

1.0 Background/Introduction

- 1.1 The Mental Health Law (MHL) department manages the Trust's responsibilities in relation to the Mental Health Act 1983 (MHA), Mental Capacity Act 2005 (MCA), the MCA Deprivation of Liberty Safeguards (DoLS), and related legislation and case-law. It is a corporate department and the executive lead is the Chief Medical Officer.
- 1.2 The department is managed by the Associate Director of Mental Health Law assisted by the Lead Nurse in Mental Health Law (the designated Trust lead for the MCA and DoLS). There are a further twenty-one staff who administer the MHA & DoLS and provide legal advice/support to clinical teams and other stakeholders.
- 1.3 The function of the Hospital Managers power of discharge set out in section 23 of the MHA, is managed by the Associate Director and overseen by the Mental Health Act Sub-Committee which is chaired by the Trust Chair. The consideration of whether or not to discharge patients from detention and Community Treatment Orders (CTOs), is a function that cannot be carried out by any employee of the organisation, so it is carried out by the Trust's appointed Associate Hospital Managers (AHMs). As of 31st March 2021 there were thirty-one appointed AHMs and the Trust once again extends its thanks for the valuable service that these volunteers give.
- 1.4 All other mental health law functions are overseen by the Mental Health Law Monitoring Group which reports to the Trust's Quality Committee. The MHL Monitoring Group is in place to:
 - Have oversight of all local and national mental health law related developments and to refer to relevant committees and individuals as appropriate;
 - Monitor, plan and implement relevant new legislation, case-law and guidance;
 - Monitor the administrative and clinically-facing elements of the Mental Health Act, Mental Capacity Act, Deprivation of Liberty Safeguards and associated legislation, case law and guidance;
 - Monitor and act on mental health law issues identified by the Care Quality Commission's inspectors;
 - Draft and review all mental health law related policies;
 - Review all policies that contain mental health law related directions;
 - Assist in identifying what the Trust needs to be assured of (i.e. through CQC reports),
 - Identify how data should be gathered and presented, identify trends and ensure accuracy of reports prior to submission to committees and the Trust Board;
 - Review the findings of other relevant organisations.
- 1.5 The general MHA functions of the Trust are covered in chapter 37 of the 2015 version of the MHA Code of Practice, whilst the Hospital Managers power of discharge is covered in chapter 38.
- 1.6 The government introduced the Coronavirus Act 2020 which included provisions for the MHA to be temporarily amended if the secretary of state saw fit to make the relevant commencement orders, if for instance, regions were experiencing shortages of the people to carry out the role and powers within the MHA. These temporary powers never came into force and those sections of the Coronavirus Act were ultimately repealed.

