

**PWYLLGOR SICRWYDD DEDDFWRIAETH IECHYD MEDDWL
MENTAL HEALTH LEGISLATION ASSURANCE COMMITTEE**

DYDDIAD Y CYFARFOD: DATE OF MEETING:	Monday 13 th June 2022
TEITL YR ADRODDIAD: TITLE OF REPORT:	Mental Health Legislation Committee Quarterly Performance Report. Quarter 4 January – March 2022
CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR:	Mr Andrew Carruthers, Director of Operations
SWYDDOG ADRODD: REPORTING OFFICER:	Mrs Ruth Bourke, Mental Health Act Administration Lead

Pwrpas yr Adroddiad (dewiswch fel yn addas) Purpose of the Report (select as appropriate)
For information

**ADRODDIAD SCAA
SBAR REPORT**

<p><u>Sefyllfa / Situation</u></p> <p>The purpose of the paper is to present to the Mental Health Legislation Committee the quarterly Mental Health Performance Report in relation to statutory mental health legislation in Wales including relating to The Mental Health Act (1983), as amended.</p> <p>As of June 2022 The Mental Health (Wales) Measure 2010 report shall be provided separately.</p> <p>The paper also includes assurance of other work carried out by the Mental Health and Learning Disabilities Directorate where related to mental health legislation.</p>
<p><u>Cefndir / Background</u></p> <p>This Report provides assurance in respect of the work that has been undertaken by Mental Health and Learning Disabilities (MHL) Services during the quarter, that those functions of the Mental Health Act 1983 (the Act) which have delegated to officers and staff, are being carried out correctly; and that the wider operation of the 1983 Act in relation to the Local Health Board's area is operating properly.</p> <p>The hospital managers 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. Hospital managers must also ensure that a patient's case is dealt with in line with other legislation which may have an impact, including the Human Rights Act 1998 and the Data Protection Act 1998.</p> <p>The Terms of Reference of the Committee itself require the submission of a quarterly report to the Board to summarise the work of the Committee and identify how it has fulfilled the duties required of it. Regulations permit the Hywel Dda 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 hospital managers' duties.</p> <p>This report is prepared following the quarterly meeting of the Mental Health Legislation</p>

Scrutiny Group. The purpose of this Group is to allow senior managers and clinicians from Hywel Dda University Health Board, its partner agencies and other stakeholders to scrutinise the University Health Board's (UHB) performance, to highlight areas of good practice, and any areas of concern that must be brought to the Committee's attention.

Asesiad / Assessment

Summary

The report outlines how the Mental Legislation Committee has complied with the duties through the Terms of Reference and also identifies key actions to address developments.

The Mental Health Act, 1983

Any exceptions highlighted in the Mental Health Act activity report are intended to raise the Committee's awareness of matters relating to the functions of the hospital managers and give assurance that the care and treatment of patients detained within Hywel Dda University Health Board and those subject to a community treatment order is only as the Act allows. Rates of detention under different sections of the Act typically fluctuate between each quarter therefore only significant points are highlighted.

The use of the Act during Quarter 4, 2021/22 was lower than average with a number of sections having the lowest quarterly use seen for many years. Reasons for this remain unclear however given the fact that earlier quarters within this current year had very high use it may be premature to refer to an established trend. Numbers will fluctuate sometimes quite dramatically between quarter to quarter.

The data below illustrates the use of the Mental Health Act during Quarter 4 of 2021/22.

