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WALES

Bwrdd Iechyd Prifysgol  
Betsi Cadwaladr  
University Health Board

## Mental Health Act Committee Annual Report 2020-21

\*Including an overview of the work of the Power of Discharge Sub-Committee

### 1. Title of Committee:

Mental Health Act Committee

### 2. Name and role of person submitting this report:

Matthew Joyes, Acting Associate Director of Quality Assurance

### 3. Dates covered by this report:

01/04/2020-31/03/2021

### 4. Number of times the Committee and Sub-committee met during this period:

The **Mental Health Act Committee** was routinely scheduled to meet 4 times and otherwise as the Chair deemed necessary. During the reporting period, it met on 3 occasions with 1 cancellation in June 2020 due to the COVID-19 pandemic and in-line with Welsh Government governance requirements. The September 2020 scheduled meeting had been postponed and held in October 2020.

Attendance at meetings of the Committee are detailed within the table below:

<b>Members of the Mental Health Act Committee</b>	12/06/20	19/10/20	08/12/20	12/03/21
Lucy Reid (Chair)	Meeting cancelled due to COVID-19 pandemic	P	P	P
Cheryl Carlisle Independent Member		P	A	P
Eifion Jones Independent Member		P	A	P
Jackie Hughes Independent Member (co-opted)		-	P	-
Vacant Independent Member		-	-	-

<b>Formally In Attendance</b>	12/06/20	19/10/20	08/12/20	27/03/21
<p>Andy Roach (Lead Director) Director of Mental Health &amp; Learning Disabilities</p> <p>Lesley Singleton (Interim) Lead Director of Mental Health &amp; Learning Disabilities</p> <p>Iain Wilkie Interim Director of Mental Health &amp; Learning Disabilities</p>	Meeting cancelled due to COVID-19 pandemic	P (IW)	P (IW)	P (IW)
Alberto Salmoiraghi Medical Director for Mental Health		A	P	P
Alison Cowell Assistant Area Director Centre - Childrens		A	P	X
Ben Thomas Consultant Nephrologist		◆	A	P
Caniad Service User Representative & Carer Representative		X	X	X
Chris Pearson Safeguarding Specialist Practitioner/DoLS Manager, Safeguarding		P	A	-
Chris Stockport Executive Director Primary & Community Care		◆	A	A
Frank Brown Associate Hospital Manager		P	P	P
Gill Harris Executive Director of Nursing and Midwifery / Debra Hickman Acting Executive Director of Nursing & Midwifery		A	A	P*

Heulwen Hughes All Wales Approval Manager For Approved Clinicians And Section 12(2) Doctors
Lynda King All Wales Project Support Manager
Matthew Joyes Acting Associate Director of Quality Assurance
Hilary Owen Head of Governance And Compliance
Joan Doyle – Unillas IMCA Advocacy IMHA Advocacy
Mark Jones Interim Senior Head of Service Adult Social Care, Wrexham County Borough Council
Steve Forsyth Nursing Director for Mental Health
Mike Smith Interim Director of Nursing, Mental Health & Learning Disabilities
Rachel Turner Royal College of Nursing, Accredited Steward
Steve Riley Consultant Nurse, Child & Adolescent Mental Health
Teresa Owen Executive Director of Public Health Executive Lead, Mental Health & Learning Disabilities
Unison representation
Vacant Associate Hospital Manager

P	P	P
-	P	-
P	P	P
P	A	P
X	X	X
P	P	X
P (MS)	P (MS)	P (MS)
X	P	A
P	◆	◆
P	P	A
X	P	X
◆	◆	◆

Wendy Lappin  
Mental Health Act Manager

P	P	P
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**Key:**

P - Present

P\* - Present for part meeting

A - Apologies submitted

X - Not present

◆ Not a member of the Committee at this time.

The **Power of Discharge Sub-Committee** was scheduled to meet 4 times and otherwise as the Chair deemed necessary. During the reporting period, it met on 3 occasions with 1 cancellation in June 2020 due to the COVID-19 pandemic and in-line with Welsh Government governance requirements. The September 2020 scheduled meeting was postponed and held in October 2020.

