**Report to the Meeting of the**

**RR/App 16(i)/2022**

(Agenda item: 22(e))

**Oxford Health NHS Foundation Trust**

**Board of Directors**

**30 March 2022**

**Mental Health Act Committee Annual Report 2020/21**

**For Assurance**

**Executive Summary**

The Annual Report summarises the performance and work programme of the Mental Health Act Committee during the period 01 April 2020 to 31 March 2021. Annual reviews of committees are intended to support the Board and Accounting Officer by providing assurances to meet their needs. Whilst this Annual Report reflects the period to March 21, monitoring of committee effectiveness has been a conscious activity at the end of the majority of meetings. The business of each meeting has consistently been reported to the Board of Directors through escalations as necessary and via presentation of the minutes. Reviews for 20/21 have been undertaken taking into account the impact of measures to streamline arrangements (‘reducing the burden’) during the pandemic.

**Governance Route/Approval Process**

The Committee discussed iterations of the Annual Report at its meetings in October and November 2021 and approved its presentation to the Board at its February 2022 meeting. The Committee agrees it has throughout the year reported upon, monitored, reviewed, and escalated to the Board of Directors the fitness of the Trust’s processes to support the Trust’s delivery of care in accordance with mental health legislation.

**Forward view**

The Committee has considered its forward planning in the context of the impending changes to legislation in areas covered in its remit which will form part of the 21/22 Annual Report. In support of that, it has considered the information appended to this report concerning the official statistics about uses of the Mental Health Act in England during 2020-21 which it will continue to benchmark the Trust against going forwards.

**Recommendation**

The Board is invited to receive the report and confirm it supports assurances that the Committee has delivered relevant assurances across its remit to the Board.

**Author and Title: Nicola Gill, Executive Project Officer**

**Committee Chair: John Allison, Non-Executive Director**

**Lead Executive Director: Kerry Rogers, Director of Corporate Affairs & Company Secretary**

1. *A risk assessment has been undertaken around the legal issues that this report presents and there are no issues that need to be referred to the Trust Solicitors.*
2. *This report satisfies or provides assurance and evidence against the requirements of the following* ***Terms of Reference of the Mental Health Act Committee****:*
* *to monitor, review and report to the Board of Directors the Trust’s implementation of, and compliance with, current mental health legislation and proposed changes to such legislation, in particular the Mental Health Act 1983 and the Mental Capacity Act 2005, taking into account best practice;*
* *ensure that there is an appropriate number of Hospital Managers in place with the appropriate skills and experience to fulfil their role;*
* *monitor trends in the application of the Mental Health Act 1983 (and any new Mental Health Acts or revisions to the existing Act) within the Trust and make recommendations where necessary. Consider the implication of any changes to legislation and regulations within a local context;*
* *receive reports following Care Quality Commission visits and ensure appropriate action is agreed and implemented within the organisation;*
* *scrutinise delivery against the Trust’s action plan developed as a result of the Care Quality Commission’s Annual Report as instructed by the Board of Directors;*
* *approve policies in relation to the Mental Health Act and Mental Capacity Act across the Trust and scrutinise the application of these policies throughout the Trust in relation to both Acts;*
* *monitor the provision of adequate guidance, information, education and training on mental health legislation to staff, service users, carers and other stakeholders;*
* *monitor the application of Human Rights principles and frameworks across the Trust and draw attention to any shortcomings in particular:*
* *checking that patients receive information regarding their rights, especially at key points such as prior to a MHA Hearing or Tribunal. This includes checking that patients have access to papers prior to hearings and tribunals and are offered the support of an Independent Mental Health Advisor (IMHA)*
* *checking that patients are given the opportunity to be involved in planning their care*
* *checking that the Mental Health Act is applied equitably to people of all ethnicities and that people with learning disabilities and autism are not at a disadvantage*
* *checking that, especially as regards the use of segregation and restraint, the principle of the application of the least restrictive option is always followed*
* *to monitor the incident of out of area treatments to ensure they are minimised to the maximum extent possible within overall system limitations.*

**Mental Health Act Committee Annual Report 2020/21**

**For the period 01April 2020 to 31March 2021**

The Mental Health Act Committee is the principal sub-committee of the Board with responsibility to ensure the organisation is working within the legal requirements of the Mental Health Act (1983) as amended by the 2007 Act and Mental Capacity Act 2005. This Committee is required to provide assurance to the Board on the suitability of the Trust’s processes to support the operation of mental health legislation.

