

**Minutes of the Mental Health Legislation Committee
Tuesday 1 August 2023 at 10:00am
Held via Microsoft Teams**

Present:

Ms Kaneez Khan	Non-executive Director (Chair)
Dr Chris Hosker	Medical Director
Ms Nichola Sanderson	Director of Nursing and Professions

In attendance:

Mr Kieran Betts	Corporate Governance Officer (meeting support)
Dr Nuwan Dissanayaka	Associate Medical Director
Ms Sarah Layton	Mental Health Legislation Team Leader
Ms Maxine Naismith	Head of Service for Adult Social Care Leeds
Ms Emma Oldham-Fox	Professional Practice Lead: Reducing Restrictive Practice
Ms Wendy Tangen	Clinical Services Inclusion Lead (for item 7)
Ms Viv Uttley	Mental Health Act Manager

Minute	Action
	Ms Khan opened the meeting at 10:00am and welcomed members of the Mental Health Legislation Committee.
23/029	<p>Apologies for absence (agenda item 1)</p> <p>Apologies were received from Ms Merran McRae, Chair of the Trust, who is a member of the Committee.</p> <p>Apologies were also received from Mr Oliver Wyatt, Head of Mental Health Legislation, who is an attendee of the Committee.</p> <p>The meeting was quorate.</p>
23/030	<p>Declaration of any conflict of interest in respect of any agenda item (agenda item 2)</p> <p>No one present at the meeting declared a conflict of interest in any of the items to be discussed.</p>
23/031	<p>Minutes of the meeting held on 2 May 2023 (agenda item 3)</p> <p>The minutes of the Mental Health Legislation Committee meeting held on the 2 May 2023 were accepted as a true record.</p>

23/032 Approval for the minutes above to be uploaded to the Trust's external website (agenda item 3.1)

The Committee **agreed** that the minutes of the Mental Health Legislation Committee meeting held on the 2 May 2023 were suitable to be uploaded to the Trust's external website.

23/033 Matters arising (agenda item 4)

The Committee **noted** that there were no matters arising that were not either on the agenda or on the action log.

23/034 Cumulative action log (agenda item 5)

The Committee confirmed that actions 084, 087, 091, 096, 097 and 100 were complete and could be removed from the log and that action 099 related to an item on the agenda and could be marked as complete. The Committee then discussed the open actions and received the following updates:

Action 052: The Committee heard that Mr Wyatt would produce a regular report on assessment delays that would be reported to the Mental Health Legislation Operational Steering Group (MHLOSG), and that he would also have a fortnightly meeting with the Adult Social Care team to continue to monitor referral delays. It was agreed that this action remained ongoing.

Action 083: The Committee noted that improvements in Second Opinion Appointed Doctors referral times for Section 62 requests continued to be observed. As such it was agreed that no letter would be sent to the CQC on this issue and the action was agreed to be closed.

Action 090: The Committee observed that there was no update for this action. It was agreed that Ms Oldham-Fox should also seek whether she was able to acquire the York Advocacy data through her connections with the York Advocacy Group, with a provision statement to be reported back to the Mental Health Legislation Committee (MHLC) at its November 2023 meeting.

Action 085: It was agreed that Ms Oldham-Fox would additionally be listed as a lead on providing updates on this action alongside Mr Wyatt.

Action 074: Ms Layton informed that the Mental Health Legislation Team continued to work with the CareDirector Team to get Mental Health Tribunal data recorded on CareDirector. It was agreed that this action remained ongoing.

Action 081: The Committee noted that the West Yorkshire Police Service had been asked to change their responses to Section 136 requests and as such this action was no longer relevant. The Committee agreed that this action should be

closed. It also agreed that a new action should be opened so that the Committee was sighted on the impact of the Police response changes to Section 135, Section 136, and conveyancing in general, which would be conducted by the Section 136 interagency meeting through reports to the MHLOSG.

Action 086: It was agreed that a report which assessed the impact of there being no advocate available to attend a Mental Health Tribunal Hearing would be presented at the February 2024 MHLC meeting.

Action 095: The Committee heard that data on service users' gender and ethnicity would now be included in the quarterly and annual report on Use of Restrictive Practice which was received by the MHLOSG. Ms Oldham-Fox added that after consultation with clinical services it was also agreed that additional narrative on the use of restrictive intervention would be included in the reports. Finally, the Committee noted that work had commenced on collecting data on the use of restrictive interventions on service users with autism or learning disabilities, and that this would also be included in the report once it was ready.

