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Bwrdd Iechyd Prifysgol  
Bae Abertawe  
Swansea Bay University  
Health Board



<b>Meeting Date</b>	<b>11 May 2023</b>	<b>Agenda Item</b>	<b>2.1</b>
<b>Report Title</b>	<b>Mental Health Act Activity Report: Jan-Mar 2023</b>		
<b>Report Author</b>	Penny Cram – Mental Health Act Service Manager		
<b>Report Sponsor</b>	Janet Williams – Service Group Director		
<b>Presented by</b>	Janet Williams – Service Group Director		
<b>Freedom of Information</b>	Open		
<b>Purpose of the Report</b>	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.		
<b>Key Issues</b>	<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 that may have an impact, including the Human Rights Act 1998, Mental Capacity Act 2005 and Mental Health (Wales) Measure 2010.</p>		
<b>Specific Action Required</b> <i>(please choose one only)</i>	<b>Information</b>	<b>Discussion</b>	<b>Assurance</b>
	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Recommendations</b>	<p>Members are asked to:</p> <p>Receive and note this report</p>		

## **Mental Health Act Activity Report January – March 2023**

### **1. INTRODUCTION**

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.

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 that 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 4 & Part 4A – Concerned with medical treatment for mental disorder**

Part 4 of the Act deals with people who have been detained in hospital, including those who are on section 17 leave, those who are absent without leave, and Community Treatment Order patients who have been recalled to hospital.

Part 4A of the Act deals with people who are on a Community Treatment Order

#### **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**

Hospital managers should monitor the use of section 5, including:

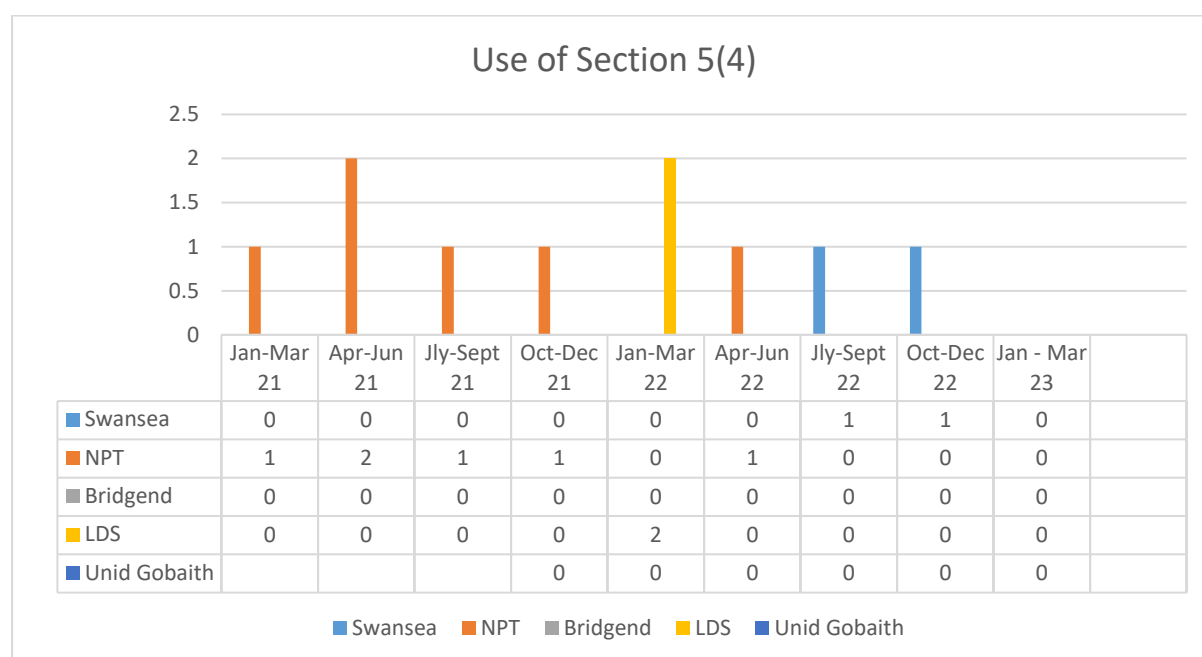
1. how quickly patients are assessed for detention and discharged from the holding power
  - 84% of patients were assessed within 24 hours (26/31)
  - 16% of patients were assessed within 48 hours (5/31)

2. the attendance times of doctors and approved clinicians following the use of section 5(4)
3. the proportion of cases in which applications for detention are, in fact, made following use of section 5

58% of cases resulted in a detention under the Act (18/31)

**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 a further assessment to take place.

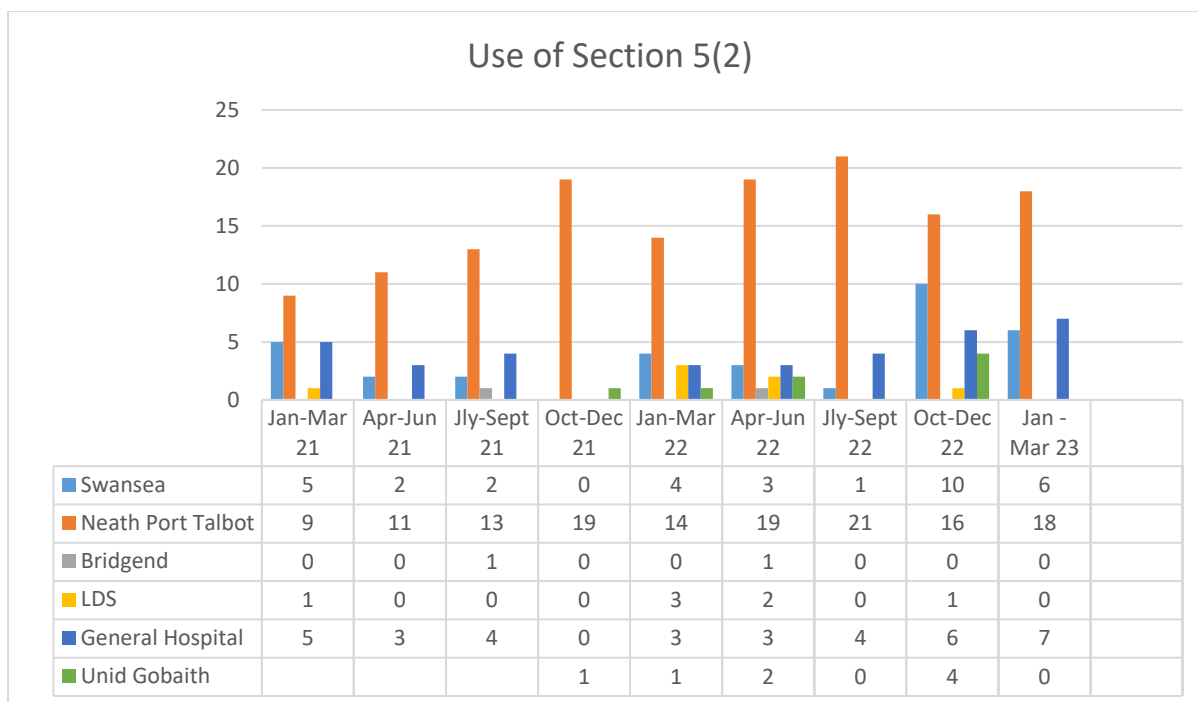
Section 5(4) was not used during this reporting period



