



PWYLLGOR DEDDFWRIAETH IECHYD MEDDWL MENTAL HEALTH LEGISLATION COMMITTEE

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|--|---|
| DYDDIAD Y CYFARFOD: DATE OF MEETING: | 18 December 2023 |
| TEITL YR ADRODDIAD: TITLE OF REPORT: | Mental Health Act Data Performance Report Quarter 2 |
| CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR: | Mr Andrew Carruthers, Director of Operations |
| SWYDDOG ADRODD: REPORTING OFFICER: | Ruth Bourke, Mental Health Act Administration Lead |

Pwrpas yr Adroddiad (dewiswch fel yn addas)

Purpose of the Report (select as appropriate)

Ar Gyfer Trafodaeth/For Discussion

ADRODDIAD SCAA

SBAR REPORT

Sefyllfa / Situation

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 The Mental Health Act (1983), as amended.

The paper also includes assurance of other work carried out by the Mental Health and Learning Disabilities Directorate related to mental health legislation.

Cefndir / Background

This Report provides assurance in respect of the work that has been undertaken by Mental Health and Learning Disabilities (MHLDD) 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.

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

The Terms of Reference of the Committee 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.

This report is prepared following the quarterly meeting of the Mental Health Legislation 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.

A copy of the full report received to inform the MH Legislation Scrutiny Group is attached as appendix 1.

Asesiad / Assessment

The MH Scrutiny group received Appendix 1 and paid particular attention to the following:

- Continued increase of Section 136 cases being taken to A&E settings which presents a number of operational issues. Concerns discussed over the lack of recording data / compliance with the joint agencies agreed policy.
- Detained patients leaving hospital without the written authority under Section 17 to do so. Further discussion around impact of smoking ban on Section 17 leave demands and the effects it has on the patient experience.
- Slight increase in the use of Community Treatment Orders, possibly a result of community clinicians taking over the care of inpatients in Bryngofal and Morlais Wards and no longer having to build in a handover period between the teams.
- The report (page 10) provides details on the use of the MHA within general hospital ward settings. The activity at end of Quarter 2, i.e. yearly midpoint, shows figures to be consistent with full yearly periods for previous years.

Argymhelliad / Recommendation

The Committee is asked to discuss the Mental Health Act Data Performance Report Quarter 2.

| Amcanion: (rhaid cwblhau) Objectives: (must be completed) | |
|---|---|
| Committee ToR Reference: Cyfeirnod Cylch Gorchwyl y Pwyllgor: | 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; |
| Cyfeirnod Cofrestr Risg Datix a Sgôr Cyfredol: Datix Risk Register Reference and Score: | Not applicable |
| Safon(au) Gofal ac Iechyd: Health and Care Standard(s): | Governance, Leadership and Accountability Choose an item. Choose an item. Choose an item. |
| Amcanion Strategol y BIP: UHB Strategic Objectives: | All Strategic Objectives are applicable Choose an item. Choose an item. Choose an item. |

| | |
|---|---|
| Amcanion Cynllunio Planning Objectives | Choose an item. Choose an item. Choose an item. Choose an item. |
| Amcanion Llesiant BIP: UHB Well-being Objectives: Hyperlink to HDdUHB Well-being Objectives Annual Report 2018-2019 | 1. Improve population health through prevention and early intervention 2. 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: | Agendas, papers and minutes of the Mental Health Legislation Scrutiny Group |
| Rhestr Termiau: Glossary of Terms: | Included within the body of the report. |
| Partïon / Pwyllgorau â ymgynhorwyd ymlaen llaw y Pwyllgor Deddfwriaeth Iechyd Meddwl: Parties / Committees consulted prior to Mental Health Legislation Committee: | MH Legislation Scrutiny Group |

| 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: | As above |
| Enw Da: Reputational: | Not applicable |
| Gyfrinachedd: Privacy: | Not applicable |
| Cydraddoldeb: Equality: | Not applicable |

**Report on the
on the use of
The Mental Health Act, 1983**

**01 July – 30 September 2023
(Quarter 2)**

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1.0 Introduction

The Mental Health Legislation Scrutiny Group's principle purpose is to ensure that the Mental Health Act 1983 and Mental Health (Wales) Measure 2010 is being carried out and operating properly within the health board and to report to the Mental Health Legislation Committee allowing for inadequacies and extraordinary activity to also be reported.

This report provides information relating to the use of the Mental Health Act 1983 (the Act) within Hywel Dda University Board during Quarter 2, 2023/24.

In order to protect identity and comply with Information Governance any figures below 5 will not be disclosed.

A more detailed breakdown of the Act is as follows:

Mental Health Act, 1983 - Data Collection and Exception Reporting

2.0 Summary

The use of the Act during Quarter 2, 2023/2024 appears to be higher than usual with the exception of emergency detentions, nurses holding powers and Section 136 instances. In relation to Section 136 the ratio of cases taken to an A&E setting both as first place of safety and for the purposes of a mental health assessment continue to remain much higher than previous years.

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 2 activity | Notes |
|----------------|---------------------|----------------|--|
| 2 | 72 | 85 ↑ | A much higher than average use of section 2 during the quarter. |
| 3 | 33 | 40 ↑ | A much higher than average use of section 3 during the quarter. Highest use in one quarter for more than 3 + years. |
| 4 | 3 | 0 ↓ | Use of this section of the Act is always minimal |
| 5(4) | 2 | 0 ↓ | Use of this section of the Act is relatively rare however will fluctuate in use between zero to as many as 6 |
| 5(2) | 20 | 26 ↑ | A higher than average use of section 5(2) during the quarter. Highest use in one quarter since the same quarter in 2020. |
| 17A | 6 | 9 | A higher than average use of section 17A. |

| | | | |
|----------|----|---------|--|
| (CTO) | | ↑ | |
| 135 | 2 | 5 ↑ | A higher than average use of section 135 warrants. |
| 136 | 52 | 46 ↓ | A slightly lower than average use of section 136. |
| Part III | 3 | Under 5 | Average number |

3.0 Findings and Information

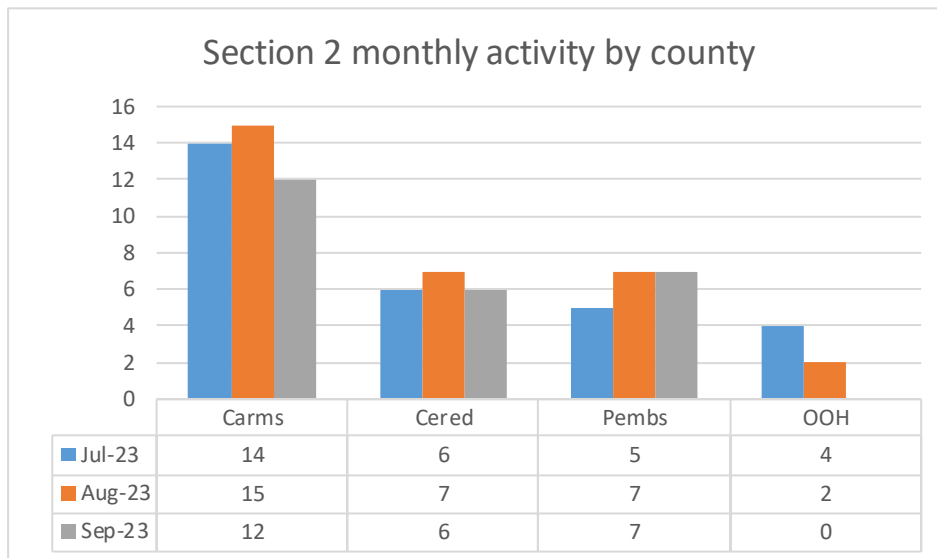
3.1 Part II, MHA

3.1.1. Section 2 - Admission for Assessment

The use of Section 2 provides for someone to be detained in hospital for assessment and treatment of their mental disorder.

