# BOARD OF DIRECTORS MEETING (Open)

**Date:** 13 November 2019 **Item Ref:** 18

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| **TITLE OF PAPER** | Report on the Performance and Activity of the Associate Mental Health Act Managers (AMHAMs) Quarter 2 19/20 |
| **TO BE PRESENTED BY** | Jayne Brown, Chair |
| **ACTION REQUIRED** | Members to receive the report for Information and Assurance |

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| **OUTCOME** | Members are assured the Associate Mental Health Act Managers are undertaking their functions in line with statutory requirements of the Mental Health Act 1983 (MHA) and the MHA Code of Practice 2015 and that patients' rights are thereby protected. |
| **TIMETABLE FOR DECISION** | November Board Meeting |
| **LINKS TO OTHER KEY REPORTS/ DECISIONS** | Mental Health Act Code of Practice 2015 |
| **STRATEGIC AIM STRATEGIC OBJECTIVE BAF RISK NUMBER & DESCRIPTION** | Strategic Objective A1 02: Deliver safe care at all times<br>BAF Risk: A1 02i. "Failure to deliver safe care due to insufficient numbers of appropriately trained staff".<br>BAF Risk No: A1 02ii. "Inability to provide assurance regarding improvement in the safety of patient care".<br>Strategic Objective: A1 03: Provide positive experiences and outcomes for service users.<br>BAF Risk No: A1 03 "Failure to comprehensively capture the experience of our service users and take appropriate action". |
| **LINKS TO NHS CONSTITUTION & OTHER RELEVANT FRAMEWORKS, RISK, OUTCOMES ETC** | Mental Health Act 1983 (MHA)<br>Mental Capacity Act 2005 (MCA)<br>Human Rights Act 1998 (HRA) |
| **IMPLICATIONS FOR SERVICE DELIVERY & FINANCIAL IMPACT** | To maintain standards in the implementation of the MHA and to preserve the rights of those subject to compulsion under its provisions will require on-going monitoring of procedures and practice and recommendations for changes made where necessary. |
| **CONSIDERATION OF LEGAL ISSUES** | It is a legal requirement that the Trust complies with the Mental Health Act 1983. The Associate Managers' role is concerned with patients' rights to liberty and security as afforded by the European Convention on Human Rights, Article 5. Their powers to discharge a patient from detention under the Mental Health Act protect patients from unnecessary and/or unlawful detention. |

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| **Authors of Report** | Anne Cook and Mike Haywood |
| **Designation** | Head of Mental Health Legislation and Manager - Mental Health Legislation Administration |
| **Date of Report** | 22nd October 2019 |

# SUMMARY REPORT

**Report to:** **BOARD OF DIRECTORS MEETING**

**Subject:** **Report on the Performance and Activity of the Associate Mental Health Act Managers (AMHAMs) Quarter 2 19/20**

**Authors:** **Anne Cook, Head of Mental Health Legislation (HoMHL)**
**Mike Haywood, Manager Mental Health Legislation Administration**

## 1. Purpose

| *For Approval* | *For a collective decision* | *To report progress* | *To seek input from* | *For information* | *Other (please state below)* |
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| | | | | ✓ | Assurance |

## 2. Summary

This report for the Board of Directors describes the performance and activity in respect of the Associate Mental Health Act Managers (AMHAMs) for the period July - September 2019.

The AMHAMs have directly delegated responsibility from the Board of Directors in respect of the Hospital Managers' statutory powers to discharge detained patients from detention under the Mental Health Act 1983. (MHA s23).

This report is presented as evidence that the requirements of the Mental Health Act and its Code of Practice are met in respect of the Board's responsibilities with regard to the appointment, training and delegated duties of the AMHAMs. Please see Appendix 3, paragraph 1.

It was reviewed and the content agreed on Wednesday 16th October 2019 at the AMHAM Quarter 2 meeting, chaired by Jayne Brown,Trust Chair.

The report is presented under the following headings:

1. Number and Availability of AMHAMs
2. Peer Performance Reviews
3. Training and Development
4. Themes from the Quarterly Meeting
5. Responses to Matters Raised at the Quarterly Meeting
6. AMHAM Activity and MHA data
7. AMHAM feedback

Appendix 1 - The Legal Status of the AMHAMs and Hospital Managers' functions and duties with regard to reviewing detention or CTO (Delegated to AMHAMs).

