

Mental Health and Capacity Compliance Committee



GIG
CYMRU
NHS
WALES

Bwrdd Iechyd Prifysgol
Betsi Cadwaladr
University Health Board

Terms of Reference and Operating Arrangements

1. INTRODUCTION

- 1.1. The Board shall establish a committee to be known as Mental Health & Capacity Compliance Committee (MHCC). The detailed terms of reference and operating arrangements in respect of this Committee are set out below.

2. PURPOSE

2.1. The purpose of the Committee is to consider and monitor the use of the Mental Health Act 1983 (MHA) and the Mental Capacity Act 2005 (which includes the Deprivation of Liberty Safeguards (DoLS) (MCA) and give assurance to the Board that:

- Hospital Managers' duties under the Mental Health Act 1983;
- The functions and processes of discharge under section 23 of the Act; and the provisions set out in the Mental Capacity Act 2005. are all exercised in accordance with statute and that there is compliance with:
 - the Mental Health Act 1983 Code of Practice for Wales
 - the Mental Capacity Act 2005 Code of Practice
 - the Mental Capacity Act 2005 Deprivation of Liberty Safeguards Code of Practice

3. DELEGATED POWERS

3.1. The Mental Health & Capacity Compliance Committee is required by the Board, within the remit of the Committee to:

- 3.1.1. Provide evidenced based assurance that there is compliance with The Equalities Act 2010.
- In discharging its duty the Committee will have 'due regard' to the Public Sector Equality Duty, to eliminate discrimination, to advance equality of opportunities and foster good relations when carrying out all functions and day-to-day activities.

- In discharging its duty the Committee will have 'due regard' to the Socio-economic Duty, to consider how strategic decisions might help reduce the inequalities associated with socio-economic disadvantage.
- 3.1.2. Provide evidenced based assurance that BCUHB Policies are compliant with relevant legislation.
 - 3.1.3. Provide evidence based and timely advice to the Board on developing strategies.
 - 3.1.4. Provide evidence based and timely advice to the Board on the delivery of strategies including those relating to Mental Health Act compliance.
 - 3.1.5. Oversee and provide evidence based and timely advice to the Board on relevant risks and concerns.
 - 3.1.6. Receive the results of relevant audits (clinical and non-clinical) and any other relevant investigations and provide the Board with evidence based impact assessment of the implementation of the recommendations.
- 3.2. The Mental Health & Capacity Compliance Committee is authorised by the Board to:
- 3.2.1. Ensure that those acting on behalf of the Board in relation to the provisions of Mental Health and Capacity legislation, including the Measure, have the requisite skills and competencies to discharge the Board's responsibilities.
 - 3.2.2. Identify matters of risk relating to Mental Health and Capacity legislation and seek assurance that such risks are being mitigated.
 - 3.2.3. Monitor the use of the legislation and consider local trends and benchmarks.
 - 3.2.4. Consider matters arising from the Hospital Managers' Power of Discharge Group (POD).
 - 3.2.5. Ensure that all other relevant associated legislation is considered in relation to Mental Health and Capacity legislation.
 - 3.2.6. Consider matters arising from visits undertaken by Healthcare Inspectorate Wales (HIW) Review Service for Mental Health in particular, issues relating to Mental Health Act 1983 and monitor action plans that inform responses to HIW reports [NOTE: HIW report recommendations are the remit of Quality Safety and Experience Committee (QSE), however, any specific recommendations relating to Mental Health or the Mental Capacity Act will be the remit of this Committee who will respond as appropriate ensuring the Board and QSE are appraised accordingly.

- 3.2.7. Consider any reports made by the Public Services Ombudsman for Wales regarding complaints about Mental Health and Capacity legislation.
- 3.2.8. Receive and review reports on the approval for all Wales Approved Clinicians and Section 12(2) Doctors;
- 3.2.9. Consider and approve on behalf of the Board any policy which relates to the implementation of mental health and capacity legislation as well as any other information, reports etc. that the Committee deems appropriate.
- 3.2.10. Receive and review Deprivation of Liberty reports regarding authorisations and associated reasons;
- 3.2.11. Receive the results of clinical audits and any other reviews relating to the use of the Mental Health Act and oversee the implementation of recommendations.
- 3.2.12. Consider any other information, reports, etc. that the Committee deems appropriate.
- 3.2.13. Approve the appointment of Associate Hospital Managers

