



Bwrdd Iechyd Prifysgol  
Bae Abertawe  
Swansea Bay University  
Health Board



<b>Meeting Date</b>	<b>09 May 2019</b>	<b>Agenda Item</b>	<b>4.a</b>
<b>Report Title</b>	<b>Mental Capacity Act 2005 Update Monitoring Report</b>		
<b>Report Author</b>	Jodie Denniss, Interim Deputy Head of Safeguarding		
<b>Report Sponsor</b>	Gareth Howells, Director of Nursing and Patient Experience		
<b>Presented by</b>	Gareth Howells, Director of Nursing and Patient Experience		
<b>Freedom of Information</b>	<b>Open</b>		
<b>Purpose of the Report</b>	This paper will provide the Committee of the Health Board position in relation to the Mental Capacity Act 2005		
<b>Key Issues</b>	This report highlights the importance of consistent and robust safeguarding and governance processes, which are an essential part in contributing to effective safeguarding for adults at risk.		
<b>Specific Action Required (please choose one only)</b>	<b>Information</b>	<b>Discussion</b>	<b>Assurance</b>
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Recommendations</b>	Members are asked to: <ul style="list-style-type: none"> <li><b>NOTE</b></li> </ul>		

# **MENTAL CAPACITY ACT 2005 UPDATE MONITORING REPORT**

## **1. INTRODUCTION**

The Mental Health and Capacity Act Legislative Committee has requested a monitoring report to assure the Board of Swansea Bay University Health Board (SBU HB) compliance with the Mental Capacity Act 2005.

## **2. BACKGROUND**

The Mental Capacity Act 2005 (MCA) came into force in October 2007 but was amended to include the Deprivation of Liberty Safeguards (DoLS) in April 2009.

The HB supports a significant number of patients with impaired decision-making, therefore this report aims to provide assurance of awareness and the use of MCA throughout the Health Board, for example through training and the use of the Independent Mental Capacity Advocacy Service (IMCA's).

### **2.1 LEGISLATIVE UPDATE**

In March 2018, the Government announced it would proceed with legislation to alter the Mental Capacity Act, which in the main will involve changes to the Deprivation of Liberty Safeguards. However, there will be some significant changes to other aspects of the MCA; the Mental Capacity (Amendment) Bill is currently proceeding through the House of Lords having been returned from the House of Commons on 2<sup>nd</sup> April 2019.

### **2.2 MCA TRAINING**

MCA Level 1 & 2 training is available for all SBU HB staff via e-learning. The Service Delivery Units (SDUs) currently monitor MCA training levels as part of their overall training compliance, reporting to the Safeguarding Committee on a quarterly basis. MCA Level 3 training is taught as a workshop directed at ward managers, senior nurses and senior clinicians whereby there is the ability to discuss cases and practice issues. This training session is delivered monthly under the Health Board's Educational contract, by law lecturers from Swansea University.

Following feedback from the SDUs regarding the quality and suitability of training delivered, and recommendations from the recent Healthcare Inspectorate Wales report regarding safeguarding training, the Corporate Safeguarding Team have commenced a period of evaluation, initially targeting Deprivation of Liberty Safeguards training and then extending to Mental Capacity Act training. The Corporate

Safeguarding Team is currently developing training needs analyses in conjunction with the SDUs; and will review training content in conjunction with Swansea University once the new legislation is passed and ensure content is practice-based as well as providing the legislative overview.

### 2.3 INDEPENDENT MENTAL CAPACITY ADVOCATES (IMCA)

The Independent Mental Capacity Advocate (IMCA) service is a statutory service which came into effect in Wales on the 1<sup>st</sup> October 2007. IMCAs are independent advocates who represent people who lack capacity in order to support them in making important decisions, which must comply with the MCA 2005. They were introduced by the MCA to act as a person’s legal safeguard and are usually instructed when there is no other independent person (e.g. a relative or friend) to act on the person’s behalf. The IMCA service that is currently contracted to the HB is provided by Mental Health Matters Wales, and quarterly monitoring reports are provided to the Health Board. There has been a decrease in instructions compared to the previous quarter. Between January and March 17 instructions were received for an IMCA from the HB (Table 1).

