

Unconfirmed
Minutes of the Mental Health Legislation Committee
held on 2nd February 2023 at 9.30am
via Microsoft teams

Present

Stephen Spill	Vice-Chair (in the chair)
Maggie Berry	Independent Member (until minute 10/23)
Jackie Davies	Independent Member

In Attendance

Anne-Louise Ferguson	Board Advisor (legal)
Carol Killa	External Reviewer, Corporate Governance
Gareth Howells	Director of Nursing and Patient Experience
Janet Williams	Service Group Director, Mental Health and Learning Disabilities
Jonathan Jones	Internal Audit
Hazel Lloyd	Director of Corporate Governance
Liz Stauber	Head of Corporate Governance
Amanda Davies	Interim Long-Term Care Manager (for minute 09/23)
Julia McCarthy	Head of Long-Term Care (for minute 09/23)

MINUTE		ACTION
01/23	WELCOME AND INTRODUCTIONS	
	The Chair welcomed all to the meeting.	
02/23	APOLOGIES FOR ABSENCE	
	Apologies for absence were received from Steve Jones, Service Group Nurse Director, Mental Health and Learning Disabilities and Penny Cram, Mental Health Act Manager	
03/23	DECLARATIONS OF INTEREST	
	There were no declarations of interest.	
04/23	MINUTES OF THE PREVIOUS MEETING	
	The minutes of the meeting held on 3 rd November 2022 were received and approved as a true and accurate record.	
05/23	MATTERS ARISING	
	There were no matters arising.	
06/23	ACTION LOG	
	The action log was received and noted , with the following updates provided:	

	<p>(i) <u>Action Point One – Mental Health Act Digitisation</u></p> <p>Gareth Howells advised that a decision was still awaited and it was agreed that the action would remain on the action log.</p> <p>(ii) <u>Action Point Two – Mental Health Legislation – Internal Audit</u></p> <p>Gareth Howells stated that two recommendations remained outstanding. An exercise had been undertaken to compare the requirements within the code of practice to the health board's reports to ensure compliance and assurance provided that compliance was in place. He added that the Mental Health Act Team had identified areas within the service group requiring training and learning and development colleges had supported the establishment of a training package to use. An update was expected imminently as to whether these two recommendations were now closed and it would remain on the action until this was received.</p> <p>(iii) <u>Action Point Three – Local Authority Care and Treatment Plans</u></p> <p>Janet Williams advised that she had previously written to both local authorities due to non-improvement in performance related to care and treatment plans. As a follow-up, individual care and treatment plans for individual practitioners were reviewed and under performance follow-up with line managers. An improvement had been seen in the last two months but it was agreed it would remain on the action log for a further update.</p>	
07/23	WORK PROGRAMME	
	The committee work programme was received and noted .	
08/23	MENTAL HEALTH ACT 1983 MONITORING REPORT	
	<p>A report providing an update on performance against the Mental Health Act 1983 monitoring report, together with care and treatment plans, and audit and action plans were received.</p> <p>In introducing the report, Janet Williams highlighted the following points:</p> <ul style="list-style-type: none"> - The report covered the period October to December 2022; - An increase had been evident in the use of section 5(2) with 37 occurrences reported; - The majority of the uses were in general hospital settings with a small number in the mother and baby unit, which had high acuity levels; - 16 new community treatment orders had been established which was seen as a positive as it meant more service users were being seen outside of a hospital setting; - There were plans to step down the triage service provided to South Wales Police as this was now superseded by 111 (press two) and the single point of access system, both of which were available 24 hours; - No unannounced Healthcare Inspectorate Wales (HIW) visits had taken place during the period but there had been one earlier the previous week to a learning disabilities bungalow in Ferndale. No immediate areas for action were raised; - The quality assurance framework had been revised to align with the board-wide system and the Service Group Nurse Director was running a programme of unannounced visits to service areas; 	

