

Bundle Audit & Risk Assurance Committee 25 February 2020

6.1 Mental Health Legislation Assurance Committee Assurance Report around the Discharge of their Terms of Reference

Presenter: Andrew Carruthers

MHLAC Assurance Report ARAC February 2020

MHLAC Assurance Report ARAC February 2020 (Revised Version)

**PWYLLGOR ARCHWILIO A SICRWYDD RISG
AUDIT AND RISK ASSURANCE COMMITTEE**

DYDDIAD Y CYFARFOD: DATE OF MEETING:	25 February 2020
TEITL YR ADRODDIAD: TITLE OF REPORT:	Mental Health Legislation Assurance Committee Report: Discharge of Terms of Reference
CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR:	Mr Andrew Carruthers, Director of Operations
SWYDDOG ADRODD: REPORTING OFFICER:	Mr Andrew Carruthers, 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 update reports from the Mental Health Programme Group on improvement programmes for high quality, safe and sustainable mental health services which are consistent with the Board's overall strategic direction.
- 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.

Membership of the Mental Health Legislation Assurance Committee consists of Independent Members. 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 was presented in December 2019 for review; however, it was agreed that as committee structures are currently being reviewed, the MHLAC Terms of Reference will be reviewed in March 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 meetings are 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.

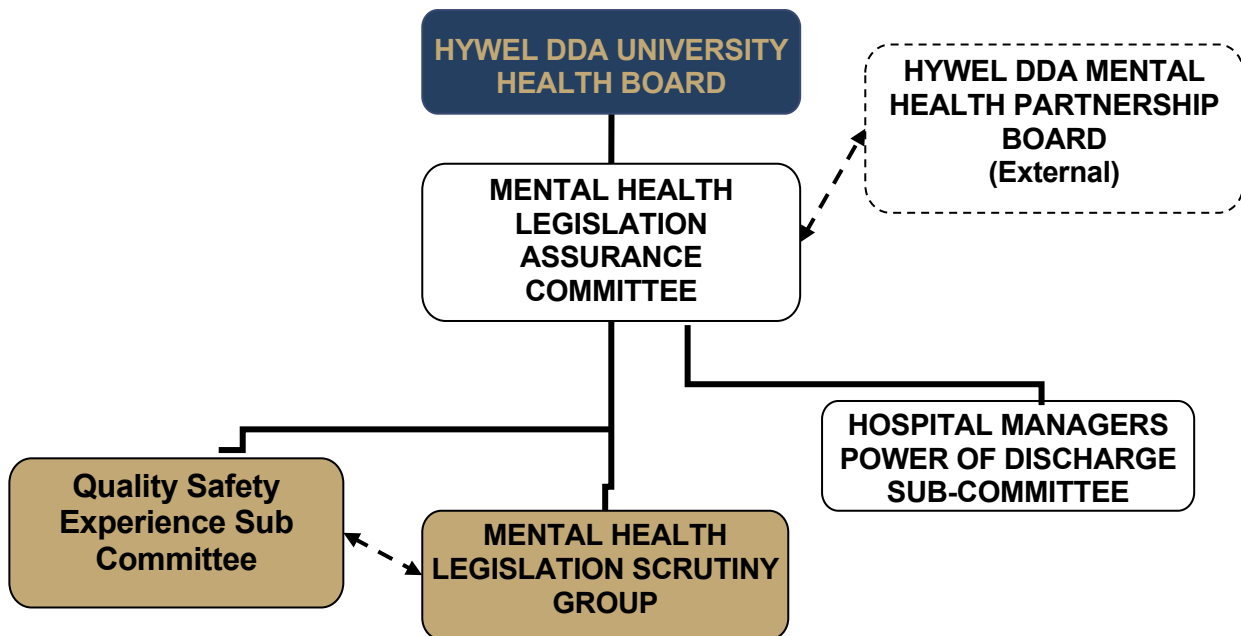
The Chair of the Sub-Committee is Professor John Gammon (Independent Member) who took over those duties in January 2016. This provides an additional level of assurance and scrutiny. The Mental Health Act administration lead is an attendee.

During the year members received training on the following areas:

- All Wales Hospital Managers Conference – Welsh Government in conjunction with Edge Training and Cardiff and Vale Health Board
- The role, responsibilities and conduct of advocates and legal representatives at reviews – Cara Young, Cambrian Law
- Deprivation of Liberty Safeguards (DoLS) – Steve Hughes, DoLS Coordinator

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

The Mental Health (Wales) Measure 2010

	Target	Jan 19	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Part 1, T1	80%	92.5%	96.5%	91.9%	93.4%	87.3%	94.3%	85.8%	82.3%	91.3%	93.8%	88.6%	90.3%
Part 1, T2	80%	87.2%	85.5%	81.5%	89.9%	86.3%	88.0%	90.6%	87.0%	83.6%	84.9%	86.0%	85.8%
Part 2	90%	91.3%	91.6%	91.1%	90.9%	91.0%	91.6%	92.0%	94.5%	92.7%	93.9%	93.0%	94.8%
Part 3	100%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	64.3%	100.0%	85.7%	80.0%
Part 4	100%	97.7%	98.5%	100.0%	97.2%	94.0%	100.0%	96.2%	100.0%	98.2%	100.0%	98.4%	100.0%

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 in the main – 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 adult 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.

