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Bwrdd Iechyd Prifysgol  
Bae Abertawe  
Swansea Bay University  
Health Board



<b>Meeting Date</b>	<b>9<sup>th</sup> May 2019</b>		<b>Agenda Item</b>	<b>3a</b>
<b>Report Title</b>	<i>Mental Health Act Performance Report for the period 1 January – 31 March 2019</i>			
<b>Report Author</b>	Lynda Rogan, Mental Health Act Manager			
<b>Report Sponsor</b>	David Roberts, Service Director, Mental Health & Learning Disabilities Service Delivery Unit			
<b>Presented by</b>	David Roberts, Service Director, Mental Health & Learning Disabilities Service Delivery Unit			
<b>Freedom of Information</b>	Open			
<b>Purpose of the Report</b>	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.			
<b>Key Issues</b>	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.			
<b>Specific Action Required (please ✓ one only)</b>	<b>Information</b>	<b>Discussion</b>	<b>Assurance</b>	<b>Approval</b>
				✓
<b>Recommendations</b>	Members are asked to: <ul style="list-style-type: none"> <li>Approve the report for submission to the Health Board.</li> </ul>			

Governance and Assurance							
<b>Link to corporate objectives</b> (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		
		✓	✓		✓		
<b>Link to Health and Care Standards</b> (please ✓)	Staying Healthy	Safe Care	Effective Care	Dignified Care	Timely Care	Individual Care	Staff and Resources
	✓	✓	✓	✓	✓	✓	✓
<b>Quality, Safety and Patient Experience</b>							
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.							
<b>Financial Implications</b>							
There are no financial implications in this report.							
<b>Legal Implications (including equality and diversity assessment)</b>							
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).							
<b>Staffing Implications</b>							
There are no workforce issues in this report.							
<b>Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015 - <a href="https://futuregenerations.wales/about-us/future-generations-act/">https://futuregenerations.wales/about-us/future-generations-act/</a>)</b>							
The report does not impact on population health.							
<b>Report History</b>	Considered by the Mental Health & Learning Disabilities Legislative Committee Operational Group on 21 January 19						
<b>Appendices</b>	<b>1. Benchmarking Report on Defective and Rectifiable Errors</b> <b>2. Postponements and adjournments of the Hospital Managers Power of Discharge patient review panels</b>						

## EXCEPTION REPORT

### 1.0 INTRODUCTION

The report provides assurance in respect of the work that has been undertaken by Mental Health and Learning Disabilities (MHLD) 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 fourteen exceptions for this period and four invalid detention identified by the Mental Health Act Department. An analysis of the reason for the invalid detention between the periods 1 January – 31 March 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	<b>Morrison Hospital (AMU West)</b>  A section 5(2) was completed for the patient, however, the doctor did not complete the start date on the Form HO12. As this omission could not be rectified under section 15 of the Act it rendered the holding power invalid.  Detention without authority: <b>72 hours</b>	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. Correspondence sent to patient to inform them of the incident. Incident Report Form completed.	MHA Administrator MHA Administrator  MHA Administrator  MHA Administrator MHA Administrator

2	<p><b>Neath Port Talbot Hospital (Ward F)</b></p> <p>The AMHP did not complete the correct hospital details for a transferred patient on their section 2 application. As the correct procedure under section 6 of the Act was not followed it invalidated the detention.</p> <p>Detention without authority: <b>40 hours 25 mins</b></p>	<p>Ward manager informed that detention is invalid. Doctor informed that detention is invalid and 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.</p>	<p>MHA Administrator</p> <p>MHA Administrator</p> <p>MHA Administrator</p> <p>MHA Administrator</p>
3	<p><b>Morriston Hospital (Ward C)</b></p> <p>A section 5(2) was completed for the patient, however, the doctor did not complete the start date on the Form HO12. As this omission could not be rectified under section 15 of the Act it rendered the holding power invalid.</p> <p>Detention without authority: <b>20 hours 40 mins</b></p>	<p>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. Correspondence sent to patient to inform them of the incident. Incident Report Form completed.</p>	<p>MHA Administrator</p> <p>MHA Administrator</p> <p>MHA Administrator</p> <p>MHA Administrator</p> <p>MHA Administrator</p>
4	<p><b>Cefn Coed Hospital (Clyne Ward)</b></p> <p>The AMHP completed their application prior to the medical recommendations being completed. As the correct procedure under section 12(1) of the Act was not followed it invalidated the detention.</p> <p>Detention without authority: <b>1 hour 12 mins</b></p>	<p>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. Correspondence sent to patient to inform them of the incident. Incident Report Form completed.</p>	<p>MHA Administrator</p> <p>MHA Administrator</p> <p>MHA Administrator</p> <p>MHA Administrator</p> <p>MHA Administrator</p>

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.

