

Mental Health Legislation Committee

Annual Report

2021/22

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1 PERIOD COVERED BY THIS REPORT

This report covers the work of the Mental Health Legislation Committee for the financial year 1 April 2021 to 31 March 2022.

2 INTRODUCTION

The Mental Health Legislation Committee is a sub-committee of the Board of Directors and provides assurance to the Board on compliance with all aspects of mental health legislation. This is a huge responsibility given that at any one time the Trust has around 282 people in its inpatient services who are detained under the Mental Health Act 1983; 178 people who are living in the community on conditional discharge or subject to a legally binding Community Treatment Order (this means that the Trust has power to readmit them to hospital if required); and seven people who have been assessed as lacking capacity to make decisions about their care and are detained under Deprivation of Liberty Safeguards. When the Trust considers whether or not people should be detained (or sectioned) five guiding principles have to be applied:

- Least restrictive option and maximising independence
- Empowerment and involvement
- Respect and dignity
- Purpose and effectiveness (of potential detention)
- Efficiency and equity.

In addition, the Trust's regulator, the Care Quality Commission (CQC) inspects the way in which the Trust administers the legislation via cyclical inspections and regular "spot checks".

The committee receives assurance through reports, both regular and bespoke, to ensure compliance is regularly monitored. This includes a report from the Mental Health Legislation Operational Steering Group which considers the practical issues staff face and how they are being resolved, reviews feedback from service users and CQC spot checks, and maintains and reviews the risk register. The committee also receives feedback from the Mental Health Act Managers about the way in which they are carrying out their role in reviewing detentions.

Membership of the Mental Health Legislation Committee is currently made up of two non-executive directors (including the Chair of the Committee), the Medical Director and the Director of Nursing, Quality and Professions. Whilst only two non-executive directors are substantive members of the committee, the other non-executive directors are invited to attend on an ad-hoc basis as and when they feel it appropriate, or to ensure quoracy. Further information about the membership of the committee can be found in section 5 below.

3 TERMS OF REFERENCE

The Terms of Reference were reviewed by the committee in August 2021. Amendments were made to reflect changes to the process for governors observing a committee meeting. This included changes to the information that governors receive and an opportunity to raise any points of clarification to be provided at the end of the meeting. A change was also made to the quoracy criteria, which is now in line with other sub-committees. The Terms of Reference were ratified by the Board of Directors in November 2021 and are attached for information at Appendix 2.

4 MEETINGS OF THE GROUP / COMMITTEE

During 2021/22 the Mental Health Legislation Committee met formally on three occasions. It should be noted that the committee met informally in February 2022 following the letter from NHS England titled '*Reducing burden and releasing capacity to manage the COVID-19 pandemic*'.

The dates on which the committee has met during the year are as follows:

- 4 May 2021
- 3 August 2021
- 2 November 2021
- 1 February 2022 (informal meeting)

5 MEMBERSHIP OF THE COMMITTEE AND ATTENDANCE AT MEETINGS

The Committee is chaired by a non-executive director (NED), Sue White, and Merran McRae is the other regular NED member of this Committee. Andrew Marran was the chair of the committee until August 2021. Sue Proctor attended the committee as a substantive member from August 2021 until Merran McRae joined the Committee in January 2022. The Director of Nursing, Quality and Professions and the Medical Director are also substantive members of the Committee.

Name	4 May 2021	3 August 2021	1 November 2021	1 February 2022
Substantive members				
Andrew Marran (Non-executive Director)	✓	-	-	-
Sue White (Non-executive Director)	✓	✓	✓	✓

Chris Hosker (Medical Director)	✓	✓	✓	✓
Cathy Woffendin (Director of Nursing, Quality and Professions)	-	✓	✓	-
Sue Proctor (Non-executive Director / Chair of the Trust)	-	-	✓	✓
Merran McRae (Non-executive Director)	-	-	-	✓

6 REPORTS MADE TO THE TRUST BOARD

The chair of the Mental Health Legislation Committee provides a chairs report at the Trust Board. This report assures the Board of the main items discussed by the committee. Should it be necessary to make the Board aware of any matters of concern, this will be done by the chair of the committee in that report, and an outline given of how the committee will take this forward. Where the matter is of significant concern the chair of the committee will ask for direction from the Board, or it may be that the Board takes a decision to receive reports directly. The Board also reviews the Mental Health Legislation Committee Annual Report.