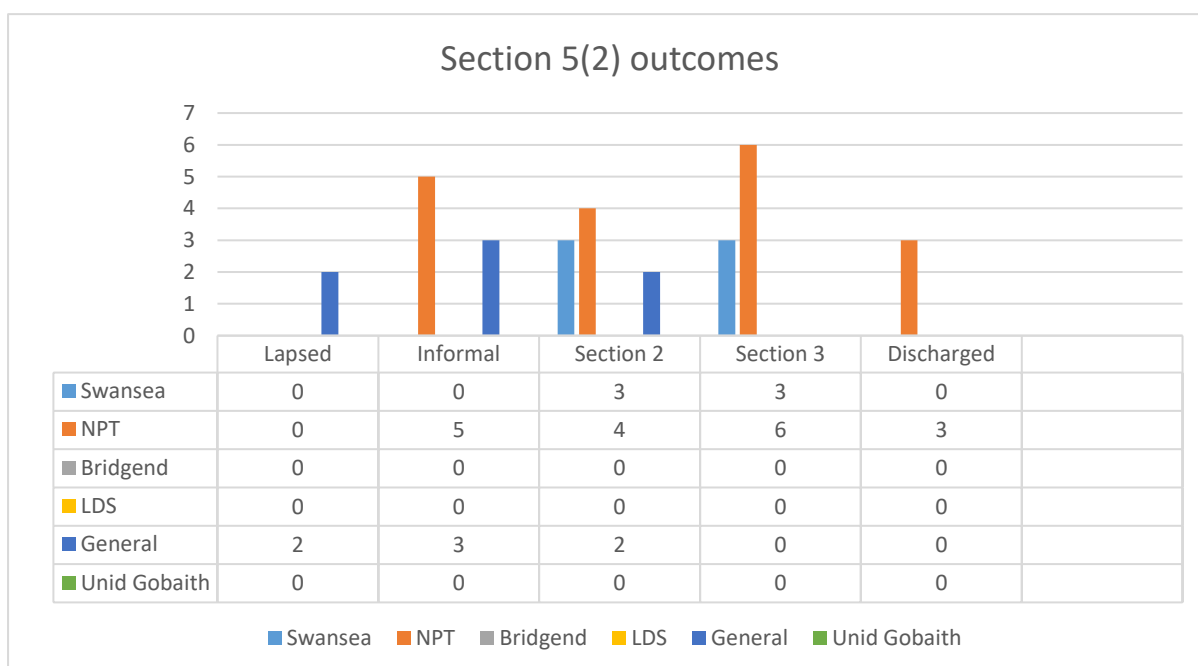
*The graph above shows use of section 5(4) together with comparison data over 2 years*

**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 31 occasions.



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

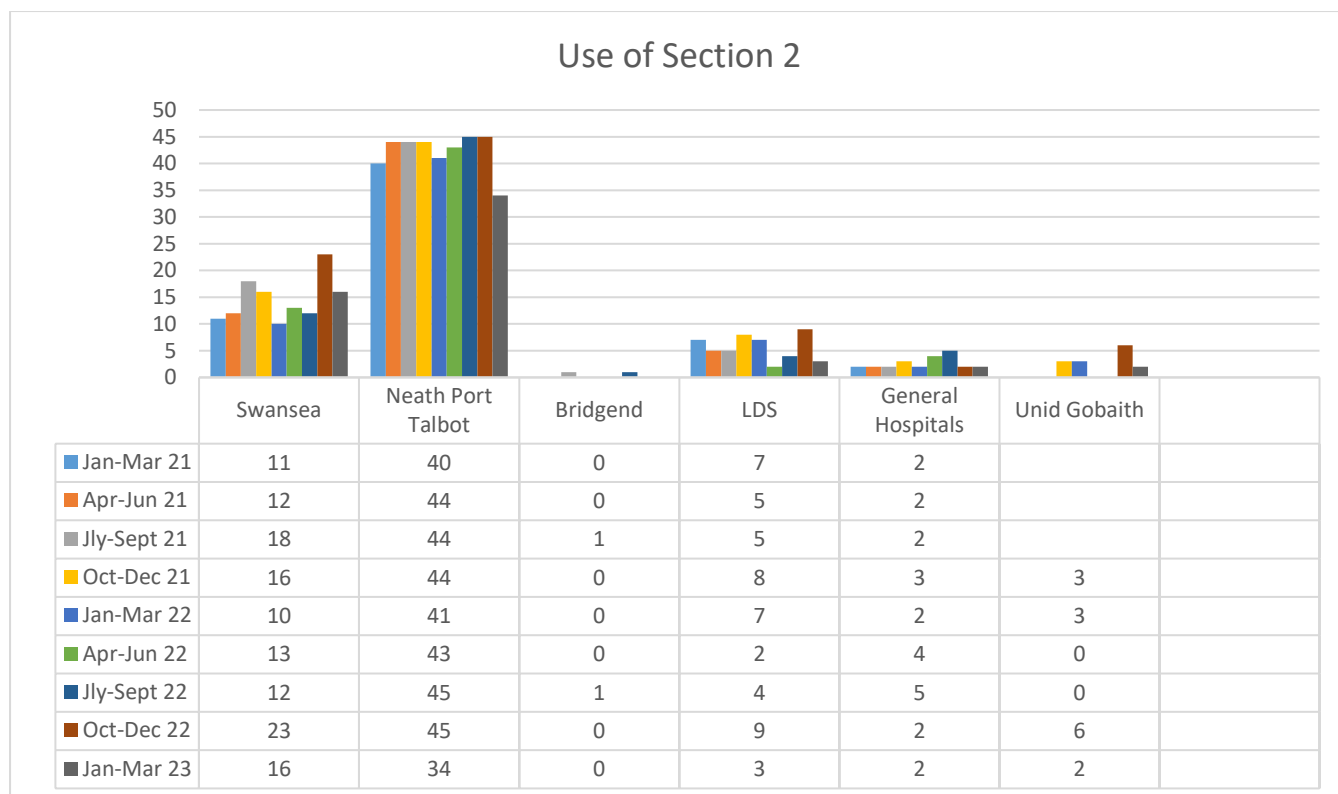


**The graph above shows the outcomes for section 5(2) in this reporting period**

## Section 2 – Admission for Assessment

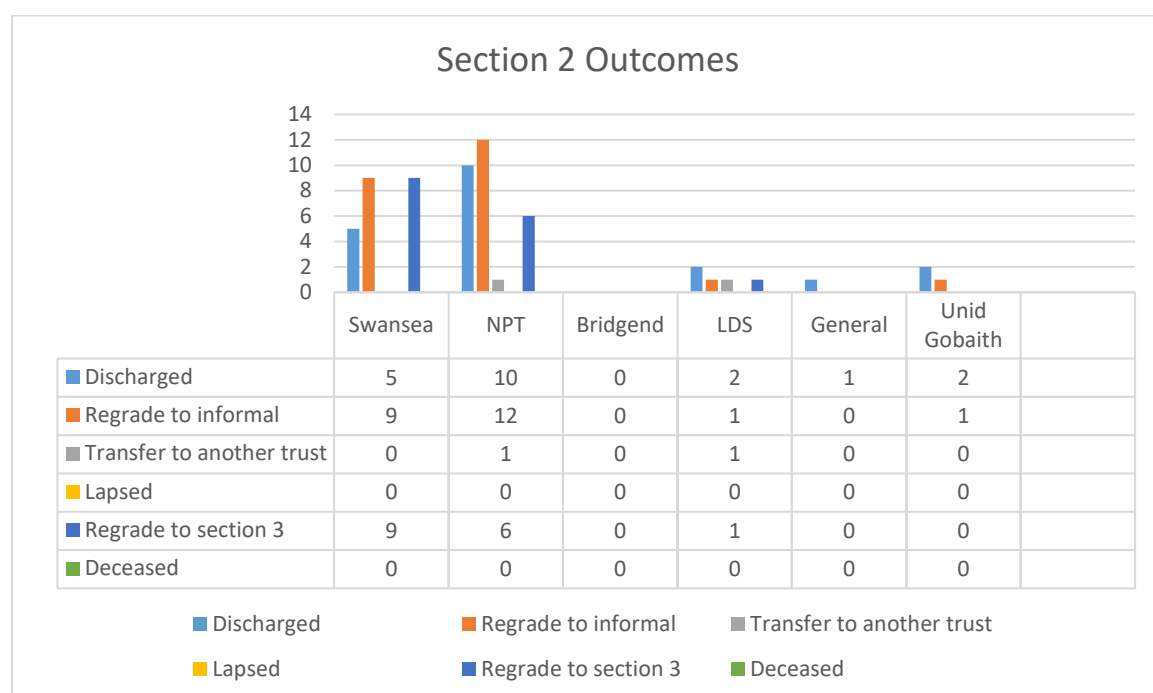
**Section 2** authorises the compulsory admission of a patient to hospital for assessment (or for assessment followed by medical treatment), for mental disorder, for up to 28 days.