4. AUTHORITY

- 4.1. The Committee may investigate or have investigated any activity (clinical and non-clinical) within its terms of reference. It may seek relevant information from any:
 - 4.1.1. Employee - and all employees are directed to cooperate with any legitimate request made by the Committee; and,
 - 4.1.2. Other committee, sub-committee or group set up by the Board to assist it in the delivery of its functions.
- 4.2. It may also obtain outside legal or other independent professional advice and to secure the attendance of outsiders with relevant experience and expertise if it considers it necessary, in accordance with the Board's procurement, budgetary and other requirements;

- 4.3. It may consider and where appropriate, approve on behalf of the Board any policy within the remit of the Committee's business concerning workforce, Partnerships and Population Health matters.
- 4.4. It will review risks from the Board Assurance Framework and Corporate Risk Register that are assigned to the Committee by the Board and advise the Board on the appropriateness of the scoring and mitigating actions in place.

5. SUB-COMMITTEES

- 5.1. The Committee may, subject to the approval of the Health Board, establish sub-committees or task and finish groups to carry out on its behalf specific aspects of Committee Business.
- 5.2. The Committee will receive regular reports from:
 - 5.2.1. Discharge Panel (s) - Three members drawn from the pool of designated Associate Hospital Managers will constitute a panel to consider the possible discharge or continued detention under the MHA of unrestricted patients and those subject to Supervised Community Treatment Order (SCT).
- 5.3. The Board retains final responsibility for the performance of the Hospital Managers' duties delegated to particular people on the staff of Betsi Cadwaladr University Local Health Board, as well as the Power of Discharge Group.

6. MEMBERSHIP

6.1. Members

- 6.1.1. A minimum of three Independent Members of the Board

6.2. In attendance

- Executive Director of Public Health (Lead)
- Executive Director of Nursing and Midwifery
- Executive Director of Primary Care and Community Services
- Medical Director for Mental Health
- Nursing Director for Mental Health
- Mental Health & Learning Disabilities Director
- Mental Health Act Manager
- Head of Governance and Compliance MHLD

- Clinical Director CAMHS
- Area Director with Regional responsibility for CAMHS
- Interim Assistant Director for CAMHS Regional
- CAMHS Regional Clinical Lead

- Service User representative
- Social Services representative
- North Wales Police representative
- Welsh Ambulance Services representative
- Director Safeguarding & Public Protection (director lead for MCA team)
- Associate Director of Quality Assurance (director lead for MHA team)
- One Associate Hospital Manager (as nominated by the Power of Discharge Group) appointed for a period of four years with re-appointment not to exceed a maximum of eight years in total.

6.3. Right of Attendance

6.3.1. Upon giving notice to the Committee Chair the following have the right to attend any meeting as an observer:

- Chair of the Board.
- Chair of the Audit Committee.
- Board Secretary.

6.4. By Invitation

- A patient / Carer representative
- A staff representative
- IMCA Advocacy provider Representative
- IMHA Advocacy provider Representative

6.4.1. Other Directors/Officers will attend as required by the Committee Chair, as well as any others from within or outside the organisation who the Committee considers should attend, taking into account the matters under consideration at each meeting.

6.4.2. Trade Union Partners are welcome to attend the public session of the Committee

6.5. Member Appointments

6.5.1. The membership of the Committee shall be determined by the Chair of the Board taking account of the balance of skills and expertise necessary to deliver the Committee's remit and subject to any specific requirements or directions made by the Welsh Government. This includes the appointment of the Chair and Vice-Chair of the Committee who shall be Independent Members.

6.5.2. Appointed Independent Members shall hold office on the Committee for a period of up to 4 years. Tenure of appointments will be staggered to ensure business continuity. A member may resign or be removed by the Chair of the Board. Independent Members may be reappointed up to a maximum period of 8 years.

6.6. Secretariat

6.6.1. The Secretariat will be determined by the Board Secretary.

6.7. Support to Group Members

6.7.1. The Board Secretary, on behalf of the Committee Chair, shall arrange the provision of advice and support to Committee members on any aspect related to the conduct of their role and ensure the provision of a programme of development for Committee members as part of the overall Board Development programme.

7. COMMITTEE MEETINGS

7.1. Quorum

7.1.1. At least two Independent Members must be present to ensure the quorum of the Committee, one of whom should be the Committee Chair or Vice-Chair. In the interests of effective governance, it is expected that a minimum of two Executive Directors will also attend.

7.2. Frequency of Meetings

7.2.1. Meetings shall normally be held quarterly, but may be convened at short notice if requested by the Chair.

7.3. Withdrawal of individuals in attendance

7.3.1. The Committee may ask any or all non-board members who would normally attend but who are not members to withdraw to facilitate open and frank discussion of particular matters.

