

PWYLLGOR ARCHWILIO A SICRWYDD RISG AUDIT AND RISK ASSURANCE COMMITTEE

DYDDIAD Y CYFARFOD: DATE OF MEETING:	23 February 2021
TEITL YR ADRODDIAD: TITLE OF REPORT:	Mental Health Legislation Assurance Committee Report: Discharge of Terms of Reference
CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR:	Mr Andrew Carruthers, Executive Director of Operations
SWYDDOG ADRODD: REPORTING OFFICER:	Mr Andrew Carruthers, Executive Director of Operations

Pwrpas yr Adroddiad (dewiswch fel yn addas)

Purpose of the Report (select as appropriate)

Er Sicrwydd/For Assurance

ADRODDIAD SCAA SBAR REPORT

Sefyllfa / Situation

The purpose of this report is to provide assurance to the Audit & Risk Assurance Committee that the Mental Health Legislation Assurance Committee's (MHLAC) terms of reference, set by the Board, are being appropriately discharged.

The Audit & Risk Assurance Committee is asked to note the content of this paper and comment on any issues in respect of the operation of the Mental Health Legislation Assurance Committee going forward.

Cefndir / Background

Hywel Dda University Health Board's Board Members are the Hospital Managers (HMs) for the purposes of the Mental Health Act 1983 (the 1983 Act) and delegate their functions to Officers and Lay Members.

HMs have a range of responsibilities, including:

- Ensuring that patient's care and treatment complies with the 1983 Act;
- Authority to detain patients admitted under the 1983 Act; and
- Power to discharge certain patients (s.23 of the 1983 Act) - which can only be exercised by three or more members of a committee formed for that purpose.

The HMs must ensure that patients are detained only as the Act allows, that their treatment and care fully comply with it, and that the patients are fully informed of, and are supported in exercising, their statutory rights. HMs must also ensure that a patient's case is dealt with in line with other legislation which may have an impact, including the Mental Capacity Act 2005, the Human Rights Act 1998 and the Data Protection Act 1998.

The Terms of Reference of the Committee itself require the submission of an Annual Report to the Board to summarise the work of the Committee and identify how it has fulfilled the duties required of it. Standing Orders permit the University Health Board to delegate functions to committees or sub-committees, whose members need not be members of the Board.

However, the Board retains the ultimate responsibility for the HMs' duties.

As stated in the Terms of Reference, the Committee is required to assure the Board of the following:

- Those functions of the Mental Health Act 1983, as amended, which have been delegated to officers and staff are being carried out correctly; and that the wider operation of the 1983 Act in relation to the UHB's area is operating properly;
- The provisions of the Mental Health (Wales) Measure 2010 are implemented and exercised reasonably, fairly and lawfully;
- The UHB's responsibilities as HMs are being discharged effectively and lawfully;
- The UHB is compliant with the Mental Health Act Code of Practice for Wales;
- The Committee will also advise the Board of any areas of concern in relation to compliance with mental health legislation and agree issues to be escalated to the Board with recommendations for action.

Whilst the Board retains overall responsibility and accountability for ensuring the quality and safety of healthcare for its patients, service users, staff and the wider public, it has delegated authority to the Committee to undertake functions as set out within the Terms of Reference of the Committee.

In respect of its provision of advice to the Board, the Mental Health Legislation Assurance Committee is required to:

- Review reports from Healthcare Inspectorate Wales 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 & Learning Disabilities Risk Register bi-annually to ensure that risks relating to compliance with mental health legislation are being appropriately managed by the Mental Health Legislation Scrutiny Group;
- Receive Mental Health Legislation Scrutiny Group updates;
- Consider issues arising from its sub-committee and group structure;
- Receive the Hywel Dda Mental Health Partnership Board Annual Report and consider issues in relation to the implementation of the Mental Health Strategy across the Hywel Dda area;
- Receive Hospital Manager's Power of Discharge Committee Update Report & Minutes from previous meetings.

