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| | | **Agenda Item** | **4.6 (iv)** |
| **Freedom of Information Status** | | Open | |
| **Reporting Committee** | Mental Health Legislation Committee | | |
| **Author** | Claire Mulcahy, Corporate Governance Officer | | |
| **Chaired by** | Martyn Waygood, Interim Vice-Chair | | |
| **Lead Executive Director (s)** | Gareth Howells, Director of Nursing and Patient Experience | | |
| **Date of last meeting** | 25 November 2019 | | |

**Summary of key matters considered by the committee and any related decisions made.**

**Deprivation of Liberty Safeguards Update (DoLS) –** members were advised that the supervisory body would be required to exceed its financial allocation in order to discharge its obligations. This was a result of the ongoing requirement for the use of external best interest assessors. Work was ongoing to reduce the unnecessary referrals and the number of unnecessary urgent requests. In preparation for the Liberty Protection Safeguards (LPS), a focus group would need to be established to scope the impact and implementation. This would include objectives, costings, timescales for the training and development needs.

**Deprivation of Liberty Safeguards (DoLS) Team Presentation –** the committee received a presentation from members of the DoLS team including two Best Interest Assessors. The presentation covered a number of areas including the remit of the DoLS team, the improvements made following previous internal audits, benchmarking data with other health boards and key risks facing the team including the planned implementation of the Liberty Protection Safeguards (LPS) legislation. Members advised that clarity was needed in terms of the resource requirement within the team and offered support to ensure there was a plan in place within the coming months in readiness for the new legislation. Members were also advised that the new legislation would require Best Interest Assessments to be carried out for CHC patients with complex needs and this would also need to be factored into the resource establishment.

**Mental Capacity Act 2005 (MCA) –** an update was received on the performance against the MCA for the period between July 1st and 30th September. Members were informed that the changes to the Mental Capacity Act Legislation would be implemented in autumn 2020 and the safeguarding team were liaising with Welsh Government on the implications for the health board.

**Mental Health Measure Monitoring Report** – the overall performance against the measure was on target for all fours areas.

**Key risks and issues/matters of concern of which the board needs to be made aware:**

**Mental Health Act (MCA) 1983 Monitoring Report and Update–** an update on performance against the MHA was received. During the period, there had been six exceptions and one invalid

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| detention identified by the department. Members raised concern regarding the unlawful detention of a section 3 patient for a period of 47 days due to an administration error. It was advised that this had been reported to Healthcare Inspectorate Wales (HIW) as a serious incident. Members sought assurance that a mechanism would be put in place within the process to counteract these errors.<br><br>**Safeguarding Training Needs Analysis** – Members received an update on a recent training needs analysis to assess the training requirements of staff for Mental Capacity Act and Deprivation of Liberty Safeguards, across the health board. A key issue arose in terms of lack of returns and members raised their concerns with poor engagement from the service delivery units. The committee raised concerns with regard to the fact that health board are unaware if staff are fulfilling their statutory duties. The item was formally referred into the Workforce and OD Committee for monitoring and focus. |
| **Delegated action by the committee:** |
| The committee approved its revised terms of reference **(appendix one)** and the Hospital Managers' Policy **(appendix two).** |
| **Main sources of information received:** |
| As above. |
| **Highlights from sub-groups reporting into this committee:** |
| None identified. |
| **Matters referred to other committees** |
| The following report was formally referred into the Workforce and OD Committee;<br>(i) Safeguarding Training Needs Analysis |

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| **Date of next meeting** | 20 February 2020 |

Bwrdd Iechyd Prifysgol Bae Abertawe
Swansea Bay University Health Board

# Mental Health Legislation Committee

## Terms of Reference

**Updated January 2020**

## 1. INTRODUCTION

1.1 The Swansea Bay University Local Health Board (the health board) standing orders provide that "*The board may and, where directed by the Welsh Government must, appoint committees of the health board either to undertake specific functions on the board's behalf or to provide advice and assurance to the board in the exercise of its functions. The board's commitment to openness and transparency in the conduct of all its business extends equally to the work carried out on its behalf by committees*".

1.2 In line with standing orders (and the health board's scheme of delegation), the board shall nominate a committee to be known as the **Mental Health Legislation Committee**. The detailed terms of reference and operating arrangements set by the board in respect of this committee are set out below.

1.3 The remit of this committee is to consider and monitor the use of the Mental Health Act 1983 (MHA), as amended, the Mental Capacity Act 2005 (which includes the Deprivation of Liberty Safeguards (DoLS)) (MCA) and the Mental Health (Wales) Measure 2010 (the measure).

A summary of the definitions of legislation and a glossary of terms are presented at **appendix 1**.

## 2. PURPOSE

2.1 The purpose of the committee is to consider and monitor the use of the Mental Health Act 1983 (MHA), Mental Capacity Act 2005 (which includes the Deprivation of Liberty Safeguards (DoLS) (MCA) and the Mental Health (Wales) Measure 2010 (the Measure) and give assurance to the Board that:

- Hospital Managers' duties under the Mental Health Act 1983;
- the functions and processes of discharge under section 23 of the Mental Health Act 1983; and
- the provisions set out in the Mental Capacity Act 2005, and in the Mental Health Measure (Wales) 2010;

are all exercised in accordance with statute and that there is compliance with:

- the Mental Health Act 1983 Code of Practice for Wales[1];
- the Mental Capacity Act 2005 Code of Practice[2];
- the Mental Capacity Act 2005 Deprivation of Liberty Safeguards (DOLS) Code of Practice;[3] and
- The Human Rights Act 1998
- The United Nations Convention on the Rights of People with Disabilities
- The associated regulations and local policies.

[1] http://www.wales.nhs.uk/sites3/documents/816/Mental%20Health%20Act%201983%20Code%20of%20Practice%20for%20Wales.pdf
[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/497253/Mental-capacity-act-code-of-practice.pdf
[3] https://webarchive.nationalarchives.gov.uk/20130104224411/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476

The Committee will also advise the board of any areas of concern in relation to compliance with any of the mental health and capacity legislation.

## 3. SCOPE AND DUTIES

3.1 The committee will:

- ensure that those acting on behalf of the Board in relation to the provisions of mental health and capacity legislation, including the Mental Health Measure, have the requisite skills and competencies to discharge the board's responsibilities;
- identify matters of risk relating to mental health and capacity legislation and seek assurance that such risks are being mitigated;
- consider and approve relevant policies and control documents in support of the operation of mental health and capacity legislation;
- monitor the use of the legislation and consider local trends and benchmarks;
- consider matters arising from the hospital managers' power of discharge sub-committee;
- ensure that **all** other relevant associated legislation is considered in relation to mental health and capacity legislation;
- consider matters arising from reports from Healthcare Inspectorate Wales (HIW), including visits, which relate to mental health and capacity legislation;
- consider any reports made by the Public Services Ombudsman for Wales regarding complaints about mental health and capacity legislation;
- consider any other information or reports that the committee deems appropriate.

## 4. DELEGATED POWERS AND AUTHORITY

The Code of Practice requires that arrangements for who is authorised to take what decisions should be set out in a scheme of delegation, which is presented in the **'Powers of Discharge Policy'.**

4.1 In respect of its provision of advice to the Board, the Mental Health Legislation Committee shall:

- Review reports from Healthcare Inspectorate Wales (HIW) visits, the Delivery Unit and other external scrutiny bodies and approve the action plans for monitoring through its sub-committee structure;

- Review the Mental Health Legislation Risk Register bi-annually to ensure that risks relating to compliance with mental health legislation are being appropriately managed;

- Consider issues arising from its Sub-Committee and Group structure;

- Receive the Mental Health Legislation Committee Annual Report and consider issues in relation to the implementation of the Mental Health Strategy across the Swansea Bay area;
- Receive Hospital Manager's Power of Discharge Committee Update Report & Minutes from previous meeting. This report should ensure compliance with the Code of Practice.
- Consider any reports made by the Public Services Ombudsman for Wales (PSOW) regarding complaints about Mental Health and Capacity legislation;

- Consider and approve on behalf of the Board any policy which relates to the implementation of mental health and capacity legislation as well as any other information, reports etc.

4.2 In respect of its provision of assurance to the Board, the Mental Health Legislation Committee will seek assurances that:

- The operation of mental health legislation is exercised fairly and lawfully and that specific issues related to compliance are managed through its Sub-Committee and Delivery Unit;
- The wider operation of the 1983 Act (the Board's delegated functions as Hospital Managers) are being exercised reasonably, fairly and lawfully and that specific issues related to compliance are managed through its Sub-Committee and Delivery Unit structure;
- Identified matters of risk relating to compliance with mental health legislation are being appropriately mitigated;
- Arrangements for the delegated authority of approval for Approved Clinicians and Section 12 Doctors in Wales are compliant with the Directions and Guidance from Welsh Government, and are monitored;
- Policies and procedures are developed and approved in line with the organisation's Written Control Document Policy;
- The training requirements of those staff who exercise the functions of mental health legislation have the requisite skills and competencies to discharge the Board's responsibilities;
- Relevant legislative and regulatory frameworks, in particular, the Human Rights Act 1998, the Equality Act 2010, the Welsh Language Standards (No. 7) Regulations 2018 the Data Protection Act 1998, the General Data Protection Regulation (EU) 2016/679 ("GDPR"), and the Data Protection Act 2018 are adhered to.

4.3 The committee is authorised by the Board to:

- Investigate or have investigated any activity (clinical and non-clinical) within its terms of reference.

- Seek any relevant information it requires from any employee and all employees are directed to co-operate with any reasonable request made by the committee;

- Obtain outside legal or other independent professional advice and to secure the attendance of outsiders with relevant experience and expertise if it considers this necessary, in accordance with the Health Board's procurement, budgetary and other requirements; and

- By giving reasonable notice, require the attendance of any of the officers or employees and auditors of the board at any meeting of the committee.

- *Note – HIW report recommendations are the remit of Quality and Safety Committee (QSC) however any specific recommendations relating to Mental Health or the Mental Capacity Act will be the remit of this Committee who will respond as appropriate ensuring the Board and QSC are appraised accordingly.

### 4.4 Sub Committees

The Committee may, subject to the approval of the Health Board, establish Sub-Committees or task and finish groups to carry out on its behalf specific aspects of Committee business.

- Sub-Committee - In accordance with Regulation 12 of the Local Health Boards (Constitution, Procedure and Membership) (Wales) Regulations 2003 (SI 2003/149 (W.19), the Board has appointed a Sub-Committee of this Committee, to be known as the Power of Discharge Sub-Committee, terms of reference for which are attached as **Appendix 3.**

- Panel -Three members drawn from the pool of designated Associate Hospital Managers will constitute a panel to consider the possible discharge or continued detention under the MHA of unrestricted patients and those subject to a Community Treatment Order (CTO).

- The Board retains final responsibility for the performance of the Hospital Managers' duties delegated to particular people on the staff of Swansea Bay University Health Board, as well as the Power of Discharge Sub-Committee

## 5. MEMBERSHIP OF MENTAL HEALTH & CAPACITY LEGISLATION COMMITTEE

### 5.1 Members

A minimum of five members, comprising:

- Three independent members, to include one who is a Member of the Quality, and SafetyCommittee and one to be the Chair of Power of Discharge Committee;
- Director of Nursing and Patient Experience;
- Chief Operating Officer (COO) and
- Service Director for Mental Health and Learning Disabilities.

Members' terms of office will be reviewed annually by the committee and a member may resign or be removed. The committee chair may invite other executive directors or health board officials to attend all or part of a meeting to assist it with its discussions on any particular matter.

### 5.2 Member Appointments

The membership of the Committee shall be determined by the Board, based on the recommendation of the Health Board Chair - taking account of the balance of skills and expertise necessary to deliver the Committee's remit and subject to any specific requirements or directions made by the Welsh Government. This includes the appointment of the Chair and Vice-Chair of the Committee who shall be Independent Members. The Vice-Chair of the Health Board will be the Chair of this Committee and shall retain the role of Chair of this Committee throughout their tenure of appointment.

The membership of the committee shall be determined by the board, based on the recommendation of the health board's chair - taking account of the balance of skills and expertise necessary to deliver the committee's remit and subject to any specific requirements

or directions made by Welsh Government. Members' terms of office will be reviewed annually by the health board's chair but a member may resign or be removed by the board.

### 5.3 Secretariat

The Director of Corporate Governance/Board Secretary shall ensure effective secretariat support is provided to the committee.

### 5.4 Support to Committee Members

5.4.1 The Board Secretary, on behalf of the Committee Chair, shall:

- Arrange the provision of advice and support to Committee members on any aspect related to the conduct of their role; and
- Ensure the provision of a programme of development for Committee members as part of the overall Board Development programme.

## 6. COMMITTEE MEETINGS

### 6.1 Quorum

At least three members must be present to ensure the quorum of the Committee. Of these three, two must be independent members one of whom should be the Committee Chair or Vice-Chair.

### 6.2 Frequency of meetings

Meetings shall be held no less than quarterly and otherwise as the committee chair deems necessary and consistent with the health board's annual plan of board business.

### 6.3 Withdrawal of individuals in attendance

The Committee may ask any or all of those who normally attend but who are not members to withdraw to facilitate open and frank discussion of particular matters.

## 7. RELATIONSHIP & ACCOUNTABILITIES WITH THE BOARD AND ITS COMMITTEES/GROUPS

7.1 Although the board has delegated authority to the committee for the exercise of certain functions as set out within these terms of reference, it retains overall responsibility and accountability for the safety, security and use of information to support the quality and safety of healthcare for its patients through the effective governance of the organisation.

7.2 The committee is directly accountable to the board for its performance in exercising the functions set out in these terms of reference.

7.3 The committee, through its chair and members, shall work closely with the board's other committees to provide advice and assurance to the board through the:

- joint planning and co-ordination of board and committee business; and
- sharing of information.

In doing so, it will contribute to the integration of good governance across the organisation, ensuring that all sources of assurance are incorporated into the board's overall risk and assurance framework.

7.4 The committee shall embed the health board values, corporate standards, priorities and

requirements through the conduct of its business, and in doing and transacting its business shall seek assurance that adequate consideration has been given to the sustainable development principle and in meeting the requirements of the Well-Being of Future Generations Act.

## 8. REPORTING AND ASSURANCE ARRANGEMENTS

8.1 The committee chair shall:

- report formally, regularly and on a timely basis to the board on the committee's activities, via the Chairs assurance report and through verbal updates on activity, the submission of committee minutes and written reports, as well as the presentation of an annual committee report;
- ensure appropriate escalation arrangements are in place to alert the Health Board Chair, Chief Executive or Chairs of other relevant committees of any urgent/critical matters that may affect the operation and/or reputation of the Health Board.

8.2 The board may also require the committee chair to report upon the committee's activities at public meetings, for example the board's annual general meeting, or to community partners and other stakeholders, where this is considered appropriate, for example where the committee's assurance role relates to a joint or shared responsibility.

8.3 The Director of Corporate Governance/Board Secretary, on behalf of the board shall oversee a process of regular and rigorous self assessment and evaluation of the committee's performance and operation, including that of any sub-committees established.

