**BOD RR/App 08(i)/2022**

(Agenda item: 19(e))

**MINUTES of the Mental Health Act Committee meeting held on Friday 12 November 2021 at 1030 hrs via Microsoft Teams**

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| **Present:** |
| Sir John Allison (**JA**) (**Chair**) | Non-Executive Director  |
| Mary Buckman (**MB**) | Associate Director of Social Care |
| Britta Klinck (**BK**) | Deputy Director of Nursing |
| Karl Marlowe (KM) | Chief Medical Officer |
| Kerry Rogers (**KR**) | Director of Corporate Affairs & Company Secretary *left the meeting at 10:46* |
| Mark Underwood (**MU**) | Head of Information Governance |
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| **In attendance:** |
| Nicola Gill (minutes) | Executive Project Officer |
| Emma Lofthouse | International Recruitment Project Manager |
| Neil McLaughlin | Trust Solicitor and Risk Manager |
| Rachel Miller | Patient Experience Lead, Learning Disabilities |
| Nykita Nelson | Risk & Assurance Manager |
| Karen Squibb-Williams | Governor |
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| **Apologies:** |
| Steve McCourt (**SMc**) | Lead for CQC Standards & Quality |

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| **Item** | **Discussion** | **Action** |
| **1.**ab | **Welcome and Apologies for Absence (JA)**The Chair welcomed all present to the meeting, noting in particular the attendance for the first time of Governor, Karen Squibb-Williams, Emma Lofthouse (for Item 8) and Rachel Miller (for Item 6).The apology of SMc was recorded. |  |
| **2.**a | **Minutes of previous meeting held on 20 July 2021 (JA)**The minutes of the meeting held on 20 July 2021 were approved as a true and accurate record, subject to minor textual amendments. |  |
| **3.**abcde | **Matters Arising (JA)**The Chair requested that Nicola Gill change her initials on the minutes to be the same throughout.**Item 2d – Potential opportunity to use researchers in OHI.**  There was discussion as to whether CTOs should be a regular agenda item. KM expressed the view that use of CTOs had massively exceeded expectations, also that it included restrictions not aligned with the new MHA, also S17 Leave should be under review. MB observed that we were outside of national benchmarking. MU agreed that the outcome had been the opposite of Government intentions and that the Annual Review of the uses of the MHA should be considered at the next meeting. **Item 5p – Workshops to be arranged by KM/MB to discuss operational governance and cultural change.** MB confirmed this had not been moved forward and it was felt that this should be held until after the new Mental Health Act was published. **Item 6c – DoLS/Liberty Protection Safeguards (LPS) update.** JA asked whether the trust was still in the same position with regards to the change in the Liberty Protection Safeguards. MB confirmed that the position was that the timescale for implementation was still the same, but that there remained the absence of a Code of Practice and a set of Regulations for the Act that provide the detail of what the Trust should be doing. Mary described that currently several strategic discussions were taking place in various networks, particularly across the ICS where the Trust has an implementation lead, and we are also having local discussions in Oxfordshire and Buckinghamshire to make sure that, as a system, we are all prepared. The Trust was described to be very much linking in with discussions and direction coming in from NHS England and as being prepared as possible in terms of still working on knowledge and skills around the Mental Capacity Act more generally and as well as preparing for having trained approved mental capacity professionals. MB will be submitting a business case for a specific post for an LPS lead within the organisation. She reaffirmed that we were as prepared as we could be. **Item 8e – It had been agreed that BK would provide a verbal update from the Positive & Safe Committee on use of restraint.** BK confirmed that she had nothing to report on this occasion.  | **MU** |
| **4.**abcdefghi | **CQC Discussion (ALL)**MU spoke about CQC visits to the trust and the fact that they visit mental health wards particularly. They have a set proforma, which has changed this year, which they go through when they visit. For the last 5 months they have been undertaking these visits in person and he explained the format of the visits. The reports are structured around the 5 guiding principles that are in the Code of Practice and the recommendations are set against these. We tend to focus on the recommendations but there are also some positive comments about our level of care, our staff, and the systems we have in place as he explained could be seen in the reports circulated. The recommendations tend to fall into 5-6 areas and that is where we frustratingly spend an enormous amount of time, talking about these and trying to improve the practice on what most of the time is good practice at a 95% level. Often, they are finding 1 or possibly 2 omissions in our practice. The areas those recommendations concentrate on are:* the presentation of information under Section 132, commonly referred to as the giving of rights;
* issues around S17 leave;
* detailed elements to do with the consent to treatment process; these are quite variable in nature and difficult to pin down; and
* IMHAs and the way the service works, the way we interact with the service and the referrals we make. This has been a challenge over the last 18-20 months due to the restrictions that have been in place

