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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board



Meeting Date	8th August 2019		Agenda Item	3.1
Report Title	<i>Mental Health Act Performance Report for the period 1 April – 30 June 2019</i>			
Report Author	Lynda Rogan, Mental Health Act Manager			
Report Sponsor	David Roberts, Service Director, Mental Health & Learning Disabilities Service Delivery Unit			
Presented by	David Roberts, Service Director, Mental Health & Learning Disabilities Service Delivery Unit			
Freedom of Information	Open			
Purpose of the Report	The purpose of the paper is to present to the Mental Health Legislation Committee the quarterly Mental Health Act performance report in relation to Hospital Managers' scheme of delegated duties under the Mental Health Act 1983 and the functions, including s23.			
Key Issues	The hospital managers must ensure that patients are detained only as the Act allows, that their care and treatment fully comply with it, and that patients are fully informed of, and supported in exercising their statutory rights. Hospital managers must also ensure that a patient's case is dealt with in line with other legislation which may have an impact, including the Human Rights Act 1998, Mental Capacity Act 2005 and Mental Health (Wales) Measure 2010.			
Specific Action Required <i>(please ✓ one only)</i>	Information	Discussion	Assurance	Approval
				✓
Recommendations	Members are asked to: <ul style="list-style-type: none"> Approve the report for submission to the Health Board. 			

Governance and Assurance							
Link to corporate objectives (please ✓)	Promoting and enabling healthier communities		Delivering excellent patient outcomes, experience and access	Demonstrating value and sustainability	Securing a fully engaged skilled workforce		Embedding effective governance and partnerships
			✓	✓			✓
Link to Health and Care Standards (please ✓)	Staying Healthy	Safe Care	Effective Care	Dignified Care	Timely Care	Individual Care	Staff and Resources
	✓	✓	✓	✓	✓	✓	✓
Quality, Safety and Patient Experience							
This report does not impact on the quality, safety and patient experience although the aim of the Committee's work is to assure the Board that Mental Health and Learning Disabilities Delivery Unit are performing in accordance with the Mental Health Act 1983 which directly impacts on patient care.							
Financial Implications							
There are no financial implications in this report.							
Legal Implications (including equality and diversity assessment)							
There are no specific legal implications (although non-compliance with the Mental Health Act could result in legal proceedings being brought against the Health Board who is the detaining authority).							
Staffing Implications							
There are no workforce issues in this report.							
Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015 - https://futuregenerations.wales/about-us/future-generations-act/)							
The report does not impact on population health.							
Report History	Considered by the Mental Health & Learning Disabilities Legislative Committee Operational Group on 9 July 2019						
Appendices	<ol style="list-style-type: none"> 1. Benchmarking Report on Defective and Rectifiable Errors 2. Postponements and adjournments of the Hospital Managers Power of Discharge patient review panels 3. Minutes of the Hospital Managers Power of Discharge Committee meeting 4. CAMHS Governance Report 						

EXCEPTION REPORT

1.0 INTRODUCTION

The report provides assurance in respect of the work that has been undertaken by Mental Health and Learning Disabilities (MHL) DU during the quarter, that those functions of the Mental Health Act 1983 (the Act), which have been delegated to officers and staff under the policy for Hospital Managers' Scheme of Delegation, are being carried out correctly, and that the wider operation of the Act across the Health Board area is operating properly.

2.0 BACKGROUND

The hospital managers must ensure that patients are detained only as the Act allows, that their care and treatment fully comply with it, and that patients are fully informed of, and supported in exercising their statutory rights. Hospital managers must also ensure that a patient's case is dealt with in line with other legislation which may have an impact, including the Human Rights Act 1998, Mental Capacity Act 2005 and Mental Health (Wales) Measure 2010.

3.0 GOVERNANCE AND RISK ISSUES

3.1 Data Collection and Exception Reporting

Any exceptions highlighted in the Mental Health Act activity 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 in Swansea Bay University Health Board and those subject to a community treatment order is only as the Act allows.

