislation and Mental Capacity Act Committee

on the use of The Mental Health Act, 1983

April- June 2024

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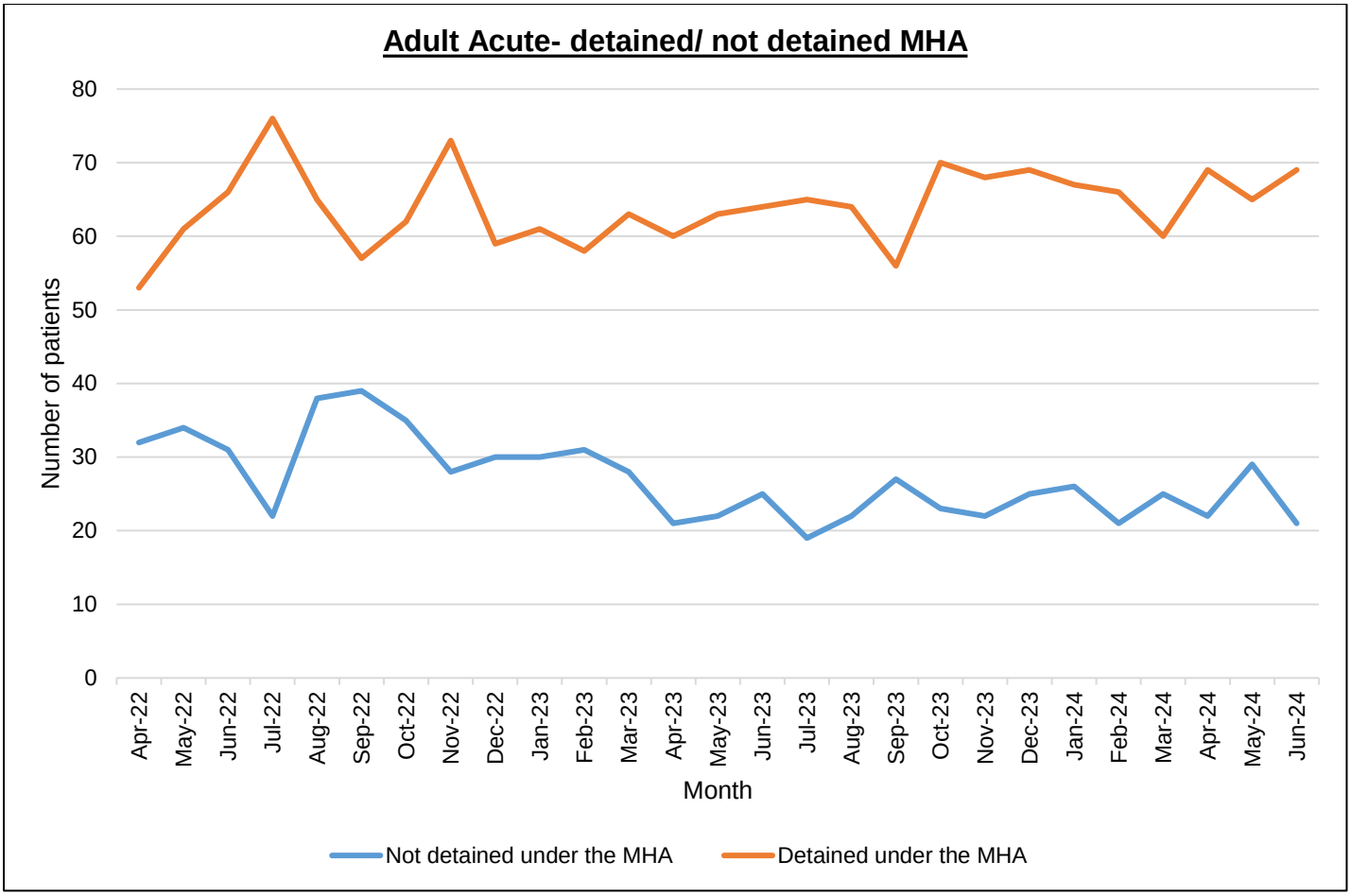
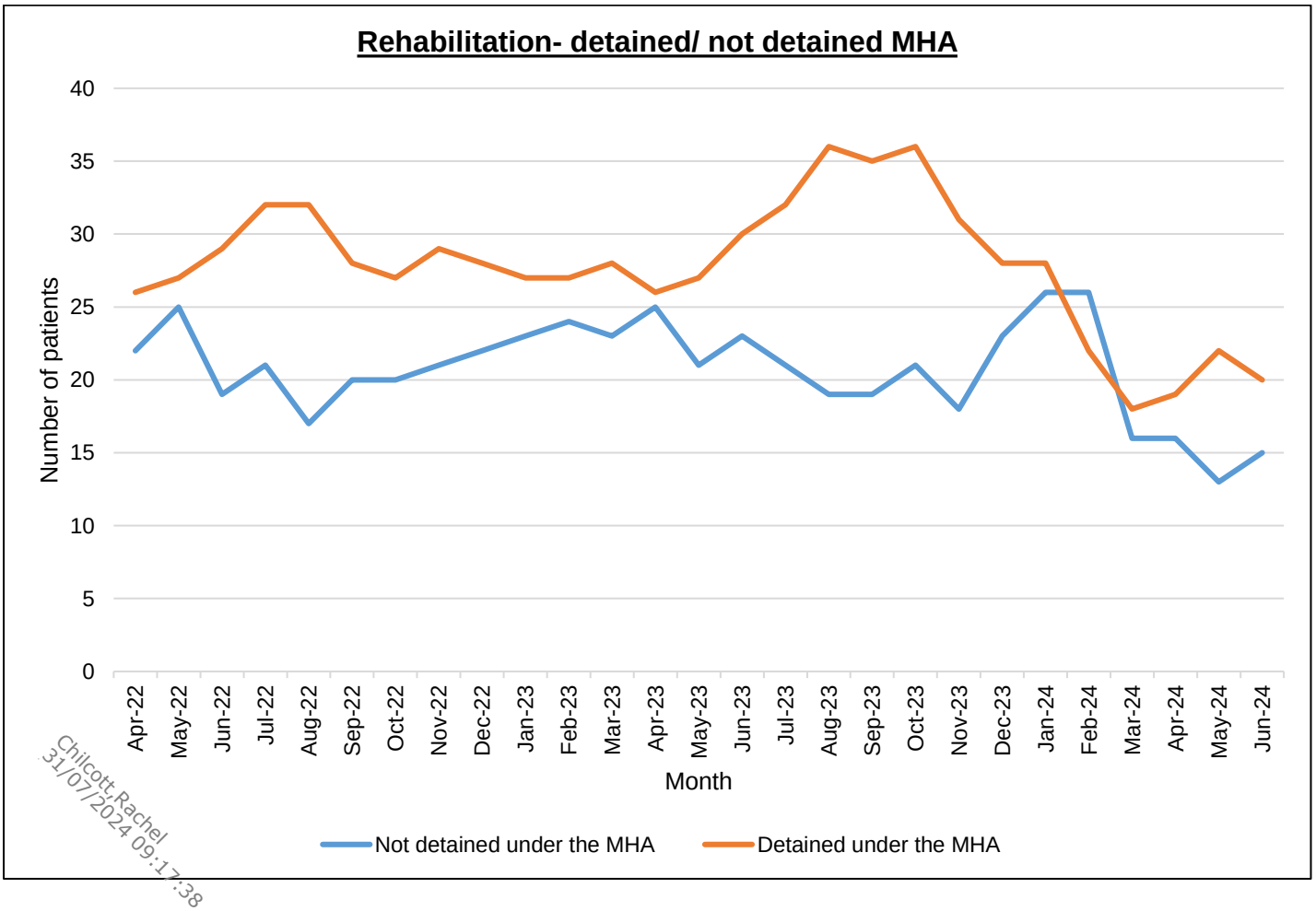
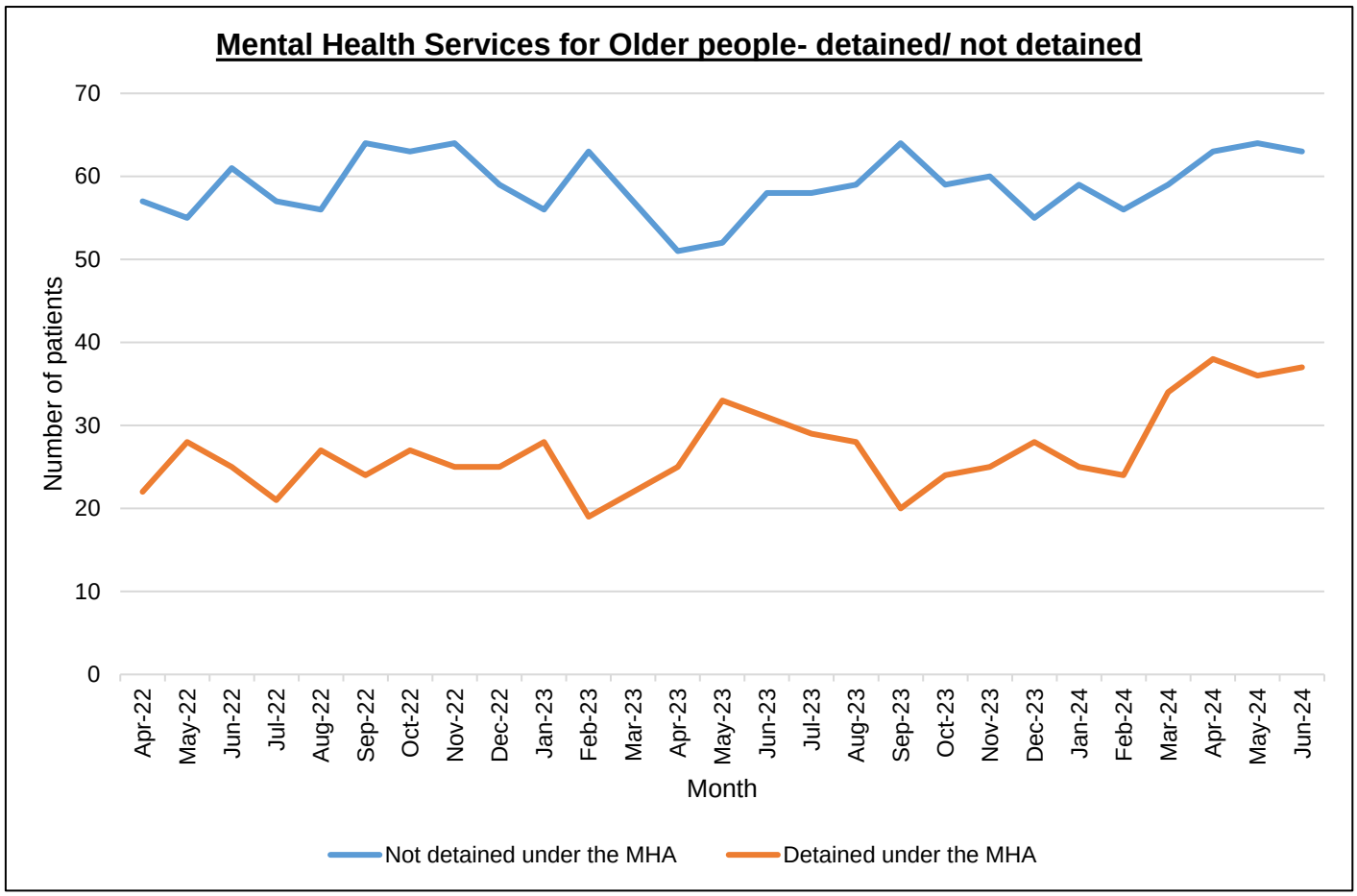
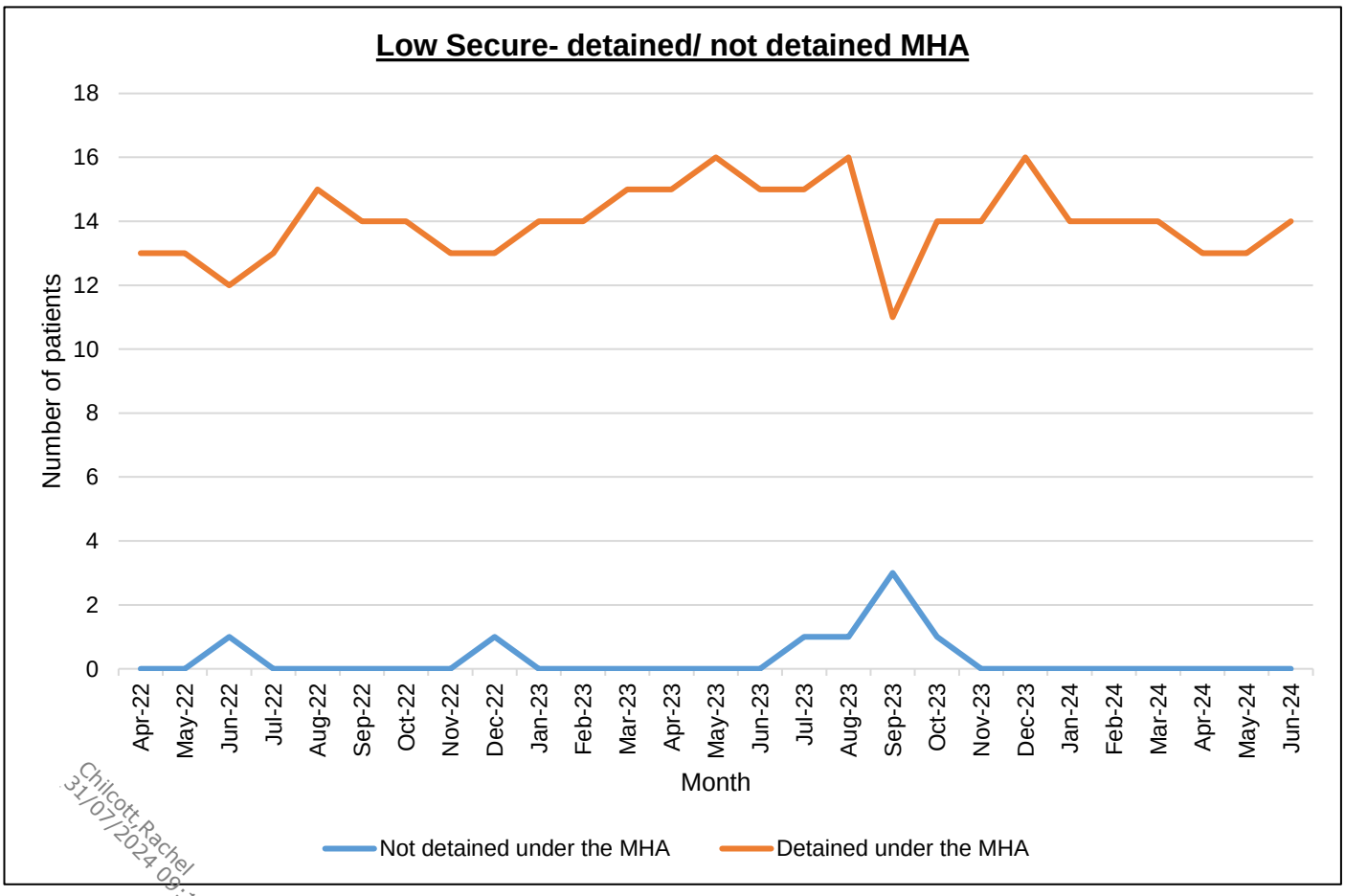
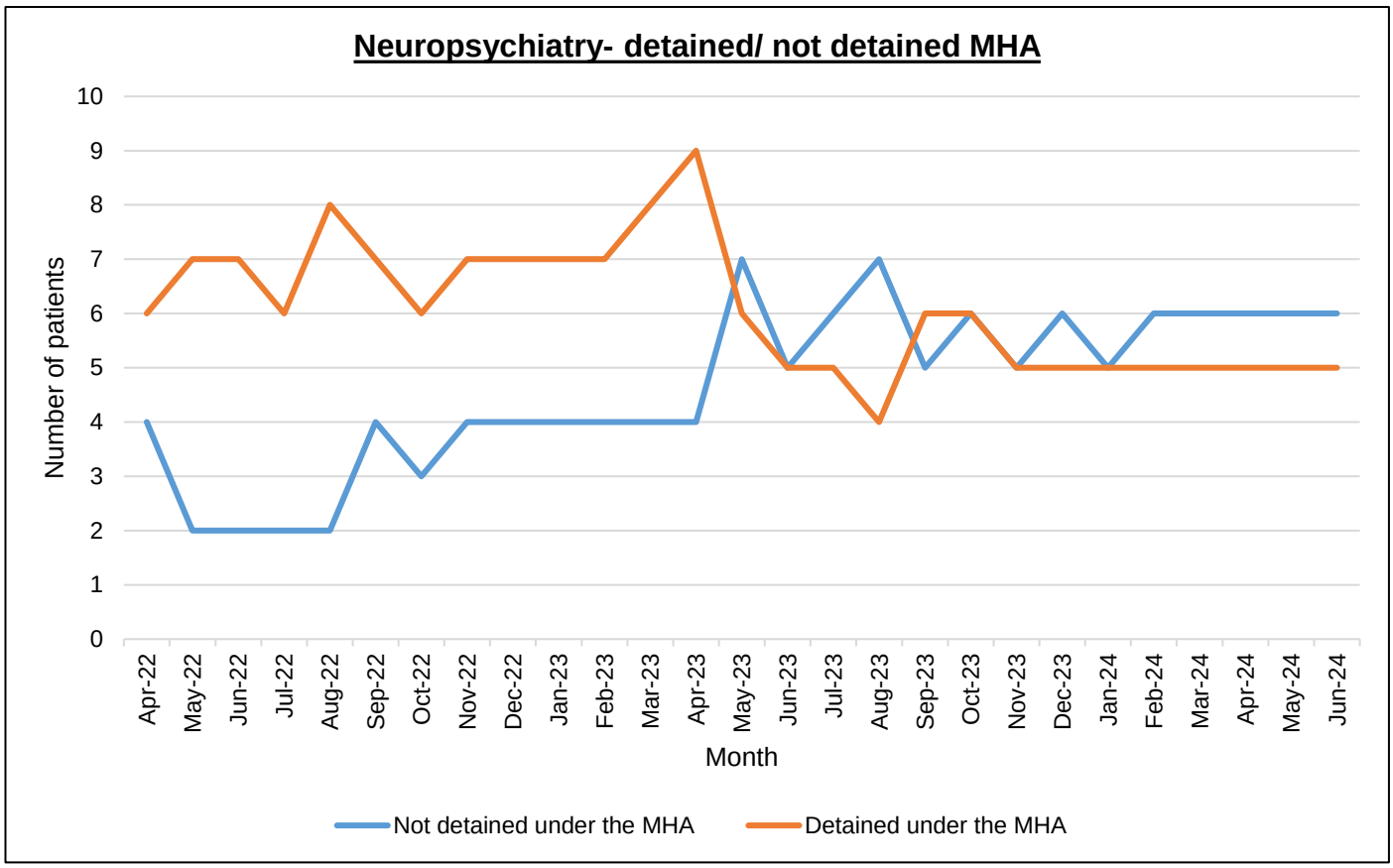
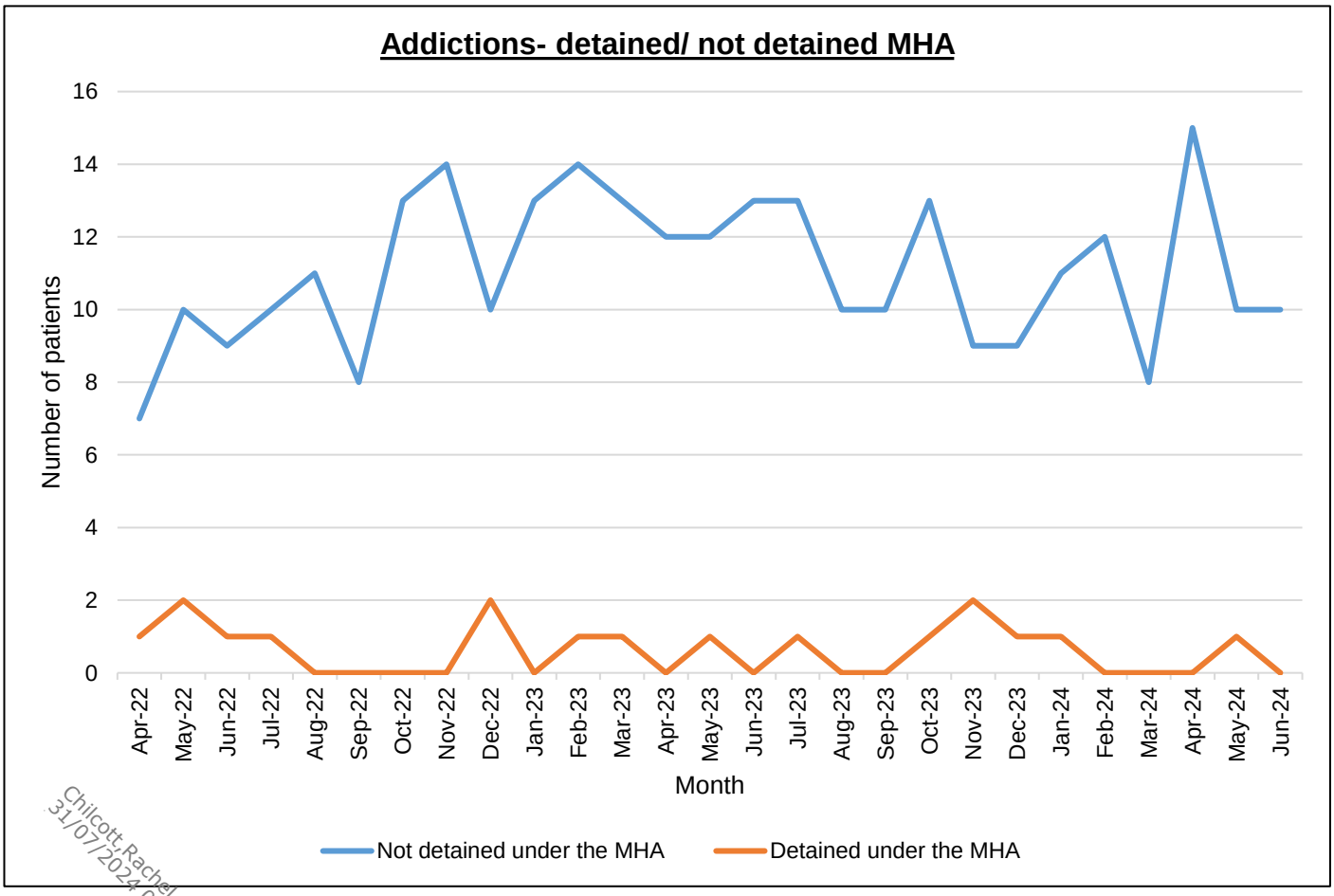








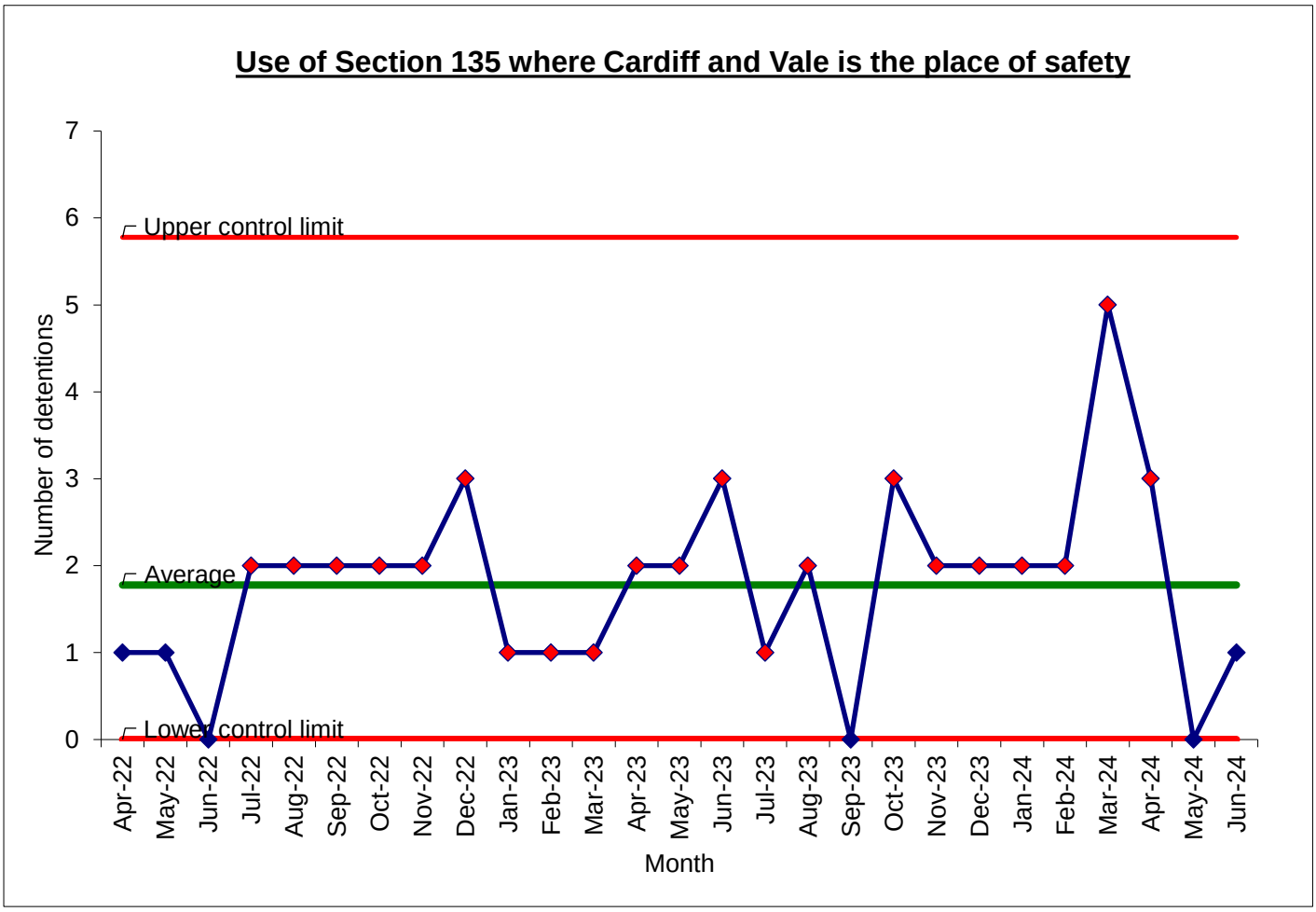




Section 135 – Warrant to search for and remove a mentally disordered person/patient from private premises to a place of safety

During the period Section 135 (1) powers were used on four occasions. During the period there were no uses of Section 135(2).

- Detained under Section 2 x 3
- Patient detained under Section to an out of area bed x1



Voluntary Assessment

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

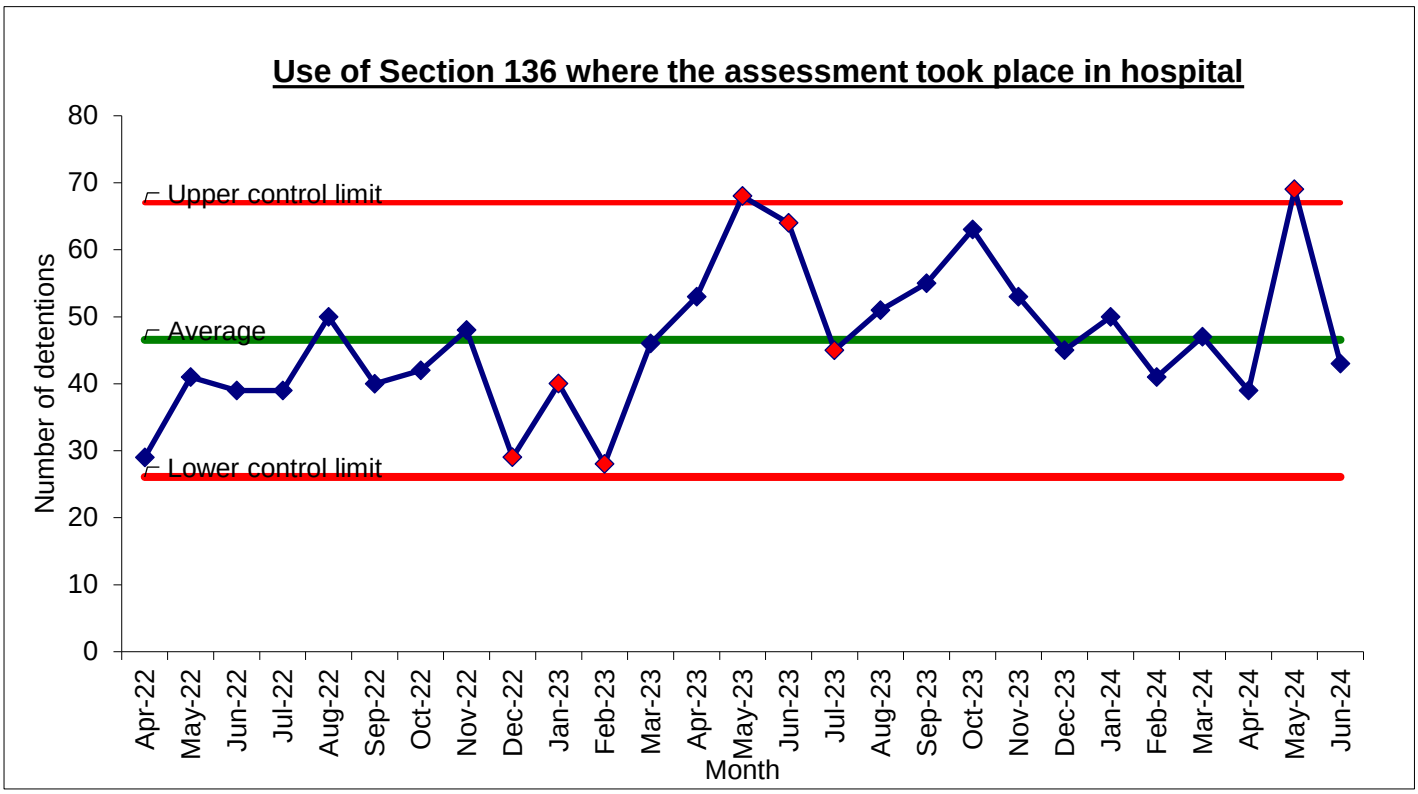
- Use of s135
- Use of s136
- Voluntary Assessment
- Mental Capacity Act

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

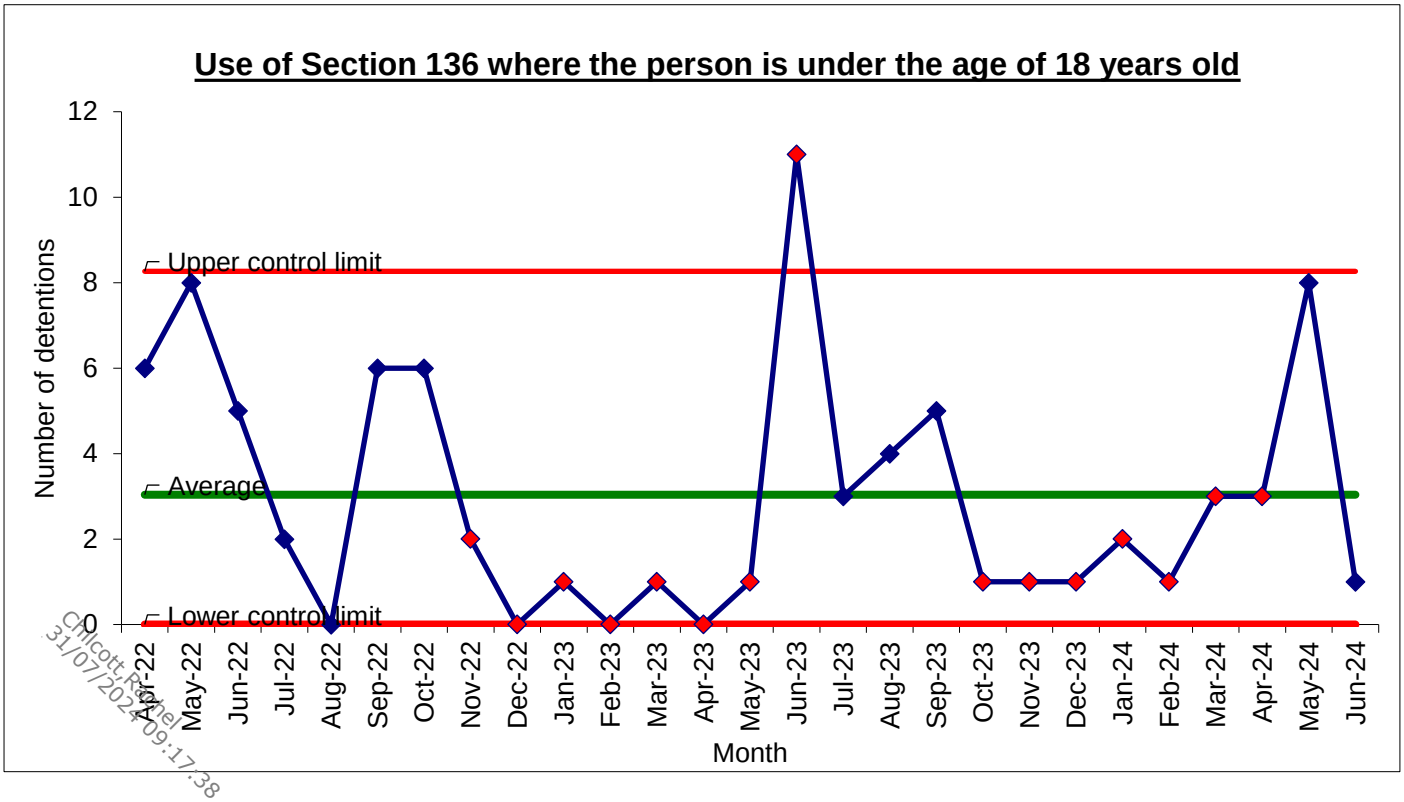
For this period, we have seen five people for a Voluntary Assessment one person was brought into hospital under the Mental Capacity Act.