The other 2 areas reviewed were in connection with care planning, particularly the involvement and empowerment of the patient within that process and our adherence and follow up to those care plans and the assessment and recording of mental capacity. There are also a few environmental issues that are raised, particularly around where shutters are used on windows for observation purposes and whether they are fit for purpose.MU confirmed that each visit is discussed at the weekly review meeting, the Mental Health Act Office coordinates the responses and then progress against the recommendations is coordinated.BK concurred. She said that the CQC pick up on little things every time that then become bigger. The areas we continue to struggle with are the timely presentation and recording of rights and the capacity assessment. She confirmed that the HoN had been working with MU on the recording of rights and this was looked at every week at the review meeting and improvements were being seen. BK questioned where we were with the broader piece of work around capacity recording as it comes up at every single Mental Health Act Inspection. MU confirmed that technical changes had been made within Care Notes to enable improved recording. It was highlighted that when considering those under 16 years of age, it is the use of the word capacity instead of competence that the pick up on. Recording in general continues to be a challenge, but it was suggested we should be able to improve this over the coming few years. JA questioned whether this issue was because staff do not want to do it, do not find it easy to do or do not have the right equipment to do so.KM confirmed that repeated CQC reports had been discussed at the recent Quality Committee (**QC**) meeting and he felt this committee should have an overview of recommendations to change the outcomes. He commented that at this meeting the Chief Nurse had made the point that as part of our CQC preparations we could not let things continue without mitigation. KM confirmed this needed to come to this meeting and then be reported back to QC. BK concurred.MB averred that we could resolve recording issues, we can review the forms that are available on care notes, we can ensure that everyone knows where they are, we can make sure that training is available, and we have undertaken lots of bespoke training for wards and teams. The frustration for her was translating this into changes in practice and that was the problem. She postulated that we needed to get more directive in our approach because we do the analysis, we look at it from a QI perspective, we put the tools in place that we are told are needed, the support that is required, the learning that is needed, the advice, the information, all of which make a difference, but it probably does not get us to where we need to be. She wondered if we were guilty of wilful blindness. She felt more consideration was needed about this. JA confirmed that in the Board he had consistently advocated a more directive style, but there is a culture in the organisation that prefers persuasion to direction, but persuasion does not always work.BK observed wryly that direction did not always cut it either. She wondered whether we needed some OHI input as she was not sure we had taken a QI approach to this. We did not know how big the problem was: we just knew that CQC keep picking it up. We do not have a good idea of our own baseline and measurement, and she felt this was something the QI team might be able to assist with. MB confirmed that she had discussed it a while ago and had been told it was not a QI approach, but she was happy to revisit this with Angie Fletcher. ***It was agreed that MB would speak to Angie Fletcher.***KM commented that in terms of actions it should be noted what the Committee has undertaken so that it can be fed back into the Quality Committee and this would cover the well led component. With regards to capacity, he questioned whether something could be annotated in the clinical notes rather than completing a form. MB confirmed that the vast majority of references to capacity would happen as a very brief reference in the clinical note along the lines of ‘no reason to doubt capacity’ and that there would only be the need to complete a full capacity assessment and a best interest process once the level of complexity increased. MU confirmed that the training did not over complicate the recording of it and that there was a high ceiling to reach before needing to activate the formal recording of capacity. | **MB** |
| **5.**abcdef | **Trends in the Mental Health Act (MU)**MU presented the Trends in Mental Health Act report, highlighting the following:* no invalid detentions to date;
* really low, and falling, number of lapses (of detention or CTO);
* there were 3 Nearest Relative Discharges none of which were barred;
* the proportion of detained patients had fallen consistently over time;
* managers meetings continued to function with no current issues and the backlog was now under control;
* the MHA Office continued to put a lot of time and effort into the managers and into preparations for mental health tribunals;
* continued to meet as the Legislation Group with 3 meetings this year and another one due soon;
* training – we were in the transitional period into the new training registration system; an item to note was that our best level of compliance was only 60% and we need to see improved attendance;
* CQC visits were covered earlier in the meeting. The report included an update on monitoring and recommendations by the CQC showing the total number of actions and those completed. MU felt that by the next meeting more of these actions will have been completed; and
* Long term leave, currently we are at the lowest number we have had since recording of this data started.

