**MINUTES of the Mental Health & Law Committee meeting held on Wednesday 27 July at 0900 hrs via Microsoft Teams**

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| **Present:** | |
| David Walker (**DW**) (**Chair**) | Trust Chairman |
| Karl Marlowe (KM) | Chief Medical Officer |
| Kerry Rogers (**KR**) | Director of Corporate Affairs & Company Secretary |
| Mark Underwood (**MU**) | Head of Information Governance |
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| **In attendance:** | |
| Nicola Gill | Executive Project Officer (*minutes*) |
| Geraldine Cumberbatch | Non-Executive Director (observing) |
| Dr Tina Kenny (observer) | Governor (observing) |
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| **Apologies:** | |
| Britta Klinck | Deputy Director of Nursing |
| Andrea Young | Non-Executive Director |

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| **Item** | **Discussion** | **Action** |
| **1.**  a  b | **Welcome and Apologies for Absence (DW)**  The Chair welcomed members of the Committee present and extended greetings to those observing.  Apologies received from Britta Klinck and Andrea Young. |  |
| **2.**  a | **Minutes of previous meeting held on 28 April 2022 (DW)**  The minutes of the meeting held on 28 April 2022 were approved as a true and accurate record. |  |
| **3.**  a  b | **Matters Arising (DW)**  KM to attend a legislative group meeting. KM confirmed this was still to happen. MU highlighted that there had been no attendance at the last two meetings and therefore a review was needed as to how these meetings were functioning.  Terms of Reference to be presented to the Board. This took place at the May 2022 Board meeting. |  |
| **4.**  a  b  c  d  e  f  g | **Trust Risk Register update (MU)**  MU confirmed there had been a national consultation on elements of the Code of Practice of the Liberty Protection Safeguards (**LPS**) which the Trust had responded to. He added that there was still no date for when the LPS would be implemented, the risks were well described and highlighted there would be a training challenge and possibly a resource challenge for the Trust.  KM added that the biggest impact for the Trust would be that it would become a designated body for the Local Authority utilising the Mental Capacity Act. MU confirmed it would be the job of the Trust to have its own assessment, recording and monitoring procedures which would be seeded from the Local Authority to local organisations.  DW questioned the resource consequences for the Trust. MU confirmed that the Trust would have to administer and monitor them which currently it did not do. He highlighted that in Oxfordshire the Local Authority had stopped applications for Deprivation of Liberty, therefore the Trust frequently had between 6-12 people who had urgent authorisations which was a 7-day application which the Trust undertakes and reviews in accordance with CQC advice.  KR highlighted the need for a review of the risks with KM and NMcL to ensure assurance.  MU spoke about the Mental Capacity Act and confirmed the risks were unchanged other than the awaited implementation of the Mental Capacity Amendment Act. He confirmed there would be an impact on all services. It was agreed to invite Community Health Leads to future meetings to give the committee and indication of any gaps they may have or assurance that as an organisation we were carrying out our duties.  ***Action: DW to speak to Grant Macdonald/Ben Riley to arrange attendance at future meetings.***  MU confirmed the Mental Health Act risk had been reviewed by himself and NMcL. KM questioned whether this risk should be at board sub committee level or individually placed where it was the biggest issue. KR confirmed that currently it was not on the Board Assurance Framework (**BAF**) but was on the Trust Risk Register and was there due to the impact of being non-compliant in terms of infringement of basic human rights. The consequence of this risk materialising was so significant that having constant assurances that we were confident we are complying was essential. KM commented that because of COVID we were worried about visiting rights, human rights etc and CQC made a very clear statement that we had responsibility to make sure human rights were carried forward. He confirmed that those restrictions had been removed and had not heard that the CQC were concerned about how we were responding and restoring our processes, so he was not sure that this risk was at a Trust level. KR asked MU whether there was a theme of non-compliance during Mental Health Act CQC Inspections. MU confirmed this was consistently the case in the Trust since CQC had started visiting. He highlighted the following areas that CQC observe in every visit they undertake:   * Rights; * The recording of leave; * Consent to treatment; * Recording of capacity; and * Issues to do with care planning.   He commented that the Trust operated at approximately a 95% level, so we were good but that 5% meant that there were about 15 patients detained at any one time that did not have one of the elements above properly in place. KR commented that it felt that remedial action was needed to ensure this risk could be taken off the register. KM commented that it was an ongoing process, and that the mitigation was to have a process of changing it, that was the risk. MU commented that this was business as usual, was something that should happen 100% of the time, we need to understand why this does not happen 100%.  ***Action: Need to ensure that the Legislative Group includes senior members of community service and mental health. KR/KM to consider a mechanism of ensuring executive directors are involved.*** | **DW**  **KR/KM** |
| **5.**  a  b  c | **Trends in Mental Health Act/CQC Activity (MU)**  MU presented the Trends in Mental Health Act report, highlighting the following:   * Year to date we had one invalid detention; * Lapses of detention, very low numbers – 6 out of 326; * No nearest relative discharges to date; * Proportion of detained patients were slightly up; * Community Treatment Orders (**CTOs**) remained consistent; * No Section 4s; * Manager’s business remained consistent with 87 meetings which equated to approximately 300 over the course of the year with approximately 1/3 not going ahead; * Method of delivery for both Managers and Tribunals continued to be virtual; * Legislation Group, the last two meetings in April and July did not take place due to lack of attendance; * Training – compliance remains low despite changes in capacity available; and * Section 17 Leave – average length of leave is low.   DW asked with the introduction of the Community Mental Health Framework what might be the consequences for issues around detained patients. He asked MU how involved he was with the ongoing Community Mental Health Framework project development team activity. MU confirmed he was involved from an IG perspective so felt reasonably acquainted with what was happening. In a general sense, if services were available outside of hospital, we ought to see a fall in numbers as one of the major reasons for admission was that alternatives at a hospital were not available.  DW commented that issues involving the Community Directorates had been highlighted twice during the meeting and felt there were conversations to be had with those colleagues about activity that would improve Community Services knowledge of the legal framework within which they operate, specifically Mental Capacity. |  |