Attendance at meetings of the Committee are detailed within the table below:

<b>Members of the Power of Discharge Sub-Committee</b>	12/06/20	19/10/20	8/12/20	12/03/21
Lucy Reid (Chair)	Meeting cancelled due to COVID-19 pandemic	P	P	P
Cheryl Carlisle Independent Member		P	A	P
Eifion Jones Independent Member		P	P	P
Vacant Independent Member		-	-	-
<b>Formally In attendance</b>				
Ann Owens Associate Hospital Manager	Meeting cancelled due to COVID-19 pandemic	◆	◆	◆
Delia Fellows Associate Hospital Manager		◆	◆	◆
Diane Arbabi Associate Hospital Manager		P	P	P
Frank Brown Associate Hospital Manager		P	P	A
Helena A Thomas Associate Hospital Manager		P	P	P
Hugh E Jones Associate Hospital Manager		P	A	A
Jackie Parry Associate Hospital Manager		P	P	P
John Williams Associate Hospital Manager		P	P	P

Satya Schofield Associate Hospital Manager	P	P	P
Shirley Davies Associate Hospital Manager	P	P	P
Vacant Associate Hospital Manager	◆	◆	◆
Vacant Associate Hospital Manager	◆	◆	◆

**Key:**

P - Present

P\* - Present for part meeting

A - Apologies submitted

X - Not present

◆ - Not a member of the Committee at this time.

In addition to the above core membership, other Directors and Officers from the Health Board regularly attend meetings of the Committee/Group/Forum. For a full list of attendance, please see the approved minutes which can be accessed on the Health Board's website via the following pages:- <https://bcuhb.nhs.wales/about-us/committees-and-advisory-groups/>

**5. Assurances the Committee is designed to provide:**

The Health Board's Mental Health Act Committee has a very narrow remit. The purpose of the Committee is to consider and monitor the use of the Mental Health Act 1983 (MHA), Mental Capacity Act 2005 (which includes the Deprivation of Liberty Safeguards (DoLS) (MCA) and the Mental Health (Wales) Measure 2010 (the Measure) and provide assurance to the Board. Governance, leadership, quality and safety matters relating to mental health fall within the remit of the Quality, Safety and Experience Committee.

The **Committee** is designed to provide assurance to the Board on the following key areas as set out in its Terms of Reference as follows:-

- 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;
- identify matters of risk relating to Mental Health and Capacity legislation and seek assurance that such risks are being mitigated;
- monitor the use of the legislation and consider local trends and benchmarks;
- consider matters arising from the Hospital Managers' Power of Discharge Sub-Committee;
- ensure that **all** other relevant associated legislation is considered in relation to Mental Health and Capacity legislation;
- consider matters arising from visits undertaken by Healthcare Inspectorate Wales Review\* Service for Mental Health in particular, issues relating to Mental Health Act 1983 and monitor action plans that inform responses to HIW reports;
- consider any reports made by the Public Services Ombudsman for Wales regarding complaints about Mental Health and Capacity legislation;
- receive and review reports on the approval for all Wales Approved Clinicians and Section 12(2) Doctors;
- consider and approve on behalf of the Board any LHB 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;

- receive and review DoLS reports regarding authorisations and associated reasons;
- receive and review reports on the implementation of the Mental Health Measure and be satisfied that positive outcomes for people are being achieved;
- receive and review the results of internal audit reports relating to care and treatment plans, as well as any other relevant reports relating to the Mental Health Measure;
- 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;
- consider any other information, reports, etc. that the Committee deems appropriate.
- investigate or have investigated any activity (clinical and non-clinical) within its terms of reference. It may seek relevant information from any:
  - employee (and all employees are directed to cooperate with any legitimate request made by the Committee); and
  - other committee, sub-committee or group set up by the Board to assist it in the delivery of its functions.
- obtain outside legal or other independent professional advice and to secure the attendance of non-members with relevant experience and expertise if it considers it necessary, in accordance with the Board's procurement, budgetary and other requirements;

\*Note – HIW report recommendations are the remit of Quality Safety and Experience Committee (QSE) however any specific recommendations relating to the Mental Health Act 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.

