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Bwrdd Iechyd Prifysgol  
Abertawe Bro Morgannwg  
University Health Board



<b>Meeting Date</b>	<b>8<sup>th</sup> November 2018</b>	<b>Agenda Item</b>	<b>3a.</b>
<b>Meeting</b>	<b>Mental Health Legislation Committee</b>		
<b>Report Title</b>	<b>Mental Capacity Act 2005 Update</b>		
<b>Report Author</b>	Jodie Denniss, Interim Deputy Head of Safeguarding		
<b>Report Sponsor</b>	Gareth Howells, Director of Nursing & Patient Experience		
<b>Presented by</b>	Gareth Howells, Director of Nursing & Patient Experience		
<b>Freedom of Information</b>	Open		
<b>Purpose of the Report</b>	The Mental Health and Capacity Act Legislative Committee has requested a monitoring report to assure the Board of Abertawe Bro Morgannwg University Health Board compliance with the Mental Capacity Act 2005.		
<b>Key Issues</b>	The Health Board (HB) supports a significant number of patients with impaired decision-making, therefore this report aims to provide assurance of awareness and the use of the Mental Capacity Act throughout the HB. For example training and the use of the Independent Mental Capacity Advocacy Service (IMCAs).		
<b>Specific Action Required</b> <i>(please ✓ one only)</i>	<b>Information</b>	<b>Discussion</b>	<b>Assurance</b>
			✓
<b>Recommendations</b>	The Committee is requested to acknowledge this report and to consider the proposed methods of assurance for future reporting.		

## **1.0 Situation**

The Mental Health and Capacity Act Legislative Committee has requested a monitoring report to assure the Board of ABMU HB's compliance with the Mental Capacity Act 2005.

## **2.0 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 Health Board (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 (IMCAs).

## **3.0 Assessment**

### **3.1 Legislative Update**

In March 2018, the government announced it will 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. This process has now begun and the Mental Capacity (Amendment) Bill is currently proceeding through the House of Lords. There is currently no anticipated date for Royal Assent.

### **3.2 MCA Training**

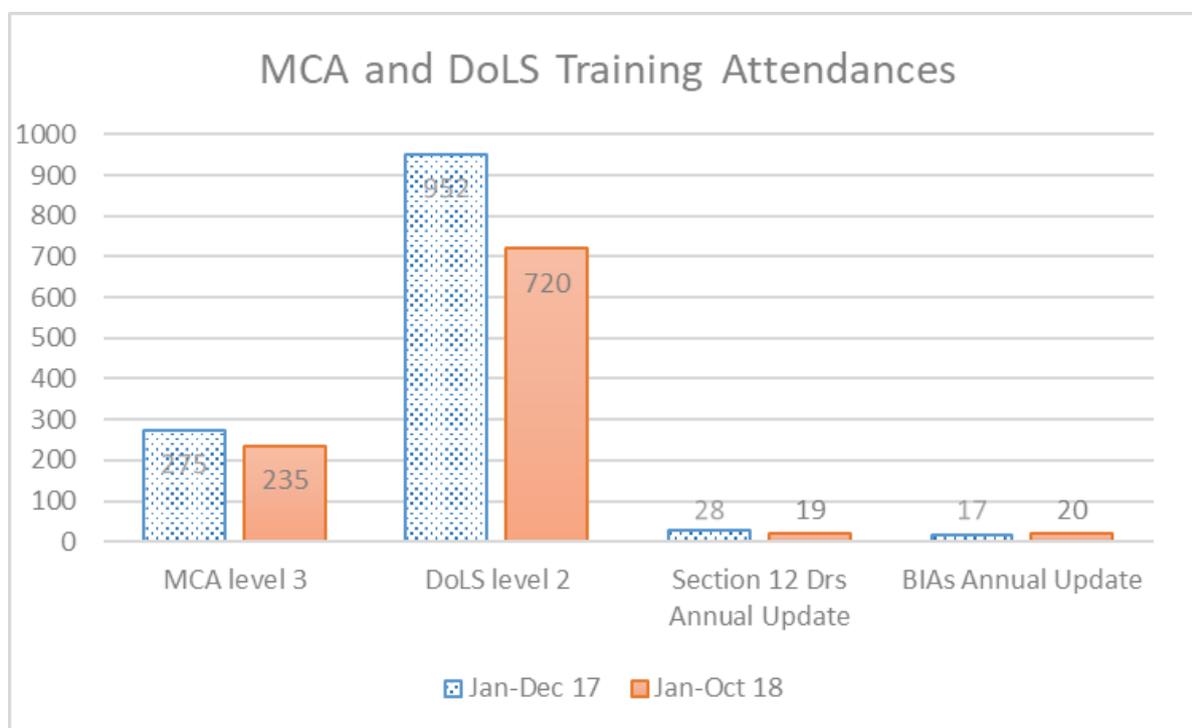
A training programme for staff with MCA Level 1 & 2 is available as e-learning for all Abertawe Bro Morgannwg University Health Board (ABMU HB) staff.