7 THE WORK OF THE COMMITTEE DURING MENTAL HEALTH LEGISLATION COMMITTEE

During 2021/22 the Chair of the Mental Health Legislation Committee confirmed that the Committee has fulfilled its role in accordance with the Terms of Reference which are attached.

In 2021/22 the committee:

- Received assurance that despite Covid-19 constraints, the Trust has administered the legislation appropriately and staff have been properly trained and supported. New ways of working have provided both challenges and opportunities. For example, a High Court judgement which concluded that remote Mental Health Act assessment of inpatients by doctors was not lawful required a review of practice and face to face reassessment of a number of service users who were affected. In addition, the Committee has continued to review the effectiveness of remote Mental Health Act hearings by Mental Health Act Managers and has been assured that specific training and support has been provided. Going forward, a mixed economy of remote and face to face hearings is likely. More generally, in the year ahead, the Committee will be ensuring that effective new ways of working implemented during Covid-19 are adopted and developed, making best use of technology.
- Received assurance on the oversight of the Trust's contribution to a national consultation on proposed amendments to the Mental Health Act. A really

comprehensive response was compiled drawing on contributions from a range of stakeholders. Although there was broad agreement with the principles of the proposed changes, some concern was expressed about some of the practicalities. One of the proposals was that Mental Health Act Manager reviews should be abolished, in favour of more frequent Tribunal hearings. At the time of writing this report, the Trust is awaiting the Government's response to the consultation. In preparation for the legislative changes, additional human rights training is being designed for staff, and experts will be identified in clinical teams.

- Received assurance on the Trust's preparations for changes to the arrangements for assessing mental capacity - replacing Deprivation of Liberty Safeguard assessments currently conducted by Local Authorities with a new system of Liberty Protection Safeguards which will be administered by the Trust itself. There have been numerous delays to the national implementation timetable and at the time of writing this report there is still uncertainty about when the changes will take effect. The Government published a Code of Practice for consultation and the committee will ensure a response is submitted on behalf of the Trust. In the meantime, the committee received assurance that careful implementation planning and preparation was underway, principally with local authority partners. Putting the new arrangements into practice will be a priority in 2022/23.
- Received assurance on the continued focus and drive on work to investigate and address issues around serial over-representation of service users from ethnic minority backgrounds in crisis and detention. The committee received updates about the work of the Synergi collaborative which was gathering information and sharing best practice nationally about ideas for addressing this challenge. In addition, the Trust is likely to be involved in a National Institute of Health Research project to listen to BAME voices and experience.
- Received the data required for assurance following the switch to Care Director in March 2020. There were some glitches initially and the committee asked for these to be addressed via the new Care Director governance arrangements.
- Received assurance on the progress made with the administration of the legislation in the Section 136 suite, following changes to the timeframes for admitting service users to beds after an assessment. The Section 136 suite is a place of safety where the police can take a person who appears to be having a mental health crisis.
- Received assurance on access to independent advocacy for service users. Information about this is now available in Leeds, but there are no reports for York. In 2022/23 the Committee will continue to request assurance on this.
- Received assurance that specific mental health legislation training has been made available to staff and mental health act managers in relation to children and young people, given that the work of the Trust has expanded since Red Kite View was established.

- Faced challenges in ensuring meaningful service user voice and engagement in its work. The committee will continue to try to find ways of achieving this in 2022/23.

8 CONCLUSION

As a sub-committee of the Board of Directors, the Mental Health Legislation Committee has provided assurance to the Trust Board regarding compliance with all aspects of the Mental Health Act 1983 and subsequent amendments. It has also received assurance that the Trust has complied with all aspects of mental health legislation including the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards. It carried out its work diligently; discussed issues openly and robustly; and kept the Board of Directors apprised of any possible issues or risks.

The Mental Health Legislation has fulfilled its role as a Trust Board governance committee in accordance with its Terms of Reference. This enables the Trust Board to comment on the adequacy and effective operation of the organisation's internal control systems and compliance with the law and regulations.

