



Hospital Managers Powers of Discharge Committee Annual Report 2019-20



GIG
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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board

Contents

Introduction	Page 3
Committee Structure	Page 3
Reports Received	Page 3
Conclusion	Page 4

1. Introduction

- 1.1 The principle remit of the Hospital Managers Power of Discharge Committee is to satisfy the board that the processes employed by the committee, tasked with considering whether the power of discharge should be used, are fair, reasonable and exercised lawfully.
- 1.2 It is a sub-committee of the Mental Health and Capacity Act Legislative Committee to which it provides regular updates to give assurance to the board.
- 1.3 During 2019-20, the committee met its responsibility by fulfilling its role as outlined in its terms of reference.
- 1.4 The annual report summarises the key issues discussed at each meeting.

2. Committee Structure

2.1 The membership of the Hospital Managers Powers of Discharge Committee comprises two Independent Members of the board:

- Jackie Davies, Independent Member; (committee chair);
- Maggie Berry, Independent Member

Also in attendance are hospital managers and nominated members of the mental health and learning disabilities directorates.

2.2 The secretary to the committee was Lynda Rogan, Mental Health Act manager.

2.3 The terms of reference required the committee to meet at six monthly intervals and this requirement was met during 2019-2020 with committee meeting on the three occasions;

- 23rd April 2019;
- 13th August 2019;
- 11th February 2020.

During the early stages of the Coronavirus (COVID-19) pandemic, it was necessary to suspend Hospital Managers' hearings, also known as Associate Managers' hearings, to limit the spread of the virus.

However, due to the anticipated backlog of hearings SBUHB took the decision to reinstate Hospital Managers' Hearings, through the use of Microsoft Teams, and telephone conferencing.

Over the past few months, the Mental Health Act Team has been successfully using Microsoft Teams as a platform for holding Hospital Managers Hearings.

Overall, the response from Hospital Managers has been positive and enthusiastic, with the majority of panel members already experienced in the use of Teams.

For those who did not have previous experience of using Teams, the Mental Health Act team have been able to offer support assisted by the Informatics Department, which has been well received by panel members.

Hospital Managers Hearings were successfully reinstated on 14 May 2020. A member of the Mental Health Act Team is present as clerk for each hearing, to ensure the efficient running of the process, and to guide all participants through each stage.

The 'backlog' of some 20+ hearings have been quickly and efficiently cleared within the first few weeks of start-up, and hearings have continued on a regular basis to date.

3. Reports Received

3.1 The committee received the following reports;

a) Information Governance

Members were informed of the governance risks surrounding the use of paper copies for patient reviews and were advised consideration was being taken on the cost effectiveness of using I-Pads, as well the information governance standards. It was agreed that I-Pads would be purchased and the use of an electronic system for documentation would be implemented.

b) Hospital Managers Remuneration

During the period, remuneration for attendance at hospital managers' panel hearings was discussed and referred to the Mental Health Legislation Committee to be reviewed in line with other health boards.

c) Terms of Reference

The Terms of Reference (Appendix 1) had been reviewed and the need for a third independent member had been highlighted. During the course of the year, the TOR had been revised in order to align with other health boards in Wales. The revised version (Appendix 1) was approved at the Mental Health Legislation Committee in November 2019.

d) Report of the Use of the Mental Health Act

Each meeting included an update with regard to use of the Mental Health Act for the reporting period.

e) Audit of Discharges by the Mental Health Review Tribunal

The group discussed patients who had been discharged by the tribunal.

f) Standards of Medical Reports for Hearings

Concerns were raised with the quality and format of the medical reports for hearings. It advised that an audit would be undertaken in which there would be a recommendation for a best practice template.

g) Training Requirement for Hospital Managers

Members attended the all Wales hospital managers training event sponsored by Welsh Government during the period.

h) Issues Relating to Specific Hospital Managers Hearings

Issues arising from hospital managers' hearings were discussed with the committee and actions agreed. In particular, the members raised concerns with regards to the clerking of the hospital managers' hearings and also hospital managers' availability.

