East London NHS Foundation Trust

REPORT TO QUALITY ASSURANCE COMMITTEE
17 SEPTEMBER 2020

Title	Mental Health Law Annual Report
Author	Guy Davis - Associate Director of Mental Health Law
Accountable Executive Director	Paul Gilluley, Chief Medical Officer
Accountable Non-Executive Director	Jenny Kay, Non-Executive Director

Purpose of the Report:

Provide information and assurance on mental health law functions within the Trust.

Summary of Key Issues:

Mental Health Law department, Tribunals and Hospital Managers power of discharge, MHA and DoLS data, Training, Legislative reviews.
Appendices: 1. List of Associate Hospital Managers, 2. Scheme of Delegation, 3. Summary of MHA sections.

Strategic priorities this paper supports (Please check box including brief statement)

Improving service user satisfaction	☒	Minimising legal status uncertainty
Improving staff satisfaction	☒	Improved guidance to enhance understanding.
Maintaining financial viability	☒	Minimising costly legal challenges

Committees/Meetings where this item has been considered:

Date	Committee/Meeting
03/08/2020	Mental Health Law Monitoring Group
02/09/2020	Quality Committee

Implications:

Equality Analysis	The Trust has a duty to promote equality. Has this report been impact assessed? This report has no direct impact on equalities
Risk and Assurance	The report highlights what the Trust needs to be doing to assure itself that service users are cared for within the legal framework.
Service User/Carer/Staff	The report emphasises the need to provide guidance for relevant staff in understanding how the legal framework applies in practice.
Financial	There are no adverse financial implications relating to this report.

Glossary

Abbreviation	In full
CQC	Care Quality Commission
CTO	Community Treatment Order
DoLS	Deprivation of Liberty Safeguards
LPS	Liberty Protection Safeguards
MCA	Mental Capacity Act 2005
MHA	Mental Health Act 1983
MHL	Mental Health Law

MENTAL HEALTH LAW REPORT 2019-2020

1.0 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 since November 2019, 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 under section 23 of the MHA is managed by the Associate Director and overseen by the Trust Board Mental Health Act Sub-Committee which is chaired by a non-executive director. As of 31st March 2020 there were thirty-eight appointed Associate Hospital Managers; these volunteers consider whether or not to discharge patients from detention and Community Treatment Orders (CTOs), and the Trust once again extends its thanks for the valuable service that they 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 was established in January 2020 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 and the Hospital Managers power of discharge are covered in chapters 37 and 38 of the 2015 version of the MHA Code of Practice and the Trust's associated scheme of delegation is at appendix 2.

1.6 The effects of the COVID-19 outbreak came right at the end of the period covered by this report and so the impact of that will be covered in more detail in next year's report. Of note however, is that the Coronavirus Act 2020 introduced provisions for the MHA to be amended if the secretary of state were to make the relevant commencement order (see 7.4 below). The Mental Health Law Monitoring Group has been overseeing and implementing all legal and policy changes associated with COVID-19.

2.0 Mental Health Law Department

2.1 The department now has twenty-three whole time equivalent posts after a new Mental Health Law Manager post was created in November 2019.

2.2 As per the data set out in paragraph 4.1, MHA activity in the Trust continues to increase year on year (as it does nationally). As planned last year, the five MHL offices in East London were to merge into one 'hub', to solve the disproportionate workload distribution that was particularly affecting the Tower Hamlets and Newham offices, where activity is high. The plan was to relocate those staff to a refurbished area in Tower Hamlets Centre for Mental Health, whilst also having at least one member of staff on site in most of the clinical areas each day; to pick up paperwork, liaise with clinical teams and assist with Tribunal and Hospital Managers hearings. However, despite the estates and I.T work being completed so that everyone could move in, this plan was interrupted by the COVID-19 outbreak and the whole MHL team has since been working from home. As with other services in the Trust, the team is looking at a new model of working going forward, which includes the fact that a number of mental health law processes will be digitised both locally and nationally.

2.3 Through Service Level Agreements, the department provides Mental Health Act administration for the Royal London Hospital, Newham University Hospital, Homerton University Hospital and Luton & Dunstable Hospital (to include Bedford Hospital by the end of 2020).

3.0 Hospital Managers Power of Discharge, MHA Sub-Committee, Tribunals

3.1 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 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. Unlike the HM's power of discharge, the Tribunal's proceedings are regulated by 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.

3.2 In 2019-20, there was 1 patient discharged from detention via the HM's power (4 in 2018-19) and 1 patient discharged from a community treatment order (2 in 2018-19). This represents a discharge rate of 1% of full hearings that took place; a minor decrease on the 2.4% in 2018-19.

3.4 Overall, 283 HM's review episodes were started (314 in 2018-19), with 215 reviews taking place. See comparison with Tribunals in table below (18-19 in brackets).

