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Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board



Meeting Date	03 February 2022	Agenda Item	2.1
Report Title	Mental Health Act Activity Report: Oct-Dec 2021		
Report Author	Penny Cram – Interim Mental Health Act Manager		
Report Sponsor	David Roberts – Service Group Director		
Presented by	David Roberts – Service Group Director		
Freedom of Information	Open		
Purpose of the Report	The purpose of the paper is to present to the Mental Health Legislative Committee the Mental Health Act activity report, in relation to Hospital Managers' scheme of delegated duties under the Mental Health Act 1983 and the functions included in section 23.		
Key Issues	<p>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.</p> <p>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.</p>		
Specific Action Required (please choose one only)	Information	Discussion	Assurance
	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Recommendations	<p>Members are asked to:</p> <ul style="list-style-type: none"> NOTE this report 		

Mental Health Act Activity Report July – September 2021

1. INTRODUCTION

The report provides assurance in respect of the work that has been undertaken by Mental Health and Learning Disabilities (MHLD) Services 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

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.

2. BACKGROUND

Mental Health Act 1983 (as amended 2007)

An activity report, along with definitions of relevant sections of the Act is included below. This summarises key points of the use of the Act within SBU Health Board. Rates of detention under different sections of the Act typically fluctuate between each reporting period therefore, only significant points are highlighted.

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)

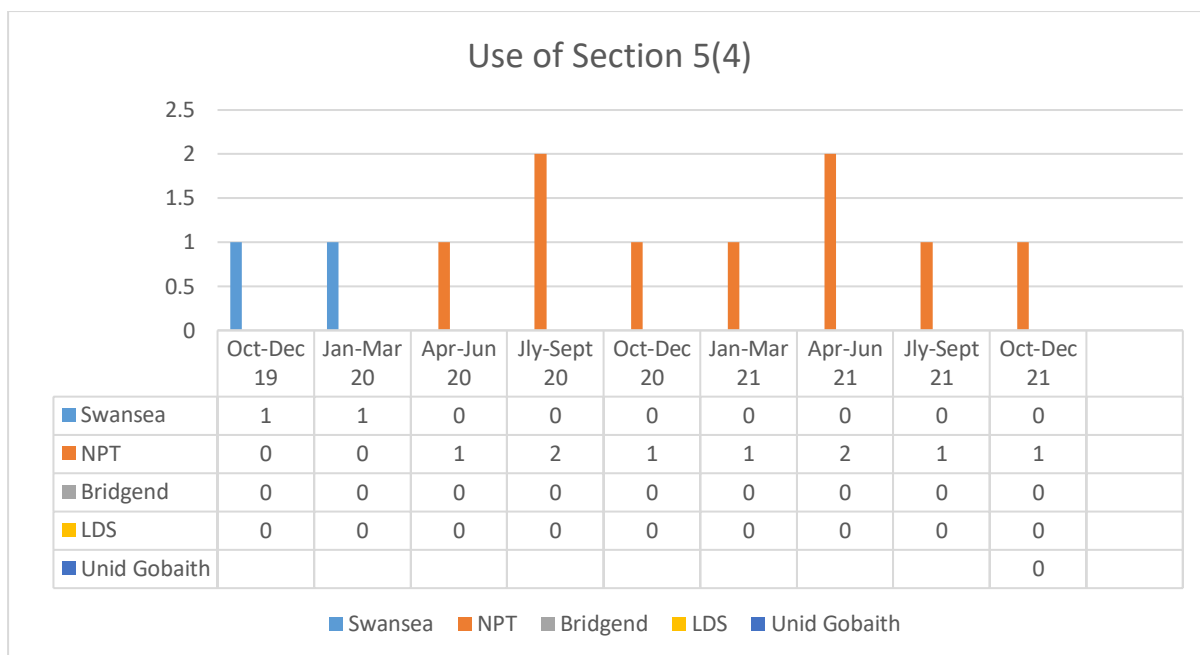
Mental Health Act 1983 - Data Collection and Exception Reporting

The data below summarises some of the key points of the use of the Mental Health Act 1983 during the reporting period, together with comparison data for the previous 2-year period:

Detention under Section 5 – Holding Powers

Section 5(4) is used by mental health and learning disability nurses in mental health in-patient settings for up to 6 hours to allow for a further assessment to take place.

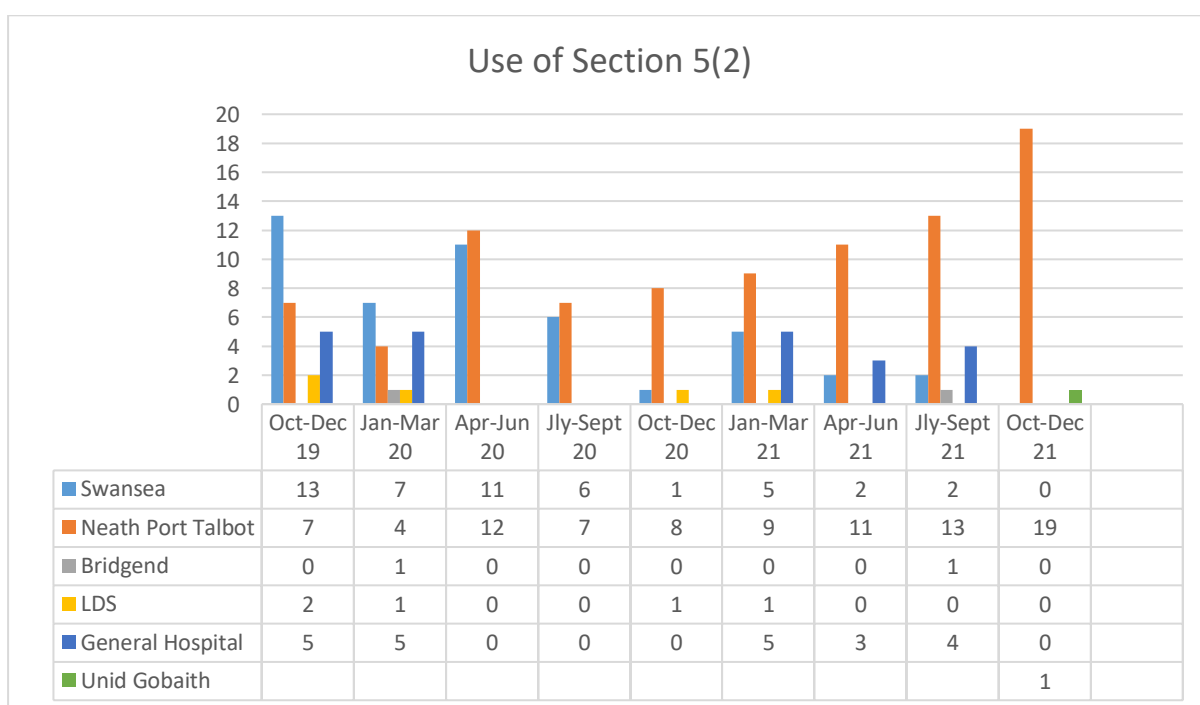
Section 5(4) was used on 1 occasion.



The graph above shows use of section 5(4) together with comparison data over 2 years

Section 5(2) is used by Doctors in both mental health and general hospital settings to detain an in-patient for up to 72 hours to allow for a mental health act assessment to take place.