Section 2 was used on 57 occasions

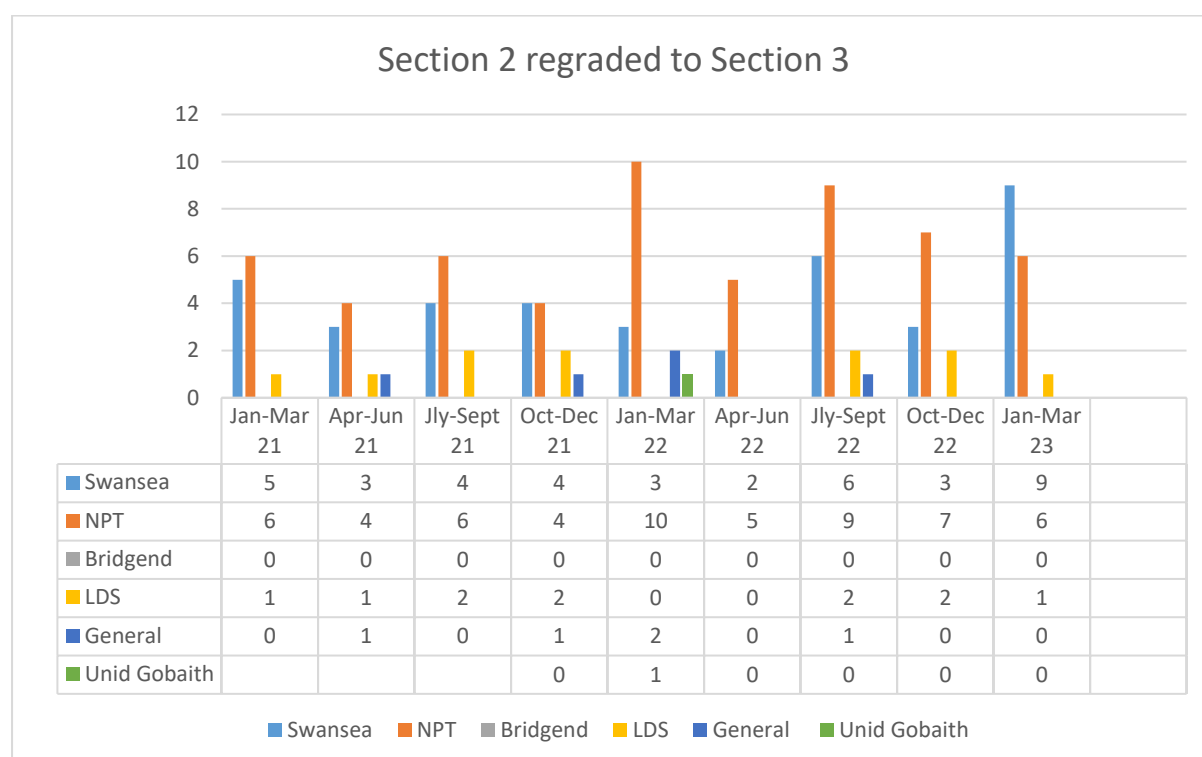


***The graph above shows the use of section 2 with comparison data over 2 years***

## Section 2 Outcomes



*The graph shows section 2 outcomes for the reporting period*

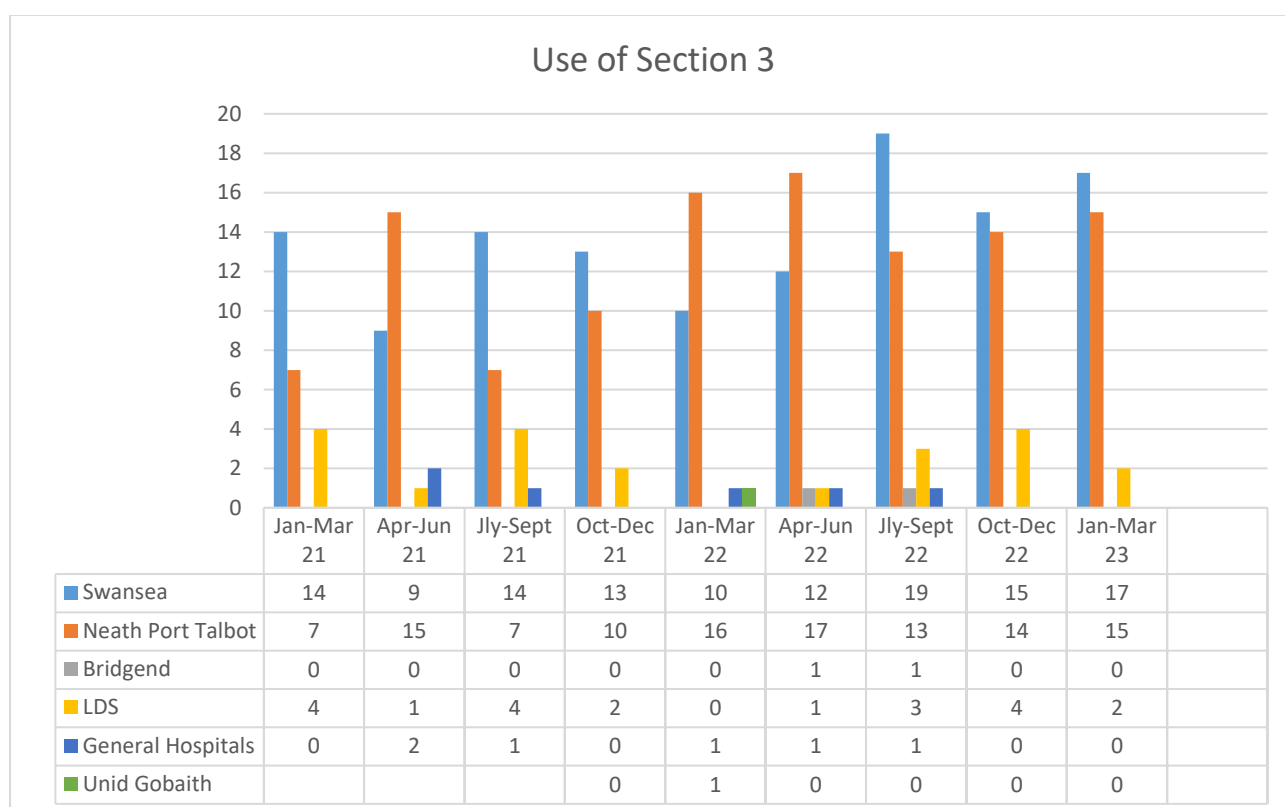


*This table shows the number of section 2 detentions regraded to section 3, with comparison data from previous 2 years*

