Camden and Islington
NHS Foundation Trust

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Report of:	**Andy Rogers, Chief Operating Officer**
FoI Status:	**Report can be made public**

Title: **Mental Health Law Annual Report 2016/17**

Executive Summary

This report describes how the Mental Health Act 1983 and the Mental Capacity Act 2005 have been used in the Trust in 2016/17. It also draws on internal and external assurance sources to establish areas of compliance and non-compliance with both pieces of legislation. This report presents the forward plan as agreed by the Mental Health Law Committee for 2017/18.

Recommendations to the Board

The Board of Directors is requested to:

- This report is presented for the Board's information and **RATIFICATION**. It has previously been received and approved by the Quality Committee.

Risk Implications

This report highlights the risk of legal challenge arising from the implementation of aspects of the Mental Health Act 1983 and the Mental Capacity Act 2005.

Legal and Compliance Implications

This report highlights areas where the Trust's practice is not in line with the Mental Health Act 1983 and the Mental Capacity Act 2005.

Finance Implications

This report makes recommendations for the training of all staff on capacity and consent provisions.

Single Equalities Impact Assessment

N/A

Camden and Islington
NHS Foundation Trust

Mental Health Law

Annual Report 2016/17

Your partner in care & improvement

Contents

1 Introduction

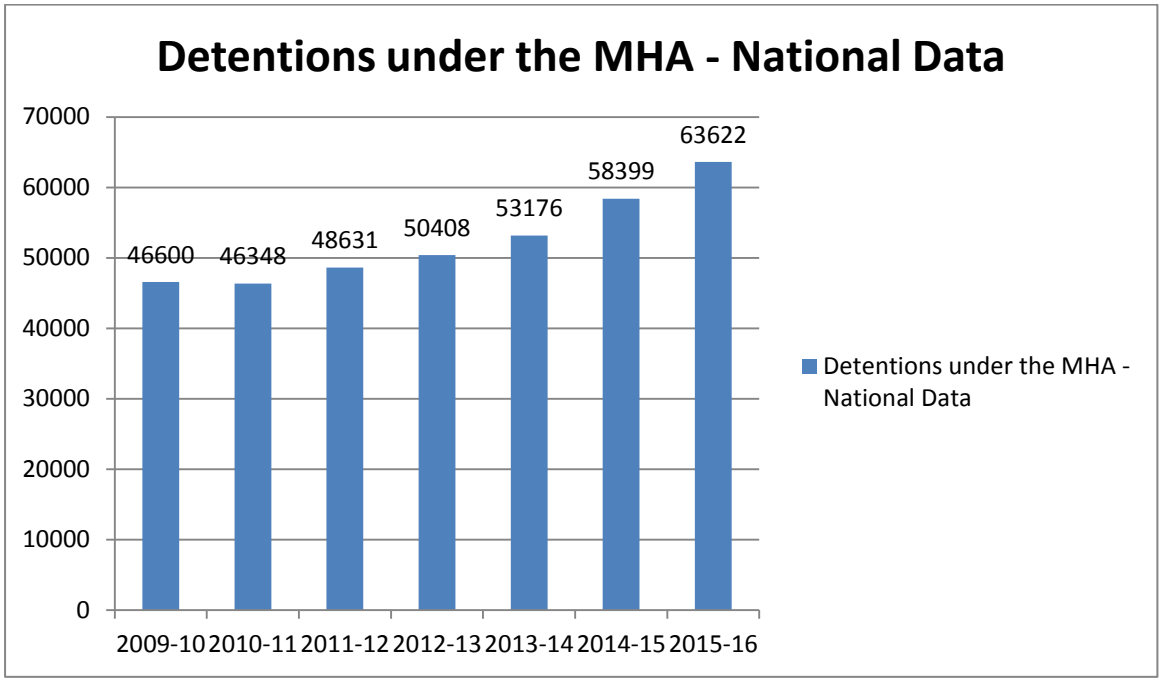
The report covers the period from 1 April 2016 to 31 March 2017 and examines not only the data and activity in relation to the use of the Mental Health Act (MHA) 1983 and the Mental Capacity Act (MCA) 2005 but also how the Trust discharges its statutory duties and responsibilities under both pieces of legislation.