Section 5(2) was used on 20 occasions.



The graph above shows use of section 5(2) with comparison data over 2 years

Section 5(2) has been used on a number of occasions where patients have been detained on 'back to back' 5(2) s.

It is clear in law that there is no power to renew detention under s5(2) and furthermore, for a patient to be detained under s5(2) and following its 'lapse' to then be detained (with or without a gap) on a new s5(2) may be subject to legal challenge, and has previously been recorded as unlawful practice by the Mental Health Act Commission.

Chapter 18 of the MHA Code of Practice states the following:

- That section 5(2) authorises detention so that the patient can be assessed with a view to making an application for detention under the Act.
- That section 5(2) should not be used as an alternative to making applications, even if it is thought that the patient will only need to be detained for 72 hours or less.
- Section 5(2) can only be used where the RC or their nominated deputy, having personally examined the patient, concludes that an application under sections 2 or 3 of the Act should be made.
- Section 5(2) should be ended either after the RC decides that an assessment for a possible application no longer needs to be carried out or, following assessment, a decision is taken not to make an application for detention.

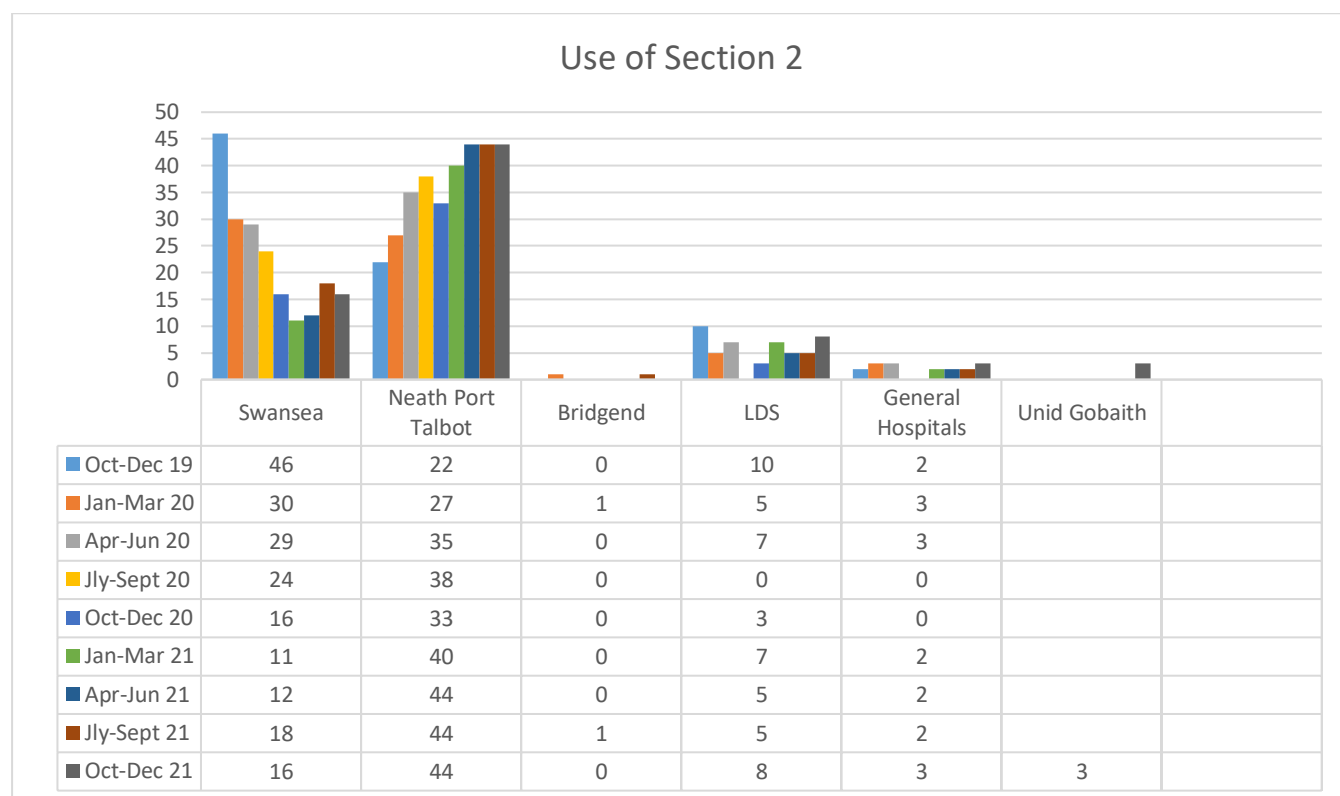
The table below highlights these incidents:

Date	Ward	Section	Comments
11.11.21	F	2	<p>Patient was transferred from a placement in Cardiff on a Section 2 to Ward F on 11/11/2021</p> <p>The patient was discharged from the section 2 within half hour of arriving, and was then placed on a 5(4) on 11/11/2021 and then a 5(2) on 12/11/2021.</p> <p>The patient was discharged from 5(2) on 12/11/2021 and was then placed on a further 5(2) on 13/11/2021, following which the patient was then further detained on a Section 3 with an immediate transfer to PICU.</p>
17.11.21	F	informal	<p>Patient was detained on 5(2) on 14/11/2021, assessed and discharged on the same day after agreeing to stay as an informal patient</p> <p>Patient then left the ward on 2 occasions</p> <p>Patient was detained 5(2) again on 17/11/2021, assessed as not detainable and discharged off the 5(2) on 18/11/21</p>

Section 2 – Admission for Assessment

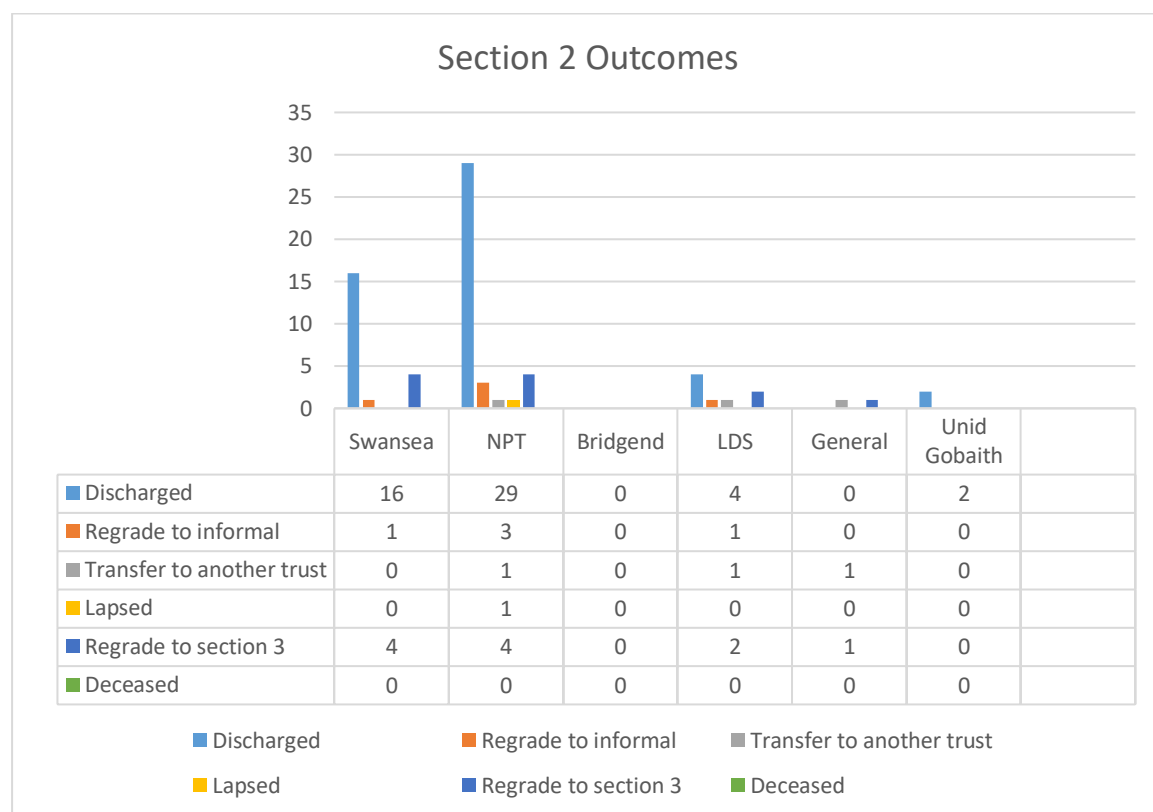
Section 2 authorises the compulsory admission of a patient to hospital for assessment (or for assessment followed by medical treatment), for mental disorder, for up to 28 days.