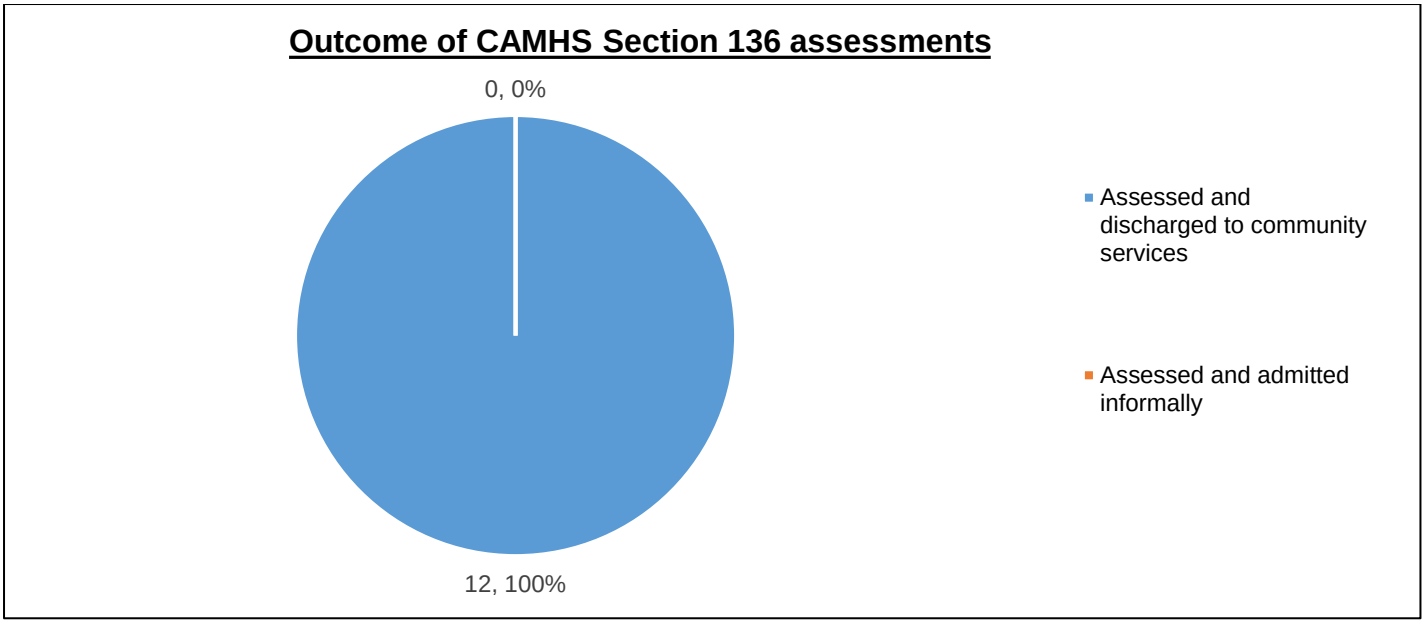
Section 136- Mentally disordered persons found in public places Mental Health Act assessments undertaken within Cardiff and Vale UHB

During the period a total of 151 assessments were initiated by Section 136 where the MHA assessment took place in a hospital as the place of safety.

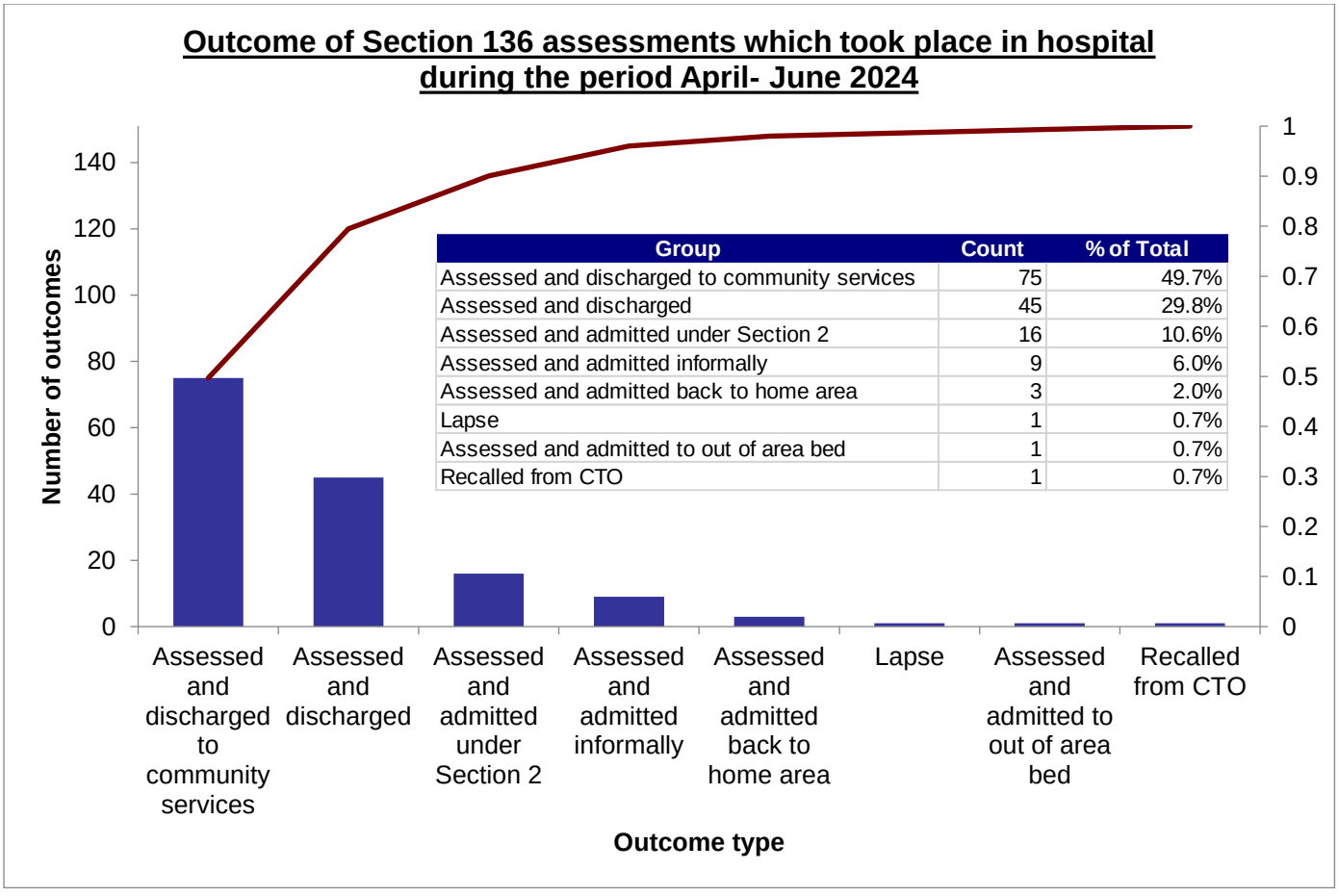


Twelve of those assessments were carried out on patients under the age of 18. Included in the above data are those under 18 years of age. Eight of these presentations were repeats of two service users. This is extracted below;-





The pareto chart highlights that 79.5% 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.

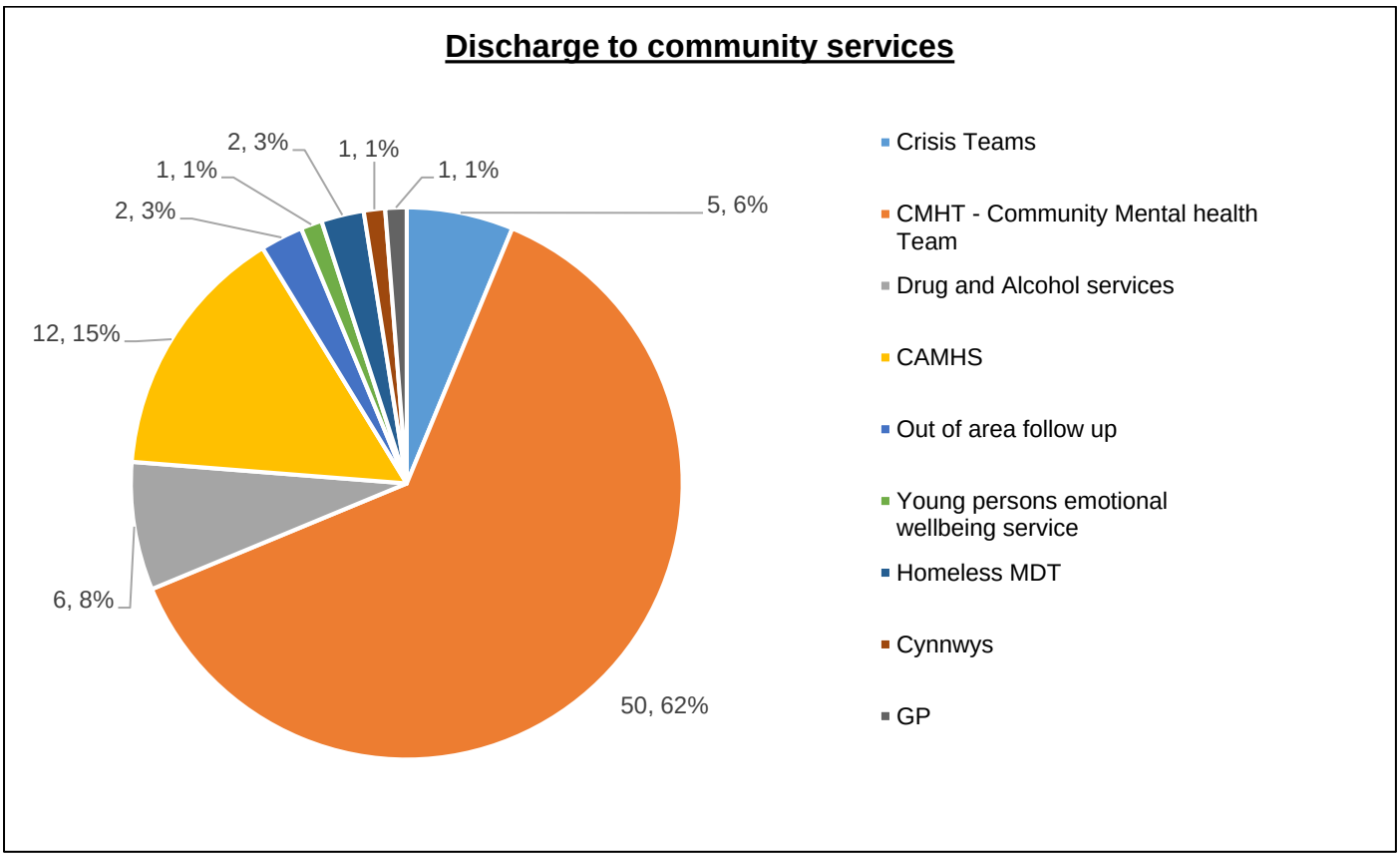


Group	Count	% of Total
Assessed and discharged to community services	75	49.7%
Assessed and discharged	45	29.8%
Assessed and admitted under Section 2	16	10.6%
Assessed and admitted informally	9	6.0%
Assessed and admitted back to home area	3	2.0%
Lapse	1	0.7%
Assessed and admitted to out of area bed	1	0.7%
Recalled from CTO	1	0.7%

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

The one lapsed detention was due to the patient not being fit for assessment during the detention period.

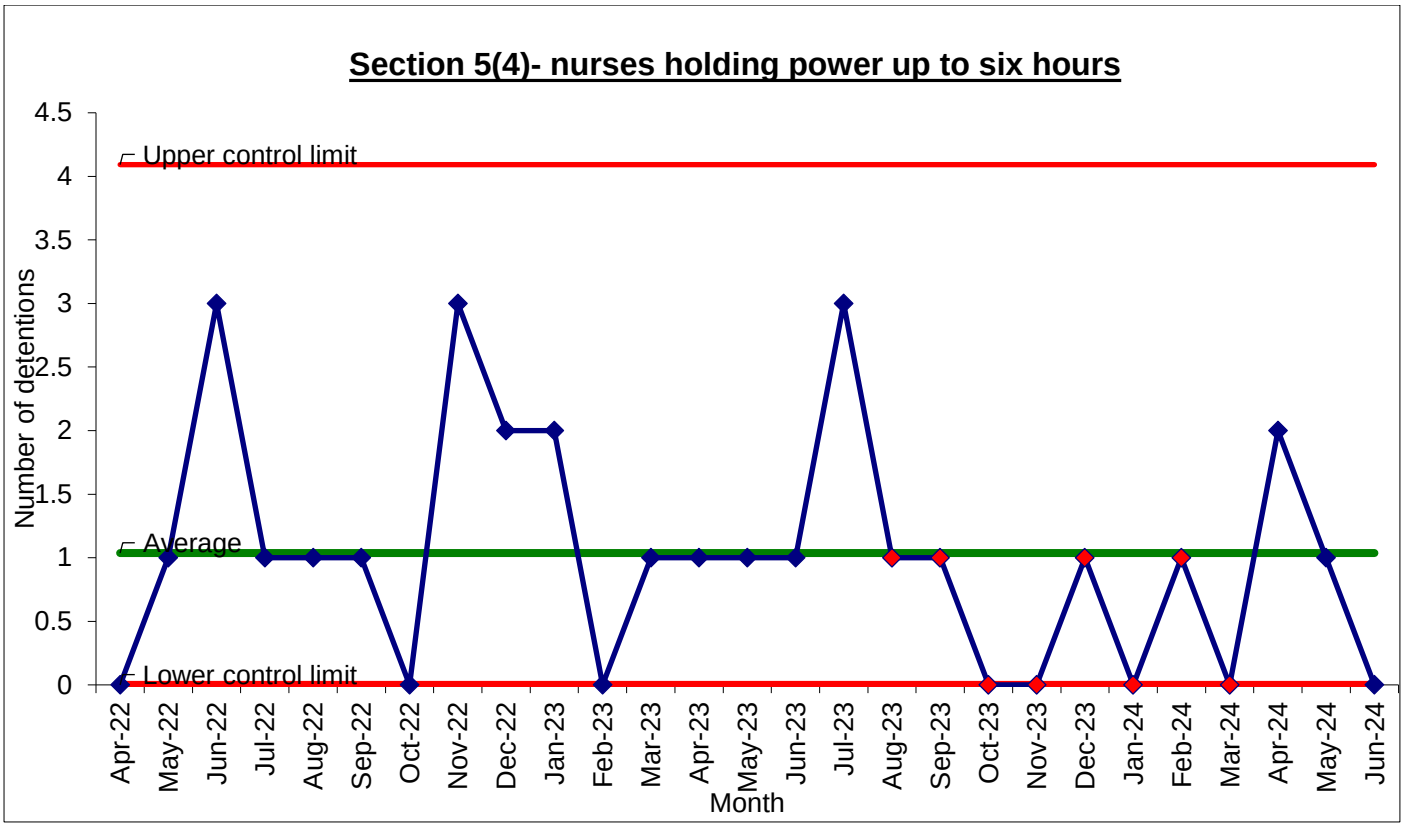
The below chart is a breakdown of the referrals to Community Services as a result of a s136 assessment. Please note that patients can be referred to multiple Community Services, so it is possible that the numbers below are higher than the total number of s136 used.

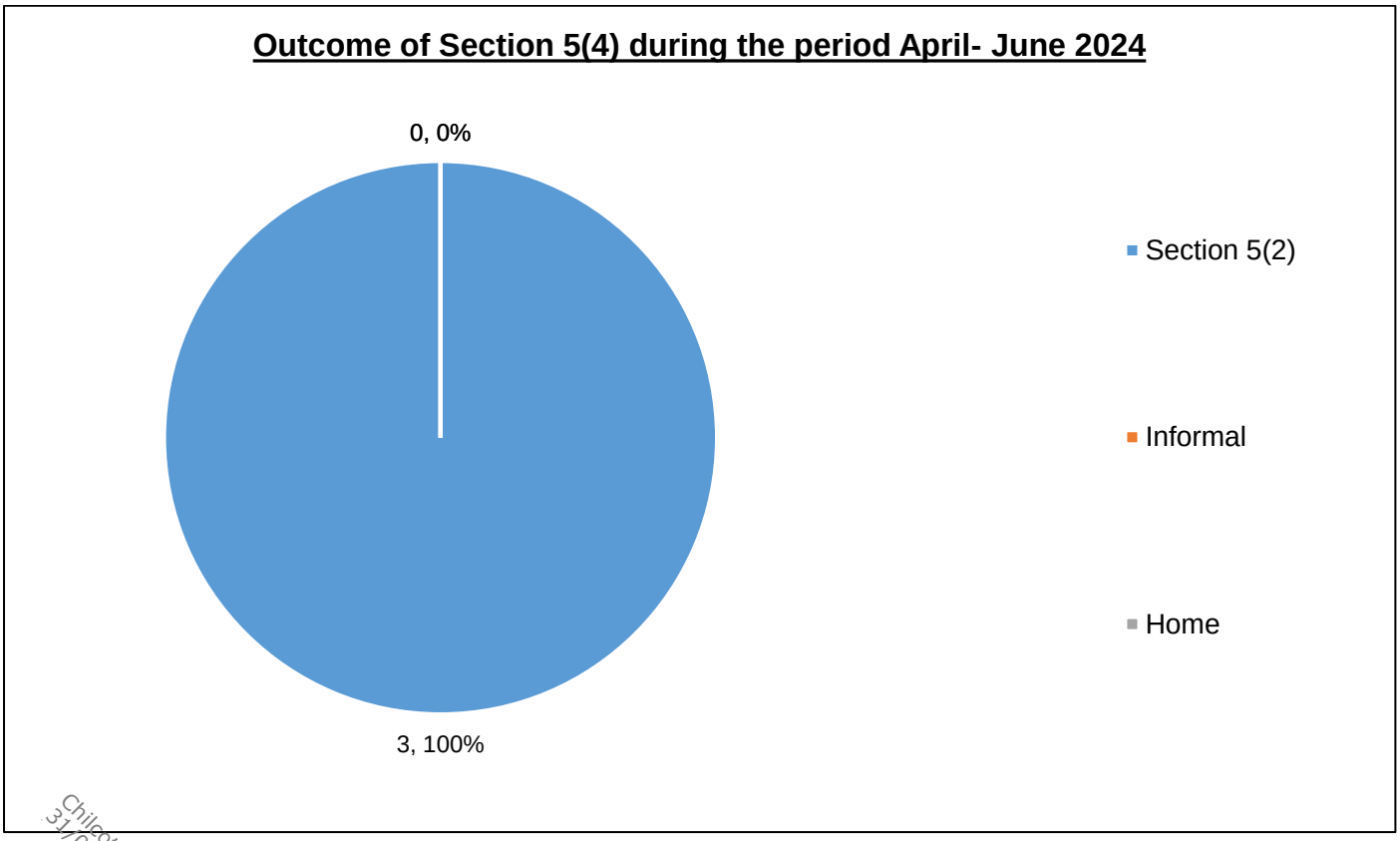


Section 136- Mentally disordered persons found in public places Mental Health Act assessments undertaken within a Police Station

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

Section 5(4) - Nurses Holding Power





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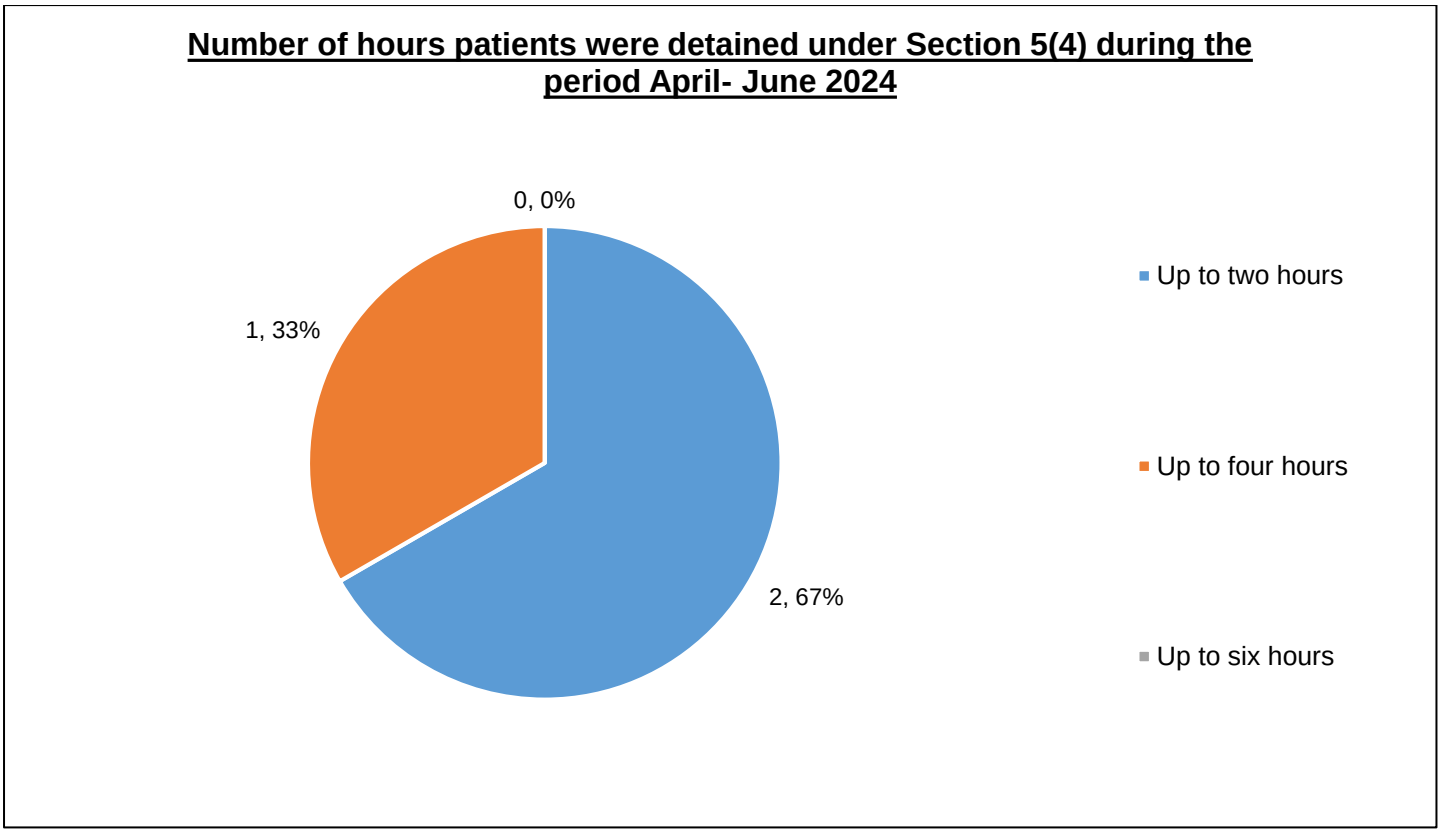
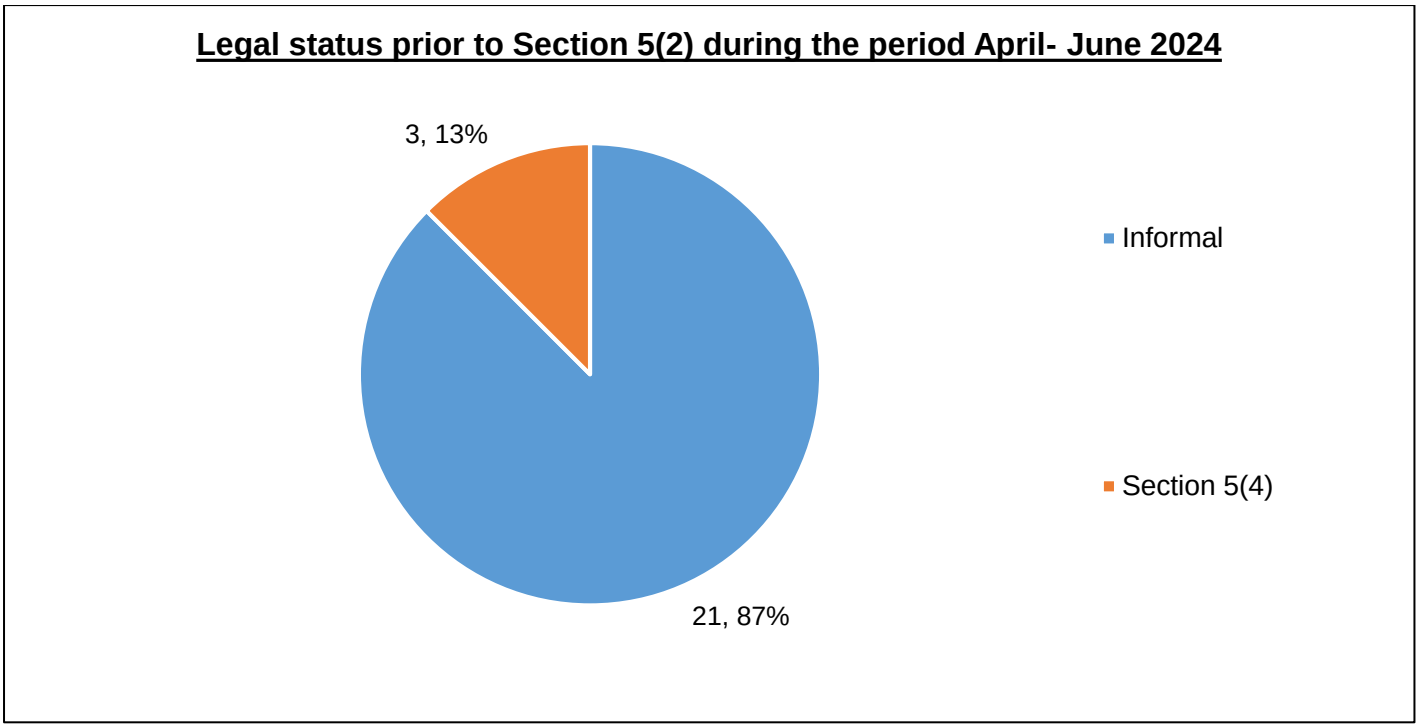
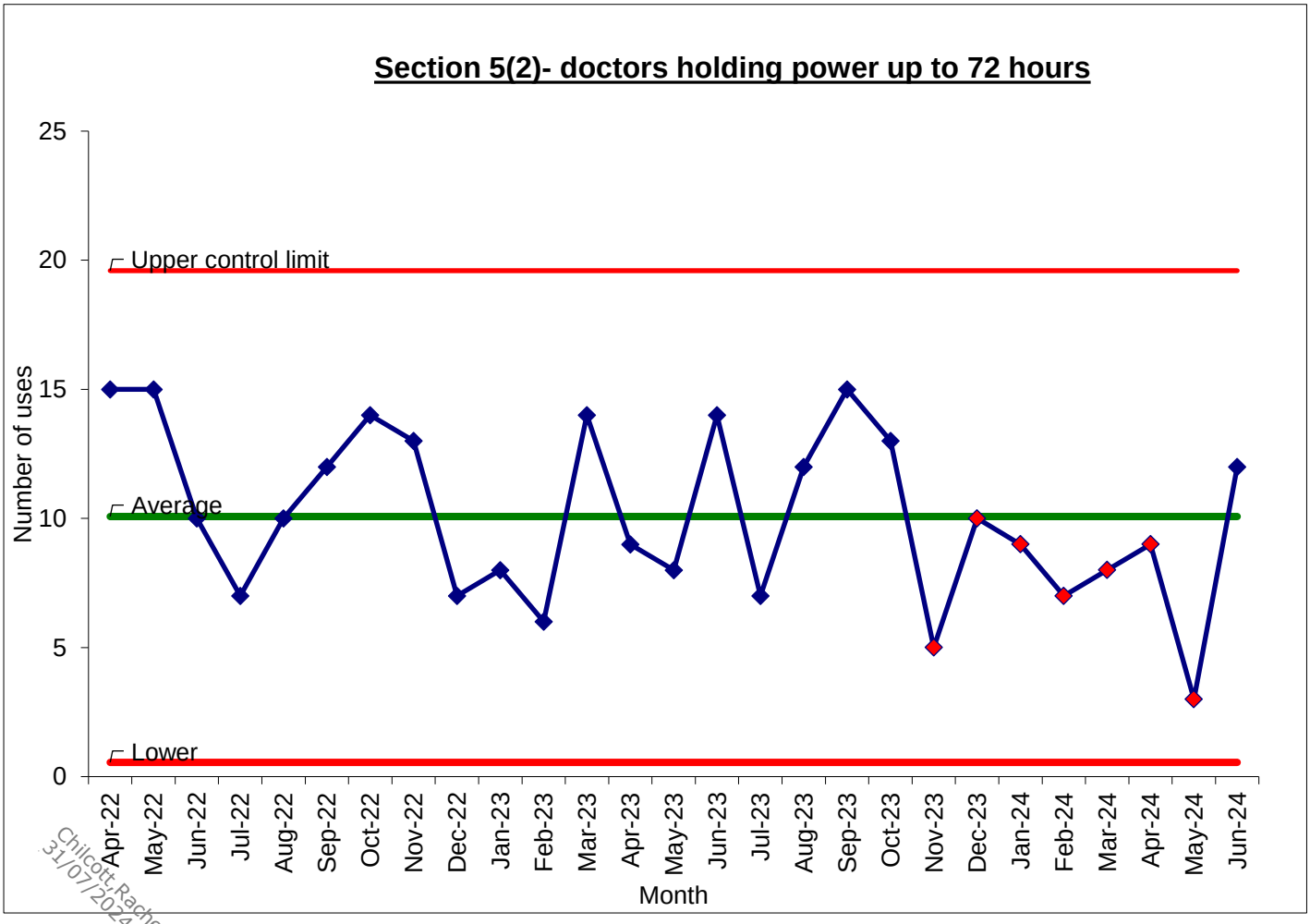
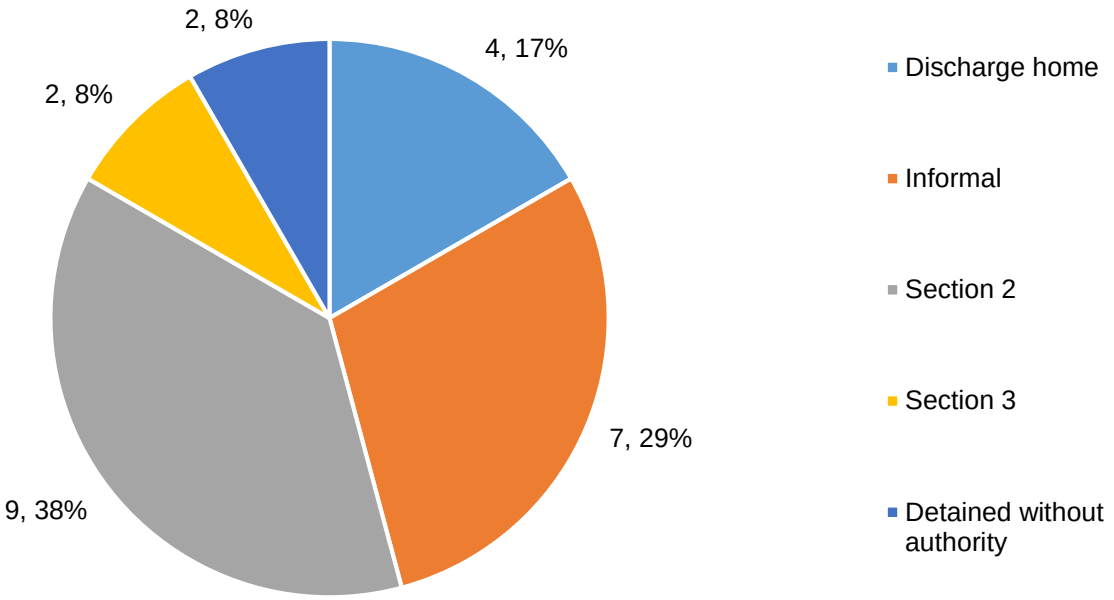


Section 5(2) - Doctors holding power

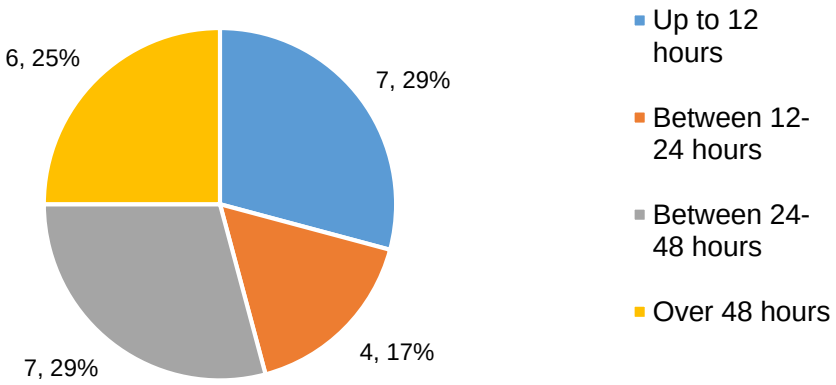




Outcome of Section 5(2) during the period April- June 2024



Number of hours patients were detained under Section 5(2) during the period April- June 2024



The two patients detained without authority were due to the detection papers not meeting the Welsh regulations in terms of being completed on Welsh forms and therefore not being accepted on behalf of the hospital managers.