**Q&A Session**KM thanked MU for an excellent report and commented that we were in a good position to demonstrate the Committee’s effectiveness in looking at data. KM asked whether the national definition was 7 days plus for long leave on sections. MU confirmed it was the definition of when the CTO needs to be considered and that there was no national definition. MU commented that over the last 3 years there had been a significant difference in the Trust in detentions and there had been a real change over a short period of time, which he considered was to the credit of all colleagues and the way they use the legislation. JA expressed interest in the low attainment figures for training and was not necessarily sure if that was a wholly bad thing because when an organisation is under the amount of pressure that ours is you have to make decisions about what areas of activity are stopped. He added there is an important debate to be had, perhaps at Board level, about what stress relieving actions we should take and a temporary reduction/suspension on training where it did not affect safety might be a sensible approach. MU commented that vacancy factors had to be considered also. JA asked if there was a degree of force majeure in that level of training attainment or was it even more deliberate than that i.e., giving priority to doing the job and fitting training in where we can. MU commented that we had reduced the length of training; refresher training was a 1.5-hour session that focussed on the Mental Health Act and the Mental Capacity Act and Induction was now similarly reduced to 1.5 hours. Refresher training occurs every 3 years. JA questioned whether the Trust should have a policy of abatement while we were in staffing crisis mode. He felt that something had to be done to make life bearable and ensure that staff could focus on what was essential, for example, face to face treatment. BK sought clarification on the number of Corporate staff and questioned who they were. MU confirmed it was medical staffing. She felt that there was a need to be careful and maintain a balance of work and training. For clinicians, training, keeping their skills up to date and having time out to reflect on their practice was what kept them interested and engaged and took care of their wellbeing. She did agree that there were some efficiencies that could be made. JA confirmed that what he had been seeking was a measured consideration of what might be abated temporarily.MU confirmed that through Teams they were able to deliver training to nearly 200 people per session whereas face to face we would have been limited to between 50-80, so from a delivery point of view Teams had brought efficiency. The Committee noted the report. |  |
| **6.**abcdefgh | **Signposting for LD Patients/Easy Read (RM)**Rachel Miller said that in terms of signposting the Reasonable Adjustment Service acts as a resource for clinicians across the organisation to help support people with a Learning Disability or Autism to access mainstream services, to help them make those reasonable adjustments. This resource is available across the Trust. She confirmed that her role related to Easy Read Information and of particular relevance to this group was the fact that she had created easy read leaflets about all the different sections of the Mental Health Act to help patients to understand their situation and their rights. She spoke about her background as an occupational therapist and that she now worked as a Patient Experience & Involvement Lead, having worked locally in Learning Disability Services for 20+ years where she had gained a wide range of experience. She offered her help to the Committee.JA asked how we could ensure the Trust was doing its best for people with Learning Disabilities and Autism and that we were getting it right without having to contact her once a month. RM confirmed that she was not part of the Reasonable Adjustment team that led in this area of work but was part of the Patient Experience & Involvement Team. She confirmed that when that team came to fruition, they undertook the green light tool kit across all wards within Oxford Health, which is an audit tool to check that mainstream mental health environments are suitable to meet the needs of people with a Learning Disability and Autism. The plan was that this would then be handed over to the wards to update and make the improvements and then call upon the Reasonable Adjustment Service as needed. Simon Tarrant who manages the Reasonable Adjustment Service would be able to provide an update to the Committee should it require wider assurances. Karen Squibb-Williams, Governor, asked if this service was available to those with Autism and not Learning Disabilities. RM confirmed that the Reasonable Adjustment Service was available to those with Autism only and also to those with Learning Disabilities and Autism and that it covered all those individuals. RM offered to act as a conduit to do some work on Easy Read information or put the Committee in touch with others if they felt there was the need. BK stated that RM’s input with Easy Read Information was invaluable and very much appreciated across all services. We as a Committee were concerned about peoples' understanding of their rights under the Mental Health Act and we know RM continues to work on those which was assuring. MU offered RM the assistance of the Mental Health Act Office should she need it. One of the things he mentioned when looking at CQC was that they were looking at the power of technology concerning rights and making them available to people digitally via the internet which may help with presentation and understanding. RM confirmed that video worked quite well for some people and she would welcome the opportunity to work with MU to look at different media and different options available. JA thanked RM for her update.*Rachel Miller left the meeting at 11:38* |  |