	Episodes started	Number of Reviews	Discharge from detention	Discharge from CTO
Hospital Managers	283 (314)	215 (249)	1 (4)	1 (2)
Tribunals	1376 (1254)	502 (485)	82 (92)	8 (5)

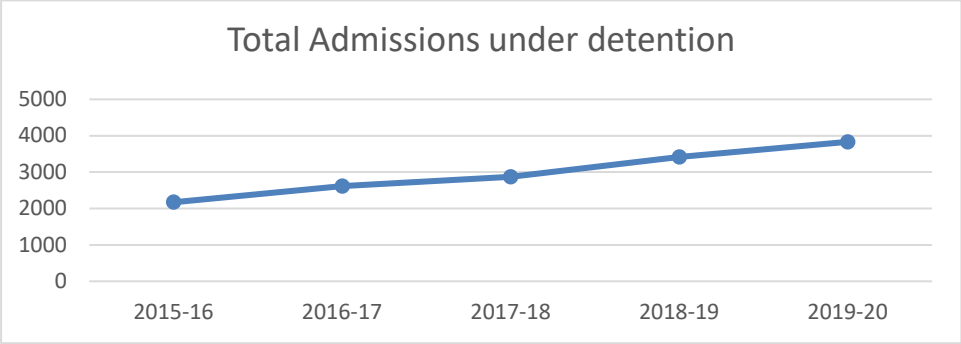
3.5 Associate Hospital Managers regularly receive information and training to enable them to carry out their role, which they are doing safely and effectively. During the period covered by this report, they received information about the counter-fraud service and the Bribery Act, the role of a senior ward nurse and the role pf peer support workers. The list of Associate Hospital Managers as at 31st March 2020 is in appendix 1.

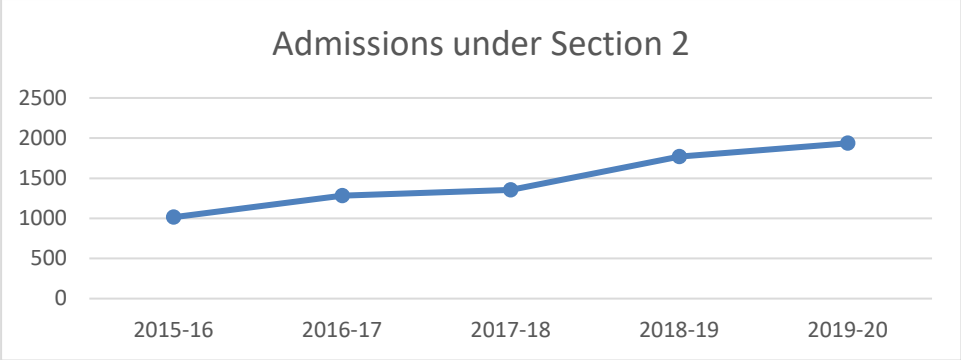
[1] Section 23(6) Mental Health Act 1983

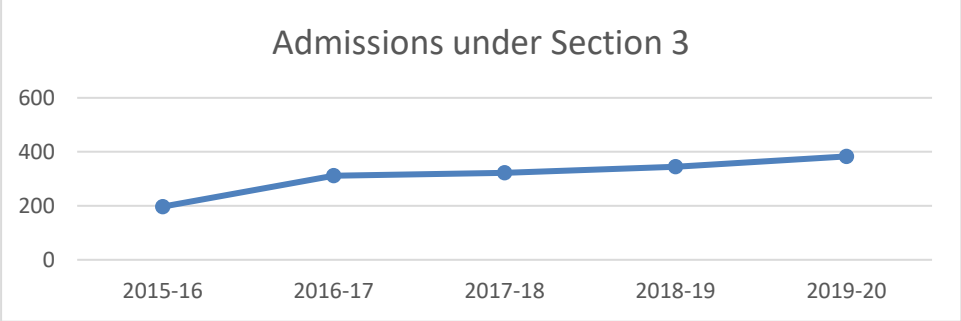
3.6 The function of this power of discharge is being reviewed in terms of how the process will operate and the extent to which remote technology will play a part going forward.

4.0 Mental Health Act data 2019-2020

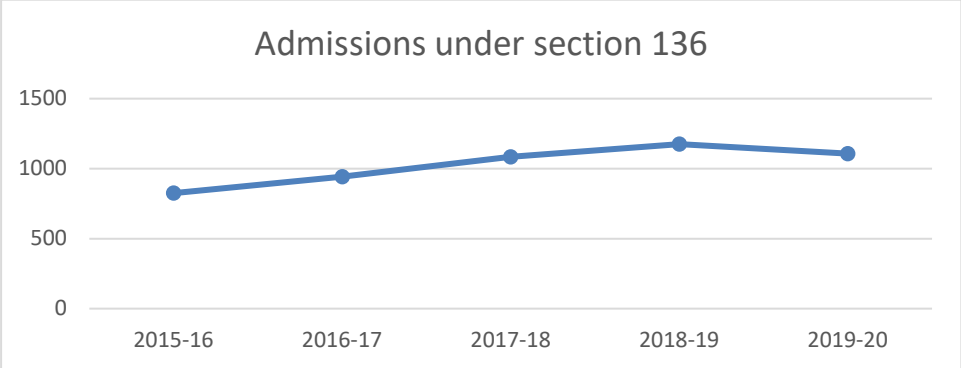
4.1 The number of MHA detention episodes continues to rise; after a 19% increase the previous year, this year saw a 12% increase with section 2 accounting for the bulk of that rise.