3.2 Detention without authority or Invalid Detentions

There were four exceptions for this period and one invalid detention identified by the Mental Health Act Department. There were no breaches to the Mental Act for in-patients admitted to Swansea Bay UHB who are under the age of 18. An analysis of the reason for the invalid detention between the periods 1 April – 30 June 2019, with actions taken and by whom, is documented to provide assurance that actions are being taken to minimize or eradicate this occurring.

No.	Reason for detention without authority	Actions taken	By Whom
1	Morrison Hospital (Anglesey Ward) A section 5(2) was completed for the patient, however, the doctor did not provide sufficient reasons for issuing the holding power on the Form HO12. As this could not be corrected under section 15 of the Act it rendered the holding power invalid. Detention without authority: 17 hours 5 mins	Ward manager informed that detention is invalid. Doctor informed that detention is invalid and discussed whether further section needs to be applied. Doctor informed to make an entry in the patients' health record to document incident and outcome. Correspondence sent to patient to inform them of the incident. Incident Report Form completed.	MHA Administrator MHA Administrator MHA Administrator MHA Administrator MHA Administrator

A benchmarking report showing the number of fundamentally defective applications and rectifiable errors by Health Board is attached at **Appendix 1**.

4. Assessment

Mental Health Act 1983

A summary report along with definitions of relevant section of the Act is included below which summarises key points of the use of the Act within Swansea Bay University Health Board. Rates of detention under different sections of the Act typically fluctuate between each quarter; therefore only significant points are highlighted.

1st April – 30th June 2019 (Quarter 1)

KEY TO SECTIONS

Part 2 – Compulsory Admission to Hospital or Guardianship

- Section 5(4) Nurses Holding Power (up to 6 hours)
- Section 5(2) Doctors Holding Power (up to 72 hours)
- Section 4 Emergency Admission for Assessment (up to 72 hours)
- Section 2 Admission for Assessment (up to 28 days)
- Section 3 Admission for Treatment (6 months, renewable)
- Section 7 Application for Guardianship (6 months, renewable)
- Section 17A Community Treatment Order (6 months, renewable)

Part 3 - Patients Concerned with Criminal Proceedings or Under Sentence

- Section 35 Remand for reports (28 days, maximum 12 weeks)
- Section 36 Remand for treatment (28 days, maximum 12 weeks)
- Section 38 Interim Hospital Order (Initial 12 weeks, maximum 1 year)
- Section 47/49 Transfer of sentenced prisoner to hospital
- Section 48/49 Transfer of un-sentenced prisoner to hospital
- Section 37 Hospital or Guardianship Order (6 months, renewable)
- Section 37/41 Hospital Order with restriction (Indefinite period)
- Section 45A Hospital Direction and Limitation Direction
- CPI 5 Criminal Procedure (Insanity) & Unfitness to Plead (Indefinite period)

Part 10 – Miscellaneous and Supplementary

- Section 135(1) Warrant to enter and remove (up to 24 hours)
- Section 135(2) Warrant to enter and take or retake (up to 24 hours)
- Section 136 Removal to a place of safety (up to 24 hours)

5. Mental Health Act, 1983 - Data Collection and Exception Reporting

The data below summarises some of the key points of the use of the Mental Health Act (1983) during the quarter:

- Two under 18 year olds were admitted to Ward F, Neath Port Talbot Hospital, one informally, the other under section 2 of the Mental Health Act. No breaches were recorded for the reporting period.
- Section 4 which should only take place in cases of urgent necessity and to avoid an unacceptable delay was used on three occasions, all patients had their section 4 converted to section 2 within the 72 hour period allowed.
- There was one death recorded of a patient detained under the Act. The death was reported to Healthcare Inspectorate Wales in accordance with protocol.

6. Hospital Managers Power of Discharge Committee

During the reporting period three hospital managers' panels were postponed or adjourned, see **Appendix 2**. A meeting of the above committee was held on 23rd April 2019. There were no issues to be brought to the attention of the Legislative Committee. The minutes of the meeting held on 23rd April 2019 is attached at **Appendix 3**.

