Confirmed Minutes of the
Mental Health and Capacity Legislation Committee
Held on 19th January 2021 – 10am.
Via MS Teams

Chair:

Sara Moseley	SM / CC	Interim Chair and Independent Member – Third Sector
Present:		
Eileen Brandreth	EB	Independent Member - ICT
Michael Imperato	MI	Independent Member - Legal
In Attendance:		
Julia Barrell	JB	Mental Capacity Act Manager
Jeff Champney-Smith	JCS	Chair, Powers of Discharge sub-Committee
Daniel Crossland	DC	Transformations and Innovation Lead
Aaron Fowler	AF	Head of Risk and Regulation
Neil Jones	NJ	Consultant - Community Addictions Unit (CAU)
Robert Kidd	RK	Consultant Clinical and Forensic Psychologist
Amanda Morgan	AM	Service User
Sian Rowlands	SR	Head of Corporate Governance
Matthew Russell	MR	Social Worker CMHT
Ruth Walker	RW	Executive Nurse Director
Sunni Webb	SW	Mental Health Act Manager
Ian Wile	IW	Head of Operations, Mental Health
Linda Woodley	LW	Local Authority Representative
Secretariat:		
Nathan Saunders	NS	Corporate Governance Officer
Apologies:		
Steve Curry	SC	Chief Operating Officer
Nicola Foreman	NF	Director of Corporate Governance
Scott McLean	SMc	Director of Operations – Mental Health

MHCL 21/01/001	**Welcome & Introductions** The CC welcomed everybody to the meeting and thanked the Committee in advance for the brevity they would bring to the meeting. Apologies were raised to the Service User for the delay in board papers being sent and assurance was given that the delay would not happen again.	**ACTION**
MHCL 21/01/002	**Apologies for Absence** Apologies for Absence were noted from Steve Curry, Nicola Foreman and Scott McLean.	
MHCL 21/01/003	**Declarations of Interest** The CC declared an interest in the meeting as the Director of Mind Cymru and advised the Committee that a letter had been sent by Mind Cymru that related to ethnicity monitoring for people detained under the Mental Health Act.	

MHCL 21/01/004	**Minutes of the Committee Meeting held on 20th October 2020** The Committee reviewed the minutes from the meeting held on 20th October 2020. Resolved that: a) The CC noted a clarification regarding point: *"MHCL 20/10/009 - The Committee noted that further work needed to be undertaken to progress the audit outcomes by the next meeting"* The CC advised the Committee that it was not on the agenda and asked that it be on the agenda for the next meeting. b) The CC noted point: *"MHCL 20/10/010 - The CC asked what learning had taken place in preparation for the next COVID-19 wave."* The CC noted that the population was in the midst of the second wave of the pandemic and asked the Head of Operations, Mental Health (HOMH) for an update on specific COVID-19 related issues that would affect the subject matter of the meeting. The update was noted in Any Other Urgent Business.	
MHCL 21/01/005	**Action Log – 20th October 2020** The Executive Nurse Director (END) advised the Committee that work had commenced on action MHCL 20/10/009 and that time would be spent at the meeting to provide clarity on what the Committee needed. The CC advised the Committee that action MHCL 20/10/13 could be closed as membership of the Committee would be looked at once revisions of the Terms of Reference had been agreed. The CC advised the Committee that action MHCL 20/10/14 needed to be updated and it was agreed that a date for an update to be provided would be agreed offline.	**NS / NF**
MHCL 21/01//006	**Chair's Action taken since last meeting** The CC advised that she had met with the Director of Corporate Governance (DCG), the END and the Chief Operating Officer (COO) and had looked at the minutes and brought a suggested revision to the meeting. No other actions had been taken	