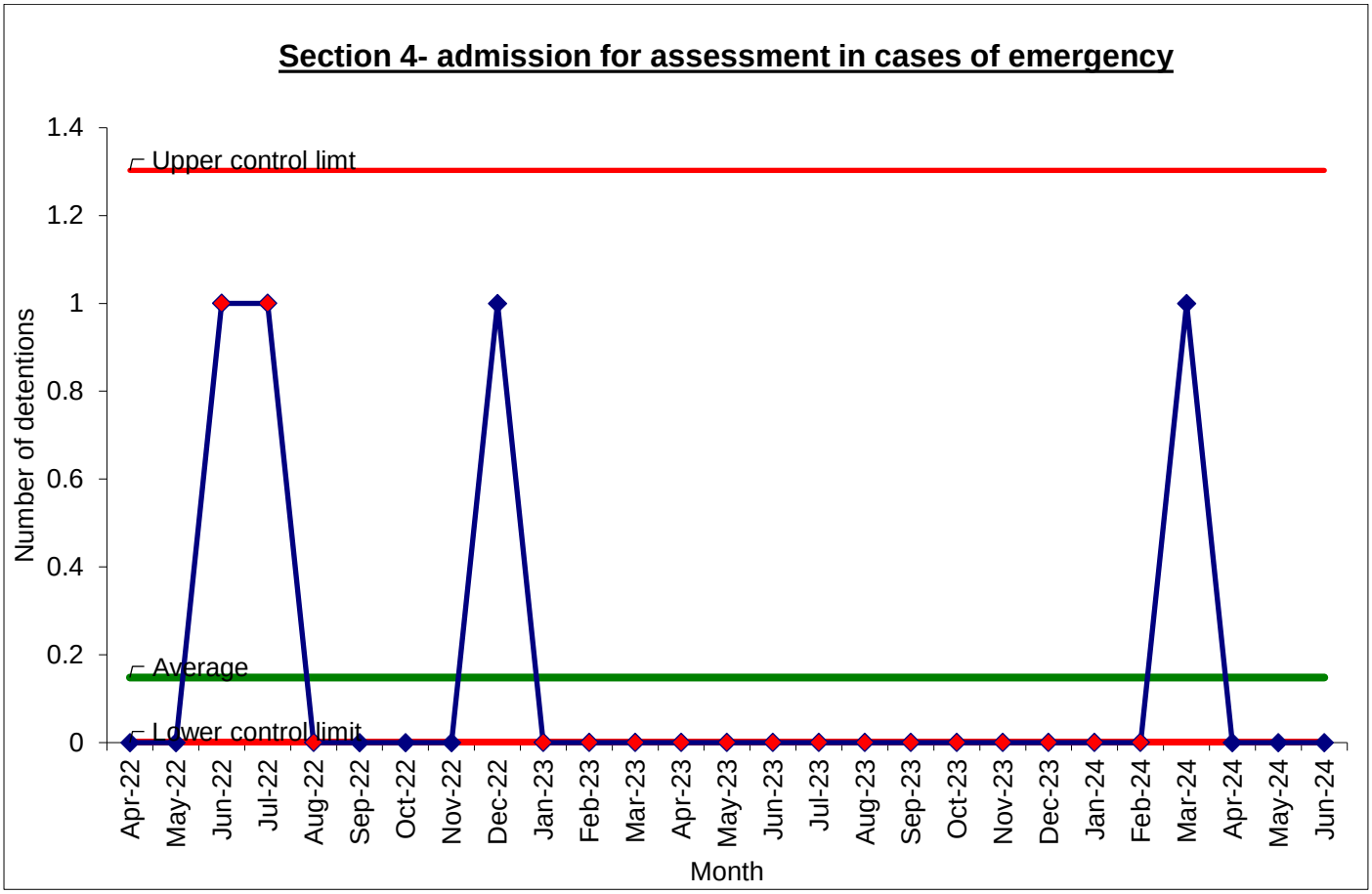
CAMHS Commissioned Inpatient Data

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

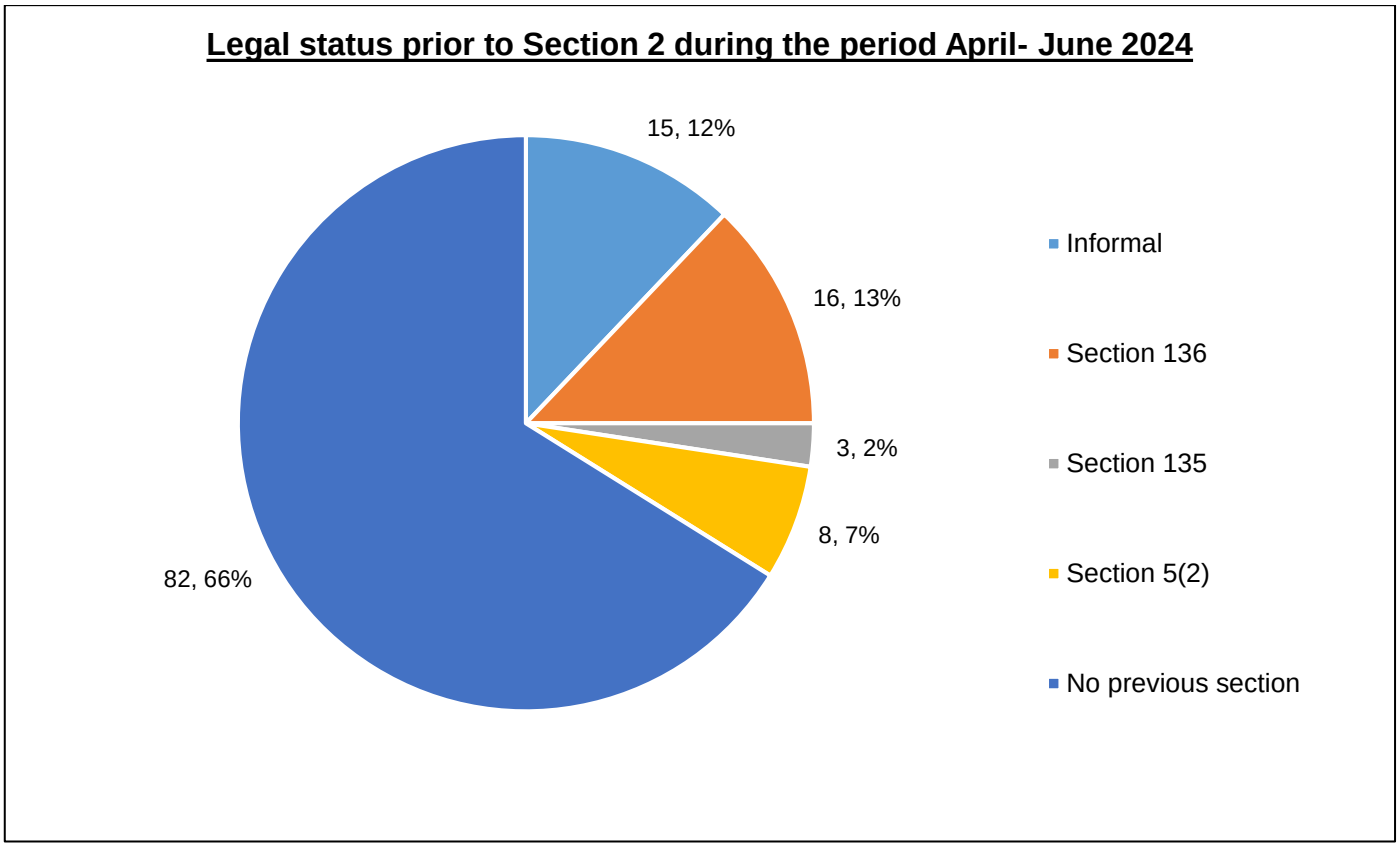
During the period there were no uses of Section 5(2) or Section 5(4) holding powers on patients under the age of 18 in either Cardiff and Vale UHB or Cwm Taf Morgannwg UHB.

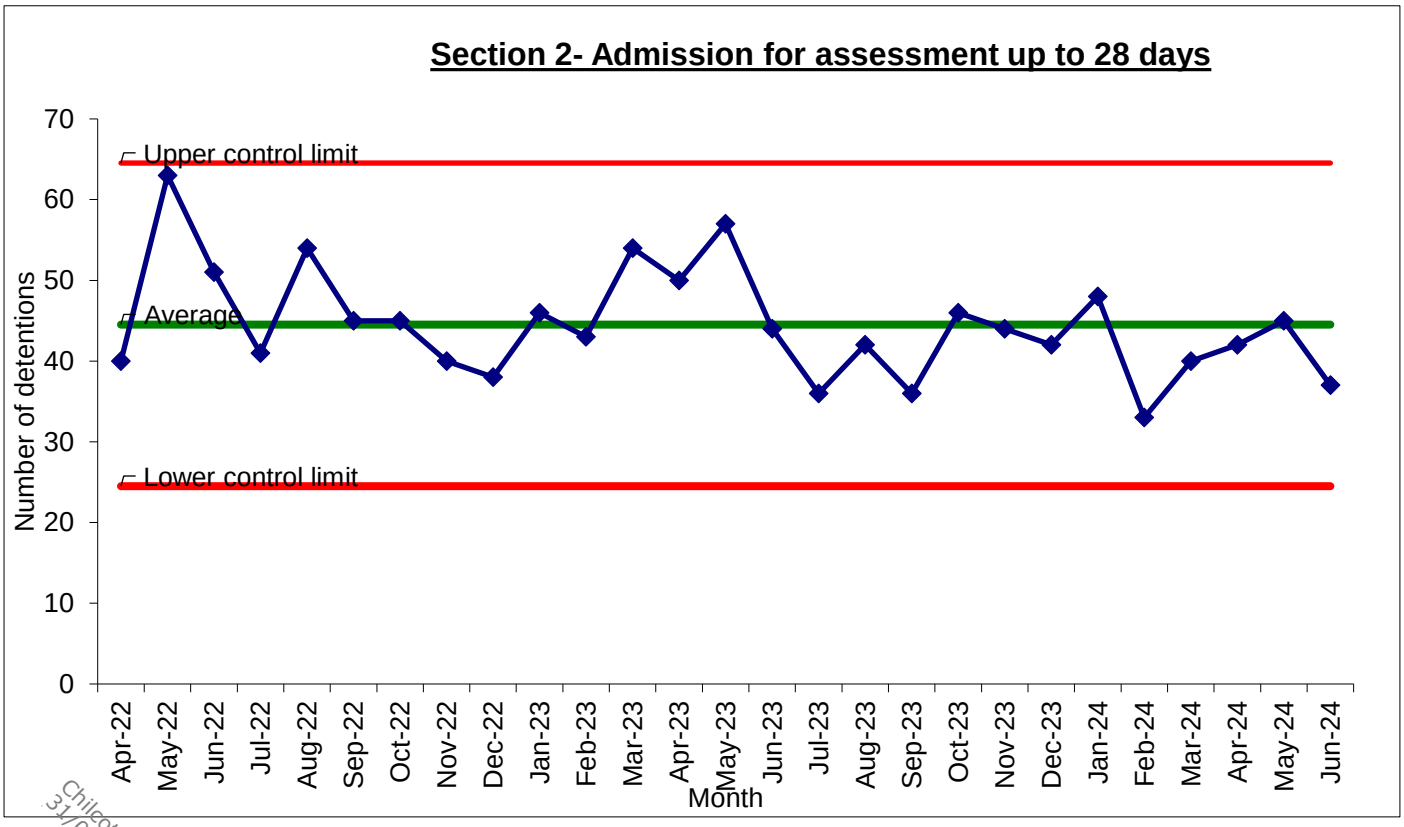
Section 4 - Admission for Assessment in Cases of Emergency

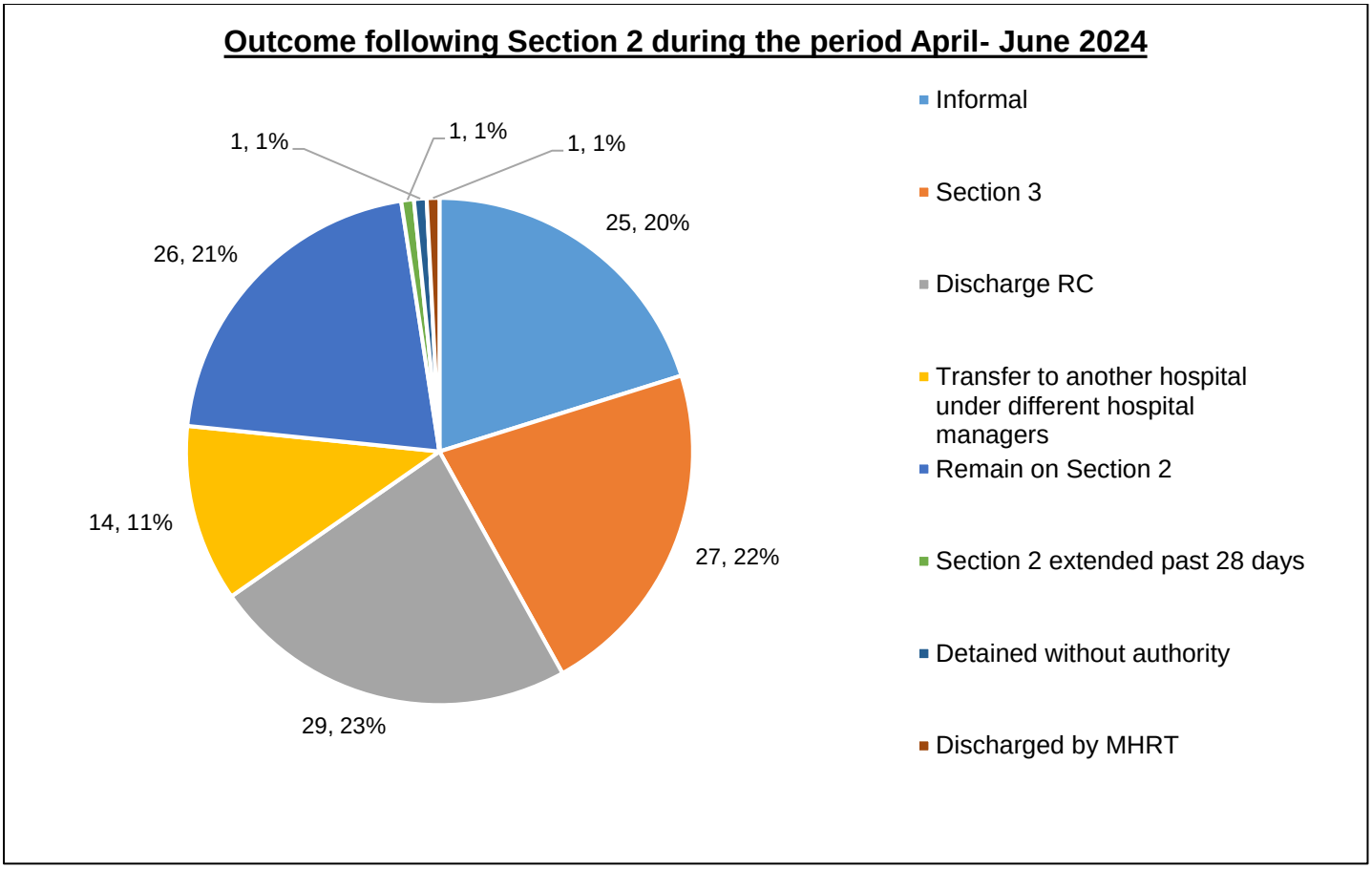
Section 4 was not used once during the period.



Section 2 – Admission for Assessment







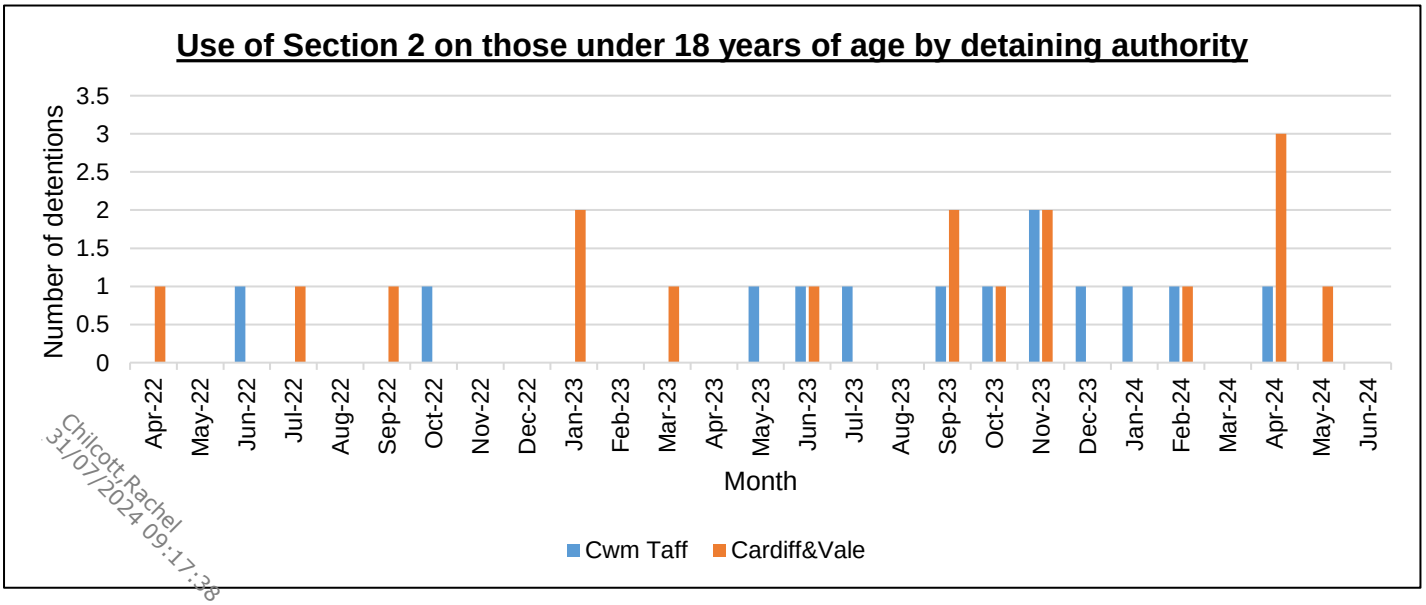
The extension of the Section 2 is due to the patients nearest relative being displaced under Section 29 MHA.

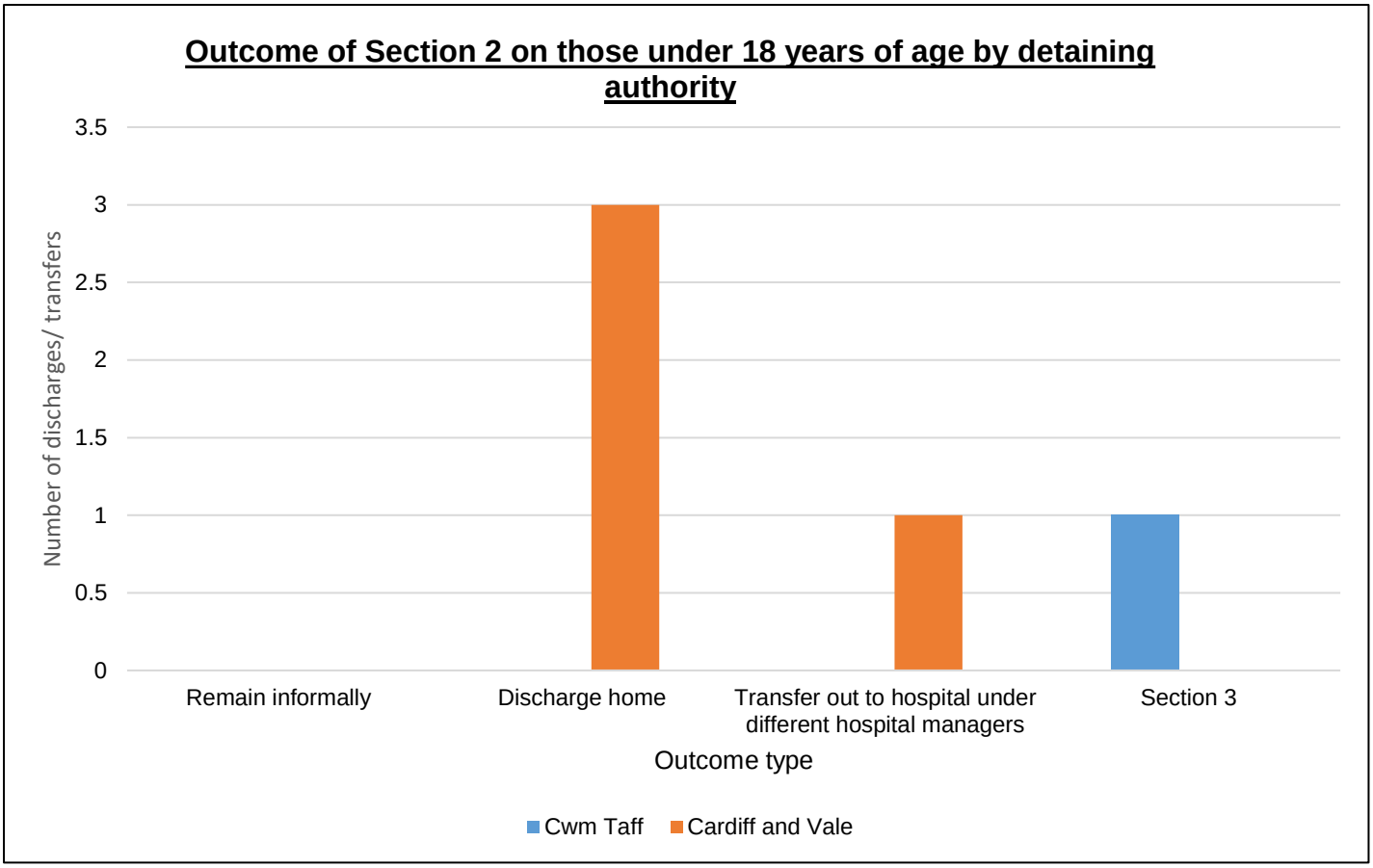
The person detained without authority was due to the AMHP application not meeting Welsh regulations.

CAMHS Commissioned Inpatient Data

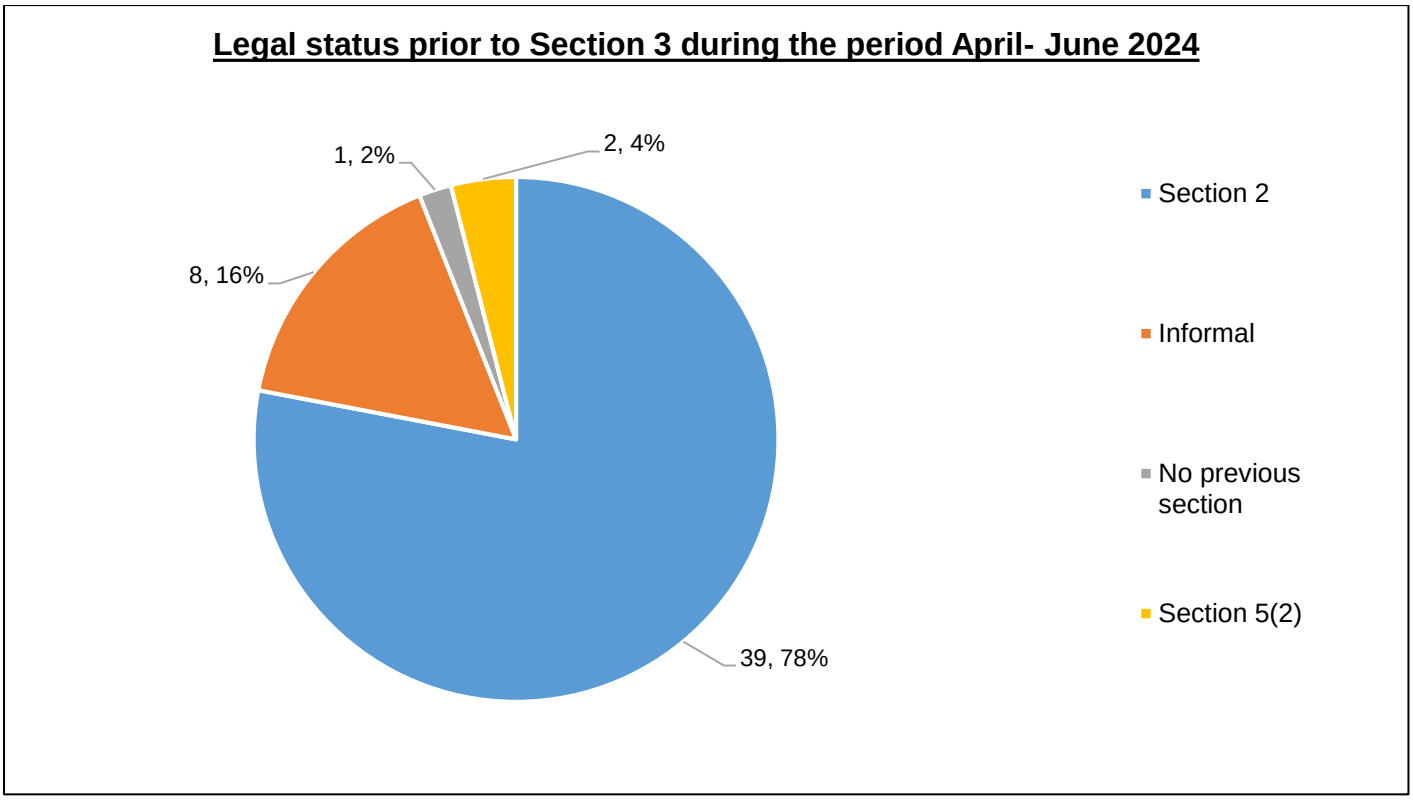
Cwm Taf Morgannwg UHB are commissioned to perform the role of Inpatient CAMHS for Cardiff and Vale UHB area patients.

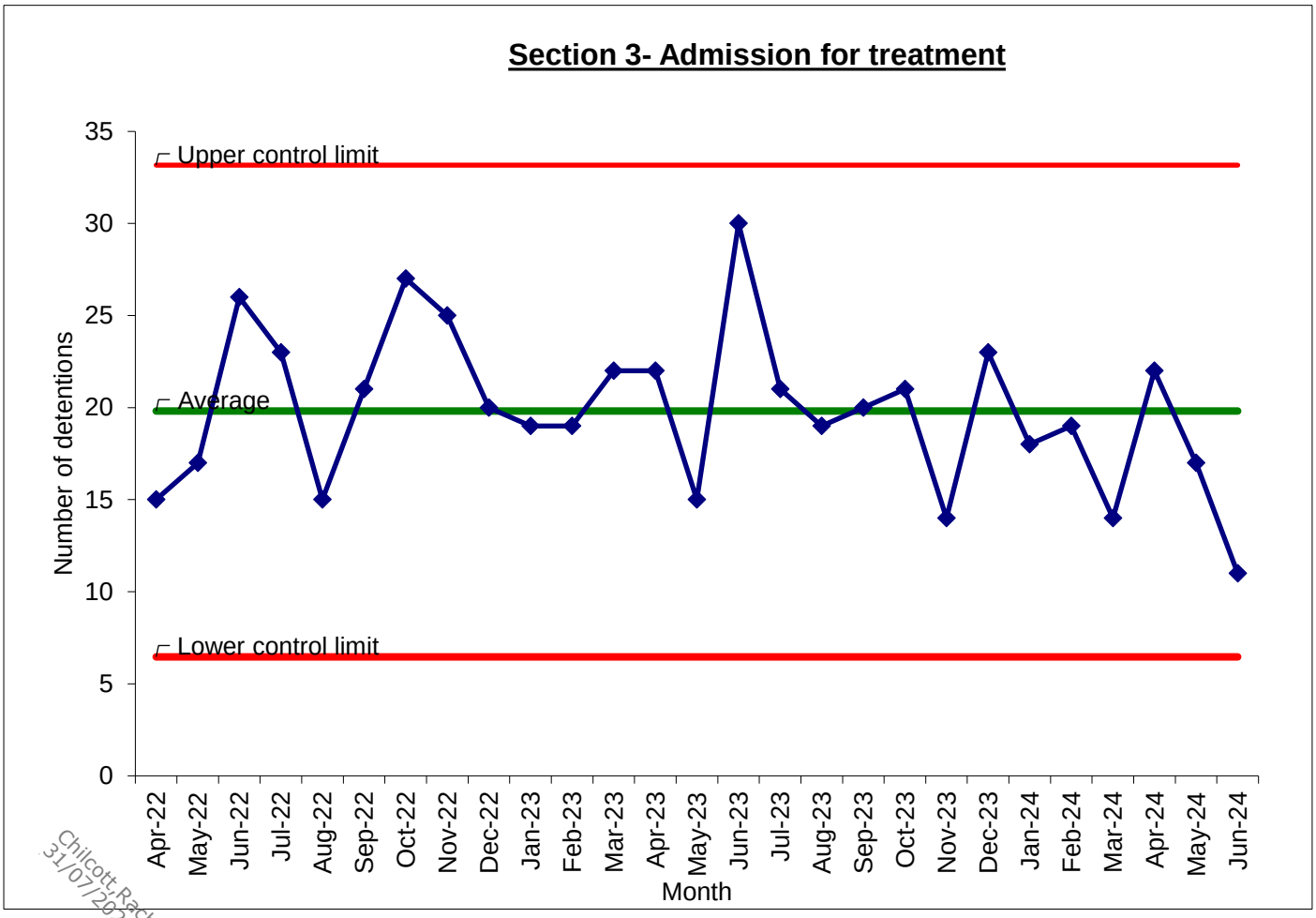
Included in the above data are those under 18 years of age. This is extracted below;-



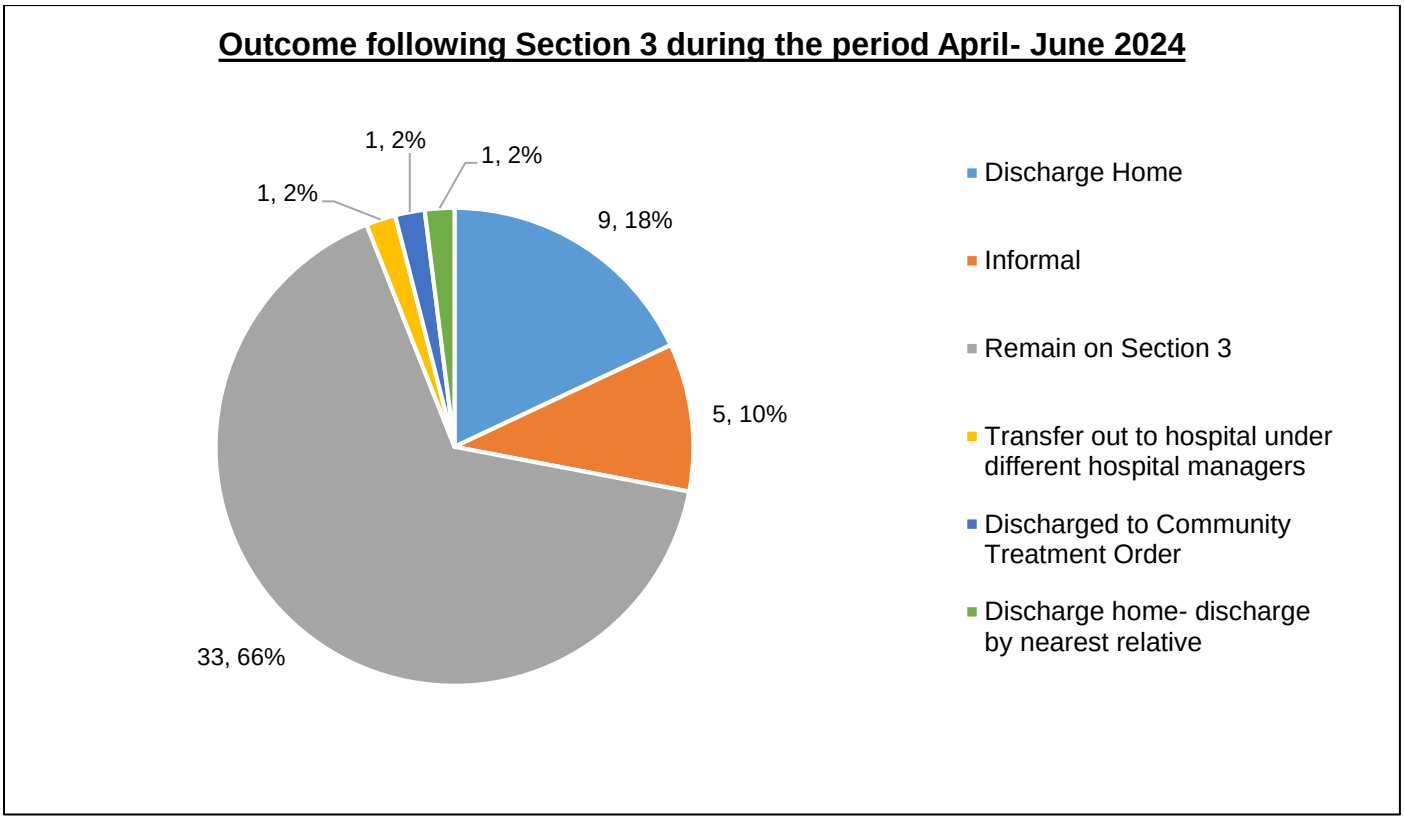


Section 3 – Admission for Treatment



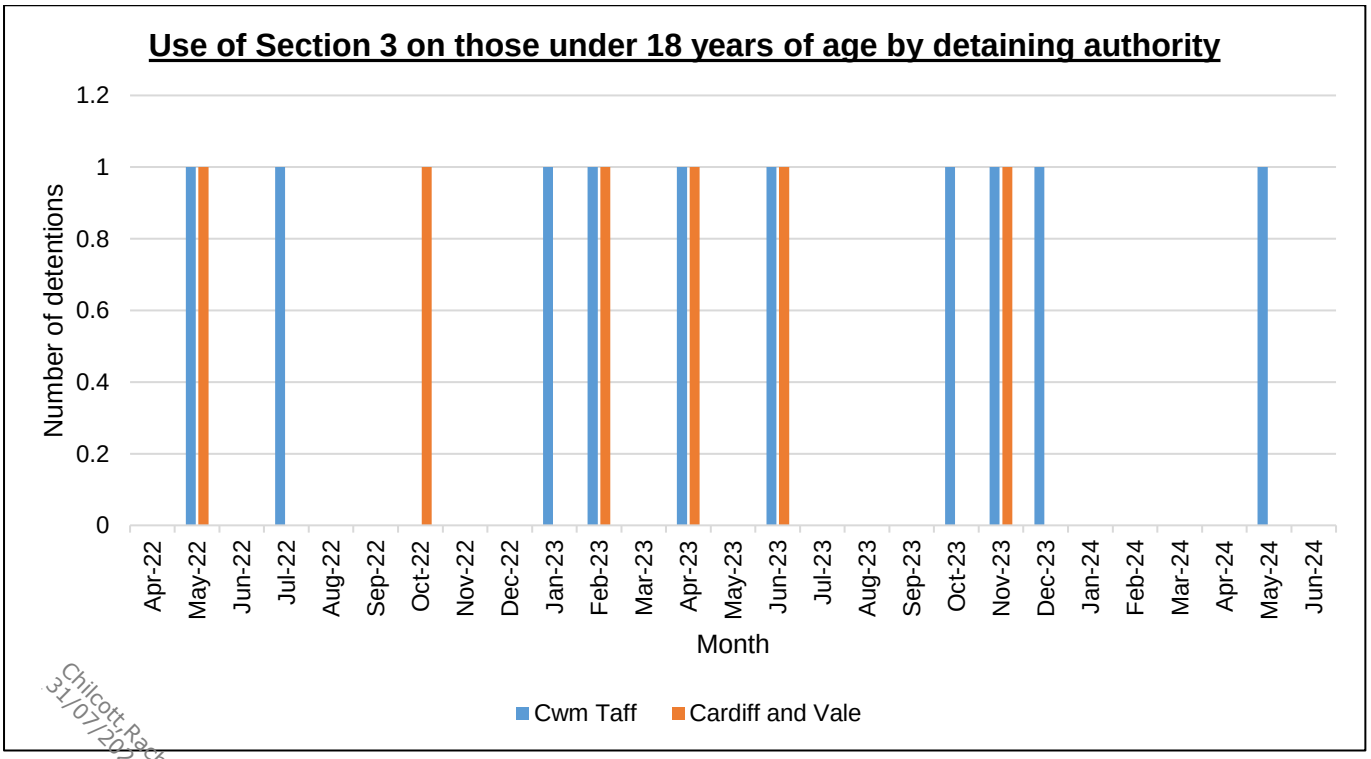


The above data would include those under 18 years of age.