Section 23 of the 1983 Act gives HMs the power to discharge certain patients from detention; although the function is delegated to a committee of three or more lay members, the LHB Board remains responsible for this statutory function.

The Vice Chair of the Health Board undertakes the role of Chair of the Committee given her specific responsibility for overseeing the Board's performance in relation to Mental Health Services. Membership of the Committee consists of four Independent Members only – for assurance purposes.

In attendance is University Health Board manager representation, a wide range of partner organisations, including local authority, police, advocacy, user representation, carer representation, Welsh Ambulance Services NHS Trust and the Community Health Council. The Committee may also request the attendance of any other officers of the Health Board as required.

In discharging its duties, the Committee receives information of all activity undertaken in

relation to the 1983 Act and the Measure which includes:

- Regular reporting on the use of the Mental Health Act within the area served by the University Health Board;
- Regular reporting on the activity and compliance with the Mental Health (Wales) Measure 2010;
- Performance reporting;
- Healthcare Inspectorate Wales reviews.

The Terms of Reference for MHLAC were revised in September 2020.

The Committee has one Sub-Committee following the UHB's governance review in 2015; the Hospital Managers Power of Discharge Sub-Committee. The Committee agreed to the establishment of the Hospital Managers Power of Discharge Sub-Committee (the Sub-Committee), made up of all Independent Members and Lay Members. Section 23 of the 1983 Act (the power of discharge) was delegated to the Sub-Committee. Officers can attend but are not members. A panel of three or more members drawn from the Sub-Committee hear 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.

In respect of its provision of assurance to the Board, the Sub-Committee is required to:

- Review and monitor how the operation of the delegated functions under Section 23 of the 1983 Act are being exercised;
- Discuss the work of individual panels;
- Discuss the training requirements of review panel members and produce a training plan for approval by the Mental Health Legislation Assurance Committee;
- Discuss any impact of legislative change on the role of Hospital Managers;
- Highlight any impact of service changes; and
- Provide learning opportunities.

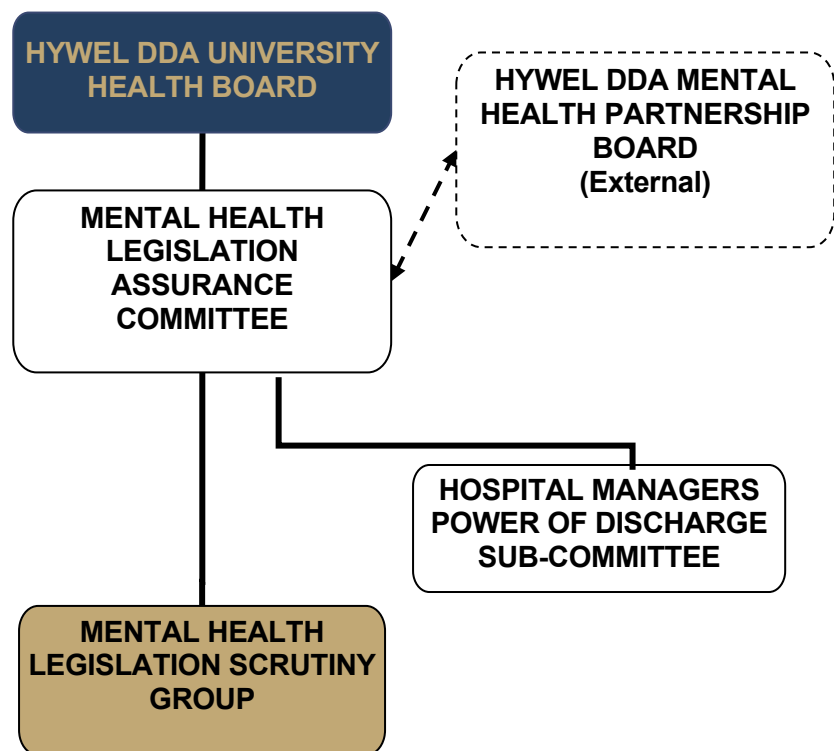
The Sub-Committee is chaired by Professor John Gammon and meetings are generally held three times each year and are divided into two parts: the first part deals with the Sub-Committee's governance and the second part has a training focus to ensure members are kept up to date with current legislation and of changes within the University Health Board. During 2020, two meetings have been held, as the April 2020 meeting was stood down due to COVID-19 and a paper update to members was provided instead.