## 9. APPLICABILITY OF STANDING ORDERS TO COMMITTEE BUSINESS

9.1 The requirements for the conduct of business as set out in the health board's standing orders are equally applicable to the operation of the committee, except in the following areas:

- Quorum;
- Notice of meetings;
- Notifying the public of meetings; and
- Admission of the public, the press and other observers.

## 10. REVIEW

10.1 These terms of reference and operating arrangements shall be reviewed annually by the committee with reference to the board.

Approval
MHLC – 25 November 2019
Board – 30th January 2020

# Annual review date: May 2020

## Appendix 1

### Mental Health and Capacity Legislation - Definitions

**Mental Health Act**

The Mental Health Act 1983 (MHA), as amended, covers the detention of people deemed a risk to themselves or others. It sets out the legal framework to allow the care and treatment of mentally disordered persons. It also provides the legislation by which people suffering from a mental disorder can be detained in hospital to have their disorder assessed or treated against their wishes.

The MHA introduced the concept of "hospital managers" which for Hospitals managed by a local health board are the "board members"[4]. The term "hospital managers" does not occur in any other legislation.

Hospital managers have a central role in operating the provisions of the MHA; specifically, they have the authority to detain patients admitted and transferred under the MHA. For those patients who become subject to a Community Treatment Order (CTO), the hospital managers are those of the hospital where the patient was detained immediately before going on to a CTO - i.e. the responsible hospital or the hospital to which responsibility has subsequently been assigned.

Hospital managers must ensure that patients are detained only as the MHA allows, that their treatment and care is fully compliant with the MHA 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 associated legislation.

With the exception of the power of discharge, arrangements for authorising day to day decisions made on behalf of hospital managers have been set out in the health board's scheme of delegation.

**Mental Health (Wales) Measure 2010**

The Mental Health (Wales) Measure 2010 received royal assent in December 2010 and has the same legal status in Wales as other Mental Health Acts. However, whilst the 1983 and 2007 Mental Health Acts are largely about compulsory powers, and admission to or discharge from hospital, the 2010 Measure is all about the support that should be available for people with mental health problems in Wales wherever they may be living.

The Measure is intended to ensure that where mental health services are delivered, they focus more appropriately on people's individual needs. It has four main Parts (Parts 5 and 6 are essentially about administrative issues), and each places new legal duties on Local Health Boards and Local Authorities to improve service delivery. The four Parts are as follows.

- **Part 1** seeks to ensure more mental health services are available within primary care.
- **Part 2** gives all people who receive secondary mental health services the right to have a Care and Treatment Plan.
- **Part 3** gives all adults who are discharged from secondary mental health services the right to refer themselves back to those services.

[4] Chapter 11 – MHA 1983 Code of Practice for Wales, page 61

- **Part 4** offers every in-patient access to the help of an independent mental health advocate.

**Guiding Principles**

These Guiding Principles are set out in the Code of Practice for Parts 2 and 3 and are particularly important for these Parts, but they are also relevant for the whole Measure.

There are six in total and they are as follows.

- ***Patients and their cares should be involved in the planning, development and delivery of care and treatment to the fullest possible extent*** – so that professionals seek to involve a person as fully as possible in their care and treatment in a sensitive way, and one which promotes their confidence and recovery.

- ***Equality, dignity and diversity*** – so that professionals have due regard to a person's needs arising from their race, gender, religion, sexuality age or disability when delivering a service.

- ***Clear communication in terms of language and culture is essential to ensure patients and their carers are truly involved, and receive the best possible care and treatment*** – so that there is always an understanding that poor communication too often leads to inappropriate care and treatment, and that good communication is likely to lead to better outcomes. This principle also states that all possible steps should be taken to ensure that bilingual (Welsh and English) services are available.

- ***Care and treatment should be comprehensive holistic, and person-focussed*** – so that professionals are sensitive to the full range of a person's needs and that they plan care, treatment and support across whatever needs will help a person's recovery.

- ***Care and treatment planning should be proportionate to need and risk*** – so there is a recognition that, whilst on the one hand, some people with complex needs may need detailed care plans, on the other some people may need un-complicated help that will still significantly improve their situations.

- ***Care and treatment should be integrated and coordinated*** – so that when offering care and treatment, professionals recognise the range of services that may benefit a person, whether in the statutory or voluntary sectors, or whether specialist mental health services or more general services, and actively work together with other services to coordinate service delivery.

**Mental Capacity Act**

1.10 The Mental Capacity Act (MCA) came into force mainly in October 2007. It was amended by the Mental Health Act 2007 to include the Deprivation of Liberty Safeguards (DoLS). DoLS came into force in April 2009.

The MCA covers three main issues:

- the process to be followed where there is doubt about a person's decision-making abilities and decisions may need to be made for them (e.g. about treatment and care);
- how people can make plans and/or appoint other people to make decisions for them at a time in the future when they can't take their own decisions;

- the legal framework for caring for adult, mentally disordered, incapacitated people in situations where they are deprived of their liberty in hospitals or care homes (DoLS).

Thus the scope of MCA extends beyond those patients who have a mental disorder.

**Glossary of Terms**

| Definition | Meaning |
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| Informal patient | Someone who is being treated for a mental disorder in hospital and who is not detained under the Act. |
| Detained patient | A patient who is detained in hospital under the Act or who is liable to be detained in hospital but who is currently out of hospital e.g. on Section 17 leave. |
| Section 135 | Allows for a magistrate to issue a warrant authorising a policeman to enter premises, using force if necessary, for the purpose of removing a mentally disordered person to a place of safety for a period not exceeding 24 hours, providing a means by which an entry which would otherwise be a trespass, becomes a lawful act. |
| Section 135(1) | Used where there is concern about the well-being of a person who is not liable to be detained under the Act so that he/she can be examined by a doctor and interviewed by an Approved mental Health Professional in order that arrangements can be made for his/her treatment or care. |
| Section 135 (2) | Used where the person is liable to be detained, or is required to reside at a certain place under the terms of guardianship, or is subject to a community treatment order or Scottish legislation. In both instances, the person can be transferred to another place of safety during the 24 hour period. |
| Section 136 | Empowers a policeman to remove a person from a public place to a place of safety if he considers that the person is suffering from a mental disorder and is in immediate need of care and control. The power is available whether or not the person has, or is suspected of having committed a criminal offence. The person can be detained in a place of safety for up to 24 hours so that he/she can be examined by a doctor and interviewed by an Approved Mental Health Professional in order that arrangements can be made for his/her treatment or care. The detailed person can be transferred to another place of safety as long as the 24 hour period has not expired. |
| Part 2 of the Mental Health Act 1983 | This part of the Act deals with detention, guardianship and community treatment for civil patients. Some aspects of Part 2 also apply to some patients who have been detailed or made subject to guardianship by the courts or who have been transferred from prison to detention in hospital by the Secretary of State for Justice under Part 3 of the Act.<br>As part 2 patient is a civil patient who became subject to compulsory measures under the Act as a result of an application for detention by a nearest relative or an approved mental health professional founded on medical recommendations. |

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| Section 5(4) | Provides for registered nurses whose field of practice is mental health or learning disabilities to invoke a holding power for a period of not more than 6 hours by completing the statutory document required.<br>During this period the medical practitioner or approved clinician in charge, or his or her nominated deputy should examine the patient with a view to making a report under section 5(2).<br>Alternatively, a patient can be detained under section 2 or 3 if a full Mental Health Act assessment is achieved during the 6 hour period. |
| Section 5(2) | Enables an informal inpatient to be detained for up to 72 hours if the doctor or approved clinician in charge of the patient's treatment reports than an application under section 2 or 3 ought to be made.<br>The purpose of this holding power is to prevent a patient from discharging him/herself from hospital before there is time to arrange for an application under section 2 or section 3 to be made. As soon as the power is invoked, arrangements should be made for the patient to be assessed by a potential applicant and recommending doctors. |
| Section 4 | In cases of urgent necessity, this section provides for the compulsory admission of a person to hospital for assessment for a period of up to 72 hours.<br>An application under this section should only be made when the criteria for admission for assessment are met, the matter is urgent and it would be unsafe to wait for a second medical recommendation i.e. where the patient's urgent need for assessment outweighs the alternative of waiting for a medical recommendation by a second doctor.<br>A psychiatric emergency arises when the mental state or behaviour of a patient cannot be immediately managed. To be satisfied that an emergency has arisen, there must be evidence of:<br>• An immediate and significant risk of mental or physical harm to the patient or to others<br>• And/or the immediate and significant danger of serious harm to the property<br>• And/or the need for physical restraint of the patient<br>Section 4 cannot be renewed at the end of the 72 hour period. If compulsory detention is to be continued, the application must either be converted into a section 2 (admission for assessment) with the addition of a second medical recommendation, in which case the patient can be detained for a maximum of 28 days under that section beginning with the date of admission under section 4 or an application for treatment under section 3 should be made.<br>The Act does not provide for a section 4 to be converted into a section 3 because the criteria for admission under each of these sections are different. |
| Section 2 | Authorises the compulsory admission of a patient to hospital for assessment, or for assessment followed by medical treatment for a mental disorder for up to 28 days. Provisions |

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| | within this section allow for an application to be made for discharge to the Hospital Managers or Mental Health Review Tribunal for Wales.<br>If after the 28 days have elapsed, the patient is to remain in hospital, he or she must do so, either as an informal patient or as a detained patient under Section 3 if the grounds and criteria for that section have been met.<br>The purpose of the section is limited to the assessment of a patient's condition to ascertain whether the patient would respond to treatment and whether an application under section 3 would be appropriate.<br>Section 2 cannot be renewed and there is nothing in the Act that justifies successive applications for section 2 being made.<br>The role of the nearest relative is an important safeguard but there are circumstances in which the county court has the powers to appoint another person to carry out the functions of the nearest relative:<br>• The patient has no nearest relative within the meaning of the Act<br>• It is not reasonably practicable to find out if they have such a relative or who that relative is<br>• The nearest relative is unable to act due to mental disorder or illness<br>• The nearest relative of the person unreasonably objects to an application for section 3 or guardianship<br>• The nearest relative has exercised their power to discharge the person from hospital or guardianship without due regard to the persons welfare or the public interest<br>This procedure may have the effect of extending the authority to detain under section 2 until the application to the County Court to appoint another person is finally disposed of.<br>Patients admitted under section 2 are subject to the consent to treatment provisions in Part 4 of the Act. |
| Section 3 | Provides for the compulsory admission of a patient to a hospital named in the application for treatment for mental disorder. Section 3 provides clear grounds and criteria for admission, safeguards for patients and there are strict provisions for review and appeal.<br>Patients detained under this section are subject to the consent to treatment provisions contained in Part 4 of the Act below. |
| Community Treatment Order (CTO) | Provides a framework to treat and safely manage suitable patients who have already been detained in hospital in the community. A Community Treatment Order (CTO) provides clear criteria for eligibility and safeguards for patients as well as strict provisions for review and appeal, in the same way as for detained patients.<br><br>Written authorisation on a prescribed form for the discharge of a patient from detention in a hospital onto CTO. |
| Section 17E (recall of | Provides that a Responsible Clinician (RC) may recall a |

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| a community patient to hospital) | patient to hospital in the following circumstances:<br>• Where the RC decides that the person needs to receive treatment for his or her mental disorder in hospital and without such treatment there would be a risk of harm to the health or safety of the patient or to other people.<br>• Where the patient fails to comply with the mandatory conditions set out in section17B (3) |
| Revocation | Is the rescinding of a CTO when a CTO patient needs further treatment in hospital under the Act. If a patient's CTO is revoked the patient is detained under the powers of the Act in the same way as before the CTO was made. |
| Part 3 of the Act | Deals with the circumstances in which mentally disordered offenders and defendants in criminal proceedings may be admitted to and detained in hospital or received into guardianship on the order of the court. It also allows the Secretary of State for Justice to transfer people from prison to detention in hospital for treatment for mental disorder. Part 3 patients can either be restricted, which means that they are subject to special restrictions on when they can be discharged, given leave of absence and various other matters, or they can be unrestricted, in which case they are treated for the most part like a part 2 patient. |
| Section 35 | Empowers a Crown Court or Magistrates Court to remand an accused person to hospital for the preparation of a report on his mental condition if there is reason to suspect that the accused person is suffering from a mental disorder. |
| Section 36 | Empowers a Crown Court to remand an accused person who is in custody either awaiting trial or during the course of a trial and who is suffering from mental disorder, to hospital for treatment. |
| Section 37 | Empowers a Crown Court or Magistrates Court to make a hospital or guardianship order as an alternative to a penal disposal for offenders who are found to be suffering from mental disorder at the time of sentencing. |
| Section 38 | Empowers a Crown Court or Magistrates Court to send a convicted offender to hospital to enable an assessment to be made on the appropriateness of making a hospital order or direction. |
| Section 41 | Empowers the Crown Court, having made a hospital order under s.37, to make a further order restricting the patients discharge, transfer or leave of absence from hospital without the consent of the Secretary of State for Justice.<br>Section 41 can also operate as a community section for people who were originally on section 37/41. When a section 37/41 is conditionally discharged it leaves the powers of Section 41 in place. This means that the person can leave hospital and live in the community but with a number of conditions placed upon them. |
| Section 45A | This is a court sentence to hospital for someone with a mental disorder at any time after admission, if the Responsible Clinician considers the treatment is no longer required or beneficial, the person can be transferred back to |

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| | prison to serve the remainder of their sentence. |
| Section 47 | Enables the Secretary of State for Justice to direct that a person serving a sentence of imprisonment or other detention be removed to and detained in a hospital to receive medical treatment for mental disorder. |
| Section 48 | Empowers the Secretary of State for Justice to direct the removal from prison to hospital of certain categories of un-sentenced mentally disordered prisoners to receive medical treatment. |
| Section 49 | Enables the Secretary of State for Justice to add an order restricting the patients discharge from hospital to a S.47 or S.48 |
| CPI Act | Criminal Procedure (Insanity) Act 1964. This Act as amended by the Criminal Procedures (Insanity and Unfitness to Plead) Act 1991 and the Domestic Violence, Crime and Victims Act 2004 provides for persons who are found unfit to be tried or not guilty by reason of insanity in respect of criminal charges. The court has three disposal options:<br>• To make a hospital order under section 37 of the MHA 1983 which can be accompanied by a restriction order under section 41<br>• To make a supervision order so that the offenders responsible officer will supervise him only to the extent necessary for revoking or amending the order.<br>• Order the absolute discharge of the accused. |
| CTO (section 37) | Once an offender is admitted to hospital on a hospital order without restriction on discharge, his or her position is the same as if a civil patient, effectively moving from the penal into the hospital system. He or she may therefore be suitable for Community Treatment Order (CTO). |
| Administrative Scrutiny | To be confirmed |
| Section 58(3) (a) | Certificate of consent to treatment (RC) |
| Section 58 (3) (b) | Certificate of second opinion (SOAD authorisation) |
| Section 58A(3)(c) | Certificate of consent to treatment, patients at least 18 years of age (RC) |
| Section 58A(4)(c) | Certificate of consent to treatment and second opinion, patients under 18 years of age (SOAD) |
| Section 58A(5) | Certificate of second opinion (patients not capable of understanding the nature, purpose and likely effects of the treatment) (SOAD) |
| Part 4A | Certificate of appropriateness of treatment to be given to a community patient (SOAD) |
| Section 62 – Urgent Treatment | Where treatment is immediately necessary, a statutory certificate is not required if the treatment in question is:<br>• To save the patient's life<br>• Or to prevent a serious deterioration of the patient's condition, and the treatment does not have unfavourable physical or psychological consequences which cannot be reversed and does not entail significant physical hazard<br>• Or to prevent the patient behaving violently or being a |

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|---|---|
| | danger to themselves or others, and the treatment represents the minimum interference necessary for that purpose, does not have unfavourable physical or psychological consequences which cannot be reversed and does not entail significant physical hazard. |
| Section 23 | Provides for the absolute discharge from detention, guardianship or from a community treatment order of certain patients, by the Responsible Clinician (RC), the Hospital Managers (or Local Social Services Authority for guardianship patients) or the patients nearest relative. The discharge must be ordered; it cannot be affected by implication.<br>Section 23 does not apply to patients who have been remanded to hospital by the courts or to patients subject to interim hospital orders.<br>The Secretary of State for Justice has powers to discharge restricted patients under section 42(2).<br>If an ay time Responsible Clinicians conclude that the criteria justifying the continued detention or community treatment order are not met, they should exercise their power of discharge and not wait until such time that the detention order or a CTO is due to expire. |
| Section 117 | Services provided following discharge from hospital; especially the duty of health and social services to provide after-care under section 117 of the Act following the discharge of a patient from detention for treatment under the Act. The duty applies to CTO patients and conditionally discharged patients as well as those who have been absolutely discharged. |

GIG CYMRU NHS WALES
Bwrdd Iechyd Prifysgol Bae Abertawe
Swansea Bay University Health Board

# DRAFT Hospital Managers Power of Discharge Committee

# Terms of Reference

**Updated November 2019**

## HOSPITAL MANAGERS POWER OF DISCHARGE COMMITTEE

## TERMS OF REFERENCE

### 1. PURPOSE

The role of the Hospital Managers Power of Discharge Committee is to satisfy the Board that the processes employed by the Committee, tasked with considering whether the power of discharge should be used, are fair, reasonable and exercised lawfully.