Action 098: The Committee noted that Mrs Joanna Forster Adams, Chief Operating Officer, had been invited to present an update on this action at the November 2023 MHLC meeting.

The Committee was **assured** on the progress made on the actions on the cumulative action log and **agreed** on which actions should be closed.

Ms Naismith joined the meeting.

23/035

NICHE Report – A system-wide independent investigation into concerns and issues raised relating to the safety and quality of CAMHS provision at West Lane Hospital, TEVV NHS Foundation Trust (agenda item 6)

Ms Oldham-Fox presented the NICHE report to the Committee. She explained to the Committee that following the findings of the report NHS England had created an improvement plan which was applicable to Children and Young People's Mental Health Inpatient Services (CYPMHS) across the country, including the Trust's own inpatient service at Red Kite View. Ms Oldham-Fox reported that the Trust was on track to complete the improvement plan, noting that a lot of the work was already embedded in the Trust and that evidence supporting this would be supplied to NHSE.

The Committee noted the contents of the report and asked Ms Oldham-Fox if she was confident that the Trust was sighted on the risks associated with its use of restrictive interventions on service users. Ms Oldham-Fox explained that the report recommended that more granular detail should be included in reports relating to the use of restrictive intervention, and reassured the Committee that the Use of Restrictive Practice report received by the MHLOSG did include such details. She also explained that another theme of the report was the theory to practice link was being misinterpreted by staff that they were not permitted to

use restrictive interventions, rather than the intent which was to minimise the use of restrictive practice through proactive preventative work, and that efforts were ongoing to challenge this misconception within the Trust. She added that the Positive and Safe Working Group were using the findings of this report as well as the findings from the BBC Panorama documentary on the Edenfield Centre as the foundation of its action and improvement plan. Ms Sanderson additionally reassured the Committee that work was ongoing in this area and that this was detailed in a report received by the Board of Directors on the 27 July 2023. The Committee was reassured that measures were in place at the Trust to monitor the safe use of restrictive interventions on service users.

The Committee **received** and **discussed** the findings of the NICHE report. It was also **assured** of the arrangements in place for the Trust to meet the requirement of NHSE and the required update. It was also **reassured** that measures were in place at the Trust to monitor the safe use of restrictive interventions on service users.

Ms Sanderson left the meeting.

23/036 Mental Health Detention Data – Ethnicity and Intersections (agenda item 7)

Ms Tangen presented a verbal update on the proposed expansion of the data provided in the Mental Health Act (MHA) Detention Report. She informed the Committee that a task and finish group was set up to consider what additional data could be included and collated, and it had been determined that this would include intersects of ethnicity, age, and gender. It also examined in which service lines this data should be collected. She explained that there would be some restrictions on how this data could be collected from some of the regional services. Finally, she explained that the Business Intelligence Team had already started collating this data and that she was currently consulting with Public Health colleagues and colleagues at Leeds-Synergi on collating additional data going forward, and that this would be reported at the November 2023 MHLC meeting.

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The Committee **received** an update on the proposed expansion of the data included in the MHA Detention Report. It **noted** that an updated report would be presented at the November 2023 MHLC meeting.

23/037 Mental Health Legislation Operational Steering Group Feedback (agenda item 8)

The Committee received the MHLOSG feedback report. Ms Layton informed the Committee that the Group had met twice since the last MHLC meeting and highlighted one issue for escalation which related to the lack of beds being available for Community Treatment Order (CTO) recall patients, in particular female patients, due to a lower pool of available beds. The Committee discussed this issue in detail.

Dr Dissanayaka noted that a failure to provide beds for CTO recall patients posed a risk to the Trust but noted that this was an issue faced by many organisations nationally. He added that there were multiple compounding issues, such as out-of-area placements being less inclined to provide inpatient services for CTO recall patients, high occupancy rates for inpatients being a national issue in both the public and private sector, and the fact that when bed availability is an issue beds would be assigned on a risk priority basis and that generally CTO recall patients were seen as lower risk than other patient groups. Dr Hosker added that work to improve bed availability was linked with work presented by Mrs Forster Adams at the Board of Directors meeting on the 27 July 2023 on improving inpatient flow. The Committee agreed that additional details on the waits for CTO recall patients to be allocated a bed should be recorded in the Mental Health Legislation Activity Report by making a referral for a bed for CTO recall patients at the point the recall was required, as this would provide a more accurate measure of the time taken for a bed to be allocated. It was agreed that this additional detail would be available in the report received by the Committee at its November 2023 meeting. It was also agreed that this information would be reported to the MHLOSG.