MHCL 21/01/007	**Any Other Urgent Business Agreed with the Chair** The CC asked the HOMH to update the Committee around the prevailing COVID-19 situation within Mental Health. The HOMH advised the Committee that the administration of the Mental Health Act had "moved mountains" which had enabled the appropriate remote work that was needed. The HOMH advised the Committee that the Mental Health Act Manager (MHAM) had looked at putting sound proofing into some of the ward areas. The MHAM responded that the work would start over the following weeks and would ensure that patients had the appropriate facilities in place and she advised the Committee that all hearings were taking place remotely and that no patients had attended the Mental Health Act office. The HOMH advised the Committee that they had authorised temporary administrative support for the team. The HOMH advised the Committee that they had continued to run as an essential service and the approach during the 2nd wave had been to put a resource ring in place around inpatients, the community specialist services and primary care. The HOMH advised the Committee that COVID-19 activity had affected inpatient areas and the team had right-sized the service to fit the staffing profile that had been available. The HOMH advised the Committee that the Transformations and Innovation Lead (TIL) and himself had conducted an audit that looked at referral activity into Mental Health. The audit showed that capacity was around the same or above what it was pre-COVID-19. The HOMH noted to the Committee that Primary Care were getting, on average, 2500 referrals per month across all Primary Care services and that some services had struggled with staff loss through COVID-19. The HOMH advised the Committee that full use of the third sector had been utilised and that the responsiveness and flexibility to demand had been magnificent. The CC asked the HOMH to extend the Committee's thanks to all staff. The END advised the Committee that from a clinical perspective in relation to Infection Prevention &Control (IP&C) the Mental Health Service had managed a number of outbreaks and she had been extremely impressed by the work they had undertaken.	

	The Consultant Clinical and Forensic Psychologist (CCFP) advised the Committee that whilst operating under COVID-19 there had been no delays with section 62 as Second Opinion Appointed Doctors (SOAD) were working remotely.	
MHCL 21/01/008	**Patient Story** No patient story presented was shared at the meeting. It was agreed that efforts would be made to ensure that stories were shared at future meetings.	
MHCL 21/01//009	**Mental Capacity Act** **Mental Capacity Act Monitoring Report:** The CC asked the report authors if there was anything that they wanted to draw to the Committee's attention. The CC advised the Committee that the paper highlighted a drop in the use of the Independent Mental Capacity Advocates (IMCA) service and asked if this was due to restrictions on contact. The END responded that there had been some feedback from the IMCAs around the flexibility of letting them on site and she acknowledged that it had been difficult to get the position right but she had not received any concerns. The Independent Member - ICT (IMI) noted that IMCAs had had varied experiences in gaining access to patients on wards and asked if there was any intention to issue guidance to make it clear what the position should be. The END responded that guidance had not been issued because it was felt that the situation had settled. She confirmed that she would be happy to issue guidance depending on what was happening in given clinical area at any one time. The Mental Capacity Act Manager (MCAM) advised the Committee that overall the IMCA service was doing as much as they could remotely but on some occasions there had been a need to see the patient. The IMI noted that there had been a significant drop in referrals and asked if that was because the need had disappeared and how that would be interpreted. The END advised the Committee that there had been some challenges around availability. The MCAM advised the Committee that the main drop was the use in IMCAs as the relevant person's representative under DoLs. The IMI asked who would make the referral.	

	The MCAM responded that the DoLs supervisory body function would appoint and that if there was nobody else appropriate to appoint to the position of relevant person's representative then the referral would be made to IMCA. The CC advised the Committee that this item would be kept under review because making sure that people are represented properly was really important and that the matter would be discussed at the next meeting to track the position. The CC advised the Committee that there was a persistent issue with low compliance with staff training and noted that it should be added onto the risk register. The END responded that the issue needed to be addressed and a plan would need to be put in but advised the Committee that the release of staff was difficult especially at the time of the meeting. She confirmed that she would bring a proposal as to what that training would look like, what opportunities were available and how medical staff would access the training. The CC advised the Committee that it would be brought to a meeting later in the year when capacity would be better.	**RW** **NS**
MHCL 21/01/010	**DoLs Report – Verbal Update** The END invited the Committee to share what information should be brought to the Committee in regards to DoLs. The CCFP advised the Committee that he would want to see a figure on the number of section 49 reports because it felt like the Organisation was asked to do those but that there was not a sense of how many there are or where they are. The Head of Risk and Regulation (HRR) advised the Committee that the MCAM and he monitored the section 49 requests that came in and that they acted as a point of contact and reference to assist colleagues. He advised the Committee that it was unknown whether all colleagues were reporting s.49 requests to him or the MCAM. The MCAM added that not all section 49 reports would be about mental capacity issues and that sometimes they could concern clinical issues rather than anything to do with mental capacity. The END advised the Committee that one of the greatest challenges was how many DoLS orders the organisation managed, where did they occur and whether there was a process in place to understand how the system was measured. The END advised the Committee that it would be good to know where DoLS predominantly originated because there were places that they had been expected, like locked wards, but they had not been received.	