Despite considerable staffing and operational pressures during 2021/22, administration of the mental health legislation requirements has been continued effectively.

The committee is extremely grateful to all those who have responded to its requests during the year and who have supported it in carrying out its duties, in particular members of the Mental Health Legislation Team for their hard work, flexibility, and commitment during this very difficult time, and the Corporate Governance Team for its excellent administration and support.

April 2022
Sue White
Chair of the Mental Health Legislation Committee

**Appendix 1 MENTAL HEALTH ACT MANAGERS ANNUAL REPORT
1 April 2021- 31 March 2022**

MENTAL HEALTH ACT MANAGERS

The role and remit of the Mental Health Act Managers

Mental Health Act Managers (MHAMs) are members of the public, appointed by the Board of Directors, together with a number of non-executive directors who act in this role. Their key responsibilities are to:

- Review the detention of service users who are either detained under the Mental Health Act or who have been placed on Community Treatment Orders (CTO)
- Discharge those service users who no longer meet the criteria to be detained or are subject to a CTO.

Training of Mental Health Act Managers

We are committed to ensuring that our MHAMs are appropriately trained for their role; training is provided at forum meetings as well as at additional adhoc sessions when appropriate. During 2021/22 the following sessions took place

- 12 May 2021 - Forum meeting to exchange best practice
- 19 May 2021 – Chair’s Training
- 19 August 2021 - Forum meeting

During the year, MHAMs were joined by a Tribunal Judge who shared their views on the progress made with virtual hearings along with the associated challenges. A facilitation session was undertaken relating to Chair’s training for MHAMs who would like to take on the Chair role; during this session, a guide on being a chair was produced collaboratively with those in attendance relating to best practice in terms of structure/process and etiquette. Further training was also provided relating to management and de-escalation techniques for distressing situations.

Remuneration, Monitoring, Effectiveness and Appraisals

Remuneration payments for MHAMs were reviewed with a temporary uplift for Panel Chairs to £70 implemented and backdated to July 2020.

In 2021/2022, there were 28 appeal hearings (a slight decrease from 29 in the previous year), of which 26 were heard within our standard of 10 days.

The MHAMs reviewed 299 renewals / extensions of detention and CTOs (a significant increase on the previous year’s 221). A total of 2 nearest relative barring orders were heard. During the year, the MHAMs discharged 12 patients from the detention/CTO.

Due to the current uncertainty surrounding the role of MHAMs following the publication of the White Paper, a decision has been made not to recruit any new MHAMs as this

time. The MHL Committee monitors hearing data at its quarterly meetings and seeks assurance as to how processes can be made more effective.

Providing assurance to the committee is the Mental Health Act Manger’s Forum. The forum is chaired by a non-executive director and/or the lead Mental Health Act Manager to ensure a direct link to the Board of Directors in accordance with the Mental Health Act Code of Practice. This seeks to provide a forum for communication between the committee, the Mental Health Act Managers and the Officers of the Trust. It provides a mechanism for assurance on the robustness of arrangements in place for the Trust to fulfill its duties in respect of the Mental Health Act 1983.

The Mental Health Act Managers Forum was chaired jointly by Andrew Marran and Sue White, Non-Executive Directors, and Marilyn Bryan, lead Mental Health Act Manager and Deputy Chair of the Forum. In 2021/22 the Forum met three times on 12 May 2021, 19 August 2021 and 18 November 2021, all meeting have been held remotely via Zoom.

Mental Health Act Managers who have served in 2021/22

We currently have 31 acting Mental Health Act Managers and the table below shows those people who have acted in this capacity during 2021/22.