Appendix 2 – Key to MHA sections.

Appendix 3 – AMHAM Duties and the MHA Code of Practice 2015

## 3. Next Steps

3.1 To continue to report on the performance and activity of the AMHAMs each quarter.
3.2 Keep the numbers of AMHAMs under review.
3.3 Keep hearing adjournments and the reason(s) for under review.
3.4 Review AMHAM training needs as per Annual Peer Reviews and develop accordingly.

## 4. Required Action

Board members are informed and assured of the role and performance of the AMHAMs in Q2.

## 5. Monitoring Arrangements

Via the Board of Directors and supported by the Mental Health Legislation Team.

## 6. Contact Details

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**Report on the Performance and Activity of the Associate Mental Health Act Managers (AMHAMs) Quarter 2 19/20**

## 1. Number and Availability of AMHAMs

Particular regard is paid to whether, as a result of AMHAM unavailability, the review of renewal of detention or extension of Community Treatment Order (CTO) occurs after the date the previous order expired: in Q2, out of a total of 29 hearings, 1 hearing took place after the expiry date, as a result of inability to convene a panel and 1 further hearing which did have a full panel was postponed at the last minute, owing to family bereavement of a panel member.

It should be noted, however, that a late review does not amount to unlawful practice. Continued detention/CTO is lawful provided that the Responsible Clinician furnishes the papers prior to the expiry of the current period.

SHSC had 18 Associate Mental Health Act Managers of different genders, ages, backgrounds and ethnicity at the end of Q2.

One is currently inactive owing to personal reasons; one has resigned having never been well enough to attend any hearings since being appointed and there has been one further resignation.

Two new applicants were appointed in Q2.

## 2. Peer Performance Reviews 2019/20

Dates for Peer Review in this financial year are being arranged for all AMHAMs.

In response to suggestions from the AMHAMs at their peer review meeting on 17th July 2019, new appointees will now receive a more detailed induction.

Documentation for an 'Admin Induction Pack' has been developed during Q2. Mike Haywood (Manager – Mental Health Legislation Administration) will undertake this part of the induction, covering practical matters such as access to hearing sites, car parking permits, expenses claims etc.

In addition, rather than waiting approximately a year for their first Peer Review, a 'foundation review' will be undertaken after a new AMHAM has attended a minimum of 3 hearings as an observer and before taking an active part on a review panel.

The foundation review will be supported by a 'Practice Induction Pack', also under development in Q2.

## 3. Training and Development

Training needs emanating from the AMHAMs' annual peer performance reviews, plus any topics identified at the quarterly peer support groups and the quarterly AMHAM meetings are reviewed by the HoMHL and incorporated into the regular bi-annual training delivered in June and December.

## 4. Key Themes from the Q1 meeting held on 17th July 2019 (ie within Q2 19/20)

The Q2 meeting was attended by 12 AMHAMs. It was chaired by Anne Cook (HoMHL) in the absence of Jayne Brown, Chair of the Board of Directors and Liz Lightbown, Executive Director of Nursing & Professions.

### 4.1 Quarterly Report to the Board – Q1 2018/19

The Q1 report was reviewed by the members. It was duly amended and approved by the meeting for presentation to the Board.

### 4.2 Review of Remuneration

The AMHAMs requested a meeting to discuss further, this took place on 2nd August 2019 between Jayne Brown and 3 AMHAM representatives.

### 4.3 AMHAM Feedback Survey Monkey

The meeting reviewed the feedback report. Several anomalies were identified, for example the number of reviews for the quarter appeared to be different for different questions

It was ascertained after the meeting that some questions had not been answered and that not all elements of the Survey Monkey were included in the report, giving rise to apparent anomalies.

The Survey Monkey has been updated to ensure that all questions must be addressed, to provide space for an explanation of any answer of 'no' (such as the reason a patient did not attend) and to provide space for an explanation of the reasons reports were found inadequate. This will be in use from Q3.

## 5. Response to Issues Raised at the Quarterly Meeting

### 5.1 Review of Remuneration

A formal response is awaited at the time of writing.