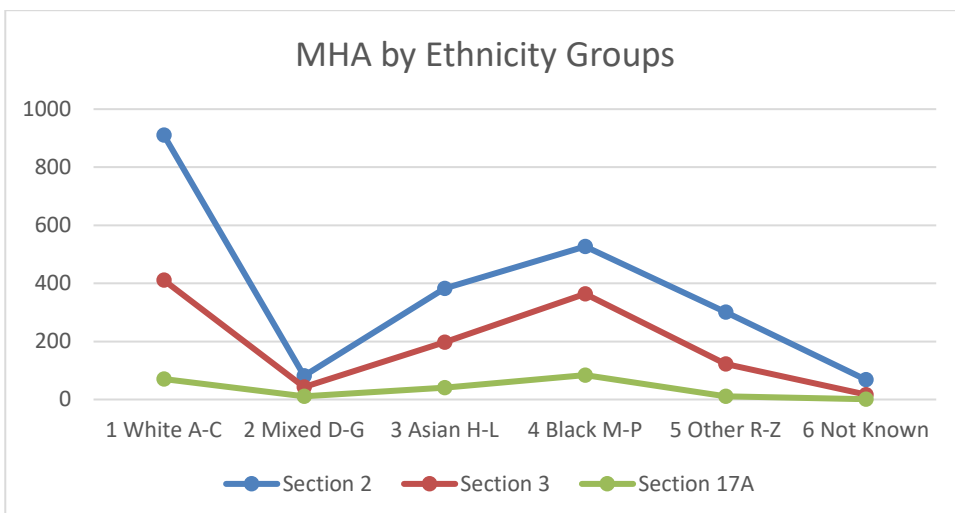
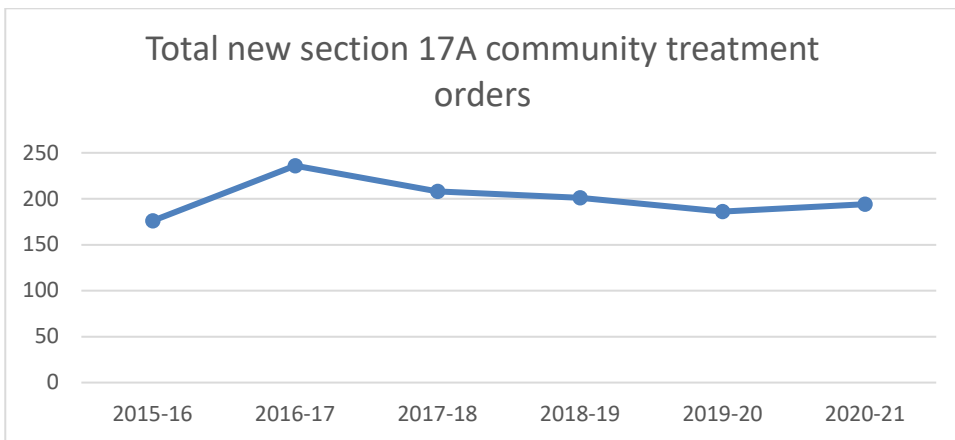
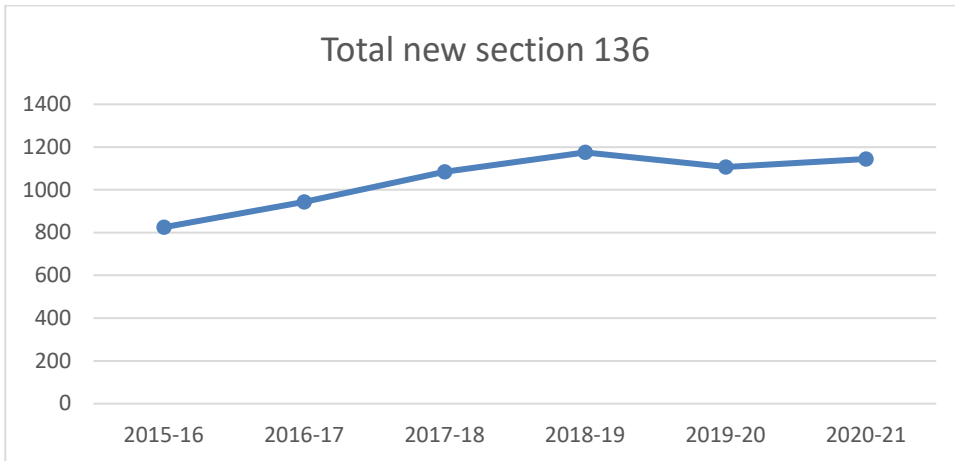
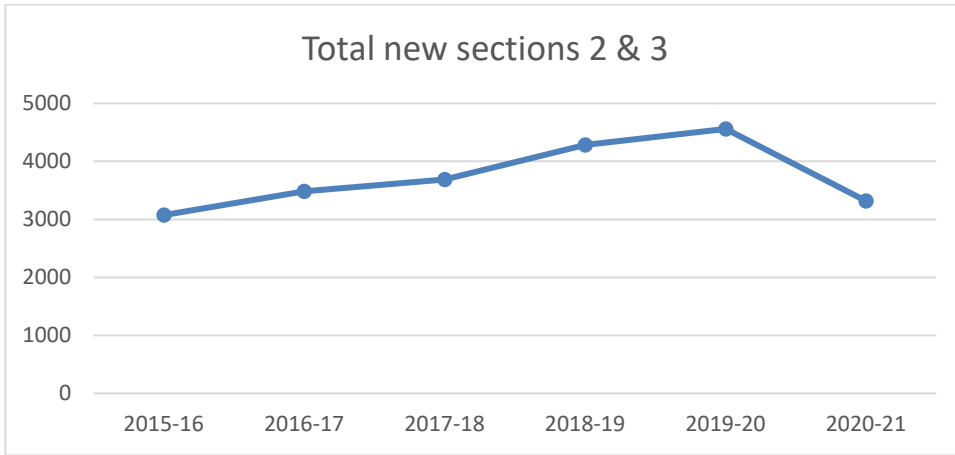
- 1.7 The COVID-19 outbreak did have a practical impact on a number of mental health law related functions; all of which were overseen by the MHL Monitoring Group. These included:
- Tribunals being conducted via video;
 - the Trust temporarily suspending HM hearings and upon reintroduction, conducting them by video;
 - Second Opinion Appointed Doctors from the CQC performing their function remotely;
 - MHA Reviewers from the CQC performing their function remotely;
 - acceleration of use of electronic processes for administration of MHL documents.
- 1.8 Through Service Level Agreements, the department also provides Mental Health Act administration for the Royal London Hospital, Newham University Hospital, Homerton University Hospital and Luton & Dunstable Hospital (and soon, Bedford Hospital).
- 1.9 The Mental Health Act Sub-Committee has the singular responsibility of overseeing the function of the Hospital Managers (HM's) power of discharge that is found in section 23 of the MHA; including policy and guidance development, appointment of Associate Hospital Managers and case discussion. The HM's power of discharge can only be exercised by three (in the majority) non-executive directors or other people appointed for the purpose who are not employees of the Trust (known as Associate Hospital Managers).¹ This function is distinct from the First-Tier Tribunal (Mental Health), which is a branch of Her Majesty's Court & Tribunal Service overseen by the Ministry of Justice and wholly independent of the responsible Trust (as such, it satisfies the United Kingdom's obligation to satisfy Article 5 of the European Convention on Human Rights; right to an independent and speedy trial). Unlike the HM's power of discharge, the Tribunal's proceedings are governed by the MHA and a formal framework of statutory rules, regulations and practice directions. Patients may appeal to the Tribunal once within certain defined time periods, and those who do not appeal are referred by the Trust at intervals fixed by law.
- 1.10 In 2020-21, there were no patients discharged from detention via the HM's power (1 in 2019-20) and none discharged from a community treatment order (1 in 2019-20). Overall, 284 HM's review episodes were started with 146 reviews taking place. See comparison with Tribunals in table below (2019-20 in brackets).