During the period that this Annual Report covers, the Committee operated in accordance with its terms of reference which were operative for the whole of the term this Annual Report covers. The terms of reference are appended at Appendix 1.

The work programmes, cycles of business and overall performance of each Committee is the responsibility of the Committee Business Management Group (CBMG). The CBMG oversees effective communication between Committees, avoiding duplication and ensuring all appropriate business is managed effectively and efficiently through the Health Board's Governance framework.

Furthermore a fundamental review of the Governance Structures has been undertaken by the Interim Director of Governance. This work is being finalised at the point of producing this Annual Report.

The Committee is required to publish its agenda and papers 7 days ahead of the meeting, and a breach log is maintained by the Office of the Board Secretary where there are exceptions to this requirement. During the reporting period there were no breaches of this nature for the reporting period.

## 6. Overall \*RAG status against Committee's annual objectives / plan: AMBER

The summary below reflects the Committee's assessment of the degree to which it has met these objectives. The supporting narrative included alongside the assessment below describes this in more detail.

Objective as set out in Terms of Reference	Assurance Status (RAG)*	Supporting narrative <i>(Please provide narrative against all red and amber including the rationale for the assurance status)</i>	Committee assessment of the quality of the Assurance provided <i>(please provide in narrative format)</i>
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.		The Committee received reports during the year regarding training however there has been changes in personnel during the year and it was noted in some areas training levels were below the Health Board target <i>(including as identified in a HIW inspection)</i> .	Amber – based on training compliance being below target in some areas. Reporting to the Committee on compliance with be strengthened.
Identify matters of risk relating to Mental Health and Capacity legislation and seek assurance that such risks are being mitigated;		The Committee receives reports detail areas of legislation that have been breached including lapses and	Amber – based on not receiving a consolidated report on risks. This will be addressed through changes to report content.

		<p>illegal detentions. However, the Committee has not received a specific report regarding risk management or a risk register report, and is therefore unable to provide full assurance on mitigating measures.</p>	
<p>Monitor the use of the legislation and consider local trends and benchmarks;</p>		<p>Reports were received by the Committee. (They did not include benchmarking data from similar organisations in Wales due to no all-Wales benchmarking reports being issued during the reporting period, as a result of the pandemic).</p>	<p>Green – The framework for receiving the reports is in place.</p>
<p>Consider matters arising from the Hospital Managers' Power of Discharge Sub-Committee;</p>		<p>A report produced for the Power of Discharge Sub-Committee. This details activities undertaken by Associate Hospital Managers. This includes the hearings activity and the scrutiny of detentions that</p>	<p>Green – The framework for receiving the reports is in place.</p>

		<p>are undertaken as a separate part of the role. These reports are received by Divisional QSE, Power of Discharge Sub-Committee and the Mental Health Act Committee.</p> <p>The Mental Health Act Manager has established an Associate Hospital Managers Forum, and any issues that require escalation are raised in the Power of Discharge Sub-Committee and escalated to Mental Health Act Committee as necessary.</p>	
<p>Ensure that <b>all</b> other relevant associated legislation is considered in relation to Mental Health Act and Capacity legislation;</p>		<p>The Committee has received reports in relation to MHA compliance and DoLS however limited assurance has been provided on compliance with the wider requirements of the Mental Capacity Act (MCA).</p>	<p>Amber – the Committee has requested Corporate Safeguarding to strengthen the reports. Further consideration is needed of MCA compliance across the organisation not just within MHL. This will be addressed through the governance review and the</p>