Table

Mental Health Act Managers during the period 1 April 2021 to 31 March 2022		
Bernadette Addyman	Nasar Ahmed	Marilyn Bryan
Rebecca Casson	Aqila Choudhry	Judith Devine
John Devine	Michael Hartlebury	Ian Hughes
Peter Jones	Trevor Jones	Andrea Kirkbride
Harold Kolawole	Susan Mosley	Graham Martin
Claire Morris	Ismail Patel	Gillian Nelson
Shamaila Qureshi	Andrea Robinson	Debra Pearlman
Susan Smith	Niccola Swan	Alex Sangster
Claire Turvill	Viv Uttley	Jeffrey Tee
Janice Wilson	Tom White	Michael Yates
Paul Yeomans		

Non-executive directors also acting as Mental Health Act Managers during 2021/22
Andrew Marran

We are appreciative of the time and commitment that Mental Health Act Managers and non-executive directors acting as Mental Health Act Managers have given this

year. Once again, we wish to thank our Mental Health Act Managers for their dedication and the skill they apply when undertaking this vital role.

April 2022

Sue White

Chair of the Mental Health Legislation Committee

Terms of Reference

Ratified by the Board in November 2021

1 NAME OF GROUP / COMMITTEE

The name of this committee is the Mental Health Legislation Committee.

2 COMPOSITION OF THE GROUP / COMMITTEE

The members of the committee and those who are required to attend are shown below together with their role in the operation of the committee.

Members: full rights

Title	Role in the group / committee
Non-executive Director	Committee Chair
Non-executive Director	Deputy Chair
Medical Director	Executive Director with MHL Knowledge
Director of Nursing, Quality and Professions	Executive Director with links to CQC

Attendees:

Title	Role in the group / committee	Attendance guide
Associate Medical Director for Mental Health Legislation	Advisory and technical expertise	Every meeting
Head of Service (Adult Social Care, Leeds)	Linkage to Local Authority	Every meeting
Head of Mental Health Legislation	Advisory and technical expertise	Every meeting
Deputy Chair of Mental Health Act Managers Forum	MHAM's perspective, experience and concerns	Every meeting
Deputy Chief Operating Officer	Linkage to Services, Chair of the MHL Operational Steering Group	Every Meeting

Title	Role in the group / committee	Attendance guide
Associate Director for Corporate Governance	Linkage to Board and other sub-committees	As required

In addition to anyone listed above as a member, at the discretion of the chair of the committee the committee may also request individuals to attend on an ad-hoc basis to provide advice and support for specific items from its work plan when these are discussed in the meetings.

2.1 Governor Observers

The role of the governor at Board sub-committee meetings is to observe the work of the Committee, rather than to be part of its work as they are not part of the formal membership of the Committee. The governor observes Board sub-committee meetings in order to get a better understanding of the work of the Trust and to observe non-executive directors appropriately challenging the executive directors for the operational performance of the Trust.

At the meeting the governor observer will be required to declare any interest they may have in respect of any of the items to be discussed (even-though they are not formally part for the discussion). Governors will receive an information pack prior to the meeting. This will consist of the agenda, the minutes of the previous meeting and summaries of the business to be discussed. Governor observers will be invited to the meeting by the Corporate Governance Team. The chair of the meeting should ensure that there is an opportunity for governor observers to raise any points of clarification at the end of the meeting.

2.2 Associate Non-executive Directors

Associate Non-executive Directors will be invited to attend Board Sub-committee meetings as part of their induction. They will be in attendance at the meeting, in the capacity of observer only, unless invited to contribute (in exceptional circumstances) by the Chair. This is so the accountability of the substantive members of the committee is maintained.

Associate NEDs will be invited to meetings by the Corporate Governance Team and will be sent copies of the meeting papers.

3 QUORACY

Number: The minimum number of members for a meeting to be quorate is three and must include one Non-executive Director and the Medical Director. Attendees do not count towards quoracy. If the chair is unable to attend the meeting, and if otherwise quorate, the meeting will be chaired by the Deputy Chair.

Deputies: Where appropriate members may nominate deputies to represent them at a meeting. Deputies do not count towards the calculation of whether the meeting is quorate except if the deputy is representing the member under formal

“acting up” arrangements. In this case the deputy will be deemed a full member of the group / committee.

It may also be appropriate for attendees to nominate a deputy to attend in their absence.

A schedule of deputies, attached at appendix 1, should be reviewed at least annually to ensure adequate cover exists.

Non-quorate meeting: Non-quorate meetings may go ahead unless the chair decides not to proceed. Any decisions made by the non-quorate meeting must be reviewed at the next quorate meeting.