CAMHS Commissioned Inpatient Data

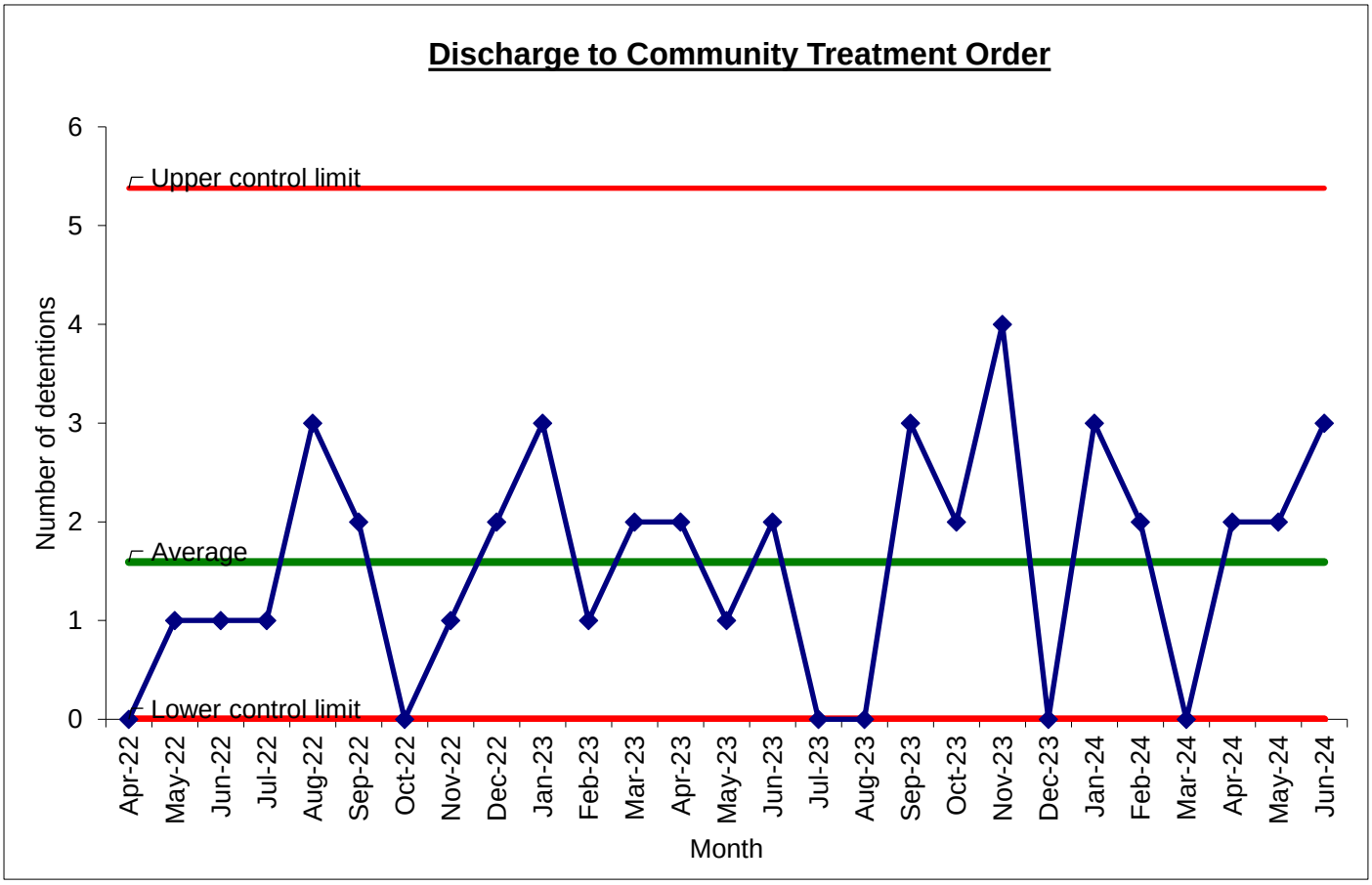
Cwm Taf Morgannwg UHB are commissioned to perform the role of Inpatient CAMHS for Cardiff and Vale UHB area patients. There was one use of Section 3 during the period. The person remains under Section 3.

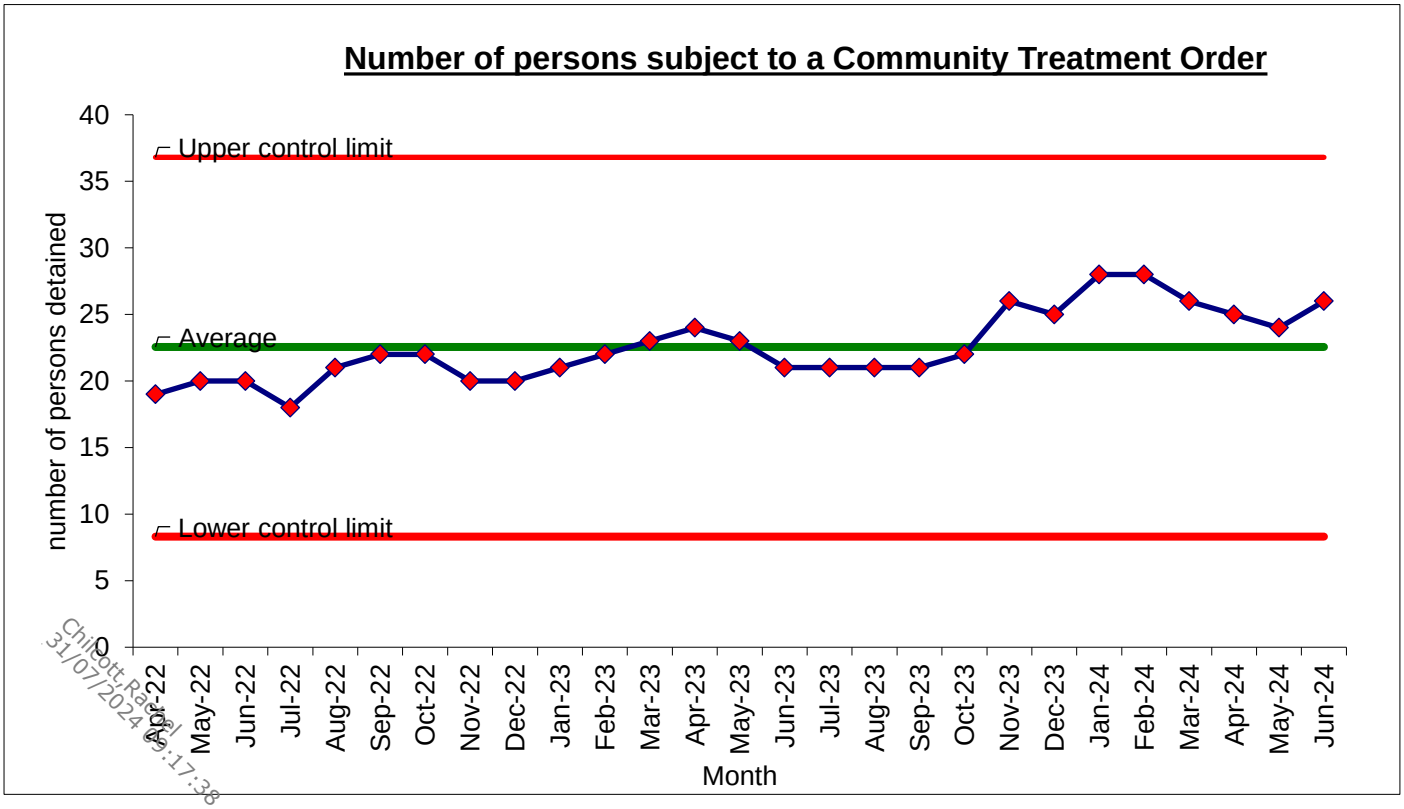


Community Treatment Order

During the period January- March seven patients were discharged to Community Treatment Order.

As at 30th June 2024, twenty-six 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 four times. Two uses resulted in the persons CTO being revoked. Two uses resulted in the person remaining on their CTO.

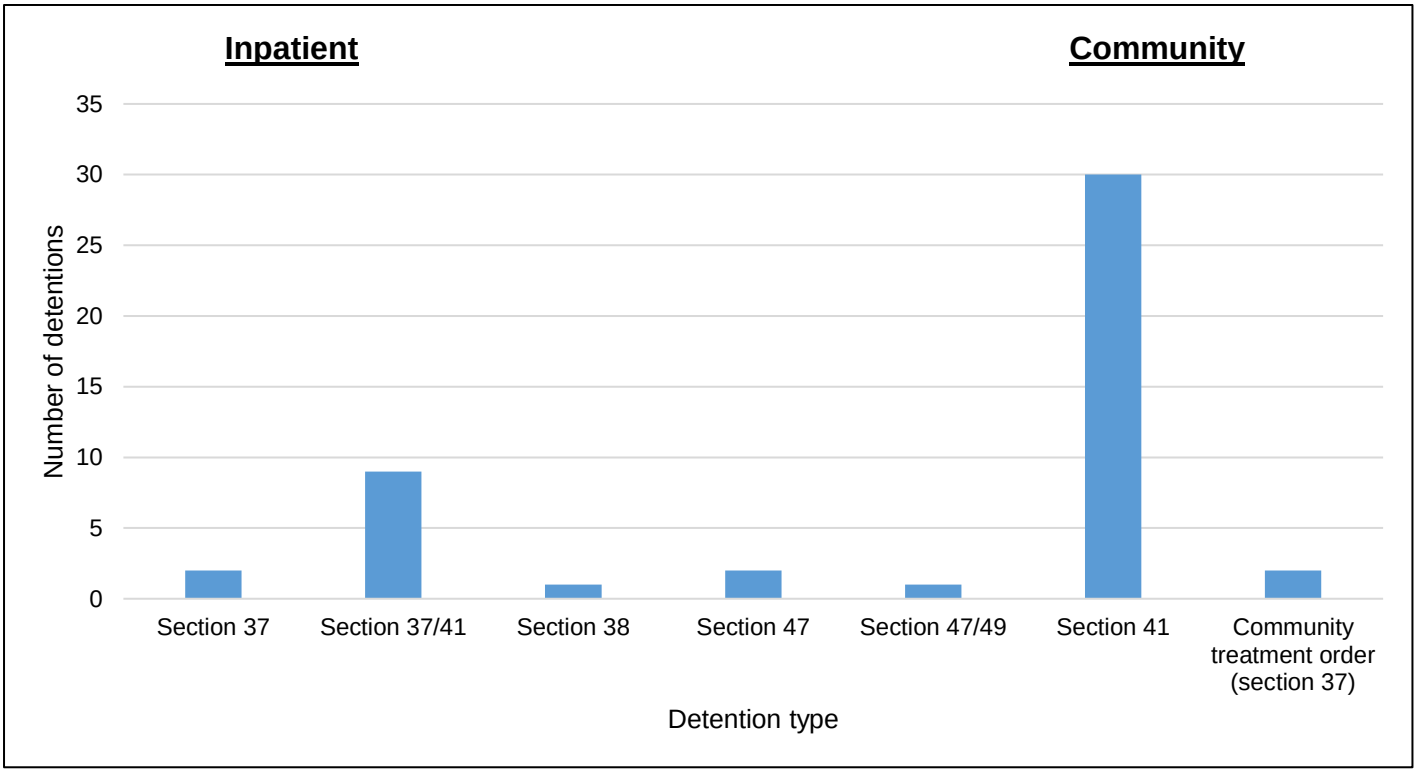
CAMHS Commissioned Inpatient Data

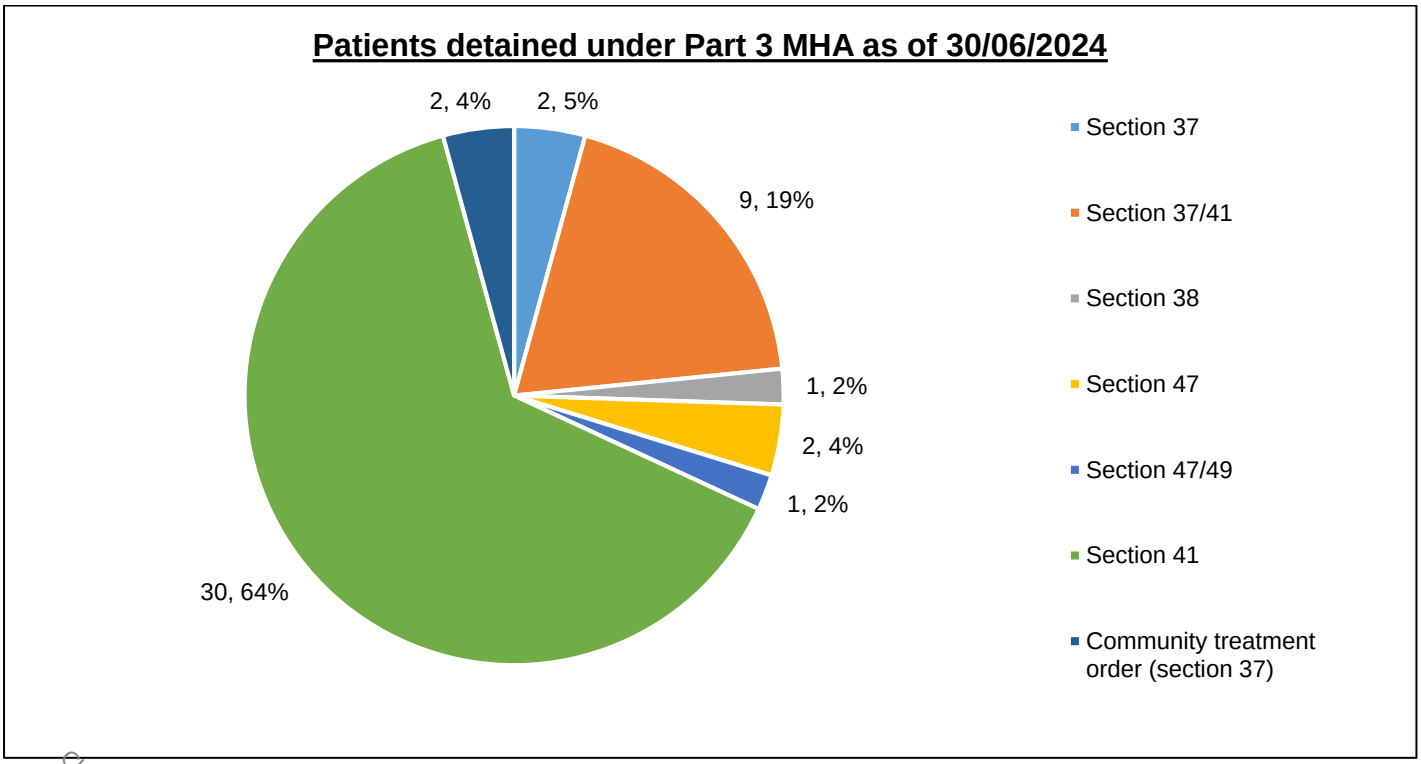
Cwm Taf Morgannwg UHB are commissioned to perform the role of Inpatient CAMHS for Cardiff and Vale UHB area patients.

During this period there no uses of Community Treatment Orders for persons under the age of 18 years of age.

Part 3 of the Mental Health Act 1983

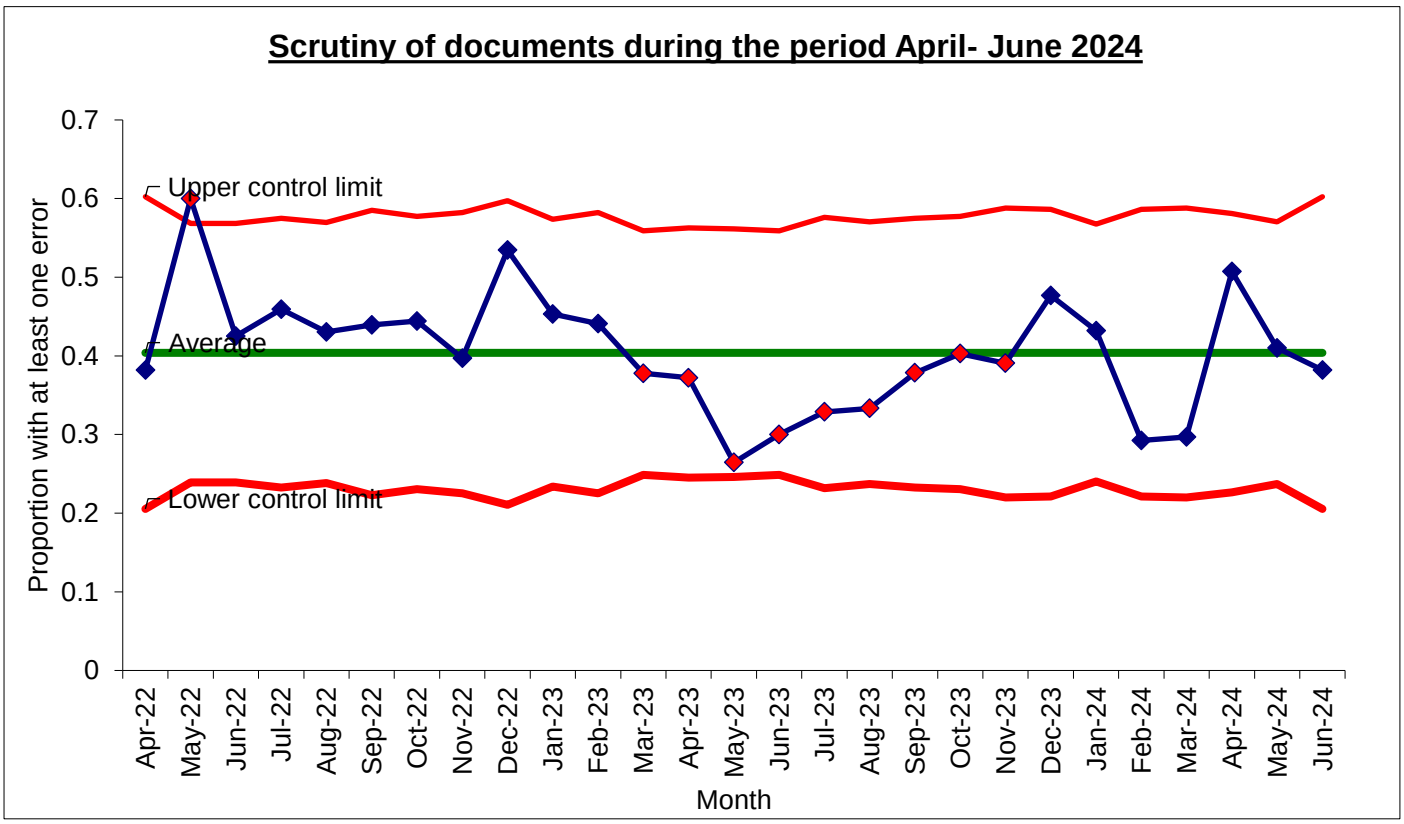
The number of Part 3 patients detained in Cardiff and Vale University Health Board Hospitals or subject to Community Treatment/Conditional Discharge in the community as at 30th June 2024.

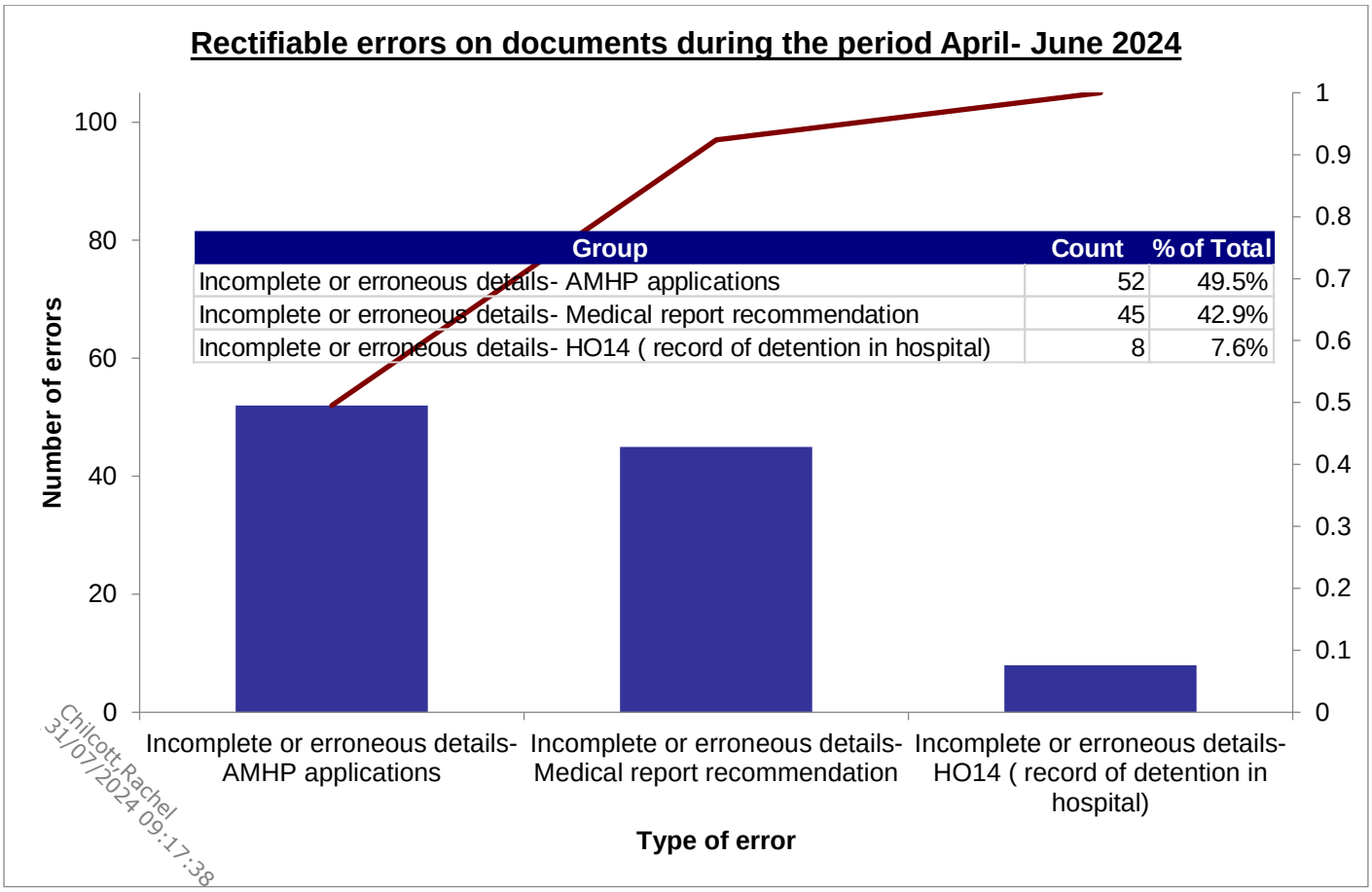




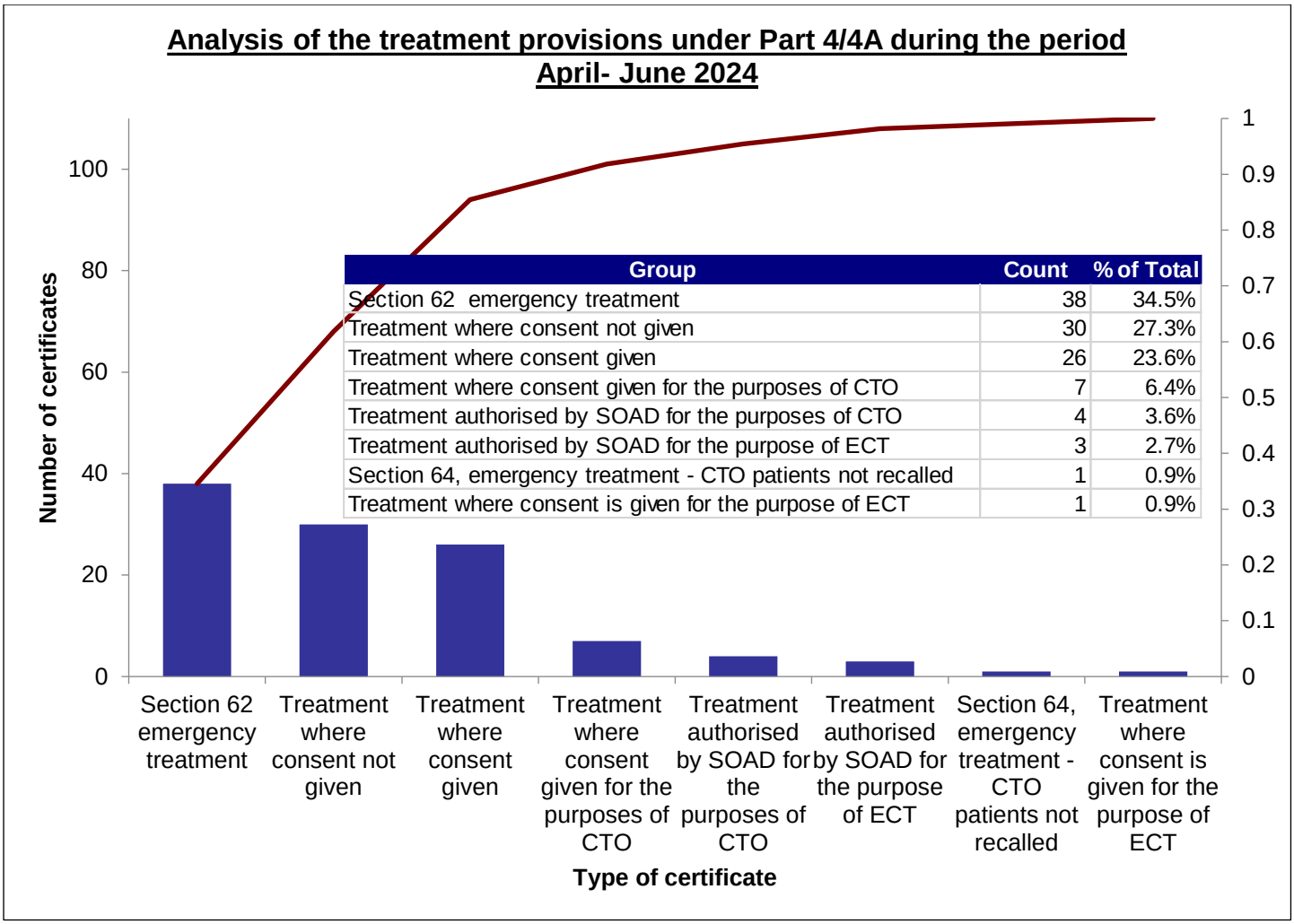
Scrutiny of documents during the period

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



Group	Count	% of Total
Section 62 emergency treatment	38	34.5%
Treatment where consent not given	30	27.3%
Treatment where consent given	26	23.6%
Treatment where consent given for the purposes of CTO	7	6.4%
Treatment authorised by SOAD for the purposes of CTO	4	3.6%
Treatment authorised by SOAD for the purpose of ECT	3	2.7%
Section 64, emergency treatment - CTO patients not recalled	1	0.9%
Treatment where consent is given for the purpose of ECT	1	0.9%

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.

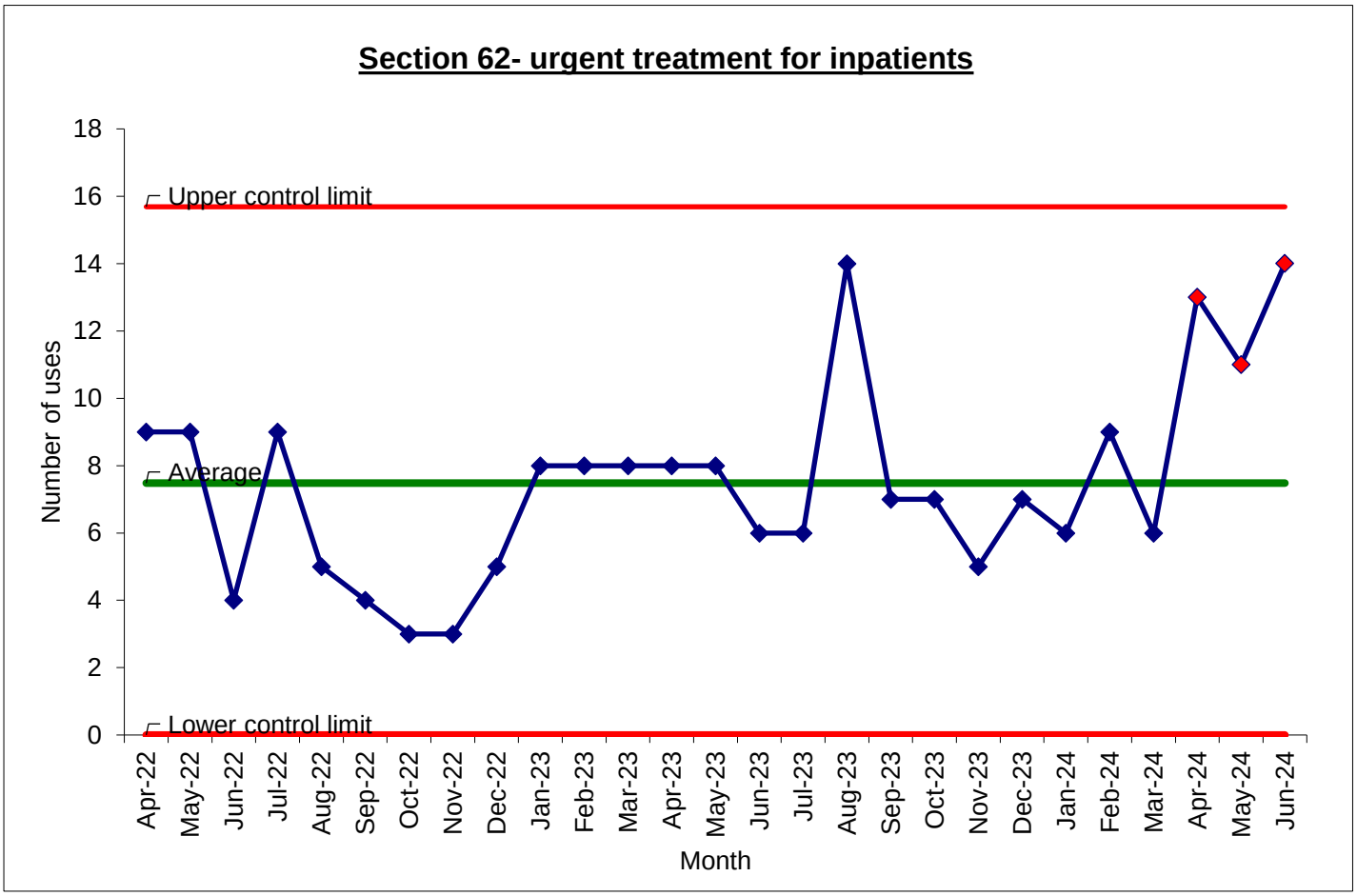
Urgent treatment is defined as treatment that is:

- 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.

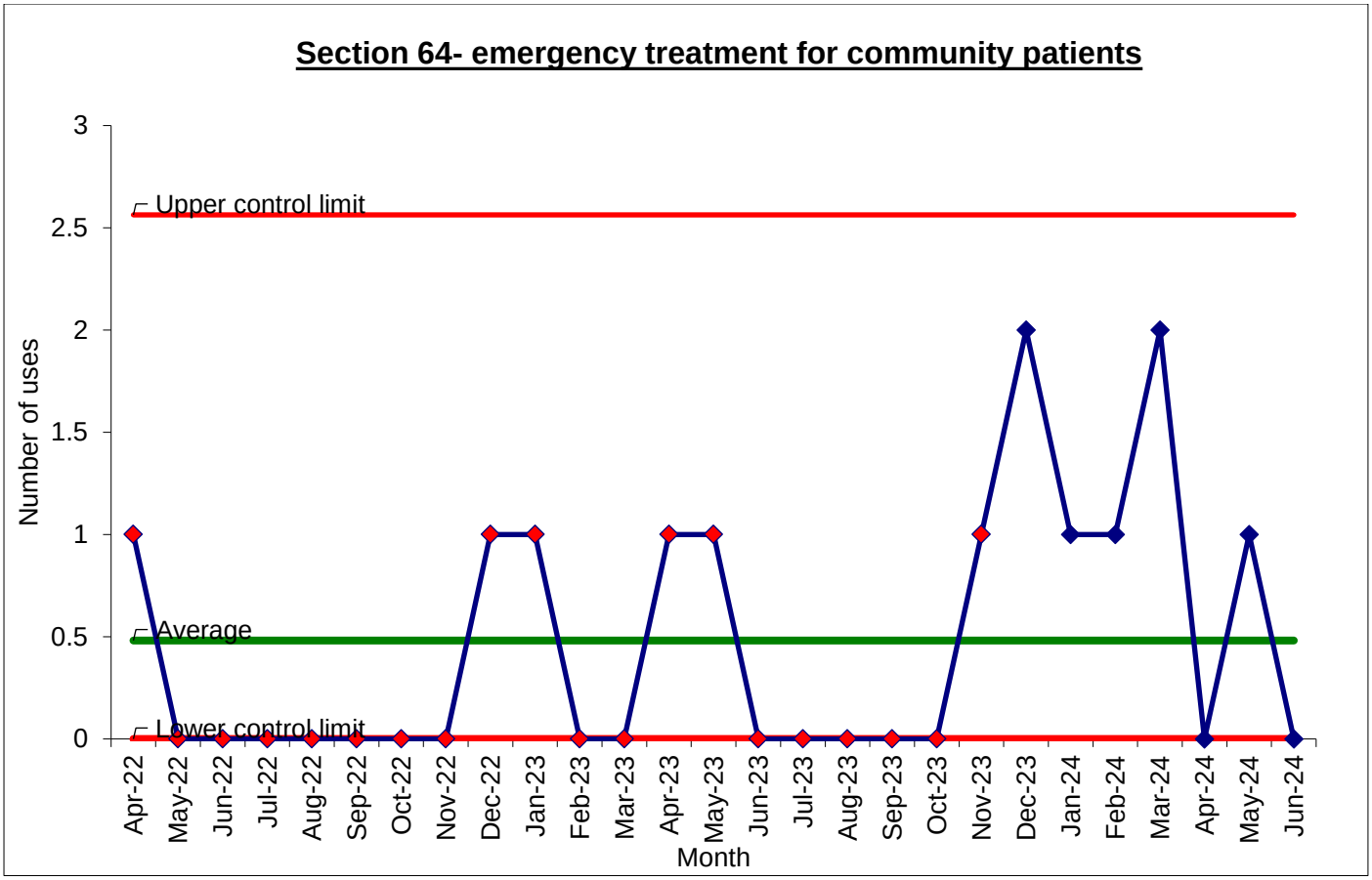
Urgent treatment can be used in any of the following instances:

- 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 thirty eight occasions for the following reasons:

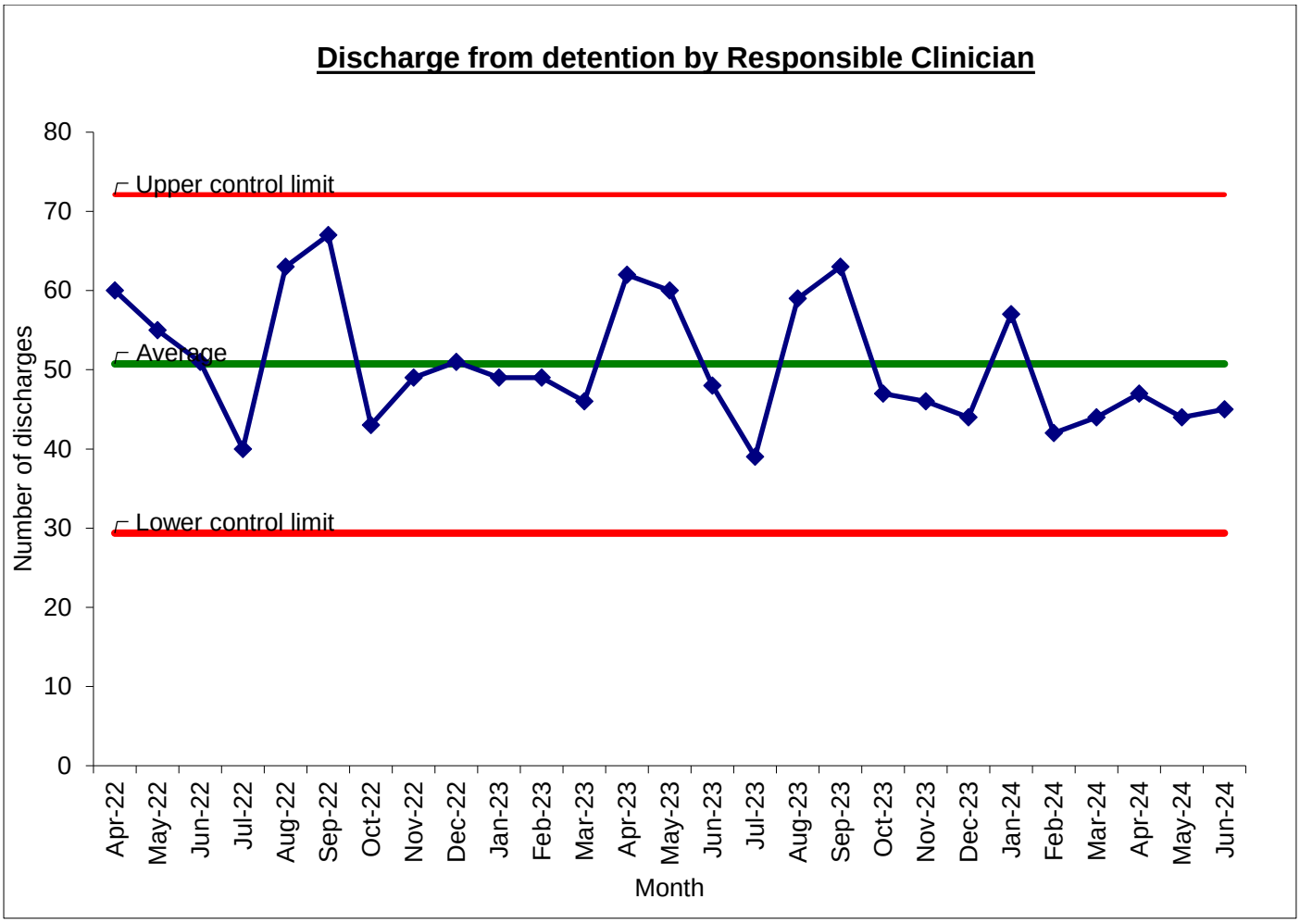
- Pending SOAD 3-month rule x 18
- Change of medication x 8
- Pending SOAD authorisation for ECT x 5
- Change of capacity awaiting SOAD x 5
- Drug error awaiting SOAD x 1
- Change of Responsible clinician awaiting review x 1

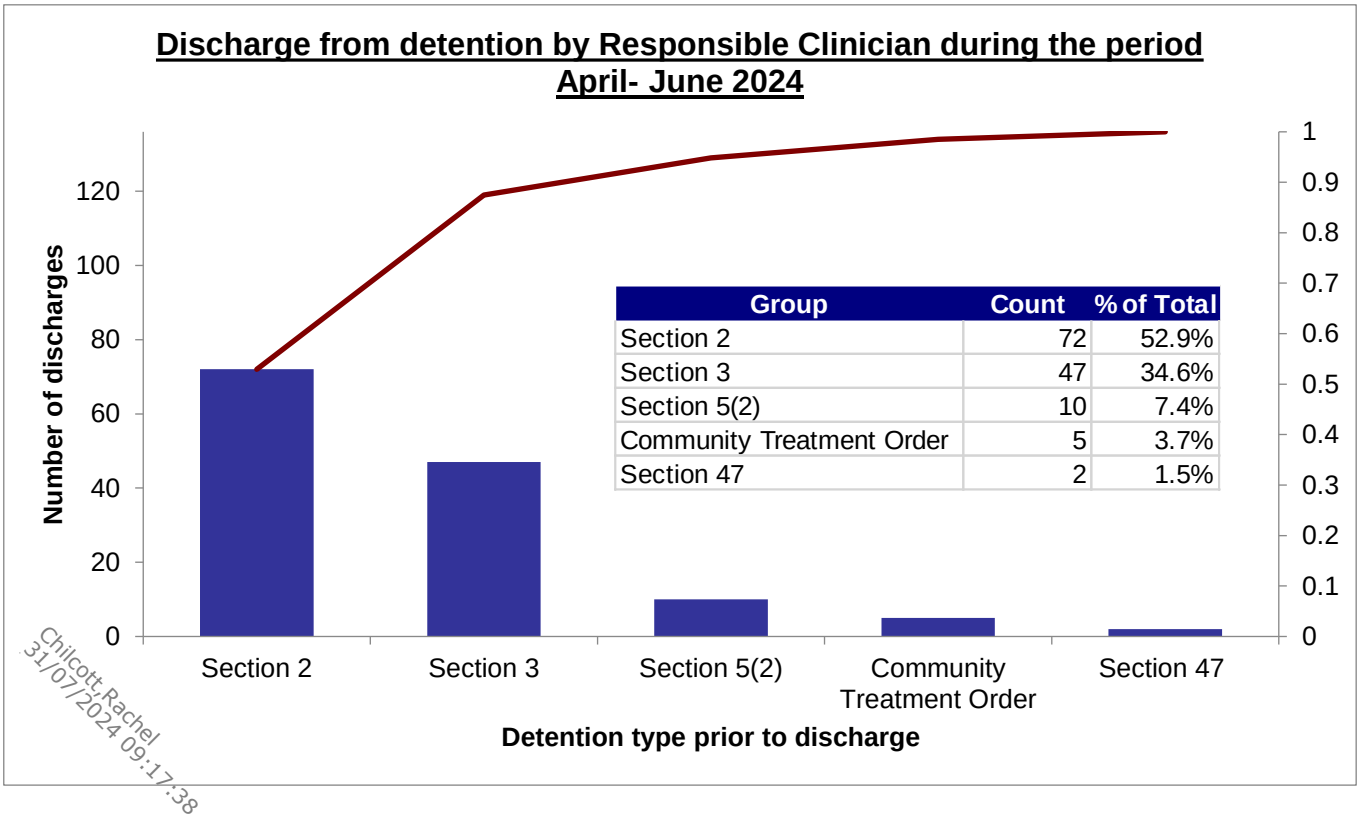


The above chart highlights that Section 64 was used on one occasion during this period.