Section 2 was used on 74 occasions.

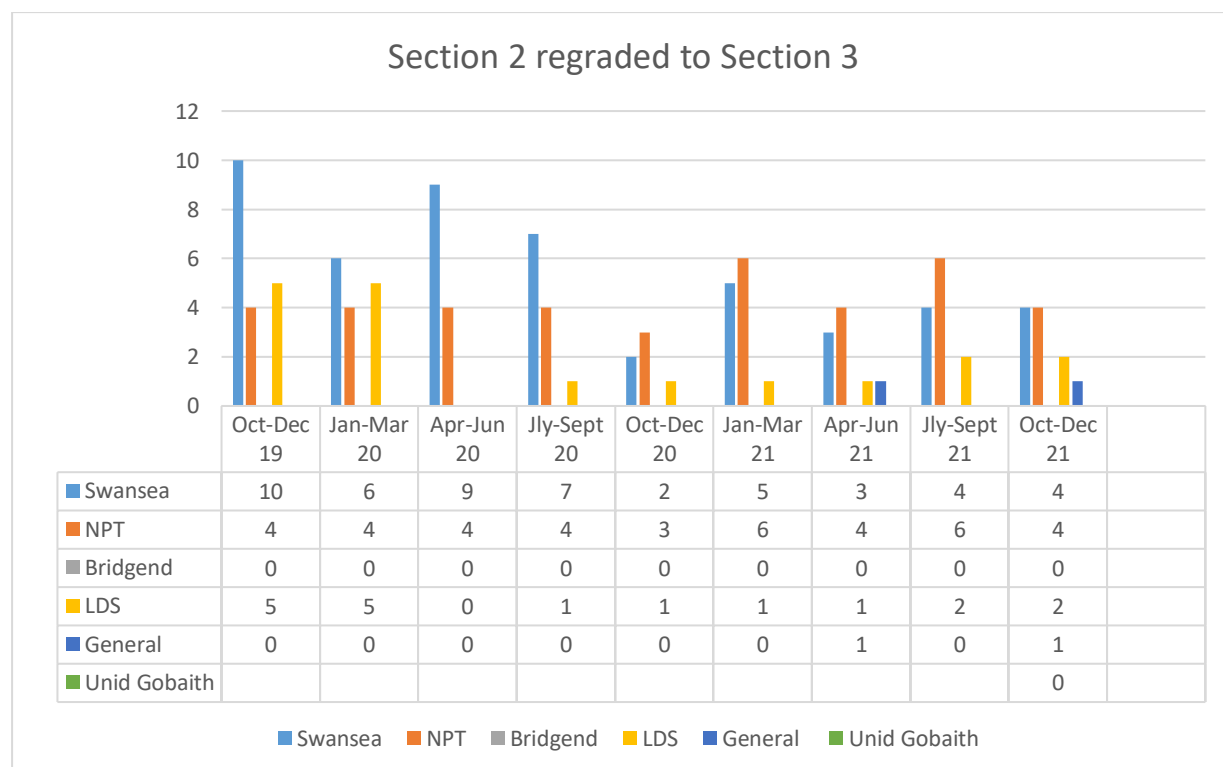


The graph above shows the use of section 2 with comparison data over 2 years

Section 2 Outcomes



The graph shows section 2 outcomes for the reporting period

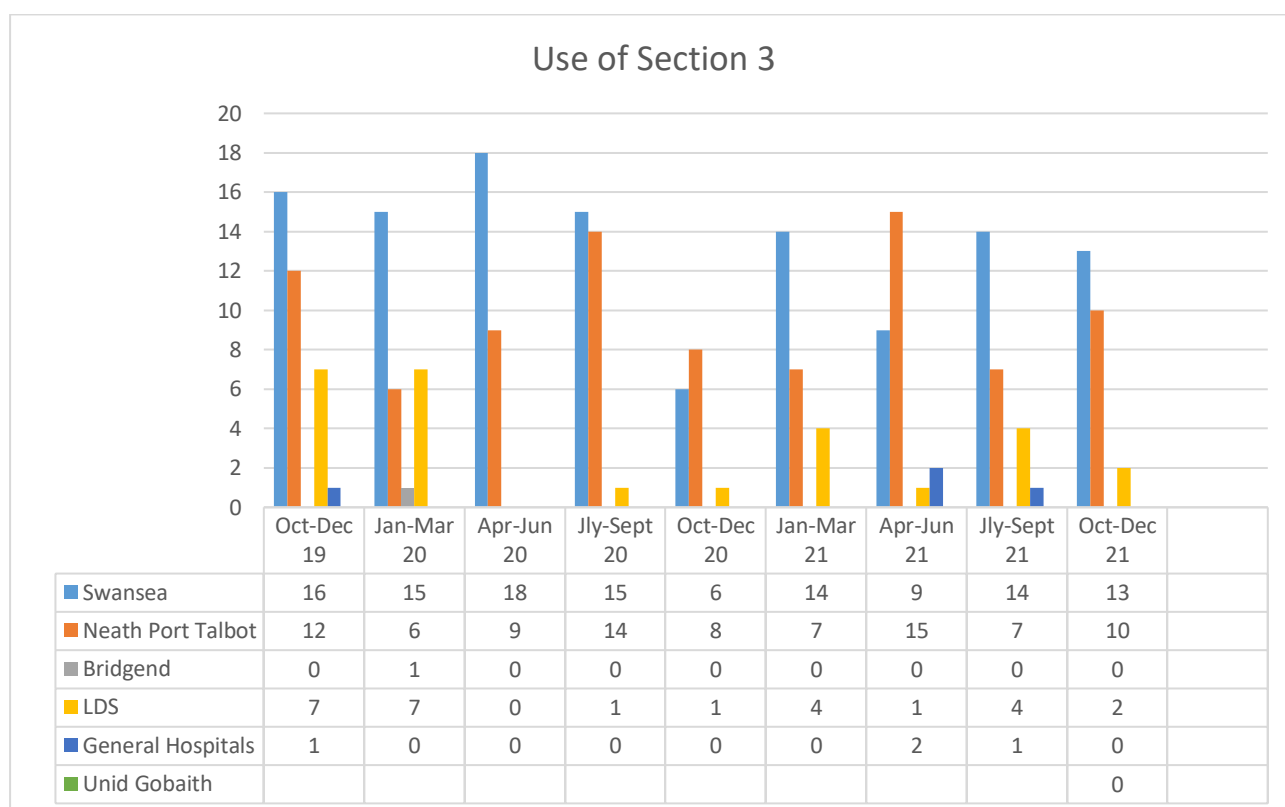


This table shows the number of section 2 detentions regraded to section 3, with comparison data from previous 2 years

Section 3 – Admission for Treatment

Section 3 provides for the compulsory admission of a patient to hospital for treatment for mental disorder. The detention can last for an initial period of six months. Then can be renewed for up to a further 6 months after review – can then be renewed for periods of one year at a time.