- Use of Section 2 during this quarter has been considerably higher than the average use based on the numbers over the previous 12 quarters (July 2020 – June 2023). Used on 85 occasions.
- Its use within older adult services has risen from 19 during the last quarter to 25 this quarter. Whilst quite high it is also more in keeping with average use, the average being 22 per quarter (based on last 3 years activity).
- 61 patients were admitted to hospital directly from the community. i.e. they were not already in hospital when they were detained, community settings can be a patients home, care home or general hospital and can also include transfers from other hospitals outside of Hywel Dda UHB.
- The times the detention orders were “received on behalf of the hospital managers” (not necessarily when the assessment was conducted) is as follows:
 - Monday to Friday 9am to 5pm: 33/85
 - Friday 05.01pm to Monday 08.59am: 29/85
 - Weekday out of hours (5.01pm to 08.59am): 23/85
- Following section 2 25 patients went on to S3 (29%) which is a consistent percentage to previous quarters. 25 were discharged by the responsible clinician, 28 were discharged from section but remained informally, 6 were transferred out of the Health Board and 1 still running at time of preparing this report.
- 96% were of white British ethnicity.

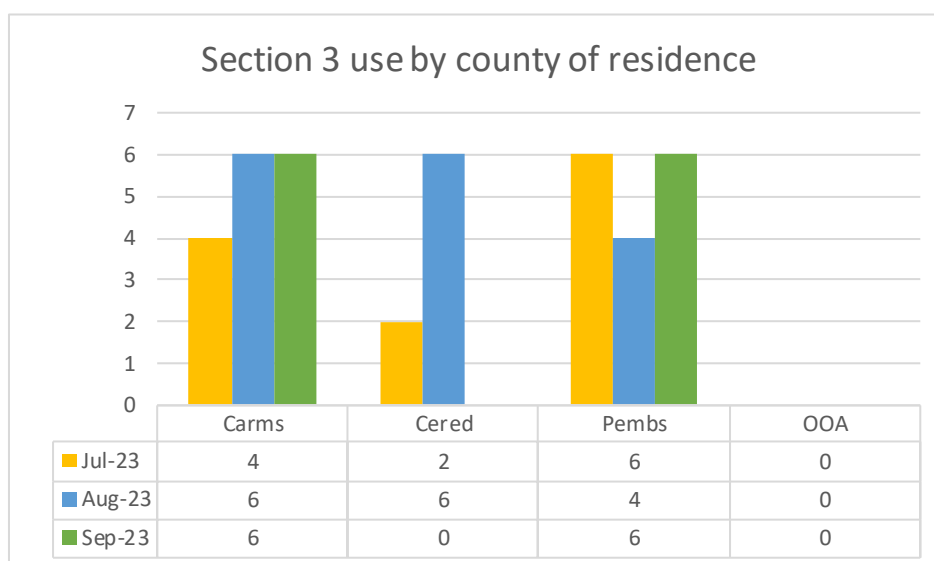
The graph below show the usage across the three counties:



3.1.2. Section 3 - Admission for Treatment

The use of Section 3 provides for someone to be detained in hospital for treatment of their mental disorder.

- Use of Section 3 occurred on 40 occasions which is a much higher use than the quarterly average (based across last 3 years). There were a further 2 cases of CTOs being revoked thus returning the patient to section 3 status.
- Of the 40 instances 34 were changes in a legal status e.g from informal or section 2. There were 6 direct admissions under this section.
- Of the 40 overall section 3s 2 were detained to adult inpatient wards and the remaining 14 to older adult wards.
- 39 Section 3s were discharged during this quarter with the following outcomes - 14 regraded to informal status (which could include DoLS authority), 15 were discharged from hospital, 9 placed in the community subject to a Community Treatment Order and 1 change to another legal status.
- 98% were of white British ethnicity.



3.1.3. Section 4 – Admission for Emergency

The use of Section 4 can be made on the basis of a single medical recommendation supported by the AMHP application and is used when the admission to hospital is urgent and would be unsafe to wait for a second medical recommendation for admission under section 2.

- On average it is used on three occasions per quarter however it has not been utilised by professionals during this quarter in order to detain a person in an emergency.

3.1.4. Section 5 – Holding Powers

Section 5(2) – used by Doctors in both mental health and general hospital settings to detain an in-patient for up to 72 hours to allow for a mental health act assessment to take place.

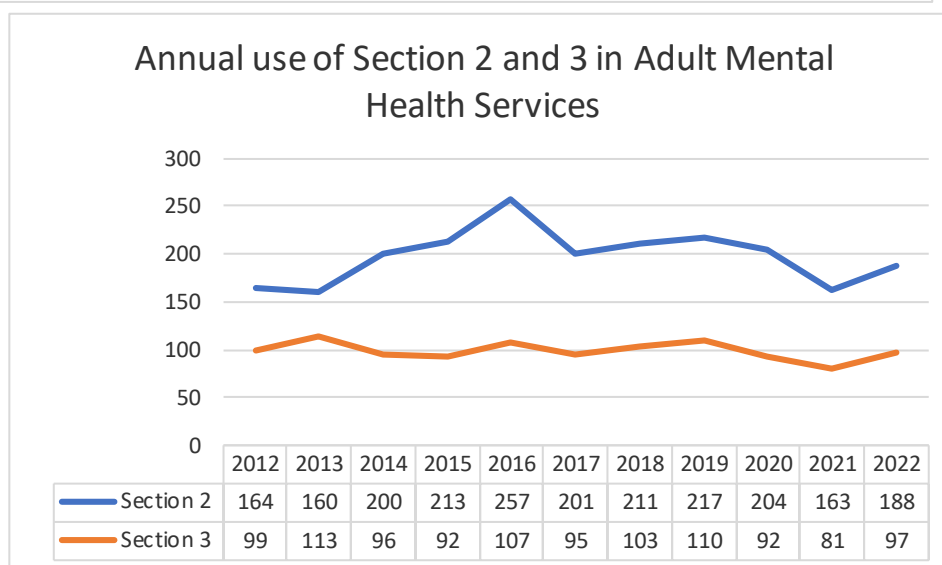
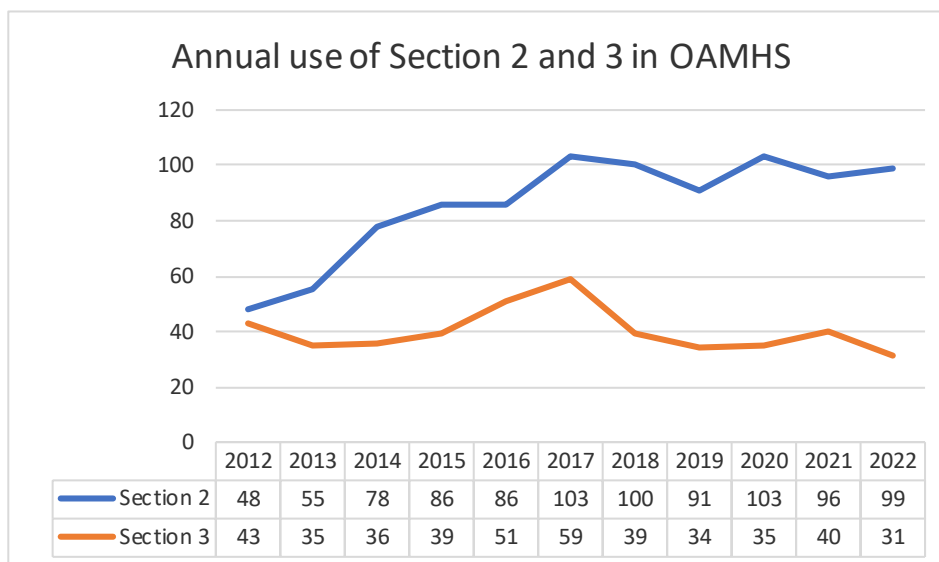
Section 5(4) is used by mental health and learning disability nurses in mental health in-patient settings for up to 6 hours to allow for a further assessment to take place