			updating the cycle of business.
Consider matters arising from visits undertaken by Healthcare Inspectorate Wales Review* Service for Mental Health in particular, issues relating to Mental Health Act 1983 and monitor action plans that inform responses to HIW reports		Any actions arising in relation to Mental Health Act legislation from external inspections e.g. HIW are monitored locally via the QSE sub groups which in turn report to Divisional QSE, to corporate PSQ, and the Mental Health Act Committee.	Green – Inspection reports and action plans are received by the Committee.
Consider any reports made by the Public Services Ombudsman for Wales regarding complaints about Mental Health and Capacity legislation		There have been no relevant reports during the reporting period.	
Receive and review reports on the approval for all Wales Approved Clinicians and Section 12(2) Doctors		The Committee has received reports in relation to the approval for all Wales Approved Clinicians and Section 12(2) Doctors.	Green – The Committee receives assurance reports.
Consider and approve on behalf of the Board any LHB 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		The Committee received assurance that a list of policies was in place that met the requirements of legislation. However it was not assured that all policies were reviewed and in-date. A number of policies were identified as out of date.	Amber - The Committee has received updates on policies throughout the year, but has not received a specific assurance report on overall policy status. This will be addressed in the changes to future report content.

		Assurance was provided that the MHLD Policy Group was addressing this aspect.	
Receive and review DoLS reports regarding authorisations and associated reasons		The Committee has received reports in relation to DOLS compliance.	Green – The Committee has received reports and has requested Corporate Safeguarding to strengthen to provide greater assurance across the organisation not just MHL Division.
Receive and review reports on the implementation of the Mental Health Measure and be satisfied that positive outcomes for people are being achieved		The Committee received information on compliance with the Measure, however consideration is underway as to whether this should be monitored by QSE.	Amber – The governance review will provide clarity on reporting against the Measure (i.e. by which Committee), and this will enable appropriate reports to be developed and scrutinized at the relevant Committee.
Receive and review the results of internal audit reports relating to care and treatment plans, as well as any other relevant reports relating to the Mental Health Measure		No internal audits were presented to the Committee in the reporting period.	The Committee notes that no internal audits were presented in the previous two reporting periods either, and decided that this is a risk. The Committee will consider how it directs internal audit to support assurance decisions.

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		No clinical audits were presented to the Committee in the reporting period.	The Committee notes that no audits were registered in the previous two reporting periods, and decided that this is a risk. The Committee will need to consider how it directs clinical audit to support assurance decisions.
Consider any other information, reports, etc. that the Committee deems appropriate		The Committee has received ad-hoc reports as required.	Green – Reports have developed as requested by the Committee.
Investigate or have investigated any activity (clinical and non-clinical) within its terms of reference		The Committee has not needed to commission investigations during the reporting period but is aware of its right to do so.	
Obtain outside legal or other independent professional advice and to secure the attendance of non members with relevant experience and expertise if it considers it necessary, in accordance with the Board's procurement, budgetary and other requirements;		The Committee has not needed to obtain outside independent or legal advice during the reporting period but is aware of its right to do so.	

**\*Key:**

<b>Red</b>	= the Committee did not receive assurance against the objective
<b>Amber</b>	= the Committee received assurance but it was not positive or the Committee were partly assured but further action is needed
<b>Green</b>	= the Committee received adequate assurance against the objective

## 7. Main tasks completed / evidence considered by the Committee during this reporting period:

The following section summarises the main evidence received by the Committee during the reporting period:

### Standing Items:

- Patient story scheduled at each meeting.
- Deprivation of Liberty Safeguards: Quarterly Report
- Hospital Manager's Update Report
- MHA Performance Report
- Report on Approval for All Wales Approved Clinicians and Section 12(2) Doctors)
- Consideration of HIW inspection reports and audit reports as appropriate to the meeting remit.

### Governance Items:

- Cycle of Business Review
- Committee Annual Report and review of Terms of Reference (including the Power of Discharge Sub-Committee Terms of Reference).