## 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 , followed by yearly renewals thereafter.

Section 3 was used on 34 occasions



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

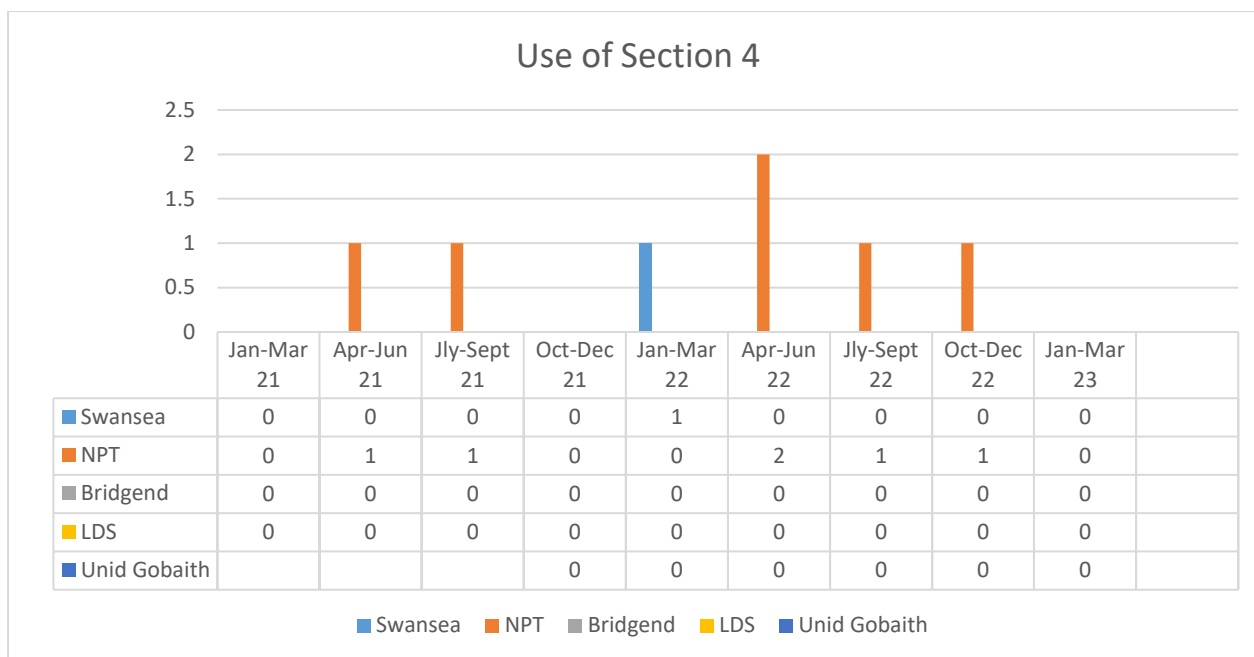
## Section 4 – Emergency Admission for Assessment

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.

Hospital managers should monitor the use of section 4 and ensure second doctors are available to visit a patient within a reasonable time after being requested. This will also be monitored by HIW

Section 4 was not used during this reporting period





*The graph above shows comparison data over 2 years*

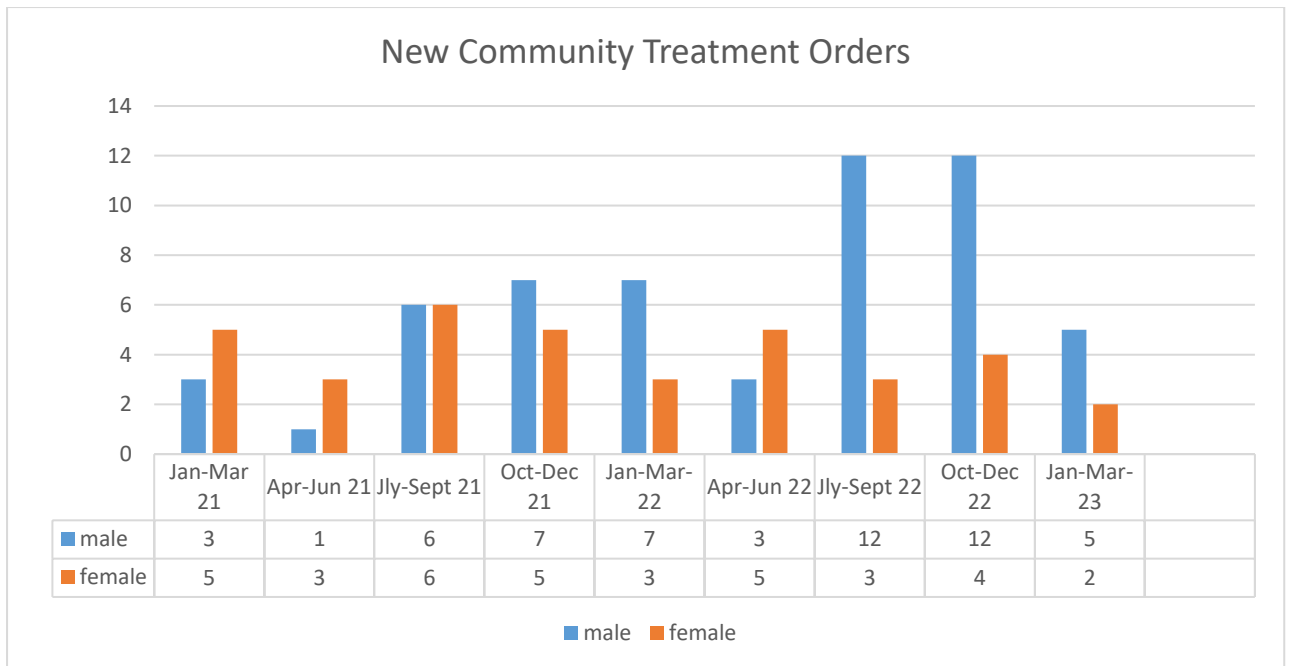
## Under 18 Admissions

There were no admissions to Ward F during the reporting period

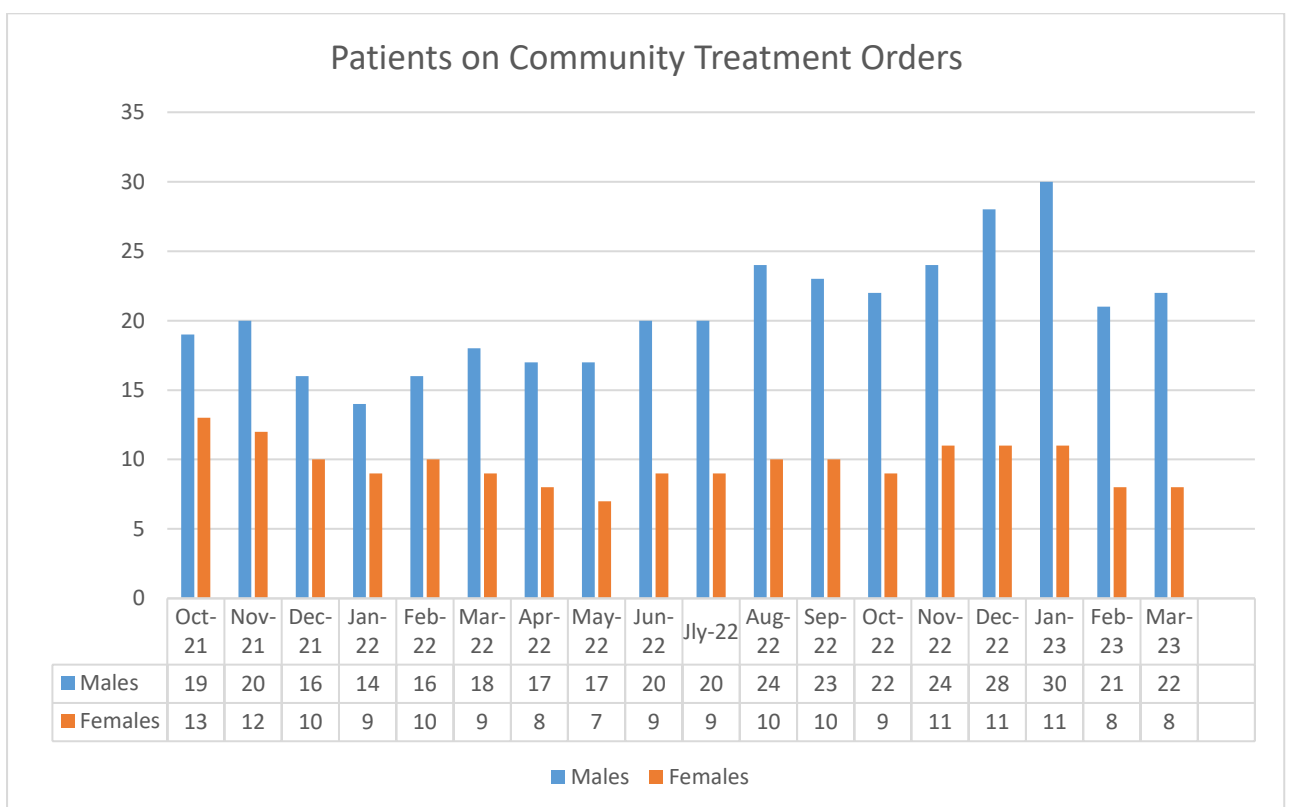
## Section 17A – Community Treatment Order

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.