### 2. MEMBERSHIP

| | |
|---|---|
| **Chair** | Non-Officer Member of the Board |
| **Membership** | Hospital Managers, to include all other Non-Officer Members of the Board and appointed Associate Members. |
| **In Attendance** | Nominated members of the Mental Health and Learning Disabilities Delivery Unit. |
| **Member Appointments** | The Hospital Managers shall retain their membership of the Power of Discharge Committee at the discretion of the Board, but only for as long as they remain Non-Officer Members or Associate Members of the Board. An annual appraisal system will be applied to support the annual renewal arrangements for Hospital Managers. |
| **Appointment of Chairman** | The chairing of the Committee should be undertaken by a Non-Officer Member of the Board |

### 3. DUTIES

The Power of Discharge Committee shall:

- Monitor the exercise of Power under Section 23 of the Mental Health Act 1983 by Hospital Managers at Hearings involving 3 or more members of the *Hospital Managers Power of Discharge Committee.* These powers are formally delegated by the Health Board in its "Policy for Hospital Managers' Scheme of Delegation". This policy sets out the statutory functions of Hospital Managers

- Report annually to the Board

- Develop a rolling programme of training activities to ensure that its members are fully able to exercise their responsibilities. This will include a formal induction programme and regular training on the Mental Health Act 1983.

- Consider issues which are identified by Hospital Managers at Hospital Managers Hearings and which required action. This will be a standing agenda item for discussion by the group. The Chair will determine if the issue needs to be escalated and will be empowered to seek legal advice from the Health Board Solicitors.

## 4. MEETINGS

### 4.1 Quorum

The Power of Discharge Committee will require the following members to remain quorate:

1 Chairman of the Hospital Managers Power of Discharge Committee
1 Other Non-Officer Member of the Board
2 Associate Members

### 4.2 Frequency of Meetings

The Power of Discharge Committee shall meet at six monthly intervals. Additional meetings may be called by the Chairman at any time providing at least ten working days' notice is given.

## 5. REPORTING

The Chairman of the Committee will present an annual report to the Board.

## 6. REVIEW

The Terms of Reference will be reviewed annually or when changes in legislation dictate.

# Hospital Managers' Policy

## Contents

## 1. INTRODUCTION

Hospital Managers, as appointed by the Health Board, have the authority to detain patients under the Mental Health Act 1983. They have a range of responsibilities including:

- Ensuring that patient's care and treatment complies with the Act;
- Authority to detain patients admitted under the act; and
- Power to discharge certain patients which can only be exercised by three or more members of a committee formed for that purpose.

In addition, there are other duties which are carried out on behalf of the health board by 'authorised officers' (staff) of the hospitals. These include receipt, scrutiny and amendment of detention documents, ensuring patients' rights are made known to them, referral for and arranging Mental Health Review Tribunals, ensuring compliance with renewal/extension, consent treatment and second opinion dates. This is not an exhaustive list, but these roles and responsibilities will be outlined in more detail below as well as in the scheme of delegation at **appendix one**.

It is the hospital managers who have the authority to detain patients under the act and have equivalent responsibilities towards patients subject to community treatment orders (CTO) (where the patient was detained at the "responsible hospital" immediately before becoming subject to the community treatment order (CTO), even if those patients are not being treated at one of their hospitals). The policy provides assurance that the health board as a detaining authority has formally delegated specific statutory duties and powers to specific individuals (or groups of individuals).

The Mental Health Legislation Committee is responsible for providing assurance to the board that those functions of the act which they have delegated are being carried out correctly and the wider operation of the act is operating properly.

## 2. SCHEME STATEMENT

The health board is responsible for ensuring that the Mental Health Act is used lawfully and fairly, in accordance with the principles of the Mental Health Act Code of Practice for Wales, including ensuring all paperwork is scrutinised for validity, that detained patients are informed of their rights, and that patients are referred to the tribunal within the timeframes set out in the Mental Health Act. They also have various powers, to discharge patients from detention, transfer detained patients to other hospitals in accordance with regulations, as well as withholding a patient's outgoing correspondence where the law permits.

## 3. SCOPE

The health board has appropriate governance arrangements in place to monitor and review the exercise of functions under the act on its behalf through the Mental Health Legislation Committee.

The scheme of delegation covers mental health patients across community, outpatient and inpatient settings. The board must ensure that those acting on their behalf are competent to do so and receive suitable training to enable them to exercise their functions appropriately on a day to day basis.

## 4. AIMS

This policy should ensure that all staff authorised for the receipt and scrutiny of Mental Health Act documentation are aware of their responsibilities and requirements both individually and collectively in relation to the delegated duties.

It is the responsibility of the Mental Health Act administration team to maintain records of all original documentation and record this information.

## 5. TERMS AND CONDITIONS OF OFFICE

As independent members of the board can only hold the post for a finite number of years the same approach is to be taken for others and initially they be appointed for a first term of a maximum of four years. All hospitals managers will be subject to annual appraisal to determine if they are to continue their term of office as planned. The terms and conditions to which hospital managers are required to comply with. (A**ppendix two)**.

## 6. THE STATUTORY FUNCTIONS OF HOSPITAL MANAGERS

The statutory functions of the hospital managers are:

- Receipt, Scrutiny and Recording of Documentation

Hospital managers should formally delegate their duties to receive and scrutinise admission documents to a limited number of officers, who may include clinical staff on wards. Within Swansea Bay University Health Board, the legal documentation of all patients is checked by the Mental Health Act Manager (or in their absence the Mental Health Act Administrator). Out of hours this function is undertaken by the out-of-hours nurse practitioner or senior nursing staff. The Mental Health Act manager then provides the Mental Health Legislation Committee with details of defective admission documents, whether rectifiable or not, and of any subsequent action, on a regular basis.

All detention papers should undergo both administrative and medical scrutiny to ensure they are technically correct and the clinical reasons given are sufficient for detaining. Authority for checking that detention documents are in order and receiving papers authorising a patients' detention can only be undertaken by:

- The Mental Health Act manager;
- Mental Health Act administrator;
- Out of hours nurse practitioner;
- A senior nominated nurse;

All of the above staff should receive regular training and instruction in the receipt of admission documentation. Should errors be identified, the person who signed the document in question must complete the rectification within 14 days. If admission documents reveal a defect which fundamentally invalidates the application and which cannot be rectified, the patient can no longer be detained on the basis of the application. Authority for detention can only be obtained through a new application. The hospital managers should discharge the patient who should be informed both verbally and in writing.

- Report on hospital in-patient

Hospital managers should monitor the use of section five including:

- How quickly patients are assessed for detention and discharged from the holding power;
- The attendance times of doctors and approved clinicians following the use of section 5(4); and
- The proportion of cases in which applications for detention are made following use of section 5.

Hospital managers should ensure suitably qualified, experienced and competent nurses are available where there is a possibility of section 5(4) being invoked.

The role of monitoring is provided by the Mental Health Legislation Committee who will be informed via the Mental Health Act manager.

- Emergency admission

Hospital managers should monitor the use of section four and ensure that second doctors are available to visit a patient within a reasonable time after being requested.

The role of monitoring is provided by the Mental Health Legislation Committee who will be informed via the Mental Health Act manager.

- Co-operation working with local social services authorities

Where the patient is admitted under the act following an application by their nearest relative, the hospital managers should request that the relevant local social service authority provide them with a social circumstances report (section 14 and Code of Practice for Wales Chapter 37.12 refers).

The Mental Health Act manager performs this role on behalf of the hospital managers.

- Allocation of a Responsible Clinician

Every patient must have an allocated responsible clinician who is the approved clinician with overall responsibility for the patient's care and treatment. The patient should be informed of the responsible clinician's identity and of any change. The functions of responsible clinicians and approved clinicians and steps to be followed to ensure that:

- They have the most appropriate expertise to meet the patient's main assessment and treatment needs;
- Can be easily determined;
- Cover arrangements are in place when they are not available;
- There is a system for keeping the appropriateness of the RC is under review.

The allocation of the responsible clinician is delegated to the clinical team. A list of approved clinicians in Wales and those employed by the Health Board is held by Betsi Cadwaladr University Health Board.

- Transfer between hospitals

Section 19 allows hospital managers to authorise the transfer of most detained patients from one hospital to another under the same managers or from one hospital to another with a different set of managers.

This role is performed on behalf of the managers by the Mental Health Act Manager or a senior nominated nurse.

- Transfers into/from guardianship

Section 19 also allows for the hospital managers to transfer a patient who is liable to be detained in hospital into guardianship with the agreement of the local authority, and a guardianship patient may be transferred to hospital.

This role is undertaken on behalf of the hospital managers by the Mental Health Act manager or responsible clinician.

- Transfer and assignment of responsibility for community treatment order patients

The managers of a hospital to which a community treatment order patient has been recalled may authorise the patient's transfer to another hospital during a 72 hour period of recall. With the agreement of the hospital to which the patient is being transferred, the hospital managers may also reassign responsibility so that a different hospital will become the patient's responsible hospital.

The Mental Health Act manager or a senior nominated nurse will perform this role on behalf of the hospital managers.

- Removal and return of patients

Part 6 of the Act enables the transfer between the United Kingdom jurisdictions, Channel Islands or Isle of Man of detained patients (otherwise than under s.35, s.36 or s.38), patients subject to guardianship or to compulsion in the community where the patient concerned needs to remain subject to detention, guardianship or the equivalent community treatment order on arrival in Wales.

This role is performed on behalf of the managers by the Mental Health Act Manager or a senior nominated nurse.

- Responsibilities under Community Treatment Order

The hospital managers must liaise with local social services authority to ensure arrangements are in place for aftercare services.

The responsible clinician or a senior nominated nurse will perform this role on behalf of the hospital managers.

- Recall to hospital for community treatment patients

Section 17E of the Act requires hospital managers to record the time and date that a community patient was recalled to hospital and the time and date of release by the responsible clinician.

The completion of form CP6 will be undertaken by ward staff on behalf of the hospital managers.

There is also a responsibility on the managers to ensure that no community patient is detained on recall for longer than 72 hours without having their community treatment order revoked by the responsible clinician.

The role of monitoring recall will be provided by the Mental Health Legislation Committee.

- Duty to provide information to patients

Section 132 and 132A of the act require hospital managers to take such steps as are practicable to ensure that patients who are detained in hospital under the act, or who are subject to a community treatment order, understand important information about how the act applies to them. This must be done as soon as practicable after the start of the patient's detention or the community treatment order.

Staff must be fully aware of the diverse needs of the patient when considering detention and must take them in to account at all times. They must ensure the patient fully understands what is happening to them in a language and format which they are able to understand, this will include sensory and cognitive abilities and physical impairment. Where necessary, an interpreter should be obtained. It would not be sufficient to repeat what is already written on an information leaflet as a way of providing information verbally. Patients should be given all relevant information, which includes how to make a complaint, how to access advocacy services, legal advice and the role of the inspectorates.

Under section 133 of the act, the hospital managers must inform the nearest relative (as defined in section 26 of the 1983 act) when a patient is released from detention, including a patient who is to be discharged from hospital under community treatment order. It need not be provided if either the patient or nearest relative have requested that this information should not be given.

The responsibility for ensuring that the patient and nearest relative are informed in line with the above requirements rests with the Mental Health Act manager, qualified nursing staff and out-of-hours nurse practitioners.

- Correspondence of patients

Section 134(1)(a) of the act allows hospital managers to withhold outgoing post from detained patient if the person it is addressed to has requested in writing that they do so provided the correct procedure is followed.

The role of monitoring is provided by the Mental Health Legislation Committee who will be informed via the Mental Health Act manager.

- Access to Interpreters

The hospital managers should ensure that members of staff receive sufficient guidance in the use of an interpreter and that all parties, including the patient, have early access to trained interpreters. (Code of Practice for Wales, Chapter 1.10).

A list of interpreters and contact numbers is available via the health board intranet site (phone contact only).

- Information about Independent Mental Health Advocates

Section 130D places a duty on hospital managers (and in certain cases responsible clinicians) to provide qualifying patients with information that advocacy services are available and how to obtain that help.

This role will be provided on behalf of the hospital managers by ward nursing staff, community staff or Mental Health Act manager in accordance with Chapter 6.26 and 4.18 of the code.

- Duty to refer cases to the Mental Health Review Tribunal for Wales

Hospital managers must refer a patient's case to the Mental Health Review Tribunal for Wales in the circumstances set out in section 68 of the act below:

- Who has not exercised their right to apply (or been referred by Welsh Ministers or the hospital managers as set out in section 68);
- Who has been transferred from guardianship under regulations under section 19 and has not applied for a tribunal;
- Who has not had an application made on his behalf by the nearest relative or by virtue of a referral by Welsh ministers;
- If the authority for detention is renewed and the patient has not had a Mental Health Review Tribunal for more than three years, or a patient under 18 years of age, for one year; or
- On the revocation of a community treatment order.

The responsibility for ensuring that systems are in place to make a reference to the Mental Health Review Tribunal for Wales within the timescales will be performed by the Mental Health Act manager.