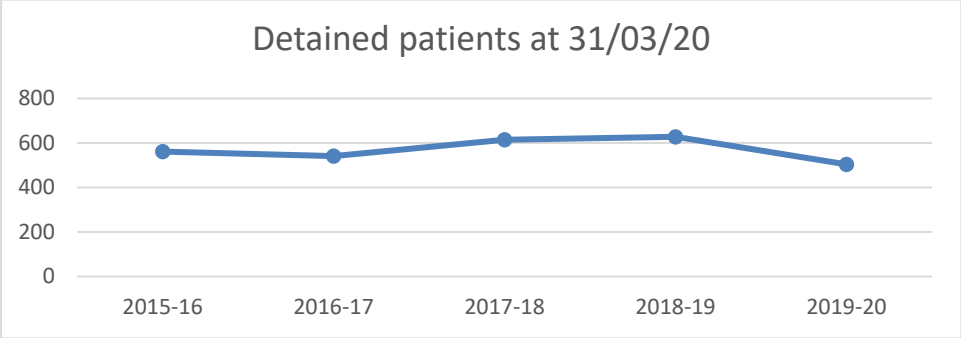


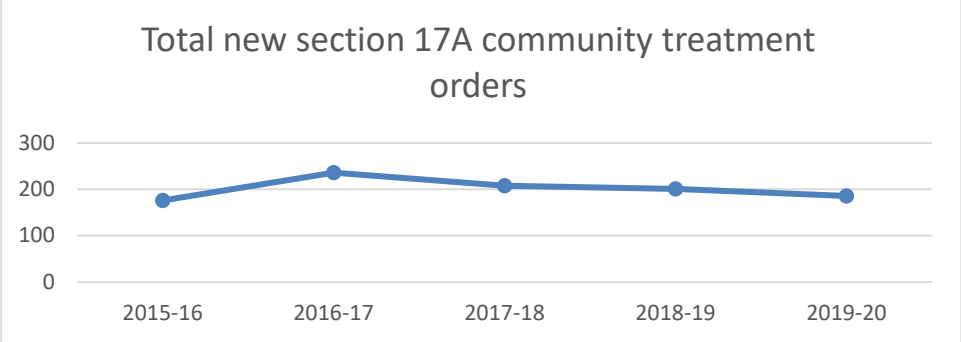


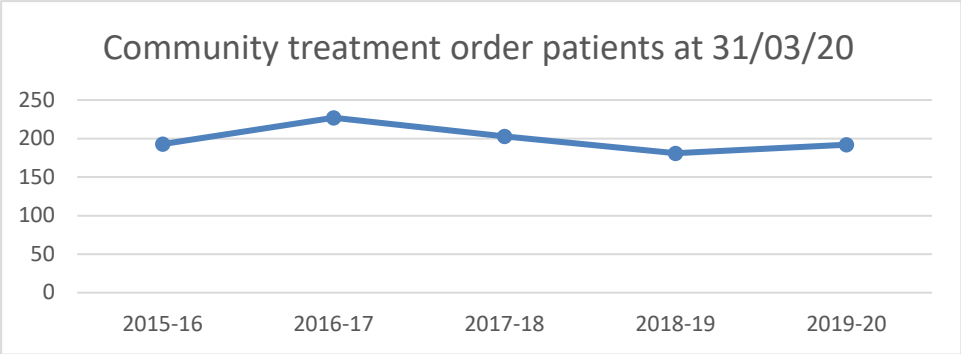


2019 saw the opening of the new place of safety hub in the City & Hackney site, which also now serves Tower Hamlets. There was a slight fall in the number of section 136 episodes; the C&H hub accounted for 349, Newham 358, Luton 314 and Tower Hamlets 86.