Alternate chair: The unique character of Board sub-committees is that they are non-executive director chaired. The Mental Health Legislation Committee has two non-executive director members hence the role of the chair will automatically fall to the other non-executive director if the chair is unable to attend.

4 MEETINGS OF THE COMMITTEE

Meetings may be held face-to-face or remotely as is considered appropriate. Remote meetings may involve the use of the telephone and / or electronic conference facilities.

Frequency: The Mental Health Legislation Committee will normally meet every three months or as agreed by the Committee.

Urgent meeting: Any member of the group / committee member may request an urgent meeting. The chair will normally agree to call an urgent meeting to discuss the specific matter, unless the opportunity exists to discuss the matter in a more expedient manner.

Minutes: Draft minutes will be sent to the Chair for review and approval within seven working dates of the meeting by Corporate Governance Team.

Meetings may be held face-to-face or remotely as is considered appropriate. Remote meetings may involve the use of the telephone and / or electronic conference facilities.

5 AUTHORITY

Establishment: The Mental Health Legislation Committee is a sub-committee of the Board of Directors and has been formally established by the Board of Directors.

Powers: The MHL Committees powers are detailed in the Trust’s Scheme of Delegation. The Mental Health Legislation Committee has delegated authority to oversee the management and administration of the Mental Health Act 1983, the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards. The Committee is authorised by the Board to investigate and seek assurance on any

activity within its terms of reference. The Committee is authorised by the Board to approve the appointment, re-appointment and make decisions in respect of remuneration to the Trusts Mental Health Act Managers. The Board will be cited on any decisions taken in respect of Mental Health Act Managers via the Chairs report. The delegated powers will be reviewed by the Board at a minimum of three yearly intervals.

Cessation: The MHL Committee is a standing committee in that its responsibilities and purpose are not time limited. However, the committee has a responsibility to review its effectiveness annually and on the basis of this review and if agreed by a majority of members the Chair of the committee may seek Board authority to end the Mental Health Legislation Committee’s operation.

In addition, the Trust should periodically review its governance structure for continuing effectiveness and as a result of such a review the Board may seek the winding up of the Mental Health Legislation Committee.

This committee was implemented as a part of the 2013 governance review.

6 ROLE OF THE COMMITTEE

6.1 Purpose of the Committee

Objective	How the group / committee will meet this objective
Governance and compliance	The MHL Committee provides assurance to the Board regarding compliance with all aspects of the Mental Health Act 1983 and subsequent amendments and on compliance with all aspects of mental health legislation including, but not limited to the Mental Capacity Act 2005 and Deprivation of Liberty Safeguards.

6.2 Guiding principles for members (and attendees) when carrying out the duties of the group / committee

In carrying out their duties members of the group / committee and any attendees of the group / committee must ensure that they act in accordance with the values of the Trust, which are:

- We have integrity
- We are caring
- We keep it simple.

6.3 Duties of the Committee

The MHL Committee has the following duties:

Mental health legislation

- The Committee will monitor and review the adequacy of the Trust's processes for administering the Mental Health Act 1983 and subsequent amendments and on compliance with all aspects of mental health legislation including the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards.
- Formally submit an annual report on its activities and findings to the Board of Directors.
- Consider and make recommendations on other issues and concerns in order to ensure compliance with the relevant mental health legislation and to promote best practice by adherence to the codes of practice.
- Review the findings of other relevant reports functions, both internal and external to the organisation, and consider the implications for the governance of the organisation

Mental Health Act Managers' Forum

- The Mental Health Legislation Committee will ensure that the Mental Health Act Managers' Forum is supported to share experience, promote shared learning and raise concerns, where appropriate both amongst themselves and, with the Trust Board and management
- The Mental Health Legislation Committee will act as arbiter of any disputes in the work of Mental Health Act Managers arising either through the Mental Health Act Managers Forum or from individuals

Performance and regulatory compliance

- Will receive assurance from the MHL Operational Steering Group regarding the flow of Mental Health Act inspection reports and related Provider Action Statements.
- Will receive assurance from the MHAMs Forum regarding training, learning and development.
- To provide relevant assurance to the Board as to evidence of compliance with the Care Quality Commission registration and commissioning requirements related to Mental Health Act.