- Referrals to the Mental Health Review Tribunal for Wales by Welsh Ministers

Hospital managers should consider asking Welsh ministers to exercise their power of referral for a patient (whose rights under Article 5(4) may be at risk of being violated) to have their case considered by the Mental Health Review Tribunal for Wales.

The hospital managers should normally seek such a reference in any cases where:

- A patient's detention under section has been extended under section 29 of the act pending the outcome of an application to the county court for the displacement of their nearest relative;
- The patient lacks the capacity to request a reference;
- The patient's case has never been considered by the Mental Health Review Tribunal for Wales or a significant period has passed since it was last considered.

The Mental Health Act manager will perform this duty

- Renewal of authority to detain (section 20)

The hospital managers should consider a report made under section 20(3) or section 20A(4) before the current period of detention or community treatment expires. If a responsible clinician does not hold a review before the period of detention or community treatment order expires, this should be considered a very serious matter to be urgently reviewed. The hospital managers should have processes in place to ensure that this does not happen.

- Report barring discharge by nearest relative (section 25)

The nearest relative may order the discharge of a patient detained under section three or community treatment order by giving 72 hours notice to the hospital managers in writing. The person receiving the notice must note the time and date received.

The responsible clinician may within the 72-hour period complete the relevant form barring the discharge by the nearest relative.

- Section 117 Arrangements

Where a tribunal hearing has been arranged, the hospital managers should inform the relevant health board and local social services authority so that they can consider the need for a section 117 aftercare planning meeting. (Code Chapter 37.36and 33.10 refers.)

***A senior nominated nurse will notify the relevant authorities of these details on behalf of the hospital managers.***

- Medical Examination for Mental Health Review Tribunal Mental Health Review Tribunal

Hospital managers must ensure that the medical member of the Tribunal is able to meet the patient in private and examine the health record.

Ward staff or community staff will undertake this duty on behalf of the hospital managers.

- Tribunal Venue

The hospital managers must provide suitable accommodation for hearings, which should be private, quiet, clean and adequately sized and furnished. The hospital managers must provide the mental health review tribunal with a statement of relevant facts and certain reports on the patient.

The Mental Health Act manager will perform this role on behalf of the hospital managers.

- Duties in respect of victims

The Domestic Violence, Crime & Victims Act 2004 (DVCVA) 2004 places a number of duties on hospital managers in relation to certain patients who have committed sexual or violent crimes together with guidance on the exercise of these. The duties include providing the following information to victims:

- When authority to detain a patient expires;

- When the patient is discharged, including allowing the victim to make representations about discharge conditions and whether a CTO is to be made;
- What conditions of discharge relate to the victim, and when these cease;
- The victim's entitlement to make representations on the need for a community treatment order and allowing representation concerning the conditions attached to the community treatment order;
- Any conditions on the community treatment order relating to the victim or their family, and any variation of the conditions;
- When the community treatment ceases.

The responsible clinician or criminal justice team will perform this role on behalf of the hospital managers.

- Discharge from Mental Health Act detention and Community Treatment Order

Hospital managers have the power to discharge certain patients from detention which can only be exercised by three or more members of a panel formed for that purpose. Although the function is delegated to a panel of three or more lay members, the health board remains responsible for this statutory function. The panel hears individual cases where patients or their nearest relative have applied for discharge. The panels also sit on renewal hearings; these are collectively known as hospital managers reviews. Hospital managers cannot delegate this duty.

- Consent to Treatment

The hospital managers should ensure that robust procedures are in place to notify the approved clinician in charge of the patient's treatment of the expiry of the three-month rule set by section 58 and Part 4A certificates for community patients, and they should check that action has been taken.

This task is delegated to the Mental Health Act manager on behalf of the hospital managers.

The same reminder system should ensure that patients are asked whether they consent to continued medication.

Responsibility for this task is delegated to the Mental Health Act manager in conjunction with ward nursing staff and community staff.

If the patient is unwilling to consent or incapable of doing so, the approved clinician in charge of the patient's treatment must ask the Healthcare Inspectorate Wales (HIW) to arrange for a second opinion appointed doctor to visit the patient and review the proposed treatment. When a second opinion is required, the hospital managers should ensure that the patient, statutory consultees (one of which will be neither a doctor nor a nurse) and any other relevant people are available to consult with the second opinion appointed doctor, and that the statutory documents are in order and readily available for inspection.

Responsibility for this task is delegated to the Mental Health Act manager in conjunction with ward nursing staff and community staff.

The hospital managers should ensure that certificates that no longer authorise treatment (or particular treatments) under part 4 of the act are clearly marked as such, including photocopies of these certificates (Chapter 25.87 of the Code).

Responsibility for this task is delegated to the Mental Health Act manager in conjunction with ward nursing staff and community staff.

- Emergency Treatment

The hospital managers should monitor the giving of 'urgent treatment' under section 62 and 64 of the act, and they should ensure that a form is provided for completion by the responsible clinician, or the approved clinician in charge of the patient's treatment, can record details of:

- the proposed treatment;
- why it is immediately necessary to give the treatment;
- the length of time for which the treatment was or will be given.

The use of section 62 and 64G will be monitored by the Mental Health Act manager.

- Hospital accommodation for children

Section 131A of the act puts a duty on hospital managers to ensure any children receiving inpatient care for mental disorder in their hospitals are accommodated in an environment which is suitable for their age and in line with their needs. This duty will apply to children admitted informally to hospitals, as well as those detained under the act.

The responsibility for this task is delegated to the responsible clinician and clinical team.

- Exclusions

The hospital managers should regularly monitor the exclusion of visitors to detained patients (Code of Practice for Wales, Chapter 11.19).

The role of monitoring this requirement is provided by the Mental Health Legislation Committee via senior ward staff.

- Local Policies – Absence without leave

The hospital managers must ensure that there is a clear written policy on the actions to be taken when a detained or a community patient goes missing (section 18).

Service managers will investigate any incident of a person absconding**.**

- Local Policies – Searching of Detained Patients and their Property

The hospital managers should ensure that there is an operational policy concerning the searching of a detained patient, their belongings and surroundings.

The responsibility for this task is delegated to the clinical service managers.

- Local Policies – Locked Door

The hospital managers must ensure that there is a clear written policy on the actions to be taken when locking the doors of the unit or ward.

The responsibility for this task is delegated to clinical service managers.

- Local Policies – Mobile Phones and other Mobile Devices

The hospital managers should have a policy for the possession of mobile phones and other devices, for example, laptops, tablets.

The responsibility for this task is delegated to clinical service managers.

## 7. TRAINING

The health board will provide ongoing training for staff who have a delegated duty under the scheme of delegation. Details of training courses available can be found by contacting the Mental Health Act administration team.

## 8. RESPONSIBILITIES

**Chief Executive**

The Chief Executive has overarching responsibility for ensuring that health board is compliant with the law in relation to the Mental Health Act.

**Executive Lead**

The Service Director for Mental Health and Learning Disabilities, on behalf of the Chief Operating Officer, is the lead and has overarching responsibility for ensuring compliance with the contents of this policy.

**Designated Individuals**

The policy states which individuals are responsible for certain sections of the Mental Health Act under the scheme of delegation at **appendix A.**

## 9. REVIEW

This policy will be reviewed following any changes in legislation

**Appendix A**

| Function | Delegated to |
|---|---|
| Receipt, scrutiny and recording of documentation | Mental Health Act manager, senior nominated nurse, out-of-hours nurse practitioner. |
| Report on hospital in-patient | Mental Health Act manager |
| Emergency admission (Monitoring) | Mental Health Act manager |
| Co-operation working with local social services authority | Mental Health Act manager |
| Allocation of Responsible Clinician | Clinical team |
| Transfer between hospitals | Mental Health Act manager, senior nominated nurse |
| Transfers into/from guardianship | Mental Health Act manager |
| Transfer and assignment of responsibility for community treatment order patients | Mental Health Act manager, senior nominated nurse |
| Removal and return of patients | Mental Health Act manager, senior nominated nurse |
| Responsibilities under community treatment order | Responsible clinician, senior nominated nurse |
| Recall of CTO patient to hospital | Ward staff |
| Duty to provide Information to patients | Mental Health Act manager, senior nominated nurse |
| Correspondence of patients | Mental Health Act manager |
| Access to interpreters | Mental Health Act manager, senior nominated nurse |
| Independent Mental Health Act Advocates – duty to provide information | Mental Health Act manager, ward/community staff |
| Referral to Mental Health Review Tribunal for Wales | Mental Health Act manager |
| Referrals by Welsh Ministers to Mental Health Review Tribunal | Mental Health Act manager |
| Section 117 Arrangements | Senior nominated nurse |

| Function | Delegated to |
|---|---|
| Medical Examination for MHRT | Ward nursing staff, community staff |
| Tribunal venue | Mental Health Act manager |
| Renewal of authority to detain | Mental Health Act manager, senior nominated nurse |
| Report barring discharge by nearest relative | Mental Health Act manager, senior nominated nurse |
| Victims right to be informed of discharge and conditions attached to that discharge | Responsible clinician |
| Discharge from MHA detention or CTO | Hospital managers |
| Consent to Treatment | Mental Health Act manager, nursing and community staff |
| Emergency Treatment (Monitoring) | Mental Health Act manager |
| Hospital accommodation for children and young people | Responsible clinician, clinical team |

**Appendix B**

**HOSPITAL MANAGERS**

**ROLE DESCRIPTION**

| | |
|---|---|
| **Job Title** | Hospital Managers Power of Discharge Group Member / Associate Hospital Managers |
| **Pay Band** | - |
| **Hours of Work and Nature of Contract** | Sessional – as and when required |
| **Division/Directorate** | Corporate Services |
| **Department** | On any NHS site within Swansea Bay University Health Board |
| **Employment Status** | Honorary Appointment – sessional fee |
| **Terms** | Fixed term for a maximum of 4 years (re-appointment subject to satisfactory appraisal) |

| | |
|---|---|
| **Remuneration** | Sessional fee, plus travel allowance |

**ORGANISATIONAL ARRANGEMENTS:**

| | |
|---|---|
| **Managerially Accountable to:** | Chair, Mental Health Legislation Committee |
| **Reports to: Name Line Manager** | Chair, Mental Health Legislation Committee |
| **Professionally Responsible to:** | Chair, Mental Health Legislation Committee |

**Role Summary/Purpose:**

The phrase 'Hospital Managers' can be confusing as it does not mean the 'management' of the hospital, but it is a term specific to the Mental Health Act, 1983. Hospital Managers in this context are the Independent Members appointed to the Health Board. Regulations permit the Board to delegate functions to committees or sub-committees whose members need not be members of the board. Honorary appointments are made to Lay Members who carry out the functions of 'Hospital Managers'.

The 'Hospital Managers' act on behalf of the Health Board when carrying out their duties. Managers have many responsibilities for the proper implementation of the Act and are encouraged to monitor the use of the Act in conjunction with senior management in PTHB

Managers have the power to discharge detained patients; a duty to refer certain cases to the Mental Health Review Tribunal for Wales and a duty to consider reports under Section 20 (Renewal of Authority for Detention).

**1. BACKGROUND**

The Mental Health & Learning Disabilities Delivery Unit provides and secures services across SBUHB as follows:

Inpatient Mental Health Services are provided at:

- Cefn Coed Hospital, Cockett, Swansea
- Ward F, Neath Port Talbot Hospital
- Tonna Hospital, Neath
- Caswell Clinic, Glanrhyd Hospital, Pen y Fai, Bridgend
- Taith Newydd, Glanrhyd Hospital, Pen y Fai, Bridgend

**2. MAIN DUTIES**

The duties of the hospital managers are explained in chapter 11 of the Code of Practice for Wales. Hospital Managers' power to discharge patients is dealt with in chapter 27. Apart from exercising the hospital manager's power of discharge, hospital managers may arrange for their functions to be delegated on a day-to-day basis, by particular people or groups of people on their behalf.

**3. KEY TASKS**

The main responsibilities which the Mental Health Act 1983 confers on hospital managers are set out below and are expanded upon, where necessary in relevant chapters of the Code of Practice for Wales:

- Attend appeals to the Managers to hear reviews regarding the patient's detention to establish whether or not the patient should be discharged from detention
- Attend updates/training sessions on a regular basis
- Act with integrity, having an understanding of the provisions of the Mental Health Act particularly with those relating to the duties of hospital managers and procedures for managers' reviews
- Act in a non-discriminatory manner, having a thorough understanding of issues including ethnicity, sexuality, gender, age etc.

**4. DUTIES AND RESPONSIBILITIES**

- Monitoring on behalf of the Health Board, the operation of all policies and procedures, which relate to the implementation of the Mental Health Act 1983, in order to protect the rights of detained patients
- Ensuring the grounds for admitting the patient are valid and that all relevant admission documents are in order
- Reporting deficiencies found both orally and in writing as appropriate to the Mental Health Act Administrator and ensure that remedial action is taken
- Monitoring the procedures for giving of information to detained patients regarding their rights relating to their detention and compulsory treatment, ensuring that they have access to review procedures.
- All employees and Independent Members must ensure that they carry out their roles with dedication and commitment to the SBUHB and its core values.

- All employees and Independent Members must have the highest standards of corporate and personal conduct and behave in an exemplary manner based on the following seven principles:
    - Selflessness – Individuals should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or friends;
    - Integrity – Individuals should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties;
    - Objectivity – In carrying out public business, including making public appointments, awarding contracts, recommending individuals for rewards and benefits, choices should be made on merit;
    - Accountability – Individuals are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate for their position;
    - Openness – Individuals should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands it;
    - Honesty – Individuals have a duty to declare any private interests relating to their duties and to take steps to resolve any conflicts

      arising in a way that protects the public interest, and;

    - Leadership – Individuals should promote and support these principles by leadership and example.

To uphold these principles you must:-

a. Ensure that the interests of patients and the public remain paramount;
b. Be impartial and honest in the conduct of your official business;
c. Use NHS resources to the best advantage of the service and the patients, always seeking to ensure value for money;
d. Not abuse your official position for personal gain or to benefit your family or friends;
e. Not seek advantage or to further private business or other interests in the course of your official duties, and;
f. Not seek or knowingly accept preferential rates or benefits in kind for private transactions carried out with companies, with which they have had, or may have, official dealings on behalf of the SBUHB.

The Standards of Behaviour Policy framework outlines the arrangements within the SBUHB to ensure that staff comply with these requirements, including recording and declaring potential conflicts of interest and handling of gifts, hospitality, honoraria and sponsorship (even if these are declined).

It is your responsibility to ensure that you are familiar with the requirements of the policy and supporting guidance. The relevance of this information will vary depending on your role within the SBUHB and your interests outside of your employment.

**5. USE OF INFORMATION AND COMMUNICATION**

- The post-holder will be expected to scrutinise, interpret and challenge objectively differing opinions presented verbally as well as in report format.
- The post-holder will need to have excellent communication skills and participate in discussions with a wide range of people from different professional backgrounds.
- The post holder must at all times be aware of the importance of maintaining confidentiality and security of information gained during the course of their duties. This will in many cases include access to personal information relating to service users.
- The post holder must treat all information, whether corporate, staff or patient information, in a discreet and confidential manner in accordance with the provisions of the General Data Protection Legislation and Organisational Policy. Any breach of such confidentiality is considered a serious disciplinary offence, which is liable to dismissal and / or prosecution under current statutory legislation and the HB or Trust Disciplinary Policy.

