AGENDA ITEM 2.2

18 May 2012

USE OF SECTION 5(2) MENTAL HEALTH ACT 1983

<table>
<thead>
<tr>
<th>Report of</th>
<th>Director of Public Health</th>
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<tbody>
<tr>
<td>Paper prepared by</td>
<td>Mental Health Act Manager</td>
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</tbody>
</table>
| Executive Summary    | Cardiff and Vale University Health Board has a statutory duty to monitor the care and treatment of all patients subject to the provisions of the Mental Health Act 1983, and has defined powers, responsibilities and duties under the Act. The University Health Board retains overall responsibility for ensuring compliance with the Mental Health Act 1983.

To ensure compliance with the Mental Health Act 1983, and to support good practice, professionals involved in implementing the provisions of section 5(2) of the Act must fully and correctly understand the power and its purpose.

The Mental Health Act 1983 Code of Practice for Wales requires that hospital managers and local social services authorities should monitor the use of the power.

The “Report to the Mental Health Act Monitoring Committee on the Use of the Mental Health Act 1983” includes information on the use of section 5(2) and
During the period December 2011 to March 2012, the report highlighted some adverse trends in the use of section 5(2), indicating an urgent training need in the provisions of section 5(2) and the Mental Capacity Act 2005 (UHB staff need to understand which piece of legislation to use in which situation).

In response to the issues around section 5(2), Shift Co-ordinators, Night Managers and Ward Managers within the Division have received training. Arrangements have been made to train Band 5 nurses in May 2012; this training will include section 5(2).

<table>
<thead>
<tr>
<th>Action required</th>
<th>The Committee is requested to advise the Medical Director of the need to ensure that medical staff, including Consultants, have received training on both the Mental Health Act and Mental Capacity Act.</th>
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<tbody>
<tr>
<td>Link to Board Committee(s)</td>
<td>Quality and Safety Committee Mental Health Legislation and Governance Group</td>
</tr>
<tr>
<td>Link to Standards for Health Services in Wales</td>
<td>Supports Healthcare Standards: 1. Governance and Accountability 2. Dignity and Respect</td>
</tr>
<tr>
<td>Link to Public Health Agenda</td>
<td>N/A</td>
</tr>
<tr>
<td>Link to UHB Strategic Direction and Corporate Objectives / Legislative and Regulatory Framework</td>
<td>To support the delivery of safe and appropriate services</td>
</tr>
<tr>
<td>Link to relevant evidence base</td>
<td>Report to the Mental Health Act Monitoring Committee.</td>
</tr>
<tr>
<td>Audit of the Use of Section 5(2) in a General Hospital Setting.</td>
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</table>
USE OF SECTION 5(2) MENTAL HEALTH ACT 1983

INTRODUCTION

Cardiff and Vale University Health Board has a statutory duty to monitor the care and treatment of all patients subject to the provisions of the Mental Health Act 1983, and has defined powers, responsibilities and duties under the Act. The University Health Board retains overall responsibility for ensuring compliance with the Mental Health Act 1983.

To ensure compliance with the Mental Health Act 1983, and to support good practice, professionals involved in implementing the provisions of section 5(2) of the Act must fully and correctly understand the power and its purpose.

The Mental Health Act 1983 Code of Practice for Wales requires that hospital managers and local social services authorities should monitor the use of the power.

The “Report to the Mental Health Act Monitoring Committee on the Use of the Mental Health Act 1983” includes information on the use of section 5(2) and outcomes.

During the period December 2011 to March 2012, the report highlighted some adverse trends in the use of section 5(2), indicating an urgent training need in the provisions of section 5(2) and the Mental Capacity Act 2005 (UHB staff need to understand which piece of legislation to use in which situation).

SECTION 5(2)

Section 5(2) of the Mental Health Act 1983 provides for applications for admission for assessment or treatment to be made for mentally disordered patients who are already receiving treatment in hospital as informal inpatients; such patients could be receiving treatment in a general hospital for a physical condition. It should only be used if at the time, it is not practicable or safe to take the steps necessary to make an application for detention without detaining the patient in the interim.

Where a patient is not receiving treatment for mental disorder but is receiving treatment for a physical health problem, the doctor in charge of...
the patient’s treatment has the power to make the report. In these cases there would not be an approved clinician in charge of their treatment.

MENTAL CAPACITY ACT 2005

Patients aged 16 years and over who lack mental capacity to decide whether or not to stay in hospital can lawfully be restrained, providing that

- the restraint is to protect the patient from harm;
- the restraint is a proportionate response to the likelihood and seriousness of harm;
- the restraint is in the patient’s best interests;
- it is the least restrictive form of intervention; and
- it does not constitute a deprivation of the patient’s liberty.