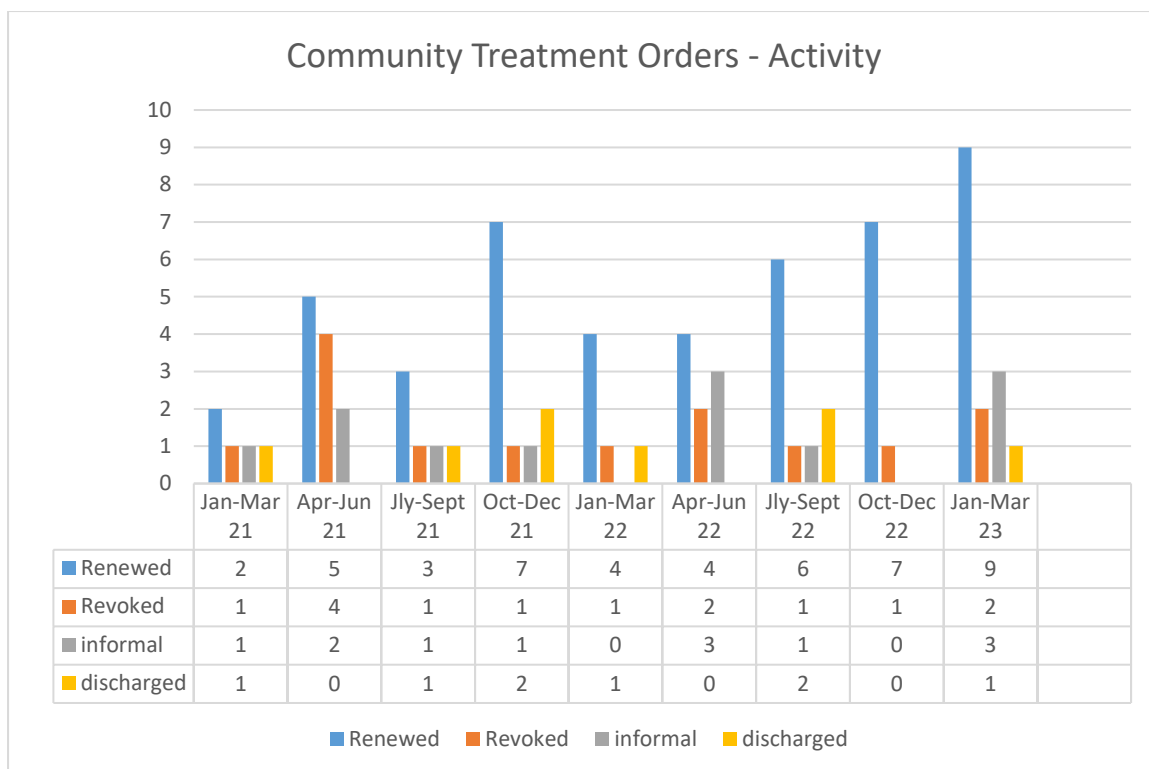
There were seven new Community Treatment Orders during the reporting period.



***This graph shows the number of new CTOs by gender during the reporting period including comparison data from previous 2 years***



***This graph shows the number of patients on a CTO at the end of each month end in this reporting period and including comparison data from previous 2 years***



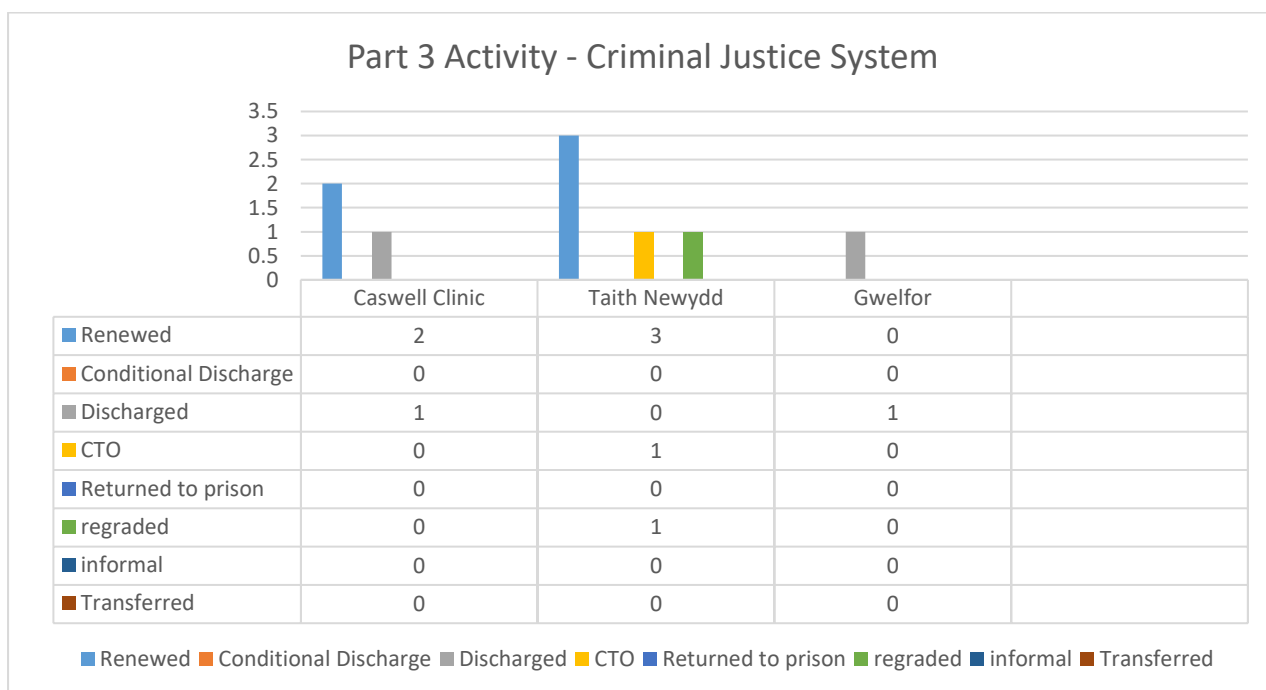
*This graph shows activity related to CTO patients over the past 2 years*

### Part 3 Criminal Justice System Data: January – March 2023

There were three new Part 3 patients during this reporting period:

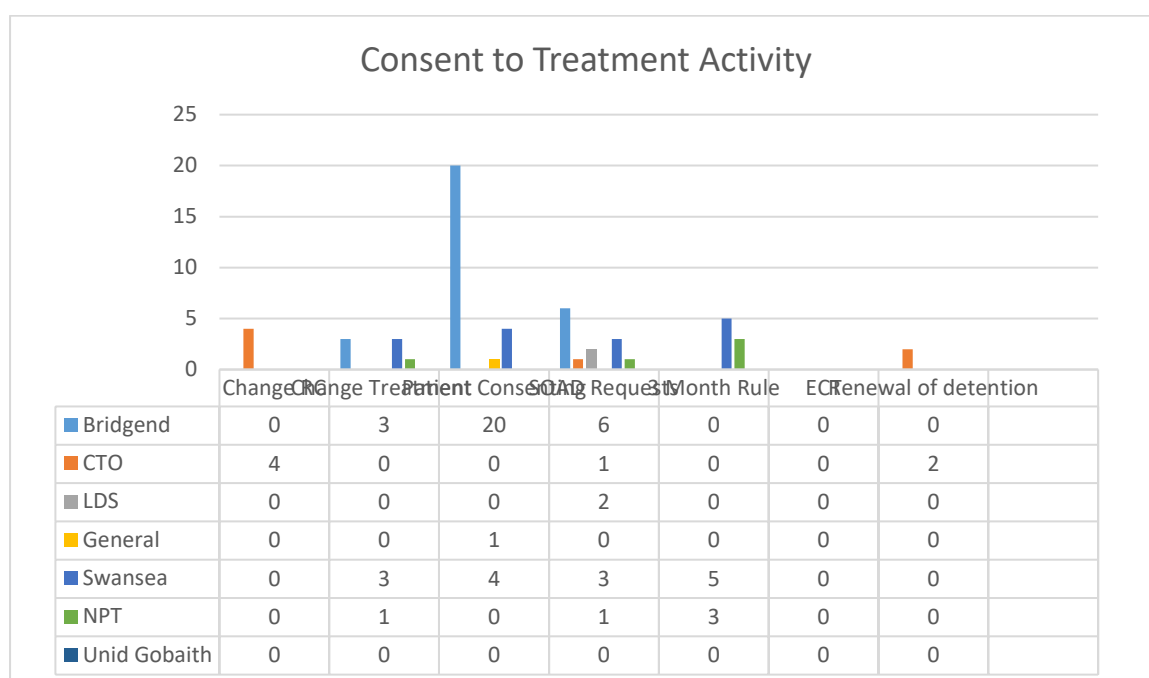
Caswell Clinic – 2

Taith Newydd – 1



*This chart shows Part 3 activity during the reporting period*

## Part 4: Consent to Treatment Activity January – March 2023



*This chart shows consent to treatment activity during the reporting period*

## Part 10: Police powers to remove a person to a place of safety under Section 135 & 136 January – March 2023

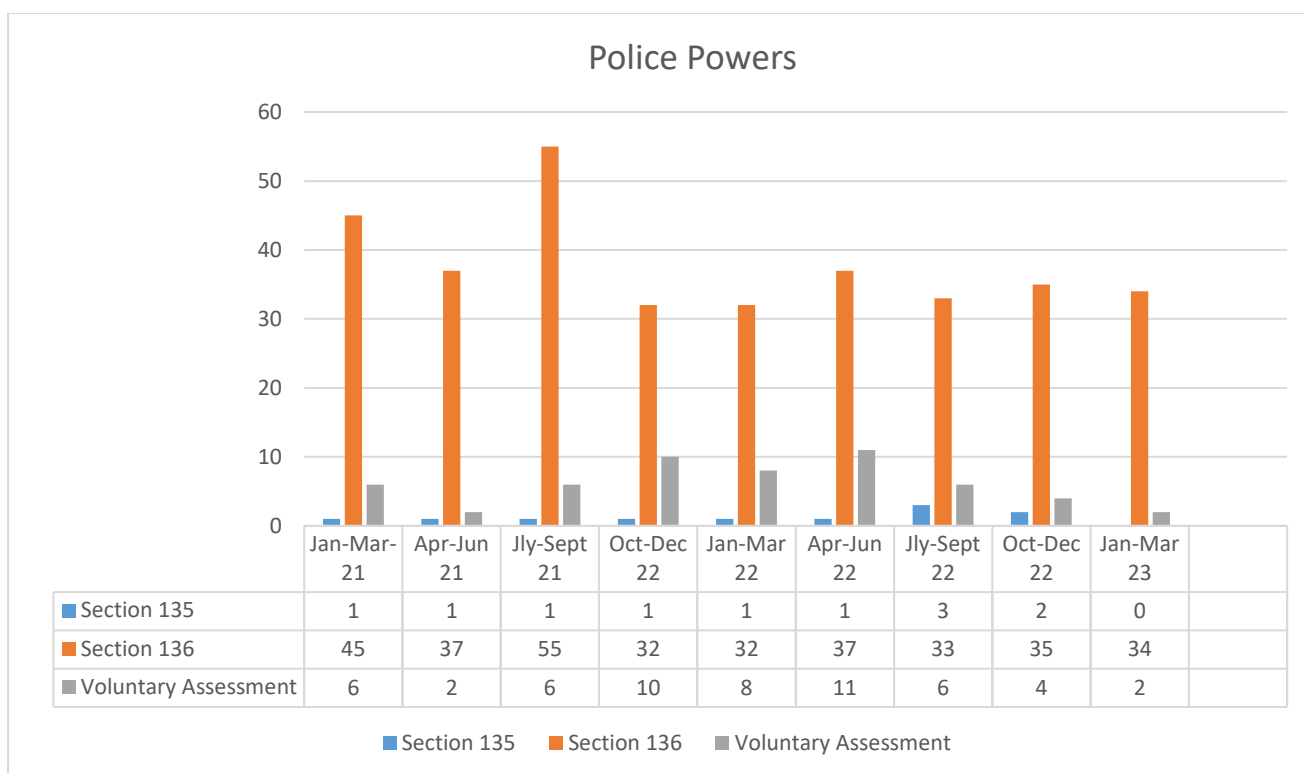
It is expected that the Mental Health Act 1983 monitoring committee or equivalent will review all cases where a person is taken to a police based place of safety. Monitoring information is collected by local health boards and received by Welsh Government. This information will be shared with all interested parties including, if relevant, child protection agencies and HIW.

**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 one 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 37 detentions under section 136 during this reporting period.

**Voluntary attendance and assessment at place of safety** occurred on 2 occasions which is a decrease from the previous reporting period



*The graph shows the number of section 135 & 136 detentions during the reporting period and including comparison data for the previous 2 years*

## Deaths of detained patients

There were two in-patient deaths reported in this period in OPMHS - these were attributed to medical condition/natural causes, and not suicide/self-harm

Both cases were reported to HIW within the mandatory 24-hour period

## 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

An unannounced visit by HIW took place to the Bryn Afon Specialised LD Residential Unit on 24<sup>th</sup> & 25<sup>th</sup> January 2023. No issues requiring immediate assurance were identified.

Some areas of improvement were identified including:

- Patient information
- Storage of waste & COSHH equipment
- Fault on telephone line

- Use of safety alarms
- Pharmacy support
- Recording of fridge temperatures.

An improvement plan has been submitted and accepted by HIW. This will now be monitored through the Service Group's Quality & Safety structure.

#### **4. GOVERNANCE AND RISK ISSUES**

##### **Mental Health Act Team**

An appointment has been made to the post of Deputy Mental Health Act Manager in February 2023

Recruitment of Associate Hospital Managers is expected to commence in April 2023

##### **Quality Assurance**

During Jan/Feb 2022, the MHL D Service Group ratified their Quality Assurance Framework, setting out the infrastructure for monitoring, assurance and governance. Part of this framework are the Nurse Directors Unannounced Reviews. These reviews are co-ordinated by the nurse director's office of a review team of clinicians, senior leaders and relevant specialists who carry out an unannounced review on a clinical area or team.

Two (2) reviews have been conducted during the reporting period and the outcome of these visits reported via the Quality and Safety Committee:

- Newton Ward, Caswell Clinic
- Swn Yr Afon

The Mental Health Act Team attended both reviews and focused patients statutory MHA documentation and compliance with the Act and the Code, in terms of providing the MHA Department with sufficient information to enable the discharge of legal duties. During this reporting period, seven (7) MHA training events were also delivered to the following groups:

- Fendrod new ward staff
- Learning Disabilities Services
- Undergraduate & Postgraduate Speciality MH Placement programmes
- 

##### **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.

There were 21 rectifiable exceptions and 6 exceptions (unlawful detentions) that were not rectifiable under section 15 during this reporting period.