2 Use of the Mental Health Act 1983

2.1 National context – Detentions in Hospital and Use of Community Treatment Orders

In 2015/16, according to the Health and Social Care Information Centre[1] (HSCIC), there were a total of 63,622 detentions under the MHA, an increase of 5,223 (or 9%) compared to 2014/15 (58,399) and an increase of 20,261 (47%) compared to 2005/06.

The chart below shows the trend of increasing detentions under the MHA between 2009/10 and 2015/16:



Source: Health and Social Care Information Centre

Note: Detentions under the MHA figures exclude: short term detention order (Sections 4, 5(2), 5(4), 135 and 136); Detentions following recalls from conditional discharge.

On the 31 March 2016, there were a total of 25,577 people subject to The Act. Of these, 20,151 were detained in hospital and 5,426 were being treated in the community on Community Treatment Orders (CTOs). The 2016 count shows an increase of 460 (2%) compared to 2015, and an increase of 3,310 (15%) compared to 2012. The number of people on CTOs at the end of the year fell by 35 between 2015 and 2016 and this was the first decrease in four years.

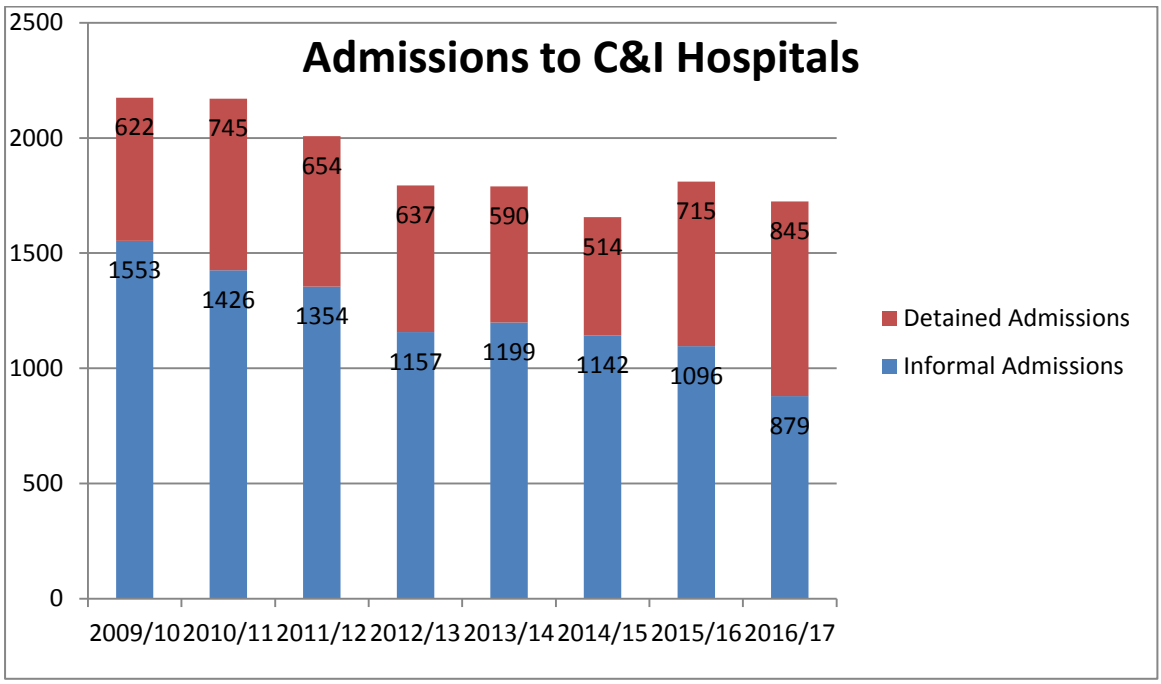
[1] Health and Social Care Information Centre (HSCIC) Annual Report 2015-2016. The HSCIC Annual Report for 2016-2017 is expected to be published in November 2017.