MONITORING USE OF SECTION 5(2)

An audit on the use of section 5(2) in the Mental Health Division is currently underway. When finalised, an outcome report will be brought to the Mental Health Act Monitoring Committee.

This audit is based on the same criteria as those set for a previous audit on the use of section 5(2) which was carried out in general hospital settings at University Hospital Llandough and University Hospital of Wales.

For the purpose of that audit the recommendations in the Code of Practice for Wales and local guidance were combined to look specifically at the following questions:

- Was the statutory form completed by the registered medical practitioner or approved clinician in charge of the patient’s treatment, or their nominated deputy, and did the doctor clearly indicate their status for the purpose of this section on the statutory form by making the appropriate deletion?

- Were the reasons for detention adequate i.e. did they include documentation of:
  - evidence suggesting the presence of a mental disorder;
  - evidence suggesting the patient was at risk;
  - evidence that the patient would no longer remain on the ward informally;
FOR CONSIDERATION

- the need for further assessment under the MHA.

- Was the fact that section 5(2) had been utilised and the time detention commenced documented in the medical notes?

- Was a discussion with a senior Psychiatrist documented in the medical notes?

- Was the referral to Emergency Duty Team/Community Team and Mental Health Act Office documented in the notes?

- Was the outcome of the assessment documented in the medical notes?

- Was the discussion of the assessment outcome between the doctor and the patient documented in the medical notes?

ACTIONS TAKEN

The audit identified that National and local guidelines are not routinely being adhered to when utilising section 5(2) provisions in general hospitals within Cardiff and the Vale UHB.

In response to the issues identified by the audit around s.5(2), Shift Co-ordinators, Night Managers and Ward Managers within the Division have received training in section 5(2). Arrangements have been made to train Band 5 nurses in May 2012; this training will include section 5(2).

CONCLUSION

There is an urgent training need to ensure compliance with the provisions of section 5(2) and ensure that University Health Board staff understand the appropriate piece of legislation to use in which situation, i.e. section 5(2) or the Mental Capacity Act. A training programme for key staff has been commenced.

RECOMMENDATION

The Committee is asked to:

- CONSIDER the report and issues raised; and to
• ADVISE the Medical Director of the need to ensure that medical staff, including Consultants, have received training on both the Mental Health Act and Mental Capacity Act.

**IMPACT ASSESSMENT**

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
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<tbody>
<tr>
<td>Health Improvement</td>
<td>Non-compliance with provisions of the Acts will compromise patient care. To give assurance to this Committee that patient safeguards are in place in accordance with the Act, Mental Health Act 1983 Code of Practice for Wales and associated legislation.</td>
</tr>
<tr>
<td>Workforce</td>
<td>Additional workforce implications are possible.</td>
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<tr>
<td>Education and Training</td>
<td>There are significant implications for provision of and acceptance of training by medical staff across the University Health Board to ensure that they are aware of and understand whether the provisions of section 5(2) Mental Health Act 1983 or the Mental Capacity Act are appropriate, particularly in a general hospital setting. Ongoing training of staff identified on the Hospital Managers' Scheme of Delegation to ensure compliance with the Provisions of this section.</td>
</tr>
<tr>
<td>Financial</td>
<td>Some additional financial implications for training of Mental Health Act Administrators and Shift Co-ordinators in the Mental Health Division to ensure competence and compliance with the Act and the Code of Practice for Wales.</td>
</tr>
<tr>
<td>Legal</td>
<td>To ensure that the organisation complies with legislation.</td>
</tr>
<tr>
<td>Equality</td>
<td>No Equality Act implications.</td>
</tr>
<tr>
<td>Environmental</td>
<td>No impact assessed.</td>
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</tbody>
</table>
### RISK ASSESSMENT

<table>
<thead>
<tr>
<th><strong>Clinical/Service</strong></th>
<th>Ensure that appropriate staff receive specific training. Ensure ongoing discussion with clinical teams and local social services authorities to minimise any associated risks.</th>
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<tbody>
<tr>
<td><strong>Financial</strong></td>
<td>Cost of ongoing specialised Mental Health Act/Mental Capacity Act training for medical staff.</td>
</tr>
<tr>
<td><strong>Reputational</strong></td>
<td>Failure to comply with the Mental Health Act 1983 and Code of Practice for Wales/ Mental Capacity Act 2005 and Code of Practice/associated legislation will result in significant reputational risk to the University Health Board.</td>
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</tbody>
</table>

| **Acronyms and abbreviations** | None |

### CONSULTATION AND ENGAGEMENT

- Mental Health Act Legislation and Governance Group
- Mental Health Division Quality and Safety Group

### SOURCES OF INFORMATION

- Mental Health Act 1983
- Mental Health Act 1983 Code of Practice for Wales
- Mental Capacity Act 2005
- Mental Capacity Act 2005 Code of Practice
- Human Rights Act 1998