	<ul style="list-style-type: none"> - 13 Mental Health Act training events had taken place; - Three unlawful detentions had been reported and four detentions allowed to lapse and each were being addressed with the service area. <p>In discussing the report, the following points were raised:</p> <p>Jackie Davies praised the concept of unannounced visits by the Service Group Nurse Director and queried if issues would be raised with this committee. Janet Williams responded that any issues relating to compliance with the Act would be reported to the committee. She added that they were modelled in mini HIW inspections and all in the visiting group were assigned a particular role. A head of nursing from another service area participated as a peer reviewer and any areas of immediate concern highlighted for action. A summary report was issued after the visit and the service area asked to develop an action plan to address any areas of improvement, which was monitored by the service group's quality and safety lead.</p> <p>Jackie Davies requested that future reports include the reasons for unlawful detentions. Janet Williams agreed to include this.</p> <p>Anne-Louise Ferguson reference a report later on the agenda which noted 108 'did not attends' to training and queried how the service group could be assured staff who should be attending training were doing so. Janet Williams responded that all mental health and learning disabilities staff were expected to complete Mental health Act training every two years but there was no way to monitor it and it only became evident if an issue was reported. Gareth Howells advised that statutory and mandatory training was under review across the health board currently as given the operational and workforce pressures, it was becoming increasingly more challenging to release staff to complete training. This needed to be addressed as staff did need to be compliant. He suggested that the issue be referred to the Workforce and OD (organisational development) Committee. Steve Spill agreed that it should be the issue generally with focus given to compliance with mental health legislation.</p> <p>Maggie Berry queried if the increase in community treatment orders would create a backlog. Janet Williams confirmed that they would not, adding that the increase was a positive as it meant service users were not being detained in hospitals and the community service was working well to be able to support people at home instead. She added that there were only 55 adult acute beds available for people in Swansea and Neath Port Talbot as hospital should be the last resort.</p> <p>Steve Spill sought further detail around the stopping of the South Wales Police triage support. Janet Williams responded that this was an all-Wales service which saw mental health staff seconded to the triage centre to signpost when appropriate to services. With the establishment of the 111 (press two) service and single points of access, the police were now able to use these for advice on a 24/7 basis, superseding the triage service.</p>	SS/LS
Resolved:	<ul style="list-style-type: none"> - The report be noted; - Referral be made to the Workforce and OD Committee regarding the concerns raised for mandatory and statutory training compliance. 	SS/LS
09/23	MENTAL CAPACITY ACT 2005 AND DEPRIVATION OF LIBERTY SAFEGUARDS MONITORING REPORTS	

A report providing an update on the Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards (DoLS) monitoring reports, together with action plan, percentage of staff trained, and detail of the review of the risk rating were **received**.

In introducing the report, Amanda Davies highlighted the following points:

- An average of 65 referrals were received a month;
- For the period October to December 2022, 138 were marked as urgent, 38 standard and eight were reviews, with 34 breaches from the previous months;
- There were 21 breaches to carryover from this period;
- 250 best interest assessments had been procured from an external agency but not all these had been completed (around 50 were outstanding);
- Through Welsh Government funding, recruitment had been undertaken for two more substantive best interest assessors as well as increase the payment to external assessors from £120 to £250 per referral;
- Additional funding had also been received to recruit a business administrative manager and a clinical nurse educator to support training delivery; A task and finish group had been established to support the transition to Liberty Protection Safeguards (LPS);
- Training for Deprivation of Liberty Safeguards (DoLS) and Mental Capacity Act training had improved across the service groups but there had been 108 staff who did not attend. DoLS training was now part of the nurse induction which had reached 104 staff in quarter three.

In discussing the report, the following points were made:

Jackie Davies referenced the 67 referrals a month, excluding the carried over backlog, and queried if the existing best interest assessor and newly recruited additional two were sufficient to manage the monthly cases. Amanda Davies responded that the three were not enough to manage all the referrals. Steve Spill reflected on the entry on the risk register for best interest assessors, the score for which had been reduced from 16 (4x4) to 15 (3x5) and queried whether the mark for 'consequence' should be four, rather than three, given it was a breach in the law, and likelihood to remain at five, giving a score of 20. This would give it more focus. He suggested that he raise this as part of the committee's update to the next board and this was agreed. Anne-Louise Ferguson agreed with Steve Spill's points, adding that there was already a backlog and this would continue to grow if there were not enough best interest assessors to manage the current cases. Carol Killa advised that there had been a cautious approach taken to recurring new best interest assessors as it was unclear that the role would be once the transition was made from DoLS to LPS. There was now more clarity that a similar role would be needed which would support further recruitment.

Jackie Davies asked how staff could become best interest assessors and whether there was potential to train staff who could then join the bank to review referrals as part of bank or over-time shifts. Amanda Davies advised that a number of staff in the long-term care team had been trained the