34% of errors were made by AMHPs (9/27) and of those, 12% resulted in unlawful detentions (4/9)

40% of errors were made by the patient's RC/Doctor (11/27), and of those, 10% resulted on an unlawful detention (1/10)

11% of errors were made by ward staff (3/27) – none resulted in unlawful detention

15% of errors were made by Second Opinion Appointed Doctors (HIW) (4/27)

Date	Form	Error	Person:	Rectifiable
06/01/2023	HO2	Full address missing	AMHP	Y
06/01/2023	HO2	Date incorrect	AMHP	N – Unlawful
11/01/2023	CO3	Patient name incorrect	SOAD	Y
13/01/2023	HO12 (H1)	English form used	Morrison Doctor	N – Unlawful
16/01/2023	HO14	Patient middle name missing	Ward Staff	Y
17/01/2023	HO17	Abbreviations used	RC	Y
23/01/2023	HO17	Applicable boxes not crossed (will or will not be staying in hospital)	RC	Y
18/01/2023	HO2	Date incorrect	AMHP	N – Unlawful
30/01/2023	HO14	Patient name missing	Ward Staff	Y
31/01/2023	HO8	Hospital not named	RC	N - Unlawful
16/02/2023	HO2	Postcode missing	AMHP	Y
06/02/2023	HO2	Postcode missing	AMHP	Y
06/02/2023	HO2	Date patient was last seen missing	AMHP	N – Unlawful
10/02/2023	CP7	Date and times incorrect	RC	Y
10/02/2023	HO8	Full address missing	RC	Y
10/02/2023	HO6	Full address of hospital missing	AMHP	Y
14/02/2023	HO17	Full date missing	RC	Y

16/02/2023	HO17	Patient full name missing	RC	Y
25/02/2023	HO14	Date and time and patient full name missing	Ward Staff	Y
02/03/2023	HO7	Full address of hospital not completed	RC	Y
06/03/2023	CO3	Hospital address spelt incorrect	SOAD	Y
01/03/2023	CO3	Statutory Consultee name spelt incorrect	SOAD	Y
07/03/2023	HO15	Patient middle name missing	RC	Y
10/03/2023	HO12	Full address of hospital missing	RC	Y
28/03/2023	HO2	Full address of NR missing and applications not crossed out	AMHP	Y
27/03/2023	CO3	Statutory Consultee name incorrect	SOAD	Y
29/03/2023	HO2	Reasons why neither medical practitioner had previous acquaintance missing. Date patient was last seen incomplete	AMHP	N – Unlawful

**Additional operational / administrative issues:**

- During the reporting period there were 9 detentions **where Form HO14 Record of Detention** was not completed and was requested several times before being completed and received in the MHA Department
- 7 sections not scanned to the MHA Department
- 4 sections where patients were not admitted to the Clinical Portal
- Taith Newydd – MHA Dept was not informed that a patient had returned to prison on the 16<sup>th</sup> Jan. This was only identified when running a routine report on 31<sup>st</sup> Jan. Patient had been transferred to the CTO ward for administrative convenience
- 2 CTO patients have been recalled on a number of occasions due to not complying with their medication (which is not a requirement of a CTO) – this is also contrary to guidance in the Code which states that continuous recall of a CTO patient should trigger a review of the patients case as they may no longer be deemed suitable for a CTO – escalated to Medical Director



Care and Treatment Plans – incidents contrary to the Code

- There has been several occasions where a local authority care coordinator has refused to provide a CTP in advance of wither a MHRT or managers hearing – citing that the ward is responsible for completing it. Furthermore a local authority care coordinator stated that as the patient was not expected to be discharged any time soon, they wouldn't be completing a CTP – escalated to Principal Officer Local Authority

Where errors that constitute an unlawful detention are identified, MHA Administrators took the following action:

- 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
- Datix completed.

Where the error does not constitute an invalid detention, the documents containing the errors is returned to the author for rectification, which must be completed within 14 days of the application for detention of the patient.

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

***Please see the graphs at Appendix 1 for comparison data***

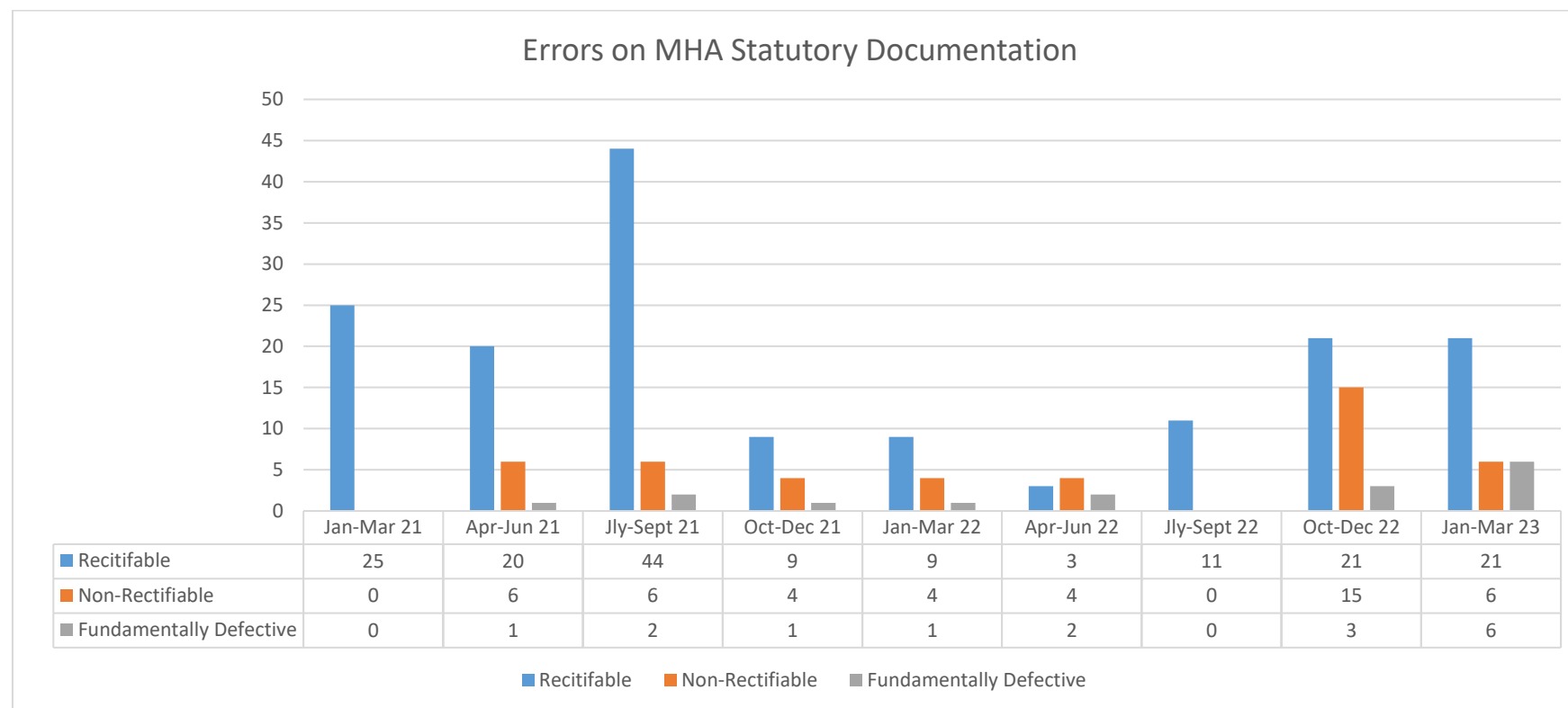
#### **4. RECOMMENDATION**

The Committee is asked to note the report.

<b>Governance and Assurance</b>		
<b>Link to Enabling Objectives</b> <i>(please choose)</i>	<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 type="checkbox"/>
	Excellent Staff	<input type="checkbox"/>
	Digitally Enabled Care	<input type="checkbox"/>
	Outstanding Research, Innovation, Education and Learning	<input type="checkbox"/>
<b>Health and Care Standards</b>		
<i>(please choose)</i>	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"/>
<b>Quality, Safety and Patient Experience</b>		
<p>The report provides assurance in respect of the work that has been undertaken by Mental Health and Learning Disabilities (MHL) 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>		
<b>Financial Implications</b>		
<b>Legal Implications (including equality and diversity assessment)</b>		
Mental Health Act 1983		
<b>Staffing Implications</b>		
An appointment has been made to the post of Deputy Mental Health Act Manager with effect February 2023		
<b>Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)</b>		
<b>Report History</b>	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.	

