



**AGENDA ITEM**

3.7

**MENTAL HEALTH ACT MONITORING COMMITTEE**

**GUIDANCE ON REMOTE MHA ASSESSMENTS**

**Date of meeting**

05/05/2021

**FOI Status**

Open/Public

**If closed please indicate reason**

Choose an item.

**Prepared by**

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**Presented by**

Phil Lewis, Head of Mental Health Nursing

**19 Approving Executive Sponsor**

Executive Director of Primary, Community & Mental Health

**Report purpose**

FOR DISCUSSION / REVIEW

**Engagement (internal/external) undertaken to date (including receipt/consideration at Committee/group)**

**Committee/Group/Individuals**

**Date**

**Outcome**

Mental Health Act office staff

SUPPORTED

**ACRONYMS**

MHA

Mental Health Act



CTMUHB	Cwm Taf Morgannwg University Health Board
CAMHS	Child & Adolescent Mental Health Services
CTO	Community Treatment Order
RC	Responsible Clinician
AMHP	Approved Mental Health Professional

## Summary

At the start of the Covid-19 pandemic in March 2020, the Welsh Government issued legal guidance on Mental Health Act (MHA) assessments being conducted using remote technology. This legal advice was superseded in February 2021, following a High Court judgement in relation to remote or virtual assessments under the MHA 1983.

## 1. SITUATION/BACKGROUND

- 1.1 Welsh Government wrote to all Health Boards advising of the renewed position regarding remote assessments stating that “the phrases “personally seen” in s. 11(5) and “personally examined” in s. 12(1) of the MHA require the **physical attendance** of the patient. The effect is such that assessments to which ss.11 and 12 of MHA apply should no longer to be conducted remotely and are to be conducted face to face.”
- 1.2 S11 (5) and S12 (1) of the MHA require the physical attendance of the patient in the application for detention under the MHA 1983, s.2, s.3, s.4 and s.7 (Guardianship).
- 1.3 The AMHP cannot submit an application for detention unless that person has been “personally seen” under s11 (5) of the MHA.
- 1.4 A doctor of qualified status is required to have “personally examined” the patient under the provisions of s12 (1).
- 1.5 Following the Devonshire High court ruling on 22 January 2021, the Welsh Government circulated a letter to all Health Board Directors within Mental Health and Local Authority Directors of Social Services. The legal advice stipulated that any assessments under the MHA 1983, should no longer be conducted remotely, either by doctors making medical

recommendations, s12 (1) or the AMHP making the application for admission, s11 (5) but face to face.

- 1.6 It advised that all patients currently detained following a remote mental health assessment to be reviewed face to face by their Responsible Clinician. The purpose of the review is to provide assurance for the detaining authority that the individual continues to meet the criteria for detention.

## **2. SPECIFIC MATTERS FOR CONSIDERATION BY THIS MEETING (ASSESSMENT)**

- 2.1 In collaboration with the local authorities, the MHA team identified two patients whose assessments had been conducted remotely; only one was remained detained under the Act. This patient who is under the CAMHS service was due for a review by tribunal.
- 2.2 However on review by the RC the patient was discharged from section prior to the tribunal date.
- 2.3 There are no other patients within CTM that were detained utilising remote assessments.
- 2.4 All teams have received up-to-date communication regarding the use of remote assessments and all assessment work is done with the patient in person.
- 2.5 The Court did not rule on assessments or examinations carried out under any section of the Act beyond s11 and s12. (s2, s3, s4 and s7).
- 2.6 This includes assessments and/or renewals under s20 and s20A; s3 renewals, s37 renewals, s7 renewals and CTO extensions.

## **3. KEY RISKS/MATTERS FOR ESCALATION TO BOARD/COMMITTEE**

- 3.1 The Mental Health Act team are assured that the 2 assessments carried out undertaking remote assessments have been reviewed given new guidance. In both cases the patients are no longer detained under the Mental Health Act.

All teams are aware of the up-dated guidance



- 3.2 As a Health Board we have taken a precautionary approach and stopped **all** remote MHA assessments and renewals where the RC or AMHP are required to 'examine' or 'see' the individual.
- 3.3 The Mental Health Act team have sought clarification from Legal and Risk services on the legal implications for those patients whose CTOs were remotely extended and the appropriate course of action, as per below:
- Would those detentions be declared unlawful if a case on renewals/extensions was brought before a Court?
  - Do any extensions, which involved the use of remote technology need to be reviewed?
  - If so, are we required to go back to the start of the Covid-19 pandemic in March 2020?
- 3.4 Once the legal team have issued their guidance on what needs to be applied in practice, the Health Board will utilise this guidance to identify any affected patients in collaboration with the Local Authorities.

Once guidance received this will be included in on-going operational reports

#### 4. IMPACT ASSESSMENT

<b>Quality/Safety/Patient Experience implications</b>	There are no specific quality and safety implications related to the activity outlined in this report.
<b>Related Health and Care standard(s)</b>	Governance, Leadership and Accountability If more than one Healthcare Standard applies please list below:
<b>Equality Impact Assessment (EIA) completed - Please note EIAs are required for <u>all</u> new, changed or withdrawn policies and services.</b>	No (Include further detail below)  If yes, please provide a hyperlink to the location of the completed EIA or who it would be available from in the box below.  If no, please provide reasons why an EIA was not considered to be required in the box below.



	Not Required
<b>Legal implications / impact</b>	There are no specific legal implications related to the activity outlined in this report.
<b>Resource (Capital/Revenue £/Workforce) implications / Impact</b>	There is no direct impact on resources as a result of the activity outlined in this report.
<b>Link to Strategic Well-being Objectives</b>	Work with communities and partners to reduce inequality, promote well-being and prevent ill-health

5.1 The MHA Monitoring Committee is asked to:

- **DISCUSS** and consider the recommendation.