- Use of the nurses holding power is rare and it has not been used during this quarter.
- The doctors holding power was used on 26 occasions during this quarter. This is consistent with the previous quarter but higher than the quarterly average of 20.
- Of the 26, 12 were used in adult MH acute wards, 11 in the general hospital wards and the other 3 in other areas of the service.
- No for under 18s have been detained under this power during this quarter.
- A holding power under Section 5(2) may be used within general hospital wards. During this quarter it was used lawfully and appropriately on 11 occasions. The outcomes of these holding powers ranged between being discharged from hospital, regraded to voluntary legal status and being detained under section 2.
- 96% of assessments were carried out within 60 hours.
- 62% were further detained under Section 2 or 3
- Statistics:
 - 100% white British, 38% male, 62% female.

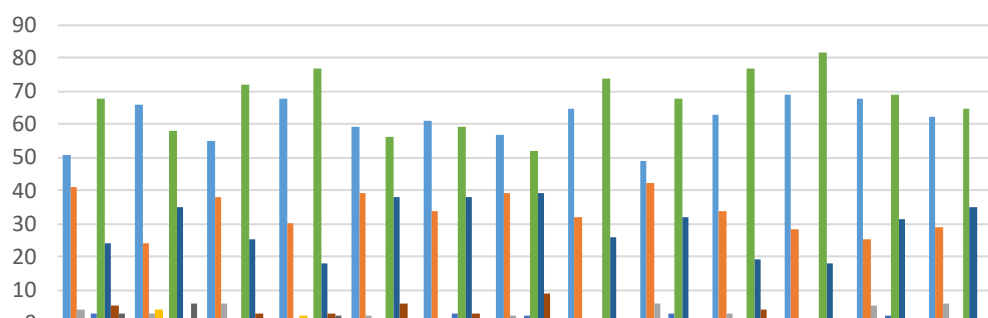
3.1.5. Trends and Service Specific Information relating to Part II, MHA (Sections 2, 3, 4 and 5)

Overall use of Sections of the Act by Qtr

| Section | Year 2020/2021 | | | | Years 2021/2022 | | | | Years 2022/2023 | | | | Years 2023/24 | |
|---------|----------------|----|----|----|-----------------|----|----|----|-----------------|----|----|----|---------------|----|
| | Q1 | Q2 | Q3 | Q4 | Q1 | Q2 | Q3 | Q4 | Q1 | Q2 | Q3 | Q4 | Q1 | Q2 |
| 2 | 91 | 78 | 65 | 80 | 86 | 63 | 67 | 54 | 77 | 77 | 68 | 68 | 76 | 85 |
| 3 | 26 | 37 | 31 | 36 | 39 | 35 | 29 | 23 | 31 | 37 | 26 | 34 | 32 | 40 |
| 4 | 5 | <5 | <5 | <5 | <5 | 7 | <5 | <5 | <5 | 7 | <5 | <5 | <5 | 0 |
| 5(2) | 20 | 26 | 18 | 23 | 22 | 23 | 21 | 14 | 15 | 18 | 16 | 17 | 26 | 26 |
| 5(4) | <5 | 6 | <5 | 0 | <5 | <5 | 6 | 0 | <5 | <5 | 0 | 0 | <5 | 0 |



Use of Section 2 and 3 - Service Specific



| | % | % | % | % | % | % | % | % | % | % | % | % | % |
|----------------|-------|------|-------|------|------|------|------|------|------|------|------|------|------|
| | 2020 | 2020 | 2020 | 2021 | 2021 | 2021 | 2021 | 2022 | 2022 | 2022 | 2022 | 2023 | 2023 |
| | Qtr 2 | Qt 3 | Qtr 4 | Qt 1 | Q2 | Q3 | Qt 4 | Q1 | Qt2 | Q3 | Q4 | Q1 | Q2 |
| S2:adult | 51 | 66 | 55 | 68 | 59 | 61 | 57 | 65 | 49 | 63 | 69 | 68 | 62 |
| S2:Older adult | 41 | 24 | 38 | 30 | 39 | 34 | 39 | 32 | 42 | 34 | 28 | 25 | 29 |
| S2: Gen | 4 | 3 | 6 | 0 | 2 | 1 | 2 | 1 | 6 | 3 | 1 | 5 | 6 |
| S2:LD | 1 | 4 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| S2 CAMHS | 3 | 0 | 1 | 0 | 0 | 3 | 2 | 1 | 3 | 0 | 0 | 2 | 1 |
| S3:adult | 68 | 58 | 72 | 77 | 56 | 59 | 52 | 74 | 68 | 77 | 82 | 69 | 65 |
| S3:Older adult | 24 | 35 | 25 | 18 | 38 | 38 | 39 | 26 | 32 | 19 | 18 | 31 | 35 |
| S3:Gen | 5 | 0 | 3 | 3 | 6 | 3 | 9 | 0 | 0 | 4 | 0 | 0 | 0 |
| S3: LD | 3 | 6 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

The above table demonstrates the % of which service both section 2 and section 3 were utilised. For example it can be seen that in 2020 Qtr 2 51% of all section 2's fell in adult services with only 1% of its use in learning disabilities. This compares with the current quarter where 62% of all section 2's were in adult services and again just 1% attributed to the learning disabilities service.

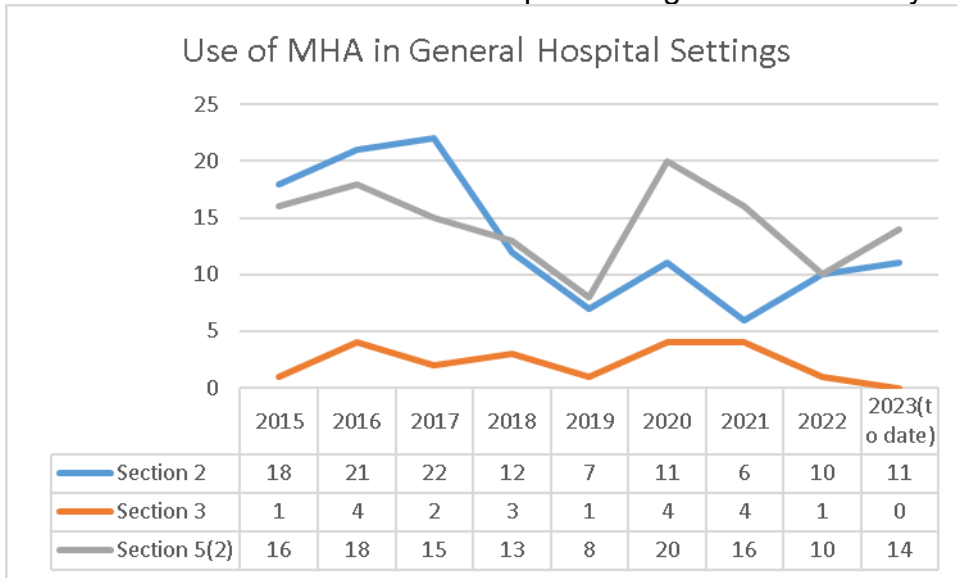
Legal Status of Patients:

The table below is a snapshot the legal status's broken down as a % in each ward as of 30th September 2023.

| Ward | MHA includes home leave pts | DoLS | Informal | Home leave |
|------------|-----------------------------|---|----------|------------|
| Bryngofal | 70% | 0 | 30% | 15% |
| Bryngolau | 47% | 33% 20% Standard DoLS authorised 20% DoLS pending – awaiting allocation to a BIA 60% Urgent DoLS – allocated to a BIA for assessment for standard DoLS | 20% | 0 |
| St Caradog | 67% | 7% | 27% | 13% |
| St Nons | 31% | 38% 80% DoLS authorised 20% Urgent DoLS – allocated to a BIA for assessment for standard DoLS | 31% | 0 |
| Morlais | 56% | 11% | 33% | 11% |
| Enlli | 36% | 27% | 36% | 0 |

| | | | | |
|------------|------|-------------------------------|---|----|
| | | 100% Standard DoLS authorised | | |
| Low Secure | 100% | 0 | 0 | 7% |
| PICU | 100% | 0 | 0 | 0 |

Use of the Act within the General Hospital settings over the last 8 years:



3.2. Use of Police Powers Sections 135 & Section 136

3.2.1. Section 136 – Removal of Mentally Disordered Persons to a place of Safety

The powers of section 136 provide authority for a police officer who finds a person who appears to be suffering from mental disorder, in a place to which the public has access, to remove him to a place of safety if the person:

- Use of Section 136 is slightly under the quarterly average. The places of safety used for the MH assessment were as follows:-
 - 38 to Bryngofal
 - 8 to A&E
- The use of A&E departments as places of safety has continued to increase during this quarter. In addition to the 8 cases listed above it was also used a further 11 times as the 1st place of safety before the persons were transferred to a MH health place of safety.
- Custody was not used as a place of safety during this quarter.
- There were no under 18s detained under S136 during this quarter.
- It is recorded within the monitoring forms that some form of restraint were used on 31 occasions (69%). This compares to 49% during the last quarter.
- Consultation is recorded as having occurred in 31 out of the 45 occasions (69%). This compares to 64% during the last quarter.
- The joint S136 policy provides a locally agreed procedure that a specialist MH nurse should be consulted with. A number of monitoring forms

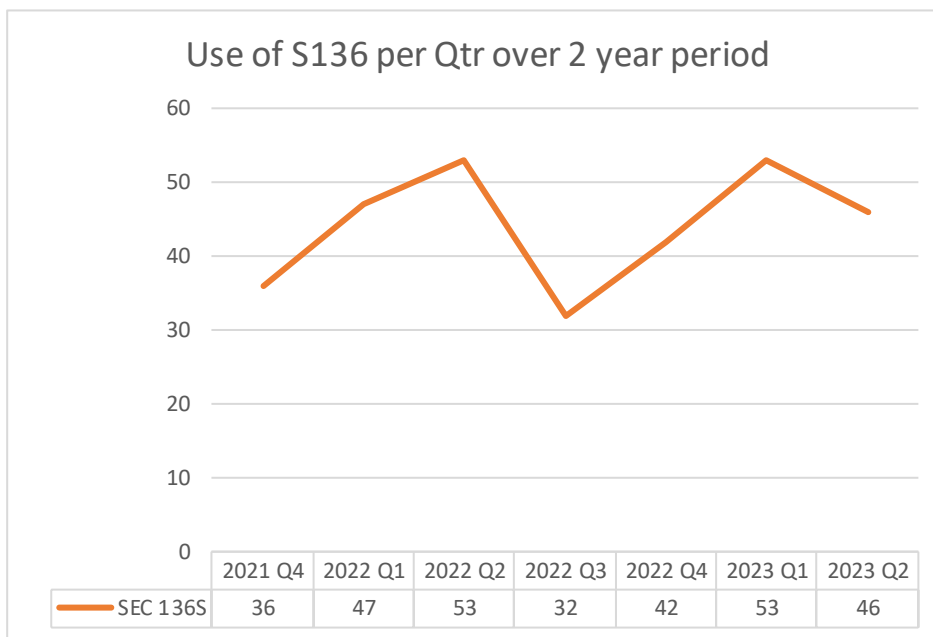
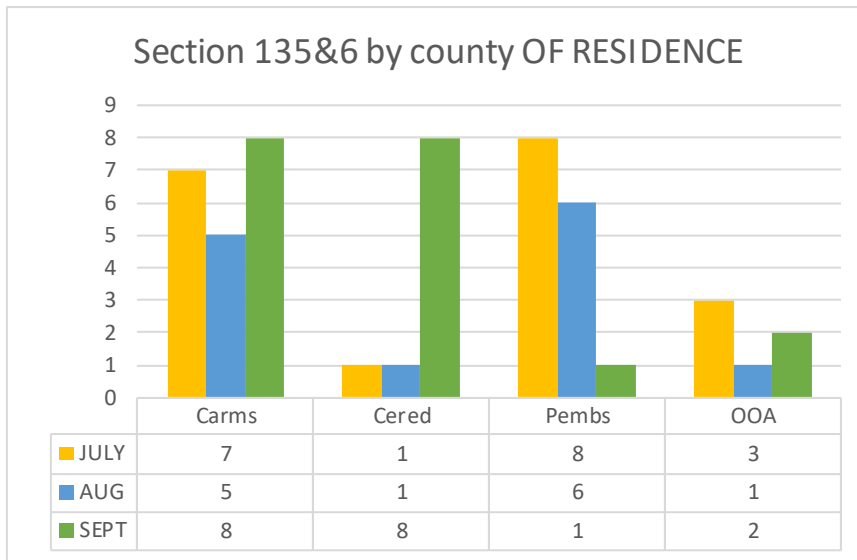
submitted details the consultation occurred after the S136 was already exercised. In these instances services were contacted to determine whether consultation occurred or not and amendments to the data provided have been made accordingly. The decision to consult rests with the detaining police officer and times where it may be considered appropriate not to consult would include emergency situations or where a person would likely remain non complaint and present during a consultation period. Of the 14 instances of no consultation, 8 were recorded as an emergency. The other 6 occasions no reasons were provided as to why the consultation process did not occur.

- Errors and missing data on Section 136 Monitoring Forms continue to present difficulties in obtaining the data accurately. These errors are reported weekly to Dyfed Powys Police and is provided to ward teams. There was 1 x S136 where no monitoring form was provided and historical data had to be collated to capture information.
- There is a report under the Out of Hours service that has a record of diverted S136s. There are 21 cases listed during the period of Quarter 2 (compared to 9 in quarter 1). Records suggest that instead the majority were taken to A&E on informal basis.
- Of the 46 cases 6 resided outside the Hywel Dda catchment area
- Of the 46 MHA assessments 16 were discharged but referred to community services, 9 were discharged with no follow up arrangements. 5 were admitted to hospital on an informal basis and 15 were directly admitted and detained to an adult acute ward. One case lapsed with no assessment conducted.
- 39 of the 46 x S136 assessments took over 4 hours before the assessment was concluded.
- Ethnicity statistics –
 - 96% White British
 - 19/45 Male, 26/45 female

3.2.2. Section 135 – Warrant to search and remove person

Section 135 empowers a magistrate to authorize a police constable to remove a person lawfully from private premises to a place of safety.