1<sup>st</sup> January – 31<sup>st</sup> March 2019 (Quarter 4)

### **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:

- Five under 18 year olds were admitted informally to Ward F, Neath Port Talbot Hospital for a period of 1-2 day, and one under 18 year old was admitted under the Act to Taith Newydd.
- Section 4 which should only take place in cases of urgent necessity and to avoid an unacceptable delay was used on four occasions, all patients had their section 4 converted to section 2 within the 72 hour period allowed.
- There were five deaths of patients who were detained under the Mental Health Act. The deaths were reported to Healthcare Inspectorate Wales in accordance with protocol.

## **6. Hospital Managers Power of Discharge Committee**

There were no meetings held by the above committee. A list of postponed hearings is attached at **Appendix 2**.

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

- During the reporting period there was one announced visit by HIW to community services in Neath Port Talbot in the Mental Health & Learning Disability Delivery Unit. The use of the electronic Mental Health Act system was commended by HIW reviewers.

## **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.

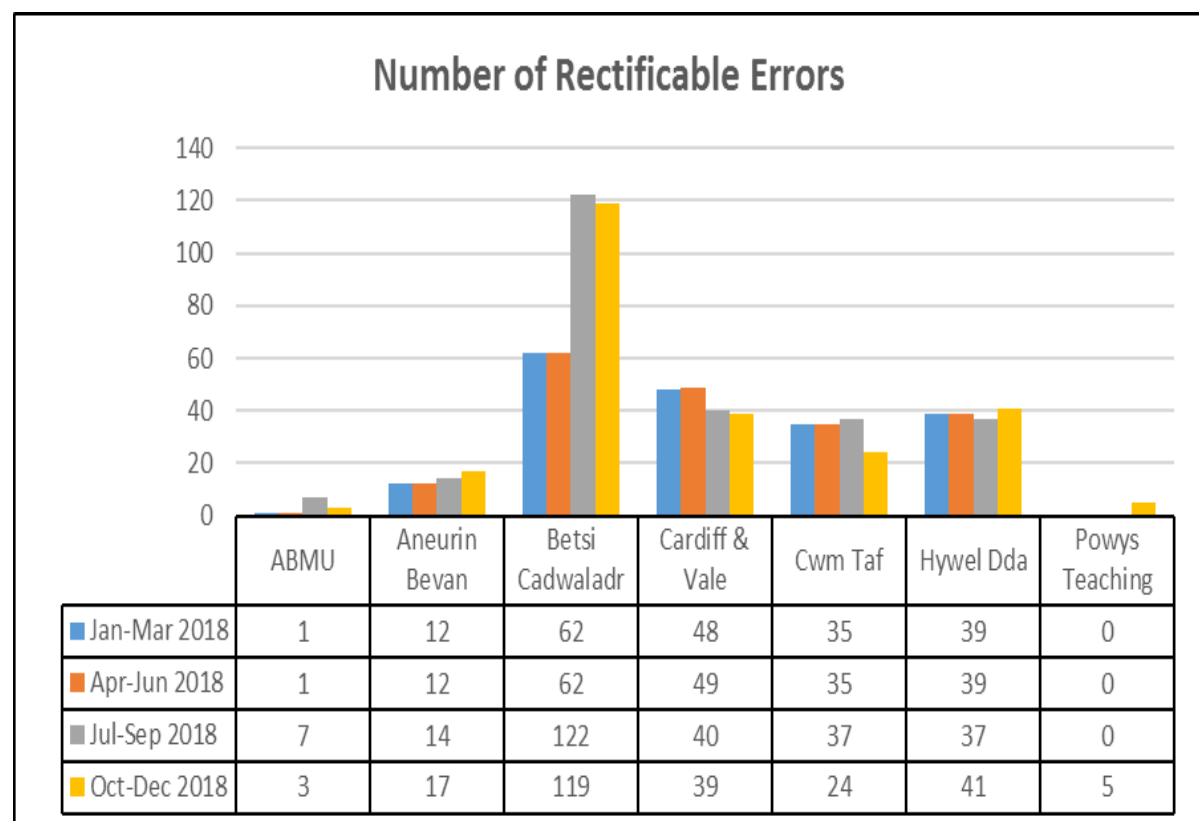