Section 3 was used on 25 occasions.

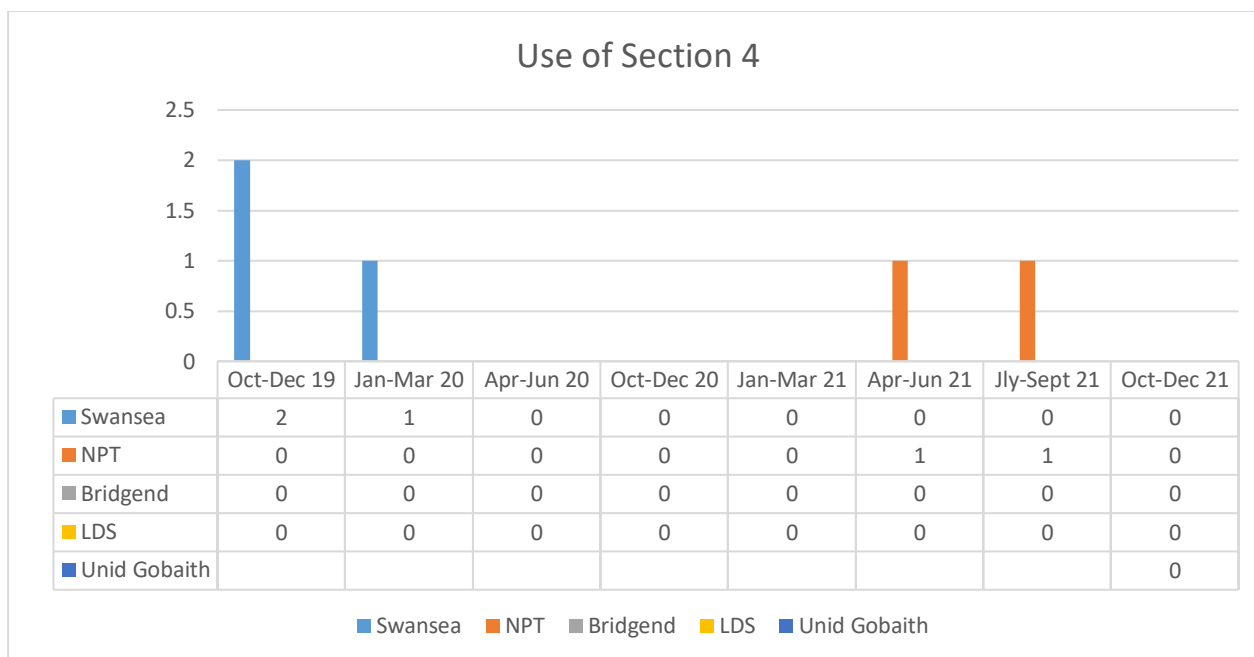


The graph above shows new section 3 with comparison data over 2 years

Section 4 – Emergency Admission for Assessment

The use of section 4 of the Mental Health Act 1983 is to enable an admission for assessment to take place in cases of urgent necessity. It should only be used to avoid an unacceptable delay and as such is infrequently used and specifically examined by Mental Health Act Managers when this is the case.

Section 4 was not used during this reporting period.



The graph above shows comparison data over 2 years

Admissions of under 18s

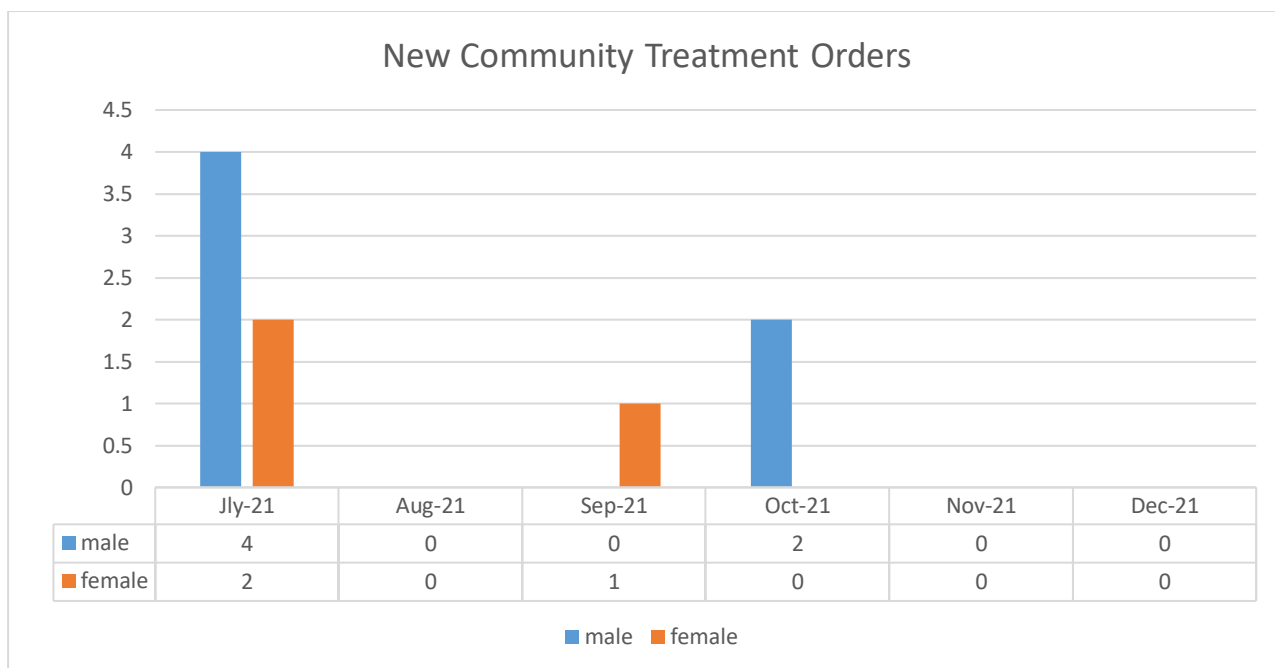
There were 3 admissions to the emergency CAMHS provision at Ward F NPT, of those aged under 18 this this quarter. The length of stay varied between 2-8 days.