2.2 Trust Data – Detentions in Hospital and Use of Community Treatment Orders

In 2016/17, according to the C&I Mental Health Act Dashboard, there were a total of 1,724 admissions to hospital sites within the Trust.

Compared to 2015/16 there was a decrease in admissions to Trust sites of 87 (or 5%). The total number of formal admissions under the MHA was 845, an increase of 130 (or 18%) and the total number of informal admissions was 879, a decrease of 263 (or 23%) compared to 2015/16.

The following chart shows the trend of admissions to Trust sites under the MHA between 2009/10 and 2016/17:



Source: C&I MHA Dashboard

There is a general trend showing a year on year decrease in the number of detained admissions between 2010 and 2014. A steep increase in detained admission has been observed in the Trust between 2014/15 and 2015/16, which is 4 times higher than the national average (39% and 9% respectively).

A number of factors might explain the difference between local and national trends in terms of detained admissions, including:

- Cheshire West ruling;
- Higher volume of referrals of patients not previously known to services; and
- Multiple admissions of same patients.

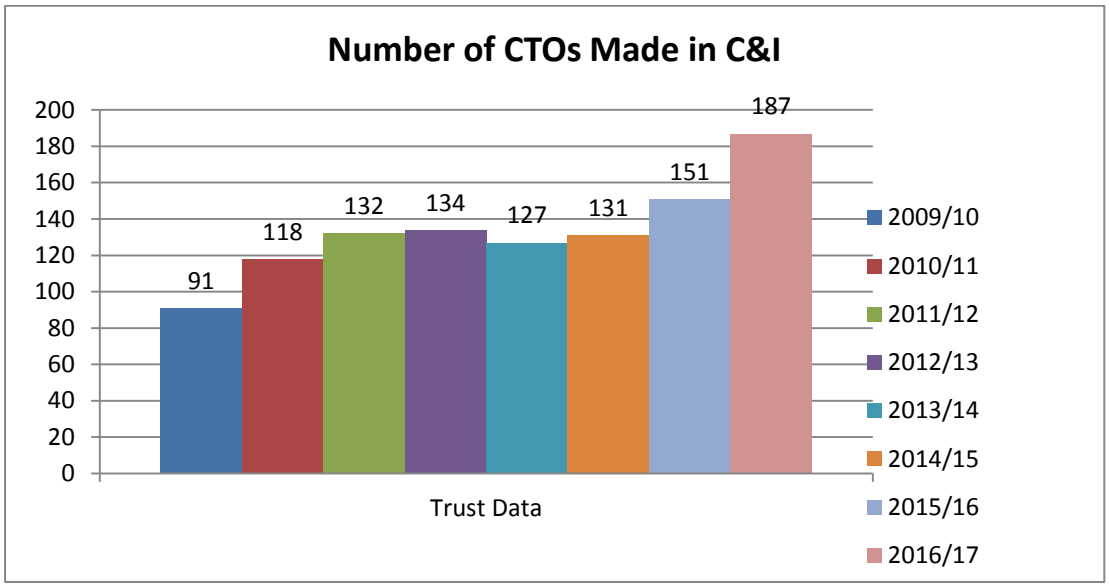
However, we need to better understand the reasons as to why the number of admissions in the Trust is so much higher than the national average. This analysis requires a Mental Health Act dashboard data validation exercise which will be conducted in 2017/18.

The Mental Health Law Monitoring Committee will continue to monitor both local and national trends in the coming year as well as underlying reasons. The Trust is also an active member of the London Mental Health Act Network, which benchmarks MHA data.