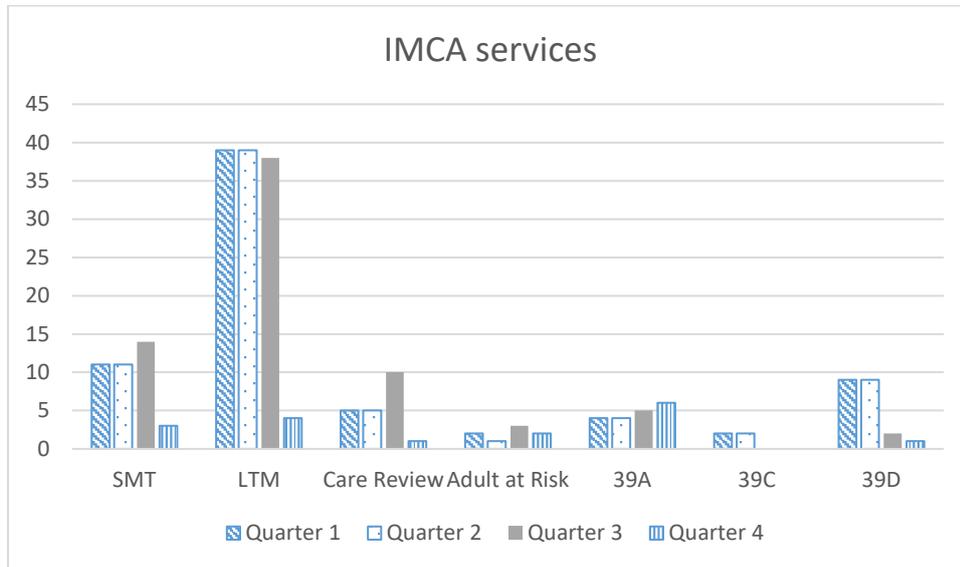
**TABLE 1: BREAKDOWN OF REASONS FOR INSTRUCTION OF AN IMCA**

Local Area	Serious Medical Treatment	Long term move of accommodation	Care Review	Vulnerable Adult	39a*	39c*	39d*
Bridgend	0	1	1	0	5	0	1
Swansea	2	0	0	0	0	0	0
Neath Port Talbot	1	3	0	2	1	0	0
	3	4	1	2	6	0	1

\* These different categories are, when a person who is deprived of their liberty, does not have a representative e.g. a friend, family member or advocate

Table 2 overleaf illustrates the variance in levels of instructions over the past financial year.

**TABLE 2: INSTRUCTION OF IMCAs 2018-19**



## 2.4 BEST INTEREST DECISIONS

If a patient has been assessed as lacking in capacity then any action taken or decision made on their behalf must be made in his or her best interests. There are many factors within the MCA to consider in deciding what is in a person's best interests. It is good professional practice to record these, particularly as these decisions may be challenged. These best interest decisions happen on a frequent basis and can vary from simple to very complicated. Currently the Service Delivery Units (SDUs) do not report the number of occasions where best interest decisions are made or provide assurance around the process. The Primary Care and Community Service Delivery Unit has recently appointed two substantive Best Interests Assessors. In conjunction with them and the DoLS Improvement and Support Group, the Corporate Safeguarding Team are currently working with the SDU's to establish an effective way to record this information in order to provide assurance to the Board. This will be reported through the Safeguarding Committee and will include:

- An audit to establish the baseline position of current systems in place for recording/measuring the quality and standards of best interest meetings held on the wards, to be completed by July 2019.
- Assessing the support available to the SDUs and consider implementation of a Best Interests Practice & Development group led by BIA leads and Safeguarding leads from the SDUs.

## **2.5 COURT OF PROTECTION**

The Court of Protection is a key decision making component of the Mental Capacity Act and has jurisdiction over property, financial affairs and the welfare of people who lack capacity. It has the same powers, rights, privileges and authority as the High Court. The Corporate Safeguarding Team intends to work with the legal team and Service Delivery Units, to ensure a clear process whereby all Court of Protection cases involving SBU HB engaged as a party, are brought to the attention of the Corporate Safeguarding team; also that subsequent actions required to have clear lines of co-ordination and that any learning from judgements are identified and disseminated via the Safeguarding Committee. There are currently 16 ongoing DoLS cases that the legal team are engaged in involving SBU HB.

## **3. GOVERNANCE AND RISK ISSUES**

Staff training compliance figures should be available from ESR but there continue to be difficulties in obtaining these; however, work related to this is continuing. The Service Delivery Units (SDUs) monitor MCA training levels as part of their overall Safeguarding training compliance, reporting to the Safeguarding Committee via their Performance reports.

## **4. FINANCIAL IMPLICATIONS**

Safeguarding is a core duty of care for the Health Board. Financial implications to meet the statutory safeguarding mandatory training requirements are within existing budgets. Withdrawal of Bridgend Local Authority funding has resulted in an additional cost pressure for the Corporate Safeguarding Team but this is minimal.

## **5. RECOMMENDATION**

The Committee is asked to note the contents of this report.

<b>Governance and Assurance</b>		
<b>Link to Enabling Objectives (please choose)</b>	<b>Supporting better health and wellbeing by actively promoting and empowering people to live well in resilient communities</b>	
	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"/>
	<b>Deliver better care through excellent health and care services achieving the outcomes that matter most to people</b>	
	Best Value Outcomes and High Quality Care	<input checked="" type="checkbox"/>
	Partnerships for Care	<input checked="" type="checkbox"/>
	Excellent Staff	<input checked="" type="checkbox"/>
	Digitally Enabled Care	<input type="checkbox"/>
	Outstanding Research, Innovation, Education and Learning	<input type="checkbox"/>
<b>Health and Care Standards</b>		
<b>(please choose)</b>	Staying Healthy	<input checked="" type="checkbox"/>
	Safe Care	<input checked="" type="checkbox"/>
	Effective Care	<input checked="" type="checkbox"/>
	Dignified Care	<input checked="" type="checkbox"/>
	Timely Care	<input type="checkbox"/>
	Individual Care	<input checked="" type="checkbox"/>
	Staff and Resources	<input checked="" type="checkbox"/>
<b>Quality, Safety and Patient Experience</b>		
N/A		
<b>Financial Implications</b>		
Safeguarding is a core duty of care for the Health Board. Financial implications to meet the statutory safeguarding mandatory training requirements are within existing budgets. Withdrawal of Bridgend Local Authority funding has resulted in an additional cost pressure for the Corporate Safeguarding Team but this is minimal.		
<b>Legal Implications (including equality and diversity assessment)</b>		
The Health Board has a statutory responsibility to make arrangements to protect and safeguard the welfare of children, young people and adults at risk. Safeguarding policies uphold that patient and service users have the right to independence, dignity, respect, equality, privacy and choice.		
<b>Staffing Implications</b>		
N/A		

<b>Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)</b>	
Improve population health through prevention and early intervention	
<b>Report History</b>	N/A
<b>Appendices</b>	N/A