- There were 5 x Section 135 during this quarter. All under Pembrokeshire local authority.
- There is evidence documenting 70% of detainees being provided with statutory rights under S135&6 during this quarter which is consistent with the previous quarter at 74%.



- Quarterly trend for S135 is no longer reported upon as figures tend to be below 5 per quarter.

3.3. Section 17A - G, Community Treatment Orders

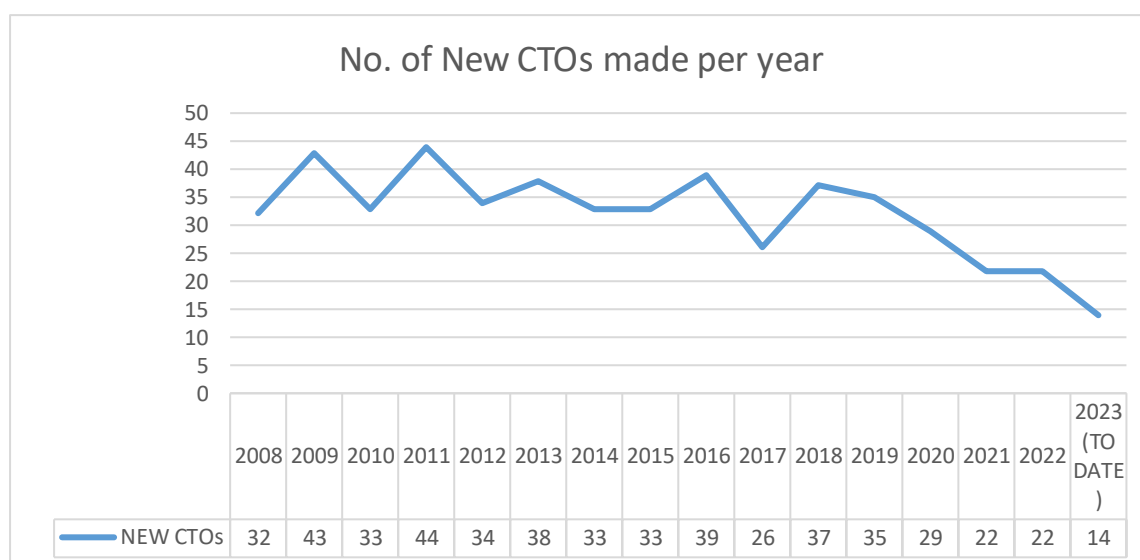
3.3.1. Community Treatment Order Activity

There were 35 Community Treatment Orders in place as at 30th September 2023

| County | Number of CTO's | Ethnicity |
|--------|-----------------|-----------|
|--------|-----------------|-----------|

| | | |
|-----------------|----|--|
| Carmarthenshire | 8 | White British – 75% Not stated on WPAS – 25% |
| Ceredigion | 14 | White British – 8 White British – 71% Not stated on WPAS – 21% |
| Pembrokeshire | 13 | White British – 77% Not stated – 8% |

- 9 new CTO's for the quarter.
- There were less than 5 recalls during this quarter. All recalls resulted in revocation of the orders.
- 6 CTO's were discharged by the Responsible Clinicians
- Since introduced into the Act in 2007 the popularity of Community Treatment Orders by clinicians has reduced over recent years.



3.4 Part III

3.4.1. Patients Concerned in Criminal Proceedings or Under Sentence

Part III of the MHA deals with the circumstances in which patients may be admitted to or detained in hospital on the order of a court or by transfers from prisons.

- Use of this area of the Act is minimal within the Health Board. During this quarter it was used to admit a patient on less than five occasions
- Unrestricted patients can be made subject to Community Treatment Orders however 0 new CTO for Part III patients were made during this quarter.
- Less than five restricted patients were discharged by the MHRTfW.
- There were no unrestricted patient discharges

- As of the 30th September 2023 the total number of Part III patients are split into the following – 77% restricted; 15% unrestricted; 8% CTOs.

3.5 Errors

3.5.1. Section 15 - Rectifiable Errors

Section 15, MHA allows corrections to be carried out within the statutory time limits (14 days).

- 125 statutory documents were medically scrutinised
- 55 rectifiable errors were made on medical documents.
- Common errors included spelling mistakes e.g. patient name, hospital; use of abbreviations in justification of detention, missing names.
- There were 17 errors recorded on HO14s by the nursing staff receiving papers on behalf of the Hospital Managers.
- There were 17 rectifiable errors relating to application made by the AMHP.
- All other rectifiable errors related to medical recommendations.

3.5.2. Section 15 - Non Rectifiable Errors

Where the error is so severe that the error cannot be rectified under Section 15 the appropriate action is taken.

- There was less than five detentions during this current quarter that were deemed to be unlawful and/or non-rectifiable. Appropriate actions were coordinated by the MHA Administration Team. Reasons for the un-rectifiable errors included conflict of interests between assessors, use of digital signatures and an application being made for a different section to the medical recommendations.

3.5.3. Other errors

Section 15 relates only to detentions under Section 2, 3 and 4 of the MHA. Errors under this heading of the report relate to other areas of the MHA including Section 5, Community Treatment Orders and Consent. Appropriate action is taken with relevant teams.

- HO12s are completed by a doctor for the purposes of Section 5(2).
 - HO12s – Of the 26 Section 5(2)s submitted during this quarter 15 had errors. These errors included insufficient and/or missing information, incorrect patient information e.g. detaining patient to home address instead of hospital. There were instances of incorrect dates and/or deletions not completed as well as use of sticky labels on detention papers as opposed to filling out the forms by hand. 11 of the 15 errors came from general hospital wards.
 - There were an additional 3xHO12s which were not accepted and appropriate remedial action taken coordinated by the MHA Administration

Team. Reasons included use of forms not compliant with Welsh Regulations or the forms were not timed nor dated.

| Section 15 | Oct-Dec 22 | Jan – Mar 23 | Apr - Jun 23 | Jul – Sept 23 |
|------------------------|---------------|-----------------|-----------------|------------------|
| Detention Papers | 97 | 105 | 110 | 125 |
| Rectifiable Errors | 50 | 26 | 41 | 55 |
| Non Rectifiable Errors | Under 5 | Under 5 | Under 5 | Under 5 |

3.6. Code of Practice (Mental Health Act)

3.6.1. Locked Door Activity (Chapter 26 CoP for Wales)

The Code of Practice provides clear guidance on locked doors. 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. All wards except have reported adhering to Code of Practice and local policy requirements.

3.6.2. Exclusion of Visitors (Chapter 11, COP for Wales)

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”. There has been less than 5 reported exclusions during this quarter. In such instances the Code of Practice and local policy requirements have been adhered to.

3.6.3. Withholding of postal packets (Sec 134 MHA)

Patients should have access to any correspondence they receive and send and their privacy respected. Anything withheld should be reported and monitored. There are no reports during this quarter of any postal documents being withheld.