On the 31 March 2017 there were a total of 387 people subject to the MHA. Of these, 201 were detained in hospital, an increase of 48 (or 31%) compared to the 31 March 2016, and 186 were subject to a CTO, an increase of 21 (13%).

In 2016/17 period, there were a total of 174 new CTOs made within the Trust, compared to 151 in 2015/16 (15% increase).

The table below shows the number of new Community Treatment Orders (CTO) made in the trust since 2009/10.



Source: MHA Dashboard

Nationally there has been a 4% decrease in the number of CTOs being made in 2016/17 compared with 2016/17 but an increase of 15% within C&I. However, the C&I increase is in keeping with the other London trusts which have seen increases ranging from 3% (Barnet Enfield and Haringey Mental Health Trust) to 45% (CNWL).

However, despite the comparable benchmarking with other neighbouring trusts, C&I needs to determine the underlying causes of this significant increase in the use of CTO and to lay out the clinical rationale for using CTOs.

2.3 The Approved Mental Health Professional Duty Service

The Trust provides Approved Mental Health Professional (AMHP) duty services for Camden and for Islington. These services are responsible for assessing individuals referred to them under the MHA. The AMHP service is run via a rota and draws social workers who are specially trained as AMHPs from across the mental health teams in all divisions and also from adult social care. The full AMHP Duty Service reports for each borough can be found in the appendices to this report.

In summary across the boroughs of Camden and Islington the total number of Mental Health Act assessments in 2016/17 was 1402, an increase of 12% (or 150) on the previous year.

This year had seen a large increase in the number of assessments at the same time as a decline in the number of AMHPs available for the rota. Staffing and how the AMHP service is safely delivered are major issues that will need to be considered in the next year. The AMHP Lead has completed a paper on this which will contribute to the S.75 review currently underway in Camden.

The increase in activity is a nationwide trend but Camden is particularly busy both during the day time and out of hours. The quarterly reports will be more focussed on headline figures and any unusual or changing activity as well as important issues to be highlighted. We will work with the information team to support audits and one-off reports.

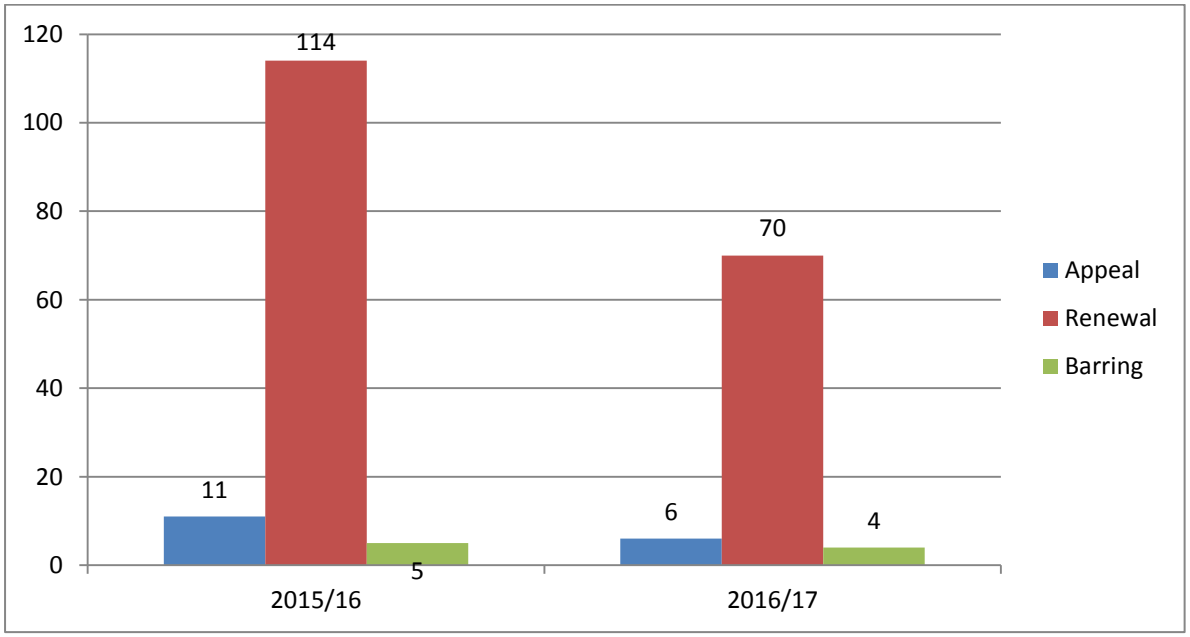
In March this year Camden and Islington police forces combined which has significantly affected the process to access police support and their response times. Previously, Camden police had a centralised events office that organised assessments and the AMHP service and police were able to jointly assess risk and prioritise. Under the new system which covers both boroughs, a warrant must be obtained before a risk assessment can be sent to the police. The duty manager then has to chase the police for a date. There have been incidents where the police have not attended. These issues have been raised with the police and added to the Trust's risk register. We are waiting to hear if more centralised resources within the police can be dedicated to facilitating mental health act assessments.