Training, clinical development and guidance

- To monitor and recommend action to ensure there are adequate staff members/skill mix trained in the application of mental health legislation and there is sufficient training provided to maintain the required competency levels within clinical teams.
- To oversee the development and implementation of good clinical practice guidelines and effective administrative procedures in regard to the Mental

Health Act and Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards and advise on any other matters pertinent to MCA within the Trust

Assurance

- To ensure adequate quality control arrangements are in place to enable:
 - An Annual Mental Health Act report
 - Continuous monitoring arrangements
 - The agreed board reporting process
- To ensure there is an agreed programme of clinical audit and mechanisms for following up actions arising
- Receive the Board Assurance Framework and ensure that sufficient assurance is being received by the committee in respect of those strategic risks where it is listed as an assurance receiver
- Receive the quarterly documentation audit to be assured of the findings, how these will be addressed and progress with actions.

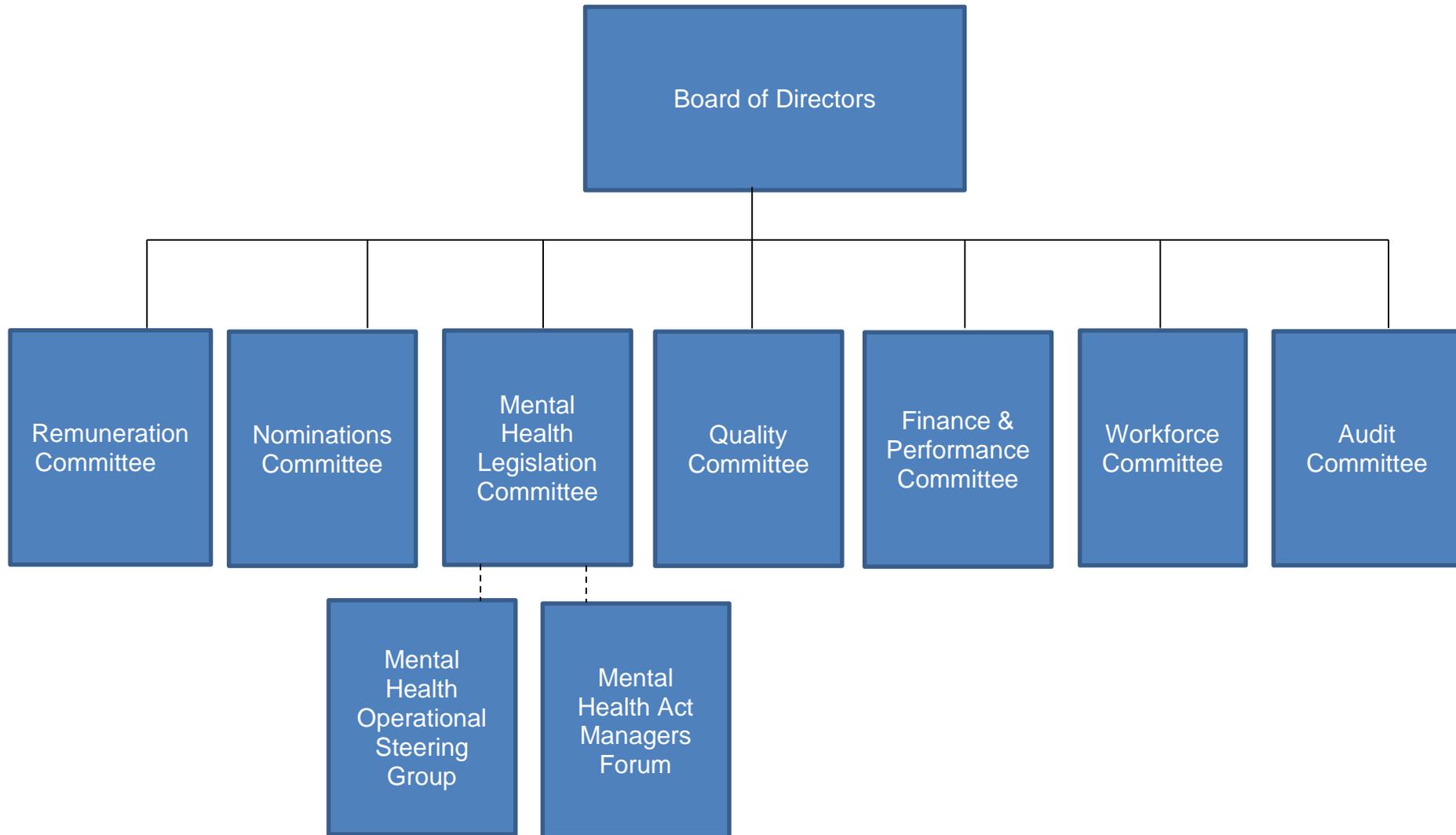
Service user and carer involvement

- To ensure there is a mechanism for service users, carers and other groups with an interest to contribute to discussions and agreement on proper use of the relevant legislation, with particular regard to the experience of compulsory detention and its therapeutic impact
- Consider any feedback received from service user surveys

Internal audit

- The Committee will review the draft Internal Audit Annual work plan so it can be assured on the sufficiency of the work the Auditors will carry out in respect of matters pertaining to the duties of the committee. Assurance on the plan's sufficiency (or comments on any matters that should be included) will be provided to the Audit Committee to allow it to approve the overall plan

7 RELATIONSHIPS WITH OTHER GROUPS AND COMMITTEES



8 DUTIES OF THE CHAIR

The chair of the committee shall be responsible for:

- Agreeing the agenda
- Directing the meeting ensuring it operates in accordance with the Trust's values
- Giving direction to the minute taker
- Ensuring everyone at the meeting has a reasonable chance to contribute to the discussion
- Ensuring discussions are productive, and when they are not productive they are efficiently brought to a conclusion
- Deciding when it is beneficial to vote on a motion or decision
- Checking the minutes
- Ensuring sufficient information is presented to the Trust Board of Directors in respect of the work of the committee.