**6. HEALTH AND SAFETY**

- Managers will be required to observe local Health and Safety arrangements and take reasonable care of themselves and persons that may be affected by their work.

**7. ISSUES AND COMPLAINTS**

- Any issues or complaints concerning the business discussions of the Committee, or the conduct of Committee members/Hospital Managers will be brought to the attention of the Chair of the Mental Health Legislation Committee, who will be responsible for reviewing matters on a case by case basis.

**8. TRAINING PERIOD**

- Training will be provided by the Health Board, and newly appointed Managers will be required to observe at least three hearings before starting to operate as an Associate Hospital Manager. This will include reading a significant amount of written information

Introduced: November 2019

Date for Review: October 2021

**HOSPITAL MANAGER**

**PERSON SPECIFICATION**

**Role: Mental Health Act Power of Discharge Group Member/Mental Health Act Manager**

**PERSON SPECIFICATION**

| ATTRIBUTES | ESSENTIAL | DESIRABLE | METHOD OF ASSESSMENT |
|---|---|---|---|
| **Qualifications and/or Knowledge** | Good standard of education. | • | Expression of Interest Letter CV |
| **Experience** | Working well with others | Understanding and knowledge of Mental Health Services | Expression of Interest Letter CV Experience<br>Interview |
| **Aptitude and Abilities** | Excellent communication skills with the ability to deals with people from different professional background. | Team working skills<br>Ability to speak Welsh | Expression of Interest Letter CV Experience<br>Interview |

| | | | |
|---|---|---|---|
| | Ability to scrutinise, interpret and challenge objectively.<br><br>Ability to make impartial decisions | | |
| **Values** | Shows empathy and compassion towards others – a natural disposition to put yourself in someone else's shoes. Sees and treats others as individuals (patient, families, and colleagues) and treats people with dignity and respect.<br><br>Shows resilience, adaptability and flexible approach as situations arise and positivity when times are tough.<br><br>Shows respect for others' views and appreciate others' inputs and encourage colleagues to display our values.<br><br>Motivated to use initiative to recognise problems and seek solutions whilst understanding the importance of empowering and enabling others (patients, families, colleagues).<br><br>Act in a non-discriminatory manner, with a thorough understanding of issues relating to ethnicity, sexuality, gender, age etc.<br><br>Willing to learn and have the ability to adapt to new working practices.<br><br>Ability to work flexibly as the post requires. | | Expression of Interest Letter CV Experience<br><br>Interview |

| | | | |
|---|---|---|---|
| **Other** | ility to travel to hospital and community sites across the service.<br><br>ould be able to commit a few hours often at short notice. | Would be available to attend at least 3 managers hearings per year | Expression of Interest Letter CV Experience<br><br>Interview |

**GENERAL REQUIREMENTS**

Include those relevant to the post requirements

- **Values:** All employees of the Health Board are required to demonstrate and embed the Values and Behaviour Statements in order for them to become an integral part of the post holder's working life and to embed the principles into the culture of the organisation.

- **Registered Health Professional:** All employees who are required to register with a professional body, to enable them to practice within their profession, are required to comply with their code of conduct and requirements of their professional registration.

- **Healthcare Support Workers:** Healthcare Support Workers make a valuable and important contribution to the delivery of high quality healthcare. The national Code of Conduct for NHS Wales describes the standards of conduct, behaviour and attitude required of all Healthcare Support Workers employed within NHS Wales. Health Care Support Workers are responsible, and have a duty of care, to ensure their conduct does not fall below the standards detailed in the Code and that no act or omission on their part harms the safety and wellbeing of service users and the public, whilst in their care.

- **Competence:** At no time should the post holder work outside their defined level of competence. If there are concerns regarding this, the post holder should immediately discuss them with their Manager/Supervisor. Employees have a responsibility to inform their Manager/Supervisor if they doubt their own competence to perform a duty.

- **Learning and Development:** All staff must undertake induction/orientation programmes at Corporate and Departmental level and must ensure that any statutory/mandatory training requirements are current and up to date. Where considered appropriate, staff are required to demonstrate evidence of continuing professional development.

- **Performance Appraisal:** We are committed to developing our staff and you are responsible for participating in an Annual Performance Development Review of the post.

- **Health & Safety:** All employees of the organisation have a statutory duty of care for their own personal safety and that of others who may be affected by their acts or omissions. The post holder is required to co-operate with management to enable the organisation to meet its own legal duties

and to report any hazardous situations or defective equipment. The post holder must adhere to the organisation's Risk Management, Health and Safety and associate policies.

- **Risk Management:** It is a standard element of the role and responsibility of all staff of the organisation that they fulfil a proactive role towards the management of risk in all of their actions. This entails the risk assessment of all situations, the taking of appropriate actions and reporting of all incidents, near misses and hazards.

- **Welsh Language:** All employees must perform their duties in strict compliance with the requirements of their organization's Welsh Language Scheme and take every opportunity to promote the Welsh language in their dealings with the public.

- **Information Governance:** The post holder must at all times be aware of the importance of maintaining confidentiality and security of information gained during the course of their duties. This will in many cases include access to personal information relating to service users.

- **Data Protection:** The post holder must treat all information, whether corporate, staff or patient information, in a discreet and confidential manner in accordance with the provisions of the General Data Protection Legislation and Organisational Policy. Any breach of such confidentiality is considered a serious disciplinary offence, which is liable to dismissal and / or prosecution under current statutory legislation and the HB or Trust Disciplinary Policy.

- **Records Management:** As an employee of this organisation, the post holder is legally responsible for all records that they gather, create or use as part of their work within the organisation (including patient health, staff health or injury, financial, personal and administrative), whether paper based or on computer. All such records are considered public records and the post holder has a legal duty of confidence to service users (even after an employee has left the organisation). The post holder should consult their manager if they have any doubt as to the correct management of records with which they work.

- **Equality and Human Rights:** The Public Sector Equality Duty in Wales places a positive duty on the HB/Trust to promote equality for people with protected characteristics, both as an employer and as a provider of public services. There are nine protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The HB/Trust is committed to ensuring that no job applicant or employee receives less favour-able treatment of any of the above grounds. To this end, the organisation has an Equality Policy and it is for each employee to contribute to its success.

- **Dignity at Work:** The organisation condemns all forms of bullying and harassment and is actively seeking to promote a workplace where employees are treated fairly and with dignity and respect. All staff are requested to report any form of bullying and harassment to their Line Manager or to any Director of the organisation. Any inappropriate behaviour inside the workplace will not be tolerated and will be treated as a serious matter under the HB/Trust Disciplinary Policy.

- **DBS Disclosure Check:** The post holder does not require a DBS Disclosure Check.

- **Safeguarding Children and Adults at Risk:** The organisation is committed to safeguarding children and adults at risk. All staff must therefore attend Safeguarding Children & Adult training and be aware of their responsibilities under the All Wales Procedures.

- **Infection Control:** The organisation is committed to meet its obligations to minimise infections. All staff are responsible for protecting and safeguarding patients, service users, visitors and employees against the risk of acquiring healthcare associated infections. This responsibility includes being aware of the content of and consistently observing Health Board/Trust Infection Prevention & Control Policies and Procedures.

- **No Smoking:** To give all patients, visitors and staff the best chance to be healthy, all Health Board/Trust sites, including buildings and grounds, are smoke free.

- **Flexibility Statement:** The duties of the post are outlined in this Job Description and Person Specification and may be changed by mutual agreement from time to time.

**Appendix C**

Hospital Managers – Terms and Conditions of Appointment

***Restricted: Appointments***

*This document sets out your principle terms and conditions of appointment.*

**APPOINTMENT AS HOSPITAL MANAGER OF SWANSEA BAY UNIVERSITY HEALTH BOARD**

**1. Commencement of appointment and duration**

1.1 Your appointment will be for a period of four years for the first term. After this you will discuss with the health board the possibility of a second term. Hospital Managers may stand for a maximum of eight years on the same board.

1.2 Your appointment period will commence on the date if your acceptance of the terms and on which this appointment is being offered.

**2. Role and duties**

2.1 You are not an employee. Accordingly nothing in this document shall be constructed as, or taken to create, a contract of employment between yourself and the health board.

2.2 You will be given the opportunity to periodically meet with the health board service director for mental health and learning disabilities to reflect on your role, review performance and evaluate the arrangements between you and the organisation.

**3. Good Governance Standards**

3.1 It is a condition of this appointment that you fulfil the responsibilities set out within the role description and the person specification

**4. Confidentiality/use of official information**

4.1 You are required to exercise care in the use of information that you acquire in the course of your duties and to protect information that is held in confidence.

**5. Conflicts of interests**

5.1 You must declare and personal business interests which may, or may be perceived to influence your judgment in performing your functions and obligations under this agreement. These interests include (without limitations),

personal direct and indirect pecuniary interests, and any such interests of your close family members and/or of people living in the same household as you or as your close family members.

5.2 You must seek confirmation from the Chair of Swansea Bay University Health Board that no conflicts has arisen and is it is appropriate for you to remain a hospital manager. You should not undertake any work on behalf of the board until you have received this confirmation.

5.3 You will need to operate in accordance with the local Health Board (Consultation, Membership and Procedures) (Wales) Regulations 2009 and the requirements set out in the Local Health Board's Standing Orders.

## 6. General Data Protection Regulations

6.1 The Welsh Government is required by law to comply with the Data Protection Act 2018 (DPA). The DPA enables individuals to have greater access to their personal information and enhance the levels of protection given to that personal information to be open about its use and ensure that the processing of personal information meets the requirements of the DPA.

6.2 As part of this, the hospital managers' scrutiny panels and powers of discharge committee will be moving to electronic working. Hospital managers will be provided with a tablet by the mental health and learning disabilities unit as well as access to an e-board software on which to access the required documentation.

## 7. Remuneration

7.1 The post is not paid out of pocket but expenses will be provided.

7.2 If a hospital manager is also a carer, there may be specific issues with regards to payments and are recommended to take expert advice from the Department of Work and Pensions before agreeing arrangements with the health board for the payment of remuneration and expenses.

7.3 The post does not attract annual or special leave allowance. There is no sickness absence payment scheme.

## 8. Assistance for Disabled Members

8.1 Where appropriately all reasonable adjustments will be made to enable those that require assistance to effectively carry out their duties.

## 9. Eligibility

9.1 You must conduct yourself at all times in a manner which will maintain public confidence

9.2 In particular, you are required to declare whether you are aware of anything in your private or professional life that would be an embarrassment to yourself or the Welsh Government if it became known at any point during your membership of the board.

## 10. Indemnity

10.1 The health board proposes to terminate your appointment prior to the expiry of the fixed term other than through immediate termination as a result of unsuitable conduct, you will be notified of the proposal and of the reasons for it and will be offered an opportunity to have a meeting with the Chair before a decision is taken. If your appointment is subsequently terminated you will receive notice in writing

## 11. Notice/Termination

11.1 Either party may terminate this contract for any reason before the expiry of the fixed period by giving one month's notice in writing

11.2 You will receive no notice if this appointment is terminated early by mutual consent.

I accept this appointment as a hospital manager of Swansea Bay University Health Board on the terms set out in the letter of appointment.

**Signed**: _____ **Date**: _____


**MENTAL HEALTH DIRECTORATE POLICY**

# MENTAL HEALTH ACT 1983

# PROCEDURE FOR HEARING PATIENT'S APPEALS AGAINST CONTINUED DETENTION OR COMMUNITY TREATMENT ORDER

## (CODE OF PRACTICE FOR WALES – CHAPTER 38)

| | |
|---|---|
| Originator: | Mental Health Policy Review Group |
| Reviewed by:<br>Date reviewed: | Mental Health Policy Review Group |
| Next review: | |
| Ratified by:<br>Date ratified: | Clinical Governance Strategy Group |
| Date circulated: | |

**CONTENTS**

# 1 INTRODUCTION

1.1 The guidelines have been prepared not only with the needs of new managers in mind, to provide them with an introduction to their role, but also to ensure that all reviews follow a recognised standard of good practice.

1.2 The guidelines should also ensure that patients experience the reviews in as positive a light as possible, and that the professionals involved are supported in their work individually and as part of a multi-disciplinary team.

1.3 Swansea Bay University Health Board recognises the importance of effective review panels and is appreciative of the work of its Independent Members and, more especially, of its Associate Members (Mental Health Act Associate Hospital Managers). Review panels could not operate without them but they also perform a very important role in the interest and commitment they demonstrate to the work of the Mental Health and Learning Disabilities Directorate.

1.4 Abbreviations used within these guidelines are:

- RC – Responsible Clinician
- CTP – Care and Treatment Plan
- CTO – Community Treatment Order
- MHA – Mental Health Act
- IMHA – Independent Mental Health Advocate
- AMHP – Approved Mental Health Professional
- CMHT – Community Mental Health Team
- "The Hospital Managers" – Mental Health Act Associate Hospital Managers
- "The Act" – Mental Health Act 1983 (as amended 2007)

1.5 **Definition of 'The Hospital Managers' (Mental Health Act Associate Hospital Managers)**

**1.5.1 The Act gives certain powers and responsibilities to 'Hospital Managers'. In legal terms, these are the Board Members of the Health Board, rather than the Managers who are operationally responsible for the running of the hospital.**

1.6 **Hospital Managers Duties**

- To ensure that authority for detaining patients under the Mental Health Act is valid and all documentation is in order.
- To ensure that those formally delegated to receive documents and those who are required to scrutinise them have a thorough understanding of the Act and are competent to do so.

- To review patients detention.
- To provide information to patients and their nearest relative.
- To ensure that any patient who wishes to apply or need to be referred to a Mental Health Review Tribunal and the Hospital Managers are given the necessary assistance.
- To authorise the transfer of certain patients to the care of another set of managers.
- To consent to the rectification of certain defined errors which can occur in the documents.

### 1.7 Hospital Managers Powers

- To review the grounds for detention and discharge.
- To withhold mail.
- To transfer a patient.

### 1.8 Delegated Powers

**1.8.1 The Hospital Managers should formally delegate their duties to receive and scrutinise admission documents to a limited number of officers with knowledge of the relevant parts of the Act who can provide 24-hour cover. It is the Hospital Managers' duty to ensure that the grounds for admitting the patient are valid and that all relevant admission documents are in order. Therefore any officer to whom the responsibility is delegated must be competent to make such a judgement and be able to identify any error in the documents which may require rectification.**

1.8.2 Ultimately, it is the Hospital Managers who are responsible for ensuring that patients are detained lawfully. Where the power to monitor the receipt and scrutiny of admission documents has been delegated, then those so delegated must be clear about which kind of errors on application forms and medical recommendations can and cannot be corrected. Any amendment to the admission document would be authorised under Section 15 of the Mental Health Act 1983. Hospital Managers should ensure that those delegated to receive and scrutinise admission documents under the requirements of the Act receive appropriate training.