| **7.**abcde | **New risk entry on TRR – Trust implementation of new Mental Health Act (NMcL)**NMcL confirmed that he had requested to speak to the Committee today to bring a potential new risk to attention, concerning which he requested a decision either today or at a future committee meeting. He spoke about two sources; the 1st arising from the trust not being ready for any changes that were anticipated in the new Mental Health Act Legislation and the 2nd arising from an item in the October minutes from this Committee where JA said his intention was to appraise the Board at the next meeting regarding concerns about resource implications of matters a presaged in the White Paper. These two sources led to NMcL speaking to KR to ask the question whether the committee/trust/executives would like there to be visibility of a risk on the Trust Risk Register that was in effect that the Trust might not be ready for any impending changes. If the answer in principle was yes, he would then discuss with MU and others how this risk might be shaped, formulated and brought back to this Committee to review and determine.JA felt it was pertinent and personally would like this item to be added to the Risk Register. He confirmed he had drawn the Board's attention to the concerns mentioned above. He commented that we were unable yet to cost the transfer of responsibility under LPS; we knew that it would require one or possibly more new posts which would incur a charge, but his opinion was that the extent of work and cost of administering it remained unclear. He felt that the Board should be alerted in a more formal way and it would help the Committee keep their minds focussed on it if it was on the Risk Register. KM felt the LPS component of the Mental Capacity Act was more urgent and immediate as we needed to recognise that the Trust might not be able to fulfil its obligation of operational delivery of Liberty Protection Safeguards. He agreed that this should be added to the Risk Register.MU concurred with KM and spoke about the three areas; MB had identified a leadership element, there was also an admin element which was unquantified currently and then across the wards, both Mental Health and Community there was a real hidden impact on them as workloads would increase.***It was agreed that this risk should be added to the Register***  | **NMcL** |
| **8.**abcd | **Essential Standards Audit (Emma Lofthouse)**EL reported on the Essential Standards Audit and explained that the audit took place every 2 months for all inpatient and forensic wards and consisted of 5 patients per ward being audited against various standards, some of which included elements of the Mental Health Act. Data from the Community Hospitals Essential Standards Audit had also been added to the report. CPA audit also had elements of mental health within it and this data had also been added. She went onto explain that included in the report were questions on Capacity & Consent and Mental Health with annotations showing whether the percentage had gone up or down. Also included were action plans, as a result of the audits so it was visible to see what work was planned to improve results. BK questioned what the colours related to and EL explained that the Trust had a rag rating scheme where Blue was Excellent 95-100%; Green was good 80-94%; Amber was Requires Improvement 50-79% and Red Unacceptable 0-49%. EL confirmed that the Essential Standards Audit came out quite positively. JA asked what the red rating in September 2020 related to. EL explained that it was completed by the Community Directorate and Governance Leads so she did not have the exact details. BK felt it was an interesting question and MB commented that she did not understand the question or its relevance as one of the things we have to do when a patient is subject to DoLS, or even awaiting DoLS and is in legal limbo, was to ensure that we were reviewing their capacity and reviewing any restrictions that were in place on a regular basis. She went on to say a lot of work had been undertaken across the Community Hospitals and Oxfordshire County Council around how we were managing the care of people where we had made a request for a Best Interest Assessment and a Standard Authorisation to manage this more tightly. She did not understand the question and did not believe it was worded well, she commented that she was much more assured than she had been a year ago that DoLS was being managed much better in partnership with the supervisory body, so she was more reassured and confident in the subsequent scorings than in the anomaly back in September. She did not feel this needed to be explored further as it was historical. BK felt the wording around the question might need to be looked at going forwards. ***EL to contact Angela Ward, Community Governance Lead and request she liaise with MB re the wording of the question.*** *Emma Lofthouse left the meeting at 12:02* | **EL** |