	The END advised the Committee that there was quite a lot of information to process and that legislation would need to be looked at to be clear about what was required and what would be reported into the Committee. The CC advised the Committee that the introduction in the paper was really good and clear and she agreed with the END's assessment of what the Committee should be looking at and proposed that a course of action was taken. The CC advised the END that she would be happy for the END to go away and come back with clear recommendations for the Committee. The END responded that she would propose separating the report and providing a separate one on DoLs and a separate one on the Mental Health Act. The MCAM responded that DoLs was part of the Mental Capacity Act and that because it was about depriving people of their liberties, it was important to discuss and she added that the COVID-19 practice for DoLS suggested that their use needed to be reported within the organisation. The IMI asked if there were any insights on how other health boards reported on DoLS and whether there was any best practice that could be identified. The END responded that there were people reporting DoLS in a more robust way compared to Cardiff and Vale UHB and that the Health Board could learn from others". The END concluded that there would be new legislation coming into force in the near future but that a date was not set. She advised that she would not be comfortable as lead to wait until that legislation was in place to fully report so it was her intention to report on plans in the interim. The CC responded that the new legislation would be in place in 2022. The CC thanked the END and MCAM for their work.	
MHCL 21/01/011	**Mental Health Act** **Mental Health Act Monitoring Exception Report** The MHAM advised the Committee that the team had met with the Police in regards to ethnicity monitoring. She noted that she was confident that an improvement in the data would be seen moving forward and in particular the data for between October and December. The MHAM advised the Committee that discussions were continuing around the time that the clock began ticking under the MHA for patients within Accident & Emergency (A&E) and she confirmed that	

	the team had been in discussion with Richard Jones (of Blake Morgan Solicitors) on the topic to finalise a stance. The CC advised the Committee that an answer on the ticking clock in A&E would need to be found and asked the HOMH to take that to the crisis care concordat meeting to push for an answer. The Independent Member - Legal (IML) asked if an independent counsels advice around A&E would be useful. The CC responded that to fix the A&E issues, clear national guidance would be needed and it would be important to get the position right. The IML advised the Committee that the ethnicity data seemed to be emerging too slowly which had a great significance given the impact of COVID-19 which appeared to effect ethnic minorities more. The CC responded that the ethnicity data was not just required in relation to Sections 135 and 136 of the Mental Health Act, it was also needed in relation to the use of the Mental Health Act across the board. She added that it was not just the responsibility of the police, it was the health board's responsibility to capture the data which would be within the organisation's control. The CC advised the Committee that the UHB should be position itself to be on top of these issues before the new Mental Health Act came into force. The MHAM commented on the ethnicity data and advised that there had been a blip with the electronic form which had been corrected and was live on PARIS for the data to be recorded.	
MHCL 21/01/012	**Mental Health Measure Monitoring Reporting including Care and Treatment Plans Update Report.** The HOMH advised the Committee that the report covered all 4 parts of the measure and that part 1A drew attention to pre-COVID-19 activity numbers which had now been reached and exceeded in terms of referrals. Given staff losses and high volume activity it had not taken much to breach and a lot of the activity around the 28 day referral to assessment had occurred over the course of the previous week. The HOMH advised the Committee that compliance had reduced dramatically when capacity did not reach demand. The HOMH advised the Committee that 3 extra staff had been employed who would specifically provide assessment services and would commence their roles in the coming months. The HOMH advised the Committee that at the time of the meeting, people were being booked into the service at 37 to 38 days instead of the 28 day target which meant that 100's of service users were waiting. The HOMH advised the Committee that the Director of Operations – Mental Health (DOMH) had asked him to bring the CAMHS position to	