## 6 AMHAM Activity: Q2 2019/20

### 6.1 Number of Applications and Hearings – please see Appendix 3 paragraph 2

Table 1: Number of AMHAM Hearings Booked and Reason

| Reason | Q3 18/19 | Q4 18/19 | Q1 19/20 | Q2 19/20 |
|---|---|---|---|---|
| In response to patient application S3 or S37 | 0 | 1 | 0 | 2 |
| In response to patient application CTO | 1 | 0 | 0 | 1 |
| RC Renewals S3/S37 | 9 | 9 | 15 | 16 |
| RC Extension CTO | 10 | 11 | 11 | 13 |
| Barring NR | 0 | 0 | 0 | 0 |
| At Managers' Discretion | 0 | 0 | 0 | 0 |
| Total applications | - | - | - | 32 |
| Quarterly Total – Completed Hearings | 20 | 21 | 26 | 29 |
| Discharged by AMHAMs | 1 | 0 | 0 | 0 |
| Hearings applied for in Q2 to be heard in Q3 | - | - | - | 3 |

Table 2: Applications to the AMHAMs

| Applications | Q3 18/19 | Q4 18/19 | Q1 19/20 | Q2 19/20 |
|---|---|---|---|---|
| Total Applications submitted | 1 | 4 | 8 | 8 |
| Inpatient applications | 0 | 4 | 7 | 7 |
| CTO applications | 1 | 0 | 1 | 1 |
| Total not proceeding to hearing | 0 | 3 | 6 | 4 |
| Reasons for not proceeding to hearing | | | | |
| Tribunal pending | - | 1 | 3 | 0 |
| Discharged by RC before hearing | - | 1 | 3 | 1 |
| Withdrawn by patient | - | 1 | 0 | 2 |
| Application considered did not proceed | - | 0 | 0 | 1* |
| Total | - | 3 | 6 | 4 |

*One hearing was not granted having been considered by the AMHAM, as the patient was too ill and it would not have been in their best interest.

There is no known reason for the variation in the number of applications, however the increased numbers in year 19/20 indicate that patients are aware of their right to apply for discharge.

The number of hearings following in-patient renewal and CTO extension necessarily reflects the number of orders reaching a trigger for renewal during the quarter (sections 3, 37 and CTOs each run for 2 consecutive 6-month periods and for 12 month periods thereafter).

Patients continue to opt for the Tribunal over the AMHAMs for consideration of discharge from detention/CTO. Both bodies have broadly similar powers to discharge patients, although legal representation is more accessible for applications to the Tribunal, as this is covered by the legal aid scheme.

For comparison, during Q2, 99 applications and automatic referrals were made to the First Tier Tribunal in respect of section 2, section 3 and CTO.

Table 3 – Applications and Referrals to the First Tier Tribunal (Mental Health):

| Type of Review | Q3 18/19 | Q4 18/19 | Q1 19/20 | Q2 19/20 |
|---|---|---|---|---|
| Applications – inpatient | 50 | 60 | 70 | 68 |
| Automatic referrals – inpatient | 4 | 6 | 13 | 14 |
| Applications – CTO | 3 | 4 | 5 | 5 |
| Automatic referrals – CTO – no application | 5 | 4 | 7 | 8 |
| Automatic referrals – CTO – revocation | 1 | 4 | 1 | 4 |
| Total | 63 | 78 | 96 | 99 |

The number of applications to the Tribunal is evidence that patients are being informed of their right to apply to challenge their detention (the right to apply to either or both the Tribunal and the AMHAMs is detailed in the same rights explanation form). Please see Appendix 3, paragraph 3

**6.2 AMHAM Hearings Taking Place Prior to Expiry –** See Appendix 3 paragraph 4

Table 4 below shows the number of hearings which have taken place prior to the expiry date, the number that have taken place up to 7 days after expiry date and the number which have taken place over 7 days after expiry.

Table 4 – AMHAM Hearings taken place in relation to expiry date:

| Quarter | Total number of hearings | Hearings before expiry date | Hearings up to 7 days after expiry date | Hearings more than 7 days after expiry date |
|---|---|---|---|---|
| Q3 18/19 | 20 | 16 | 3 | 1 |
| Q4 18/19 | 20 | 14 | 2 | 4 |
| Q1 19/20 | 26 | 16 | 5 | 5 |
| Q2 19/20 | 29 | 19 | 7 | 3 |
| **Grand Total** | 95 | 65 | 17 | 13 |

Although a review before expiry is ‘desirable’ it is not required by law, as it is the Responsible Clinician’s (RC’s) report that provides the authority for the continued detention or CTO.

During Q2, there were 29 hearings for the renewal or extension of the detention/CTO; 3 applications made towards the end of Q2 will have their hearings in Q3.