2.4 Associate Hospital Managers

Associate Hospital Managers (AHMs) are lay people, who are appointed by the Trust to review the cases of patients who are subject to the MHA. Their role and powers derive from the MHA and are set out in detail in the Code of Practice to the MHA.

The Convenor of Associate Hospital Managers is appointed by the Trust Chair and chairs the AHM group. The AHM Group meets every quarter to with the remit to consider issues of good practice, raising standards and receiving training. The AHM Group reports to the Mental Health Law Committee. In addition, the Convenor of the AHMs is an active member of the London Mental Health Act Network, which brings together non-executive directors, Lead Associate Hospital Managers (AHMs) and Heads of Mental Health Act Departments with key active roles in leading and shaping the implementation of the Mental Health Act provisions applicable to AHM panels within mental health trusts and private providers based in London and the South East for mutual support through development and change.

There were 80 Associate Hospital Managers reviews listed in 2016/17 (38% decrease compared to 2015/16).



This decrease is explained by the staffing issues experienced in the Mental Health Law Hub. In all cases the use of the Mental Health Act was upheld.

Due to staffing issues in the Mental Health Law Hub, a backlog of AHM hearings had accrued at the beginning of the year. An action plan was put in place in November 2016 but failed to deliver results due to lack of resources and lack of monitoring. The action plan was reviewed and significantly altered in March 2017. As part of this new action plan extra resources were allocated to the administration of AHM hearings. The target date for completion of the action plan is 31 October 2017.

AHM paper reviews for CTO extensions were introduced via a pilot in August 2016. The pilot proved successful and the decision was made in January 2017 to implement paper reviews across the Trust. One of the objectives for next year will be to consider extending paper reviews to S3 and S37 renewals.

One of the MHL priorities for the Trust for last year was to develop and strengthen AHM appointments, recruitment and appraisal systems. The development of new terms of appointment has proved to be more time consuming than expected. The introduction of new terms of appointment is now planned for April 2017, with recruitment taking place in the next financial year and appraisals taking place in 2018.

One of the Trust's AHMs, Margaret Giller, sadly passed away in November 2016. The Trust acknowledges the invaluable contribution that Ms Giller made to the Trust throughout the years as an AHM with C&I.

2.5 Care Quality Commission MHA Monitoring Visits

The use of the Mental Health Act is monitored by the Care Quality Commission (CQC) via unannounced MHA Monitoring visits to each inpatient ward every 18 months. The CQC conducted a total of 9 MHA monitoring visits to the following trust wards in 2016/17:

- Amber Ward (06/07/2016);
- Emerald Ward (11/07/2016);
- Malachite Ward (12/10/2016);
- Jade Ward (13/10/2016);
- Dunkley Ward (27/10/2016);
- Montagu Ward (17/01/2017);
- Pearl Ward (20/01/2017);
- Rosewood Ward (02/03/2017); and
- Coral Ward (09/03/2017).