Full details of the issues considered and discussed by the Committee are documented within the agenda and minutes which are available on the Health Board's website and can be accessed from the following pages

<https://bcuhb.nhs.wales/about-us/committees-and-advisory-groups/>

## 8. Key risks and concerns identified by this Committee in-year which have been highlighted and addressed as part of the Chair's reports to the Board:

<b>Meeting Date</b>	<b>Key risks including mitigating actions and milestones</b>
19.10.2020	<ul style="list-style-type: none"><li>• The Committee were not assured that inadequacies identified through the "Deprivation of Liberties Safeguards applications" were being addressed by the service. A bid had been submitted to Welsh Government for funding to create a training package and a Standard Operating Procedure had been produced and a further review of this was required.</li><li>• The Committee were concerned about the lack of progress in relation to the availability for section 12(2) doctors that had been raised in previous meetings. The mental health leads committed to providing a report and action plan to the meeting in January 2021.</li></ul>
08.12.2020	<ul style="list-style-type: none"><li>• The Committee noted with concern the outstanding discussions to address the recruitment and management of Section 12(2) doctors despite requests that this be addressed. The Committee agreed that the relevant Executive Leads need to convene to</li></ul>

	confirm how these issues will be managed and that this requires a multi-disciplinary approach.
12.3.2021	<ul style="list-style-type: none"> <li>• A Task and Finish Group has been established to respond to the concerns regarding the section 12(2) recruitment. The Group would include membership from the Mental Health and Learning Disabilities Division, the Office of the Medical Director and the Primary and Community Services office. An update would be provided to the June 2021 Committee meeting.</li> </ul>

## 9. Review of effectiveness

The Committee has sought to discharge its responsibilities in line with the scrutiny applied by the new Committee Chair and recognising the significant impact of the COVID-19 pandemic. The ongoing governance review will provide further direction to the Committee's business and this review has identified some areas of improvement including strengthening the reporting of mental health law compliance beyond the remit of Mental Health and Learning Disabilities and the better use of audit resources to support assurance discussions.

## 10. Focus for the year ahead

The primary focus of the Committee over the next twelve months will be the objectives set out in the Terms of Reference. This is attached as Appendix 1.

In line with the ongoing governance review the Committee will review its scope and effectiveness as outlined above.

A cycle of business is in place (Appendix 2) however in line with the governance review and findings of this assessment, the Associate Director of Quality Assurance will review the cycle of business and report requirements with the secretariat, lead executive and chair to strengthen these aspects going forward.

**Betsi Cadwaladr University Health Board**  
**Terms of Reference and Operating Arrangements**

**MENTAL HEALTH ACT COMMITTEE**

## **1. INTRODUCTION**

1.1 The Board shall establish a committee to be known as the **Mental Health Act Committee**. The detailed terms of reference and operating arrangements in respect of this Committee are set out below. Background information in relation to the Mental Health Act, the Mental Health Measure and the Mental Capacity Act is set out in Annex 1. The Committee will also consider, when appropriate, any other legislation that impacts on mental health and mental capacity. It will regularly report to the Board and advise it of any areas of concern.

## **2. PURPOSE**

2.1 The purpose of the Committee is to consider and monitor the use of the Mental Health Act 1983 (MHA), Mental Capacity Act 2005 (which includes the Deprivation of Liberty Safeguards (DoLS) (MCA) and the Mental Health (Wales) Measure 2010 (the Measure) 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;
- the provisions set out in the Mental Capacity Act 2005, and
- in the Mental Health Measure (Wales) 2010

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
- the Human Rights Act 1998
- the United Nations Convention on the Rights of People with Disabilities
- the associated Regulations and local Policies

## **3. DELEGATED POWERS AND AUTHORITY**

3.1 The Committee, in respect of its provision of advice and assurance will and is authorised by the Board to: -

- 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;
- identify matters of risk relating to Mental Health and Capacity legislation and