4.2 Patients detained in hospital by ethnicity at 31st March 2020 (2019 in brackets)

Code	Group	Total	Total %	TH	C&H	FOR	NEW	BED	LUT
A	White British	**134 (169)**	26.25%	25	7	48	6	29	19
B	White Irish	**5 (7)**	0.97%	0	0	4	0	0	1
C	Any Other White	**36 (41)**	7.14%	7	4	9	6	2	8

D	White & Black Caribbean	**10 (12)**	1.93%	2	0	6	1	1	0
E	White & Black African	**4 (5)**	0.77%	1	1	2	0	0	0
F	White & Asian	**3 (1)**	0.58%	0	0	1	1	0	1
G	Other Mixed Background	**13 (10)**	2.51%	2	1	6	3	1	0
H	Indian	**16 (17)**	3.29%	2	3	4	3	2	2
J	Pakistani	**11 (15)**	2.12%	1	1	3	0	1	5
K	Bangladeshi	**33 (61)**	6.95%	10	3	14	4	0	2
L	Any Other Asian	**11 (15)**	2.12%	1	1	6	3	0	0
M	Black or Black British Caribbean	**59 (79)**	11.39%	3	8	36	12	0	0
N	Black or Black British African	**73 (82)**	14.48%	6	13	40	9	2	3
P	Any Other Black Background	**46 (58)**	9.27%	7	8	26	5	0	0
R	Chinese	**3 (9)**	0.58%	1	0	2	0	0	0
S	Any Other Ethnic Background	**28 (23)**	6.56%	3	7	14	3	0	1
Z	Not Stated	**19 (25)**	3.09%	7	4	1	2	2	0
TOTAL		**504 (628)**		**78**	**61**	**222**	**58**	**40**	**42**

The report from the independent review of the Mental Health Act presented to the government in 2018, was the latest to note the disproportionate rate of detention of people from Black African and Caribbean communities and recommended that steps are taken for "Improving the quality and consistency of data and research on ethnicity and use of the Mental Health Act…" As such, the Mental Health Law Monitoring Group is proactively developing data reports to look at detentions in relation to ethnicity in more detail; for instance, taking into account age, gender and local population data. Once developed, these reports will be provided to directorate management teams to assist them in planning and delivering care.

5.0 Deprivation of Liberty Safeguards data 2019-20 (2018-19)

5.1

Area	Number of Applications made:	Number Granted:	Number in Place 31/03/20	Applications Outstanding 31/03/20
Bedford Borough Council	21 (31)	9 (11)	3 (8)	0 (1)
Central Bedfordshire Council	18 (19)	4 (5)	2 (4)	2 (0)
Luton Borough Council	16 (8)	3 (0)	2 (1)	2 (0)
LB Hackney	25 (14)	11 (12)	7 (8)	3 (0)
LB Newham	30 (22)	14 (12)	8 (12)	1 (2)

LB Tower Hamlets	11 (13)	3 (1)	5 (4)	5 (3)
Out of Area	2 (8)	1 (2)	0 (2)	0 (1)
Total	**123 (115)**	**45 (43)**	**27 (39)**	**13 (7)**

5.2 There have been slightly more DoLS authorisation requests this year compared to last year, however there were less people subject to a DoLS authorisation on 31st March in 2020 compared to 2019. The most common reason for an authorisation request not being granted has been due to the patient being discharged from ELFT prior to the local authority assessments taking place. The average length of time from application to outcome remains 6-8 weeks although there are regional variations. The next most frequent reason for a person not having a DoLS authorisation granted has been due to the person subsequently being detained under the MHA 1983, and sadly the third most frequent reason is that the patient passed away prior to the authorisation being issued. All but two of the patients subject to a DoLS authorisation on 31st March were admitted to older adult wards.

5.3 See para 7.2 for latest information about the replacement regime for DoLS, known as the Liberty Protection Safeguards.

6.0 Training

6.1 Certain staff groups in the Trust must complete training on three mental health law subjects which are available in face to face sessions and/or via e-learning packages accessed via the OLM system. Staff compliance as of 31/03/20 was as follows:

- Overview of the Mental Health Act - 84.87% (5% up on same time in 2019)
- Overview of the Mental Capacity Act – 85.86 (4% up on same time in 2019)

6.2 How MHL training will be delivered in future is currently being reviewed.

7.0 Future Legislative Developments

7.1 The independent team that were commissioned by the government to review the Mental Health Act 1983 delivered their final report in December 2018 and made 154 recommendations for reform. The government have stated that they accept two of the recommendations regarding replacing Nearest Relative with 'nominated person' and putting advance treatment preferences on more of a statutory footing. The prime minister and secretary of state indicated that once all the other recommendations have been considered, the government intends to introduce a bill to parliament to amend the current Act. The bill is yet to appear with it's believed, a combination of Brexit, General Election and COVID-19 accounting for the delay. The independent report can be accessed here: https://www.gov.uk/government/publications/modernising-the-mental-health-act-final-report-from-the-independent-review

7.2 **The Mental Capacity (Amendment) Act 2019** amends the MCA by replacing the current Deprivation of Liberty Safeguards with a new framework, informally referred to as the Liberty Protection Safeguards. Some of the main drivers were to lessen bureaucracy and burdens on Local Authorities and simplify the statutory process so that much of it can sit with practitioners working in the hospital or care home where people (including those aged 16 and 17) are being treated. This will have implications for the Trust's clinical and administrative practitioners. This legislation was originally due to be introduced in October 2020, but it has now been put back to April 2022 at the earliest.