- 19 of the 29 took place before the expiry date
- 7 of the 29 took place within 7 days of expiry
- 3 of the 29 took place more than 7 days after expiry

### 6.3 Reasons for AMHAM Hearings Not Taking Place Prior to Expiry

Table 5

| Reason | Q3 18/19 | Q4 18/19 | Q1 19/20 | Q2 19/20 |
|---|---|---|---|---|
| Hearing not booked prior to expiry known unavailability of AMHAMs | - | 0 | 2 | 0 |
| Hearing originally booked prior to expiry unavailability of AMHAMs (unable to convene a panel) | - | 1 | 0 | 1 |
| Date up to 7 days after expiry is earliest RC is available | - | - | 5 | 7 |
| Hearing adjourned | 2 | 1 | 0 | 1 |
| Hearing not booked prior to expiry known unavailability of RC | - | 0 | 0 | 1 |
| Hearing originally booked prior to expiry - RC cancelled (RC sick) | 1 | 2 | 1 | 0 |
| Hearing booked prior to expiry - AMHAM withdrew | - | 1 | 2 | 0 |
| Patient wished to attend hearing but refused to attend on a Thursday (see below) | - | 1 | - | 0 |
| Total | 3 | 6 | 10 | 10 |

One hearing in Q2 was 42 days over the expiry date. The hearing had been listed 4 times, but on the first 3 occasions the RC was on sick leave

None of the patients who had a hearing after the expiry date went on to be discharged at their hearing.

### 6.4 Number of Hearings Adjourned - See Appendix 3 paragraph 5

Table 6

| Adjournments and Reason | Q3 18/19 | Q4 18/19 | Q1 19/20 | Q2 19/20 |
|---|---|---|---|---|
| Total Adjourned | 2 | 1 | 0 | 1 |
| Number with reason recorded on report | 2 | 1 | - | 1 |
| Patient not present | 0 | 0 | - | 0 |
| Relevant staff not present | 1 | 1 | - | 1 |
| AMHAM not present | 1 | 0 | - | 0 |

One hearing in Q2 was adjourned as the patient would not attend the hearing without an Independent Mental Health Advocate (IMHA) present.

On further investigation, the Independent Mental Health Advocacy (IMHA) service confirmed that they did not have an episode open to the patient. A new hearing was booked at earliest opportunity and will be held early October with IMHA attendance.

Please note that where the number of reasons is greater than the number of adjournments more than one reason has been given. Panels must consist of 3 or more members in order to consider discharge (s23(4) MHA). Therefore; it is unlawful to proceed with only 2 members.

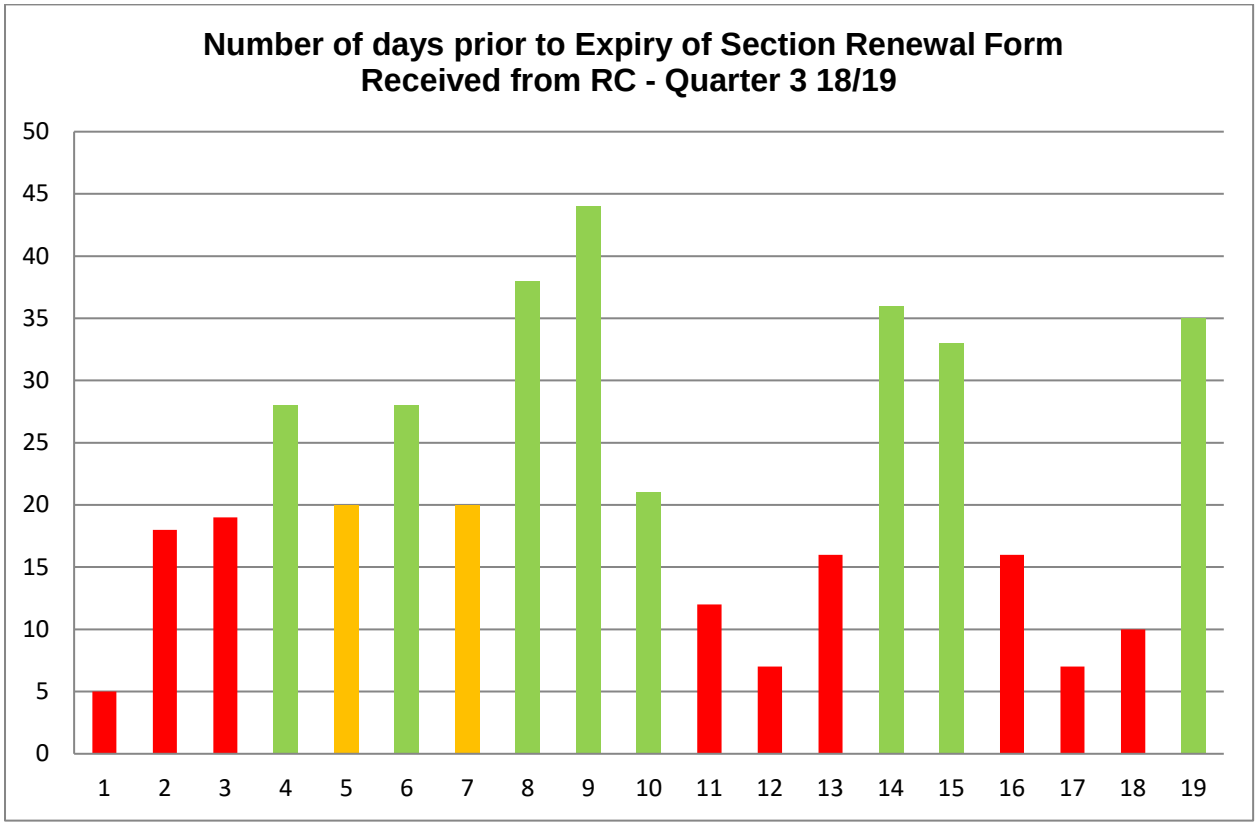
There was no negative impact as a result of these adjournments. Detention continued lawfully until a re-arranged review, and no patient was discharged at a re-arranged review.