The table below sets out the issues identified by the CQC on their ward visits:

DOMAIN AREA	Amber	Emerald	Malachite	Jade	Dunkley	Montagu	Pearl	Rosewood	Coral
Care Plans	!	!	!	!	□	!	□	!	!
Section 132 Rights	!	!	□	!	!	□	!	!	!
Tribunals and hearings	NI	NI	NI	NI	NI	NI	NI	NI	NI
Leave of absence	□	□	!	!	□	!	!	□	□
Transfers	NI	NI	NI	NI	NI	NI	NI	NI	NI
Control and security	NI	NI	NI	NI	NI	NI	NI	NI	NI
Consent to treatment	!	!	□	!	!	!	!	!	!
General Healthcare	□	□	□	□	□	□	□	□	□

□ **No issue identified**

! **Issue identified**

NI **Not inspected**

The top three issues identified by the CQC are:

- Consent to treatment: patients' consent to treatment was not sought and/or capacity to consent to treatment was not tested prior to first administration of treatment (**Breach of paragraph 24.41 of the Code of Practice to the Mental Health Act**);
- Section 132 rights: evidence was found of attempts being made on the admission day to explain their rights to patients but, when unsuccessful, little evidence could be found of further attempts being made in a timely fashion (**Breach of S132 of the Mental Health Act**); and
- Care plans: patients' views were not adequately reflected and copies were not always shared with patients (**Breach of Chapter 1 of the Code of Practice to the Mental Health Act).**

The above issues have been the top three issues since the Mental Health Law Hub started reporting to the Board in 2015. The CQC findings are also corroborated by internal assurance sources (see clinical audit results at 1.6).

The Trust is planning on introducing consent to treatment and Section 132 rights key performance indicators (KPIs) for all divisions in 2017/18 to reinforce accountability of Operations and make compliance/non-compliance issues more visible.

The Trust is also planning on introducing a new approach to care planning focused on capturing patients' views in 2017/18.

2.6 MHA Related Clinical Audits

The Trust had set itself the objective to continue delivering its robust MHA audit programme in 2016/17 however only one audit was completed due to staffing issues in the Mental Health Law Hub: the Information for Detained Patients under section 132 of the MHA audit was carried out in January 2017.

The audit results show that attempts are now made to inform patients subject to the Mental Health Act in hospital of their rights in the vast majority of cases (94%) and this happens within 72hrs of a new admission in 70% of cases. However when unsuccessful, attempts are not followed up in 60% of cases, which suggests systems must be tightened up in this area. Recordings were found to be good or adequate in 77%. However the IMHA service was not referenced in 91% of cases. None of the records checked for patients subject to Community Treatment Orders showed evidence of patients being informed of their rights.

An action plan was drawn to improve performance in this area and a further audit will be carried out in 2017/18.

2.7 MHA Training

The CQC reported, following its February 2016 inspection, that *compliance with Mental Health Act (MHA) training was low with some staff not receiving any training at all in MHA. Some staff were not aware of their responsibilities under the MHA*. The Trust agreed to make MHA, MCA and DoLS training mandatory for relevant staff and to include it in Core training. This is due to be implemented in 2017/18.

The Trust is also looking to introduce an e-learning package on MHA in 2017/18.

2.8 MHA Admin Function

2.8.1 Staffing

The Trust had set itself the objective to review the structure of the Mental Health Law Hub to ensure it has the staffing capacity to meet the demands of the Mental health Act administration service. The review was completed and the need for additional resources identified. A business case was prepared by the Acting Mental Health Law Manager and the creation of an additional band 5 Mental Health Act Officer post agreed. Recruitment is due to take place in 2017/18. A further structure review shall take place in 2017/18 following the

secondment of one of the staff members to another role within the trust at the end of 2016/17.