- ensuring that governor observers are offered an opportunity at the end of the meeting to raise any points of clarification.

It will be the responsibility of the chair of the committee to ensure that it (or any group that reports to it) carries out an assessment of effectiveness annually, and ensure the outcome is reported to the Trust Board along with any remedial action to address weaknesses. The chair will also be responsible for ensuring that the actions to address any areas of weakness are completed.

In the event of there being a dispute between any 'groups' in the hierarchy (in the case of this Board sub-committee, this would be between the Board and the Mental Health Legislation Committee and, in recognition of the nature of matrix working between the work of all Board sub-committees, the Mental Health Legislation Committee and any other Board sub-committee) it will be for the chairs of those groups to ensure there is an agreed process for resolution; that the dispute is reported back to the 'groups' concerned; and that when a resolution is proposed the outcome this is also reported back to the 'groups' concerned for agreement.

9 REVIEW OF THE TERMS OF REFERENCE AND EFFECTIVENESS

The terms of reference shall be reviewed by the committee at least annually, and be presented to the Board of Directors for ratification, where there has been a change.

In addition to this the chair must ensure the committee carries out an annual assessment of how effectively it is carrying out its duties and make a report to the Board of Directors including any recommendations for improvement.

Schedule of deputies

It may not be necessary or appropriate for all members (or attendees) to have a deputy attend in their absence. If this is the case please state below “no deputy required”.

Full member (by job title)	Deputy (by job title)
Non-executive Director (Chair)	Non-executive Director
Non-executive Director	None
Medical Director	Executive Director (ideally with knowledge and experience of MHL)
Director of Nursing, Quality and Professions	Deputy Director of Nursing

Attendee (by job title)	Deputy (by job title)
Associate Medical Director for Mental Health Legislation	No deputy available to attend this Committee
Head of Service (Adult Social Care, Leeds)	Service Delivery Manager
Associate Director for Corporate Governance	Head of Corporate Governance
Head of Mental Health Legislation	Mental Health Legislation Team Leader / Law Advisor
MHA managers' nominated individual	Another MHA Manager
Deputy Chief Operating Officer	Head of Nursing (Deputy chair of MHL Operational Group) / Head of Operations for Acute Servicers