1. **Membership of the Committee and Frequency of Meetings**

The core membership of the Committee includes two Non-Executive Directors, the Medical Director, the Deputy Director of Nursing, and the Director of Corporate Affairs and Company Secretary, with the Associate Director of Social Care, the Lead for CQC Standards and Quality and the Head of Information Governance being key attendees. John Allison, Non-Executive Director, was the Chair of the Committee during the reporting period.

The Terms of Reference state that meetings will occur no less than four times per year and the Committee met 4 times in the reporting period.

To be quorate at least four members must be present one of whom must be a non-executive director. Each meeting during the period satisfied quoracy.

***Attendance by Committee members:***

|  |  |
| --- | --- |
| **Committee member** | **Attendance** |
| John Allison (Non-Executive Director, Committee Chair) | 4/4\*\* |
| Aroop Mozumder (Non-Executive Director) | 3/4\*\* |
| Mary Buckman (Associate Director of Social Care) | 2/2\*\* |
| Marie Crofts (Chief Nurse) | 1/4\*\* |
| Mark Hancock (Medical Director) | 4/4\*\* |
| Kerry Rogers (Director of Corporate Affairs & Company Secretary) | 4/4\*\* |
| Mark Underwood (Head of Information Governance) | 4/4\*\* |

***Regular attendees of the Committee and their attendance:***

During the reporting period, the following officers of the Trust and other interested parties were invited to attend for all or part of meetings:

|  |  |
| --- | --- |
| **Regular Attendee** | **Attendance** |
| Steven McCourt (Lead for CQC Standards & Quality) | 4/4\*\* |
| Nicola Gill (Executive Project Officer) | 4/4\*\* |

*\*Attended when invited to cover specific agenda items*

*\*\* Regular attendee of Mental Health Act Committee*

The Executive Project Officer attended meetings during the reporting period to take a true and accurate record of the proceedings of the Committee.

During the reporting period, the following also attended to observe meetings:

|  |  |
| --- | --- |
| **Observer** | **Attendance** |
| Hannah-Louise Toomey (Governor) | 1/6 |
| Myrddin Roberts (Governor) | 1/6 |
| Benjamin Glass (Governor) | 1/6 |
| Mike Hobbs (Governor) | 1/6 |

1. **Business transacted by the Committee**

Set out below is the remit of the Committee together with a report on the business transacted over the reporting period 01 April 2020 to 31 March 2021.

* 1. **Monitor trends in the application of the Mental Health Act 1983 (and any new Mental Health Acts or revisions to the existing Act) within the Trust and make recommendations where necessary. Consider the implication of any changes to legislation and regulation within a local context.**

During the reporting period the Committee discussed the trends in the Mental Health Act with the Head of Information Governance providing an update report which included regular updates on:

* Detentions & CTOs;
* CQC (Section 120) Visits;
* Training Summary;
* Report on work of MHA/MCA Legislation Group; and
* Report on work of Mental Health Act Managers

MCA & DoLS Update

At the December 2020 meeting, the Associate Director of Social Care presented the Mental Capacity Act. She updated the Committee on the proposed changes to replace Deprivation of Liberty Safeguards (**DoLS**) with the introduction of Liberty Protection Safeguards (**LPS**) by April 2022 and drew attention to the impact this would have on staffing.

* 1. **Receive reports following Care Quality Commission (CQC) visits and ensure appropriate action is agreed and implemented within the organisation.**

The Lead for CQC Standards & Quality presented a CQC update at every meeting.

In May 2020, the Lead for CQC Standards & Quality provided analysis of the number of deaths over recent years to the Committee. Whilst the Trust’s numbers remained low it was acknowledged that there is always learning to be gained from deaths. The Trust acknowledged that during the reporting period the way it worked and operated faced massive changes due to the global pandemic. This has an impact on every element of how the Mental Health Act was implemented and the change to virtual working as the country was put in lockdown. Both the Devon Ruling and the change to CTOs created a lot of ambiguity on how to deliver a legal framework and meant the Trust was constantly having to change the way it worked in unprecedented circumstances to ensure it delivered the best practice for its service users.

At the July 2020 meeting the Committee’s attention was drawn to the CQC’s proposed new strategy for improving patient safety and discussions were had as to how the Trust should respond.

* 1. **Approve policies in relation to the Mental Health Act and Mental Capacity Act across the Trust and scrutinise the application of these policies throughout the Trust in relation to both Acts.**

No policies were brought to the Committee for approval during the reporting period as there had been no policy changes during the period.