7. Healthcare Inspectorate Wales (HIW) Visits to Mental Health & Learning Disabilities Units

During the reporting period there were no visits by HIW to wards or units in the Mental Health & Learning Disability Delivery Unit.

8. Conclusions

Unlawful and de facto detentions are likely to re-occur where qualified ward staff have insufficient training in the receipt and scrutiny procedures under section 15 of the Mental Health Act 1983.

9. Recommendations

- Training sessions to be arranged for qualified staff on the receipt and scrutiny of Mental Health Act documentation across all mental health hospital sites and learning disability units.
- Clinicians to be reminded of their responsibilities under the Act when completing statutory documentation. Persistent non-compliance should be an issue raised formerly.

Actions

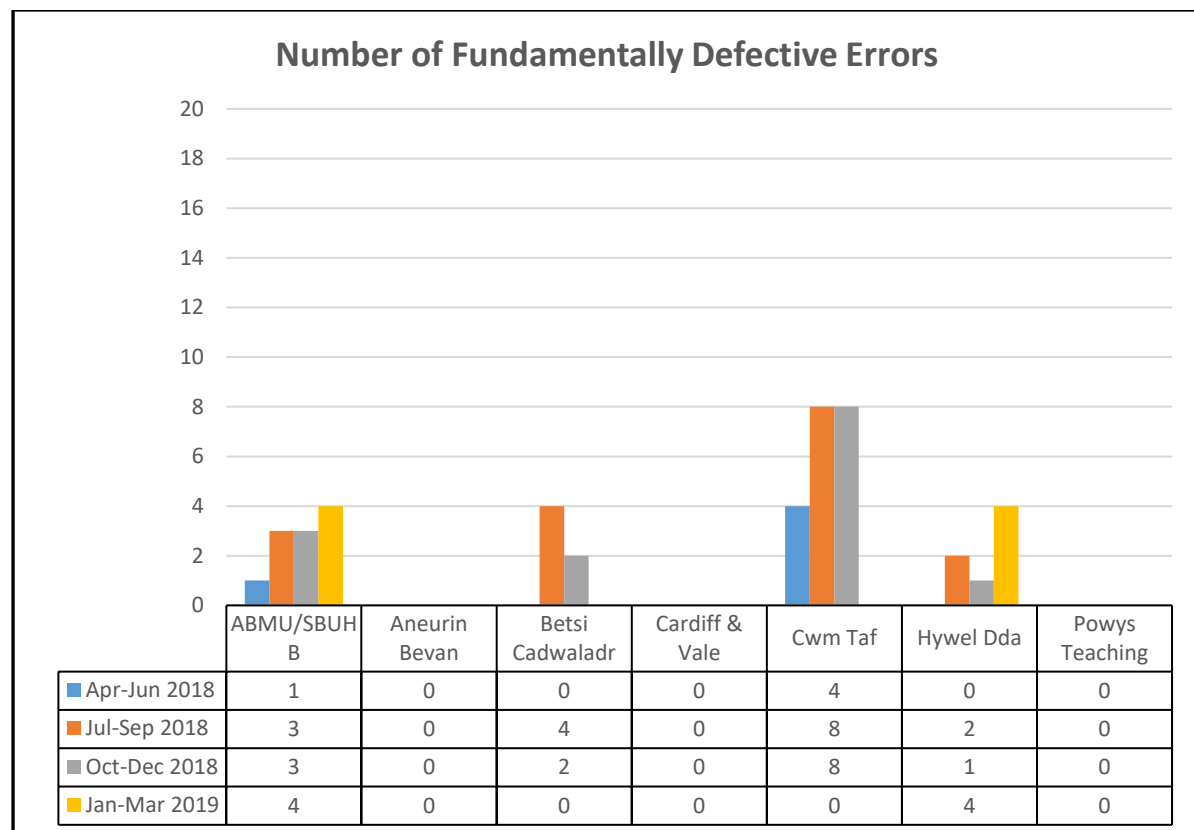
- The Mental Health Act Department is arranging training sessions for qualified staff on the receipt and scrutiny of Mental Health Act documentation across all mental health hospital sites and learning disability units. This will instruct staff on how to recognise minor errors and fundamentally defective applications likely to invalidate sections under the Mental Health Act; and should reduce the rate of de facto detentions.