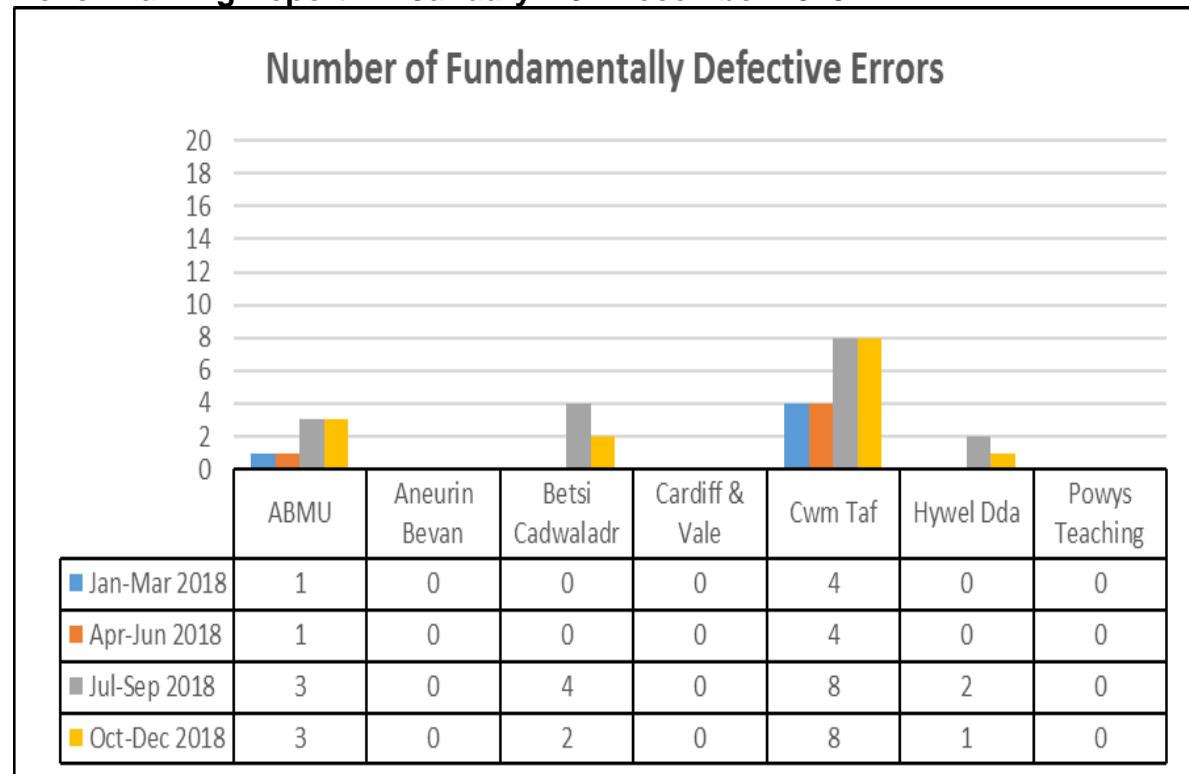
### **Actions**

- 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.

# Benchmarking Report – 1 January – 31 December 2018



**Hospital Managers Postponed/Adjourned during 1 January – 31 March 2019**

Postponed/Adjourned	Type of hearing	Date/time	Reason for postponement/adjournment	Outcome
Postponed	Renewal of detention	07/01/2019	Advocacy did not action a referral sent to them by the MHA Department and requested a postponement as they were unable to attend to support the patient.	Rescheduled hearing on 14/01/2017
Postponed*	Renewal of detention	25/01/2019	The CPN who was allocated to complete the social circumstances report requested a postponement on 23/01/19 as they had only returned from sickness absence the day before the report was due.	Rescheduled hearing on 15/02/2019
Postponed*	Renewal of detention	15/02/2019	Contacted by patient's solicitor who requested a postponement as he could not attend on the date provided.	Rescheduled hearing on 01/03/2019
Postponed	Application for discharge from detention	22/02/2019	Advocate requested a postponement on behalf of the patient who was not well enough to attend.	Rescheduled hearing on 04/04/2019

\*Relates to the same patient