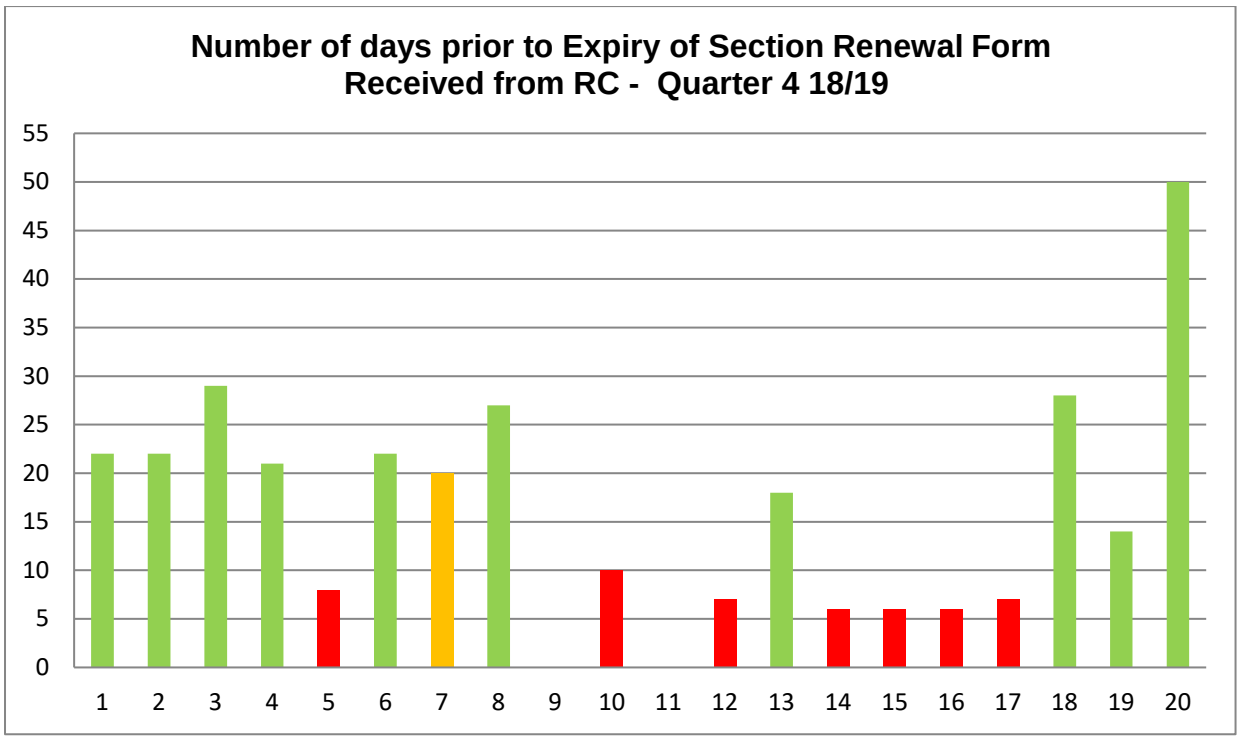
### 6.5 Responsible Clinician (RC) Response to Notification of Renewal/Extension