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The Committee noted that the MHLOSG did not have a permanent chair following the departure of Ms Linda Rose from the organisation. Ms Oldham-Fox informed the Committee that Ms Janet Smith, Head of Safeguarding, had been asked to perform this role from August 2023. The Committee noted this update.

The Committee **received** feedback from the Mental Health Legislation Operational Steering Group and **discussed** the updates provided. It **agreed** that the issues regarding the lack of beds being available for CTO recall patients should be explored and reported in future Mental Health Legislation Activity Reports received by the Committee. It additionally **noted** that Ms Janet Smith, Head of Safeguarding, had been asked to become the permanent Chair of the MHLOSG from August 2023 onwards.

23/038 **Mental Health Act Managers Forum Feedback** (agenda item 9)

The Committee welcomed Ms Uttley as the new Deputy Chair of the Mental Health Act Managers (MHAMs) Forum to the meeting. Ms Uttley highlighted the main points of discussion at the MHAMs Forum since the last MHLC meeting, which included:

- A note that a presentation on Eating Disorders which had been given at the last MHAMs Forum had been particularly useful.
- Issues regarding the current mileage cap that the MHAMs could claim as expenses had been discussed.
- The lack of advocates being available to attend some MHA tribunal hearings remained an issue. Ms Uttley was reassured that this issue was being investigated, with a report on this topic due to be presented at the February 2024 MHLC meeting.
- That 11 MHAMs were due to leave the Trust by the end of the year and that only six new MHAMs had been appointed to replace them. Ms

Layton reported that a total of eight new MHAMs were undergoing their final employment checks with the Trust, and that the team was aiming to go back out to recruit additional MHAMs by the end of the year.

Ms Khan thanked Ms Uttley for the update, and noted that herself, Ms Layton, and Ms Uttley would aim to meet to discuss these issues further ahead of the next MHLC meeting in November 2023.

The Committee **received** and **discussed** the feedback from the Mental Health Act Managers Forum.

23/039 **Mental Health Legislation Activity Report** (agenda item 10)

The Committee received the Mental Health Legislation Activity Report. Dr Dissanayaka reported that aside from the fact that some Mental Health tribunal hearings had been cancelled as a result of industrial action taken by junior doctors that there was nothing additional to highlight in the report.

The Committee discussed the Police Pathway to patient. The Committee noted that the “Right Care, Right Person” model which aimed to reduce police forces involvement in responding to mental health incidents was planned to be rolled out nationally based on a government directive. The Committee noted that while sometimes it was inappropriate for police forces to be involved in mental health incidents as patients could find police custody and intervention stressful, that it was entirely appropriate for police to be involved in a multi-agency approach in some instances, such as use of Section 135 / 136 powers in the MHA. The Committee also pointed out that while this agenda demonstrated some success in the Humberside region, that this would not necessarily translate well in the West Yorkshire region due to different population needs and distribution of resources. The Committee acknowledged that police involvement in mental health incidents was a nuanced discussion, and that the Committee should remain sighted on developments in this area.

The Committee **received** the Mental Health Legislation Report and was **assured** that the plans in place were sufficient to ensure ongoing compliance with all mental health legislation. The Committee additionally **discussed** developments in police responses to mental health incidents in light of the “Right Care, Right Person” agenda being introduced nationally and **agreed** to continue to monitor developments in this area.

Ms Sanderson rejoined the meeting.

23/040 **Consent to Treatment Audit Report, Including a Review of S62 Powers** (agenda item 11)

Ms Layton presented the results of an audit which looked into service users consenting to treatment across the Trust and summarised the issues found.