7.3 **The Mental Health Units (Use of Force) Act** received Royal Assent in November 2018. The Act makes provision about the oversight and management of the appropriate use of force in relation to people in mental health units, and to make provision about the

use of body cameras by police officers in the course of duties in relation to people in mental health units. 'Use of force' is defined as the use of physical, mechanical or chemical restraint; or the isolation of a patient. The only development since then has been the commencement of the Regulation requiring the secretary of state to enter into formal consultation before issuing guidance, but that consultation has not yet been announced. The Trust has already been taking steps to act in accordance with the Act's directions and the Mental Health Law Monitoring Group is developing related data reports.

7.4 **The Coronavirus Act 2020** received royal assent in March 2020 and it makes provisions for various aspects of the MHA to be amended, in the event that the operation of the Act becomes compromised as a result of the pandemic. These are briefly summarised as follows:

Part II - Applications for admission to hospital

- An application made by an Approved Mental Health Professional (AMHP) under s.2 or s.3 may be based upon a 'single medical recommendation' (defined below) if the AMHP considers it impractical or would involve undesirable delay, to obtain two medical recommendations (note - this change does not apply to applications made by Nearest Relatives).

- If an application is based on a single medical recommendation the AMHP must record why they consider it impractical or why it would involve undesirable delay, to obtain two medical recommendations.

- A single medical recommendation must be:
  - Signed on or before the date of the application
  - Made by a registered medical practitioner (RMP) who is approved under s.12
  - Made by a RMP who has personally examined the patient – however there is no requirement for the RMP to have had previous acquaintance.

- A single medical recommendation can be rectified or replaced under s15.

Part II - Use of holding powers – Section 5

- Any RMP can make a report under s.5(2) if they consider that obtaining the attendance of the clinician in charge of treatment would be impractical or involve undesirable delay.
- S.5(2) may last for up to 120 hours (up from 72 hours).
- S5(4) may last for up to 12 hours (up from 6 hours).

Part II – Statutory Forms

- The existing statutory forms should be used for all the above.

Part III - Periods of remand to hospital

- S.35 and s.36 will continue to run for 28 days at a time, but will no longer be limited to a maximum of 12 weeks.

Part III - Court Orders

- Ss.36, 37 (inc. under s.51), 38 and 45A – now only require evidence from one RMP.
- For s45A, the evidence must be provided orally to the Court.

Part III - Transfer Directions

- S.47 and s.48 transfer directions may be made based on a report from one RMP.

Part III - Conveyance

- S.35 – convey within 7 days or as soon as practicable after that;
- S.37 and s.38 – convey within 28 days or as soon as practicable after that;
- S.45A – convey within 28 days or as soon as practicable after that;
- S.47 and s.48 – convey within 28 days (up from 14 days).

Part IV – Treatment

- The Approved Clinician (AC) in charge of the treatment may certify medication under s.58 for a patient who lacks capacity or is not consenting if they consider it would be impractical or involve undesirable delay to arrange for a Second Opinion Appointed Doctor to make the certificate.
- An AC completing form T3 can do so after consulting with just one other person, if the requirement to consult with two would be impractical or involve undesirable delay.
- If an AC completing form T3 consults with just one person, this person cannot be a nurse, doctor, or the Responsible Clinician.

Part X - Detention in a place of safety

- S.135(1) and s.136 detention period extended from 24 hours to 36 hours (further extension of 12 hours is still permitted).

8.0 Work Plan 2020-2021

8.1 The Covid outbreak and the uncertainty over legislative change means that work-planning is somewhat tentative, but some of the broader issues that will need to be addressed over the next 12 months are:

- 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.

9.0 Action being requested

9.1 The Board is asked to RECEIVE and APPROVE the report.

ASSOCIATE HOSPITAL MANAGERS 2019-2020 as of 31/03/2020

NAME	NUMBER OF PANEL SESSIONS	QUARTERLY MHA SUB-COMMITTEE MEETINGS or L&B MEETINGS
Ms Julie Adeleye	21	1
Ms Marilyn Adolphe	0	0
Ms Shahida Ahmed	8	1
Ms Glynis Akers	17	1
Ms Titilayo Ayedele	0	0
Mr Keith Bailey	18	1
Mr Simon Bailey	17	4
Mr Shiv Banerjee	11	1
Ms Diane Beaven	19	4
Mr Sonam Bligh	9	0
Ms Stephanie Boyle	2	0
Ms Misbah Choughtai	25	0
Mr Paul Cleaver	0	0
Mr Harrington Cumberbatch	8	2
Mr Kofo David	0	2
Ms Susanna Ferrar	25	3
Ms Joyce Frizzelle	28	3
Mr John Hamilton	4	1
Ms Oluwatoyin Idomeh	0	0
Mr Michael Johnson	14	2
Mr Edward Jordan	29	3
Ms Pashmina Kohli	15	0
Ms Saranna Maynard	2	2
Mr Brian Merison	22	4
Mr Clive Myers *	19	3
Mr Joseph Ogunremi	28	3
Ms Dupe Okusipe	6	4
Mr Tony Oteh	17	3
Ms Veronica Ottway **	0	0
Mr Ayoola Owojori	41	0
Mrs Susan Patterson	0	0
Ms Barbara Read	0	0
Ms Joanne Share-Bernia	0	0
Ms Rosalind Shaw	1	4
Ms Janina Struk	0	0
Mr Joe Ukemenam	0	3
Ms Janna von Kremen	0	0
Ms Ann Webb	19	2
Ms Beverley Woodburn	15	2

***** Clive Myers sadly passed away in early April 2020 and we acknowledge here the contribution he made to the Trust; he will be greatly missed.