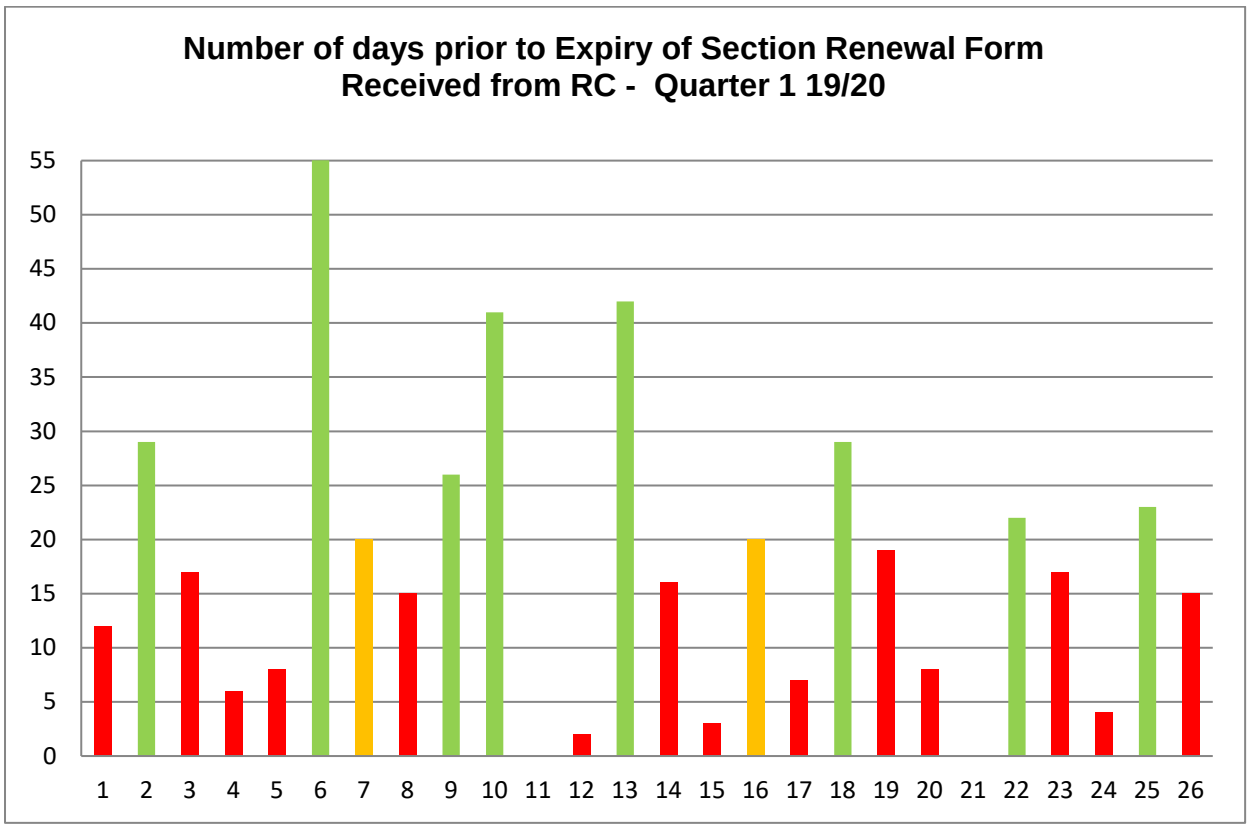
Please see Appendix 3 paragraph 6.

The graphs below show the number of days on the vertical axis; the horizontal axis shows individual renewals/extensions.

Green indicates renewal reports received 21 or more days prior to expiry of the current order; amber indicates reports received at 20 days; red on the graph indicates reports received less than 21 days prior to expiry; a blank indicates that reports were provided on the day of the hearing.