By Whom

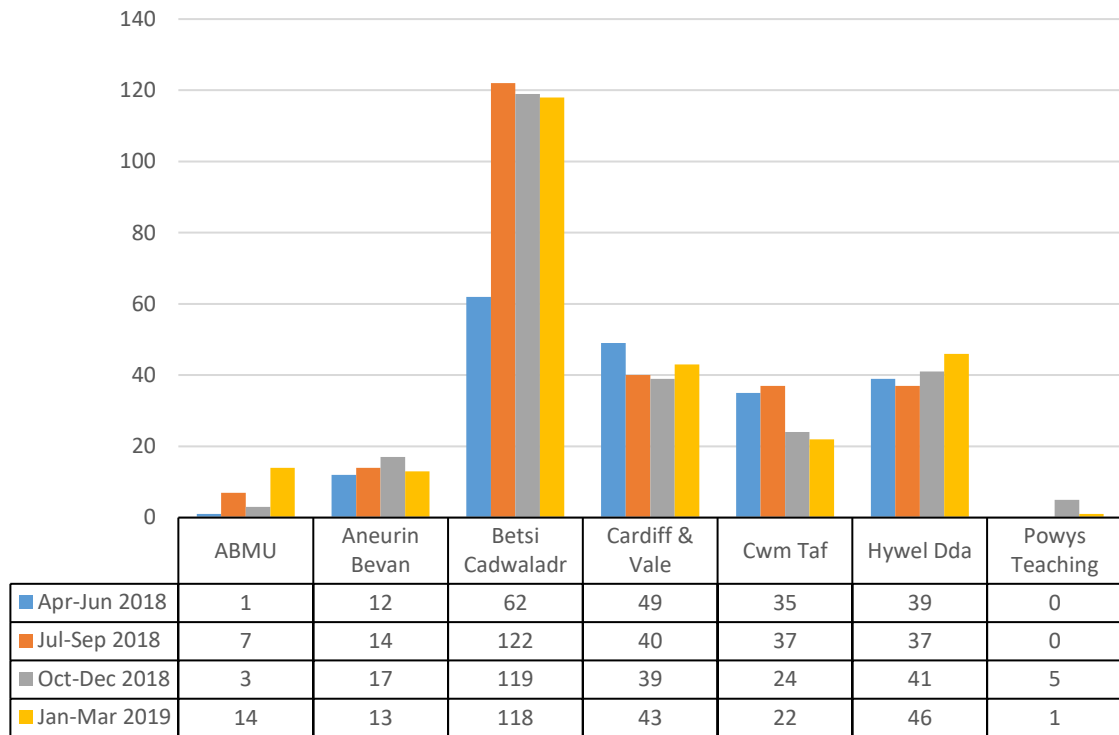
- Training will be delivered by the Mental Health Act Senior Managers.

Appendix.1

Benchmarking Report – 1 April 2018 – 31 March 2019



Number of Rectifiable Errors



Hospital Managers Postponed/Adjourned during 1 April – 30 June 2019

Postponed/Adjourned	Type of hearing	Date/time	Reason for postponement/adjournment	Outcome
Postponed	Renewal of detention	17/04/19 10.00 am	The patient's advocate asked for an adjournment as they were unable to represent the patient due to another commitment.	Rescheduled hearing on 17/05/2019
Adjourned	Renewal of detention	02/05/19 2.00 pm	The patient's solicitor was involved in a RTA and was therefore unable to attend the hearing. The patient did not wish to proceed without their solicitor present.	Rescheduled hearing on 17/05/2019
Postponed	Renewal of detention	24/05/19 10.00 am	The patient had been referred to both the hospital managers and Mental Health Review Tribunal, as they had not applied for a review in their own right. The date allocated for the hospital managers hearing was appropriated by the Tribunal who take precedence for hearing the patient's reference.	Rescheduled hearing on 14/06/2019