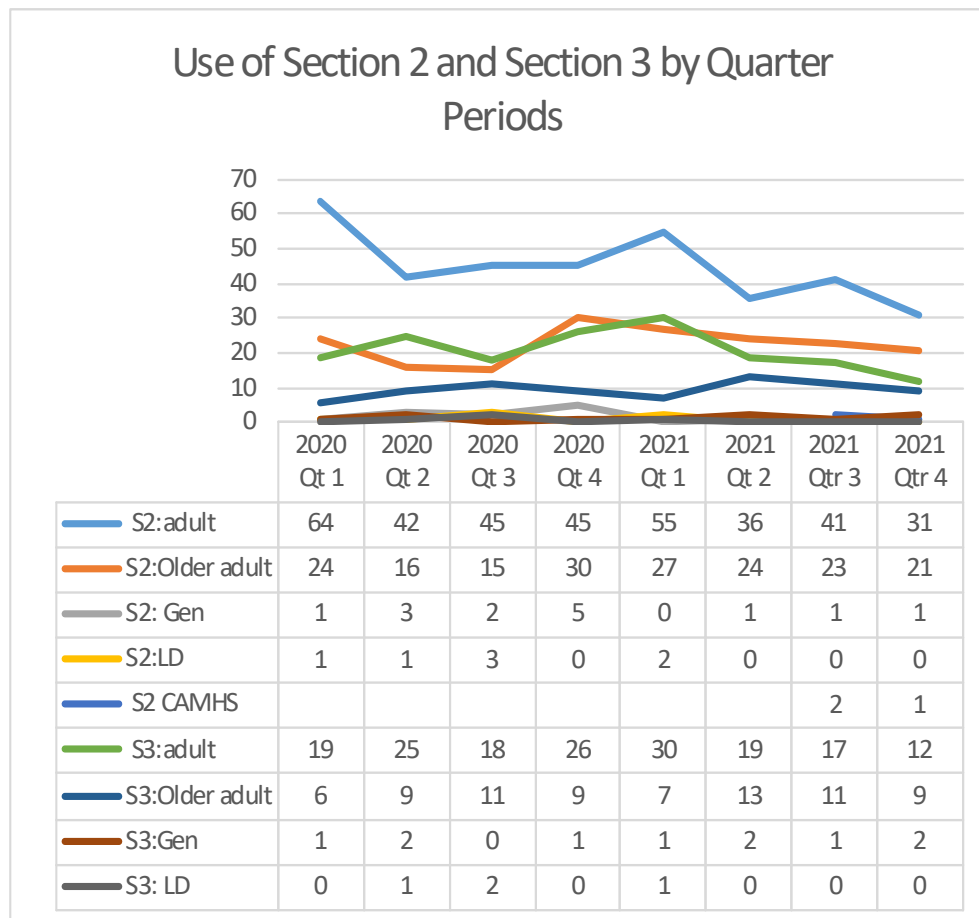
Use of the different sections shown in the table below are shown in comparison to average numbers based over the previous 3 years.

Section of MHA	Average use per Qtr	Qtr 3 activity	Notes
2	64	54 ↓	A low use of section 2 during this quarter upon further investigation this was found to be the lowest quarterly use of section 2 in almost 10 years. It follows a low quarterly use in the previous quarter. Whether there are any contributory factors to cause this trend may need exploring.
3	34	23 ↓	As above – same pattern with the lowest quarterly use in 10 years.
4	3	3	Use of this section of the Act is always minimal and this quarters' use is consistent.
5(4)	3	0 ↓	Use of this section of the Act is relatively rare however will fluctuate in use between zero to as many as 7.
5(2)	22	14 ↓	A very low use of section 5(2) during this quarter and once again the lowest quarterly use in at least the last 5 years.
17A (CTO)	8	1 ↓	As above very low use during this quarter.

135	1.5	2	Numbers remain small and relatively consistent
136	59	36 ↓	A very low use in Section 136's. A lot of communication and joint working between police and health services may have contributed to low numbers.
Part III	3	3	Nothing of note

Detentions under S.2 and 3

Section 2¹ and Section 3² are the most commonly used sections of the Act in the detention for assessment and treatment of individuals suffering from a mental disorder. Below is a graph to demonstrate their use of the previous 8 quarter periods.



Overall use of Section 2 and 3 by Qtr

Section	2020 Qtr 1	2020 Qtr 2	2020 Qtr 3	2020 Qtr 4	2021 Qtr 1	2021 Qtr 2	2021 Qtr 3	2021 Qtr 4
2	91	78	65	80	86	63	67	54
3	26	37	31	36	39	35	29	21