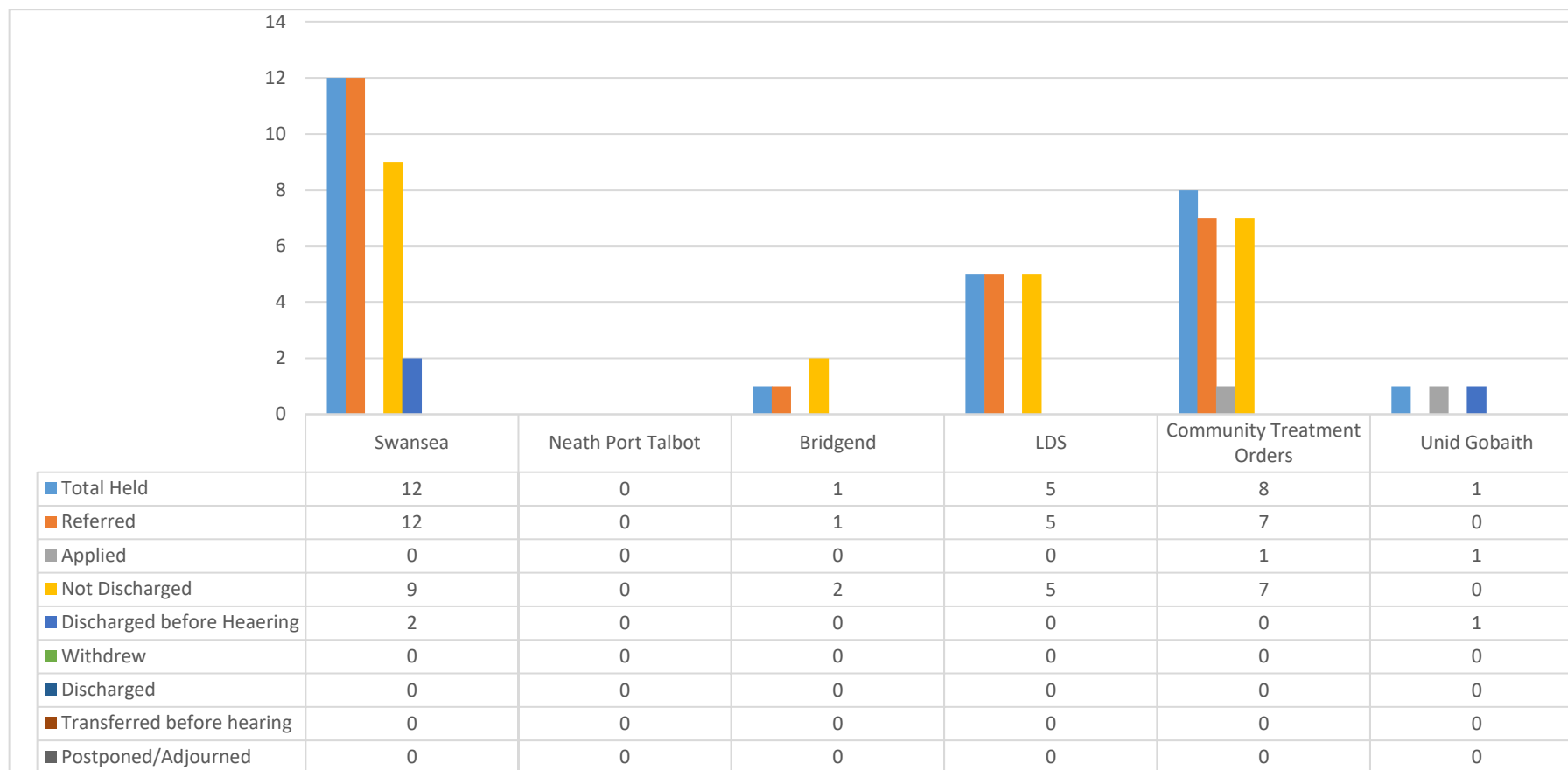
	<p>The most recent Power of Discharge Meeting was a training event and took place on 27<sup>th</sup> October 2022</p> <p>The next meeting is due to take place on 12<sup>th</sup> April 2023</p>
<b>Appendices</b>	<p>Appendix 1: Graph showing rectifiable and non-rectifiable errors under Section 15 of the 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 January – March 2023



*This graph shows exceptions that can be rectified under section 15 and those that cannot, on Mental Health Statutory Documents*

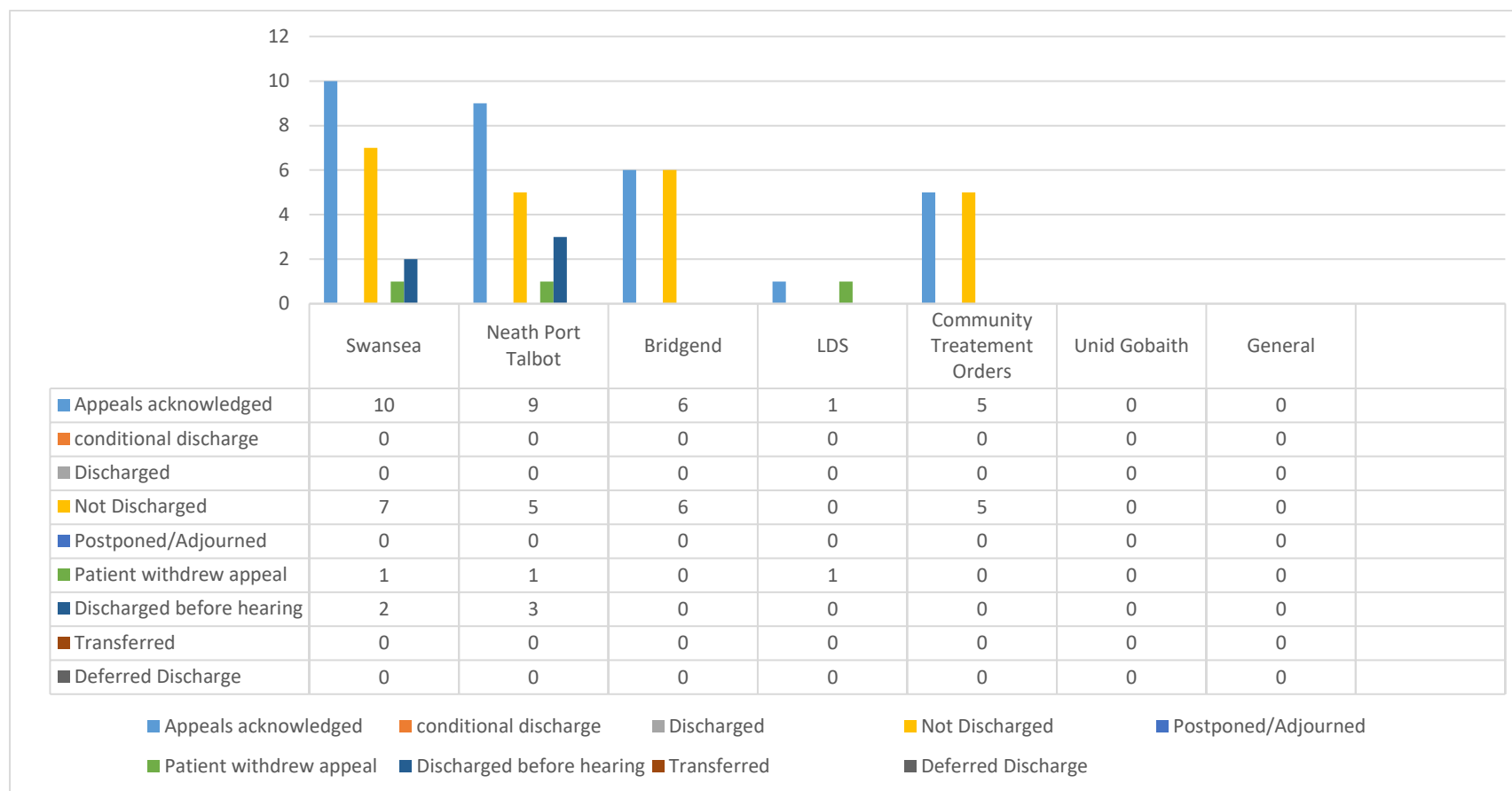
### Hospital Managers Appeals & Referrals January – March 2023



*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 January – March 2023



### Timeliness of Section 3 Tribunal Hearings

Of the 12 MHRT Hearings for Section 3 patients – 75% were heard within the recommended 56 days and 25% were heard within 60 days. Delayed hearings were mainly due to the granting of extensions for reports to be completed.