** Veronica Ottway's appointment came to an end.

Appendix 2

MENTAL HEALTH LAW SCHEME OF DELEGATION

	FUNCTION	PRIMARY/SECONDARY LEGISLATION REFERENCE (or other as indicated)	CODE OF PRACTICE REFERENCE (or other as indicated)	AUTHORISED PERSON(S)
1	Hospital Managers authority to detain and exercise compulsory powers in the community	MHA sections 6(2), 17A, 35, 36, 40, 45B, 135 and 136	Chapter 37	The Trust as exercised by its staff
2	Receipt and scrutiny of statutory documents	MHA sections 11 and 15 Regulations 3 and 4	Chapter 35	All Mental Health Law staff and any clinical staff at Band 4 or above (or equivalent) who have completed in-house 'Receipt & Scrutiny' training
3	Scrutiny of medical grounds for detention	MHA section 15(2)	Chapter 35	All Mental Health Law staff and s.12 approved doctors other than the patient's Responsible Clinician or the doctor who made the medical recommendation
4	Arrangements for rectification of applications and recommendations	MHA section 15	Chapter 35	Mental Health Law staff
5	Receipt of Nearest Relative orders for discharge under section 23	MHA section 25 Regulation 25	Chapter 32	All Mental Health Law staff and any clinical staff at Band 4 or above (or equivalent) who have completed 'Overview of MHA' training.
6	Restrictions on discharge by nearest relative	MHA section 25	Chapter 32	Responsible Clinician report to be furnished to Mental Health Law staff

7	Request for social circumstances report from social services following receipt of an application for detention made by the Nearest Relative.	MHA section 14	Chapter 37	Mental Health Law staff
8	Deciding if, when and where a Hospital Managers Review should take place	N/A	Chapter 38	Mental Health Law staff
9	Hospital Managers power to discharge from compulsory powers	MHA Section 23(2)(a)	Chapter 38	Non-executive directors and appointed Associate Hospital Managers
10	Duty of Hospital Managers to give information to patients subject to compulsory powers	MHA sections 20(3), 20A(5) and 132	Chapter 4	All Mental Health Law staff and any clinical staff at Band 4 or above (or equivalent) who have completed 'Overview of MHA' training.
11	Duty of Hospital Managers to give information to patient's nearest relative	MHA sections 25(2), 132(4) and133	Chapter 4	Mental Health Law staff
12	Medical practitioner/approved clinician 'nominated deputy' power under section 5(2)	MHA section 5(3)	Chapter 18	Duty doctor as per duty doctor rota or as otherwise set out in writing.
13	Return of patients who are absent without leave (AWOL)	MHA section 18	Chapter 28	Any member of staff of the Trust or any other person authorised in writing by the Hospital Managers[2]
14	Transfer of authority to detain/exercise compulsory powers in the community	MHA sections 19 and 19A Regulations 7, 8, 9 and 10	Chapter 37	Mental Health Law staff and staff at Band 6 or above (or equivalent) who have attended the relevant Trust training

[2] For written authorisation purposes, the Scheme of Delegation directs that this function can be exercised by a Service Director, the patient's Responsible Clinician or anyone delegated by a Service Director or the Responsible Clinician.

15	Conveyance to Hospital on recall, transfer or other reasons	MHA sections 17C or 19 Regulations 11 and 12	Chapter 17	Any member of staff of the Trust or any person authorised in writing by the Hospital Managers (see AWOL above)
16	Record of detained patients moving within United Kingdom to England and Wales	MHA Part VI Regulations 15 and 16	N/A	Mental Health Law staff
17	Record of Renewal of compulsory powers	MHA sections 20, 20A and 21B Regulation 13	N/A	Mental Health Law staff
18	Evidence of admission arrangements	MHA sections 35(4), 36(3), 37(4), 38(4), 44(2) and 45A(5)	N/A	Evidence from the assigned Approved Clinician or another person authorised by that Approved Clinician.
19	Duty to refer cases to First Tier Tribunal (Mental Health), or requesting references to be made by the Secretary of State	MHA sections 67, 68 and 71	Chapters 12 and 37	Mental Health Law staff
20	Sending reports to First Tier Tribunal (Mental Health)	Rule 32 of Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008	Chapter 12	Mental Health Law staff
21	Completion of Statement of Information for First Tier Tribunal (Mental Health)	Rule 32 of Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008. First Tier Tribunal (Mental Health) Practice Direction 2012	Chapter 12	Mental Health Law staff
22	Completion of Responsible Clinician Report for First Tier Tribunal (Mental Health)	Rule 32 of Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008. First Tier Tribunal (Mental Health) Practice Direction 2012	Chapter 12	Responsible Clinician or other clinician delegated by the Responsible Clinician