HOSPITAL MANAGERS POWER OF DISCHARGE COMMITTEE

M I N U T E S

**for the meeting held at 12 pm on Tuesday 23rd April 2019
in the Millennium Room, Trust Headquarter, Baglan, Port Talbot**

All Committee members should be advised that public, patient or general staff access may be given to this meetings' minutes and associated documents under the Freedom of Information Act.

ACTION

Present: Mrs J Davies, Non Officer Member (Chair)	(JD)
Mrs R Owen, Non Officer Member	(RO)
Mrs J Williams, Head of Operations	(JW)
Mrs K Crabbe, Associate Manager	(KC)
Mrs M Pritchard, Associate Manager	(MP)
Mr D Cooper, Associate Manager	(DC)
Dr D Barton, Associate Manager	(DB)
Mr K Morgan, Associate Manager	
Dr J Copley, Associate Manager	(KM)
Mr A Thomas, Associate Manager	(JC)
Mr D Adams, Associate Manager	(AT)
Mr C Toutt, Associate Manager	(DA)
	(CT)

In Attendance

Ms L Rogan, Mental Health Act Manager	(LR)
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HM/19/01 Welcomes and Introductions

The Chair opened the meeting and extended a warm welcome to everyone.

HM/19/02 Apologies for Absence

Apologies for absence were received from Mrs M Berry, Mrs R Morgan, Ms S Abbott, Mr W Griffiths and Ms Heather Richards.

HM/19/03

Minutes of the Previous Meeting

The minutes of the meeting held in the Board Room, Glanrhyd Hospital, on 1st October 2018 were held as a true record.

HM/19/04 Matters Arising

All Wales Hospital Managers Conference - Cardiff

Members who attended expressed their dissatisfaction at the poor quality and structure of this event which was provided by a professional training organisation. It was agreed to provide feedback to Cardiff & Vale UHB who sponsored the event, on the failings of the day and comments from those who attended.

JD

HM/19/05 Terms of Reference

Members reviewed and discussed the TOR and the need for a third independent member to be included to the membership of the committee to ensure that meetings were quorate.

Members discussed the inconsistency across Health Boards Wales as to whether Non-Office Members could Chair panels or if this constituted a conflict of interest. **JD** to seek legal advice on this issue. Members agreed to the changes to the TOR.

JD**HM/19/06 Information Governance**

JW informed members of the governance risks surrounding the use of paper copies for patient reviews and ensuring these are destroyed after hearings. A review of the cost implications and staff resources was undertaken and compared against the cost of I-Pads. I-Pads were shown to be more cost effective and met with Information Governance standards in removing the risks involved in sending patient identifiable/confidential information. Formal papers will be uploaded into Ibabs and training will be provided for members. **JD** asked for a training session to be arranged by Becky Wadley on Information Governance. **KM** asked for the timescale for the introduction of the I-Pads. **JD** was unable to confirm the exact timeframe when these would be introduced and would update members accordingly.

LR**HM/19/07 Hospital Managers Remuneration**

JC raised the topic of remuneration for attendance at hospital managers' panel hearings. Compared to other Health Boards the fee for Swansea Bay UHB was considerably lower and members felt that their expertise was being undervalued. **JD** to bring the concerns of members to the next Legislative Committee meeting for a decision regarding a review of the current payment and where this recommendation should be addressed. **JD** to take forward to Pamela Wenger for advice.

JD**HM/19/08 Re-appointment of Hospital Managers**

LR informed members that re-appointment letters had been sent out by the Chairman of the Health Board to individuals who attended for appraisals on the 12 March 2019.