2.8.2 Standardisation of procedures

The Trust had set itself the objective to devise Mental Health Act Administration guidelines and to explore new tools that might support MHA administration staff and create standardised systems across the Trust. Standard Operating Procedures (SOPs) were introduced in 2016/17 for the transfer of patients and the management of expiry date reminders. However the Trust is yet to develop mental health Act Administration guidelines covering all aspects of Mental Health Act administration and to standardise systems across both the Huntley Centre and the Highgate Mental Health Centre Mental Health Act offices. This work will be completed in 2017/18.

2.8.3 Service Level Agreements

The Trust had set itself the objective to explore new income generating opportunities through service level agreements (SLAs) with neighbouring acute trusts in relation to Mental Health Act administration and training. This objective was fully met as the Trust's MHA administration SLA with University College London Hospital Trust was renewed in August 2016. New SLAs were signed with the Royal Free Hospital's and the Whittington Hospital's Children and Adolescent Mental Health Services (CAMHS). The Trust has been approached by Great Ormond Street Hospital and the Whittington Hospital (non-CAMHS service) for potential SLAs.

3 Use of the Mental Capacity Act 2005 and Deprivation of Liberty Safeguards

3.1 National Context

The Supreme Court found, in the case of Cheshire West[2] in March 2014, that any person, residing in a hospital or care home, who is under ***'continuous supervision and control and not free to leave'*** is being deprived of their liberty. This has lowered the threshold of what constitutes a deprivation of liberty and has had the effect of increasing the number of applications made yearly for Deprivation of Liberty Safeguards (DoLS) made nationally from 13,000 to 113,000 representing a 872% increase.

3.2 DoLS Figures for Camden and Islington NHS Foundation

There were 24 DoLS applications in 2015/16 and 23 in 2016/17 (a 4% decrease). The Acute division made 3 applications (1 on Jade Ward, 1 on Opal Ward and 1 on Dunkley Ward – which facilitates admissions from the Learning Disability service) and the SAMH division made 20 (16 for Stacey Street and 4 on Garnet Ward).

96% of DoLS applications were granted (71% were granted last year). In the 1 instance where DoLS authority was not granted it was on the grounds that the person was objecting and the Mental Health Act was then used to detain. The Trust had set itself the target of 80% of applications being granted and has therefore not only met but also exceeded this target. This is due to excellent training take up and to DoLS procedures being embedded into clinical practice.

2 [2014] UKSC 19 - P (by his litigation friend the Official Solicitor) (Appellant) *v* Cheshire West and Chester Council and another (Respondents) P and Q (by their litigation friend, the Official Solicitor) (Appellants) *v* Surrey County Council (Respondent)

3.3 Mental Capacity Act Leadership in the Trust

A Mental Capacity Lead/Deputy Mental Health Law Manager was appointed in March 2015, as a result of the 2014 CQC inspection, with responsibility for:

- Implementing the recommendation of the CQC inspection in relation to mental health law;
- Overseeing the administration of the Mental Capacity Act 2005, Deprivation of Liberty Safeguards, other associated legislation, case law and statutory guidance;
- Acting as the point of expertise within the Trust providing support and guidance to clinicians on all aspects of the Mental Capacity Act 2005 and Deprivation of Liberty Safeguards within the framework of the Mental Health Law Hub; and
- Representing the Trust at any relevant national or regional meetings/networks in relation to the Mental Capacity Act 2005 and Deprivation of Liberty Safeguards.

This post still has a considerable portfolio of work to accomplish, and although steady progress is being made, it will be difficult to meet all objectives if funding for the post is not agreed.

3.4 MCA & DoLS Training

The Trust decided to make MCA/DoLS training mandatory in April 2015. Since then, MCA/DoLS training has formed part of the induction programme for all staff. Existing staff have been required to complete an MCA workbook. The Trust set the training compliance rate at 80%. Rates were as follows at the end of 2016/17.