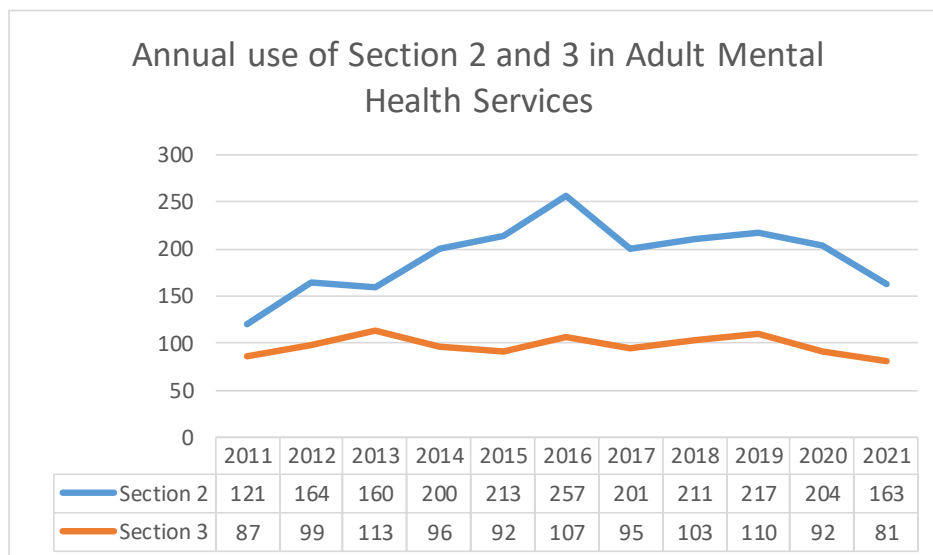
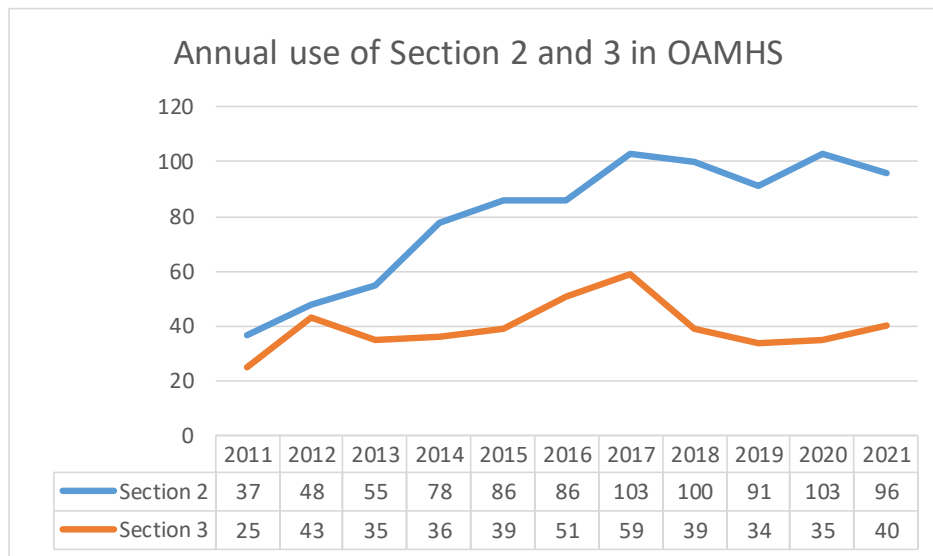
- Use of both section 2 and section 3 this quarter were lower than average and in both cases the lowest quarterly use in around 10 years.
- With figures broken down further to adult and older adult services the reduction

¹ Section 2 of the Act allows for a period of detention in hospital for up to 28 days for assessment and treatment.

² months for treatment and may be renewed.

was across disciplines apart from the use of section 3 in older adult services which was relatively more consistent with previous quarters.

The annual trend in annual use of section 2 and section 3 can be found in the graph below:



The MH Scrutiny Group considered the above and explored reasons for decreasing use of detentions under section 2 and section 3. A number of factors were considered which included short term ward closure impact and patients already on the ward that required longer admissions resulting in reduced availability to new admissions however there was no clear explanation obtained and the data will continue to be monitored.

The scrutiny group are tasked with focussing on what is happening to people prior to their admission under section 2, the level of activity, service input and if could have avoided any detentions. This piece of work continues with every admission to hospital being analysed.