- October – 1 (informal)
- November – 1 (Informal)
- December – 1 (informal and 5(2))

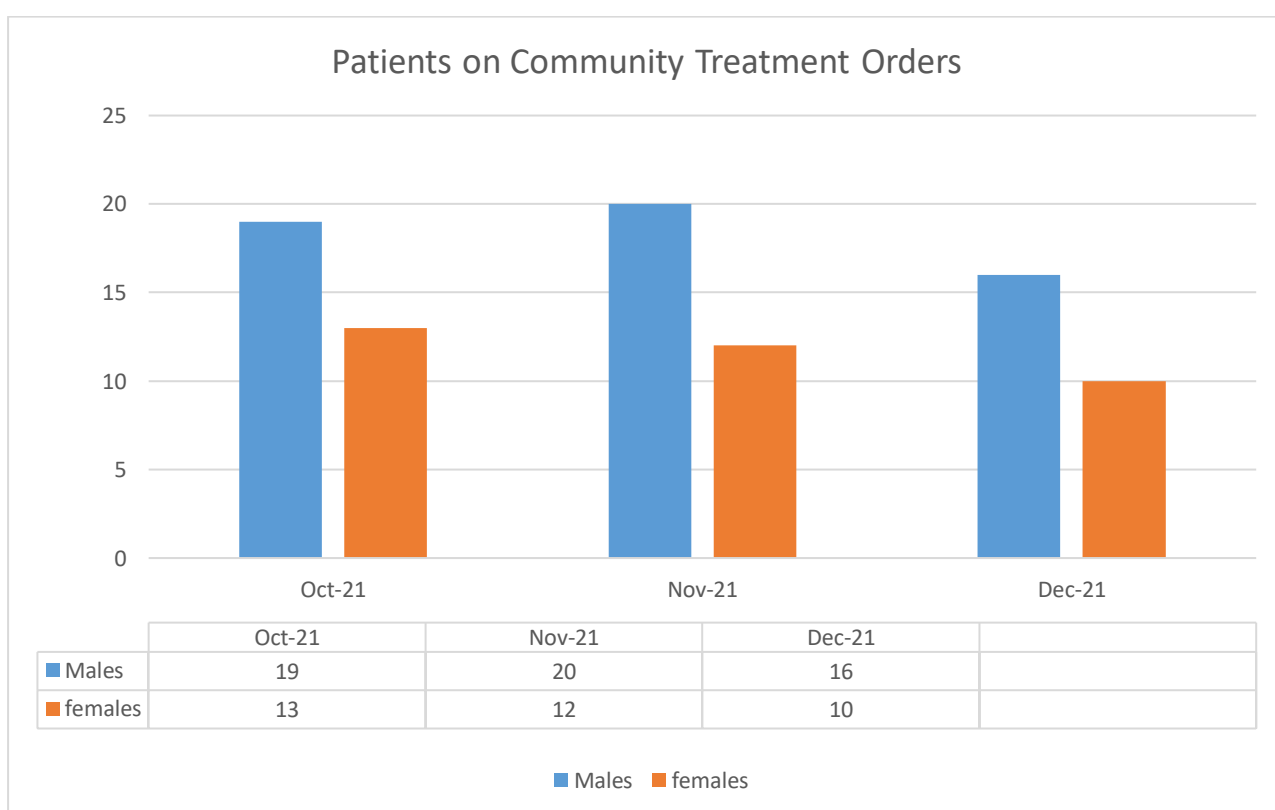
Section 17A – Community Treatment Order

This section provides a framework to treat and safely manage certain eligible patients who have been detained in hospital for treatment, in the community, whilst still being subject to powers under the Act.

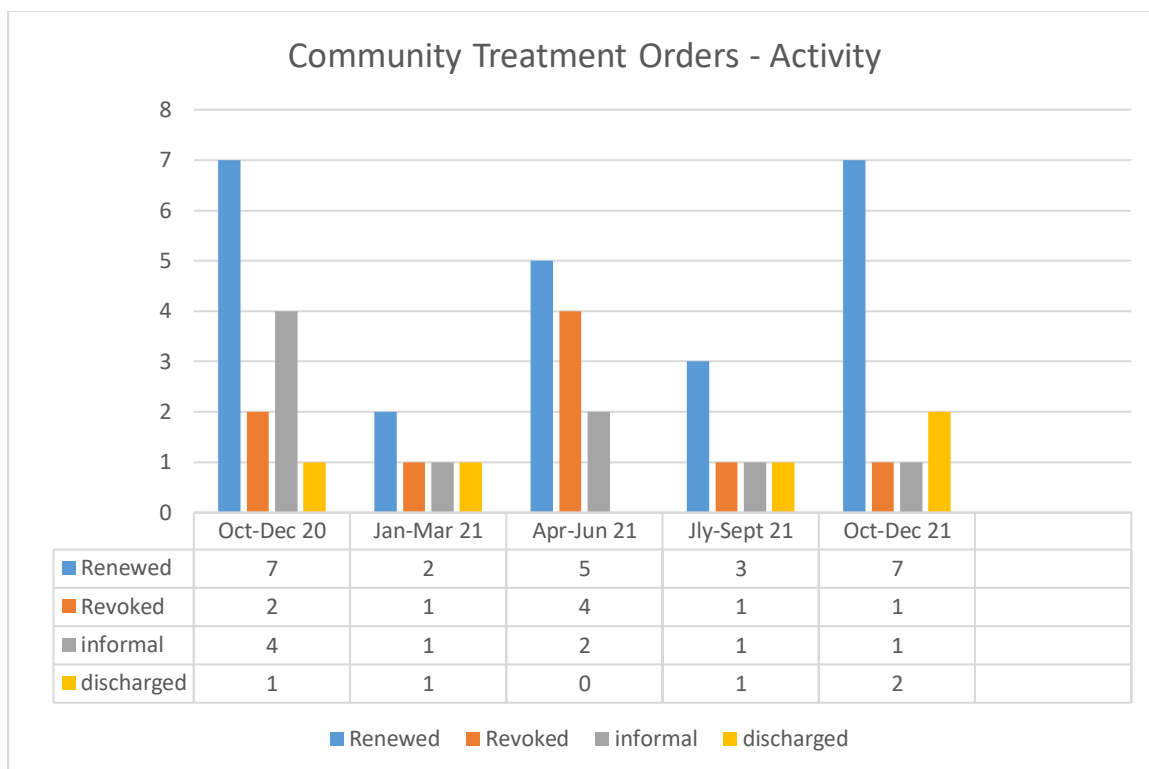
There were 2 new Community Treatment Orders during the reporting period.



This graph shows the number of new CTOs during the reporting period



This graph shows the number of patients on a CTO as of each month end in this reporting period



This graph shows activity related to CTO patients over the past 1 year

Police powers to remove a person to a place of safety under Section 135 & 136

Section 135 (1) empowers a police officer to forcibly enter a property to look for and remove a person to a place of safety for assessment for a period of up to 72 hours. There was 1 section 135 (1) warrant executed in this reporting period.

Section 135 (2) empowers a police officer to forcibly enter a property to look for and remove a detained patient who is absent without leave (AWOL) from hospital. If it is anticipated that the person will allow entry to the property voluntarily, there was no need to obtain a warrant under section 135 (2) during this reporting period.