## 2 THE MENTAL HEALTH ACT 1983

### 2.1 Issues Relating to Renewals and Discharge

**2.1.1 A Hospital Managers Panel must have at least 3 members, 1 of whom, the Chair, where possible, is a Non-Executive Director. Section 23 of the Act in itself does not set out any procedure for reviewing patient's detentions. The revised Code of Practice for Wales Chapter 38 provides detailed guidance. In exercising this power, Hospital Managers must have regard**

**to the general law and to public law duties that arise from it. The Managers conduct of reviews must satisfy the fundamental legal requirements of fairness, reasonableness and lawfulness.**

2.1.2 The Hospital Managers should ensure that all patients are aware that they may apply for a review of detention by the Hospital Managers at any time and of the distinction between this and their right to appeal to the Mental Health Review Tribunal. Key workers should ensure that their patients are reminded of their rights on a regular basis.

2.1.3 The Hospital Managers may undertake a review at any time at their discretion, but they must review a patient's detention when the Responsible Clinician submits a report under Section 20(3) renewing detention or under Section 20A(4) extending CTO, even if the patient does not object to it. The Hospital Managers must consider holding a review at the request of the patient, or when the Responsible Clinician submits a report under Section 25(1) barring the patient's discharge by the nearest relative. Such a review must consider an additional criterion to those set out below in *Criteria for Discharge*. If the Managers do not agree with the Responsible Clinician's statement in the Section 25 report, they should usually discharge the patient (see Code of Practice for Wales Chapter 38.17-19).

A restricted patient is entitled to ask the Hospital Managers to consider whether they should conduct a review of his of her detention, although the Hospital Managers may not discharge the patient following such a review without the consent of the Secretary of State for the Ministry of Justice.

**2.1.5 The Hospital Managers should consider carefully whether it is appropriate to hold a review in the case of patients detained for treatment, if there has been a review in the last 28 days and there is no evidence that the patient's condition has changed or a Mental Health Review Tribunal is due in the next 28 days.**

2.2 **Uncontested Renewals**

**2.2.1 If a patient's detention is renewed under Section 20(3) or 20A(4), and the patient has indicated that he/she does not object to this, the review panel should meet to consider the reports and should hold a full hearing with all the professionals involved in the patient's care present.**

**2.3** The sections under which Hospital Managers' Reviews are most likely to take place are:

- **Section 2**: Allows compulsory admission and detention for up to 28 days for assessment, or assessment followed by treatment for mental disorder.

- **Section 3**: Allows compulsory detention for up to six months for treatment and renewable for a further six months, and yearly thereafter.

- **Section 37**: Hospital Order from Court directing admission initially for up to six months (renewable on the same basis as Section 3).

- **Section 17A (Community Treatment Order):** A community treatment order for eligible patients for up to six months, renewable for a further six months and yearly thereafter. If the patient is recalled and the section revoked, the original section is re-commenced.

2.3.1 The Code of Practice for Wales Revised in 2016 (Chapter 1) draws attention to the guiding principles which underpin the Act. There are 6 principles to follow under the headings of Dignity and Respect, Least Restrictive Option, Fairness, Equality and Equity, Empowerment and Involvement, Keeping People Safe and Effectiveness and Efficiency.

2.3.2 Patients can appeal to managers for discharge *at any time* during their detention under these Sections. The clinical team, on behalf of the Hospital Managers, should ensure that patients know that this is their right, and that reviews will be arranged if they appeal. The hospital managers may, however, use their discretion not to hear an appeal from a patient who has had a recent Managers' Review or Mental Health Review Tribunal if they decide, after investigation, that there have been no new developments. The decision not to hear an appeal must be reported to the patient so he/she is aware of the reason for not having a further review.

2.3.3 Section 2 cannot be renewed, and renewal procedures (governed by Section 20 of the Act) will apply only to Sections 3, 37 and 17A (Community Treatment Order).

2.3.4 Statutory documentation must be completed for each of these Sections. The Hospital Managers have empowered the Mental Health Act Administrator with the responsibility of scrutiny of the documents that relate to the application of the Act to ensure that they are lawful.

2.3.5 Managers must be alerted to the legal issues arising from the application of any of these Sections. This is achieved by:

- Seeking the advice of the Mental Health Act Administrator, who will be in attendance at individual reviews;
- Referring to official publications, which must be readily available for all reviews, in particular current versions of:

    - Mental Health Act 1983 Code of Practice for Wales (revised 2016)

- Mental Health Act Manual, Richard Jones.
- Relevant Directorate and Health Board Policies, as necessary.

**2.4 Patient who are transferred onto a Community Treatment Order**

2.4.1 Some patients who appeal to the Hospital Managers may be placed on a CTO prior to the date of the review. The review will NOT automatically be cancelled. The Mental Health Act Administrator must notify the patient's legal representative (if any) of the change of status. If the decision is to continue with the appeal, the review may be postponed for a new date to be allocated.

## 3 PREPARING FOR THE REVIEW

3.1 Where possible, five days in advance of the review, the review panel will receive written reports from the patient's Responsible Clinician, a social circumstances report and a nurses/care coordinators report who are directly involved in the patient's care.

3.2 A current care and treatment Plan should also be available, however due to the timeframe of a Section 2 this may be brief summary given on the day.

3.3 If reports are not available, then the Managers should consider adjourning the review, provided it does not prejudice the patient, nor fall outside the period of time left for the period of detention.

3.4 Hospital Managers' Reviews will be coordinated by the Mental Health Act Administrator. A member of staff with whom the patient is familiar should, on the panel's behalf, establish contact with the patient beforehand to explain the procedure. This enables the panel to be alert to particular issues which will be raised at the review and it helps to establish a trusting and confident relationship with the patient.

3.5 The panel should meet prior to the review, at least 15 minutes, or longer if all the reports are not available, before the scheduled start of the review, to cover the items set out below.

3.6 **Reading and discussing written reports**

3.6.1 For Sections 3, 37, and 17A written reports must be available from the Responsible Clinician, AMHP, care-co-ordinator or key nurse. For Section 17A it may also be helpful to receive a report from the patients care placement.

**3.7 Scrutinising the legal documentation**

3.7.1 As well as the documentation directly relevant to the review, parts of which the panel's Chair will complete, the legal file containing previous statutory documents should also be scrutinised. This contains the Responsible Clinician's original reason for the detention/renewal, which is basic information for the review.

3.7.2 Hospital Managers should ask the Mental Health Act Administrator to check any unusual legal points which seem likely to arise.

### 3.8 Ascertaining the attendance

3.8.1 The Mental Health Act Administrator will normally check on behalf of the panel who will be attending the review. In addition to professionals, the Mental Health Act Administrator should ascertain that steps have been taken to inform the nearest relative, provided the patient does not object. The nearest relative should also be advised that they may put their views in writing to the panel or inform staff of their concerns, and that this information will be brought to the panel's attention and could be shared with the other professionals if it may have an impact on the future treatment and discharge of the patient.

3.8.2 The Mental Health Act Administrator should also ascertain whether the patient will be accompanied by an advocate or a legal representative.

### 3.9 Chairing of the Panel

3.9.1 A Non-Executive Director of the Health Board should normally be the Chair of the panel. This is a key role, with a particular responsibility for the conduct of the review and for initiating any further action. The panel should be of mixed gender whenever possible. When there may be an unreasonable delay to undertake an appeal due to the non-availability of a Non-Executive, the Chair may be an experienced Associate Hospital Manager. Every panel must contain three managers, all of whom must unanimously agree on the decision reached. It is unlawful to have a split panel decision*. (R. On the application of Tagoe-Thompson v The Hospital Managers of the Park Royal Centre [2003] EWCA Civ330; [2003] M.H.L/R. 326)*

### 3.10 Agreeing Key Questions

3.10.1 Prior to the start of the hearing, the panel should identify the key questions to raise with professional staff and with the patient and, as appropriate, with the patient's advocate or legal representative.

### 3.11 Arranging the location

3.11.1 The Mental Health Act Administrator should be satisfied that a room appropriate to the occasion, is available and that it can accommodate all those attending. Normally, reviews should be held on or near to the patient's ward and in surroundings with which the patient will be familiar. As far as possible the room should be comfortable and conducive to an informal atmosphere. In addition, where possible, a suitable waiting room should be made available for those attending the review. For CTO patients, reviews will be held in a suitable community location, possibly the local Community Mental Health Resource Centre.

### 3.12 Checking the patient's wishes/understanding

3.12.1 Before a review starts the panel, normally through the Chair, should check:

3.12.2 Whether the patient, and/or their representative, has had the opportunity to read the written reports, or wishes to do so, in which case an opportunity must be granted.

3.12.3 Whether the patient is happy for the review to be conducted with all parties present at the same time.

3.12.4 Whether (assuming that there is to be a review with all parties present) the patient wishes first to speak to the panel privately, and to make arrangements accordingly. The patient should also be advised of the opportunity to speak to the panel privately at the end of the review, unless it is considered inappropriate for them to do so.

3.12.5 Due arrangements will need to be made if a patient has a physical disability or needs an interpreting service. The Mental Health Act Administrator will generally take responsibility for ensuring that these arrangements are made.

## 4 OBTAINING PROFESSIONAL VIEWS

**4.1 Written reports should be prepared by the Responsible Clinician, the AMHP or care co-ordinator and the named nurse. For sections 3, 37 and 17A (CTO) appeals/renewals, written reports should be regarded as essential. Only in exceptional circumstances - fully explained to the panel - should this requirement be waived. Reports from other professionals (e.g. psychologists) will be helpful so long as the information is relevant to the review. The patient's CTP will also need to be available for Hospital Managers to see. This will assist and enable understanding of the**

**programme of care during the inpatient episode and anticipate and clarify the after-care needs and proposed arrangements to ensure these are met.**

### 4.2 Verbal Reports/Attendance by Professionals

4.2.1 An important feature of a review is the presentation and discussion of written reports. This enables managers and the patient to develop an understanding of a patient's mental health problems, reasons for detention, areas of risk and care and treatment plans. It is desirable that the authors of the reports should attend the review, and in particular the Responsible Clinician.

4.2.2 However, it has to be accepted that other operational priorities may make this difficult to achieve consistently. An acceptable deputy to the Responsible Clinician (RC) would be an Associate Specialist, Specialist Registrar or Staff Grade Psychiatrist who has had reasonably close involvement with the patient and is well informed about the RC's report. In exceptional circumstances, a Senior House Officer who is well acquainted with a patient would be acceptable. Deputies for other professionals should also have some knowledge of the patient, and be familiar with the views of the author of the report.

4.2.3 When, as may happen with Section 2 appeals, written reports have not been available, it is important that Hospital Managers receive verbal reports which cover the same ground, essentially, the nature of the mental health problems to be assessed, the reason for detention, and the proposed care and treatment. The RC should, whenever possible, attend these reviews personally, failing which an Associate Specialist, Specialist Registrar or Staff Grade Psychiatrist to whom total responsibility has been delegated by the RC.

### 4.3 Review and Appraising Professional Views

4.3.1 The main criteria of a report, written or verbal are whether it assists Hospital Managers' understanding and contributes to a decision consistent with the Act. To this end, Hospital Managers should be ready to:

- Distinguish between 'opinion' and 'fact'.
- Be wary of personal views and impressions and of stereotyping the patient.
- Note uncertainties of diagnosis and prognosis.
- Inquire about the updated care and treatment plan.
- Consider conflicting professional opinions.
- Evaluate the reliability of data relating to risk, behaviour, events and reports.
- Have special regard to any developments in the diagnosis and treatment in the period since any earlier review.
- Ask for an opinion of the future vulnerability of the patient or of possible danger to the patient or to others and the severity and likelihood of this.
- Question hearsay evidence. Test the evidence, for example, by asking, "Why do you think that?"

## 5 CONDUCTING THE REVIEW

5.1 When undertaking a review, the Hospital Managers must adopt an applied procedure which is fair and reasonable and must make rational decisions and must act lawfully. The review should be conducted so as to ensure that the case for discharging or continuing to detain the patient is properly considered against the criteria for discharge and in the light of all relevant evidence. The Hospital Managers review panel will need to have sufficient information about the patient's past history of care and treatment, and details of any future plans. The main source of this will be the patient's CTP (Care and Treatment Plan). It is essential that the panel is fully informed about any history of violence or self-harm, and any risk assessment which has been conducted.

5.2 The conduct of the review is managed throughout by the Chair, with the support of the other panel members.

5.3 The panel should aim to establish an informal and mutually confident style to the review. Particular effort should be made to ensure that the patient, and any patient's relatives or representatives, understand and accept what is taking place, and do not feel overawed or threatened by the proceedings.

5.4 The panel has discretion over procedures for the review but normally, subject to the patient's agreement, all those attending should hear the entire proceedings. This promotes an open exchange of views and statements, and can have a therapeutic benefit. However, circumstances and natural justice may sometimes mean that alternative models will have to be considered.

5.5 The order of giving evidence is also for the panel to decide. It can be less intimidating for the patient if the RC is invited to give evidence first in order to justify the reasons for detention, but asking the patient to speak first acknowledges the importance of the patient in the proceedings and indicates that the review is being held at the patient's request.

5.6 The form of the review is inquisitorial and not adversarial and that the panel's prime concern is the health of the patient and the lawfulness of the detention. Professionals should be invited in turn to present and develop their reports. However, the main essential is that panel members are all able to ask questions, and that the patient and each of the professionals are given an opportunity to ask questions of each other. An attitude of objectivity is important. The same opportunity should be offered to nearest relatives (where applicable) and to the patient's advocate or legal representative.

5.7 There is no objection to a round-table discussion provided that it is controlled by the Chair. However, formal cross-examination between professionals, or by

a legal representative, should not be encouraged. Questions from these sources should be addressed to the Chair in the first instance.

5.8 Any of those present may request to see the panel privately. This request may be granted at the panel's discretion. Anyone who wishes to speak privately to the panel may do so, either before the start of the review in order that the panel can take any information into account in the course of the review, or following the review so that they can understand the outcome.

5.9 Hospital Managers should bear in mind the social, cultural, gender, sexual orientation, ethnic and religious background of the patient and the risk of making assumptions based on those factors.

5.10 The patient should receive copies of the reports unless the Hospital Managers are of the opinion that the information disclosed would be likely to cause serious harm to the physical or mental health of the patient or any other individual. If, however, there is any part of the report that is not to be disclosed, this should be produced as a separate report and the reason for non-disclosure given. Alternatively, the patient may wish to share this information with a relative, friend or advocate.

5.11 There are some essential issues which the panel must ensure are covered, largely by their own questioning of those present as follows:

**5.12 Medical/Clinical Staff**

5.12.1 The nature of a patient's mental illness; the form and effectiveness of present and future treatment, including community care arrangements (under Section 117 of the Act, where this is indicated); possible side effects of medication and the likely effect of the discontinuation of medication; possible danger to the patient and others; the appropriateness of continuing treatment in hospital; specific reasons why continued detention is thought necessary.

5.12.2 In particular, either at this stage or at the conclusion of the review, for those patients who are detained or liable to be detained, the Mental Health Act Code of Practice for Wales (revised 2016) 38.15 stated "*to promote equality of decision making, managers' discharge panel should consider the questions set out below in the order stated*" these should be put to the RC in order to ascertain unequivocally his/her professional opinion, namely:

**5.13 For patients detained for assessment under section 2 of the Act:**

- Is the patient still suffering from mental disorder?