- seek assurance that such risks are being mitigated;
- monitor the use of the legislation and consider local trends and benchmarks;
- consider matters arising from the Hospital Managers' Power of Discharge Sub-Committee;
- ensure that **all** other relevant associated legislation is considered in relation to Mental Health and Capacity legislation;
- consider matters arising from visits undertaken by Healthcare Inspectorate Wales Review\* Service for Mental Health in particular, issues relating to Mental Health Act 1983 and monitor action plans that inform responses to HIW reports;
- consider any reports made by the Public Services Ombudsman for Wales regarding complaints about Mental Health and Capacity legislation;
- receive and review reports on the approval for all Wales Approved Clinicians and Section 12(2) Doctors;
- consider and approve on behalf of the Board any LHB 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;
- receive and review DoLS reports regarding authorisations and associated reasons;
- receive and review reports on the implementation of the Mental Health Measure and be satisfied that positive outcomes for people are being achieved;
- receive and review the results of internal audit reports relating to care and treatment plans, as well as any other relevant reports relating to the Mental Health Measure;
- 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;
- consider any other information, reports, etc. that the Committee deems appropriate.
- investigate or have investigated any activity (clinical and non-clinical) within its terms of reference. It may seek relevant information from any:
  - employee (and all employees are directed to cooperate with any legitimate request made by the Committee); and
  - other committee, sub-committee or group set up by the Board to assist it in the delivery of its functions.
- obtain outside legal or other independent professional advice and to secure the attendance of non members with relevant experience and expertise if it considers it necessary, in accordance with the Board's procurement, budgetary and other requirements;

\*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.

### **Sub Committees/Panels**

3.2 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.

3.3 Sub-Committee - In accordance with Regulation 12 of the Local Health

Boards (Constitution, Procedure and Membership) (Wales) Regulations 2003 (SI 2003/149 (W.19), the Board has appointed a Sub-Committee of this Committee, to be known as the Power of Discharge Sub-Committee, terms of reference for which are attached as Annex 2.

3.4 Panel -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).

3.5 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 Sub-Committee.

## **4. MEMBERSHIP**

### **4.1 Members**

Four Independent Members of the Board to include one who is a Member of the Quality, Safety and Experience Committee and one who shall be the Chair of the Power of Discharge Sub-Committee.

### **4.2 In attendance**

Director of Mental Health & Learning Disabilities  
Executive Director of Nursing and Midwifery  
Medical Director for Mental Health  
Nursing Director for Mental Health  
Mental Health Director  
Mental Health Act Manager  
Service User Representative  
Carer Representative  
Social Services Representative  
North Wales Police Representative  
Welsh Ambulance Services NHS Trust Representative  
IMCA Advocacy provider Representative  
IMHA Advocacy provider Representative  
MCA representative  
DoLS representative  
Two Associate Hospital Managers (as nominated by the Power of Discharge Sub-Committee) appointed for a period of four years with re-appointment not to exceed a maximum of eight years in total.

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

4.4 Trade Union Partners are welcome to attend the public session of the

Committee

#### **4.4 Member Appointments**

4.4.1 The membership of the Committee shall be determined by the Board, based on the recommendation of the Health Board Chair - 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. The Vice-Chair of the Health Board will be the Chair of this Committee and shall retain the role of Chair of this Committee throughout their tenure of appointment.

4.4.2 Other 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 from the Committee by the Board. Independent Members may be reappointed up to a maximum period of 8 years.

#### **4.5 Secretariat**

4.5.1 Secretary: as determined by the Board Secretary.

#### **4.6 Support to Committee Members**

4.6.1 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.

### **5. COMMITTEE MEETINGS**

#### **5.1 Quorum**

5.1.1 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.

#### **5.2 Frequency of Meetings**

5.2.1 Meetings shall routinely be held on a quarterly basis.

#### **5.3 Withdrawal of individuals in attendance**

5.3.1 The Committee may ask any or all of those who normally attend but who are not members to withdraw to facilitate open and frank discussion of particular matters.

## **6. RELATIONSHIP AND ACCOUNTABILITIES WITH THE BOARD AND ITS COMMITTEES**

6.1 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.

6.2 The Committee is directly accountable to the Board for its performance in exercising the functions set out in these Terms of Reference.