3.6.4. Information to Detained Patients and Nearest Relatives

The MHA monitor and contact wards and departments to help ensure all patients detained under the MHA are provided with information relating to the rights of detention.

The majority of patients are provided with rights during the first 72 hours of detention however there are occasions whereby this is not possible, for example due to a temporary loss of capacity to retain the information or that the risks are deemed to high to staff to do this safely.

3.7. Part IV / IVA Act (Sections 57 – 64) Consent to Treatment and SOAD (Second Opinion Appointed Doctor) requests to Healthcare Inspectorate Wales.

3.7.1. Certification for Treatment – Capacity and Consenting Status

During this quarter there have been 17 new treatment authorisation documents completed for consenting to treatment instances:-

11 x C02 – to certify person has capacity and consents to treatment (detained patients)

6 x C08 – as above (CTOs)

0 x CO4 – as above for the treatment of ECT

3.7.2. Certification for Treatment – Non capacious or non-consenting status

When a detained patient requires authority for treatment to proceed but does not have the capacity to consent or refuses to consent then a Second Opinion Appointed Doctor must certify the treatment. SOADS are allocated through HIW.

- 15 SOAD requests were made (27 the previous quarter) and the following certificates were completed:
 - 8 CO3s (detained patients)
 - 4 CO7s (CTOs)
 - 3 CO6s (ECT)
- Average waiting time for a SOAD (medication for inpatients) was 10 days (consistent with last quarter).
- Of the 15 certificates issued 2 patients were seen in person with the remaining 13 reviews conducted remotely by a SOAD before issuing the relevant certificate to authorise treatment. HIW advised that this ratio is likely to remain.
- Average waiting time (ECT) was 5 days compared to 6 in the last quarter.
- Longest waiting time for a certificate was 15 days. It is reported that this was due to administrative delay by HIW. However there was only 2 instances where a SOAD certificate took over 2 weeks to be issues which is a vast improvement on previous timescales.
- Section 62/64 emergency treatment forms were completed on 22 occasions in total, compared to 38 during the last quarter. On 9 occasions it was used to authorise ECT to proceed. On 6 occasions to allow for a medication change. Other reasons Section 62 was utilised was the patient had changed from consenting to non consenting status and or/the three month rule of authority had expired without the relevant treatment certificate in place. The S62 treatment then allows for lawful and short term administration of treatment in the absence of a SOAD certificate.

3.7.3. Section 61, Review of Treatment

When a section is renewed under Section 15 or a Community Treatment Order is extended the Responsible Clinician is required to review the treatment and progress for

patients that have been subject to a SOAD certificate during the previous period of detention. A report is sent to Healthcare Inspectorate Wales on each case (HIW1). There were 8 records made during this quarter under Section 61. This compares to 10 in the last quarter.

3.8. Sections 23, 24, 20/20A and 65-79 MHA – Discharge from Detention

3.8.1. Applications for Discharge to Hospital Managers

There have been 6 applications for discharge made to the hospital managers during this quarter compared to 7 in the same quarter last year indicating that applications continue to remain low despite returning to face to face reviews. During the same quarter in 2018 there were 11 applications made. Of the 6 applications, no hearings have actually taken place – 1 is arranged during Qtr 3, 1 person was regraded to informal status, 3 applications were withdrawn and 1 did not take place due to having a MHRT arranged within a 7 day period.

All applicants appealing their detention are given the choice to request whether they want a face to face or remote type hearing. Of the 6 applications 4 opted for a face to face review, 1 chose a remote hearing and the other applicant gave no preference.

3.8.2. Renewals/ Extensions of Sections

The hospital managers heard 14 renewals compared to 16 in the previous quarter. This is slightly lower than the same quarter last year when 16 renewals were considered for the same period. The Code of Practice states renewal hearings should be held before the section expiry date. 1 hearing was held after the expiry date – sufficient reasons was provided why deviation from the Code of Practice occurred. It does not affect the legal status of the patients.

3.8.3. Application for Discharge by Nearest Relative

There has been 2 applications for discharge made by a nearest relative during this quarter. In both cases the RC agreed the patient was well enough to be discharged and ordered the discharge prior to the 72 hours expiring on the nearest relative application.

3.8.4. Hospital Managers Hearings

In total (all hearing types) the Hospital Managers held 14 reviews during this quarter. Of the 14 cases patients were present in 5 reviews, 3 of which were supported by IMHAs, 1 had a solicitor. Of the 8 where patients did not attend 3 were attended by IMHAs, 1 by a solicitor and 1 by nearest relative.

No applications were made for a Welsh hearing. No use of translation services were requested.

3.8.5. Applications, Referrals and Outcomes at the Mental Health Review Tribunal

There has been 41 applications/referrals to the Mental Health Review Tribunal (MHRTfW) during this quarter with 24 hearings conducted. The MHRTfW office have now introduced the option of face to face or remote reviews based upon patient choice. Of the 24 hearings 21 occurred in person and 3 via MS Teams.

The tribunal ordered the discharge of less than five detained patients during this period.

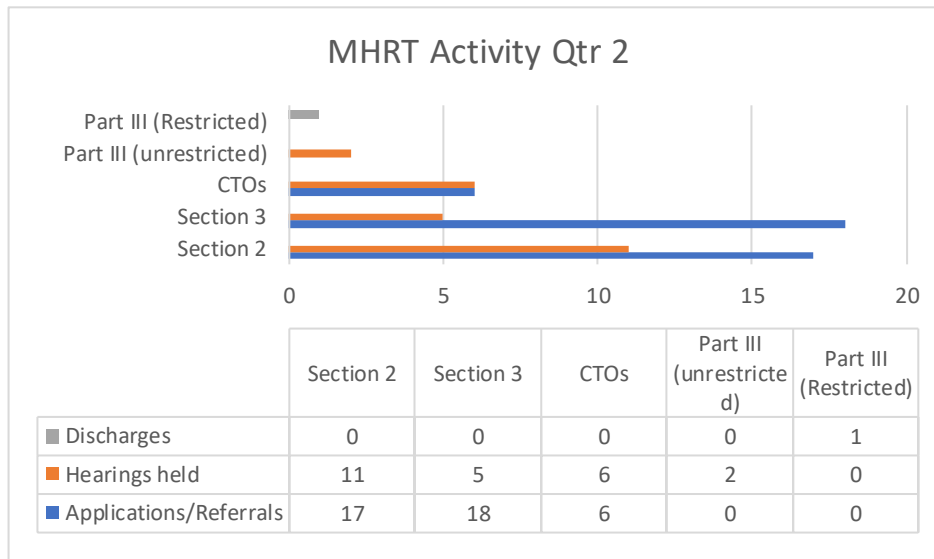
No applications were made for a Welsh hearing. No use of translation services were requested.

3.8.6. Comparative Information relating to Hospital Managers and Tribunals processes

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 1 activity | Notes |
|---------------------------------------|-----------------|----------------|--|
| Applications to the Hospital Managers | 7 | 6 | Despite all restrictions now lifted applications still remain generally lower than pre-covid times. All applicants are asked whether they wish for a virtual or face to face review. |
| Renewals / Extension reviews | 19 | 14 | Every renewal of section / extension of CTO must have a hospital manager review |
| Applications by nearest relative | Less than 5 | Less than 5 | Figures are generally low |
| Applications/referrals to MHRTfW | 48 | 41 | This is lower than average. |
| MHRT hearings held | 26 | 24 | See narrative. |

The following table shows the MHRT activity during Qtr 2, 2023/4 including applications/referrals; hearings held and outcomes.