	Episodes started	Number of Reviews that took place	Discharge from detention	Discharge from CTO
Hospital Managers	284 (283)	146 (215)	0 (1)	0 (1)
Tribunals	1049 (1376)	571 (502)	47 (82)	3 (8)

The decrease in the number of reviews reflects their temporary suspension from April to August 2020.

- 1.11 As per the charts below, the total number of MHA detention episodes under sections 2 and 3, fell for the first time during the existence of the Trust, with the number of section 136 episodes and CTOs increasing very slightly. The distribution of sections 2, 3 and 17A by broad ethnicity groups is also set out. The Trust is exploring ways of producing and presenting more detailed data in general and according to specific requirements of local services.

¹ Section 23(6) Mental Health Act 1983



1.12 Deprivation of Liberty Safeguards data for 2020-21 (2019-20 in brackets):

Area	Number of Applications made:	Number Granted:	Number in Place 31/03/21	Applications Outstanding 31/03/21
Bedford Borough Council	32 (21)	21 (9)	1 (3)	2 (0)
Central Bedfordshire Council	10 (18)	5 (4)	0 (2)	0 (2)
Luton Borough Council	9 (16)	1 (3)	0 (2)	0 (2)
LB Hackney	7 (25)	4 (11)	0 (7)	2 (3)
LB Newham	14 (30)	11 (14)	3 (8)	0 (1)
LB Tower Hamlets	4 (11)	0 (3)	0 (5)	1 (5)
Out of Area	1 (2)	1 (1)	0 (0)	0 (0)
Total	77 (123)	43 (45)	4 (27)	5 (13)

As of 31/03/2021, 9 DoLs authorisations were active; 4 'standard' and 5 'emergency' awaiting outcomes. On average it took 3 to 4 weeks for outcomes and authorisations to be reached. Factors for non-authorisations included patients being discharged prior to an outcome, patients placed under MHA section in the meantime and patients being transferred to different wards/sites, necessitating fresh applications being made.

1.13 Legal Developments during 2020-21

- The Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 were amended to give clarity about the use of electronic signatures on statutory forms. They also established that some forms may be served/delivered via electronic means and although this was no doubt accelerated by the pandemic, it reflects the growing desire to have the MHA operating in a more 'digital' way.
- Through NHS England/Improvement (NHSE/I) and the Department of Health and Social Care (DHSC), the government issued guidance as part of the response to the pandemic, that examinations carried out as part of the requirements in the MHA, could be carried out 'remotely'; i.e. via video. Devon Partnership NHS Trust sought a declaration to confirm that this approach was lawful and their application was heard by the divisional high court in January 2021 (Devon Partnership NHS Trust v Secretary of State for Health and Social Care [2021] EWHC 101 (Admin)), which ruled that in respect of examinations carried out for the purpose of medical recommendations and being 'seen' for the purpose of making section 2 and section 3 applications, the guidance issued by NHSE/I and DHSC was wrong and that practitioners were required to be in the physical presence of the person being assessed. Pursuant to the judgment, ELFT discharged all those patients who were subject to compulsory powers on the back of a remote examination having taken place. This included cases which were not directly considered by the court, such as where renewals of detention and extensions of CTOs had taken place; the rationale being that the wording in the judgement, strongly suggested that any court considering such cases would reach a similar conclusion.
- In January 2021, the government published its white paper on extensive reforms to the MHA and this was presented to relevant committees in the Trust. A public consultation period ran until April and the nature of it meant that the Trust's executive team took the view that a meaningful collective response to it all was almost impossible, so staff groups were invited to submit their particular responses and in any case, individuals could submit their own responses. A Bill is expected to be put before parliament in 2022

which should mean the first changes coming into effect no earlier than 2024. The MHL Monitoring Group continues to oversee developments.