23	Completion of Social Circumstances Report for First Tier Tribunal (Mental Health)	Rule 32 of Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008. First Tier Tribunal (Mental Health) Practice Direction 2012	Chapter 12	Care Co-ordinator, Social Worker or other practitioner delegated by the care co-ordinator or relevant Team Manager
24	Completion of Nursing Report for First Tier Tribunal (Mental Health)	Rule 32 of Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008. First Tier Tribunal (Mental Health) Practice Direction 2012	Chapter 12	Registered Nurse (Mental Health or Learning Disability) as delegated by Team Manager
25	Withholding Correspondence of Patients	MHA Section 134	Chapters 4 and 37	Staff at Band 6 or above (or equivalent)
26	Hospital Managers duty to give information to victims regarding unrestricted Part III patients	Domestic Violence, Crime and Victims Act 2004	Chapter 37	Responsible Clinician
27	Hospital Managers duty to ensure that in-patients under the age of eighteen (detained and informal) are accommodated in a suitable environment.	MHA Section 131A	Chapter 19	Senior clinician with knowledge and experience of cases involving patients under the age of eighteen who suffer with mental disorders
28	Duty on the NHS body to instruct an independent mental capacity advocate if serious medical treatment is prescribed and P who lacks capacity has no other person to consult	MCA Section 37		Consultant in charge of relevant care or treatment
29	Duty on the NHS body to instruct an independent mental capacity advocate if it is proposed to move P to a hospital or care home for a period likely to exceed 28 days and P who lacks capacity has no other person to consult	MCA Section 38		Consultant in charge of relevant care or treatment

30	Duty on the managing authority to alert the supervisory body for the purposes of appointing an independent mental capacity advocate when P is subject to SchA1 safeguards and there is no person to consult regarding best interests	MCA Section 39A-D		Ward manager
31	Duty on the managing authority to request a standard authorisation to deprive P of his liberty if P meets qualifying requirements	MCA Schedule A1 para 24)		Clinician with knowledge and experience of deprivation of liberty safeguards
32	Duty on the managing authority to request a fresh standard authorisation if there is one in force but there has been a change of the place of detention or circumstances	MCA Schedule A1 paras 25-30		Clinician with knowledge and experience of deprivation of liberty safeguards
33	Duty on the managing authority to keep written records of requests for standard authorisation to the supervisory body	MCA Schedule A1 para 32		Lead Nurse in Mental Health Law
34	Duty on the managing authority to give P information about the effects of an authorisation	MCA Schedule A1 para 59		Registered Nurse (Mental Health or Learning Disability) as delegated by Team Manager
35	Duty on the managing authority to give itself an urgent authorisation in relevant cases and make a request for extension of duration	MCA Schedule A1 paras 76 & 84		Clinician with knowledge and experience of deprivation of liberty safeguards
36	Duty on the managing authority to keep written records of urgent authorisations and provide a copy to the supervisory body and P or any S39A IMCA	MCA Schedule A1 para 82		Lead Nurse in Mental Health Law
37	Duty on the managing authority to give RPRinformation about the effects of an authorisation	MCA Schedule A1 para 83		Registered Nurse (Mental Health or Learning Disability)

				as delegated by Team Manager
38	Duty on the managing authority to give notice to the supervisory body that they are satisfied that P has ceased to meet the eligibility requirement or one or more of the qualifying requirements for P's existing standard authorisation are reviewable	MCA Schedule A1 paras 91(3) & 103(2)		Clinician with knowledge and experience of deprivation of liberty safeguards
39	Ensuring that required mental health law policies and procedures are in place, reviewed and updated.			Associate Director of Mental Health Law