3.9. Miscellaneous

3.9.1. Policies

The following policies were under review during Qtr 2:

(596) Section 5(2) Doctors Holding Power *review by date – 25th February 2024*

(625) Community Treatment Order Policy *review by date – 25th February 2024*

3.9.2. Training

The Mental Health Act Team continues to provide training to services and partner agencies on the use and processes in performing the functions of the Act. During Quarter 2 the following sessions have been provided either face to face or via MS Teams:-

| Date | Group | Topic |
|----------|---------------------------------------|---|
| 09.08.23 | Doctors | Session during Induction programme – MHA Introduction and forms |
| 09.08.23 | Administrators and Clerical | Introduction to the MHA and the role of the administrator |
| 28.08.23 | Nursing staff and students | MHA Refresher, processes and documents |
| 12.07.23 | Police | Section 136, MHA |
| 27.09.23 | General Hospital Qualified Nurses | Section 136 and Section 5(2)s of the MHA – use and processes within the general hospital settings |
| 27.09.23 | New Independent Board and Lay Members | The Role of the Hospital Managers – Sec 23 |

In addition a pre-recorded training presentation has been uploaded to the MHA Administration SharePoint page on the use of Section 5(2) holding powers which is readily and easily accessible to all staff across the Hywel Dda sites. Further

presentations to be developed and should be available in due course on Section 136 and Receiving of Detention Papers, both aimed at nursing staff.

3.9.3. Operational

Lasting Power of Attorneys

The MHA department are required to notify the MHRTfW about any Powers of Attorneys/Deputies. This is in addition to any other responsibilities to Attorneys and Deputies as outlined in Code of Practice (Chapter 7). No details of LPA's have been provided for detained patients during this quarter to the MHA administration team.

CAMHS ASSESSMENTS

There have been less than five uses of the Mental Health Act within the CAMHS service during this quarter. Where a CAMHS assessment is undertaken a specialist doctor in this field should make themselves available.

DATIX REPORTING

All incidents relating to breaches within the MHA are reported upon internally via the DATIX system by the MHA Administrator and reporting it to MHA Administration Lead.

3.9.4. Section 117 Aftercare

A centralised Section 117 register to serve both Health Board and the Local Authority is in its early stages. During this period the Section 117 Administrator post has been vacant and is now out for advert

4.0. Description of Sections

Longer Term Sections (medication can be given)

Section 2 Admission for assessment – up to 28 days

Mental Health Act assessment undertaken by 2 registered medical practitioners, where practicable by one who knows the patient. One must be Section 12(2) approved. An Approved Mental Health Professional (AMHP) must also assess, preferably at the same time as at least one registered medical practitioner.

Criteria needs to be met -

- a) is suffering from mental disorder of a nature or 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; and*
- b) ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons*

2 x medical recommendations (HO4), 1 x application from AMHP (HO2)

Section 3 Admission of treatment – up to 6 months, renewable for 6 months, 12 monthly thereafter

Mental health act assessment undertaken by 2 registered medical practitioners, where practicable by one who knows the patient. One must be Section 12(2) approved. An Approved Mental Health Professional (AMHP) must also assess, preferably at the same time as at least one registered medical practitioner.

Criteria needs to be met -

- a) is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in hospital; and*
- b) it is necessary for the health and safety of the patient or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this section; and*
- c) appropriate medical treatment is available for him.*

2 x medical recommendations (HO8), 1 x application from AMHP (HO6)

Short Term Sections (medication cannot be given)

Section 4 Admission for emergency – up to 72 hours

mental health act assessment undertaken by a registered medical practitioner, where practicable by one who knows the patient
An Approved Mental Health Professional (AMHP) must also assess the patient – ideally at the same time

Criteria needs to be met -

“it is of urgent necessity for the patient to be admitted and detained under section 2” and that compliance with the provisions relating to application under that section “would involve undesirable delay”

1 x medical recommendation, (HO11) 1 x application from AMHP (HO10)

Section 5(2) Approved Clinician Holding Power – up to 72 hours

mental health act assessment undertaken by a registered medical practitioner.
Criteria is - *that an application for compulsory detention “ought to be made”.*

1 x Form HO12

Section 5(4) Nurses Holding Power – up to 6 hours

Criteria is: if it appears to a nurse of the ‘prescribed class’ firstly that *“...the patient is suffering from mental disorder to such a degree that it is necessary for his health and safety or for the protection of others for him to be immediately restrained from leaving the hospital”.* Secondly the nurse must believe that *“...it is not practicable to secure the immediate attendance of a practitioner or clinician for the purposes of furnishing a report under subsection (2)...”* In other words, the doctor or approved clinician (or their deputy) cannot attend in time to provide a report under section 5(2).

1 x Form HO13

Community Treatment Order and related sections (medication can be given)

Section 17A Community Treatment Orders – up to 6 months, renewable for 6 months (17A+) 12 monthly thereafter (17A ++)

Criteria is:

the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;

it is necessary for his health and safety or for the protection of other persons that he should receive such treatment;

subject to his being liable to be recalled ... such treatment can be provided without his continuing to be detained in a hospital;

it is necessary that the responsible clinician should be able to exercise the power under section 17E (1) below to recall the patient to hospital;

appropriate medical treatment is available for him

Form CP1

Section 17E Recall of a CTO. Duration is up to 72 hours, which starts once the patient has been admitted to the hospital.

Criteria is: *a change of mental state or increase in risk.*

Form CP5

Section 17F Revocation of a CTO patient who has been recalled to hospital – the section is the re-introduction of the Section 3 or Section 37 (depending on

what section they were on previous to the CTO) - up to 6 months, renewable for 6 months, 12 monthly thereafter

Criteria needs to meet the same as Section 3 -

- a) *is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in hospital; and*
- b) *it is necessary for the health and safety of the patient or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this section; and*
- c) *Appropriate medical treatment is available for him*

Revocation requires the written agreement of an AMHP. Form CP7

Places of Safety Sections (medication cannot be given)

Section 135 Warrant to search and remove

Section 135(1) – warrant to enter and remove

Section 135(1) empowers a magistrate to authorize a police constable to remove a person lawfully from private premises to a place of safety.

A warrant may be issued if, on having information on oath from an approved mental health professional (AMHP), it appears to the magistrate that there is reasonable cause to suspect that a person believed to be suffering from mental disorder is:

Criteria is:

has been, or is being, ill-treated, neglected or kept otherwise than under proper control, in any place within the jurisdiction of the justice, or being unable to care for himself, is living alone in any such place

Section 135(2) – warrant to enter and take or retake

Section 135(2) concerns the taking into custody of patients who are unlawfully absent.

A magistrate can issue a warrant to take or retake the patient if it appears, on information on oath by any constable or any “*other person authorised by or under this Act... to take...or retake a patient who is liable under this Act*”, that:

There is reasonable cause to believe that the patient is to be found on premises within the jurisdiction of the justice; and

That admission to the premises has been refused or that a refusal of such admission is apprehended

Section 136 Place of Safety – up to 24 hours

The powers of section 136 provide authority for a police officer who finds a person who appears to be suffering from mental disorder, in a place to which the public has access, to remove him to a place of safety if the person:

Criteria is:

Appears to be suffering from mental disorder and to be in immediate need for care or control, the constable may, if he thinks necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety...