| **6.**  a | **Update on Mental Health Act Managers (MU)**  MU provided an update highlighting the following:   * A recent business meeting had occurred where the managers received an excellent session from Alex Langford about personality disorder; * They were currently undertaking a recruitment drive; * Engagement issues had already been spoken about; and * Mental Health Bill – still awaiting confirmation of the legislation and what this may mean for mental health act managers. |  |
| **7.**  a  b  c  d  e  f | **CQC Activity/Compliance (MU)**  MU provided an updated on CQC visits and highlighted that from the visits undertaken in 2021 all 55 actions had been completed.  He highlighted the following regarding visits year to date:   * Frequency of visits had increased with 5 to date in 2022; * 39 actions, 3 of which were currently overdue and 6 which were within timescale for completion;   He highlighted Kestrel ward which had been a remarkably good visit and the report from the CQC included only 2 actions. They were a model in terms of their compliance with the Mental Health Act and the way they interact with their patients.  KR asked MU from his perspective if he felt we were learning from the trends/themes and improving. MU confirmed we were. KR asked for the purpose of the minutes and the committee’s oversight function if it was at the Weekly Review Meeting (**WRM**) where we got an immediate understanding of what the CQC had said once we had received their report. MU confirmed this was the case explaining that the reports / actions were looked at when they arrived. KR asked if there was a committee that looked at tracking those actions through to completion. MU confirmed these were tracked through to completion and that Jane Kershaw reported on them.  KM requested the committee commend Evenlode, Wenric and Kingfisher for their compliance of the Mental Health Act which was remarkable.  DW endorsed the commendation. |  |
| **8.**  a | **Draft Annual Report (KR)**  KR presented the Annual report commenting that before it went to Board, she felt it needed to be more impactful emphasising the work undertaken by the committee. The challenge to the committee was did it think the Annual Report was impactful and representative of the work of the committee. DW suggested that KM/MU provide some phraseology to insert into the document to provide more impact.  ***Action: KM and MU to provide some phraseology to insert into the Annual Report to provide more impact.*** | **KM/MU** |
| **9.**  a | **Legal & Regulatory Update (KR)**  KR made the link with between what had been said at Board re her legal and regulatory update and made the connection with what had been highlighted that the Mental Health & Law Committee would do.   * The draft Mental Health Act Bill – included in the Reading Room; * Policy approaches outlined in the Wesley Review in 2018 and our need to oversee some of these; and * Patient Carer Race Equality Framework from NHSE which would have an impact on some of the areas which the committee would want to oversee regarding carers and service users. |  |
| **OTHER BUSINESS** | | |
| **10.**  a  b  c | **Any other business**  DW commented that he had spoken to two Mental Health Advocates at Littlemore the previous day and asked where they fitted in or whether they were an extraneous element? MU clarified they were Independent Mental Health Advisors (**IMHAs**) and went on to explain that IMHAs were introduced by the 2007 Amendments to the Act. They offered statutory advocacy, all qualifying patients e.g., all detained inpatients subject to the Mental Health Act apart from Section 5 and Section 136 were entitled to receive the service of an Advocate. They provide voice, emotional and physical support but their role in the mental health act was to help patients understand the information about the mental health act, what their rights were, to be physically supported in making applications to the tribunal or the managers. Although they were not Advocates in the full legal sense, they could help patients in hearings as well. They were commissioned by the Local Authority and the provider in Oxfordshire and Buckinghamshire were called POHWER and in Swindon and Wiltshire it was an organisation called SAM. They visit all the wards, and we also refer into the service. They were an important support to those people detained or subject to the mental health act.  Geraldine Cumberbatch, Non-Executive Director spoke about the Advocates and asked if all their checks were undertaken by the Local Authority or did the Trust do them given that they visit wards. MU responded confirming that they were effectively warranted i.e., checked out as part of the commissioning arrangements by the Local Authority and confirmed it was a registered advocacy service and that there was a level of performance in the IMHA regulations that individuals must achieve to become IMHAs.  KR confirmed these had been looked at in detail with Mary Buckman providing regular updates. She spoke about it being incumbent upon the organisation to ensure that our service users receive the advocacy and questioned whether there were records kept showing what actions we take to promote the advocates and those who take up this support to enable us to get a sense of our proactivity or would that be something we would have to start to do. MU confirmed nothing was done centrally but confirmed the IMHA service as part of their commissioning arrangements did collect detailed data on their visits to Trusts. |  |
| **11.**  a | **Meeting Review (ALL)**  Tina Kenny commented that it had been a powerful meeting where a range of good and interesting topics had been discussed and thanked the Committee for allowing her to observe. |  |
| **12.**  a | **Meeting Close**  There being no other business the meeting closed at 10:22 hours. |  |

\*\*The next meeting is scheduled to be held on Wednesday 12 October at 0900 hrs via Microsoft Teams\*\*