- If so, is the disorder of a nature or degree that warrants the continued detention of the patient in hospital?
- Ought the detention to continue in the interests of the patient's health or safety or for the protection of other people?

**5.14 For other detained patients:**

- Is the patient still suffering from mental disorder?
- If so, is the disorder of a nature or degree that makes treatment in a hospital appropriate?
- Is continued detention of medical treatment necessary for the patient's health or safety or for the protection of other people?
- Is appropriate medical treatment available for the patient?
- Should consideration be given to whether the Mental Capacity Act 2005 can be used to treat the patient safely and effectively?

**5.15 For patients on a CTO:**

- Is the patient still suffering from mental disorder?
- If so, is the disorder of a nature or degree which makes it appropriate for the patient to receive medical treatment?
- If so, is it necessary in the interest of the patient's health or safety or the protection of other persons that the patient should receive such treatment?
- Is it still necessary for the responsible clinician to be able to exercise the power to recall the patient to hospital, if that is needed?
- Is appropriate medical treatment available to the patient?

Where the RC has made a report under Section 25(1) barring the discharge by the nearest relative, the Hospital Managers should not only consider the above questions but also the following:

- Would the patient, if discharged, be likely to act in a manner dangerous to themselves or others?

5.15.1 The panel should be positively satisfied that the above criteria are met before declining to exercise their powers of discharge. The revised Code of Practice for Wales Chapter 38.16 recommends that if the Panel are satisfied from the evidence presented to them that the answer to any of these questions above is 'no', then the patient must be discharged.

## 6 THE HEARING

6.1 Before the current period of detention or the CTO ends, it is good practice that a managers panel considers a report made under section 20 or section 20A and decides whether to exercise its discharge power. A hospital managers' panel should consist of three or more people who are either non-executive directors of the Health Board or members of a committee which is authorised for that purpose. The panel chairperson will welcome everyone to the hearing and make the introductions. The preferred model for reviews is informal i.e. all

parties being interviewed in each other's presence. This model has the benefit of natural justice allowing frank exchange and challenge of views. The patient should be given a full opportunity to explain why they wish to be discharged. The patient should be allowed to be accompanied by a friend, relative or representative to help put their views across to the panel. This should in no way undermine the patient's credibility or question their ability and the Managers must maintain a respectful non-patronising approach to the patient.

6.2 The panel will interview the Responsible Clinician, Approved Mental Health Professional and key nurse/care coordinator in turn, and the patient and/or his representative will be able to raise any queries at the end of each interview.

6.3 In interviewing staff, the managers should look for evidence that the grounds for continued detention and/or supervised community treatment are satisfied.

6.4 No one person should be allowed to "take over" the proceedings. It must be remembered that the patient's nearest relative will have attended to enable their views to be heard and should therefore be encouraged to participate in the hearing. At no time will the Managers or professionals become confrontational with any of the parties involved and the same would be expected of the patient and/or their representative. Should any difficulties arise with the conduct of the hearing, interpretation or disagreement of judgements, the Managers must request to speak to the professional concerned alone. All parties must remember that the patient/professional relationship will have to be maintained following the hearing; regardless of the hearing nothing should be allowed to jeopardise that relationship.

6.5 When discussion and questioning has been completed, the Chair should thank all those who have attended and indicate that the panel will adjourn to reach their decision.

## 7 REACHING A DECISION

7.1 Prior to recording the decision of the hearing the panel will normally adjourn for a short period to discuss their findings. While the panel must give full weight to the views of all the professionals concerned in the patient's care, its members will not, as a rule, be qualified to form clinical assessments of their own. The essential consideration is whether the grounds for continued detention or extension of CTO under the Act are satisfied.

7.2 The panel should consider what they have heard in relation to the key issues. They may invite the Mental Health Act Administrator to be present for this discussion. They should, in particular, decide whether the legal criteria for detention have been fully met. When there is an element of doubt, they should also consider whether, on pragmatic grounds, discharge would be in the patient's interest, for example, if the patient might still be vulnerable and uncooperative over treatment; detention may **not** be used or prolonged "just in case".

7.3 All three panel members should strive to reach agreement on their decision**.** If all three cannot agree then 'no decision' is the outcome. A further hearing will be held as soon as possible, with a completely new panel.

7.4 If the Hospital Managers disagree with the RC or any of the professionals and decide to discharge the patient, it is extremely important that cogent and rational reasons are provided for departing from any professional advice and any risk assessment which has been conducted by the clinical staff must be taken into account.

7.5 If a panel decide to discharge a patient from Section, the panel will initiate the action, and complete HO17 or CP8 (Section 23 Discharge) (Appendix 2a and 2b) and the Mental Health Act Administrator will facilitate the procedure, but it is essential that the RC is immediately informed.

7.6 The panel should also agree on any recommendations they wish to make, for example, consideration of Guardianship under Section 7 of the Act or Section 17A (Community Treatment Order) and to whom they should make their recommendations. The purpose of Guardianship is set out in Chapter 30 of the Code of Practice for Wales (Revised 2016) but the limited powers of the guardian (Ch 30.21) mean that the continued compliance and co-operation of the patient is necessary for guardianship to be effective. Community Treatment Order is dealt with in Chapter 29. However, it must be noted, that although the Hospital Managers may recommend, it is only a recommendation and the decision as to whether a CTO is the right option for the patient is taken by the responsible clinician and requires the agreement of an approved mental health professional (AMHP).

7.7 Hospital Managers have the authority to postpone or adjourn a review, providing there is still time left within the Section. Reasons for postponement/adjournment include:

- Non-attendance of patient
- Non-attendance of a panel member.
- Non-attendance of key professionals.
- Unsatisfactory written/verbal reports.
- Unresolved differences between professionals.
- Undeveloped plans for care/treatment, both in and out of in-patient care.

7.8 An alternative to postponement is to indicate that an appeal cannot be upheld on the day, but to initiate a further Managers' Review on a date to be agreed by the panel, with further written reports to be provided.

7.9 They should also arrange in accordance with the patient's wishes, for a member of the panel to see the patient personally to communicate the panel's decision, together with its reasons and any proposed follow-up action.

7.10 The reasons for the Hospital Managers decision should be fully recorded on an appropriate form, together with the names and roles of all the people interviewed. (Appendix 3: Managers Discharge Panel Hearing Record of Decision)

7.11 The panel's decision should be communicated immediately both orally and in writing to the patient, the nearest relative **with the patient's consent** (where capacity exists) and the professionals concerned. The chairperson should see the patient to explain in person the reasons for the decision, in certain circumstances it may be advisable for this to be done by a member of staff. In addition, the Hospital Managers should, if the patient does not object, inform their nearest relative of the panel's intention to discharge the person from Section and/or from hospital. Discharge should be on the basis of a plan of care being available to support their ongoing needs at the point of discharge and notice should be at least 7 days in advance of discharge occurring.

7.12 If the patient objects to the nearest relative being informed, those involved in making the decision to discharge should consider the necessity to overruling the patient's objection if they feel that the nearest relative might be at risk as a result. If concerns about continued risks are sufficiently strong the validity of the decision to discharge and whether the patient continues to meet the criteria for detention should be revisited before the Panel's final decision is communicated.

7.13 The panel should agree on notes of the review and a summary of their decision, supported by reasons, and ensure this is recorded and can be made available to the Health Board. This is a particular responsibility of the Chair, who may wish to be assisted by the Mental Health Act Administrator. All panel members should agree the summary. The Mental Health Act Administrator will send a letter containing the decision of the panel to the patient and to the patient's advocate or representative. A copy of the Record of Decision will be sent to the ward manager, for inclusion in the patient's records, to the RC and care co-ordinator.

## 8 WRITTEN REPORTS - ESSENTIAL FEATURES

***All reports should be printed on appropriate headed paper. They should be signed by the author(s). They should be dated.***

8.1 The checklist below should not prevent professionals from including other relevant material. An up-to-date addendum attached to an earlier report may also be acceptable provided the earlier report is no more than 6 months old.

8.2 **Responsible Clinician's Report**

The Responsible Clinician's report should cover the history of the patient's care and treatment and state the grounds for continued detention, comments on the patient's current mental state, response to treatment and prognosis. Prior to the hearing, the responsible clinician and multi disciplinary team should have met to consider the services and other arrangements that might be provided should the patient be discharged.
**Author**: Must be prepared by RC or delegated by the RC

**Format/Key Information** - A report should contain:

- Basic information about a patient, i.e. name, age, sex, ethnicity, home address, date of admission, MHA Section and date of application, date of most recent assessment.
- Reason for Admission
    - Circumstances for Detention
    - Consideration of Criteria in the Act
    - The Characteristics of the Disorder, including nature and degree
    - Specific Risks
    - Other Relevant and Significant History
    - Appropriate Medical Treatment
    - Diagnosis
- Details of Progress Since Admission
- Current mental state and residual symptomatology, insight, compliance and response to leave

- Current Medication
- Other Treatments tried or currently being delivered
- Care plan
- Compliance
- Unmet Needs
- Risk
- Aftercare (if subject to Section 117, a meeting must have taken place prior to review) - considered options discussed.
- Reasons for non-discharge/renewal of Section
- Date last interviewed the patient

- **The report must be dated and signed by the RC/Delegated Nominee.**

8.3 **Nursing Report**

**Author**: Named Nurse

**Format/Key Information -** A report should contain:

- Basic information, i.e. patient's name, age, sex, ethnicity, MHA Section, date of admission to ward, name of RC, IMHA involvement

- Summary of psychiatric history, and reason for current hospital admission
- Reason for detention under MHA Section
- Is the patient subject to Enhanced Care and Treatment Plan?
- Risk Assessment - At present, is the patient at risk of self-harm or suicide? Details of how decision was reached should be included.
- How does the patient explain his/her need for mental health services?
- How does the patient interact with other people on the ward?
- Description of the activities of the patient during a typical 24 hour period.
- Do family and friends visit, and would family and friends be supportive if the patient was discharged? On what do you base your answer?
- What support systems are in place in the community to help the patient maintain his/her mental well-being?
- Section 17 Leave - Has the patient had a period of trial leave? If so, how they managed and any problems encountered. Feedback from relatives/carers to be included.
- Treatment/Medication - If the patient says that he/she does not want to continue treatment, please describe their reasons for wanting treatment to cease.
- Aftercare - Has there been a Section 117 (if applicable) or CPA Review? – considered options discussed - links with CMHT. A copy of Section 117 and care and treatment plan to be included.
- Are there any POVA or Child Protection issues?
- Professional Opinion/Recommendation regarding Section
- Date last interviewed the patient

- **The report must be dated and signed by named nurse and/or nurse attending.**

The key worker or in their absence, a member of staff who knows the patient well should accompany the patient to the hearing together with the patients' health record, which should be made available to the Managers if required.

8.4 **Social Circumstances Report**

**Author**: Where possible, a Social Worker or the Care Co-ordinator

**Format/Key Information -** A report must contain:

- Basic information, i.e. name, age, sex, ethnicity, home address, date of admission, MHA Section and date of application. Must also include the name and address of nearest relative.
- Contact with patient (including any prior to admission) and date of most recent discussion
- Home and family circumstances
- Views of nearest relative
- Opportunities for employment/occupation
- Community support (including accommodation)
- Other relevant information – any medical/physical needs or other agencies involved

- Financial circumstances, including welfare benefit entitlement
- Summary of the events leading to the present detention of the patient
- Outcome of any home leaves
- Detailed planning for community care arrangements under Section 117 of the Act, facilitated by the implementation of the CTP – considered options discussed
- Is there sufficient community support for the patient, if discharged from Section and from hospital?
- Would the patient co-operate with community care plans? Is there evidence of risk, to patient and/or other people, and has this been taken into account in future care plans?
- At present, is patient at risk of suicide or self harm?
- Is patient a physical or psychological danger to others?
- Has patient any insight into his/her own illness?
- Are there any POVA or Child Protection issues?
- Professional Opinion/Recommendations regarding Section

**The report must be dated and signed by Social Worker /Care Co-ordinator attending.**

8.5 A Care and Treatment Plan must be planned with the patient and detail all relevant fields:-

- Accommodation
- Education and Training
- Finance and Money
- Medical and other forms of treatment, including psychological interventions
- Parenting or Caring Responsibilities
- Personal care and physical well-being
- Social, Cultural and Spiritual
- Work and occupation

8.6 It is good practice that the CTP is signed by a patient but it is acknowledged that sometimes this is not possible due to the patient being unable or unwilling to sign.

8.7 The Care Coordinator should always sign and date the document and state if a patient does not sign the reasons for this.

## 9 REVIEWS WHEN LEGAL REPRESENTATIVES OR ADVOCATES ARE PRESENT

**9.1 A patient should always be allowed to have relatives/carers present in the review, however only** one representative **may assist him/her in presenting his/her case to the managers. This representative could be:**

- A friend, relative or significant other;
- An IMHA (Independent Mental Health Advocate) or
- A professional legal representative.

**9.2 The term "patient's representative" or "representative" will be used throughout to cover both (b) and (c).**

9.3 It should be borne in mind that the patient has a right in addition to call a friend, relative or significant other who may be there specifically to support the patient, but would not receive reports.

9.4 When a legal representative is present Hospital Managers should explain that the review is conducted in an inquisitorial, not an adversarial manner and that the panel's sole concern is the mental health of the patient and the need to establish whether the detention remains in place. It is useful to make this clear at the beginning of the review. However, the panel should appreciate that a legal representative's duty is to put the patient's case in accordance with the patient's instructions. A legal representative may, therefore, properly regard his or her role in the proceedings in the light of a 'win' or 'lose' situation.

**9.5 The role of the patient's representative will not be that of giving personal evidence about the patient, although obviously if the representative has known the patient a long time, he/she may be able to give such evidence to the Hospital Managers. It should however be the representative's prime interest to be satisfied that questions are asked of the RC, the AMHP/care co-ordinator, the nurse, and any friend or relative of the patient which will draw out all the relevant information and test the evidence given by the people present. Hospital Managers should also recognise that the patient's representative should be satisfied that all such questions are asked that the patient might have wanted to ask if he/she had the necessary experience and skills to know what questions to ask and how to ask them.**

9.6 The patient's representative's role should not be to protect or restrict the patient from answering questions put by the panel, nor should it be the representative's role to try to restrict the Hospital Managers from asking whatever questions they want to ask. If the patient's representative should seek to restrict the patient from speaking freely or the Hospital Managers from asking any relevant questions then the representative should be reminded that the panel will need to form a view about matters such as the patient's insight, the patient's attitude towards medication, in hospital and after discharge etc., which will only be possible with a free exchange with the patient.

9.7 The patient's representative should be afforded the same courtesy, information and rights that the patient himself would be entitled to. The review panel shall, however, consider whether disclosure of information to the patient’s representative would adversely affect the health or welfare of the patient or others, and if satisfied that it would, shall record in writing its decision not to disclose such information. The panel will not withhold disclosure of information to a patient’s representative if he/she is:

- A solicitor.
- A registered medical practitioner.
- In the opinion of the panel, a suitable person by virtue of his/her experience or professional qualification.

9.8 Such a disclosure will only be made on the proviso that information is not disclosed either directly or indirectly to the patient or to any other person without the authority of the panel or used otherwise than in connection with the review proceedings.