Section 4³ is an emergency admission which is based upon one medical recommendation and application by AMHP. It allows for a second medical recommendation to be obtained within 72

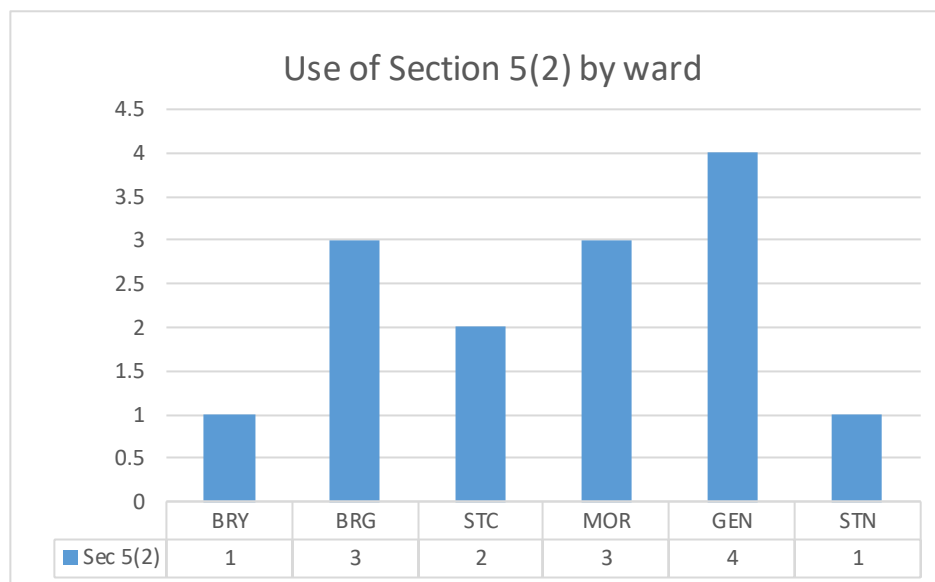
³ Section 4 of the Act allows for an emergency admission for assessment lasting up to 72 hours.

hours at that point converting it to section 2.

- On average it has been used on three occasions per quarter. During quarter 4 it was used on 3 occasions – all 3 came under Pembrokeshire local authority.
- 2 of the 3 assessments were converted to section 2 within 24 hours. One assessment did not convert to section 2 as was regraded to voluntary admission within 48 hours.
- Reasons for the use of section 4 were reported to include unamenable to home visit therefore swift detention necessary as well as difficulties in obtaining second doctors including out of hours.

The MH Scrutiny group accept that due process was followed and in all cases emergency admission under section 4 was appropriate.

Holding Powers - detentions under Section 5



- Section 5(4)⁴ is used rarely with the average quarterly use being three. During this quarter the nurses holding power was not utilised at all.
- Use of the Section 5(2) holding power during this quarter occurred on 14 occasions. This compares to 21 in the last and the average use (based on last three years) which is 22.
- Use within general hospital ward settings of the Mental Health Act remains low however detentions under section 5(2) has generally increased over recent years. During this quarter it was used on 4 occasions with the outcome of half requiring further detention under the Act and the other half returning to voluntary status.

⁴ Section 5(4) allows for a mental health and learning disability nurse to hold an in-patient up to 6 hours to allow for a decision to be made whether an application for detention should be made.

- All assessments were carried out within 60 hours which is recognised as a good area of practice.

The MH Scrutiny group considered the holding powers usage particularly within the general hospital ward settings. All holding powers were considered to have been appropriately utilised and members acknowledged the timely assessments undertaken following holding power implementation.

Further discussions are due to take place between the MHA Management and Associate Medical & Clinical Director in MHL D along with acute settings counterpart to look at supporting the regular use of this section.

Detention without authority or Invalid Detentions

	Apr – June 21	Jul – Sept 21	Oct – Dec 21	Jan – Mar 22
Detention Papers	129	106	97	77
Rectifiable Errors	36	42	49	53
Non Rectifiable Errors	3	3	4	0

- 77 statutory documents were medically scrutinised with 53 rectifiable errors made on medical documents under section 15, MHA which allows corrections to be carried out within the statutory time limits (14 days). These errors are generally spelling mistakes or missing middle names.
- Other errors not covered under Section 15 include:-

Errors in relation to:	Total no. of occasions used in Qtr	Total no. of errors made	Outcomes
Section 5(2) <i>Doctors Holding Power</i>	14	8	All - amendments made
Section 23 – <i>Discharge from detention</i>	50+	1	New form completed

- HO12s – There continues to be a high percentage of errors made in regards to undertaking Section 5(2) paperwork. Errors during this quarter included deletions on forms, names of patient missing or incorrect, reasons for detention inadequate and papers not being “received”/ received by a qualified nurse in line with statutory requirements.
- Section 23 an uncommon error whereby a doctor completed the appropriate form to discharge a patient from detention under the Act when not qualified to do so.
- This was the first recorded quarter since April to June 2019 whereby there were no invalid detentions.