During the year members received training on the following areas:

- The role of the nearest relative under the Mental Health Act – Richard Griffith, Senior Law Lecturer, Swansea University
- Human Rights Act in relation to the Mental Health Act (pending) – Richard Griffith, Senior Law Lecturer, Swansea University

Compliance with Mental Health Legislation (Sub-Groups)

The Mental Health Legislation Assurance Committee has one Sub-Group that provides an additional layer of scrutiny to the University Health Board's (UHB) compliance with statutory mental health legislation.



The Mental Health Legislation Scrutiny Group (Scrutiny Group) representation consists of senior service managers from health and local authority stakeholders. It also includes representatives of service users, carers and advocacy groups. It is chaired by the Head of Adult Inpatient Services and it meets quarterly, four weeks prior to MHLAC. Its purpose is to scrutinise the UHB's compliance with mental health legislation and to investigate any areas of concern, independently or as directed by MHLAC. It reports directly to MHLAC through a quarterly performance paper and may also provide additional papers to MHLAC on areas of concern being investigated.

The role of the Scrutiny Group is evolving, however its primary benefits to date have been to:

- More clearly identify any areas of concern and present greater clarity of exception reporting to MHLAC;
- Provide a clear line of communication between practicing clinicians and managers to the MHLAC assurance process;
- Quickly identify any areas of concern and instigate further investigation and intervention, thereby improving the quality of care delivery.

Asesiad / Assessment

2020

A number of Committee meetings have had to be stood down during 2020, with a number of meetings taking place outside the formal committee, between relevant staff, to ensure compliance with governance and legislation. The MHLAC has, therefore, only held one meeting during the reporting year.

The Mental Health (Wales) Measure 2010

The Directorate's ability to report against statutory performance targets has been hampered from August 2020 onward as a consequence of a project to migrate from a legacy Mental Health Patient Administration System (PAS) to Welsh PAS. Initial migration of historical data was a significant task, involving 11000 individual patient referrals. This took longer than expected and, at the same time, the Directorate also suffered hardware issues which resulted in staff being unable to enter new referrals for approx. 3 weeks.

Following the initial migration, completed in October 2020, a number of data quality issues have been highlighted by data validation reports. Initially, there was a focus on medical outpatient reporting and validating against previous and more expected levels of activity. Data for this area was submitted to Welsh Government in December 2020 as part of a planned schedule to resume all reporting by the 1st of April 2021.

Part One – Target One – Assessed within 28 days of referral
Target Two – Treated within 28 days of assessment

Compliance with this target has been consistent with targets being met for April to July 2020 – the services are made up of small teams of staff which are sensitive to vacancies and sickness absence. Waiting time initiatives are used at times, resourced by funding available through vacancies.

Part Two – Patients in secondary care to have a valid Care and Treatment Plan

The service has been consistently compliant, albeit marginally at times. Fluctuations are mostly seen in Learning Disability services in teams where there are vacancies – this target is monitored at service level.

Part Three – 100% of assessment reports sent within ten working days

There is some variation in compliance with this target; the numbers of individuals involved are small. For April to November 2020, we averaged 10 Part Three assessment reports sent per month.

Part Four – (Internal Target) – All patient admissions offered Independent Mental Health Advocate

The variation in compliance with this target is largely down to the adult acute inpatient units and is often due to higher levels of acuity, as well as instances where patients on admission are less receptive to a discussion about advocacy services.

Inspections

The Healthcare Inspectorate Wales (HIW) Annual Report 2019/20 sets out the findings of the work carried out by HIW during this financial year.

In particular, it includes the findings of the inspection that took place at the Llanelli Community Mental Health Team.