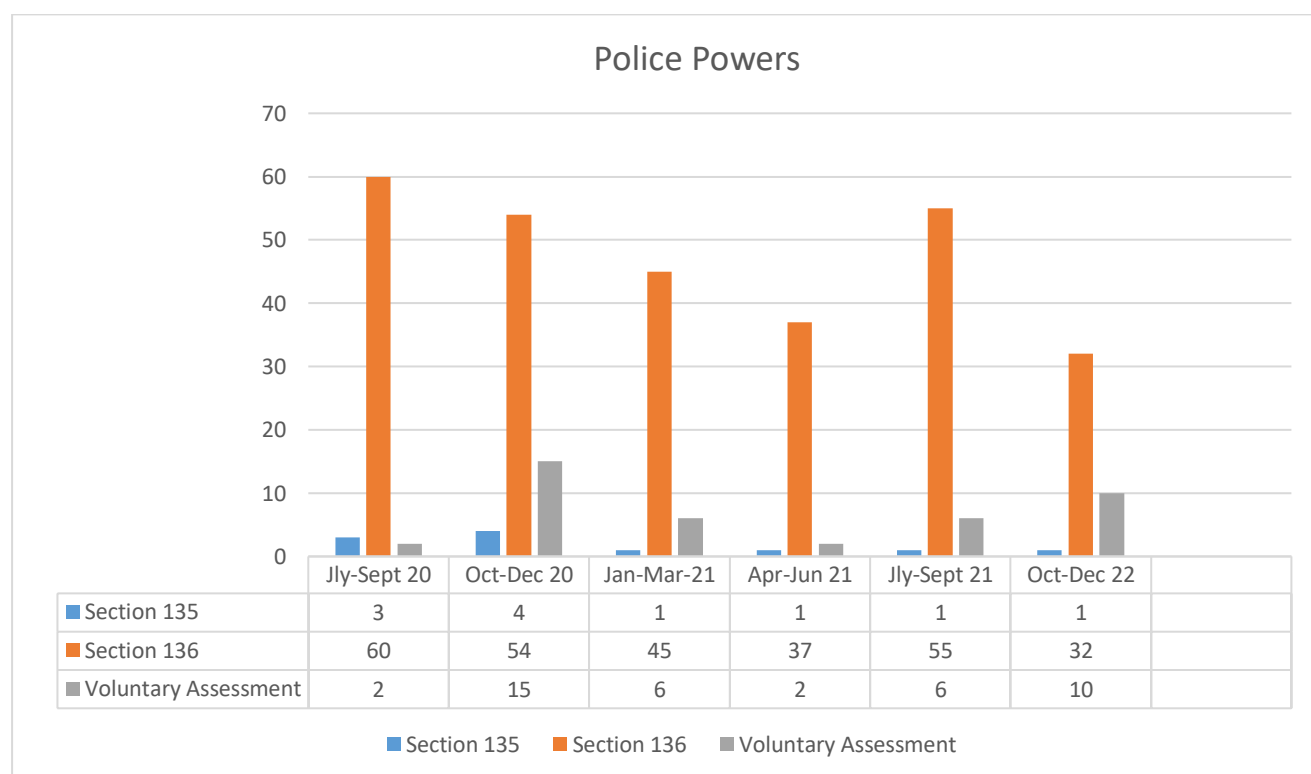
Section 136 empowers a constable to remove a person from a public place to a place of safety if it is considered the person is suffering from mental disorder and is in immediate need of care or control. There were 32 detentions under section 136 during this reporting period.

Voluntary attendance and assessment at place of safety occurred on 10 occasions

Police Powers

The MHLO for Neath Port Talbot & Swansea (Angela Jackson) has been working to improve and increase communication between police officers and the MH Triage team, in order to ensure that detentions under section 136 are appropriate. The 32 Section 136 detentions throughout the reporting period are broken down as follows:

- October - 11
- November - 8
- December - 13



Deaths of detained patients

There was 1 patient death during November in this reporting period.

The patient was transferred from Cefn Coed to Morriston Hospital.

Their death was related to medical complications associated with hospital acquired pneumonia and heart failure.

The death was reported to HIW.

Application for Discharge to Hospital Managers and Mental Health Review Tribunal

See graphs at Appendix 2 for data

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

The MHA Department was not made aware of HIW audits of MHA Documentation during this reporting period

3. GOVERNANCE AND RISK ISSUES

Legislative Compliance

The Mental Health Act Department are currently carrying out a mapping exercise with regard to mapping legislative compliance against the MHA requirements and have identified a number of areas where there is non-compliance. Specifically, in the reporting of activity concerning Part 3 patients, Consent to Treatment and restrictive practices. Work is being done to provide this data in partnership with Digital Services and these will be reported upon in future Legislative Committees.

Mental Health Act Team

An interim appointment has been made to the Post of Mental Health Act Team Manager with effect 6th November 2020 and extended to end of February 2022.

Team members continue to work in a blended fashion of home & office based working in light of current Covid-19 workplace measures. These arrangements have recently been reviewed in light of the renewed guidelines.

Scrutiny of Documents

Section 15 of the Act provides for certain admission documents, which are found to be incorrect or defective, to be rectified within fourteen days of the patient's admission. Rectification or correction is mainly concerned with inaccurate recording, and it cannot be used to enable a fundamentally defective application to be retrospectively validated.

Data Collection and Exception Reporting

Any exceptions highlighted in the Mental Health Act Activity Report are intended to raise 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.

Detention without authority or Invalid Detentions

There were 13 exceptions for this period

There was 1 invalid detention:

No.	Reason for detention without authority	Actions taken	By Whom
1	Neath Port Talbot Hospital Ward F – November A section 2 was completed for the patient, however, the last page of HO2 Application for Detention was mislaid on Ward F - Making the detention invalid due to there not being a signed application for detention. A fresh application was made by the AMHP and the patient was further detained under section 2	<ul style="list-style-type: none">• Ward manager informed that detention is invalid.• Doctor and AMHP informed that detention is invalid and discussed whether further section needs to be applied.• Staff informed to make an entry in the patients' health record to document incident and outcome.• Ward staff informed to inform the patient that they are not detained under MHA• Correspondence sent to patient to inform them of the incident.• Incident Report Form completed.	MHA Administrator MHA Administrator MHA Administrator MHA Administrator MHA Manager

There were no breaches to the Mental Health Act for in-patients admitted to Swansea Bay UHB who are under the age of 18.

Non-compliance with statutory duties

There has been a significant increase of incidents whereby MHA documentation have not been scanned to the MHA Department for scrutiny, which does not allow for the discharge of legal duties on behalf of Hospital Managers, or for the timely identification and rectification of errors. Examples of such incidents are shown below:

Date	Ward	Section	Comments
08.11.21	F	2	Ward F had not scanned over detention papers when the patient was detained. The patient had transferred to Cwm Taf the following day whilst we were still unaware of the detention so medical scrutiny was not completed.
10.11.21	F	2	Received original detention papers in the post for patient on the 10th November 2021, patient was detained on the 9th November 2021 and not scanned to the department
22.11.21	Morriston Ward M	3	Patient was transferred to Cwm Taf without informing MHA Department Form TC1 was delivered to PICU in a taxi which is a potential breach of confidentiality

As a result of discussions with the Quality & Safety Team regarding serious incident reviews, the MHA Manager has recently agreed to sit on the Quality & Safety Committee with a view to establishing a more proactive approach to reducing errors on MHA documentation, and improving compliance with the Act. The Interim MHA Manager will also be meeting with Ward F managers and staff to deliver a refresher session on the compliance requirements.