- The Liberty Protection Safeguards which replace the DoLS, are scheduled to come into force in April 2022, but given that an accompanying draft code of practice and associated draft regulations were expected in December 2020, that date looks increasingly optimistic. However, the Trust is working to that date and the implementation will be overseen by the MHL Monitoring Group.
- As referred to in previous reports, the Mental Health Units (Use Of Force) Act 2018 has still not taken effect and by the end of the financial year there was no further news at all. However, at the time of writing (02/06/21), the secretary of state has just recently published the required associated draft guidance for public consultation. Again, MHL Monitoring Group will take stock of that document and then recommend how the Trust proceeds with implementation.

2.0 Progress against work-plan during 2020-21

As noted in the previous year's annual report, the pandemic and uncertainty over potential legislative changes meant that work-planning was somewhat tentative, but some of the broader issues that were identified as needing to be addressed during 2020-21 were:

- Shaping the future of the MHL department including staff development, 'Enjoyment at Work' and well-being;
- Development of digital solutions; including for things like patient's Hearings;
- Development of MHL reports to assist with clinical improvement work;
- Training needs analysis review and training provision;
- Monitoring and communication of mental health legal developments.

2.1 The key achievements:

- The MHL department operated with all staff working from home and in partnership with its stakeholders, managed to keep everything running smoothly. Some clinical areas expressed concern that they had been left feeling a little isolated because of the lack of a physical MHL presence (i.e. when remote Tribunals were having technical difficulties) and those concerns are being considered in respect of planning for future MHL service provision.
- Further to the above, the Trust managed to keep functioning within the legal framework in the face of rapidly changing circumstances, due to the physical impact of the pandemic and some of the legal guidance changes. The Tribunal service in particular made a number of alterations to their practice and procedures which had to be reacted to very quickly. Additionally, the Trust was able learn some lessons from this and apply them to the provision of its Hospital Managers hearings.

2.2 Some of the unmet challenges:

- Although some progress was made in considering shaping the future of the MHL department, it became clear that staff well-being, attitudes towards working at home versus working from an office and how ways of working fit into all that, were changing quite rapidly. So after September 2020 when serious consideration was starting to be given to 'shaping the future' and 'enjoying work', the following few months saw fluctuating levels of engagement within the team coupled with some problems with support from the Quality Improvement team. The Associate Director of Mental Health Law is reviewing all of this with a view to collaborating with partners to decide how best to take things forward.
- Although the Trust was considering how to 'digitise' the MHA (in particular) prior to the pandemic, the need for a more digital way of working became more apparent as time

went by and some progress was made as mentioned above. However, a potentially suitable more bespoke product has been identified, which would give the Trust the ability to manage all internally generated (and some externally generated) MHA documents through a central electronic hub; making administration of the MHA a lot easier, quicker and safer (i.e. in terms of documents going missing and containing significant errors). This product has been adopted by the CQC for their SOAD service, the Metropolitan Police are going to use it for section 136 episodes and it will interface with the Trust's electronic patient records system(s) and e-prescribing package. However, partly due to the product's need for ongoing development (which the Trust engages with as a means of ensuring that it meets our needs), its procurement has proved to be very challenging with uncertainty as to how the relevant business case should be taken forward, due in part as to how the product will be implemented with all the various stakeholders, and for which there will inevitably be a need for the Trust to commit to provision of resources.

- A small amount of progress was made with the development of MHL reports for Trust oversight and very little in respect of assisting with clinical improvement work. This was in part due to competing pressures in light of the pandemic, but a more focussed approach is required and the MHL monitoring group is considering this.
- Very little progress was made in reviewing the Trust's training needs analysis (TNA) in respect of MHL; in part due to the focus being on the need to explore different ways of delivering meaningful training i.e. via remote means. Consideration also needs to be given as to how legislative change will impact on staff groups from a TNA perspective.

3.0 Work-plan for 2021-22

3.1 Key priorities and links to Trust objectives – see appendix 1.

3.2 Reports on progress will be made via the MHL Monitoring group and escalated and adapted accordingly.

3.3 There are a number of key stakeholders involved in delivering the plan and those have been identified for each key objective together with the relevant support requirements.

3.4 There are resourcing implications with associated risks in respect of some of the implementation. This is due to the need to resolve required cost savings and identified cost pressures. Additionally, practical consideration needs to be given by the Trust to succession planning within the MHL department, prior to the loss of key senior managers when it occurs.

