

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

Present:

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

In Attendance:

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

Secretariat:

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

Apologies:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

	<p>b) The Committee approved the full publication of the Independent Mental Capacity Advocacy procedure in accordance with the UHB Publication Scheme</p> <p>Lasting Power of Attorney and Court Appointed Deputy Procedure</p> <p>The MCAM advised the Committee that this was another aspect of the Mental Capacity Act. The procedure sets out who these people are and then what the Clinicians need to do.</p> <p>The MCAM advised the Committee that it was an important issue and that there was already mandatory training in place for Clinicians.</p> <p>IML asked why Aaron Fowler, Head of Risk and Regulation came under the “useful contacts” in the Appendix for this procedure.</p> <p>The DCG responded that all of the legal aspects have now been centralised through Aaron Fowler. He will source any external legal advice if needed.</p> <p>The DCG noted that this centralisation has saved the UHB a significant amount of money.</p> <p>Resolved that:</p> <ul style="list-style-type: none"> a) The Committee is approved the Lasting Power of Attorney (LPA) and Court Appointed Deputy (CAD) procedure b) The Committee approved the full publication of the Lasting Power of Attorney (LPA) and Court Appointed Deputy (CAD) procedure in accordance with the UHB Publication Scheme <p>The CC advised the Committee that she had one more item to raise in relation to equality and the mental health act.</p> <p>The CC noted that a background knowledge, awareness and information would be helpful to the Committee. The CC asked the Committee if this could be something for consideration.</p> <p>IMC responded that it was very important to get this information and that he was happy to support this alongside other organisations.</p> <p>The CC asked if this was needed to be taken offline or if we could join a different session in future.</p> <p>The DCG responded that this would be picked up with the Executive Director of Workforce & Organisational Development (EDWOD).</p>	
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	<p>The DCG advised the Committee that a number of other Committees had also expressed interest in addressing this issue and that it needs to be looked at globally.</p> <p>The DCG advised the Committee that she will action this.</p> <p>IMC highlighted that a number of different Committees needed to have Mental Health put into their agendas and for this to be focussed on across the board.</p> <p>IML advised the Committee that at the last S&D meeting, a discussion was had around a draft strategic equality plan and how this could be fed into all areas.</p> <p>IMI noted that the purpose of the Committee was to look at legislation and reports and noted that no figures had been represented in the reports surrounding equality.</p> <p>The COO advised that a meeting he had chaired that morning had the same conversation surrounding equality and the lack of BAME data and he acknowledged that there was something more general about this that needed to be done.</p> <p>The CC noted that a larger conversation had been opened up surrounding this but it was an important one to have.</p> <p>The CC noted that the DOMH had been looking at data tracking issues.</p>	
MHCL 20/10/015	<p>Review of the Meeting</p> <p>The CC facilitated a review of the meeting. Members confirmed that:</p> <ul style="list-style-type: none"> • It was a very well chaired meeting. • Sharing of video on screen needs to work in future meetings • Skype worked well but an overall preference for Microsoft Teams in future meetings <p>CCFP asked if one person (administrative) could put each paper up on the screen during the presentation.</p> <p>The DCG responded that she would look into this with the team.</p> <p>The CC thanked the Committee.</p>	
MHCL 20/10/016	<p>Date & Time of next Committee Meeting</p> <p>19th January 2020 – 10am via MS Teams</p>	