The MH Scrutiny Group were pleased to note that there were no invalid detentions during this quarter. Training on Scrutiny and Receipt of MHA detention papers has been provided to nursing staff in mental health services along with a training session to MH medical staff on Section 15, MHA – Rectification of Errors during this quarter and has resulted in a significant improvement in data quality.

Discussions due to be held between the MHA Management and Associate Medical Directors in both acute and MH will consider further support of completion of Section 5(2) papers as errors continue to be significantly higher in proportion than other areas of the Act.

CAMHS and Learning Disabilities (LD)

Use of the MHA within both CAMHS and LD services remain small. It has not been possible to accurately record instances of the Act within LD services during this quarter as any admissions have occurred in an adult acute MH unit whilst Ty Bryn has been closed.

A separate report has been provided by the CAMHS services and can be found as an embedded document below:



CYSUR Quarter 4
2021-2022 (1).doc

The use of Section 135/6⁵

- Use of Section 135/6 has been very low during this period - 36 occasions compared to 65 occasions in the last quarter. The places of safety used for the MHA assessment were as follows:-
 - 15 to Bryngofal ward
 - 1 to Morlais Ward
 - 10 to Bro Cerwyn
 - 3 to PICU
 - 3 to Gorwelion Resource Centre.
 - 3 to A&E
 - 1 other
- Of the 36 MHA assessments 23 were discharged but referred to community services, 5 were discharged with no follow up arrangements. 1 was admitted to hospital on an informal basis and 7 were directly admitted and detained to an adult acute ward.
- No assessment had to be extended over 24 hours and there were no instances of custody being used as a place of safety.
- Of the 36 x S136's five cases resided outside the Hywel Dda catchment area with 2 assessments resulting in hospital admissions under the Act.
- Consultation is recorded as having occurred in 21 out of 36 occasions (76%) and all

⁵ Section 136 allows a police officer to remove a person to a place of safety, if the person appears to be suffering from a mental disorder and to be in immediate need of care or control.

consultations being appropriately held with a qualified nurse. This is an improvement on the previous quarter where consultation occurred in 55% of the cases and with a number of varied professionals. Of the 17 remaining S136s only one is recorded as being an emergency therefore not practicable to consult.

- It is recorded on the S136 monitoring forms that some form of restraint was used on 20 occasions (56%).
- There were 2 x Section 135 during this quarter – 1 x S135(1) and 1 x S135(2).
- The use of S136s carried out during this period is considerably lower than the last quarter when there were 5 cases.
- Section 136 policy has undergone the three yearly review and has become an active working document during this quarter.

A more detailed analysis of the use of Section 136 is detailed below providing information on which persons were previously known to MH&LD services, the follow up they received following the Section 136 and whether or not they had a care and treatment plan or were care co-ordinated.

2021/22 QTR 4		Jan	Feb	Mar	TOTAL
SEC 136 MONTHLY ACTIVITY					
COUNTY OF RESIDENCE	CARMS	5	3	6	14
	PEMBS	5	5	2	12
	CERED	0	3	2	5
	OOA	2	1	2	5
PLACE OF SAFETY	BRYNGOFAL	2	6	7	15
	BRO CERWYN	6	2	2	10
	MORLAIS	0	0	1	1
	GORWELION	0	2	1	3
	OTHER	1	0	0	1
	A&E	0	2	1	3
	PICU	3	0	0	3
M/F/O	MALE	3	4	5	12
	FEMALE	9	8	7	24
	OTHER	0	0	0	0
OUTCOME	DETAINED	5	1	1	7
	VOLUNTARY ADMISSION	0	0	1	1
	DISCHARGED	0	4	1	5
	Discharged & Referred to Services	7	7	9	23
	LAPSED	0	0	0	0
KNOWN TO SERVICE	NO	2	2	4	8
	YES	10	10	8	28
	CARE CO-ORDINATED	0	2	3	5
	CTP IN PLACE	5	5	4	14

Scrutiny Group noted areas of good practice – no S136s to custody reported during this quarter (3rd consecutive quarter in a row) and no requirements to extend a detention over 24 hours. Improvements have also been made with regards to the consultation process when considering use of Section 136.

Section 136 Joint Policy has undergone the three yearly review and provides further clarity and local working agreements to the process between police, local authorities and healthcare providers.