- One month rule x 1

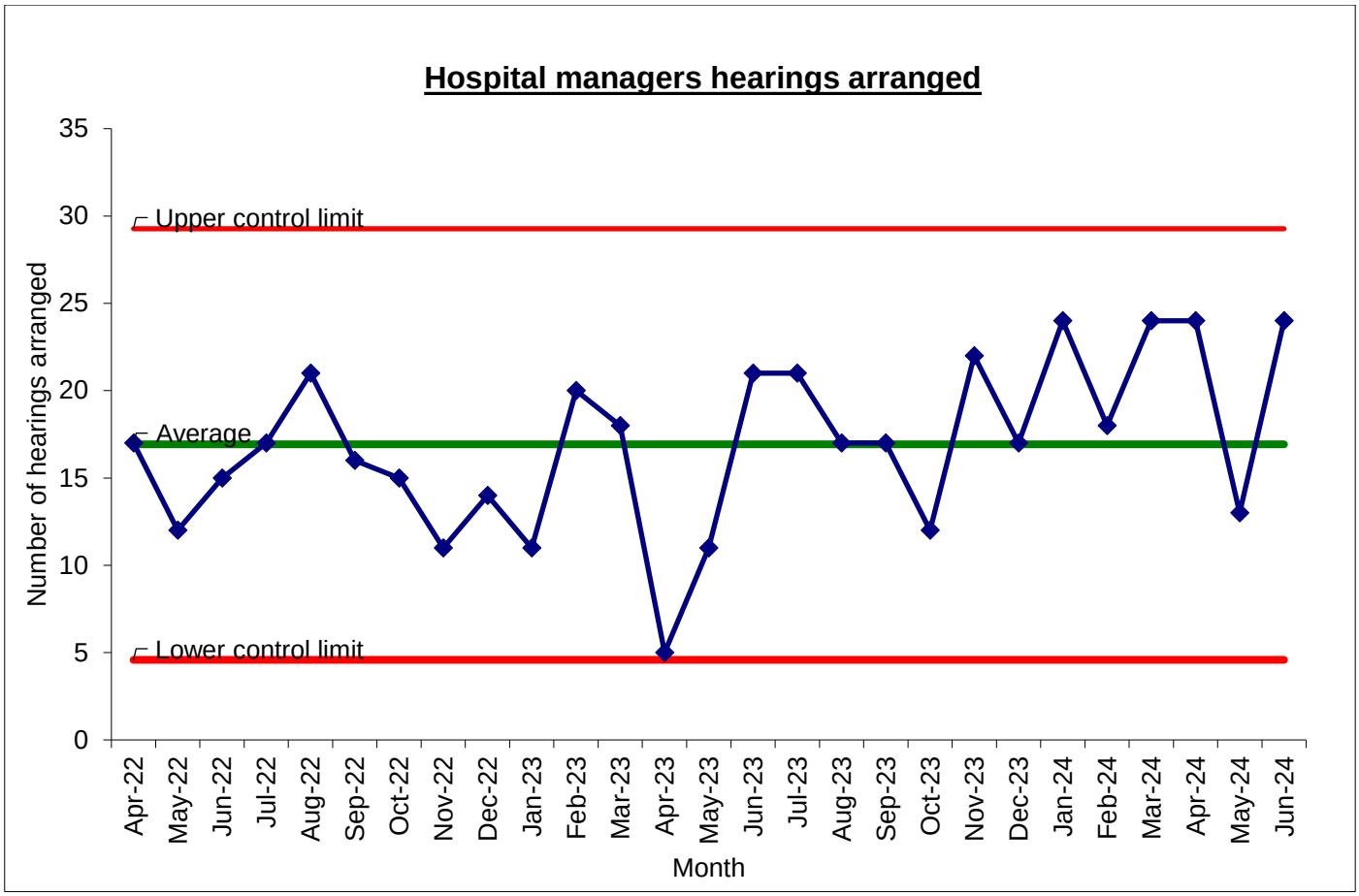
Discharge

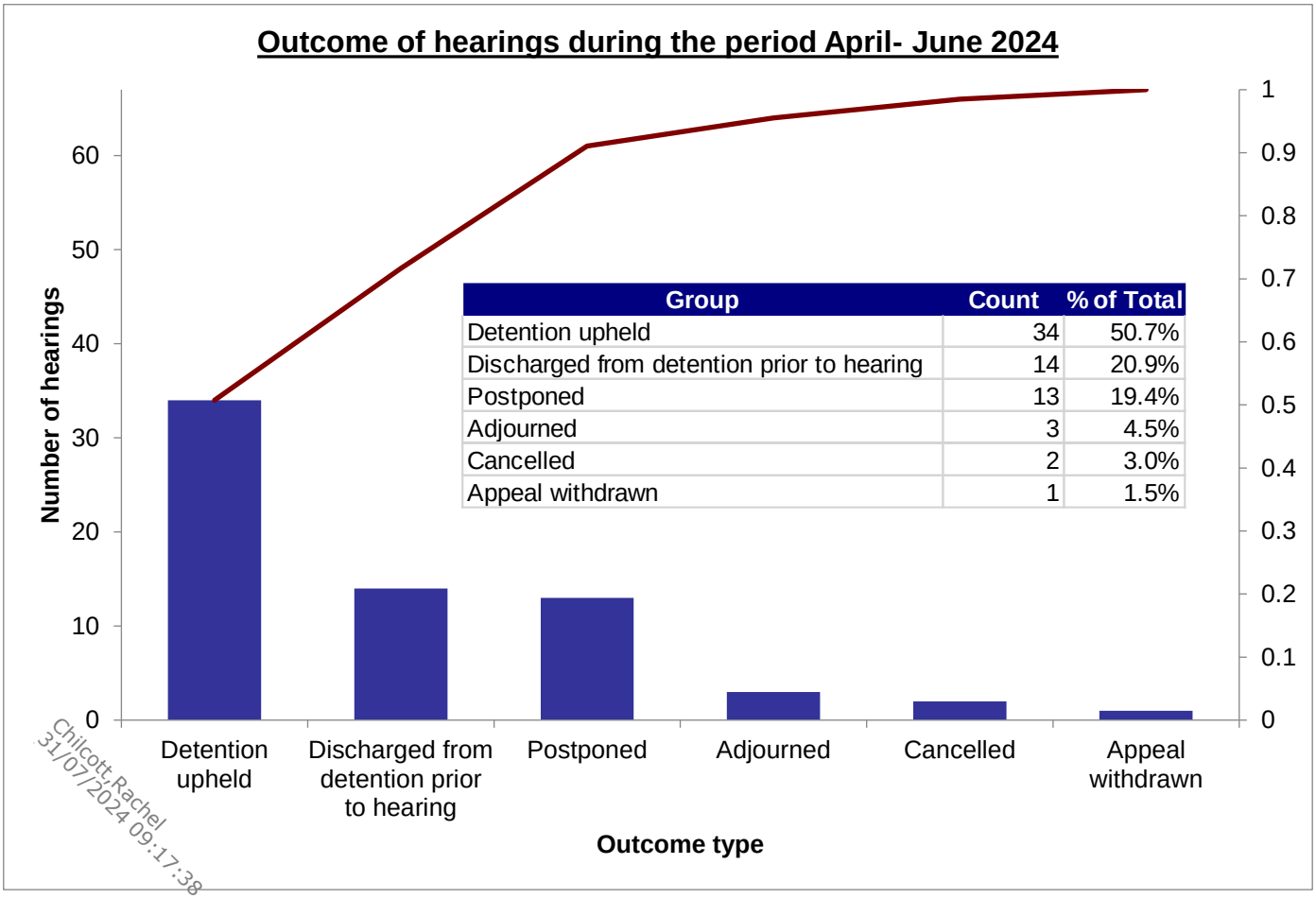




Group	Count	% of Total
Section 2	72	52.9%
Section 3	47	34.6%
Section 5(2)	10	7.4%
Community Treatment Order	5	3.7%
Section 47	2	1.5%

Hospital Managers – Power of Discharge





Group	Count	% of Total
Detention upheld	34	50.7%
Discharged from detention prior to hearing	14	20.9%
Postponed	13	19.4%
Adjourned	3	4.5%
Cancelled	2	3.0%
Appeal withdrawn	1	1.5%

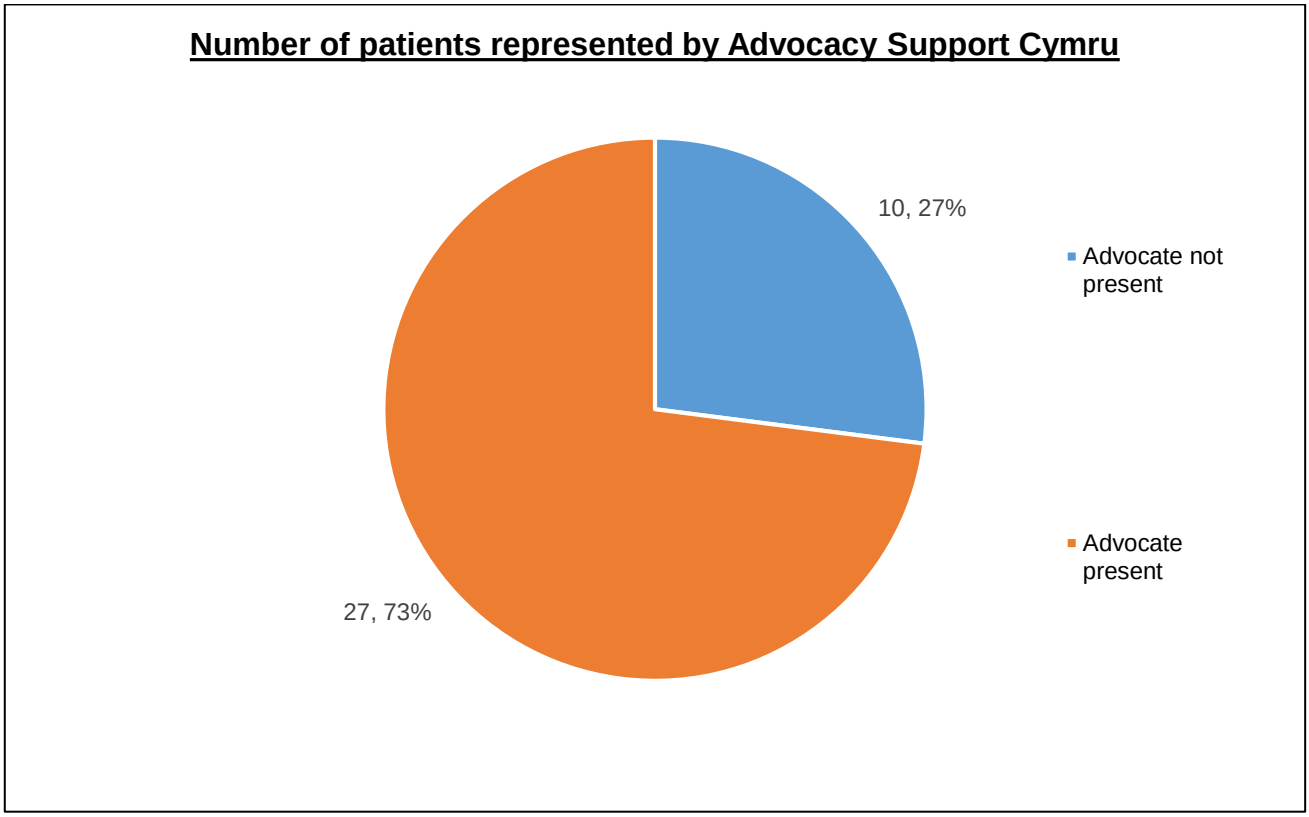
Three hearings were adjourned for the following reasons:

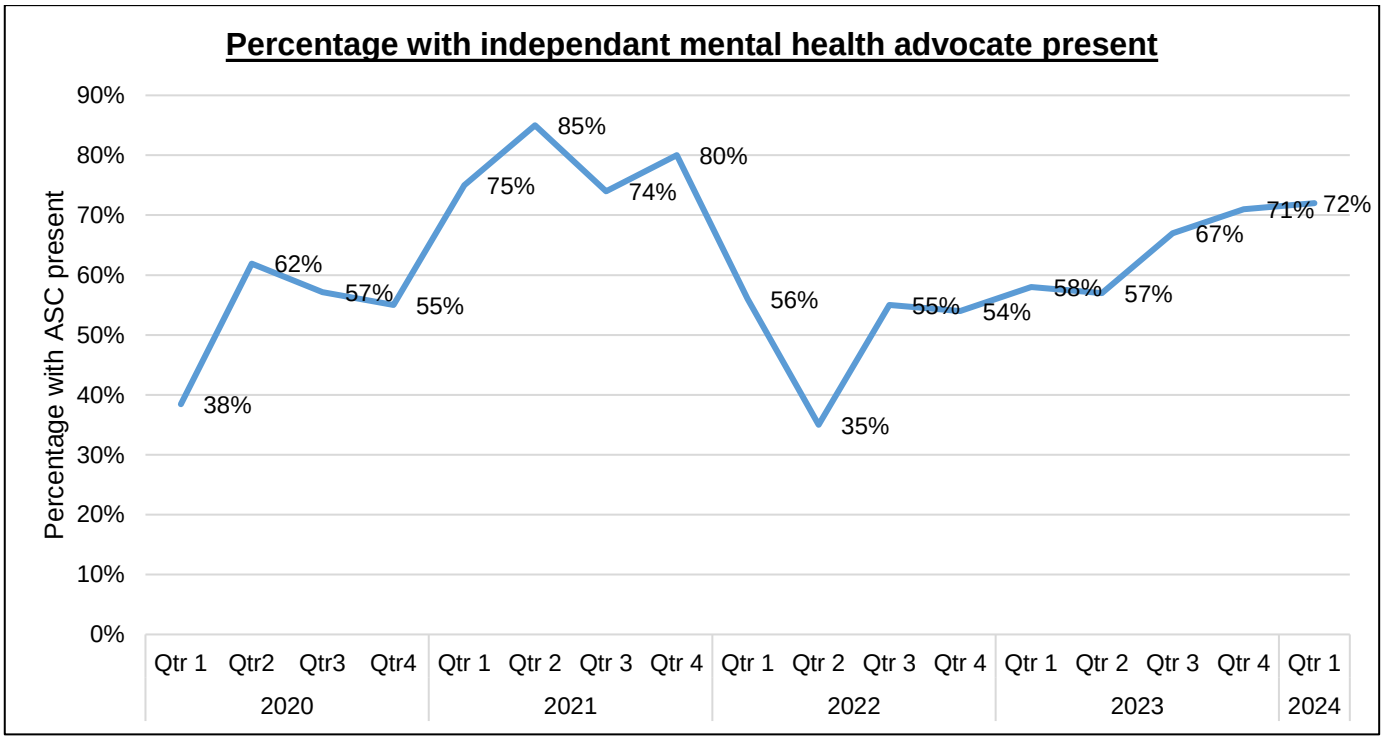
- Renewal document not received x 1
- Patient distressed due to communication issues at hearing x 1
- Patient decided to appoint an advocate during the hearing x1

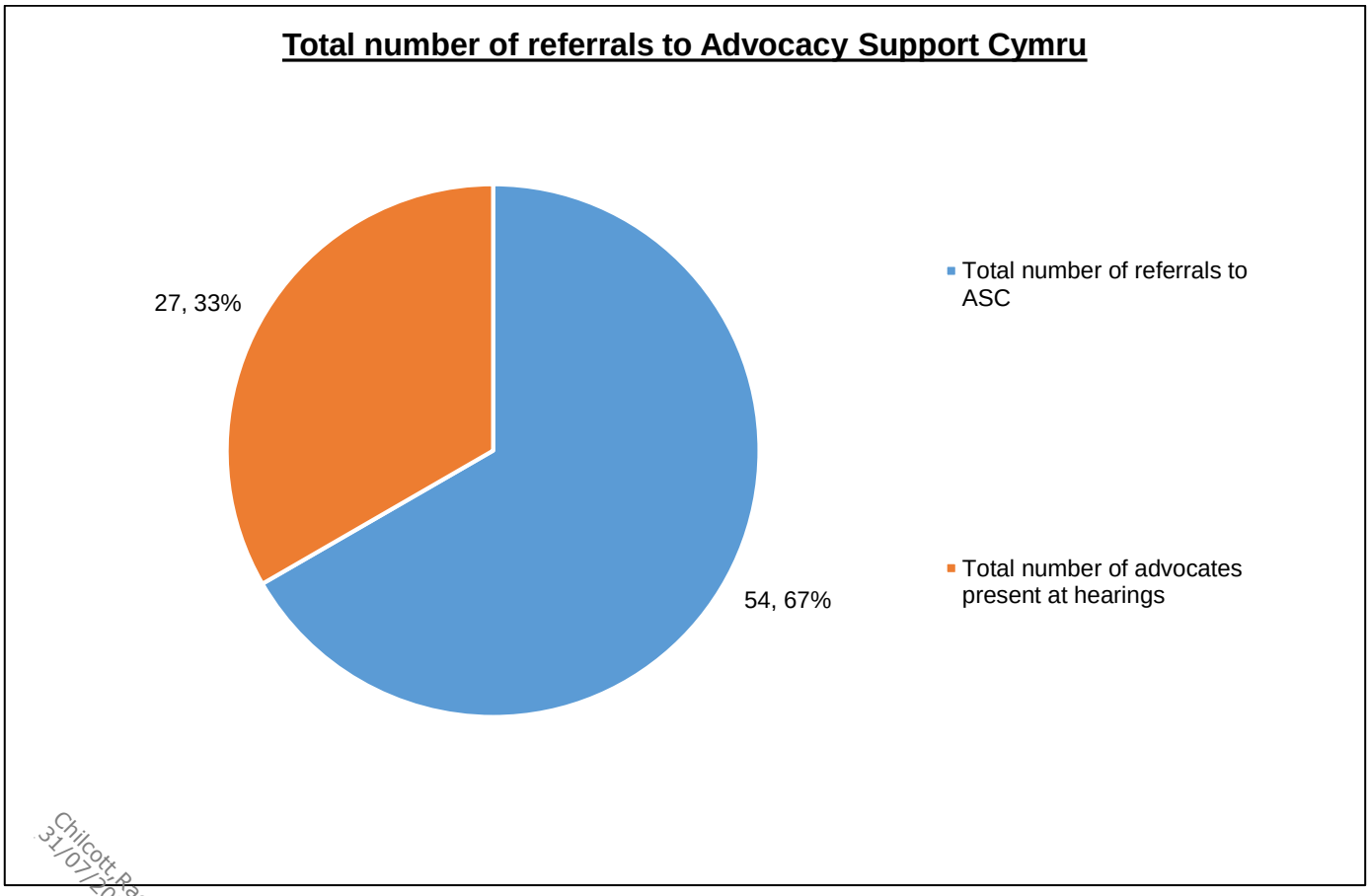
Thirteen hearings were postponed for the following reasons:

- Responsible Clinician unavailable x 2
- Interpreter unavailable x 1
- Advocacy Support Cymru unavailable 3
- Industrial action x 2
- Medical report unavailable x 3
- Nearest relative unavailable x 1
- No room available x 1

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

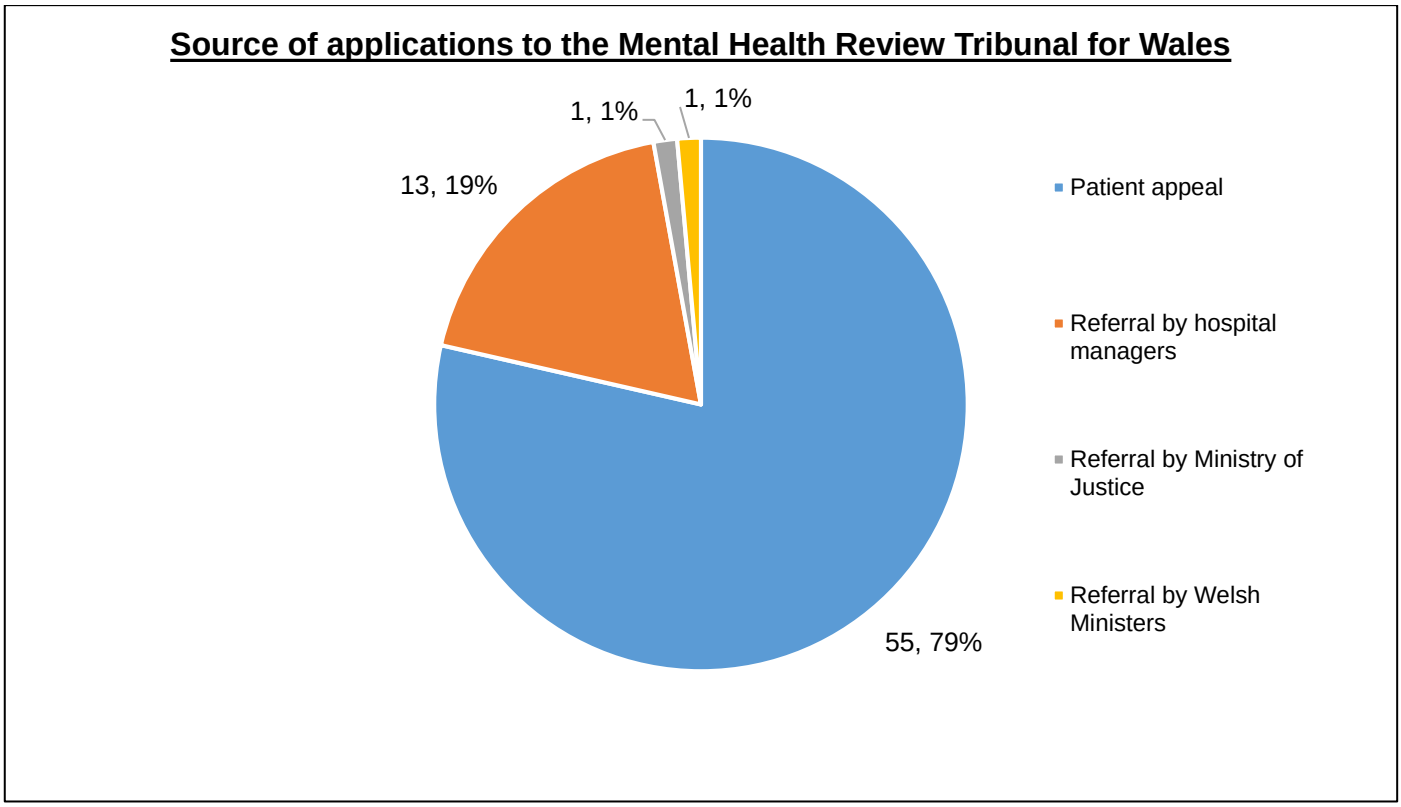




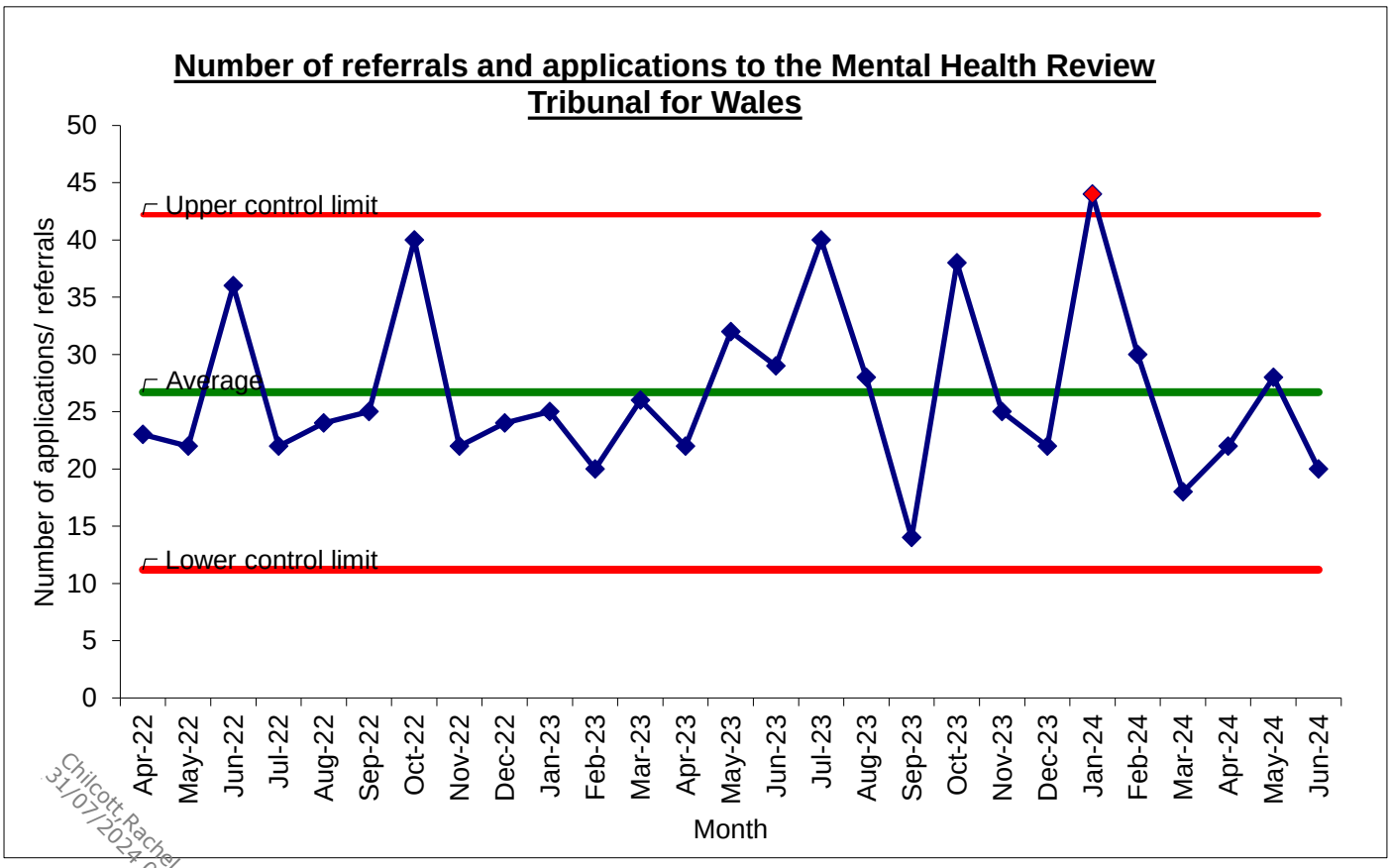


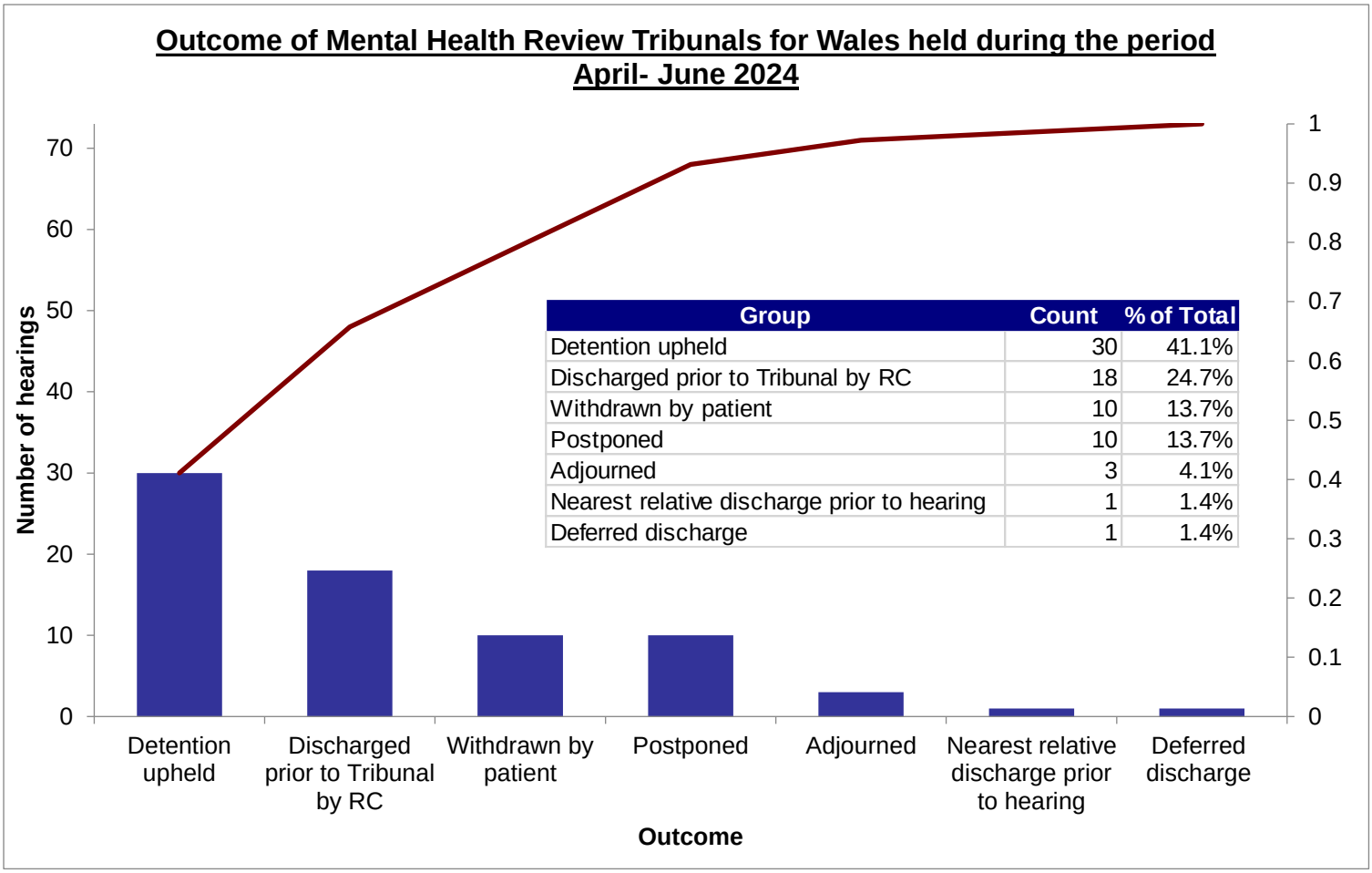
Mental Health Review Tribunal (MHRT) for Wales