9.9 The Hospital Managers may, when they consider it to be in the patient's interest, request those giving confidential information to allow them to release part or all of the confidential information to the patient and the patient's representative if present. The release of information may take the form of an agreed statement which gives a synopsis of part or all of the confidential information but omits sensitive details. Exceptionally, where the Hospital Managers consider that the disclosure of information offered by the professionals as confidential would not adversely affect the health or welfare of the patient or others, the Hospital Managers may require the information to be disclosed to the patient at the review in the normal way. It should be borne in mind that requiring such disclosure would be exceptional, and may well be controversial but would be justifiable in the interests of conducting a fair review.

9.10 If a report writer wishes certain parts of his/her report to be withheld from the patient, this information should be presented in a separate document in which the writer states their reasons for believing that disclosure of the information would adversely affect the health or welfare of the patient, or others. In practice this is sometimes the only way the views of the nearest relative can be presented to a review, if they conflict with those of the patient.

9.11 In the unusual event that the Hospital Managers decided to hear oral evidence from the RC, or any of the other professionals in the absence of the patient, then the patient's legal representative should also be entitled to be present provided the same assurances are given by the patient's legal representative as applied to the above confidential written reports.

9.12 The patient's representative should be allowed to make submissions and representations to the Hospital Managers at the end of the review. Should the patient's representative feel that the Hospital Managers' questions have not covered points which the representative feels are relevant to the patient's interests, the representative may be invited to question the professionals, to test whether or not there is further evidence relevant to the review. The conduct of the review, however, must remain with the Chair, and not be taken over by the legal representative.

**9.13 Additional points:**

9.13.1 If both a solicitor and an advocate arrive for a review, it could confuse the review if both attempt to represent the patient. In this case the Hospital Managers will need to clarify the position and ensure that the most appropriate representation is in place to meet the patient's interests. The patient's view should be obtained if appropriate.

9.13.2 In addition to the patient's legal representative or advocate, the patient's friend or relative may, subject to the patient's consent, give personal first hand evidence about any of the matters which the Hospital Managers have to take into consideration.

## 10 CONFIDENTIALITY

10.1 Hospital Managers' reviews are expected to conform to the general rule of confidentiality of patient information.

10.2 The Hospital Managers' usual policy is to conduct their reviews with the patient and professionals present at the same time, and with all reports made available to the patient before the review, and information from the team and nearest relative given in the patient's presence.

10.3 **The Data Protection Act 1998** gives patients the right to apply for disclosure of such reports. The information should not be disclosed if:

(i) disclosure could cause damage or deterioration to the patent's mental health; or

ii) the information was given by a third party who refuses consent to its disclosure.

**10.4 There may be occasions when professionals or a relative may wish to give the Hospital Managers confidential information which they do not wish to be shared with the patient, but which may have a bearing on the Hospital Manager's decision. The patient and nearest relative may also wish to speak in confidence to the Hospital Managers. Confidential information from professionals must be given to the Hospital Managers in writing with the other reports, unless it concerns events of the previous 24 hours, in which case it may be given verbally, in private, at the start of the review. The patient and nearest relative should be given the opportunity to speak privately to the Hospital Managers before the review, and, if questions arise during the review which make it appropriate, at the end of the review. The relative may also write in confidence to the Hospital Managers.**

10.5 When a confidential report from a professional is received the final decision on whether

to keep this information confidential rests with the Hospital Managers, although a decision not to do so would be very rare. The Hospital Managers must, however, respect a relative's wish for information given by them to be kept confidential.

## 11 PROPOSED QUESTIONS TO BE COVERED AT ALL MANAGERS' REVIEWS

It is not necessary to phrase the questions as shown below, but it is vital that all the issues included are raised at all reviews.

### 11.1 To the patient:

11.1.1 Would you continue to accept your treatment if you were discharged from your Section and became an informal patient?

11.1.2 Would you be willing to remain an in-patient informally if we were to discharge your Section?

### 11.2 To the medical/clinical team:

11.2.1 **In respect of Section 3, 37 or 47**

- Is the patient still suffering from mental disorder?
- If so, is the disorder of a nature or degree which makes treatment in a hospital appropriate?
- Is continued detention for medical treatment necessary for the patient's health or safety or for the protection of other people?
- Is appropriate medical treatment available for the patient?

11.2.2 If the answer to any of these questions in "no", to any of these questions, the patient should be discharged.

11.2.3 **In respect of Section 17A (Community Treatment Order)**

- Is the patient still suffering from mental disorder?
- If so, is the disorder of a nature or degree that makes it appropriate for the patient to receive medical treatment?
- If so, is it necessary in the interests of the patient's health or safety or the protection of other persons that the patient should receive such treatment?
- Is it still necessary for the responsible clinician to be able to exercise the power to recall the patient to hospital, if that is needed?

- Is appropriate medical treatment available for the patient?

11.2.4 If the answer to any of these questions is “no”, to any of these questions, the patient should be discharged.

11.2.5 **In respect of Section 2**

- Is the patient suffering from a mental disorder of a nature and degree which warrants the detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period (28 days maximum)?

- Ought the patient be detained in the interests of his own health and safety or with a view to the protection of other persons?

11.2.6 **To the care co-ordinator and/or AMHP representatives:**

11.2.7 What arrangements have been made, or are being developed for the patient’s care following discharge from inpatient services: If none are evident, why is this the case?

11.2.8 Past circumstances, social behaviour and ability to maintain themselves in the community e.g. issues regarding accommodation etc, detailed planning for community care arrangements, the views of the nearest relative.

11.2.9 The answer to this question may cast a different light on the need to safeguard a patient's health and safety through treatment as an in-patient. Lack of co-ordinated and well planned care in the community may affect whether or not the person can safely and effectively be cared for and receive the services that they need. This should always be borne in mind when Managers arrive at a decision that detention is no longer lawful and recommendations to accelerate the process of care planning and service delivery in the community will need to be made to the multidisciplinary team involved in the care and treatment of the individual. Managers might wish to postpone making their final decision until such reassurances can be made in light of the statutory duty under Section 117 to a detained patient under Sections 3, 37, 47 or 17A.

11.3 **To the Nurse/Key Worker**

11.3.1 Recent behaviour on the ward, compliance with medication, and details of any Section 17 leave.

## 12 NOT HOLDING A REVIEW BEFORE DETENTION EXPIRES

Hospital Managers should ensure that a review is held before the period of detention or CTO expires. If this does not occur, the reasons for the review not having taken place and actions should be fully documented.

**APPENDIX 1A**


To: The Hospital Managers

I _____ wish to appeal to the Hospital Managers against my compulsory detention under section _____ of the Mental Health Act, 1983. I have appointed someone to represent me at the appeal, and his/her name and address is:

_____

_____

_____

Signed: _____ Date: _____

Ward: _____

Home address: _____

_____

_____

**I would like the hearing conducted in the English language.** ☐

**APPENDIX 1B**


I: Reolwyr yr Ysbyty

Yr wyf fi _____ yn dymuno apelio i Reolwyr y Ysbyty yn erbyn fy nghadw o dan Adran _____ y Ddeddf Iechyd Meddwl 1983.

Yr wyf wedi penodi rhywun i'm cynrychioli yn yr apel, a'i enw a'i ch/gyfeiriad yw:

Llofnod:_____ Dyddiad: _____

Ward: _____

Cyfeiriad Cartref: _____

_____

_____

**Hoffwn gynnal yr apel yn yr iaith Gymraeg.** ☐

**APPENDIX 2**

## RECORD OF DECISION FOR SECTION 2

## ABERTAWE BRO MORGANNWG UNIVERSITY HEALTH BOARD

## MENTAL HEALTH ACT 1983

## DECISION OF THE MENTAL HEALTH MANAGERS

**IN RESPECT OF AN APPLICATION FOR PATIENTS LIABLE TO BE DETAINED UNDER SECTION 2**

| | |
|---|---|
| **1** | **NAME OF PATIENT:**<br>**WARD AND HOSPITAL:** |
| **2** | **TYPE OF HEARING: CONTESTED** ☐ **UNCONTESTED** ☐ |
| **3** | **MANAGERS PRESENT:** |
| **4** | **IN ATTENDANCE: _____ (MHAA)** |

| | |
|---|---|
| | **ADVOCATES PRESENT:** _____ |
| **5** | **THE FOLLOWING PEOPLE WERE INTERVIEWED:**<br><br>Responsible Clinician ☐ Nurse ☐<br>Approved Mental Health Professional ☐<br>Patient ☐ Other ☐ |
| **6** | **REPORTS WERE CONSIDERED FROM:**<br><br>Responsible Clinician ☐ Nurse ☐<br><br>Approved Mental Health Professional ☐ Other ☐ |
| **7** | **DECISION OF THE MENTAL HEALTH MANAGERS:**<br><br>**The patient SHALL be discharged from liability to be detained with effect from:**<br><br>**The patient SHALL NOT be discharged** |
| **8** | **THE GROUNDS FOR THE MANAGERS DECISION:**<br><br>**The Managers are obliged to discharge if the answer to either of the following is negative**<br><br>**Question** **Decision of the Managers**<br><br>(a) is the patient still suffering from mental disorder YES/NO<br><br>(b) if so, is the disorder of a nature or degree which<br>warrants the continued detention of the patient in hospital YES/NO |

| | |
|---|---|
| | (c) detention in hospital is still necessary in the interests of the<br>patient's own health or safety or for the protection of other people YES/NO |
| | **In reaching its conclusions the Managers have had regard to:**<br><br>the likelihood of medical treatment alleviating or preventing a deterioration of the patient's condition |
| **9** | **Note of patient's expressed concerns or views of particular note:** |
| | **REASONS FOR THE MANAGERS DECISION AND RECOMMENDATIONS**<br>(In accordance with chapter 38.42 of the Code of Practice for Wales you must record fully the evidence you considered in reaching your decision, the reasons for your decision, and the decision itself). |

| | |
|---|---|
| | |

**Signed:** _____ **(Chairperson)**

_____

_____

**Date:** _____

# APPENDIX 3

## RECORD OF DECISION FOR SECTION 3, 37 & 47

**ABERTAWE BRO MORGANNWG UNIVERSITY HEALTH BOARD**

**MENTAL HEALTH ACT 1983**

**DECISION OF THE MENTAL HEALTH MANAGERS**

**IN RESPECT OF AN APPLICATION FOR PATIENTS LIABLE TO BE DETAINED UNDER SECTION 3/37/47**

| | |
|---|---|
| **1** | **NAME OF PATIENT:**<br>**WARD AND HOSPITAL:** |

| | |
|---|---|
| **2** | **TYPE OF HEARING : UNCONTESTED ☐ CONTESTED ☐** |
| **3** | **MANAGERS PRESENT:** |
| **4** | **IN ATTENDANCE:**<br><br>**ADVOCATES PRESENT: _____** |
| **5** | **THE FOLLOWING PEOPLE WERE INTERVIEWED:**<br><br>Responsible Clinician ☐ Nurse ☐<br>Approved Mental Health Professional ☐<br>Patient ☐ Other ☐ |
| **6** | **REPORTS WERE CONSIDERED FROM:**<br><br>Responsible Clinician ☐ Nurse ☐<br><br>Approved Mental Health Professional ☐ Other ☐ |
| **7** | **DECISION OF THE MENTAL HEALTH MANAGERS:**<br><br>**The patient SHALL be discharged from liability to be detained with effect from:**<br><br>**The patient SHALL NOT be discharged** |

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| **8** | **THE GROUNDS FOR THE MANAGERS DECISION:**<br><br>**The Managers are obliged to discharge if the answer to either of the following is negative**<br><br>**Question** — **Decision of the Managers**<br><br>(a) is the patient still suffering from mental disorder — YES/NO<br><br>(b) if so, is the disorder of a nature or degree which warrants the continued detention of the patient in hospital — YES/NO<br><br>(c) detention in hospital is still necessary in the interests of the patient's own health or safety or for the protection of other people — YES/NO<br><br>(d) is appropriate medical treatment available for the patient — YES/NO |
| **9** | **Note of patient's expressed concerns or views of particular note:** |
| | **REASONS FOR THE MANAGERS DECISION AND RECOMMENDATIONS**<br><br>(In accordance with chapter 38.42 of the Code of Practice for Wales you must record fully the evidence you considered in reaching your decision, the reasons for your decision, and the decision itself) |

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**Signed:** _____ **(Chairperson)**

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**Date:**

**APPENDIX 4**

## RECORD OF DECISION FOR CTO

**ABERTAWE BRO MORGANNWG UNIVERSITY NHS TRUST**
**MENTAL HEALTH ACT 1983**

## DECISION OF THE MENTAL HEALTH MANAGERS

**IN RESPECT OF AN APPLICATION FOR PATIENTS LIABLE TO BE DETAINED UNDER CTO**

| | |
|---|---|
| **1** | **NAME OF PATIENT:**<br>**PREVIOUS WARD AND HOSPITAL:** |
| **2** | **TYPE OF HEARING: UNCONTESTED ☐ CONTESTED ☐** |
| **3** | **MANAGERS PRESENT:** |

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| **4** | **IN ATTENDANCE: _____ (MHAA)**<br><br>**ADVOCATES PRESENT: _____** |
| **5** | **THE FOLLOWING PEOPLE WERE INTERVIEWED:**<br><br>Responsible Clinician ☐ Nurse ☐<br>Care Coordinator ☐ AMHP ☐<br>Patient ☐ Other ☐ |
| **6** | **REPORTS WERE CONSIDERED FROM:**<br><br>Responsible Clinician ☐ Nurse ☐ Care Coordinator ☐<br><br>Approved Mental Health Professional ☐ Other ☐ |
| **7** | **DECISION OF THE MENTAL HEALTH MANAGERS:**<br><br>**The patient SHALL be discharged from liability to be detained with effect from:**<br><br>**The patient SHALL NOT be discharged.** |

| | |
|---|---|
| **8** | **THE GROUNDS FOR THE MANAGERS DECISION:**<br><br>**The Managers are obliged to discharge if the answer to either of the following is negative**<br><br>**Question** — **Decision of the Managers**<br><br>(a) is the patient still suffering from mental disorder — YES/NO<br><br>(b) if so, is the disorder of a nature or degree which makes it appropriate for the person to receive medical treatment — YES/NO<br><br>(c) if so, is it necessary in the interests of the patient's own health or safety or for the protection of other people — YES/NO<br><br>(d) can such treatment be provided without the patient being detained in hospital but subject to being liable to recall — YES/NO<br><br>(e) is appropriate medical treatment available for the patient — YES/NO |
| **9** | **NOTE OF PATIENT'S EXPRESSED CONCERNS OR VIEWS OF PARTICULAR NOTE:** |
| **10** | **REASONS FOR THE MANAGERS DECISION AND RECOMMENDATIONS**<br><br>(In accordance with chapter 38.42 of the Code of Practice for Wales you must record fully the evidence you considered in reaching your decision, the reasons for your decision, and the decision itself). |

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**Signed:** _____ **(Chairperson)**

_____ **(Panel member)**

_____ **(Panel member)**

**Date:** _____

**Figure 1 - Flowchart: Hospital Manager Process**