Summary of Compulsory Powers under the Mental Health Act 1983

Compulsory Detention/Power	Purpose	Time Limits	Patient Appeal Rights	Discharge
Section 2 Admission to Hospital for Assessment	To detain people who are suffering from a mental disorder, for assessment.	Up to 28 Days	Appeal to Tribunal and Managers.	RC, Tribunal, Managers and Nearest Relative can order discharge.
Section 3 Admission to Hospital for Treatment	To detain people who are suffering from a mental disorder, for treatment.	Up to 6 months, renewed for 6 months, then every 12 months	Appeal to Tribunal and Managers.	RC, Tribunal, Managers and Nearest Relative can order discharge.
Section 4 Emergency Admission to Hospital	To detain in cases of real emergency.	Up to 72 Hours	Appeal to Tribunal and Managers.	RC, Tribunal, Managers and Nearest Relative can order discharge.
Section 5(2) Doctor's Holding Power	To hold an informal in-patient for assessment for detention (not CTO pts)	Up to 72 Hours	No Right of Appeal.	Ends upon completion of assessment for detention under section 2 or 3.
Section 5(4) Nurses Holding Power	To hold an informal in-patient where it is immediately necessary (not CTO pts)	Up to 6 Hours	No Right of Appeal.	Ends upon arrival of doctor.
Section 17A Community Treatment Order	To allow discharge from hospital subject to conditions, with power to recall to hospital and potentially reinstate previous detention power.	Up to 6 months, renewed for 6 months, then every 12 months	Appeal to Tribunal and Managers.	RC, Tribunal, Managers and (when the suspended authority is section 3) Nearest Relative can order discharge.
Section 135(1) Place of Safety	Police power to enter premises and remove a person who is believed to be suffering from mental disorder.	Up to 24 hours (can be extended up to 12 hours)	No Right of Appeal	Either if assessed as not suffering from a mental disorder, or arrangements for further care have been made.
Section 136 Place of Safety	Police power to remove a person from a public place who appears to be suffering from mental disorder.	Up to 24 hours (can be extended up to 12 hours)	No Right of Appeal	Either if assessed as not suffering from a mental disorder, or arrangements for further care have been made.

Compulsory Detention	Purpose	Time Limits	Patients Appeal Rights	Discharge
Section 35	Remand to hospital for a report on the mental condition of the accused.	28 days at a time up to maximum of 12 weeks.	Application to court for termination of the remand.	Court
Section 36	Remand of accused to hospital for treatment.	28 days at a time up to maximum of 12 weeks.	Application to court for termination of the remand.	Court
Section 37	Hospital Order for treatment	For up to 6 months, then can be renewed for 6 months, then every 12 months	Appeal against conviction or sentence. After 6 months, right to appeal Tribunal. Appeal to Managers anytime.	RC, Tribunal and Managers can order discharge.
Section 37/41	To protect the public from serious harm by restricting the application of the Act to a patient made the subject of a hospital order.	Without limit of time	Appeal against conviction or sentence. After 6 months, right to appeal Tribunal. Appeal to Managers anytime.	RC and Managers can order discharge with consent from Secretary of State. Tribunal can discharge. A Conditional Discharge means that the patient is 'liable to be recalled' upon which the 37/41 is reinstated.
Section 38	Admission to hospital to determine if a hospital order is an appropriate disposal.	Initially 12 weeks, then 28 day periods up to maximum of 12 months.	Appeal against conviction or sentence. Court may terminate order.	Court
Section 44	Committal to Hospital where there is committal to Crown Court by Magistrates for possible Restriction Order. Has same effect as section 37/41.	Until case is disposed of by the Crown Court.	Appeal against conviction or sentence. After 6 months, right to appeal Tribunal. Appeal to Managers anytime.	RC and Managers can order discharge with consent from Secretary of State. Tribunal can discharge.
Section 45A	Upon sentencing to imprisonment, Crown Court can direct immediate admission of the patient to hospital. Has same effect as section 37/41.	Restriction element lasts until sentence expiry.	Appeal against conviction or sentence. After 6 months, right to appeal Tribunal. Appeal to Managers anytime.	RC and Managers can order discharge with consent from Secretary of State. Tribunal can discharge.

Section 47	Transfer to hospital of a sentenced prisoner in need of treatment (see 49 below).	As section 37 above	Immediate right to appeal to Tribunal	RC, Managers, Secretary of State and Tribunal.
Section 48	Transfer to hospital of a non-sentenced prisoner in urgent need of treatment (see 49 below).	As section 37 above or upon disposal of case.	Immediate right to appeal to Tribunal	RC, Managers, Secretary of State and Tribunal.
Section 49	Additional restriction on discharge of prisoners detained under sections 47 or 48.	Without limit of time or upon sentence expiry.	See sections 47 and 48 above	Secretary of State and Tribunal.

Informal – Not currently detained under the MHA RC – Responsible Clinician Managers – The Trust

Other significant sections

Section 1 – Definition of Mental Disorder
Section 17 – Authorisation of leave
Section 18 – Retaking of patients who are absent without leave
Section 19 – Transfer of authority to detain
Sections 20 – Renewal of detention
Section 20A – Extension of Community Treatment Order
Section 23 – Power of discharge
Section 26 – Definition of Nearest Relative
Section 29 – Displacement of Nearest Relative
Sections 56-64 – Consent to Treatment re detained patients
Sections 64A-64K – Consent to Treatment re Community Treatment Order patients
Sections 66-79 – Mental Health Tribunals
Sections 80-92 – UK cross-border movements
Section 117 – Duty to provide after-care
Sections 130A-130L - Independent Mental Capacity Advocates
Sections 132, 132A and 133 – Duty to give information
Section 145 – Interpretation and definitions