Source of applications to the Mental Health Review Tribunal for Wales



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





Group	Count	% of Total
Detention upheld	30	41.1%
Discharged prior to Tribunal by RC	18	24.7%
Withdrawn by patient	10	13.7%
Postponed	10	13.7%
Adjourned	3	4.1%
Nearest relative discharge prior to hearing	1	1.4%
Deferred discharge	1	1.4%

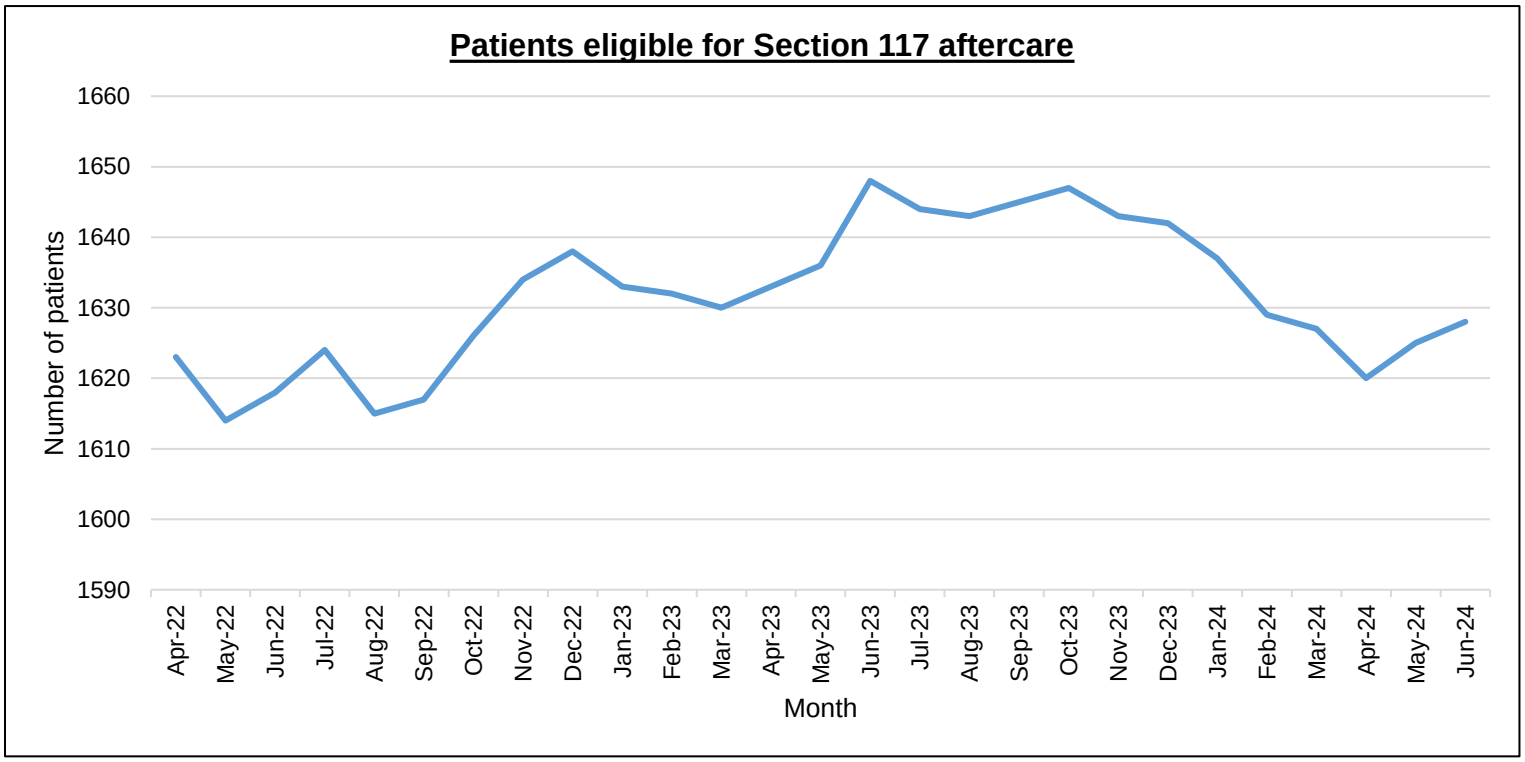
Three hearings were adjourned for the following reasons:

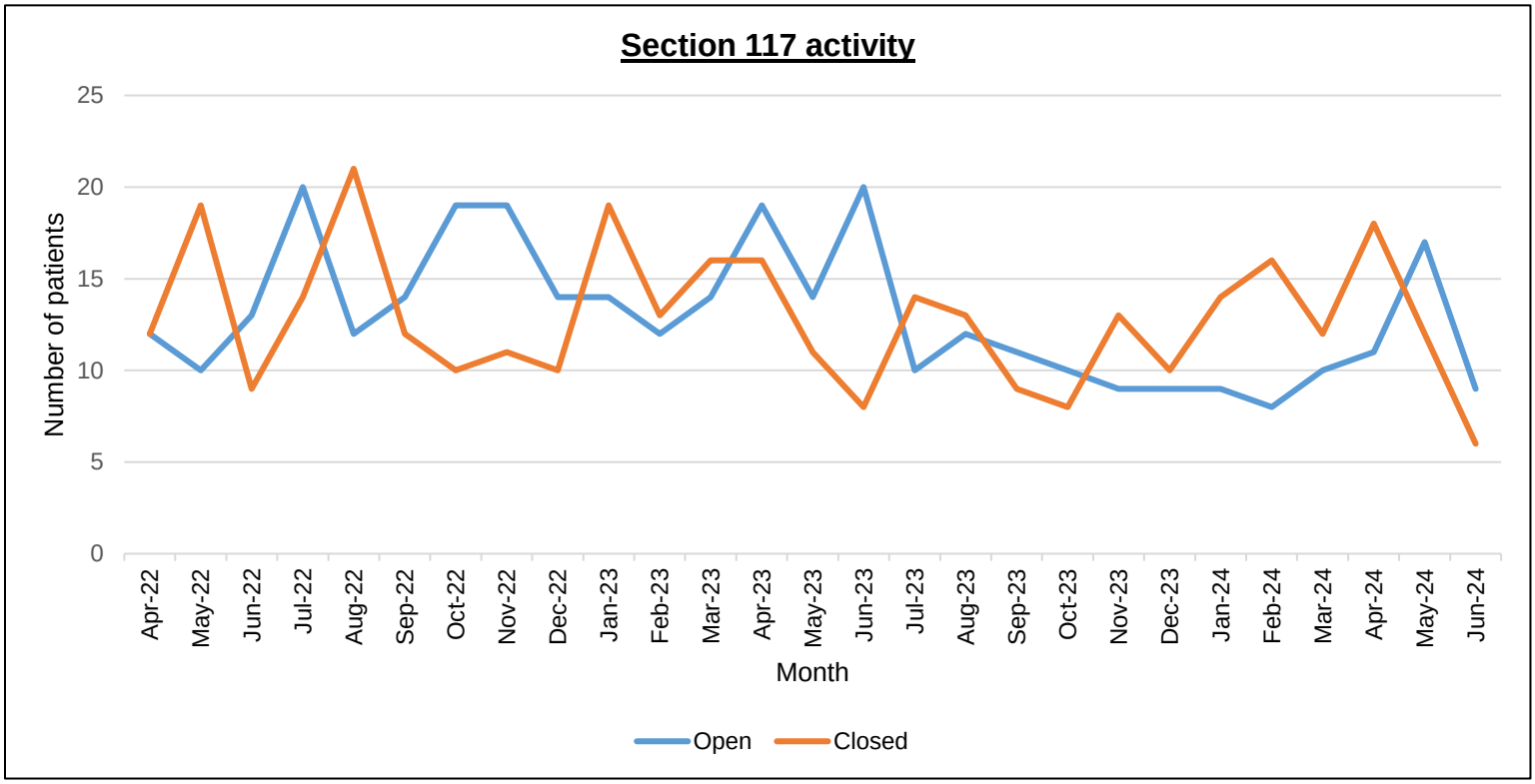
- Discharge plan needed x 1
- Clinician's failed to attend x 1
- For representative to be appointed under rule 13 x 1

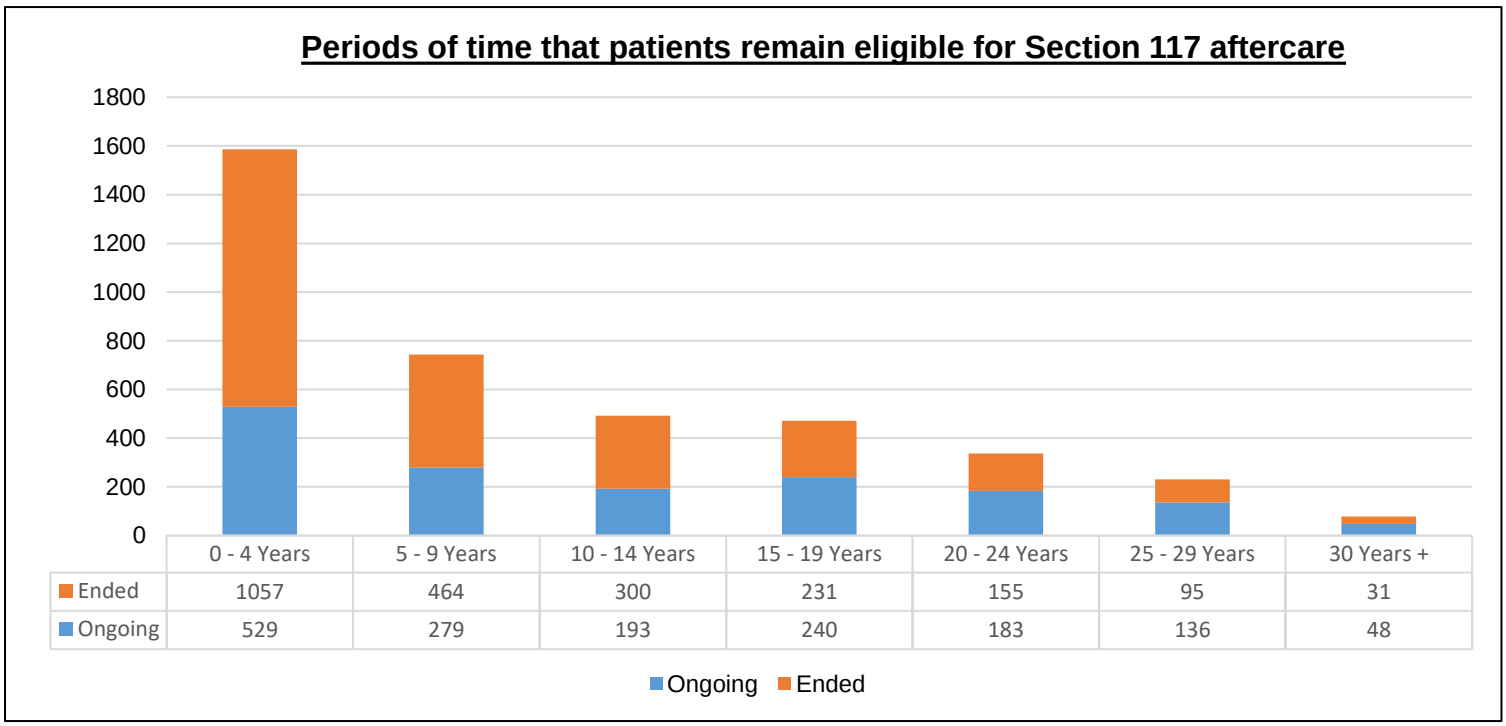
Ten hearings were postponed for the following reasons:

- Patient unavailable x 5
- Social worker unavailable x 2
- Legal representative unavailable x 2
- Responsible clinician unavailable x 1

Section 117 Aftercare







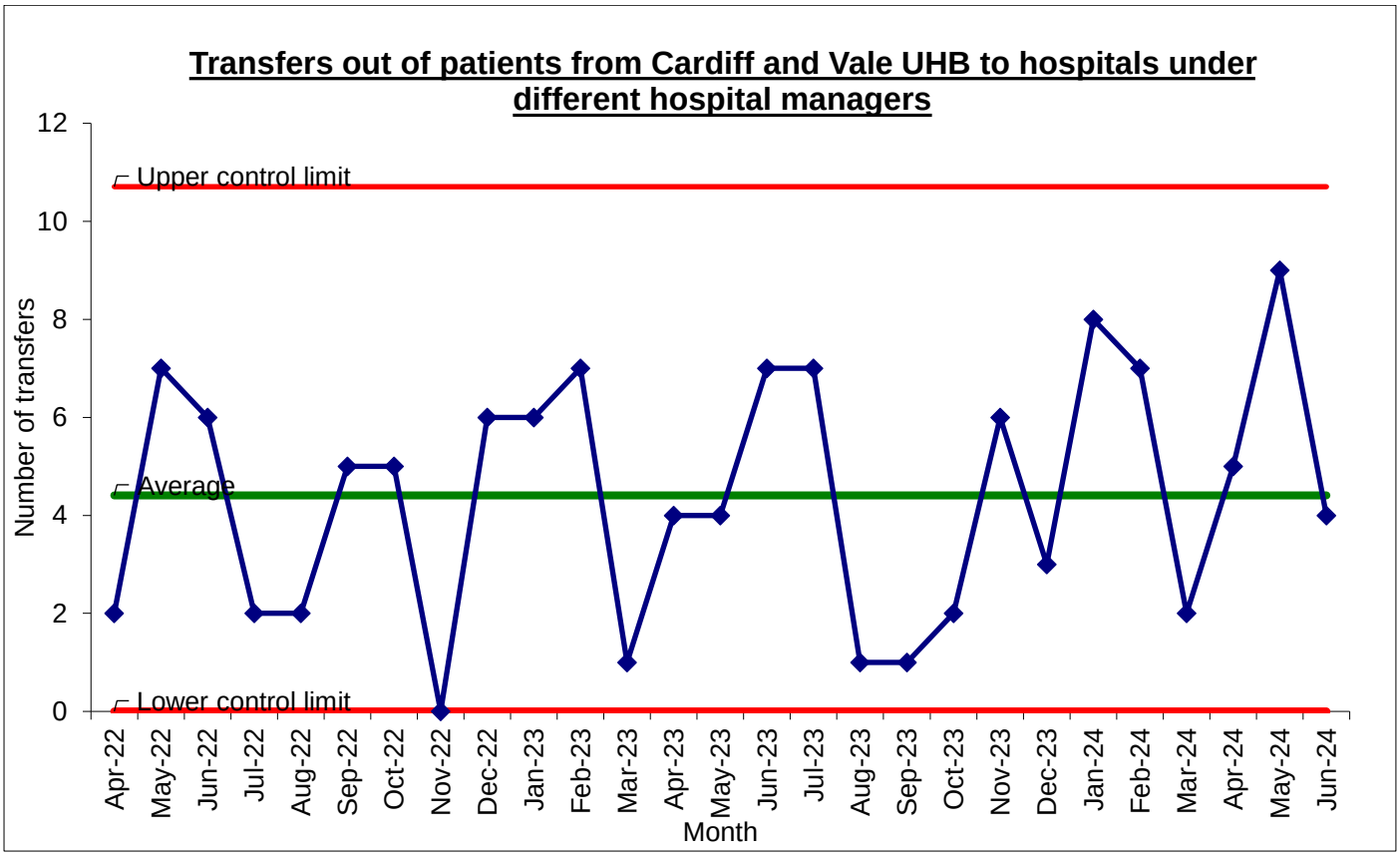
Section 19 transfers to and from Cardiff and Vale UHB

During the period:

Seventeen 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:

- To PICU beds out of area x 9
- To a specialist placement x 1
- Back to their home area x 7

One patient detained under Part 3 of the Mental Health Act was transferred from Cardiff and Vale UHB to a medium secure unit.

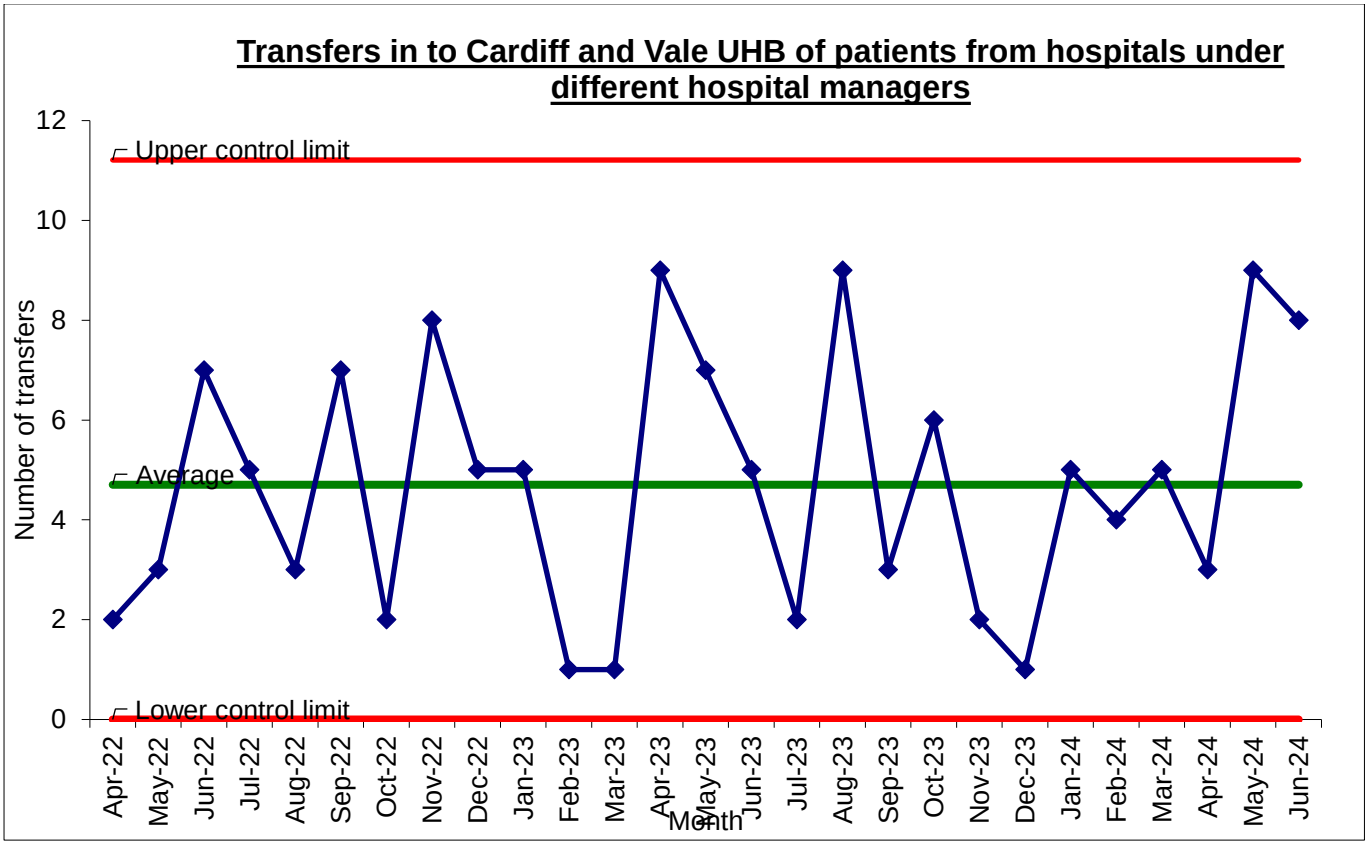


Eighteen patients detained under Part 2 of the Mental Health Act were transferred into Cardiff and Vale UHB from a hospital under a different set of Managers for the following reasons:

- From out of area PICU beds to home PICU x 8
- One from out of area beds to home area x 9
- From out of area forensic bed to home forensic bed x 1

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

One person detained under a Community Treatment Order was transferred back into Cardiff and Vale UHB.



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

April- June 2024

Exclusion of visitors

Visiting on wards at Hafan Y Coed are allowed but by appointment only. This is managed through a booking in system.

Death of detained patients

During the period there was one death of a detained patient.

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

	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.
Part 2 of the Mental Health Act 1983	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. 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.
Section 5(4)	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. 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). 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.
Section 5(2)	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. 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

	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.
Section 4	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. 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. 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: • An immediate and significant risk of mental or physical harm to the patient or to others • And/or the immediate and significant danger of serious harm to property • And/or the need for physical restraint of the patient. 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. 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.

Section 2	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. 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. 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. Section 2 cannot be renewed and there is nothing in the Act that justifies successive applications for section 2 being made. 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: • The patient has no nearest relative within the meaning of the Act • It is not reasonably practicable to find out if they have such a relative or who that relative is • The nearest relative is unable to act due to mental disorder or illness • The nearest relative of the person unreasonably objects to an application for section 3 or guardianship. • The nearest relative has exercised their power to discharge the person from hospital or guardianship without due regard to the persons welfare or the public interest 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.

	Patients admitted under section 2 are subject to the consent to treatment provisions in Part 4 of the Act.
Section 3	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. Patients detained under this section are subject to the consent to treatment provisions contained in Part 4 of the Act below.
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)	Provides that a Responsible Clinician may recall a patient to hospital in the following circumstances: • Where the RC decides that the person needs to receive treatment for his or her mental disorder in hospital and without such treatment there would be a risk of harm to the health or safety of the patient or to other people. • Where the patient fails to comply with the mandatory conditions set out in section 17B (3).
Revocation	Is the rescinding of a CTO when a patient needs further treatment in hospital under the Act. If a patients' CTO is revoked the patient is detained under the powers of the Act in the same way as before the CTO was made.
Part 3 of the Act	Deals with the circumstances in which mentally disordered offenders and defendants in criminal proceedings may be admitted to and detained in hospital or received into guardianship on the order of the court. It also allows the Secretary of State for Justice to transfer

	people from prison to detention in hospital for treatment for mental disorder. 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.
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	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. 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

	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	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: • To make a hospital order under section 37 of the MHA 1983 which can be accompanied by a restriction order under section 41. • To make a supervision order so that the offenders responsible officer will supervise him only to the extent necessary for revoking or amending the order. • Order the absolute discharge of the accused.
CTO (section 37)	Once an offender is admitted to hospital on a hospital order without restriction on discharge, his or her position

	is the same as if a civil patient, effectively moving from the penal into the hospital system. He or she may therefore be suitable for CTO
Administrative scrutiny	The University Health Board has formally delegated its duty to administratively scrutinise admission documents to officers identified in the scheme of delegation. Medical scrutiny is undertaken by Consultant Psychiatrists.
	Compliance with the Consent to Treatment provisions under Part 4 & 4A of the Act is related to treatments requiring the patient's consent or a second opinion. 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. If the patient lacks capacity to consent SOAD authorisation is required.
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)

Section 62 – Urgent treatment	Where treatment is immediately necessary, a statutory certificate is not required if the treatment in question is: • To save the patient's life • Or to prevent a serious deterioration of the patients condition, and the treatment does not have unfavourable physical or psychological consequences which cannot be reversed • Or to alleviate serious suffering by the patient, and the treatment does not have unfavourable physical or psychological consequences which cannot be reversed and does not entail significant physical hazard • Or to prevent the patient behaving violently or being a danger to themselves or others, and the treatment represents the minimum interference necessary for that purpose, does not have unfavourable physical or psychological consequences which cannot be reversed and does not entail significant physical hazard.
Section 23	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. Section 23 does not apply to patients who have been remanded to hospital by the courts or to patients subject to interim hospital orders. The Secretary of State for Justice has powers to discharge restricted patients under section 42(2). 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.

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.

Report Title:	Mental Health Measure (Wales) 2010 incl. Part 2				Agenda Item no.	**4.1**	
Meeting:	Mental Health Legislation and Mental Capacity Act Committee		Public	X	Meeting Date:	6th August 2024	
			Private				
Status *(please tick one only):*	Assurance	X	Approval		Information		
Lead Executive:	Chief Operating Officer						
Report Author (Title):	Director of Operations, Mental Health						

Main Report
Background and current situation:

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

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

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

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

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

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

Part 1: PMHSS

Part 1a – target: 28-day referral to assessment compliance target of 80% (Adult)
Part 1a is at 9% compliant on 18/7/24. This is a deteriorating picture as compliance month on month. The last month of compliance was February 2024.
As of July 17th the average waiting time was 41.3 days with the longest waiting being 55 days. Trajectory is deteriorating due to an upward trajectory of referrals from 2021 to July 2024 (see Graph 1), with the trendline indicating an increase of 200 referrals per month while there has been a consistent decrease in quarterly assessments since Q1 2023 Currently there are 6 practitioner absences due to sickness or maternity leave. Two additional positions have been created from Planned Care and are now out to advert. To support projected compliance by December 2024 additional posts are required (identified through capacity and demand modelling. There has been

increased volatility since covid (see Graph 3) due to the increasing number of referrals. The establishment has been increased but there is not indication of any slowing in referral numbers.

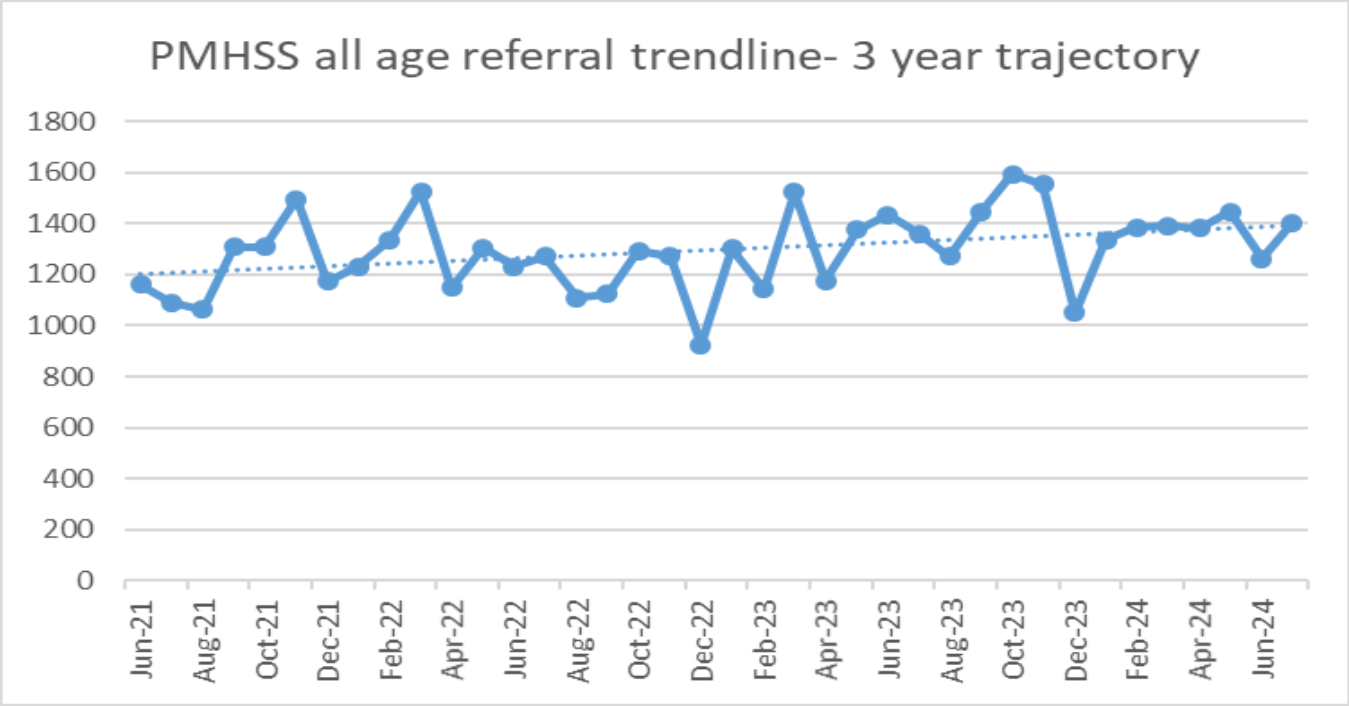
In terms of outcomes outside of the target, recent Civica reports highlighted high quality interactions between service users and PMHSS:

“Keep the good work up.”
“I think [Staff Member] had a very calming and caring attitude which automatically helped put me at ease.”
“Empathy and understanding was quite above and beyond by the lady I spoke to. She does this all day and still manages to show it. Incredible.”
“Very quick and efficient.”
“He was very knowledgeable and was obviously well experienced in the field.”
“Very well organised.”
“I really do think I was cared for impeccably.”
“Informative. Understanding. Kind. Polite. Considerate.”
“He was a excellent listener and caring the client. His advice and the information he is going to send to me will be great helping.”
“Individual who I spoke with was great. Very empathetic and a good listener and communicator.”
“Advisor was so kind and understanding to my situation and experiences , It would’ve been nice to get support from the nurse I spoke too but I managed to secure help through another service which we decided would be better for my needs.”
“No messing. To the point and out. But I was not rushed.”
“Very understanding and caring took the time to listen and made me feel comfortable and listen to came away feeling reassured!”
“... - the trip went well, and am now spending time with family (client is originally from Hong Kong). I just wanted to thank you for all the trust you've put in me, for the respect and kindness you paid me. Thank you for believing in me and taking a chance in me, even when no one else did."

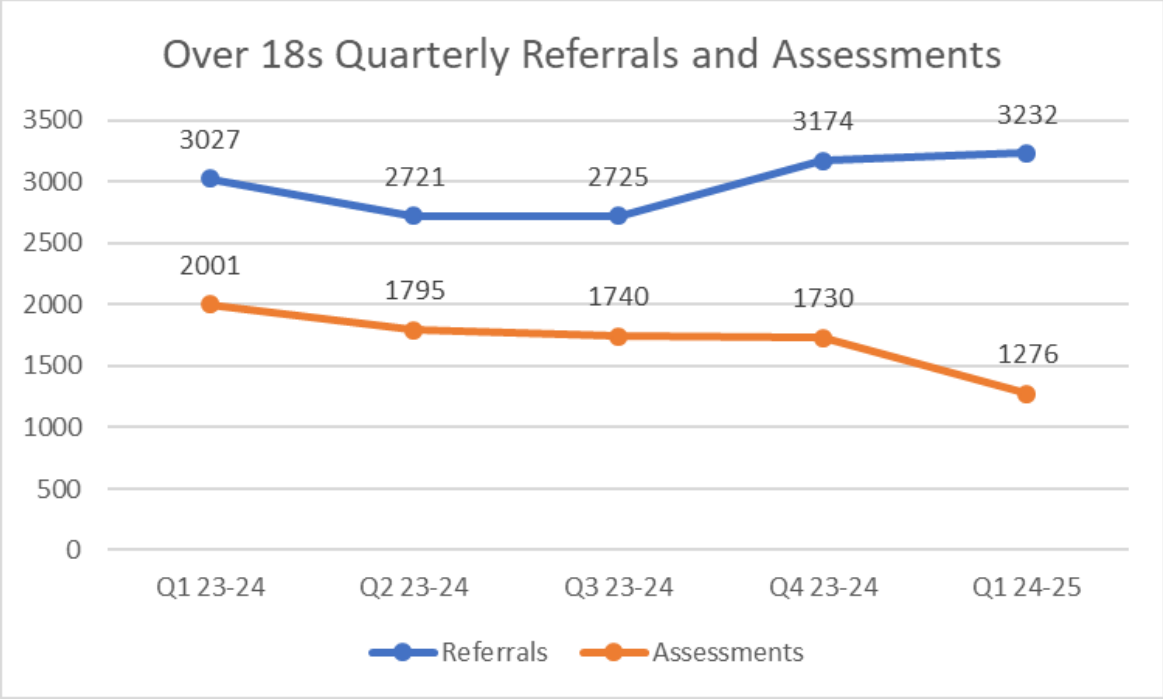
In terms of areas of dissatisfaction, waiting times were an area of concern:
“The waiting list is way to long for people with mental health, especially when having suicidal thoughts.”
Other concerns raised related to not receiving a letter and waiting times for referrals on for counselling.

Actions to restore compliance:
Additional staffing resource is required. 2.0 WTE band 6 practitioner positions now approved by Vacancy Scrutiny Panel are to be advertised shortly. Demand / capacity assessments indicate that additional positions will be required to achieve compliance. A further 1.0 WTE band 6 practitioner position will be required to ensure that target recovery improves by December 2024.