	the Committee and he advised that there had been a high level of referrals and Interruption with staffing numbers due to COVID-19. He noted that CAMHS was, at the time of the meeting, non-compliant and the team were taking on extra staff to help reset the trajectories. The IMI asked why there were no figures in the report for CAMHS in relation to part 1A. The HOMH responded that he was not sure why the data was not included in the report and confirmed that he had received figures from the DOMH earlier that day and advised the Committee that compliance was around 56% in December. The IMI advised the Committee that CAMHS figures always appeared to be missing from Committee and asked the CC to advise the DOMH that the figures should be a standing item on future agendas. The CC responded that the Committee would need to write to the directorate to impress upon them that the requirement to report was mandatory. The IML responded that he had been in email correspondence with the DOMH that day about CAMHS and confirmed that he would convey the position to him later that week. The CC responded that she wanted it in writing as well and that assurance could not be provided without seeing what was going on and that there was a need to have the position on the record. The CC advised the Committee that the report mentioned the National Assembly for Wales which was wrong as the body was now called the Senedd. The CC advised the Committee that in terms of part 1A of the report there was a massive increase in the number of people waiting and she shared her hope that the impact of the measures put in place would find their way through in time. The CC advised the Committee that she welcomed the continued focus on care and treatment plan quality and completions. The HOMH advised the Committee that part 1A of the report was symptomatic of broader pressures within Primary Care and that the Mental Health service would be investing in tier 0 capacity with the third sector and would also support GPs to ensure that they refer into the appropriate areas. The HOMH advised the Committee that care and treatment planning was the heartbeat of the therapeutic relationship for mental health and that compliance with part 2 of the report was very good. It was the first time that the service had hit 90% in a long time.	

	Resolved that: a) The Mental Health and Capacity Legislation Committee noted the content of the report and the work undertaken by the Mental Health Clinical Board.	
MHCL 21/01/013	**Items to bring to the attention of the Committee for Noting / Information** **Feedback on Committee Training Session & Review** The Head of Corporate Governance (HCG) advised the Committee that the paper was for noting. **Resolved that:** a) The Committee noted the summary of the second Committee training session.	
MHCL 21/01/014	**a) Hospital Managers Power of Discharge Minutes** The Chair of the Powers of Discharge sub-Committee (CPDSC) advised the Committee that there was nothing to raise and that the minutes were shared for information. The CPDSC advised the Committee to note that the service were now providing 3 person hearings and had dropped the 4th member. **b) Mental Health Legislation and Governance Group Minutes** The CCFP advised the Committee that there had been positive things noted about the way the service had adapted to working virtually. He also added that: - he needed to pursue the issue of reading the rights to CTO clients in adult Q&S. - there had been progress in working relationships with the CAMHS teams. - the service had met with various people from the emergency unit about the use of the Mental Health Act for patients presenting at UHW. - information regarding the UK Governments reform of the Mental Health Act would need to be brought to the Committee. The CC advised the Committee that a briefing on the content and focus of the white paper would be added to the agenda for the next meeting.	

	The CCFP asked the Committee whether in terms of the detention of people with learning disabilities, how that have a knock on effect with DoLs.	
MHCL 21/01/015	**Corporate Risk Register** **Corporate Risk Register – Mental Health Clinical Board Risks** The CC advised the Committee that items discussed that day and recommended for inclusion within the Corporate Risk Register, DoLS Training and CAMHS reports would not sit on the Corporate Risk Register and should instead be noted as actions. The HRR advised the Committee that he had worked with the HOMH to refine the Mental Health Clinical Board's extreme risks which would be reported at that month's Board meeting and were shared at the meeting for further scrutiny and assurance that appropriate mitigating action would be taken. THE HOMH specifically discussed the risk relating to conveyancing of Service Users in and out of community settings. Problems with WAST waiting times had led to the HOMH and his team seeking alternative conveyancing options with the St. Johns Ambulance Service who had provided a similar contract to Cwm Taf University Health Board. The HOMH advised the Committee that St. Johns Ambulance could provide a service at short notice and had a vehicle and staff available should approval be given for proposals. The Local Authority Representative (LAR) confirmed support for the proposal. She noted concern that an incident could occur when individuals were detained who should be in hospital settings but had been left in the community for a significant waiting periods. She noted that a national solution had been discussed with WG over a year ago. The IML advised the Committee that this had been a concern pre-COVID-19 and asked the HOMH how much of the proposal would be a "sticking plaster" and whether there would be scope to move to a longer term solution. The HOMH responded that he was looking for a long term solution and advised the Committee that he could not see the operational side of WAST changing anytime soon which was why he had looked at St. Johns ambulance as a medium to long term resolution. The HOMH advised the Committee that he would take the issue to the Chief Operating Officer (COO) and report back to the Committee. The CC advised the Committee that the risk outlined was not a downward trend risk and that the retention of the severity of that risk in terms of safety, dignity and care would need to be on the Board's radar.	