* 1. **Monitor the provision of adequate guidance, information, education, and training on mental health legislation to staff, service users, carers, and other stakeholders.**

The Head of Information Governance provided updates on the state of training at all the meetings held during the reporting period. Latterly, this was included as part of the Mental Health Trends update report.

At the May 2020 meeting the Committee considered if there was a shortfall in training. The Head of Information Governance and Medical Director assured the Committee that training was scrutinised, and the training was appropriate and positive feedback on quality and content was received.

In July 2020, the Head of Information Governance reported that delivery of training had been interrupted due to the pandemic, however, training recommenced in July via Teams session (digital sessions) as in person training was not appropriate at that time. Digital sessions on Teams could accommodate more attendees than face to face training, and it was anticipated that attendance would be up to date at the end of the year.

At the December 2020 meeting, it was reported that online/virtual training had now been scheduled for staff due to the restrictions in place due to the pandemic and that the position was slowly recovering.

* 1. **Monitor the application of Human Rights principles and frameworks across the Trust and draw attention to any shortcomings in particular:**
* **checking that patients receive information regarding their rights, especially at key points such as prior to a MHA Hearing or Tribunal. This includes checking that patients have access to papers prior to hearings and tribunals and are offered the support of an Independent Mental Health Advisor (IMHA)**
* **checking that patients are given the opportunity to be involved in planning their care**
* **checking that the Mental Health Act is applied equitably to people of all ethnicities and that people with learning disabilities and autism are not at a disadvantage**
* **checking that, especially as regards the use of segregation and restraint, the principle of the application of the least restrictive option is always followed**

Protection of Patient Rights/Access to IMHA Service

In December 2020 the Associate Director of Social Care confirmed that she had contacted managers of two POhWER organisations, commissioned by local councils to provide IMHA and IMCA services. She advised that the scope of their duties included supporting patients to understand their rights and to prepare for tribunals, also to understand the difference between tribunals and managers’ hearings. They were not trained to represent patients at hearings.

* 1. **Other business transacted.**

The following additional reports were received and reviewed:

* The Essential Standards Audit (**ESA**) Report
* Legal & Regularity Update

Essential Standards Audit (**ESA**) Report

A rolling update on the ESA report was presented to the Committee at every meeting during the reporting period.

In July 2020 the Lead for CQC Standards & Quality reported that a review of the Essential Standards Audit had taken place focussing on human rights and in particular (i) ensuring that patients receive information regarding their rights; (ii) ensuring that patients have the opportunity to be involved in planning their care; (iii) checking that the Mental Health Act is applied equitably to all patients; and (iv) ensuring that the principle of application of the least restrictive option is always applied. Analysis of the present pattern of audits showed some gaps and provided focus for the areas to be improved and monitored.

In October 2020 and December 2020 discussions took place regarding the best way to develop the report to ensure optimum effectiveness of the information provided. It was felt that the report was a valuable tool and that its frequency was appropriate.

Legal & Regularity Update

At the October 2020 meeting the Director of Corporate Affairs & Company Secretary discussed DoLS and Liberty Protection Safeguards (LPS) and the Committee were asked to consider the matter accordingly such that a status report could be commissioned. The Committee were also invited to consider the report as part of its discussions about expanding the remit of the Committee to incorporate oversight of compliance with the Mental Capacity Act and the DoLs. This was agreed.

In December 2020 the report focussed on the CQC’s report on restrictive practices; the use of electronic forms under the Mental Health Act accelerated by the pandemic and an amendment to Mental Health (Hospital, Guardianship & Treatment) (England) Regulations 2008.

COVID-19

A rolling programme of updates from the Medical Director were received during this reporting period on the pandemic and the issues and complexities this raised for the Trust and its service users. Assurance was given to the Committee that during this time of unprecedented change (face masks; social distancing etc) that patient care, safety and wellbeing were being monitored and reviewed.

1. **Reporting**

All Committee meetings were formally recorded. The minutes were distributed to all Committee members and formally reported to the Board of Directors.

1. **Overall**

This report records the first year of the Committee’s operation. There was a learning curve as the Committee found its way against a background of external change in thinking and legislation. It adjusted and expanded its membership as it became necessary. By its third meeting (October 2020) it had started to ask more questions prompted by patient care based on observations of activities and events – for example, concerning the state of training, the use of IMHAs and the reasons behind, and consequences (if any) of an apparent spike in discharges during the early days of the Covid pandemic. Overall, it was a productive year in which it delivered against the purposes set out in its Terms of Reference.