	<p>previous year but the offers of over-time had not been taken up on a great scale. It was hoped the increase in payment would now encourage more external best interest assessors to return to the health board as the amount had been benchmarked against the independent provider as well and other health boards and local authorities.</p> <p>Jackie Davies queried if the training was provided in-house or through the university. Amanda Davies confirmed it was currently through the university but a review was being undertaken to see if it was something the team leader could provide. However there could be a cost implication to purchase the training package.</p> <p>Maggie Berry stated that the number of the reviews marked as urgent and the numbers accepted did not correlate and asked whether a lack of training meant that referrals were being marked as urgent when they should have been standard. Carol Killa advised that this had been an issue and had led to the referral form being reviewed as the way it was set out almost encouraged nursing staff to mark referrals as urgent. This had been revised and also guidance sent out alongside the form to help nursing staff consider if it was an urgent referral. The situation now needed to be monitored to see if this had had an impact.</p>	
Resolved:	<ul style="list-style-type: none"> - The report be noted. - Risk score for best interest assessors be escalated to the board for a review. 	SS/LS
10/23	HEALTH BOARDS IMPLICATIONS AND PREPAREDNESS SURROUNDING LIBERTY PROTECTION SAFEGUARDS	
	<p>A report detailing the health board implications and preparedness surrounding liberty protection safeguards was received.</p> <p>In presenting the report Carol Killa highlighted the following points:</p> <ul style="list-style-type: none"> - Progress had been made to prepare for the transfer to LPS but there was yet to be an established date for implementation. One was expected now that the consultation had closed but would likely be 2024 at the earliest; - A decision was yet to be made as to the hosting arrangements for the legal body; - A task and finish group had been established within the health board, chaired by the Director of Nursing and Patient Experience, to ensure the health board's preparedness; - Around four to six best interest assessors were needed to manage the current level of demand and move to LPS would mean the wider Mental Capacity Act would need to be taken into account, not just DoLS; - Proposals were being developed to revert back to having a dedicated Mental Capacity Act team with a lead to oversee the role of the service and the court of protection cases would need to be a feature of this; - More complex cases were being referred which was challenging for staff and also impacted on patient flow; - Welsh Government monies were to be used for a clinical nurse 	

	<p>educator to provide training and support to staff on the wards;</p> <ul style="list-style-type: none"> - There had been an increase in the number of court ordered reports, which had a word count of around 6,000. Ward staff did not feel skilled enough to complete these but a dedicated team would be able to provide support; - Work was continuing on the all-Wales IMCA (independent mental capacity advocate) contract. Funding had been increased by Welsh Government to support the required infrastructure ready for implementation in 2024; - A small audit was undertaken across the service groups which identified a lack of understanding of the Mental Capacity Act and DoLS processed which was leading to patients documented as not having capacity but not referred to DoLS for authorisation. This opened the health board up to the risk of challenge for unlawful DoLS. The dedicated team would be able to support the clinical areas to address this. <p>In discussing the report the following points were raised:</p> <p>Anne-Louise Ferguson sought an update on the training being developed by Welsh Government and whether this was delaying the implementation date. Carol Killa advised that providers had now been procured to develop the training pack and it was expected to be rolled-out later in 2023 in advance of the LPS launch. As codes of practice were yet to be agreed, training could not yet commence, which was making staff momentum challenging.</p> <p>Anne-Louise Ferguson stated that having a Mental Capacity Act team would help the health board enormously as one area of difficulty for legal teams was knowing who to contact and it would likely be the same for staff. This would help remove some of the burden.</p> <p>Steve Spill queried if a patient was showing signs of a challenged mental capacity, the likelihood of someone on the ward being trained under the Mental Capacity Act. Carol Killa responded that it would be unlikely and it tended to be the DoLS team who provided the advice. However, he balance was often off as staff either came to the team too early for support or too late, sometimes leading to legal challenge.</p>	
Resolved:	The report be noted .	
11/23	MENTAL HEALTH (WALES) MEASURE 2010 MONITORING REPORT	
	<p>The Mental Health (Wales) Measure 2010 monitoring report was received.</p> <p>In introducing the report, Janet Williams highlighted the following points:</p> <ul style="list-style-type: none"> - The health board consistently met the 80% target for part one of the measure but once CAMHS (child and adolescent mental health services) data was incorporated this reduced the performance; - It was hoped once CAMHS had been repatriated back to the health board (this was currently in progress), performance would improve but for now, the data would be reported separately; - Part two of the measure had been met in three of the last four months and it was hoped the work to monitor care and treatment plan performance in local authorities would improve this further; 	

	<p>- Parts three and four both remained at 100% compliance.</p> <p>In discussing the report the following points were raised:</p> <p>Jackie Davies commented that she was looking forward to seeing if an impact was had on CAMHS performance following its repatriation, of which she was in full support. Janet Williams responded that the purpose was to improve services but this would be a journey of three to five years as it adjusted to being within Swansea Bay.</p> <p>Steve Spill noted the reference to the local authority impact on the care and treatment plan performance and queried their involvement. Janet Williams advised that these were meant to be a joint response with a lead practitioner set dependent on whether the majority of the care was health or social care, with most provided by the health board. Whoever was the lead on the case management needed to ensure the care and treatment plan was reviewed – this was discussed with the service user, who then signed it. There was more control when health was the lead, which was why more monitoring was put in place for local authorities.</p>	
Resolved:	The report be noted .	
12/23	ITEMS TO REFER TO OTHER COMMITTEES	
	There were no items to refer to other committees.	
13/23	ANY OTHER BUSINESS	
	There was no further business and the meeting was closed.	
14/23	DATE OF THE NEXT MEETING	
	The next meeting is to take place on Thursday 11th May 2023	