	The LAR reiterated that the risk had been ongoing since 2017 and that it was not just a COVID-19 related issue and advised that the position worsened because WAST were not responding. The HRR advised the Committee that the downward trend shown to the Committee was not intended to suggest the risk had reduced in terms of severity and that it was the score that had reduced following a rescoring using the risk management scoring matrix correctly. The CC responded that upon looking at the risk register it did not capture the mitigating actions so it was difficult to evaluate. The HRR responded that the team would continue to work with the HOMH and increase the detail in the action section of the risk register. The IMI asked what the foundation was for WAST saying that they would not transport an unwell person. The HOMH responded that WASTs stance was that an unwell person with mental health problems was not in immediate danger in comparison with someone with physical health problems. The IMI asked if the Committee were formally pushing back on that stance. The CC responded that as a committee the concern should be escalated and noted that the committee's position could be put in writing to compel commissioners of the service to take action. The CC asked the HOMH to speak with the COO and to come back to with a proposal which could be taken forward under Chairs Action.	
MHCL 20/10/016	**Items for Approval Ratification** **Terms of Reference** The CC advised the Committee that discussions had been had around membership of the Committee and welcomed the Committee's input and thoughts. The END advised the Committee that when the function of the Committee was explored it had become clear that it was a Committee about providing assurance to the board in relation to the application of the Mental Health legislation which included the Mental Health Act and DoLs and that it was not a wider Committee than that. The END advised the Committee that it was time to narrow down and be very clear about the focus of the Committee and who should be "around the table" as well as the accountable officers for the areas of responsibility brought to the Committee. She advised that it was important to bring in colleagues as when important.	

	The CCFP advised that it would be helpful to have colleagues from the Local Authorities (LA) attend the Committee meetings. The CC responded that in relation to that aspect of the work consideration was needed for LA input. Amanda Morgan (Service User) asked about the role of service users and carers within the Committee and their value within the forum. The CC responded that the discussion that had happened previously was that certainly in relation to patient stories that the focus would be on people's experience of the legislation to enable a rounded view of the impact of the legislation. The CC advised the Committee that more thought would need to be given to the role of Service Users and Carers within the Committee. The IMI added that there was a real issue between making sure the Committee was open to hearing those most affected by legislation and avoiding anecdotal and operational matters. She thought that a balance needed to be struck between the need to be open to listening to the views of those who use the service and the need to gain assurance that the Health Board was complying with its legislative responsibilities. The Service User advised the Committee that, as the voice of a carer, it was unclear on how much value was being added to the vast majority of the Committee agenda and that there had been a constant battle about whether they had been a part of the committee or not. The CC responded that rather than having Service Users and Carers as part of the substantive Committee, they could be brought when different aspects were looked to assess how the legislation was affecting individuals. The END advised the Committee that the conversation had been really helpful and that information could be gathered from Service Users that would help and inform the Committee. The CC advised the Committee that Primary Care input was missing and that it would be useful to understand what was going on from the Primary Care perspective. **Work Plan and Committee Annual Report 2020/21** It was agreed that the Committee Work Plan and Annual Report would be brought to the next MHCLC meeting.	**NF / NS**
MHCL 20/10/017	**Review of the Meeting** The IMI advised the Committee that this was her last meeting and thanked the Committee for their support.	

	The CC thanked the IMI for her input and noted that she had looked at things thoroughly. The CC noted that the timings for this Committee should be the same from this point. 1 hour and 30 minutes.	
MHCL 20/10/018	**Date & Time of next Committee Meeting** 20th April 2021 9am – 10.30am	