7.4. Conduct of Meetings

7.4.1. Meetings may be held in person where it is safe to do so or by video-conferencing and similar technology.

8. RELATIONSHIP & ACCOUNTABILITIES WITH THE BOARD AND ITS COMMITTEES/GROUPS

8.1. Although the Board has delegated authority to the Committee for the exercise of certain functions as set out within these terms of reference, it retains overall responsibility and accountability for ensuring the quality and

safety of healthcare for its citizens through the effective governance of the organisation.

- 8.2. The Committee is directly accountable to the Board for its performance in exercising the functions set out in these Terms of Reference,
- 8.3. The Committee, through its Chair and members, shall work closely with the Board's other Committees including joint committees/Advisory Groups to provide advice and assurance to the Board through the:
- 8.3.1.1. Joint planning and co-ordination of Board and Committee business; and
 - 8.3.1.2. Sharing of information

In doing so, contributing to the integration of good governance across the organisation, ensuring that all sources of assurance are incorporated into the Board's overall risk and assurance arrangements.

- 8.4. The Committee shall embed the corporate goals and priorities through the conduct of its business, and in doing and transacting its business shall seek assurance that adequate consideration has been given to the sustainable development principle and in meeting the requirements of the Well-Being of Future Generations Act.

9. REPORTING AND ASSURANCE ARRANGEMENTS

9.1. The Committee Chair shall:

- 9.1.1. Report formally, regularly and on a timely basis to the Board on the Committee's activities via the Chair's assurance report and an annual report.
- 9.1.2. Ensure appropriate escalation arrangements are in place to alert the Health Board Chair, Chief Executive or Chairs of other relevant committees of any urgent/critical matters that may affect the operation and/or reputation of the Health Board.
- 9.1.3. The Board Secretary, on behalf of the Board, shall oversee a process of regular and rigorous self-assessment and evaluation of the Committee's performance and operation.

10. APPLICABILITY OF STANDING ORDERS TO COMMITTEE BUSINESS

- 10.1. The requirements for the conduct of business as set out in the Standing Orders are equally applicable to the operation of the Committee, except in the following areas:
- Quorum

11. REVIEW

11.1. These terms of reference and operating arrangements shall be reviewed annually by the Committee and any changes recommended to the Board for approval.

Version number 1.06	
Committee	Date of approval
MHCC	1.07 17.12.21
Audit Committee	1.0 10.6.21
Health Board	

Annex 1

BACKGROUND INFORMATION REGARDING THE ASSOCIATED LEGISLATION

Mental Health Act 1983 (as amended by the Mental Health Act 2007)

The Mental Health Act 1983 covers the legal framework to allow the care and treatment of mentally disordered persons to be detained if deemed to be a risk to themselves or others. It also provides the legislation by which people suffering from a mental disorder can be detained in hospital to have their disorder assessed or treated against their wishes.

The MHA introduced the concept of “Hospital Managers” which for hospitals managed by a Local Health Board are the Board Members. The term “Hospital Managers” does not occur in any other legislation. Hospital Managers have a central role in operating the provisions of the MHA, specifically they have the authority to detain patients admitted and transferred under the MHA.

For those patients who become subject to Supervised Community Treatment (SCT), the Hospital Managers are those of the hospital where the patient was detained immediately before going on to SCT - i.e. the responsible hospital or the hospital to which responsibility has subsequently been assigned.

Hospital Managers must ensure that patients are detained only as the MHA allows, that their treatment and care is fully compliant with the MHA and that patients are fully informed of and supported in exercising their statutory rights. Hospital Managers must also ensure that a patient’s case is dealt with in line with associated legislation. With the exception of the power of discharge, arrangements for authorising day to day decisions made on behalf of Hospital Managers have been set out in the Health Board’s Scheme of Delegation.

Mental Capacity Act

The MCA came into force mainly in October 2007. It was amended by the Mental Health Act 2007 to include the Deprivation of Liberty Safeguards (DoLS). DoLS came in to force in April 2009.

The MCA covers three main issues:

- The process to be followed where there is doubt about a person's decision-making abilities and decisions therefore where 'Best Interest' may need to be made on their behalf (e.g. about treatment and care)
- How people can make plans and/or appoint other people to make decisions for them at a time in the future when they can't take their own decisions
- The legal framework for caring for adult, mentally disordered, incapacitated people in situations where they are deprived of their liberty in hospitals or care homes (DoLS) and/or where Court of Protection judgements are required.

Thus the scope of MCA extends beyond those patients who have a mental disorder.