Action plans are devised for each visit that takes place and these are monitored through the Mental Health and Learning Disabilities Quality, Safety and Experience Sub-Committee.

The full HIW Annual Report can be accessed via the following link:

https://hiw.org.uk/sites/default/files/2020-10/20201022HIWAnnualReport2019-20_eng.pdf

Other Areas of Responsibility

- The Committee noted the updated 626 - Section 5(4) Nurses Holding Power Policy
- As a Chair's action on behalf of the Committee, the following policy reviews were agreed: 596 - Section 5(2) Doctors Holding Power, 625 - Community Treatment Order and 363 - Hospital Managers Scheme of Delegation
- The Committee was provided with an update on the transformation of Mental Health services during COVID-19
- The Committee also noted the changes in practice by the Mental Health Review Tribunal for Wales and Healthcare Inspectorate Wales Second Opinion Appointed Doctor (SOAD) service

Annual Work Plan

The Committee will continue to review all work undertaken by the UHB which lies within its remit and provide assurance to the Board that its statutory obligations are being met.

The Committee takes an annual work plan-based approach to the management of its work and reminds members and stakeholders at every meeting that they can influence this work plan at any time.

Argymhelliad / Recommendation

The Audit & Risk Assurance Committee is asked to note the content of this report and take assurance that the Mental Health Legislation Assurance Committee has operated effectively during 2020/21.

Amcanion: (rhaid cwblhau)

Objectives: (must be completed)

Committee ToR Reference Cyfeirnod Cylch Gorchwyl y Pwyllgor	5.8 Invite Lead Directors of Board level Committees to attend the Audit and Risk Assurance Committee at least annually to receive assurance that they are effectively discharging their Terms of Reference and ensuring that principal risks are being managed effectively.
Cyfeirnod Cofrestr Risg Risk Register Reference:	Not applicable
Safon(au) Gofal ac Iechyd: Health and Care Standard(s):	Governance, Leadership and Accountability 2. Safe Care 3. Effective Care 4. Dignified Care
Amcanion Strategol y BIP: UHB Strategic Objectives:	7. To improve the mental health and wellbeing of our local population through improved promotion, prevention and timely access to appropriate interventions.

	9. To improve the productivity and quality of our services using the principles of prudent health care and the opportunities to innovate and work with partners.
Amcanion Llesiant BIP: UHB Well-being Objectives: Hyperlink to HDdUHB Well-being Statement	Support people to live active, happy and healthy lives Improve efficiency and quality of services through collaboration with people, communities and partners

Gwybodaeth Ychwanegol: Further Information:	
Ar sail tystiolaeth: Evidence Base:	Terms of Reference: <ul style="list-style-type: none"> Mental Health Legislation Assurance Committee
Rhestr Termau: Glossary of Terms:	Within body of report
Partion / Pwyllgorau â ymgynhorwyd ymlaen llaw y Pwyllgor Archwilio a Sicrwydd Risg: Parties / Committees consulted prior to Audit and Risk Assurance Committee:	Director of MH&LD Vice Chair

Effaith: (rhaid cwblhau) Impact: (must be completed)	
Ariannol / Gwerth am Arian: Financial / Service:	Non-compliance with Mental Health Legislation could result in legal proceedings being brought against the University Health Board
Ansawdd / Gofal Claf: Quality / Patient Care:	There is a Service User representative on the Mental Health Legislation Assurance Committee
Gweithlu: Workforce:	Not applicable
Risg: Risk:	Safety of patients Assurance – use of statutory mechanisms
Cyfreithiol: Legal:	Risk of non-compliance with the 1983 Act and with the Welsh Government's <i>Mental Health Act 1983 Code of Practice for Wales</i> ; the <i>Mental Health (Wales) Measure 2010 Code of Practice</i> ; and with the <i>Good Governance Practice Guide – Effective Board Committees (Supplementary Guidance) Guidance</i> .
Enw Da: Reputational:	Not applicable
Gyfrinachedd: Privacy:	Not applicable
Cydraddoldeb: Equality:	Not applicable