The MH Scrutiny Group is tasked with working to understand a person's experience of being detained therefore is currently focusing on how this is measured and will report its findings separately to this Committee.

Locked Door

The Code of Practice is clear on the issue that “A blanket locked door policy which affects all patients in a hospital or on a ward could depending on its implementation amount to a restriction or a deprivation of liberty” and that “The professional in charge of a clinical area is responsible for the care and safety of patients and staff and have the authority to lock the doors of the clinical area if that can be justified as an acceptable measure to protect patients or others. In such circumstances they should keep a record of the action”.

Wherever possible the HDUHB operates an open door policy (other than Cwm Seren PICU and LSU). On some wards there is a recognised significant and regular risk of accidental harm so units are designated as locked in order to mitigate this risk.

A record of all instances when the ward doors are either unlocked or locked must be maintained at ward level and reported on a quarterly basis to the MHA Administration Lead (Locked Doors Policy) however this information is not reported in other Board Committees across Wales.

Reports provided from units have identified that doors to wards have remained locked throughout this quarter.

The policy on locked doors is available and is due to be reviewed during 2022.

The Scrutiny group acknowledged the locked door policy is due for review by June 2022. It was suggested that this will be an opportunity to update and review monitoring requirements as there is no requirement to report this data it is suggested this sub heading be removed to ensure consistency with other health boards across Wales. It is suggested that future monitoring and any concerns relating to locking of doors in MH units be addressed via Ward Managers Forums and/or MH Scrutiny Group.

Exclusion of Visitors

The Code of Practice states that Hospital Managers should regularly monitor the exclusion from the hospital of visitors to detained patients. Any decision to exclude a visitor should be fully documented and available for independent scrutiny by HIW”.

It has been reported by all MH units that there has been one specific exclusion to a visitor during this period. This was due to them not making an appointment and additionally

arrangements were in place to transfer the patient to another ward. All wards however referred to restrictions on visiting generally in line with Health Board guidance due to the Covid pandemic.

Applications for Discharge to Hospital Managers and Mental Health Review Tribunal

In order to determine whether activity deviates from the norm current quarterly activity can be found in the table below compared against average activity based over the previous 3 years.

Activity	Average per Qtr	Qtr 3 activity	Notes
Applications to the Hospital Managers	10	6 ↓	Numbers of applications have dropped in applications particularly since Covid and following Welsh Government advice that Hospital Managers hearings should not follow where there is a MHRTfW application arranged or has been held within 6 to 8 weeks. However during this period hospital managers hearings resumed despite the advice as a recognised patient safeguard and as agreed following discussions at the Hospital Managers Power of Discharge sub-committee meeting held in November 202.
Renewals / Extension reviews	21	25 ↑	Every renewal of section / extension of CTO must have a hospital managers review. See narrative below
Applications by nearest relative	1	1	This is consistent with average
Applications/ referrals to MHRTfW	54	39 ↓	Very low quarterly activity – proportionate with the lower use of MHA detentions

There were 6 applications for discharge made to the hospital managers during this quarter compared to 9 made in the same quarter last year. 4 hospital manager appeal hearings were arranged with a further hearing due to be held during 2022, Qtr1. One case withdrew their application prior to the review. One hearing had a tribunal listed within 7 days so was invited to make a further application following an unsuccessful outcome to the tribunal.

Discussions held over resuming face to face appeals to hospital managers were held at the Hospital Managers Power of Discharge sub-committee in March 2022. It was agreed to continue to hold reviews remotely via MS Teams until such time all risk factors are concluded. This will be reviewed at the next meeting due to be held in August.

The hospital managers heard 25 renewals which is relatively consistent with the quarterly average however much higher than the same quarter last year when just 13 were held. The Code of Practice states renewal hearings should be held before the section expiry date. During this quarter 2 of the 25 hearings were held after the section expiry date and this was due to either the Responsible Clinician or Care Coordinator being on leave at the scheduled time the hearing was due to be held.

There was one applications for discharge made by a nearest relative during this quarter. The Responsible Clinician barred the discharge and the hospital managers reviewed the case. The outcome of the hospital managers was not to discharge the order.

There were 38 applications/referrals to the Mental Health Review Tribunal which compares to 42 during the last quarter. There were 21 hearings that took place during this quarter with 4 discharges being made – 2 CTO patients and 2 restricted MoJ patients.