6.3 The Committee, through its Chair and members, shall work closely with the Board's other Committees to provide advice and assurance to the Board through the:

- 6.3.1 joint planning and co-ordination of Board and Committee business; and
- 6.3.2 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.

6.4 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.

## **7. REPORTING AND ASSURANCE ARRANGEMENTS**

7.1 The Committee Chair shall:

7.1.1 report formally, regularly and on a timely basis to the Board on the Committee's activities, via the Chair's assurance report as well as the presentation of an annual Committee report;

7.1.2 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.

7.2 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.

## **8. APPLICABILITY OF STANDING ORDERS TO COMMITTEE BUSINESS**

8.1 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

## **9. REVIEW**

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

V4.0 Approved:

Audit Committee 30.5.19

Chair's Report to Board 25.7.19

## **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 Sub-Committee, 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 Health Measure**

The Mental Health (Wales) Measure received Royal Assent in December 2010 and is concerned with:

- providing mental health services at an earlier stage for individuals who are experiencing mental health problems to reduce the risk of further decline in mental health;
- making provision for care and treatment plans for those in secondary mental health care and ensure those previously discharged from secondary mental health services have access to those services when they believe their mental health may be deteriorating;
- extending mental health advocacy provision.

## **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 into 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.

**POWER OF DISCHARGE SUB-COMMITTEE  
TERMS OF REFERENCE AND OPERATING ARRANGEMENTS**

**1. INTRODUCTION**

- 1.1 The Board shall establish a sub-committee to be known as the Power of Discharge Sub-Committee. The detailed terms of reference and operating arrangements in respect of this Sub-Committee are set out below.

**2. PURPOSE**

- 2.1 The purpose of the Power of Discharge Sub-Committee (hereafter, the Sub-Committee) is to advise and assure the Board that the processes associated with the discharge of patients from compulsory powers that are used by the Sub-Committee are being performed correctly and in accordance with legal requirements.

**3. DELEGATED POWERS AND AUTHORITY**

- 3.1 The Sub-Committee, in respect of its provision of advice and assurance will and is authorised by the Board to:-
- Comment specifically upon the processes employed by the Sub-Committee's Panel in relation to the discharge of patients from compulsory powers, and whether these processes are fair, reasonable and compliant with the Mental Health Act and are in line with other related legislation, including, the Mental Capacity Act 2005, the Human Rights Act 1998 and the Data protection Act 1998 and that the appropriate systems are in place to ensure the effective scrutiny of associated discharge documentation.
  - undertake the functions of Section 23 of the Mental Health Act 1983, in relation to hearing cases of detained powers ensuring that three or more members of the Sub-Committee form a Panel and only a minimum of three members in agreement may exercise the Power of Discharge Sub-Committee. The Panel will be drawn from the pool of members formally designated as Hospital Manager as reported to the Sub-Committee.
  - investigate or have investigated any activity (clinical and non-clinical) within its terms of reference. It may seek relevant information from any:
    - employee (and all employees are directed to cooperate with any legitimate request made by the Committee); and
    - other committee, sub-committee or group set up by the Board to assist it in the delivery of its functions.

- 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;
- 3.2 The Sub-Committee will, as part of its process of hearing cases, be made aware of operational issues affecting the patient's care and treatment, including discharge arrangements. These are not matters for which the Sub-Committee shall have responsibility. Even so, Sub-Committee members are not precluded from raising such matters with those holding operational responsibility. In addition, such issues can be raised on an anonymised basis or through the Board itself.

## **4. MEMBERSHIP**

### **4.1 Members**

Three Independent Members of the Board.

A maximum of ten (10) appointed MHA Managers (as nominated and agreed by the Sub-Committee) (Appointed for a period of four years with appointment not to exceed a maximum of eight years in total).