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 last joint inspection (Healthcare Inspectorate Wales and Care Inspectorate Wales) took place in November 2018 with the report published in February 2019.

There was one unannounced Healthcare Inspectorate Wales visit:

- Bro Myrddin (Learning Disabilities NHS Residential setting) – 2nd April 2019

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.

Other Areas of Responsibility

- The Committee noted the updated Locked Door Policy and Section 135 Procedure.
- The Committee was provided with an update on the use of Section 136 following the implementation of the Policing and Crime Act in 2017.
- The Committee noted the content of the Local Mental Health Partnership Board Annual report.
- The Committee was provided with updated report on the learning disability service improvement programme.
- The Committee also noted the updated Mental Health Review Tribunal for Wales Practice Directions of November 2019.

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. In addition to the previous work highlighted within this paper, this included:

- Regular updates from the Mental Health Programme Group on the transformation project.
- Regular updates on the All Wales Benchmarking report based upon MHA usage data.
- Regular updates from the Mental Health Partnership Board. The Committee will continue to receive regular updates throughout 2019/20.
- Regular updates on out-of-area placements.
- Service user representations including service user sharing stories and experiences.

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 2018/19.

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 & Risk Assurance Committee at least annually to receive assurance that they are effectively discharging their Terms of Reference.
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

	<p>interventions.</p> <p>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.</p>
<p>Amcanion Llesiant BIP: UHB Well-being Objectives: Hyperlink to HDdUHB Well-being Statement</p>	<p>Support people to live active, happy and healthy lives Improve efficiency and quality of services through collaboration with people, communities and partners</p>

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

Effaith: (rhaid cwblhau) Impact: (must be completed)	
<p>Ariannol / Gwerth am Arian: Financial / Service:</p>	<p>Non-compliance with Mental Health Legislation could result in legal proceedings being brought against the University Health Board</p>
<p>Ansawdd / Gofal Claf: Quality / Patient Care:</p>	<p>There is a Service User representative on the Mental Health Legislation Assurance Committee</p>
<p>Gweithlu: Workforce:</p>	<p>Not applicable</p>
<p>Risg: Risk:</p>	<p>Safety of patients Assurance – use of statutory mechanisms</p>
<p>Cyfreithiol: Legal:</p>	<p>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>.</p>
<p>Enw Da: Reputational:</p>	<p>Not applicable</p>
<p>Gyfrinachedd: Privacy:</p>	<p>Not applicable</p>
<p>Cydraddoldeb: Equality:</p>	<p>Not applicable</p>

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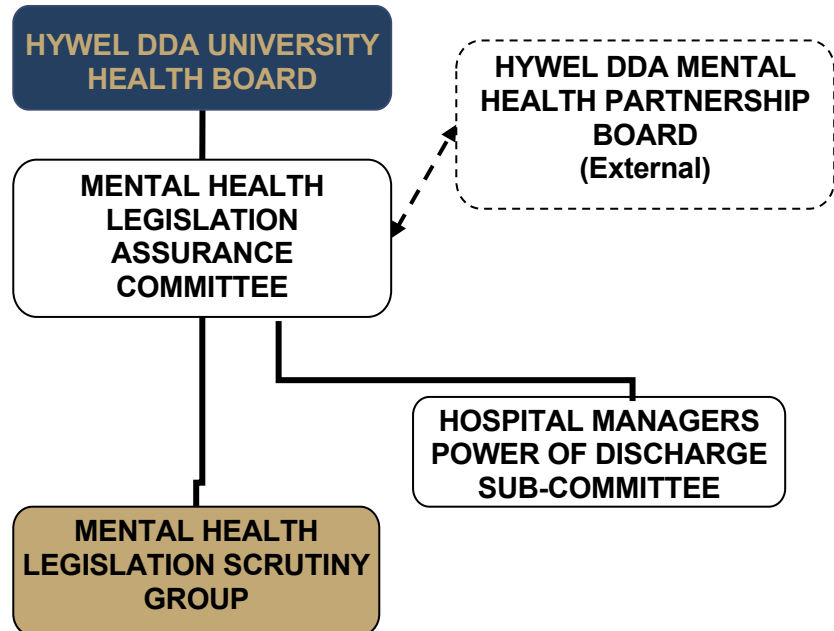
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Part One – Target One – Assessed within 28 days of referral

Target Two – Treated within 28 days of assessment

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- Regular updates from the Mental Health Partnership Board. The Committee will continue to receive regular updates.
- Regular updates on out-of-area placements.
- Service user representations including service user sharing stories and experiences.

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 2019/20.

Amcanion: (rhaid cwblhau)

Objectives: (must be completed)

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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
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