Division:	Training Compliance Rate:
Acute	86.81%
Community Mental Health	83.81%
Recovery & Rehabilitation	85.41%
Services for Ageing & Mental Health	89.74%
Substance Misuse Services	81.25%
Corporate	84.42%
Total	85.89%

The Trust will be exploring alternatives to the MCA workbook and the possibility of adopting an e-learning package in 2017/18.

3.5 MCA and DoLS Reporting

The Trust EPR system cannot currently provide reports around the use of the MCA and DoLS and this data is therefore currently kept manually. Work has started on addressing this gap as part of the EPR revamp project. The Trust will be in a position to provide EPR generated reports on the use of the MCA and DoLS in 2017/18.

4 Mental Health Law Governance Arrangements within the Trust

4.1 Mental Health Law Committee

The Mental Health Law Committee has met every quarter since 2015.

The role of the Committee is to:

- have oversight and scrutiny of all issues related to Mental Health law relevant to the services and duties delivered by the Trust and its Local Authority partners;
- use internal and external legal expertise, to advise the Trust on issues related to the application of law in Trust practice, with a view to contributing towards improved risk management and service user experience;
- provide assurance to the Board, the governing body and partners, on the appropriate and effective administration and application of mental health law in practice and adherence to best practice guidance; and
- uphold and protect the rights of service users.

Four groups will report directly to the Mental Health Law Committee. These are the:

- Associate Hospital Managers Group;
- Mental Health Law Policies and Procedure Group;
- Mental Health Law Monitoring Group; and
- Mental Health Law Training Group.

All four groups were created in 2015/16 and were meant to review their terms of reference in 2016/17. This did not happen but will be done in 2017/18.

4.2 Mental Health Law Champions

The Trust had set itself the objective to create Mental Health Law champions in 2015/16 to ensure staff across the Trust are equipped with relevant MHL knowledge and skills. This objective was partially met as 9 champions were selected in the summer of 2016 (1 for each division + 4 “local” champions) and the MHL Champion initiative was launched in January 2017. The role and title of the MHL Champions is due to be reviewed in 2017/18.

5 Conclusion

Although there are still areas of concerns in terms of MHA and MCA compliance within the trust, monitoring and reporting has been strengthened and operations are being supported by the Mental Health law Hub to improve performance and address issues through the delivery of training, the provision of guidance and regular monitoring. The Trust is in a healthier position than it was 2 years ago although some work remains. The introduction of KPIs in 2017/18 should be helping to close the gaps in areas of concern.

The following **Mental Health Law Priorities** are proposed for 2017/18:

- Successfully recruit to vacant posts in MHL Hub;
- Devise MHA admin guidelines and standardise MHA admin systems across the Trust;
- Appoint more MHL Links to ensure staff across the trust have access to MHL advice
- Resurrect audit programme to check compliance with MHA and MCA;
- Introduce new terms of appointment for AHMs and appoint new AHMs, as required, taking BME representation into account;
- Clear backlog of AHM reviews;
- Resurrect the AHM training programme;
- Provide EPR generated reports on the use of the MCA and DoLS;
- Provide EPR generated reports on MHA and E&D characteristics;
- Meet with Advocacy Service Providers on a quarterly basis to monitor access to statutory advocacy services across the Trust;

- Introduce e-learning package on MHA to be completed by all clinical staff with service user contact as part of induction programme;
- Explore alternatives to MCA workbook currently completed by all clinical staff with service user contact as part of induction programme; and
- Deliver refresher training on the MHA, MCA and DoLS to clinical staff with service user contact as part of Core Skills training.

Appendix 1

Trust's Associate Hospital Managers List 2016/17

Lady Butterworth
Tony Bowyer
Margaret Giller
Brian Haley
Norman Hamilton
Paul Jacques
Kathleen Lee
Petra Leseberg
Peter Nevins
Alistair Nimblette
Fiona Ng
Maria Oladapo
Pamela Ormerod
Susan Plowden
John Rahman
Jennifer (Jennye) Seres
David Uzosike
Jeremy Walker
Roberta Wetherell