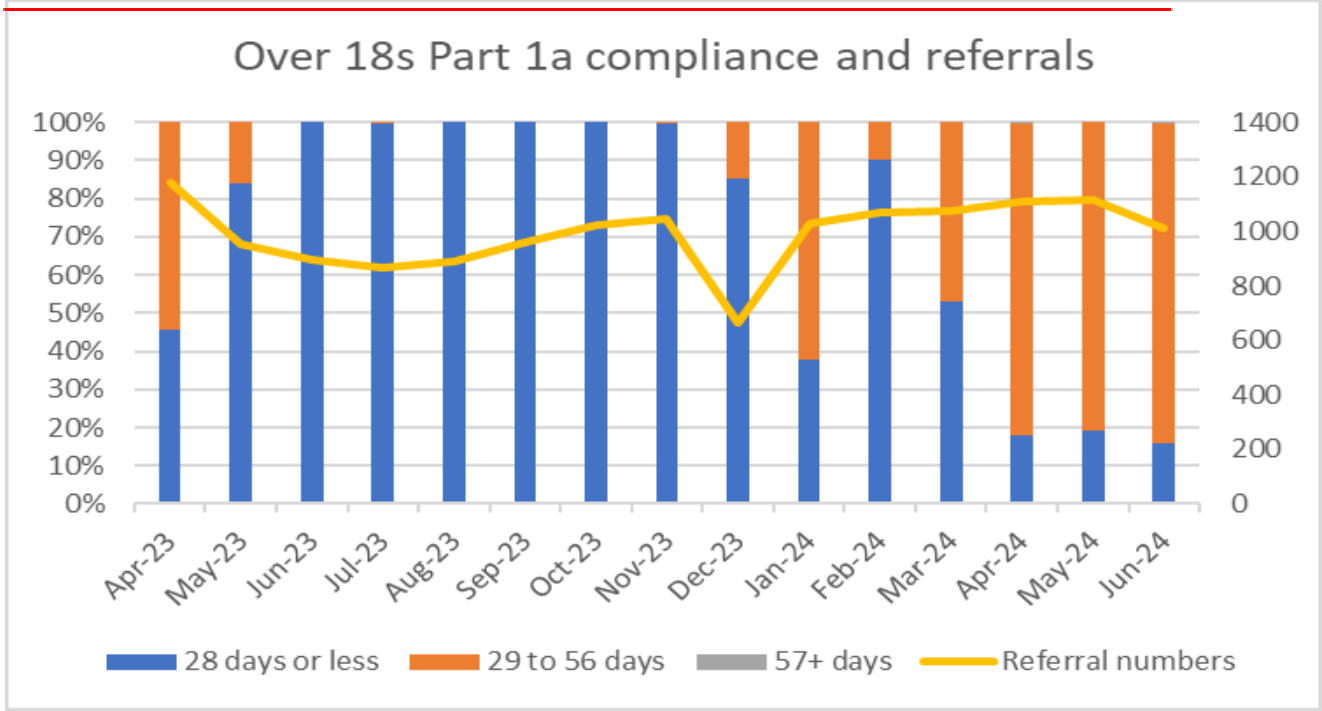
Graph 1:



Graph 2

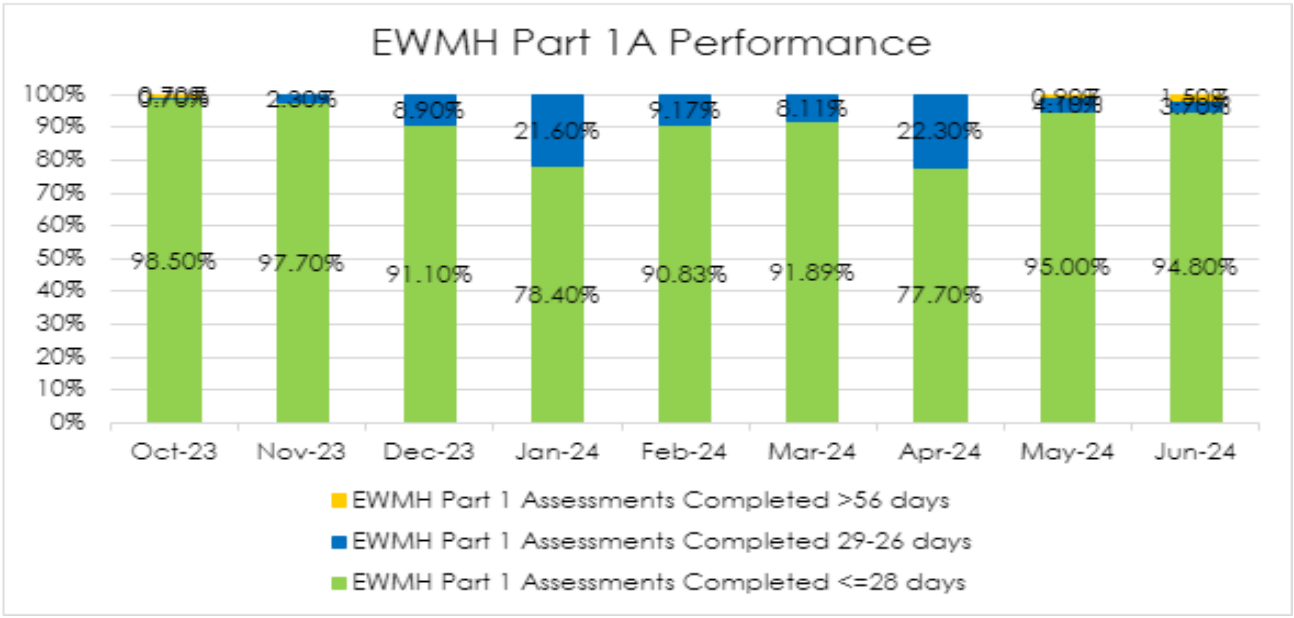


Graph 3



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

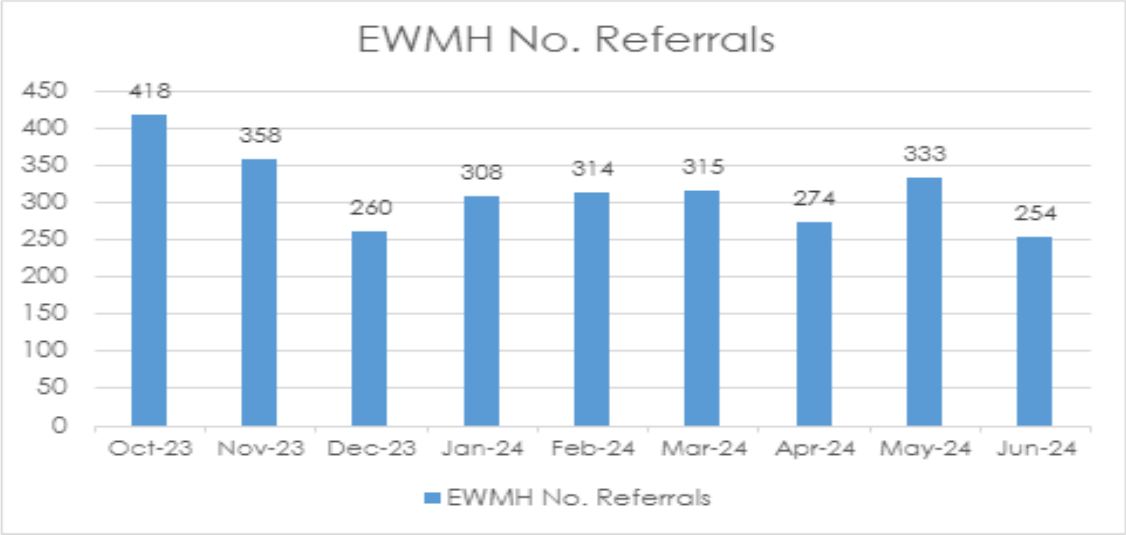
Graph 4



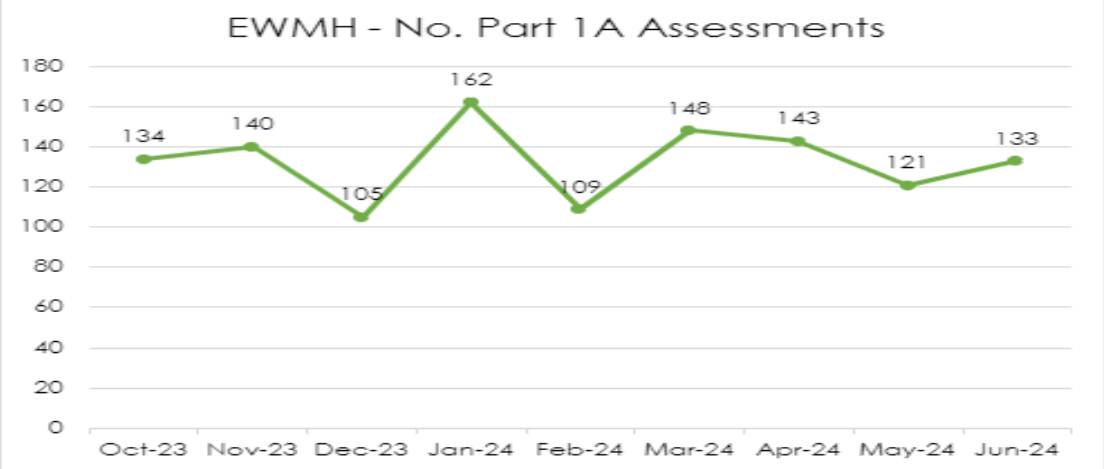
As a result of increased sickness within the Assessment Team there was a slight dip in compliance during April. However this has been recovered and compliance exceeded in May and June.

The establishment of the Assessment Team continues to support the service in providing sufficient capacity to meet incoming demand and the average wait for assessment currently fluctuates between 3-4 weeks.

Graph 5



Graph 6



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

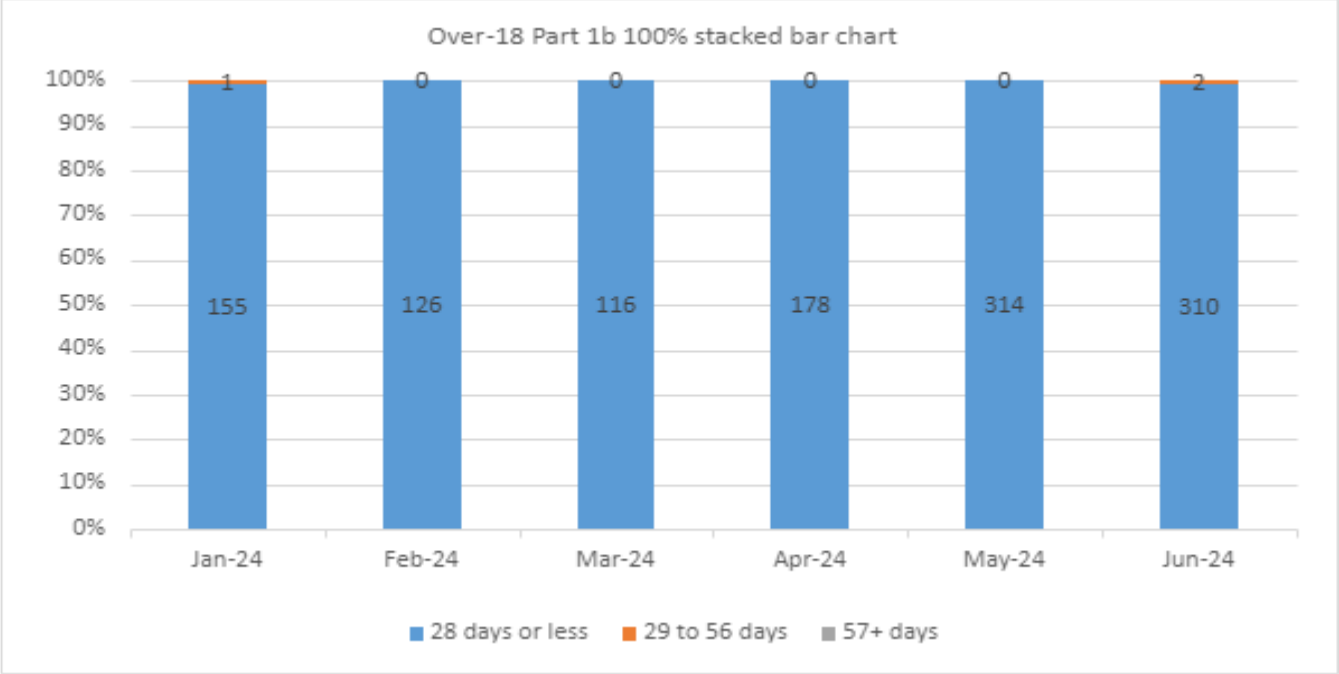
Part 1b remains compliant (Graph 7). The same professionals delivering Part 1a assessments also deliver the interventions in Part 1b.

The PMHSS team continue to deliver group interventions for:

-Living Life to the Full
-Behavioural Activation
-ACT for Wellbeing
-Anger Awareness.

The *Understanding Me* course is currently under evaluation.

Graph 7:



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

Compliance with Part 1b remains a challenge as the service continues to recover from the volume of assessments which were undertaken through the previous waiting list initiatives where the focus had been on the external waiting list.

Service capacity has been an ongoing issue due to vacancies and sickness. There remain key vacancies in the service which have been challenging to recruit, as well as significant long-term sickness. Staff are returning to work from sickness and capacity will increase once they are back to full working capacity.

An ongoing review of demand and capacity is in place and is being flexed where appropriate. Discussions with colleagues from across Wales are also ongoing in terms of learning and sharing how teams are managing their capacity.

The service has soft launched a psychoeducation offer which will form a key part of the Part 1b intervention offer. It includes:

- A Wellbeing/Intervention journal which will be given to young people at the time of their assessment and starts to cover some of the topics they may look at during their intervention
- Four video modules on the website for young people to work their way through which are linked to the content in the journal
- A support pack for parents
- Wellbeing appointment and check-in calls

We will be working to evolve the offer and develop more bespoke packages that children and young people can access.

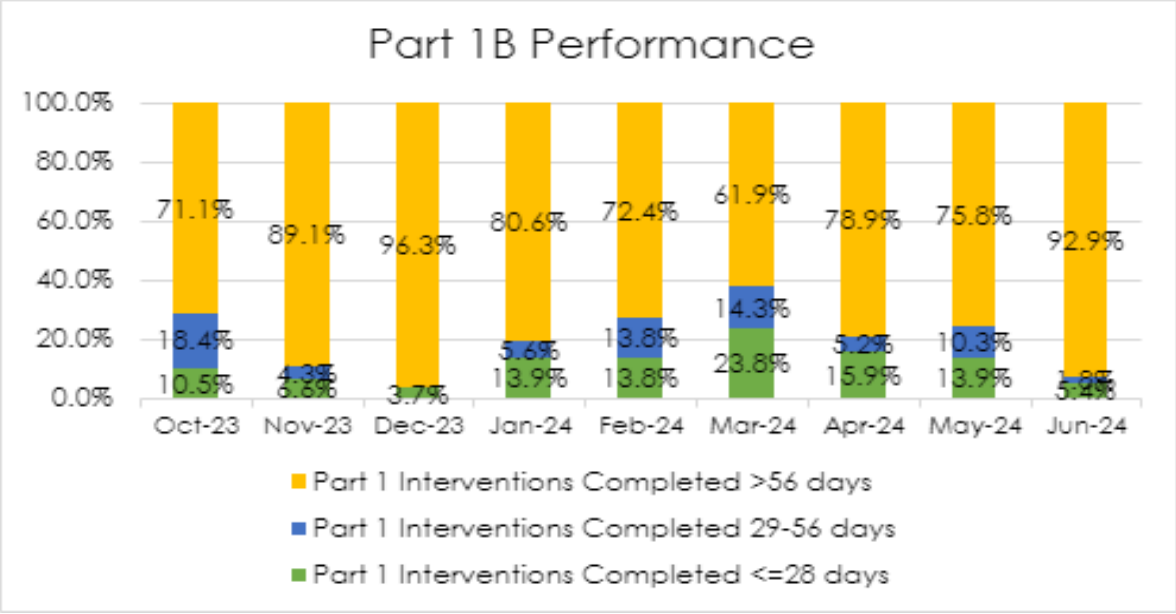
Similarly, the service has been evolving its group offers and has increased the capacity to deliver these. An anxiety management group has been very successfully run and has resulted in YP not requiring further intervention. Further groups under development include a behavioural activation group, managing big emotions, and looking at online 2-day groups such as Mood & Food, Managing

Sensory difficulties. We are also setting up a resilience group to offer to all young people on Part 1/2 waiting lists.

All IG documentation has now been approved by the organisation and work is underway to progress the refer on option for SilverCloud. This will allow the Assessment Team to refer children and Young People directly into SilverCloud for CBT based support for anxiety, low mood and depression, supporting easy and timely access to appropriate support.

Overall, the volume on the waiting list is reducing, however compliance remains low as we work through the longest waits.

Graph 8



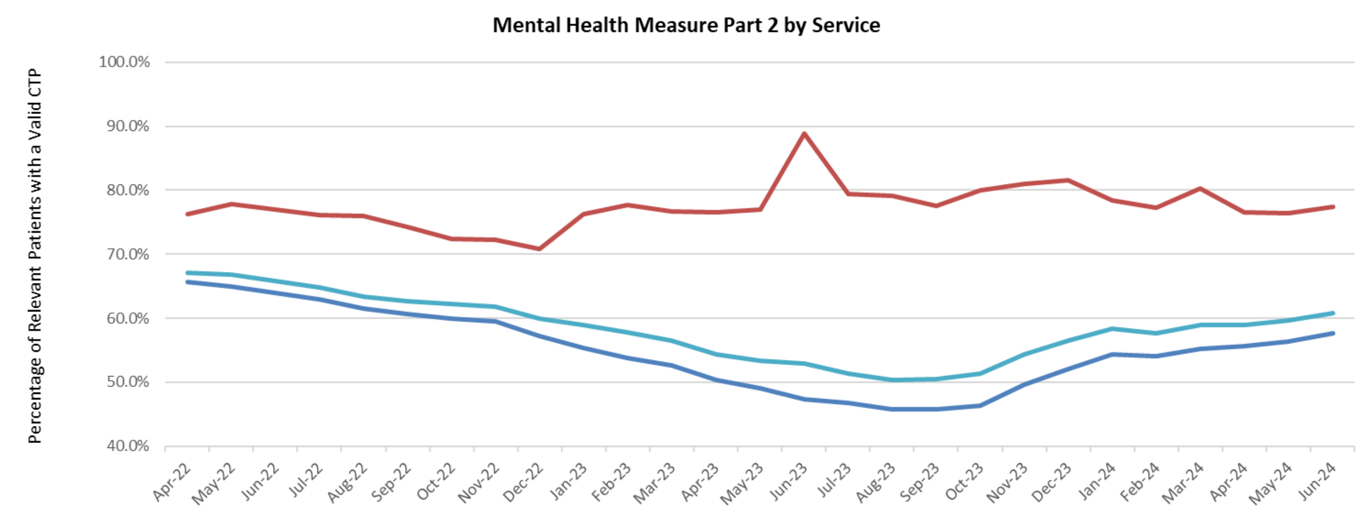
Actions to improve compliance against the target include:

- Recruitment to vacant posts – (1 x Band 8a Psychologist and 1 x Fixed Term Psychology Posts)
- Embedding of Psychoeducation Offer
- Active sickness and absence monitoring and wellbeing support to the team
- Supplementary capacity using agency staff to cover sickness/vacancies
- Active weekly monitoring of capacity and demand as well as caseloads and supporting the process of letting go through peer group
- Regular triage of the internal waiting list and waiting list validation
- Work with PARIS and clinical team to address data capture, recording and reporting quality
- Active work on clinical pathways to ensure a clear model that allows for clear capacity and demand planning
- Extension of the group offer which provides an alternative intervention offer for several children and young people, which will help meet demand
- Set up of Silvercloud refer in offer for support offer for anxiety, depression and low mood

Part 2 – Care and Treatment Planning (over 18)

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

Graph 10



	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23
Adult	65.7%	65.0%	64.0%	62.9%	61.5%	60.7%	59.9%	59.5%	57.2%	55.4%	53.8%	52.7%	50.3%	49.1%
MHSOP	76.3%	77.9%	77.0%	76.1%	76.0%	74.2%	72.4%	72.3%	70.8%	76.2%	77.7%	76.7%	76.6%	77.0%
Total for UHB	67.1%	66.8%	65.8%	64.8%	63.4%	62.7%	62.2%	61.8%	60.0%	59.0%	57.8%	56.5%	54.4%	53.4%

	Jun-23	Jul-23	Aug-23	Sep-23	Oct-23	Nov-23	Dec-23	Jan-24	Feb-24	Mar-24	Apr-24	May-24	Jun-24
Adult	47.3%	46.7%	45.7%	45.7%	46.3%	49.6%	52.0%	54.4%	54.0%	55.2%	55.7%	56.4%	57.7%
MHSOP	88.8%	79.4%	79.1%	77.6%	80.0%	81.0%	81.5%	78.4%	77.2%	80.3%	76.6%	76.4%	77.4%
Total for UHB	52.9%	51.4%	50.3%	50.5%	51.3%	54.4%	56.5%	58.3%	57.7%	58.9%	58.9%	59.6%	60.8%

There has been a steady improvement in compliance with Care and Treatment Plans since August 2023. The main challenge continues to be compliance within medical caseloads, specifically where the medic has:

1. Large caseloads of patients (typically over 100)
2. Where the medic is the only professional involved in the care of the individual
3. Where the 'caseness' of the individual falls below that of severe mental health problems but where there is no 'stable severe' or alternative Primary Care pathway.

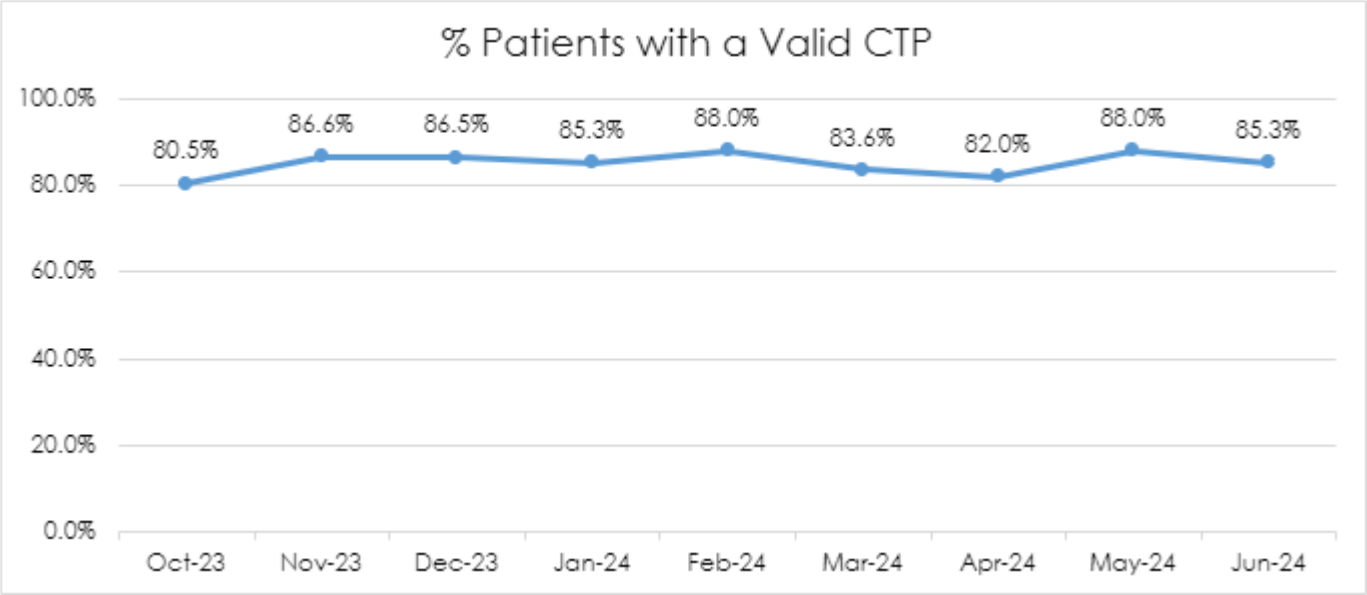
The Recovery And Maintenance Programme (RAMP) Protocol has been approved but there is currently limited PARIS development time to implement this electronically. However, local teams are applying the protocol specially around ADHD patients. The RAMP Protocol is designed for service users who only see a single clinician and where they cannot be discharged due to limits of provision in primary care (such as for medications where there is no shared care agreement). The expected benefits for compliance will be that this will create the first provision in line with the Measure for 'Stable Severe' service users. The benefit for service users will be that their care will continue to be delivered, Part 3 rights will be protected, access to usual services such as the CMHT Duty worker will continue and all letters to the GP from the Outpatient Clinic are mandated to be sent to the service user.
When there is an electronic pathway, we expect to see large numbers transferring onto RAMP and consequently seeing an improvement in the performance.

Second to this there are conversations with the Local Medical Committee about providing an ADHD Primary Care pathway and a Stable Severe pathway within Part 1. This should support CMHT transformation which is one of the NHS Executive's priorities. Cardiff and Vale has had a Mental Health Community Summit on 6th June, the MHCB will be undertaking roadshows around community MH services to meet with stakeholders towards this largescale transformation.

The Recovery and Wellbeing College course *Preparing for Discharge* has commenced on the Wards and 2 courses been evaluated, and have passed the internal quality assurance process and external scrutiny from the Delivery and Assurance Team in the NHS Executive. Inpatient courses are being run in all adult mental health inpatient areas (including in community based Rehabilitation Units). This course has been developed with Health Education and Improvement Wales, Social Care Wales and co-produced with staff, service users and carers in the usual manner. Pre and post course feedback from the initial courses show improvements in understanding, confidence in completion and perception of how important the CTP is to quality delivery.

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

Graph 11



For the last quarter, compliance has remained just below target. The service continues to face challenges with engaging young people in the CTP process due to the nature of the paperwork and requirements being more focused towards adults. The team continues to work hard to ensure that the CTP process can be completed meaningfully with children and young people and in a supportive multi-agency approach.

Works remains ongoing in relation to data capture and reporting through PARIS to ensure staff are supported in the management and oversight of the CTP process where it has been identified for a child or young person.

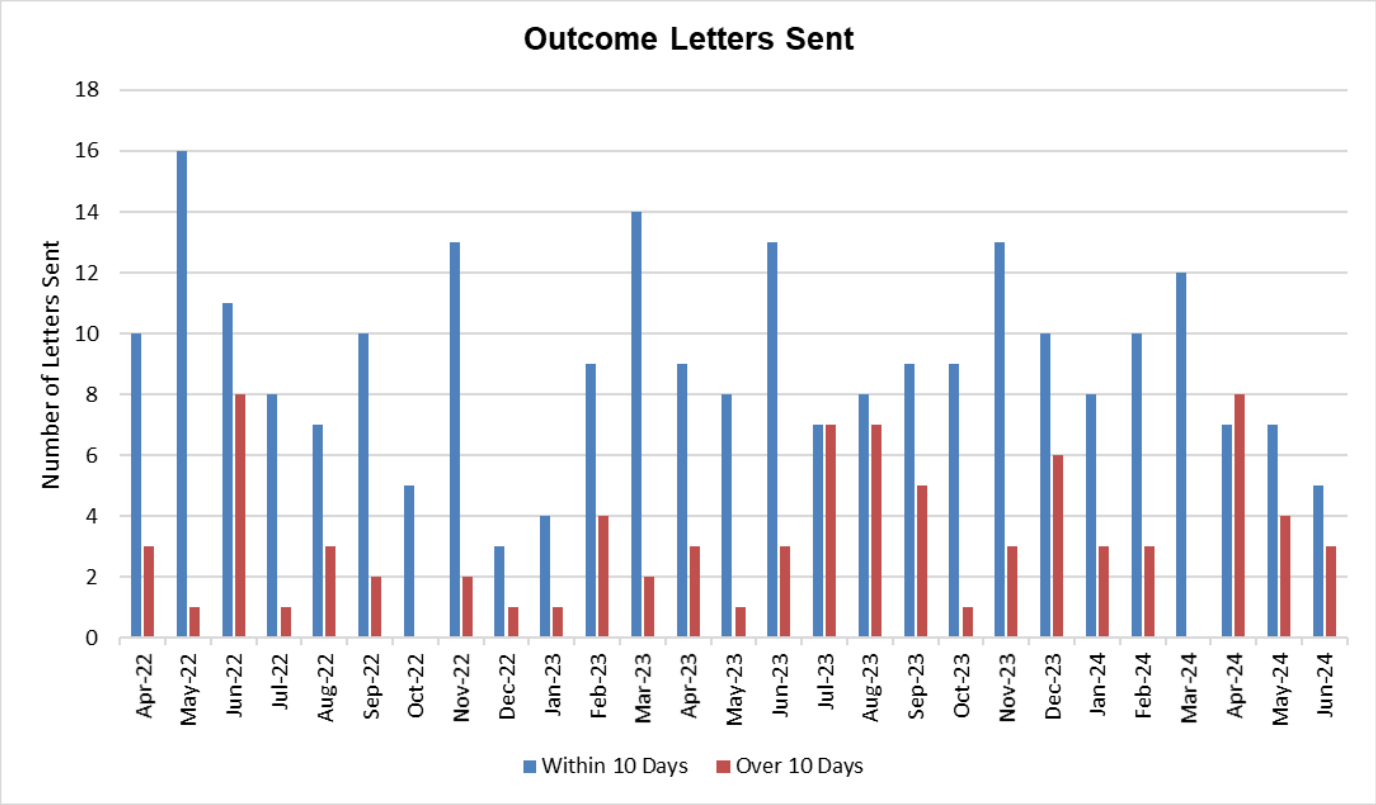
Actions to improve compliance against the target include:

- Embedding staff training
- Engagement with Youth Board re ensuring a child and young person friendly approach to the CTP process.
- Engagement with All Wales CAMHS Implementation Network to support a national improvement to the paperwork for CYP

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

The target relates to service users who have self-referred, having a confirmation letter regarding the outcome of their assessment within 10 days. Graph 12 details our compliance of the target time of within 10 working days for an assessment outcome letter to be sent to the patient.

Graph 12



The Adult and Older people's directorates have dedicated time with the Mental Health Clinical Board to explore the various issues contributing to volatility of the target. We are now performance managing individual team outcomes for Part 3. The breach timescales are a report in writing must be provided to the patient within 10 working days of the assessment, anything over 10 working days is a breach.
The MH PARIS Team have developed a report on local team performance, this has been shared with team leaders with a clear expectation for improvement.
We have reviewed processes around how Part 3 is recorded and administrated between the directorates to reduce any variation.
Actions for the next quarter include:
-individual team performance management
-single process map
-directorate performance management overview

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

100% compliance but asks the committee to note the following:-

The following observations for quarter 1 in the delivery of Advocacy services across Cardiff & Vale

- Staffing issues within ASC over the last few months have been resolved.

- There has been no increase in Welsh Government funding for Advocacy since inception of the Mental Health Measure 2010 and demand continues to rise.
- Several senior ward staff on an acute ward were very supportive and helped advocate for a client in ward review and with a move on placement. The Chair of a Hospital Managers hearing gave my client and their family lot of time to speak and put across their view.

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

Part 1: Operational decisions about staffing numbers to maintain consistent compliance to be outlined at next meeting.

Part 2: RAMP goes live following MHMCLC

Part 3: Process mapping underway and PARIS development required to provide a reliable system to monitor and maintain compliance.

Part 4: Continues to be 100% compliant with ongoing progress.

Recommendation:
The Committee is requested to: Committee to note the contents of the report

Link to Strategic Objectives of Shaping our Future Wellbeing: *Please tick as relevant*			
Reduce health inequalities	X	Have a planned care system where demand and capacity are in balance	
Deliver outcomes that matter to people	X	Be a great place to work and learn	
All take responsibility for improving our health and wellbeing	X	Work better together with partners to deliver care and support across care sectors, making best use of our people and technology	X
Offer services that deliver the population health our citizens are entitled to expect	X	Reduce harm, waste and variation sustainably making best use of the resources available to us	
Have an unplanned (emergency) care system that provides the right care, in the right place, first time	X	Excel at teaching, research, innovation and improvement and provide an environment where innovation thrives	

Five Ways of Working (Sustainable Development Principles) considered *Please tick as relevant*									
Prevention	X	Long term	X	Integration	X	Collaboration	X	Involvement	X

Impact Assessment: *Please state yes or no for each category. If yes please provide further details.*
Risk: Yes/No
N/A
Safety: Yes/No
No

Financial: Yes/No
No
Workforce: Yes/No
No
Legal: Yes/No
No
Reputational: Yes/No
Yes
Socio Economic: Yes/No
No
Equality and Health: Yes/No
Yes
Decarbonisation: Yes/No
n/a

Approval/Scrutiny Route:	
Committee/Group/Exec	Date:

MINUTES OF THE MEETING OF THE MENTAL HEALTH ACT HOSPITAL MANAGERS POWER OF DISCHARGE SUB COMMITTEE HELD AT 3 PM ON 9th April 2024 MENTAL HEALTH ACT OFFICE AND VIA TEAMS

Present: Jeff Champney-Smith Chair, PoD Group
Liz Singer - Vice Chair, PoD Group
Alex Nute - PoD member
Mair Rawle - PoD member
Alan Parker - PoD member
Gerrie Hughes – PoD member via TEAMS
Mike Lewis – PoD member
Margaret Jones – PoD member
Dr John Copley – PoD member via TEAMS
Sharon Dixon – PoD member Apologies:
David Seward – MHA Manager
Sarah Vetter - PoD member
Peter Kelly – PoD member
Carol Thomas – PoD member via TEAMS
Amanda Morgan – PoD member

Apologies for absence

Wendy Hewitt-Sayer - PoD member
Professor Ceri Phillips - Vice Chair, Cardiff and Vale Health Board
Rashpal Singh – PoD member
John Owen – PoD member

1. Welcome and Introductions - The meeting was held in the MHA office and via Teams and the Chair welcomed all to the meeting. There were no new members.

2. Apologies - Apologies were received and noted.

3. Members points for open discussion
PoD Fees – There was a discussion regarding the payment of fees in other providers when Hearings were cancelled. Currently, C&V pay 50% of the fee when the Hearing is cancelled on the day. Other Health Boards and private providers pay a full fee if the Hearing is cancelled within 24 hours. The MHA Manager agreed to raise the issue at the senior team meeting. **Action MHA Manager**
Beech Ward Room –PoD members had previously expressed concerns regarding both safety and patients and staff comfort when using Beech Ward's activity room for Hearings as there was nowhere nearby to wait. The MHA Manager advised that the second tribunal room in the MHA office suite was now available for Hearings. The Chair and PoD members thanked the MHA Manager for arranging this. On rare occasions it may be necessary to use Beech Ward although it wasn't anticipated that this would be a frequent occurrence.
Agreed questions for the panel – the Chair reminded members that at the pre-hearing briefing the area of questioning from each member should be determined. Where possible each member of the panel should stick to the areas agreed. **Action All**
Deletions from minutes – all agreed that the minutes needed updating to reflect the fact that they were almost all completed electronically now. Chair and MHA Manager agreed to revise the minutes which would then be trialled. **Action MHA Manager and Chair PoD**
4. Minutes of Meeting held on 9th April 2024 - The minutes were confirmed as an accurate record of the meeting.

5. Matters Arising

Barring Hearing -Barring Hearing – there was a lengthy and wide-ranging discussion on Barring Hearings. Dr John Copley presented a recent Barring that he had chaired in which the Nearest relative had requested to withdraw the application prior to the hearing. A template wording for the opening of the Barring had been developed by him and, with the agreement of the other panel members, had been used at the start of the hearing. Learning from the discussion included the following:

- The Law -once the Barring Order has been made the NR can't withdraw their application
- The Hospital managers have a discretion to hold a Barring Hearing. It was noted that the practise in Cardiff and Vale was to arrange a hearing once the Barring Order had been made. In light of the recent numbers of Nearest Relatives request for discharge this may need to be reconsidered with the PoD exercising their discretion.
- The template wording had been shared with the Chair of PoD. It was agreed to share more widely across the group whilst recognising each case was different and the wording from the template needed to be modified in each circumstance.
- Robustly record all decisions and the evidence behind them.

The RC who had barred the discharge was not present for the Hearing and the MHA office had been informed that he was away for 3 weeks. The NR was unhappy about the situation but agreed for the Hearing to proceed with the registrar presenting the medical evidence. The RC however was in fact in the hospital. The panel were concerned about the situation and the Chair agreed to raise at the next MHLGG. **Action Chair**

Discretionary Reviews – the Chair and MHA Manager had considered the four cases where a discretionary review had been requested. The Chair was unsure as to what PoD wanted to do with the information. It was agreed to consider one or two of the discretionary review cases at the next PoD business meeting with a view to seeing whether there was any learning. **Action Chair and MHA Manager**

Interpreter Hearings – it had been agreed at the last PoD that the default for hearings with an interpreter would be face to face unless the patient specifically requested the hearing proceed on Teams. **Action MHA office**

Activity Reports – these reports have been developed for use in other forums and as such they are shared with the PoD group for information.

CTP training – the chair and vice-chair had attended the training. The training emphasised the necessity for the patient's involvement in developing an outcome focussed care and treatment plan.

Annual reviews – these had now been completed by the Chair. He thanked everyone for their participation in the process. The Vice-Chair of the Health Board wished to convey his thanks to the PoD. The letters for each PoD member to be issued shortly. **Action Chair and MHA Manager**

Operational Issues – there was a discussion regarding the layout of the room for a Hearing that can seem confrontational an "us and them" situation. Whilst ensuring the safety of panel members it was a matter for each hearing how to arrange the room. **Action -All**

6. Lessons Learnt – this had been covered under matters arising/Barring Hearing

7. MHA Activity Monitoring Reports - Activity reports were provided for the periods March to June 2024 for both Hospital Managers and Tribunals. The contents of the reports were noted with the following issues highlighted: -

- There were still a high number of adjournments for both the Tribunal and the Hospital managers
- It was pleasing to note the increased representation by advocacy at Hearings in the last quarter (over 70%)
- The number of Hearings had remained high in the quarter.

8. Concerns/compliments from Power of Discharge group Hearings - These were noted and discussed. Again, a number of concerns still being raised for CTP's. There were some outstanding "WIP's" that the MHA office is chasing. **Action MHA office**

9. Committee and Sub-Committee Feedback - The Chair had nothing further to add. The minutes from these meetings were attached. There was some discussion regarding the wording from the MHLGG regarding the discharge from a Barring Hearing in the last quarter.