HM/19/09 Receive the Report of the Use of the MHA83 Jul – Dec 2018

The group considered the report on activity for the period.

The use of the nurses holding power under section 5(4) of the Act continues to be used on mental health units. An audit of the reasons for this has shown that a delay in a doctor not being available to visit the ward at the time of the incident necessitated this.

The activity of the appeals committee showed that 61 hearings were held, with 10 postponed/adjourned. The reasons for any hearing being postponed or adjourned is tabled to the Legislative Committee.

The number of patients detained under a community treatment order (CTO) had decreased however, numbers have increased over the last three months. **DC** asked if the new legislation had had a bearing on the decline in the use of CTO. **LR** stated that this was not linked to the legislation as it was not one of the areas being consulted on.

LR informed the group that there had been six unlawful detentions recorded during the detention period. All other errors had been rectified under section 15 of the Act.

HM/19/10 Audit of Discharges by the Mental Health Review Tribunal

The group discussed the four patients discharged by the Tribunal, one of these were restricted patients, who can only be discharged by the Tribunal or Ministry of Justice. None of these patients have been re-admitted under the Act.

HM/19/11 Standard of Medical Reports for Hearings

JW provided an update to the group. Dr Maggs has been asked for an update and will be contacting Dr Provan for a conclusion to this review. JW asked for this to be put on the agenda for the next meeting where the results will be presented.

TRAINING

HM/19/12 Training Requirement for Hospital Managers

Members attended the all Wales hospital managers training event sponsored by Welsh Government and presented by Edge Training and Consultancy Limited on 28th November in Cardiff. A copy of the handout had been included in the papers. **JD** asked if a training session could be arranged in May by Becky Wadley on Information Governance.

LR

HM/19/13 Issues relating to specific hospital managers hearings

JC noted the number of hospital managers hearings recorded against each associate member and felt that the system for allocating panels was not fairly distributed. **JD** had received information on the given process and details on how these had been utilized over a nine month period and felt that it did appear fair to members, given that some may not have been available to attend when contacted.

DC asked whether hospital managers' hearings will be clerked following the boundary change. **LR** stated that this would be re-instated as soon as the department is fully staffed.

FOR INFORMATION

HM/19/14 Final Report of the Independent Review of the Mental Health Act 1983 dated 28th December 2018

The group considered the summary of the key proposals and recommendations of the final report on the independent review of the Mental Health Act 1983.

HM/19/15 RadcliffeLeBrasseur Article: Bringing proceedings before the First-Tier Tribunal – A question of capacity

The group considered the judgement delivered in VS v St Andrew's Healthcare [2018] UKUT 250 (ACC), which concerns the capacity required by a patient to bring proceedings before the First-Tier Tribunal.

HM/19/16 RadcliffeLeBrasseur Article: Inherent jurisdiction and the use of conditional discharge for patients with capacity

The group considered the judgement delivered in Hertfordshire County Council v AB [2018] WEHC 3103 (Fam) on whether the High Court's inherent jurisdiction can be used to authorise a deprivation of liberty of a patient with capacity who is subject to a conditional discharge under the Mental Health Act 1983.

HM/19/14 Welsh Government Statistics – Patients in mental health hospitals and units in Wales, at 31 March 2018

The group considered the annual report on the summary results from the 2018 Psychiatric Census showing a snapshot of residents in NHS hospitals and private units for people with mental health or a learning disability.

HM/19/15 Any Other Business

Boundary Change

KC asked if the change of location and new contact details of the department could be disseminated. **LR** stated that these would be emailed to members prior to the move on the 3rd May 2019.

LR

KM asked if members could be provided with information as to which services would be moving to Cwm Taf Morgannwg UHB. **JD** stated that she would send a list out to members.

JD

HM/19/16 Date and Time of Next Meeting

Tuesday, 14th May 2019 at 10.00 am – 12.00 pm, venue TBA.