Please see the graphs at Appendix 1 for exception data

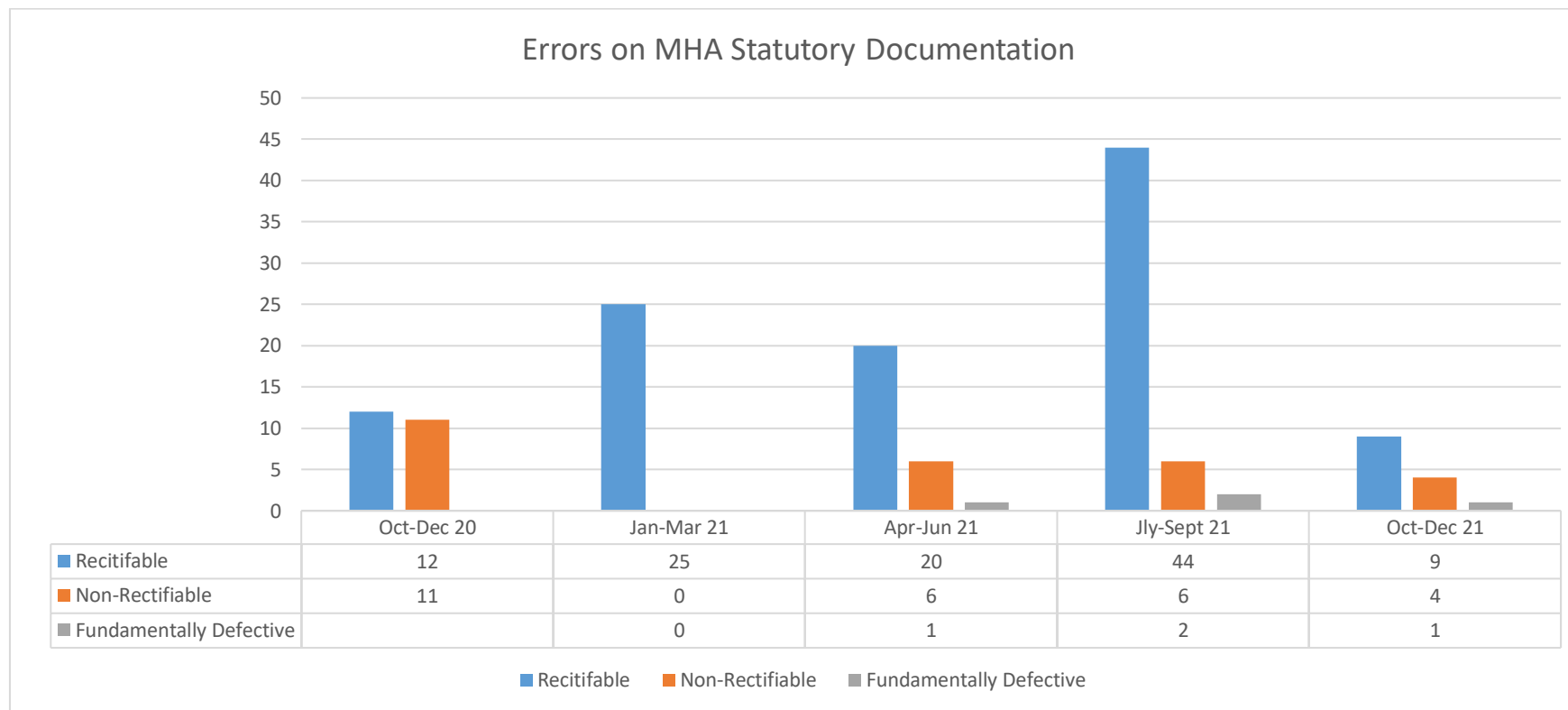
4. RECOMMENDATION

The Board is asked to note the report.

Governance and Assurance		
Link to Enabling Objectives (please choose)	Supporting better health and wellbeing by actively promoting and empowering people to live well in resilient communities	
	Partnerships for Improving Health and Wellbeing	<input checked="" type="checkbox"/>
	Co-Production and Health Literacy	<input type="checkbox"/>
	Digitally Enabled Health and Wellbeing	<input type="checkbox"/>
	Deliver better care through excellent health and care services achieving the outcomes that matter most to people	
	Best Value Outcomes and High Quality Care	<input checked="" type="checkbox"/>
	Partnerships for Care	<input type="checkbox"/>
	Excellent Staff	<input type="checkbox"/>
	Digitally Enabled Care	<input type="checkbox"/>
	Outstanding Research, Innovation, Education and Learning	<input type="checkbox"/>
Health and Care Standards		
(please choose)	Staying Healthy	<input type="checkbox"/>
	Safe Care	<input checked="" type="checkbox"/>
	Effective Care	<input type="checkbox"/>
	Dignified Care	<input checked="" type="checkbox"/>
	Timely Care	<input checked="" type="checkbox"/>
	Individual Care	<input checked="" type="checkbox"/>
	Staff and Resources	<input checked="" type="checkbox"/>
Quality, Safety and Patient Experience		
<p>The report provides assurance in respect of the work that has been undertaken by Mental Health and Learning Disabilities (MHLDD) Services 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.</p>		
Financial Implications		
Legal Implications (including equality and diversity assessment)		
Mental Health Act 1983		
Staffing Implications		
<p>An interim appointment has been made to the Post of Mental Health Act Team Manager with effect 6th November 2020, and extended to end February 2022.</p> <p>Team members continue to work in a blended fashion of home & office based working in light of current lockdown measures. This is working well and has recently been reviewed in light of new guidance.</p>		
Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)		