| **9.**abcdefghi | **Annual Report including review of ToR (KR)**JA had distributed an updated version of the Annual Report, highlighting in yellow things he was concerned about, or were new. He welcomed comments on the annual report.MB questioned her attendance and JA confirmed the reporting period covered the first four meetings from May 2020 to December 2020. Her understanding is that she is a Committee Member not an attendee. JA agreed and confirmed that she was a Committee Member and had attended the last 2 meetings of the reporting period, so her attendance was 100%. The report was to be amended accordingly. It was also confirmed that BK would be the nominated Committee Member in lieu of Marie Crofts. MU questioned whether under Item 2.4 we should add that towards the latter end of 2020 we started to deliver training via Teams. JA commented that it was not what the Committee did but more what MU did and reaffirmed that this report was solely on the activities of the Committee. JA had highlighted training in yellow as there was conflicting information. It was agreed that this should be re-drafted to show that there were training problems, and this would give MU the opportunity to mention the training via Teams. ***MU to provide NG with a re-draft of wording to be added to the Annual Report.***JA commented on Item 2.2 para 2 as, although it was a true reflection of the minutes, he felt it sounded quite smug and complacent and asked for comments. KM felt that saying "no learnings" was a very problematic provocation as there will always be learning. BK concurred that there had been lots of learning. KM felt it should be noted how well the teams responded to the change in the world in a short space of time and noting that CTOs and the Devon Hearing had created a lot of ambiguity of how to deliver a legal framework. MU agreed and felt we needed to suggest that there were always learnings from deaths.***MU to re-draft the wording to give context and update the Annual Report.***JA had added a paragraph at the end of the report to complete the report and asked for comments. No comments recorded. BK commented that it had made her think about the scope of the Committee going forwards and ensuring we look at the areas that are relevant and not those areas that are looked at in other Committees and be careful to keep the boundaries as this could become wide ranging and this Committee needed to find its place in relation to the overall Governance Framework and other Committees that are scrutinising parts of patient care. JA agreed that this was a powerful point. ***It was agreed that the changes be made to the Annual Report and re-circulated for review/agreement by the committee.*** **Terms of reference**KM commented that the Terms of Reference needed reviewing. This Committee’s remit was beyond the Mental Health Act and in its wide-ranging discussions it had showed that it was a Committee that looked at Mental Health legislation in the broader sense. He felt having NMcL in attendance was essential. He referred to the Ethics Committee and suggested that the Mental Health Act Committee should feed into this rather than the Mental Health Legislation Group. KM to draft revised ToR to be discussed at a future committee meeting. This offer was welcomed by the Chair.***KM to write a draft Terms of Reference to be reviewed at the next Committee meeting.*** ***NG to add draft Terms of Reference to the agenda.*** | **NG****NG****MU****MU/NG****NG****KM****NG** |
| **10.**a | **Legal & Regularity Update (MB)*** **LPS**
* **Use of Force Act**

Covered earlier in the meeting. |  |
| **11.**abc | **Expansion of Committee Membership (ALL) Terms of reference**JA reflected that at the previous meeting there had been a suggestion to expand the Committee membership to admit other voices, providing a wider view. He felt it was pertinent that at the same meeting there was much favourable comment on the quality of discussion that was facilitated by having a small membership. That preference was expressed by several members. Thus, his preference would be to keep the core membership tight and to invite others to attend to contribute to specific items relevant to their expertise or experience. BK concurred with JA. She felt that overall, we did not have enough time to do quality thinking about steering the Trust in the right direction in relation to legislation. For this committee to do some of that would require space and that could only be achieved within a smaller group. We may want to review this in the future but for now we should keep the core membership and then invite people in for conversation, the risk around that is we might not get challenged enough; we would not get the patients' and carers' voices enough so we would need to mitigate against this.KM felt there was something around having someone who had been subject to the experience and commented that it was about the balance between membership versus the challenge to diversity of thinking. JA agreed and commented it was tricky to get the right person to represent the patient/carer group as they would only be representing their own experience. BK confirmed that frameworks were being set up so that people who are going to take part and help us with these things will get the training and will have a group to feedback to so will be representing the patient group rather than the individual. It was agreed that there was a need to understand how we engage with patients. |  |
| **OTHER BUSINESS** |
| **12.**a | **Any other business**None. |  |
| **13.**a | **Meeting Review (ALL)**JA thanked the committee for a useful and worthwhile meeting. There was no time for a review as several members had to leave urgently for their next commitment. |  |
| **14.**a | **Meeting Close**The meeting closed at 12:30 hours. |  |

\*\*The next meeting is scheduled to be held on Monday 14 February at 0900 hrs via Microsoft Teams\*\*