Part 3 - Sections in relation to Patients concerned with criminal proceedings or under sentence

Section 35 Remand to hospital for report on accused's mental condition – for up to 28 days but can be extended to a maximum of 12 weeks (*medication cannot be given*)

An approved clinician (at the hospital) is required to provide a report to the court. The court must be satisfied (on the written or oral evidence of any doctor) that:

- (a) *...there is reason to suspect that the accused person is suffering from mental disorder; and*
- (b) *...it would be impracticable for a report on his mental condition to be made if he were remanded on bail*

Section 36 Remand of accused person to hospital – up to 28 days but duration will be set by the Court – maximum of 12 weeks (*medication can be given*)

The Section 36 is to allow a Crown Court to remand an accused person to hospital for the purposes of treatment. The court must be satisfied (on the written or oral evidence of two doctors, one of whom must be section 12(2) approved) that the patient:

- (a) *...is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and*
- (b) *appropriate medical treatment is available for him*

Section 37 Hospital Order or Guardianship Order - up to 6 months, renewable for 6 months, 12 monthly thereafter (*medication can be given*)

Section 37 enables a Crown Court or a magistrates' court to order a person to be detained in hospital for treatment (or make a person subject to guardianship) when otherwise they may have imposed a prison sentence. The "hospital order" or a "guardianship order" is given as an alternative to imprisonment, a fine, or probation if appropriate.

The court must be satisfied (on the written or oral evidence of two doctors, one of whom must be section 12(2) approved) that the patient:

is suffering from mental disorder and that either –

- (i) *the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and appropriate medical treatment is available for him; or*
- (ii) *in the case of an offender who has attained the age of 16 years, the mental disorder is of a nature or degree which warrants his reception into guardianship...;and*

...the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to all other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under [section 37]

Section 37/41 Hospital Order with Restrictions – made with no time limit (medication can be given)

A Crown Court may, if necessary for the protection of public from serious harm, place restrictions onto a hospital order at the time of making the order under section 37.

The restrictions, Section 41, sets out that the Court must have regard to “...the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large...” and if it is necessary “for the protection of the public from serious harm...” the Court can order that the patient is subject to the special restrictions of the section.

An order made under section 41 is known as “a restriction order”, and is commonly referred to as “section 37/41” or a “hospital order with restrictions”.

In addition to the requirements for making an order under section 37, the Court must receive oral evidence from at least one of the registered medical practitioners who gave evidence under section 37.

Section 38 Interim Hospital Order – up to 12 weeks, but duration set by the Court – maximum 12 months (medication can be given)

To allow a court to send a person who has been convicted but not yet sentenced to hospital, to assess the person’s response to medical treatment. The court must be satisfied (on the written or oral evidence of two doctors, one of whom must be section 12(2) approved) that the patient:

- (a) *...is suffering from mental disorder; and*
- (b) *that there is reason to suppose that the mental disorder from which the offender is suffering is such that it may be appropriate for a hospital order to be made in his case,*

the court may, before making a hospital order or dealing with him in some other way, make an order (...referred to as “an interim hospital order”) authorising his admission to ... hospital...

**Section 47 } Transfer of sentenced prisoners (including with restrictions) -
Section 47/49} (medication can be given)**

Allows the Secretary of State for Justice to order the transfer to hospital of a sentenced prisoner following conviction. The Secretary of State must be satisfied (from the reports of two doctors, one of whom must be section 12(2) approved) that the patient:

- (a) *... is suffering from mental disorder; and*
- (b) *that the mental disorder from which that person is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and*
- (c) *that appropriate medical treatment is available for him*

The Secretary of State must have “...regard to the public interest and all the circumstances...”

A direction made under section 47 is known as a ‘transfer direction’. A transfer direction may be accompanied by the special restrictions of section 41, by virtue of section 49. Such a direction is known as a “restriction direction” and is commonly referred to as ‘section 47/49’ or a ‘transfer and restriction direction’

Duration - the transfer direction (including a restricted section 47) ends at the earliest date of release (EDR). At this time the patient, unless discharged by the responsible clinician, will be treated as though a hospital order had been made (and is referred to as a ‘notional section 37’).

**Section 48 }Transfer of other prisoners (including with restrictions) for urgent
Section 48/49 }treatment**

Allows the Secretary of State for Justice to order the transfer to hospital of a prisoner who is not sentenced but in urgent need of treatment. The Secretary of State must be satisfied (from the reports of two doctors, one of whom must be section 12(2) approved) that the patient:

... is suffering from mental disorder of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment; and he is in urgent need of such treatment; and appropriate medical treatment is available for him

The section only applies to:

- persons detained in a prison, not being a person serving a sentence of imprisonment or persons falling within the following groups
- persons remanded in custody by a magistrates’ court;
- civil prisoners, that is to say, persons committed by a court to prison for a limited term, who are not persons falling to be dealt with under section 47;
- persons detained under the Immigration Act 1971 or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State).

It is known as a ‘transfer direction’. A transfer direction may be accompanied by the special restrictions of section 41, by virtue of section 49. Such a direction is known as a “restriction direction” and is commonly referred to as ‘section 48/49’ or a ‘transfer and restriction direction’. A restriction direction must be given in respect of

- persons detained in a prison, not being a person serving a sentence of imprisonment
- persons remanded in custody by a magistrates’ court;

Duration - the period of detention is variable and can continue to the time of sentence; the Secretary of State can also issue a warrant to return the person to prison at any before the Court disposes of the case.

5.0. GLOSSARY OF TERMS

| Term | Description | Explanation/Link |
|----------------------------|--|--|
| MHA | Mental Health Act 1983 | http://www.legislation.gov.uk/ukpga/1983/20/contents |
| Sections | | Parts of the Mental Health Act 1983 which allow particular types of detention. |
| PICU | Psychiatric Intensive Care Unit | Severely ill patients who pose a risk in the short term. |
| CAMHS | Child and Adolescent Mental Health Services | Core age up to 18 years. |
| Part 2 of the Act | Part 2 of the Mental Health Act 1983 | Deals with detention, guardianship, and supervised community treatment for civil (i.e. non-offender) patients. |
| Part 3 of the Act | Part 3 of the Mental Health Act 1983 | Deals with mentally disordered offenders and defendants in criminal proceedings. |
| HIW | Healthcare Inspectorate Wales | Independent body which is responsible for monitoring the operation of the Act. |
| Secondary Care | | Psychiatric inpatient or community mental health team input for adults. |
| SOAD | Second Opinion Appointed Doctor | Independent doctor employed by HIW who approves particular forms of medical treatment for a patient. |
| CTO | Community Treatment Order | Patients can be discharged from detention in hospital under the Act but remain subject to the Act in the community. |
| Formal admission | | Patients admitted to hospital who are detained. |
| Exception Reporting | | Section 5(2) over 60 hours; Hospital Managers' Hearings heard after one month. |

| | | |
|--------------------------|--|--|
| MHRT | Mental Health Review Tribunal | A judicial body that has the power to discharge patients from detention, supervised community treatment, guardianship and conditional discharge. |
| Hospital Managers | | Independent individuals who carry out functions on behalf of the Board. |
| Recall | | Where it is necessary for a CTO patient to be recalled into hospital. |
| Revocation | | Patients for whom a CTO has been rescinded following recall. |
| Application | | Request from a patient for the MHRT to consider discharge from section. |
| Referral | | Hospital managers request the MHRT to consider a patients detention. |
| AMHP | Approved Mental Health Professional | Professional with training in the use of the Act, Approved by a local social services authority to carry out a number of functions under the Act. |