### **4.2 Attendees**

Director of Mental Health  
Senior Mental Health Clinicians  
Mental Health Act Manager  
Officer Representatives for Learning Disabilities and Children's Services

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

Trade Union Partners are welcome to attend the public session of the sub-committee

### **4.3 Member Appointments**

- 4.3.1 The membership of the Committee shall be determined by the Board, based on the recommendation of the Health Board Chair - 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. The Vice-Chair of the Board shall be the Chair of this Sub-Committee.

4.3.2 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 from the Committee by the Board. Independent Members may be reappointed up to a maximum period of 8 years.

#### **4.4 Secretariat**

4.4.1 Secretary: as determined by the Board Secretary.

#### **4.5 Support to Committee Members**

4.5.1 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.

### **5. SUB-COMMITTEE MEETINGS**

#### **5.1 Quorum**

At least two Independent Members and four Associate Hospital Managers must be present to ensure the quorum of the Sub-Committee one of whom should be the Chair or Vice-Chair.

#### **5.2 Frequency of Meetings**

Meetings shall routinely be held on a quarterly basis.

#### **5.3 Withdrawal of individuals in attendance**

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

### **6. RELATIONSHIP & ACCOUNTABILITIES WITH THE BOARD AND ITS COMMITTEES/GROUPS**

6.1 Although the Board has delegated authority to the Sub-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.

6.2 The Sub-Committee is directly accountable to the Board (via the Mental Health Act Committee) for its performance in exercising the functions set out in these Terms of Reference.

6.3 The Sub-Committee, through its Chair and members, shall work closely with the Board's other Committees to provide advice and assurance to the Board through the:

- 6.3.1 joint planning and co-ordination of Board and Committee business; and
- 6.3.2 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.

6.4 In terms of the Board's assurance on the Mental Health Act requirements, the remit of the Sub-Committee is limited to the exercise of powers under Section 23 of the Mental Health Act 1983, rather than the wider operation, which would be the remit of the Mental Health Act Committee.

6.5 The Sub-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.

## **7. REPORTING AND ASSURANCE ARRANGEMENTS**

7.1 The Committee Chair shall:

7.1.1 report formally, regularly and on a timely basis to the Board on the Sub-Committee's activities, via the Chair's assurance report;

7.1.2 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.

7.2 The Board Secretary, on behalf of the Board, shall oversee a process of regular and rigorous self-assessment and evaluation of the Sub-Committee's performance and operation as part of the overall review of the Mental Health Act Committee.

## **8. APPLICABILITY OF STANDING ORDERS TO COMMITTEE BUSINESS**

8.1 The requirements for the conduct of business as set out in the Health Board's Standing Orders are equally applicable to the operation of the Sub-Committee, except in the following areas:

- Quorum
- owing to the nature of the business of the Sub-Committee, meetings will not be held in public.

## **9. REVIEW**

9.1 These terms of reference and operating arrangements shall be reviewed annually by the Sub-Committee and any changes recommended to the Board, with reference to the Mental Health Act Committee for approval.

V4.0

## Appendix 2

<b>Agenda Item</b>	<b>25.06.21</b>	<b>24.9.21</b>	<b>17.12.21</b>	<b>25.3.22</b>
<b>Opening Business</b>				
Apologies	x	x	x	x
Declaration of Interests	x	x	x	x
Previous Minutes, Matters Arising and Summary Action Plan	x	x	x	x
Minutes of previous POD meeting and oral update from the earlier meeting	x	x	x	x
CANIAD – Patient Story	x	x	x	x
Deprivation of Liberty Safeguards: Quarterly Report	x	x	x	x
Hospital Manager's Update Report (Oral summary only based on feedback from earlier POD Sub-Committee meeting)	x	x	x	x
Performance Report	x	x	x	x
Approval for All Wales Approved Clinicians and Section 12(2) Doctors)	x	x	x	x
Consideration of any HIW/Inspection reports/Audit reports etc as appropriate to meetings remit.	x	x	x	x
Agree CoB for coming year				x
Committee Annual Report and review of TOR and Power of Discharge Sub-Committee				x
Issues of Significance	x	x	x	x
Any Other Business	x	x	x	x
Date of Next meeting(s)	x	x	x	x