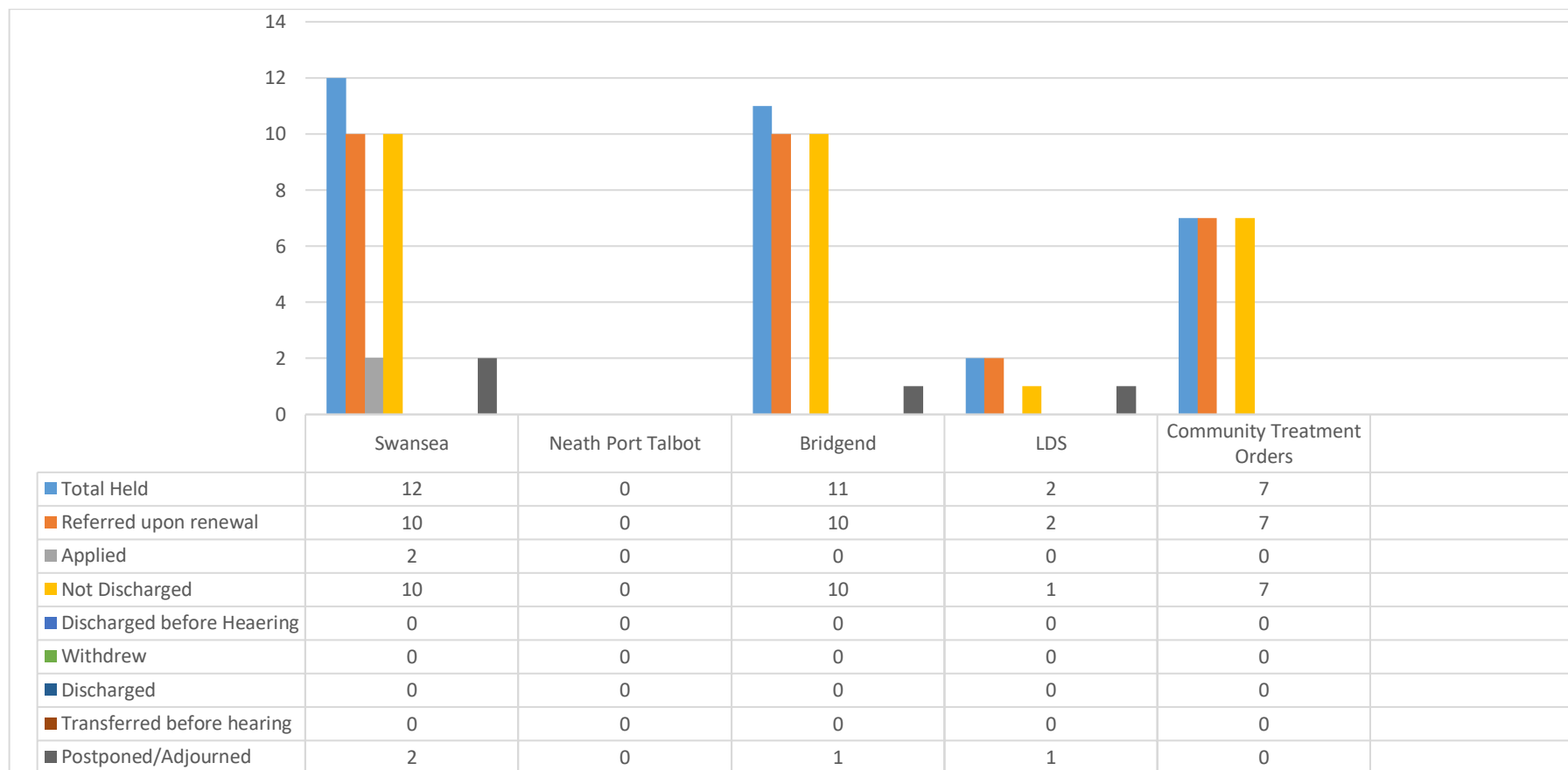
Report History	<p>The Mental Health Act Activity report is produced on a quarterly basis to inform both the MH Legislative Committee, and the Hospital Managers Power of Discharge Committee.</p> <p>The most recent Power of Discharge Committee was held on 12th January 2022.</p>
Appendices	<p>Appendix 1: Graph showing rectifiable and non-rectifiable errors under Section 15 of the Act.</p> <p>Appendix 2: Graphs showing activity relating the Mental Health Review Tribunals and Hospital Managers Hearings</p>

Exceptions and non-rectifiable errors on Mental Health Act statutory documents for the period 1 October – 31 December 2021



This graph shows exceptions that can be rectified, and those that cannot, on Mental Health Statutory Documents

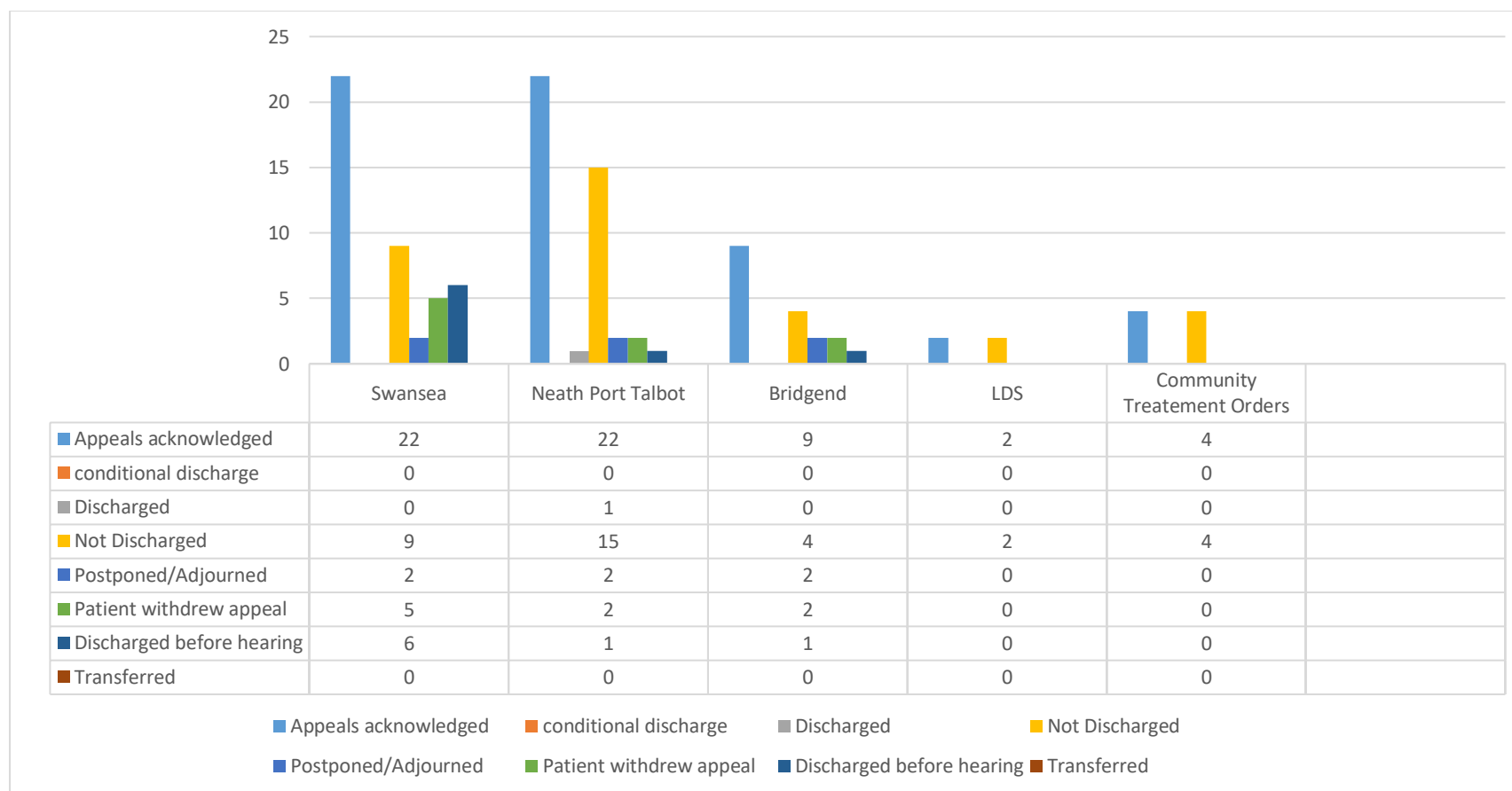
Hospital Managers Appeals & Referrals 1 October – 31 December 2021



This table shows Hospital Managers Hearings activity for the reporting period

There were no occasions where a patient was discharged by the MHRTW following a recent 'not discharged' decision by Hospital Managers

Mental Health Review Tribunal for Wales Hearings 1 October – 31 December 2021



Timeliness of Section 3 Tribunal Hearings

Of the 21 MHRT Hearings for Section 3 patients – 50% were heard within the recommended 56 days and 50% were heard within 60 days.