The Mental Health Review Tribunal for Wales continued to conduct the majority of hearings by telephone. Of the 21 hearings that took place 17 were held by telephone and 4 using MS Teams.

The Scrutiny group discussed the future of telephone / video reviews for patient appeals against detentions of the MHA both to Hospital managers and Mental Health Review Tribunals. Frustrations continued regarding the slow uptake of the MHRT moving to MS Teams and recognised that all efforts were being made to challenge the MHRT. It was agreed that any future applications whereby a patient wished for a face to face review the MHRT would be requested with a preference to use MS Teams rather than telephone..

Policies

During this quarter work has been undertaken on the following policies and procedures:-

Section 136 Inter Agency Procedure (395)
Approved

Section 117 After-care Joint Health Board and Local Authorities Policy (688)
Delayed – referred to Clinical Written Control Documents Group (CWCDG) following inability to reach agreement within some areas of the policy between the local authority long term care and health commissioning team. Following period of consultation agreement to develop a centralised Section 117 register was obtained. This to be funded jointly between health and local authority. This post has not progressed following the delay of the policy review.

Locked Door Policy (321)

Due for review. Recommendation to update reporting of locked doors process to digital format.

MH Scrutiny group discussed policy reviews.
Anticipated completion on Locked Door Policy – June 2022
Section 117 Policy continues to be delayed – update to be inserted

Amcanion: (rhaid cwblhau)

Objectives: (must be completed)

Cyfeirnod Cofrestr Risg Datix a Sgôr
Cyfredol:

Not applicable

Datix Risk Register Reference and Score:	
Safon(au) Gofal ac Iechyd: Health and Care Standard(s): Hyperlink to NHS Wales Health & Care Standards	Governance, Leadership and Accountability
Amcanion Strategol y BIP: UHB Strategic Objectives: Hyperlink to HDdUHB Strategic Objectives	All Strategic Objectives are applicable
Amcanion Llesiant BIP: UHB Well-being Objectives: Hyperlink to HDdUHB Well-being Objectives Annual Report 2018-2019	<ol style="list-style-type: none"> 1. Improve population health through prevention and early intervention 2. Support people to live active, happy and healthy lives 3. Improve efficiency and quality of services through collaboration with people, communities and partners

Gwybodaeth Ychwanegol: Further Information:	
Deddf Llesiant Cenedlaethau'r Dyfodol (Cymru) 2015 - Pum dull o weithio:	Please explain how each of the '5 Ways of Working' will be demonstrated
The Well-being of Future Generations (Wales) Act 2015 - 5 Ways of Working:	Long term – can you evidence that the long term needs of the population and organisation have been considered in this work?
Hyperlink to Well-being and Future Generations Act 2015 - The Essentials Guide	Prevention – can you evidence that this work will prevent issues or challenges within, for example, service delivery, finance, workforce, and/or population health?
	Integration – can you evidence that this work supports the objectives and goals of either internal or external partners?
	Collaboration – The Mental Health Legislation Committee comprises external agencies, carer representatives and local authorities
	Involvement – can you evidence involvement of people with an interest in the service change/development and that this reflects the diversity of our population?

Gwybodaeth Ychwanegol: Further Information:	
Ar sail tystiolaeth: Evidence Base:	Agendas, papers and minutes of the Mental Health Legislation Committee, Power of Discharge sub committee and scrutiny group
Rhestr Termau: Glossary of Terms:	Included within the body of the report.
Partïon / Pwyllgorau â ymgynhorwyd	The Mental Health Legislation Scrutiny Group

ymlaen llaw y Cyfarfod Bwrdd Iechyd Prifysgol: Parties / Committees consulted prior to University Health Board:	
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Effaith: (rhaid cwblhau) Impact: (must be completed)	
Ariannol / Gwerth am Arian: Financial / Service:	Not Applicable
Ansawdd / Gofal Claf: Quality / Patient Care:	SBAR template in use for all relevant papers and reports.
Gweithlu: Workforce:	Not Applicable
Risg: Risk:	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> . Safety of patients Assurance – use of statutory mechanisms
Cyfreithiol: Legal:	s
Enw Da: Reputational:	Not Applicable
Gyfrinachedd: Privacy:	Not Applicable

**Cydraddoldeb:
Equality:**

Not Applicable