Compliance figures should be available from ESR but there continue to be difficulties in obtaining these; however, work is continuing to ensure a single electronic recording, monitoring and reporting point that is available in the HB. The Service Delivery Units (SDUs) are currently monitoring training levels as part of their overall training compliance reporting to the Safeguarding Committee on a bi-monthly basis.

MCA level 3 is taught as a workshop directed at ward managers, senior nurses and senior clinicians whereby there is the ability to discuss cases and raise concerns. A training session is delivered each month, under the HB educational contract by law lecturers from Swansea University. The Corporate Safeguarding Team has recently appointed a Band 6 Practice Education facilitator, who will be involved in developing evaluation mechanisms and training needs analyses in conjunction with the SDUs.

**Table 1**

**MCA/DoLS training breakdown below for Jan - Dec 2017 and Jan - Oct 2018**



The graph above also identifies other forms of training associated with the Mental Capacity Act. This training is delivered to both the Health Board and the three Local Authorities. However, table 1 only illustrates Health Board attendances. Attendance at MCA L3 and DoLS L2 sessions for the first seven months of 2018 suggest the total attendance for the year will equal attendances for 2017.

Currently the Health Board does not collate training figures broken down by Service Delivery Unit, however it is something the Corporate Safeguarding Team will start recording from December 2018.

The Health Board is unable to determine what training is required per Service Delivery Unit, as only level 1 training is mandatory. This is a Health Board issue, which requires a training needs analysis.

### **3.3 Independent Mental Capacity Advocates (IMCA)**

IMCAs are independent advocates who represent people who lack capacity in order to support them in making important decisions. They were introduced by the Mental Capacity Act 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. This service provides quarterly monitoring reports to ABMU HB. Between January 2018 and September 2018 they received 72 instructions for an IMCA from the HB (Table 2).

**Table 2: Breakdown of reasons for instruction of an IMCA**

Local Area	Serious Medical Treatment	Long term move of accommodation	Care Review	POVA	39a*	39c*	39d*
Bridgend	2	11	1	1	3	0	1
Swansea	12	13	6	0	2	0	1
Neath Port Talbot	0	14	3	2	0	0	0
	14	38	10	3	5	0	2

\* 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

### 3.4 Best Interest Decisions

If a patient has been assessed as lacking in capacity then any action taken or decision made on behalf of that individual 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 collate the number of occasions where best interest decisions are made. The Corporate Safeguarding Team (CST) are currently working with the SDUs to establish an effective way to record this information in order to provide assurance to the Board by reporting through the Safeguarding Committee.

### 3.5 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. All Court of Protection cases involving ABMU HB engaged as a party, are

formally logged by the CST and any learning from judgements identified and disseminated via the Safeguarding Committee.

### **3.6 Dedicated HB MCA/DoLS Lead.**

Due to changes within the Local Authorities which resulted in them having their own DoLS/MCA teams, and the retirement of the HB DoLS/MCA lead earlier this year, Local Authorities funding for the post was withdrawn. There is currently no dedicated lead for MCA and DoLS issues and this has been entered on the risk register.

The CST has retained a MCA/DoLS officer Band 4 who co-ordinates training and distributes case law updates and handles queries. This role remains jointly funded by the 3 Local Authorities. The CST has recently recruited an additional Band 7 Safeguarding Specialist who will be able to take on limited aspects of an advisory role regarding MCA/DoLS.

## **4.0 RECOMMENDATIONS**

The Committee is requested to acknowledge this report and to consider the proposed methods of assurance for future reporting.

<b>Governance and Assurance</b>							
<b>Link to corporate objectives</b> <i>(please ✓)</i>	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> <i>(please ✓)</i>	Staying Healthy	Safe Care	Effective Care	Dignified Care	Timely Care	Individual Care	Staff and Resources
		✓	✓				
<b>Quality, Safety and Patient Experience</b>							
The Health Board (HB) supports a significant number of patients with impaired decision-making, therefore this report aims to provide assurance of awareness and the use of Mental Capacity Act throughout the HB. For example training and the use of the Independent Mental Capacity Advocacy Service (IMCAs).							
<b>Financial Implications</b>							
The report does not note any financial implications for the Health Board.							
<b>Legal Implications (including equality and diversity assessment)</b>							
In March 2018, the government announced it will 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.							
<b>Staffing Implications</b>							
There is currently no dedicated lead for MCA and DoLS issues although there is a MCA/DoLS officer Band 4 who works within the Corporate Safeguarding Team who co-ordinates training and distributes case law updates and handles queries.							
<b>Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)</b>							
Collaboration – Working together ensure safeguarding of patients.							
<b>Report History</b>	N/A						
<b>Appendices</b>	N/A						