During the early stages of the Coronavirus (COVID-19) pandemic, it was necessary to suspend Hospital Managers' hearings, also known as Associate Managers' hearings, to limit the spread of the virus.

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3.2 Reports received for information;

i) The Independent Review of the Mental Health Act 1983 Final Report 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.

j) Radcliffe LeBrasseur 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, which concerns the capacity required by a patient to bring proceedings before the First-Tier Tribunal.

k) Radcliffe LeBrasseur Article – Inherent Jurisdictions and the use of conditional discharge for patient with capacity.

The group considered the judgement delivered in *Hertfordshire County Council v AB* 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.

j) Welsh Government Statistics – Patients in mental health hospitals and units in Wales

The group considered the annual report on the summer results from the 2018 and 2019 Psychiatric Census showing a snapshot of residents in NHS hospitals and private units for people with mental health or a learning disability.

l) RadcliffeLeBrasseur Article: Perinatal Mental Health Services – Where are we in Wales?

The group considered the summary on the progress of recommendations provided in the October 2017 report on perinatal mental health services. Members were informed that Swansea Bay Health Board was taking the lead in this area.

m) RadcliffeLeBrasseur Article: Community Treatment Orders and Deprivation of Liberty

The group considered the judgement delivered in *Welsh Ministers v PJ* [2018] UKSC 66 which concerned conditions imposed under a CTO (community treatment order) that amounted to a deprivation of liberty.

n) RadcliffeLeBrasseur Article: Restraint and Restrictive Practices

The group considered the summary of the Mental Health Units (Use of Force) Act 2018 about the management and appropriate use of force in relation to people in mental health units and similar institutions.

o) Case Law – PB v Priory Group Ltd [2018] MHLO 74

The group considered the case law for damages for unlawful psychiatric detention and breach of Article 5 ECHR, HRA 1998 and noted the importance of following due process when applying the Mental Health Act.

p) RadcliffeLeBrasseur Article: Segregation may be breaching human rights

The group considered the interim findings of CQC (Care Quality Commission) about the segregation in mental health wards of young people and people with a learning disability or autism.

q) Welsh Government Statistics: Admissions of patients to mental health facilities in Wales 2017-2018

The group considered the summary information on the number of patients admitted to mental health facilities in Wales both formally and informally, and patients subject to community treatment orders.

r) Welsh Government Statistics: Patients in mental health hospitals and units in Wales, at 31 March 2019

The group considered the summary result from the 2019 Psychiatric Census snapshot as at 31 March 2019, the census is taken of residents in NHS hospitals and units for people with a mental illness or a learning disability.

s) RadcliffeLeBrasseur Article: Reform of the Mental Health Act 1983

The group considered details of the recommendations that are likely to be included in the amendments to the Mental Health Act. The timescale for the implementation of any new legislation has yet to be confirmed.

t) RadcliffeLeBrasseur Article: Extension of the Article 2 ECHR boundaries

The group considered the judgement delivered in *Rabone & Anor v Pennine Care NHS Trust* and *R (Lee) v HM Assistant Coroner Sunderland*. These concerned situations where a mental health patient was neither admitted nor detained in hospital and the systemic duty imposed on the State by Article 2 to provide an effective regulatory framework for the protection of people's lives.

u) RadcliffeLeBrasseur Article: Mandatory training on autism and learning disabilities for all health and social care staff

The group considered the article which reminded decision makers just how important the Codes of Practice are.

v) Peter Edwards Law Article – Will I get into trouble if I don't follow them?

The group considered the case law for damages for unlawful psychiatric detention and breach of Article 5 ECHR, HRA 1998 and noted the importance of following due process when applying the Mental Health Act.

4. Conclusion

This report demonstrates that the committee fulfilled its responsibilities through the reports it had received during the year from various services and sources.