Ms Layton continued that the audit had concluded by making multiple recommendations, which included:

- Introducing a prescribing system which incorporates MHA treatment certificates. Ms Layton added that following consultation with the Medicines Safety Committee that this was unlikely to be achieved within a year due to limitations of the system and recommended that a Task and Finish Group was set-up to consider alternative solutions with existing systems.
- A weekly review of medication folders to be performed as part of the weekly review conducted by pharmacy team members.
- All Second Opinion Appointed Doctor requests to be made through the CQC Portal to improve Section 62 monitoring. Ms Layton noted that the CQC had informed the Trust that the portal would be taken offline at some point in the future.
- The preparation of a briefing note to be circulated across the Trust which summarised the findings and recommendations of the audit.

The Committee noted that it was unlikely that changes could be implemented to the electronic prescribing and medicines administration system to incorporate MHA certificates, as the system was external to the Trust and designed primarily with acute care in mind. The Committee agreed that a task and finish group should be set up in collaboration with the Medicines Safety Committee to consider alternative solutions to this issue.

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Ms Khan asked Ms Sanderson whether she had any additional points to raise on items discussed in her absence. Ms Sanderson confirmed that she had nothing that she wished to raise in addition to the discussion which had already taken place.

The Committee **received** and **discussed** the results and recommendations of the Consent to Treatment Audit Report. It **agreed** with the proposed recommendations and that a Task and Finish Group should be set-up to examine potential solutions to reduce the risk of medicines being prescribed to service users without correct lawful authority.

23/041

S5(2) Audit Report, including Service Users detained under the MHA after previously being assessed to have capacity to make informed decisions (agenda item 12)

The Committee received the S5(2) Audit Report which investigated service users being detained following an informal admission due to being judged not to have capacity to make informed decisions. Ms Layton reported the main findings to the Committee. The Committee noted that these findings were demonstrative of an issue where individuals could engage with the informal admission process without having been informed of the potential restrictions that they may be subject to, and their ability to appeal these decisions would be limited without a completed MCAA.

Ms Layton continued by highlighting the recommendations outlined in the report, which primarily involved improving and reiterating Mental Health training to ensure that MCAAs were completed and well documented for patients undergoing informal admission and ensuring that individuals were aware of what the informal admission process entailed. She added that the Mental Health Legislation Team would additionally provide extra resources to ward and Crisis teams when conducting an informal admission. The Committee noted that the report also recommended that this area would be reaudited in 12 months' time to assess the impact of the recommendations made, and that this report would also be presented at the August 2023 MHLOSG. The Committee agreed to support the recommendations of the report.

The Committee **received** and **discussed** the results and recommendations of the S5(2) Audit Report. It **agreed** with the proposed recommendations of the report.

23/042 Publications to Consider / Legislative Changes (agenda item 13)

Ms Khan noted that there was a new report from NHS Race and Health Observatory on the disparity of health outcomes for ethnic minorities with a learning disability and access to healthcare which should be considered. She noted that this report had been received by Mrs Forster Adams and work had begun to address issues raised in the report at the Trust. The Committee agreed that it should support work in this area where required.

The Committee **received** an update on draft legislative changes and **discussed** the potential implications.

23/043 Committee Effectiveness Questionnaire Results (agenda item 14)

The Committee **received** the Committee Effectiveness Questionnaire Results and **discussed** its contents.

23/044 Any risks or issues to be escalated to the Trust Board or other Sub-Committees (agenda item 15)

Ms Khan noted that she would be raising the following points at the next Board meeting:

- The Committee was reassured on the arrangements in place at the Trust to monitor the safe use of restrictive interventions on service users.
- The Committee received the Mental Health Legislation Activity Report for Q1 2023-24 and was assured the plans in place were sufficient to ensure ongoing compliance with all mental health legislation.

- The Committee noted that Police responses to mental health incidents were likely to change under the “Right Care, Right Person” agenda and would continue to monitor developments in this area.
- The Committee received the Treatment Audit Report, noted the issues raised, and supported the recommendations suggested by the report. It also agreed that a Task and Finish Group should be set up to investigate how to examine potential solutions to reduce the risk of medicines being prescribed to service users without correct lawful authority.
- The Committee received the S5(2) Audit Report, noted the issues raised, and supported the recommendations suggested by the report.

23/045 Any other Business (agenda item 16)

The Committee did not discuss any other business.

The Chair of the Committee thanked everyone for attending and closed the meeting at 11:15am.

Date and time of next meeting:

Tuesday 7 November 2023 at 10:00am until 12:00pm via Microsoft Teams.