



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

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| DYDDIAD Y CYFARFOD: DATE OF MEETING: | 22 February 2022 |
| TEITL YR ADRODDIAD: TITLE OF REPORT: | Mental Health Legislation 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 Committee's 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 Committee (MHLC) 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 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 update report and minutes from previous meeting;
- 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 Managers Power of Discharge Committee Update Report & Minutes from previous meeting. This report should ensure compliance with the Code of Practice.

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 MHLC were revised in July 2021.

For 2020/21, a new approach to the MHLC Self-Assessment Exercise 2020/21 was introduced to elicit a broader range of response, in order to shape and influence the agenda of the Committee going forward. At MHLC in September 2021 the Committee received the Outcome & Analysis Report, which included the responses and a number of useful suggestions regarding ways in which the governance and operation of MHLC might be improved. Following presentation of these, it was agreed that an update outlining progress of the identified actions be presented to the Committee in March 2022.

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 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 2021 three meetings have been held.

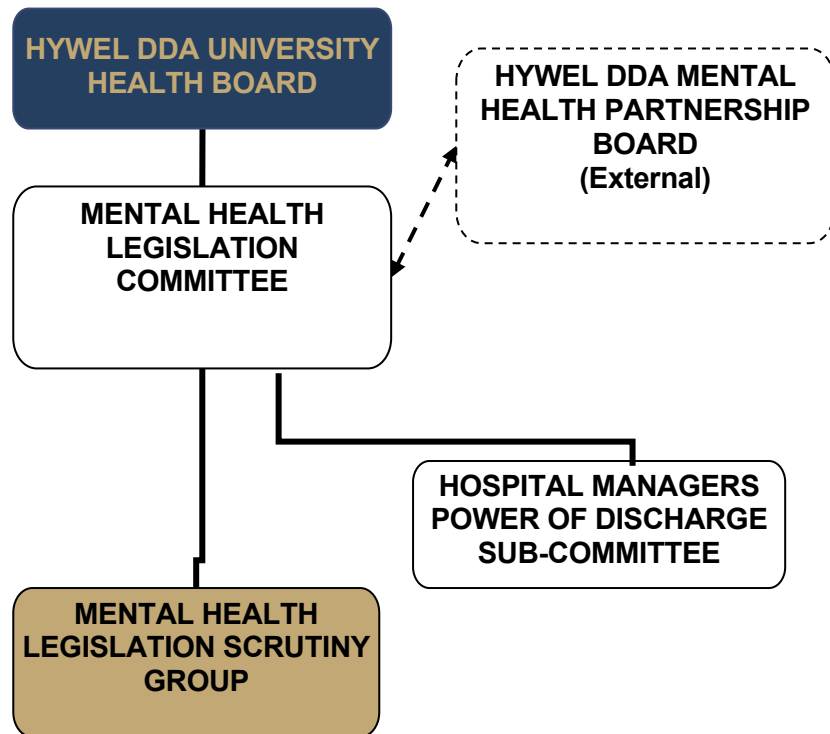
During the year members received training on the following areas:

- Associate Hospital Managers in depth training video – Richard Griffith, Senior Law Lecturer, Swansea University

- Basic IT skills – Jack Turner, Digital Senior Support Technician, HDdUHB

Compliance with Mental Health Legislation (Sub-Groups)

The Mental Health Legislation 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 MHLC. 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 MHLC. It reports directly to MHLC through a quarterly performance paper and may also provide additional papers to MHLC 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 MHLC;
- Provide a clear line of communication between practicing clinicians and managers to the MHLC assurance process;
- Quickly identify any areas of concern and instigate further investigation and intervention, thereby improving the quality of care delivery.

Asesiad / Assessment

The Committee have held three meetings to date: 15th June 2021, 2nd September 2021 and 26th November 2021. A further meeting is scheduled to take place on 1st March 2022.

The Mental Health (Wales) Measure 2010

The Directorate's ability to report against statutory performance targets had been hampered from August 2020, as a consequence of a project to migrate from a legacy Mental Health Patient Administration System (PAS) system to Welsh PAS.

The initial migration, completed in October 2020, highlighted a number of data quality issues. The schedule to resume all reporting commenced 1st April 2021.

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

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

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

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

Inspections

The Healthcare Inspectorate Wales (HIW) Annual Report 2020/21 sets out the findings of the work carried out by HIW during this financial year.

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

<https://hiw.org.uk/annual-report-2020-2021-0>

A report relating to a remote HIW Quality Check of Ty Bryn (Learning Disability services) was published on 19th January 2022. Any actions within the report that relate to Mental Health Legislation will be identified and progressed via MHLIC.

The report can be accessed via the following link:

<https://hiw.org.uk/sites/default/files/2022-01/20220119LDHywelDda21003-EN.pdf>

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 and approved the following policies:
 - Information to Patients Procedure (741)
 - Leave of Absence (731)
 - Section 135 – Warrant to search for and remove patients inter-agency procedure (743)
- The Committee also noted the changes in practice by the Mental Health Review Tribunal in relation to telephone case and video case reviews.
- The Committee received a staff story from Nicola Hopkins, Nurse Assessor in Mental Health and Learning Disabilities, who provided an illustration of experiences in working with care and treatment plans and how a person-focussed approach makes the difference to patients' journeys in mental health services.
- The Committee received and discussed the response by the Health Board to the Department of Health of the consultation on the review of the Mental Health Act.

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 Committee has operated effectively during 2021/22.

Amcanion: (rhaid cwblhau)

Objectives: (must be completed)

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| Committee ToR Reference Cyfeirnod Cylch Gorchwyl y Pwyllgor | 3.9 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: | All Strategic Objectives are applicable |
| 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:

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| Ar sail tystiolaeth: Evidence Base: | Terms of Reference: • Mental Health Legislation Committee |
| Rhestr Termiau: 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) | |
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| 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 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 |