10. Training – Chair agreed to invite Dr Fergus to the next Business Meeting to discuss the rehabilitation service. Unconscious bias training will be provided later in the year. **Action Chair**

11. A.O.B – in order to activate our badges to allow entry to the MHA Office all PoD members to email the MHA Manager the number on the back of their badge. **Action All**

12 Date and times of next meetings - 8th October 2024, 14th January 2025 at 3pm in MHA Office/Teams

As there was no further business the meeting was closed.

Minutes of the Mental Health Legislation and Governance Group held at 10:00 on 11 July 2024 via Microsoft Teams

Present

Robert Kidd	(Chair) Consultant Psychologist
David Seward	Mental Health Act Manager
Bianca Lepore	Deputy Mental Health Act Manager
Jeff Champney-Smith	Chair, Power of Discharge Group
Callista Hettiarachichi	Consultant Representative, CAMHs
Claire Thomas	South Wales Police Representative
Noel Martinez Walsh	Lead Social Worker, Vale LA
Gemma Lewis	Emergency Duty Team Lead, Cardiff LA
Bethan Evans	Emergency Duty Team Lead, Vale LA
Alex Alegretto	Advocacy Support Cymru Manager
Rebekah Vincent Newson	DoLS Lead
Chloe Evans	Mental Capacity Act Project Lead
Samantha Kennedy	Interim Integrated Manager MHSOP Cardiff & Vale LA
Joshua Lusby	CAMHs Representative
Rachel Rushforth	Lead Nurse, Adult Mental Health
Matthew Russell	Operational Manager MH, Cardiff LA
Philip Ball	Senior Nurse, Adult Community Mental Health Teams
Marianne Seabright	Lead Nurse, MHSOP and Neuropsychiatry
Julia West	Senior Nurse, Continuing Healthcare Mental Health
Kelle Al-Shei	Shift Coordinator Representative
Radhika Oruganti	LPOP Representative
Andrea Sullivan	Senior Nurse, Education, Quality, safety and Patient Experience

Apologies

Ceri Phillips	Vice Chair, Cardiff and Vale UHB
Ceri Lovell	CAMHs Representative
Rebecca Lendon	Consultant Representative
Chris Frayne	Senior Nurse, Low Secure & Specialist Mental Health Services
Gemma Moeller	South Wales Police Representative

1 Welcome and Introductions

The Chair welcomed everyone and introductions were completed.

2 Apologies for absence

Apologies were noted.

3 Minutes of meeting held on 11 April 2024

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

4 MHA Activity

The MHA Monitoring report was gone through by the MHA Manager who noted that the use of Section 3 had slightly decreased this quarter. The use of Section 62 emergency treatment has noticeably increased this quarter- largely as a result of awaiting SOAD certificates to be issued after the three-month rule. It was confirmed that the MHA office do send reminders to responsible clinicians to consider consent to treatment status. The use of Section 19 transfers under the MHA has also increased this quarter which increases the workload for the MHA office. Transfers have particularly affected the psychiatric intensive care unit. There has been an increase in the use of Section 136s for those under the age of 18 years old but it was recognised that this was largely due to two service users repeat presentations. The number of uses for all ages has also increased but having taken account of the increase in CAMHs the usage is within the expected range. There was one lapse of the Section 136 due to the patient not being fit for assessment. One member of the group queried where the statistics that go into the monitoring report come from as there seems to be a possible discrepancy. This will be addressed. There doesn’t appear to be any perceivable increase in the number of voluntary assessments. The emergency duty team lead for the Vale will also provide her assessment figures.

Action- MHA Manager to contact EDT Leads to confirm numbers of assessments

The exception report picked up the following that occurred within the last quarter:

One fundamentally defective Section 2 application due to a lack of a wet signature and two fundamentally defective Section 5(2) reports due to the incorrect English versions of the MHA documentation being used. The MHA Manager assured those present that the MHA intranet page is up to date and accurate so far as advice for clinician’s considering the use of the MHA and working in non-mental health areas. Staffing issues within the MHA office have not so far allowed staff to visit non-mental health areas to provide training. The MHA office do continue to provide regular training both face to face and virtually for staff across the Health Board. Audits of both the wards and the community mental health teams continue to be done on a rota basis and wards that have had medication errors are inspected again to ensure instructions and guidance are being adhered to.

Action- MHA Manager to create posters for UHW re: 5(2)

5 Matters for Action

Action log-This will be updated and sent separately.

Supreme court ruling in relation to S117 to be removed.

There have been no further instances of one doctor completing a Section 136 assessment. This action can be removed.

The knowledge gap in younger persons services in relation to their Section 117 responsibility persists and unfortunately hasn't seen any movement. The Operational Manager for Cardiff LA did mention that he would be happy to look over one specific ongoing case.

Discussions about A&E and detentions are ongoing.

Section 140/bed management procedure being reviewed by medics. There will hopefully be an update next time.

Assessments after 4pm will be followed up further by the Chair.

Locked door policy- discussed elsewhere in the meeting.

Single medical recommendations- discussed elsewhere in the meeting but it is hoped that both recommending doctors are at a minimal available for consultation. It is hoped that responsible clinicians can change their practice.

6 Feedback on operational issues and incidents

There remains question surrounding people being admitted to psychiatric services on an informal basis and their capacity to make this decision. There remains a discussion surrounding the use of DoLS. Conversation around the use of locked doors has resulted in an information leaflet for service users admitted informally being created. This is at a final draft stage and will contain information specifically for informal patients. This has come at a good time as the lack of information for informal patients was picked up on a recent inspection by Healthcare Inspectorate Wales. There has been a recent push by the Health Board to provide further MCA training to medics and this has so far proved successful. Further dates are coming up from Edge Training and the Health Boards own internal training. The Advocacy Manager did confirm that de facto detentions don't appear to be a regular issue within Cardiff and Vale but that when they occur they are discussed in ward rounds and reported on by Advocacy Support Cymru. It was agreed that the leaflets creation will help towards creating a robust system for people entering mental health services on an informal basis.

The Section 140 / bed management procedure continues to be worked on. The most recent version of this has been sent to one of the medical advice committees for further feedback and we are awaiting a response.

A High Court ruling in relation to Section 136 and the potential ramifications to the Section 140 policy was briefly discussed but it was agreed by all relevant parties that

further debate around this was not warranted. Those present agreed that the dissemination of the Section 140 policy needs to be expedited as far as possible.

7 Feedback from other meetings:

The Vale AMHPs forum did not highlight any new issues outside of the ordinary, e.g. conveyancing, bed issues.

Cardiff LA continue to experience difficulties when accessing Section 12, SPRs and consultants overnight. Whilst it was duly noted that SPRs need their rest time it was raised that the agreement of the SPR contacting the on-call consultant if they are not available for assessment is not always being adhered to. The Health Board has a duty for doctors to be available on call and using two section 12 approved doctors is not best practice. This has been raised to the Assistant Clinical Director. The Lead Nurse, Adult MH also agreed to bring this issue to the attention of the shift coordinators in the hope of the providing a further layer of reminder.

Action- Chair to raise issue with Assistant Clinical Director again re: SPRS calling consultant on call if they're unavailable

The persistent issue of doctors completing single medical recommendations and then leaving them either on the ward or in MHA office was discussed. It was noted that this is not best practice and is not in line with the spirit of the MHA or CoP. This puts added pressure on AMHP's to try and locate the medical recommendations and MHA office to try and find out if professionals are aware that an assessment is needed, both of which isn't their responsibilities. The Deputy MHA Manager apologised as it was agreed that statistics around this would be complied but due to resource constraints this hasn't happened as of yet.

Action- Deputy MHA Manager to compile statistics

Action- MHA Manager to raise in MAC meeting

The South Wales Police Representative confirmed that a review of South Wales Police's compliance with contacting relevant services prior to the use of Section 136 will shortly be undertaken.

The advocacy service continues to struggle to attend ward rounds with service users due to ward rounds happening at seemingly short notice and with no regular pattern. This sometimes means advocates are waiting around to help service users which can affect the amount of time they're parked in Llandough which can have a detrimental effect on the service they provide. It was noted that other MDT members are also struggling with the unpredictability of ward rounds- a problem that has known to have worsened with so many locums currently employed.

Action- Lead Nurse, Adult MH to contact the Clinical Director to try and get a firmer time table.

Non-medical approved clinicians have been discussed in the HIW work plan so there may be movement in this in the near future.

8 Power of Discharge Group comments, compliments and feedback

Care and treatment plans persist as a problem in that the care provided to patients is not being reflected in the written care plans provided to the hospital managers. It was also noted that there has been a tremendous leap in the number of nearest relative discharge requests within the last two quarters that is localised to Cardiff and Vale. The dangerousness criteria is still an issue but PoD continue to have open discussions about it. It has been agreed that hearings requiring an interpreter will default to being face to face unless the service user requests a virtual hearing as it can cause communication issues. One recent hearing was briefly mentioned whereby a patient's responsible clinician wasn't at the hearing and had sent a junior member of staff to represent him whilst still being in work himself. This will be looked into.

Action- MHA Manager to investigate and liaise with Lead Nurse, Adult MH

9 External reviews

Healthcare Inspectorate Wales recently visited two of our wards. Written feedback is not expected for another couple of weeks but it was noted two actions relate to the functioning of the MHA that have now been addressed. Healthcare Inspectorate Wales commented on the lack of Code of Practices on the two wards they visited but ward managers have assured senior management that the books are available. Risk assessments for Section 17 leave were also noted to be missing by Healthcare Inspectorate Wales. It was discussed that printed out risk assessments might not be mandated by the Code of Practice and that the regular printing of documents can lead to more wastage within the Health Board.

Action- MHA Manager to check what constitutes a structured risk assessment and does it have to be printed out?

10 Interface MHA/MCA/DOLS

Further specific training is being offered to staff working in MH. The new DoLS Lead is very new to her post and would like to learn what is discussed at this meeting. Discussions are being held in relation to when the use of each piece of legislation (MHA/MCA/DoLS) is applicable and it has been recognised that requests for DoLS assessments are coming in when perhaps historically the MHA would have been deemed more appropriate. Particularly within older peoples wards there seems to be a culture of service users going between DoLS and the MHA without it being obvious what has changed with the patients situation in that time or that people are still receiving active treatment. It is hoped that a short-term flow chart may help guide professionals and that a longer-term memorandum/ procedure will help ensure the correct guidance is being followed by all those making decisions. The Chair reminded all those present that we need to ensure compliance and understanding across the services that Cardiff and Vale provide- for instance children's services, learning disability or CAMHs.

11 Quality indicators and audit activities

New clinical ethics committee within the UHB. It has been queried whether this group should have involvement with this new working group going forward.

12 Any other business

The Chair confirmed that by the time of the next meeting the Kings speech will have gone ahead but that we are currently unaware of whether any update to the MHA or DoLS/LPA is being progressed.

Nothing further to add to position of the Health Board/ Local authorities position in relation to the Supreme Court judgement for Section 117. It is believed the clinical board may be doing some work with trying to identify patients being placed within Cardiff and Vale areas from other LA's/UHB's.

13 Date of future meetings

10th October 2024

16th January 2025

Mental Health Legislation & Governance Group Action Log

Key:	Red: Outstanding	Amber: In progress	Green: Completed

ACTIONS FROM PREVIOUS MEETINGS

STATUS	SUBJECT	AGREED ACTION	ACTION BY
To be removed	~~Supreme Court Ruling~~	~~Further discussions to be had regarding the impact of the ruling~~	~~**RK/DS**~~
To be removed	~~136 assessment with one doctor~~	~~MHA Manager to discuss with Clinical Board Director whether one doctor is sufficient in CaV for a consistent approach~~	~~**DS**~~
	117 knowledge gaps in CAMHs LA teams	Re-start discussions with CAMHs LA for training to be scheduled in	**CW/DS/CH**
	Sentenced prisoner being detained in HYC	Chair to liaise with Clinical Board about reaching out to Prison service re: review of incident	**RK**
	Patients being detained in A&E	MHA Manager to liaise with Senior Nurse, Crisis and Clinical Board about detaining patients in A&E	**DS**
Revised below	Bed management/s140 policy	Needs to be more succinct in order for it to be more user friendly	**SW/RK**
Revised below	SPR's and consultants taking assessments after 4pm	Further discussions between Clinical Board Director and Assistant Clinical Director are progressing the matter	**NJ/EM**
Revised below	Locked door policy	This working group needs to be re-established.	**RK**
Revised below	Single med recs being done	Deputy MHA Manager will provide data to the Cardiff LA around this.	**BL/CW**

ACTIONS FROM THIS MEETING – 11th July 2024

STATUS	SUBJECT	AGREED ACTION	ACTION BY
	Number of 136 assessments from EDT	MHA Manager to liaise with EDT Leads and confirm number of 136 assessments in last quarter.	**DS/BE/GL**
	Section 5(2)'s in UHW being completed on English forms	MHA Manager to create and disseminate posters/flowchart to wards in UHW to mitigate wrong forms being used.	**DS**
	SPRs not calling on call consultant if they aren't available for assessments	Chair to raise the issue with Assistant Clinical Director to remind SPRs of the agreement and duty to call on call consultant. Lead Nurse, Adult MH to advise shift coordinators for an extra reminder.	**RK/EM** **RR**
	RC's completing and leaving single medical recommendations on ward/MHAO	Deputy MHA Manager to collate data and send to both LA. MHA Manager to raise in MAC meeting that RC's shouldn't be doing it as not best practice/in line with CoP.	**BL** **DS**
	RC didn't attend NR barring managers hearing	MHA Manager to investigate and liaise with Lead Nurse, Adult MH.	**DS/RR**
	Does S17 leave need a printed risk assessment attached to it	MHA Manager to look in the CoP and feedback.	**DS**
	Bed management/s140 policy	Final review being done by medics. Update at next meeting.	**SW/RK**
	Locked doors – do informal patients know their rights	Lead Nurse, Adult MH advised information leaflets are being created. Update at next meeting.	**RR**
	Advocacy continues to struggle to support clients at ward rounds as timetable isn't being adhered to	Lead Nurse, Adult MH to discuss with Clinical Director to establish a firmer timetable for all.	**RR/PY**

Report Title:	**RESTRAINT IN THE CARE MANAGEMENT OF PATIENTS AGED 16 YEARS AND OVER WITH IMPAIRED MENTAL CAPACITY- POLICY AND PROCEDURE APPROVAL**			Agenda Item no.	*6.1*
Meeting:	**Mental Health & Capacity Legislation Committee**	Public	X	Meeting Date:	6th August 2024
		Private			
Status *(please tick one only):*	Assurance		Approval X	Information	
Lead Executive Title:	Jason Roberts Executive Director of Nursing				
Report Author (Title):	Dan Crossland Director of Operations Mental Health Clinical Board				

Main Report
Background and current situation:

The policy *Restraint in the Care Management of Patients Aged 16 years and over with Impaired Mental Capacity* was highlighted in a recent HIW inspection report to have elapsed from its renewal date. An action from the inspection was to provide assurance that the policy would be reviewed.

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

The policy relates to care of patients without capacity in Physical Health settings. The policy was sent to the CBD for Mental Health for renewal, however, this policy is typically not used in MH settings as the Mental Health Act is the more likely legislation to be used in mental health inpatient settings.
The policy was sent for comment to Directors of Nursing and the Mental Capacity Act Team who made minor amendments (mainly the replacement of 'Mental Capacity Lead' to 'Mental Capacity Team').

Recommendation:

The Committee is requested to:

a) Approve the policy as renewed.

Link to Strategic Objectives of Shaping our Future Wellbeing:
Please place an "X" in the relevant box below ***(this section must be completed)***

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	
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 place an "X" in the relevant box below* ***(this section must be completed)***									
Prevention		Long term	X	Integration		Collaboration		Involvement	

Impact Assessment:
Please state yes or no for each category. ***If yes please provide further details. This section must be completed***

Risk: Yes/No

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

Safety: Yes/No

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

Financial: Yes/No

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

Workforce: Yes/No

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

Legal: Yes/No

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

Reputational: Yes/No

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

Socio Economic: Yes/No

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

Useful Guidance on the application of the Socio-Economic Duty can be found at the following link: The Socio-economic Duty: guidance | GOV.WALES
(If this has been addressed in the main body of the report, please confirm)

Equality and Health: Yes/No

Equality Health Impact Assessments (EHIA) are typically undertaking when developing or reviewing Health Board strategies, policies, plans, procedures or services. Do the proposals contained within the report necessitate the requirement for an EHIA to be undertaken? If so, please include the detail of any EHIA undertaken or the plans are in place to do so.
Useful guidance on the completion of an EHIA can be found at the following link: EHIA toolkit - Cardiff and Vale University Health Board (nhs.wales)
(If this has been addressed in the main body of the report, please confirm)

Decarbonisation: Yes/No

There are a number of ways by which carbon emissions can be avoided through the operations of CVUHB. These include:

- *A focus upon preventing ill health in our population*
- *Saving energy or increasing throughput.*

- *Value based healthcare. Being prudent by not over-treating/intervening. Avoid delivering low-value interventions.*
- *Patients empowered to manage their conditions, utilising See on Symptoms and Patient Initiated Follow Ups to reduce unnecessary outpatient appointments.*
- *Service delivery in the most appropriate setting, e.g. in a community setting rather than an acute setting.*
- *Reducing waste – for example use non-sterile gloves only when needed, manage use-by dates to avoid throwing out good products, recycle and reuse.*

Does the subject matter of your paper risk any of the above not being achieved. Any queries, please contact edward.hunt@wales.nhs.uk

Approval/Scrutiny Route: ***Please insert any previous meetings where this paper has been received***	
Committee/Group/Exec	Date:

Reference Number: UHB 044 **Version Number:** 4	**Date of Next Review:** 22/07/2027 **Reference Number:** *N/A*

RESTRAINT IN THE CARE MANAGEMENT OF PATIENTS AGED 16 YEARS AND OVER WITH IMPAIRED MENTAL CAPACITY- POLICY AND PROCEDURE

Policy Statement

To ensure that Cardiff and Vale UHB (the UHB) delivers its aims, objectives, responsibilities and legal requirements transparently and consistently. The UHB is committed to ensuring that adult patients with impaired mental capacity are only restrained lawfully and appropriately.

Policy Commitment

We are committed to ensuring that the law regarding decision making – the Mental Capacity Act 2005 and common law – is followed by our staff when they are considering using restraint and the patient lacks mental capacity to consent to it.

Supporting Procedures and Written Control Documents

This Policy and the supporting procedure describe the following with regard to the use of restraint when patients lack the mental capacity to consent to it.

- The process to follow when restraint is being considered, including documentation
- The use of hand mittens to prevent patients from pulling out lines, tubes, etc.

Other supporting documents are:

- Department for Constitutional Affairs (2007) Mental Capacity Act 2005 Code of Practice, TSO London
- Ministry of Justice (2008) Mental Capacity Act 2005 Deprivation of Liberty Safeguards: Code of Practice to supplement the main Mental Capacity Act 2005 Code of Practice HMSO (2005)
- Mental Capacity Act 2005, HMSO London
- Cardiff and Vale UHB, Consent to Examination or Treatment Policy, UHB 100

Scope

This policy applies to all of our staff in all locations including those with honorary contracts.

This policy does not address the needs of children (i.e. under 16 year olds).

Equality and Health Impact Assessment	An Equality and Health Impact Assessment (EHIA) has been completed and this found there to be no impact.

Policy Approved by	Mental Health and Capacity Legislation Committee

Group with authority to approve procedures written to explain how this policy will be implemented	Health System Management Board
Accountable Executive or Clinical Board Director	Medical Director

Disclaimer

If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or the Governance Directorate.

Summary of reviews/amendments

Version Number	Date Review Approved	Date Published	Summary of Amendments
1	10 May 2011	Not recorded	*New policy*
1.1	November 2012	Not recorded	Appendix 4 added (now Appendix 3)
1.2	31 March 2015	Not recorded	Front page amended to confirm that policy is still current whilst review underway
2	2 February 2016	02/03/16	Revised document – no major amendments Duplicated wording removed Re-ordering of some sections Some wording altered to clarify meaning
3	21 February 2020	04/03/2020	Revised document – no major amendments Some wording altered to clarify meaning Flow chart slightly simplified
4	22nd July 2024	6th August 2024	Revised document some wording changed in relation to MCA and DOLS Team.

CONTENTS

Appendix 1 Suggested restraint care plan template

1. Introduction

This policy sets out how restraint may be appropriately and lawfully used with patients who lack capacity to consent to it.

Restraining a person who has capacity to agree to it can be done either –

- with the person's consent, or
- to prevent harm to others (in conjunction with other Cardiff and Vale UHB policies and procedures pertaining to the management of violence and aggression) under common law ("judge made" case law)

Restraining people who lack capacity to it, within care management, is governed by the Mental Capacity Act 2005 (MCA). Staff using restraint are required by law to have regard to the MCA 2005 Code of Practice.

(Note that patients with impaired mental capacity may also be restrained under common law to prevent harm to others.)

2. Aim

The aim of this policy is to provide guidance to staff regarding use of restraint as part of care management with patients aged 16 years and over who lack capacity to consent to treatment and care, so that UHB staff deal with restraint issues lawfully.

3. Objectives

- Assist staff to understand the law regarding the use of restraint
- Assist staff to determine when an application to court may need to be made
- Assist staff to determine when they might need to apply for a Deprivation of Liberty Safeguards (DoLS) authorisation
- Protect the UHB and staff from civil or criminal proceedings

4. Responsibilities

Clinical Boards are responsible for

- Ensuring that their staff are aware of, and have access to, this policy and procedure
- Ensuring that training on this policy and procedure is available to all staff
- Ensuring that existing training that touches on restraint is reviewed in light of this policy
- Monitoring the use of restraint through formal audit
- Ensuring that audit results are discussed at the appropriate quality and safety or audit meeting

5. The Policy

When making decisions regarding the use of restraint, it is vital to consider the patient's mental capacity to consent to it. Where there is reason to doubt the person's mental capacity, the Mental Capacity Act 2005 must be followed. This will include providing the patient with practical support to help them to make the decision for themselves and, if the support does not help, assessing the patient's mental capacity, using the 'Mental Capacity Assessment Form' to record outcomes. The form and any other information relevant to the capacity assessment must be stored in the patient's notes.

If the patient is assessed as having mental capacity to consent and refuses restraint then its use would be unlawful and could constitute an assault, unless it is used under common law to protect others from harm. It may be subject to an investigation under the law, policies and procedures regarding Adult Safeguarding.

If the patient is detained in hospital under the Mental Health Act 1983, it may be possible to restrain the patient, regardless of whether the patient has capacity to consent to this or whether the patient does consent. The Mental Health Act Office should be contacted for advice where necessary.

5.1 Principles that staff must comply with when working with a person who may or does lack capacity to consent to care and treatment

Whenever staff are working with a patient who either does, or may, lack capacity to consent to care and treatment, staff must have regard to the following principles which are set out in Section 1 of MCA 2005 –

- A person must be assumed to have capacity unless it is established that he lacks capacity
- A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success
- A person is not to be treated as unable to make a decision merely because he makes an unwise decision
- An act done or decision made under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests
- Before the act is done or the decision is made regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action

5.2 What is restraint?

Section 6(4) of the MCA 2005 states that restraint is where a person –

- Uses, or threatens to use, force to secure the doing of an act which the person in question resists, or
- Where the person's liberty of movement is restricted, whether or not he/she resists

Restraint can take a number of forms –

- Mechanical – the patient is restrained with a device, such as a lap belt, bedrails or bucket chair
- Environmental – the patient is restrained by the environment, such as locked ward doors
- Chemical – the patient is restrained by medication
- Personal – the patient is physically restrained by a staff member/ members
- Psychological – directing a patient to stay in bed, on the ward, etc

5.3 Who can decide about the use of restraint?

There may be decisions or people already in place that will set out whether a particular form of restraint can be used and/or who makes the decision –

Advance decisions – if the patient (aged 18 years and over) has made a valid and applicable advance decision refusing the proposed restraint (i.e. a particular kind of medication) or the treatment for which the restraint is needed, then that intervention cannot be used.

Lasting Power of Attorney – if decisions concerning the proposed restraint have been handed over to another person (attorney/donee) under a Lasting Power of Attorney (patient must be 18 years and over to make a LPA), it is the attorney who must either consent to or decline the restraint.

Court Appointed Deputy – if the patient has a Court Appointed Deputy who has been given authority to take decisions about the proposed restraint, then it is the Deputy who must consent to or decline the restraint.

If none of these are in place then the decisions will need to be made by a clinician in the person's best interests – see section 5.7.

5.4 The circumstances in which restraint may be used

Restraint can only be used where a patient lacks mental capacity to consent to it if –

- The staff member using it reasonably believes that it is necessary to prevent harm to the patient **and**
- Its use is proportionate both to the likelihood and seriousness of harm **and**
- The restraint must be in the patient's best interests (see Principles above, para 4.1) **and**
- The restraint is the least restrictive appropriate and available means by which to keep the patient safe from harm (see Principles above, para 4.1)

The decision to use restraint and the reasons why the four criteria are met, in accordance with MCA 2005, must be thoroughly recorded in the patient's notes.

5.5 The meaning of "proportionate"

This means that the restraint should be the minimal necessary to achieve effective risk reduction and used for the minimal possible time.

5.6 The meaning of "less restrictive"

The proposed restraint must be the least restrictive of the patient's rights and freedom following consideration of the appropriate available alternatives.

Staff must consider whether there is a need to use restraint at all or if the patient's safety could be assured by other means.

If restraint is used which cannot be justified then staff will not be protected by the MCA from being sued or prosecuted.

5.7 The meaning of "best interests"

The checklist of issues (see below) set out in s.4 of MCA 2005 must be considered, including (if it can be ascertained) what the person themselves would have consented to if they had the capacity to do so.

"When working out what is in the best interests of the person who lacks capacity to make a decision or act for themselves, decision-makers must take into account all relevant factors that it would be reasonable to consider, not just those that they think are important. They must not act or make a decision based on what they would want to do if they were the person who lacked capacity". (MCA Code of Practice, page 68, para 5.7)

The decision to use restraint in the patient's best interests must consider the following ("the checklist") -

- all the relevant circumstances, and
- the patient's present feelings and wishes, and

- his/her past wishes and feelings, as far as they are reasonably ascertainable, and
- the beliefs and values that would be likely to influence their decision if they had capacity, and
- the other factors that he/she would be likely to consider if he/she were able to

When considering "all the relevant circumstances" it is important to recognise that the use of restraint can itself cause significant harm. For instance, patients forced to sit for long periods are subject to increased risk of pressure ulcer development, loss of dignity resulting from iatrogenic incontinence, loss of mobility resulting from muscle wasting, etc. The use of bedrails may actually increase the risk of serious injury if the person attempts to climb over them, and the use of harnesses introduces the risk of limb dislocation, fracture or asphyxiation. Restraint may also cause the patient distress and if this is likely, this must be taken seriously and considered carefully.

Consideration of best interests must therefore include a detailed risk assessment of whether the risk of using restraint is considered less than the risk it aims to reduce.

The person making the decision must take into account, if it is practicable and appropriate to consult with them, the views of the following –

- Anyone named by the person as someone to be consulted with Anyone engaged in caring for the person or interested in his welfare
- Any donee/attorney of a Lasting Power of Attorney who does not have authority to make the decision
- Any Deputy appointed for the person by the Court who does not have authority to make the decision

In determining best interests, staff must take into account the detailed guidance contained within the MCA Code of Practice. An incapacitated person's best interests, including the consultations that occurred with others in order to arrive at what is in their best interests, must be recorded in the patient's notes.

Staff must never use restraint for other purposes – e.g. to compensate for inadequate staffing levels or just so they can do something more easily.

Unlawful restraint may constitute a criminal or civil offence (see para 5.10).

5.8 Court of Protection

Where incapacitated patients need treatment that may be "serious medical treatment" (see below) and are refusing or objecting to it, legal advice must be sought with a view to seeking Court authorisation for the treatment.

"Serious medical treatment" is defined as treatment which involves providing, withdrawing or withholding treatments where:

- if a single treatment is proposed there is a fine balance between the likely benefits and burdens to the patient and the risks involved
- a decision between a choice of treatments is finely balanced, or
- what is proposed is likely to have serious consequences for the patient
  (either from the effects of treatment or its wider implications)

Whether treatment is considered 'serious medical treatment' in any given case will depend on the circumstances and consequences for the patient.

5.9 Common law

In addition to MCA 2005, the common law imposes a duty of care on health care staff. The MCA Code of Practice confirms that if a person with impaired mental capacity is acting in a way which may cause harm to others, staff may, under the common law, restrain or remove the person, in order to prevent harm, both to the person concerned and to anyone else.

However, the MCA 2005 could also be used to justify restraint if it was considered that the incapacitated patient's actions would provoke a reaction that would cause harm to the patient.

5.10 Civil Law and Criminal Offences

Section 44 of MCA 2005 states that staff will be guilty of an offence if they ill- treat or wilfully neglect patients who lack capacity.

Conviction under this section is punishable by imprisonment (for up to 5 years) and/or a fine.

5.11 Deprivation of Liberty

A deprivation of liberty occurs when a person who lacks capacity to consent to being in hospital to receive treatment and care is

- Under continuous supervision, and
- Under continuous control, and
- Is not free to leave

All three criteria must be met.

Where it is identified that a deprivation of liberty might be occurring in hospital or in a care home, providing the person is aged 18 years and over, an application should be made for a Deprivation of Liberty Safeguards (DoLS) authorisation.

Where the deprivation is occurring in other settings, such as supported living or the person's own home, providing the care is being arranged/paid for/provided by the state (i.e. NHS or Local Authority), legal advice must be sought about whether authorisation from the Court of Protection is required.

If it is necessary to provide treatment and care to a person aged 16 or 17 years in a way that involves depriving the patient of his/her liberty, and they do not meet the criteria for detention under the Mental Health Act 1983, urgent legal advice must be sought via the appropriate Clinical Board lead.

When using restraint, UHB staff must keep under continuing review whether it is appropriate to seek a DoLS/Court authorisation.

Please see DoLS Code of Practice for further information and guidance.

6. Contact details in the event of queries

In the event of any queries about this policy, in the first instance advice should be sought from a senior clinician.

For queries that cannot be resolved please contact –

- Mental Capacity Act Team
- Consultant Nurse for Older Vulnerable Adults

7. The Procedure

7.1 The process to follow

Consider and work through the following –

- Identify that restraint may be required because the patient is at risk of harm
- If there is reason to doubt the patient's mental capacity to consent to restraint, provide support to help the patient decide for themselves
- If the support doesn't help the patient to make the decision, assess patient's capacity to consent to restraint, if there is reason to doubt their capacity. Record the assessment using the UHB's Mental Capacity Assessment Form (which can be found on the Mental Capacity Act Team's SharePoint page) and keep a copy in the patient's notes
  If patient lacks capacity to consent to restraint, continue
- Has the patient made a valid and applicable Advance Decision refusing the proposed restraint (i.e. a particular kind of medication), or the treatment that the restraint is required for? If so, that intervention cannot be used
- Does the patient have an Attorney or Deputy with the relevant authority? If they do, then their consent to the restraint must be sought and recorded in the patient's notes
  Where the patient does not have an Advance Decision, Attorney or Deputy, their best interests must be determined including the risks and benefits of the different appropriate types of restraint, along with the consideration of the less restrictive principle
- Consultation must be undertaken about the restraint with anyone named by the patient as someone to be consulted
  - The patient's family, friends and carers
  - Anyone else with an interest in the patient's welfare, including the attorney of a Lasting Power of Attorney or any Court

Appointed Deputy who does not have authority to make the decision on the person's behalf

- An Independent Mental Capacity Advocate (IMCA) may need to be instructed if there are no carers/ family/ friends or Lasting Power of Attorney/Court Appointed Deputy to consult with regarding the use of restraint, as the use of restraint to facilitate treatment and care may constitute 'serious medical treatment' requiring specific referral to an IMCA

7.2 Recording requirements

If a decision to apply restraint is made then the recorded assessment must demonstrate that

- The patient will be at risk of harm if they are not restrained
- The patient lacks capacity to consent to the restraint , with evidence of this assessment
- The restraint is the least restrictive of the available, appropriate alternatives
- The restraint is proportionate to the likelihood and severity of harm
- The risks posed by the restraint are less severe than the harm the patient might experience if not restrained
- Any valid and applicable Advance Decision to Refuse Treatment has been complied with
- Consent has been sought from an Attorney or Deputy, where either is in place and has the necessary authority
- In other cases, the Best Interests Checklist has been followed, appropriate others have been consulted and a decision about restraint has been made
- A Restraint Care Plan has been developed
- The review periods for the use of restraint have been agreed

All assessments and decisions must be recorded in the patient's notes.

7.3 Disagreement about the use of restraint

Any disagreement amongst family or friends about the use of restraint (or any disagreement amongst the clinical team) must be recorded in the medical notes and a second opinion should be sought, where possible, before the restraint is applied.

If serious disagreement persists, then further consideration will need to be given to the patient's best interests. It may be appropriate to seek advice from the Mental Capacity Act Team or a Solicitor (via senior management).

If the dispute has to be referred to the Court of Protection, Section 6 of the MCA permits action to be taken in the meantime where it is necessary to sustain life or to prevent serious deterioration.

7.4 Restraint Care Plan

The decision maker must plan the use of restraint, specifying in the patient notes

- The type of restraint to be used
- The times for its use and non-use
- The frequency of review

The use of restraint in reducing the identified risk and causing additional risks must be closely monitored by the decision maker, who holds overall responsibility for the restraint and may be called upon to justify its use. The application of restraint should be time limited and must be for the shortest time possible. It is essential that, where possible and appropriate, significant periods of non-restraint are built into the care plan.

Consider carefully how often the restraint should be reviewed, as this must be determined on an individual patient basis. For example, it may be appropriate for the review period to be longer for long term/minor restraint.

A specific Restraint Care Plan (see Appendix 1) must be completed for the patient who is subject to restraint.

7.5 Mechanical restraints

Any new proposed mechanical restraint must be a manufactured product approved by the Vulnerable Adults Risk Management Working Group and purchased through UHB procurement procedures.

The manufacturer of the product must provide detailed advice about the safe and appropriate use of the mechanical restraint, either on a ward or individual basis, according to the type of restraint being used. Any health and safety notices concerning a particular product should be discussed at each Clinical Board's Quality, Safety and Experience meeting to ensure that manufactured restraint products are safe and fit for purpose.

Non-manufactured restraints, e.g. bandages to tie a person to a bed/chair or bind their hands, must never be used.

Any concerns about manufactured restraint products must be referred to the UHB's Health and Safety Department.

Please see Appendix 3 regarding the use of hand mittens.

7.6 Adverse events involving restraint

Any adverse clinical events resulting from the use of restraint must be communicated to the most senior clinician in charge of the patient's care at the earliest possible opportunity and reported in accordance with the UHB's Incident, Hazard and Near Miss Reporting procedure.

7.7 Deprivation of Liberty Safeguards (DoLS)/Court authorisation

If it is identified that the patient may be being deprived of their liberty, then an application must be made for DoLS/court authorisation.

If it is necessary to provide treatment and care to a person aged 16/ 17 years in a way that involves depriving the patient of his/her liberty, urgent legal advice via the appropriate Clinical Board lead must be sought.

Further guidance is provided at Chapter 2 of the Deprivation of Liberty Safeguards (DoLS) Code of Practice which is available in clinical areas. The DoLS Team can be contacted for advice, in-hours, on 01446 704849.