Number of days prior to Expiry of Section Renewal Form Received from RC - Quarter 4 18/19
55
50
45
40
35
30
25
20
15
10
5
0
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20


Number of days prior to Expiry of Section Renewal Form Received from RC - Quarter 1 19/20
55
50
45
40
35
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20
15
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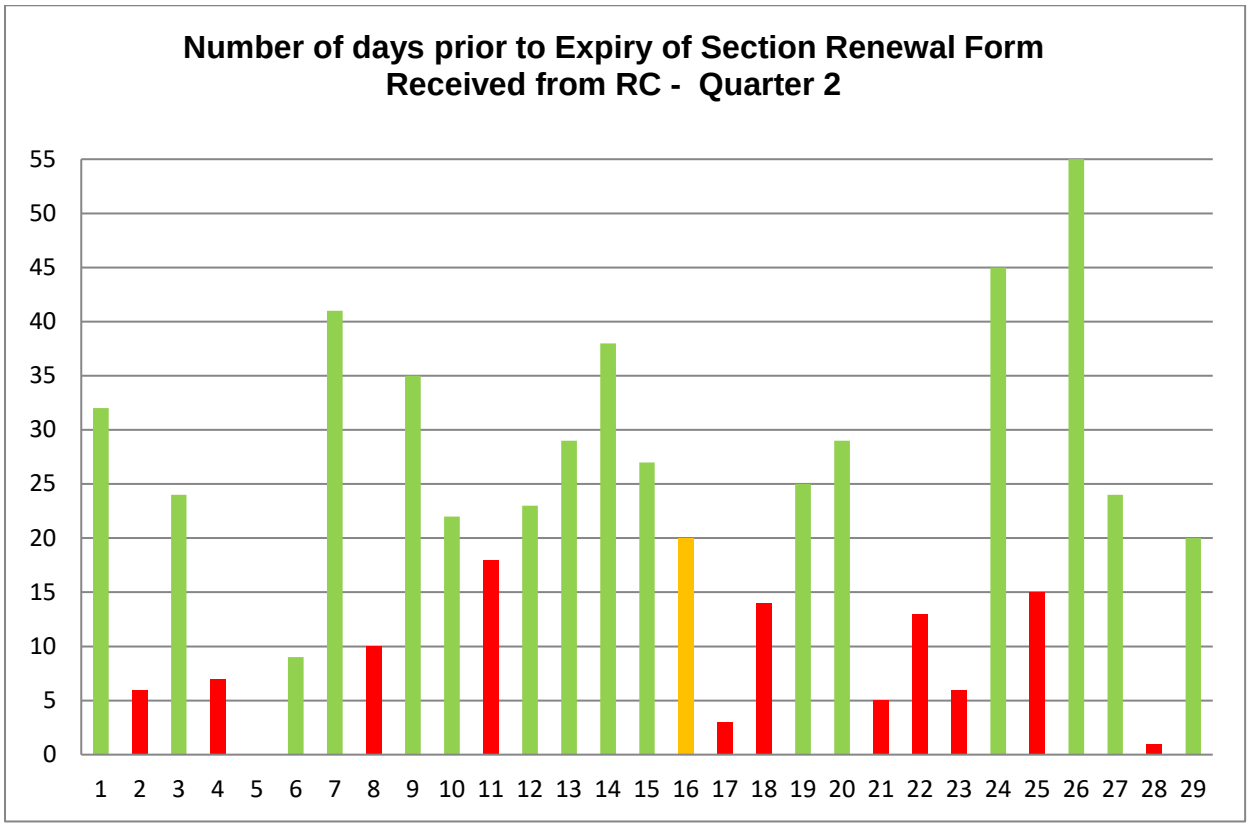
0
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26




In Q3 18/19, 42% of renewal documentation was received within 21 days.

In Q4 18/19, 10 renewal forms out of 20 were provided within the 21 day deadline (50%), and 1 at 20 days (total 20 days or less = 55%). However, there were 2 occasions when the renewal form was received on the day of expiry. These show with no coloured bar on the Q4 graph below, and bring the total missing the 21-day deadline to 9 of the 20 renewal hearings (45%). 6 of the 20 hearings took place after the previous expiry date (30%).

In Q1 19/20, 8 reports (30.7% - green) were received with 21 or more days left before expiry, and a further 2 (7.6% amber) were received at 20 days.

14 reports (53.8% – red) were received less than 20 days prior to expiry. 2 reports (7.6%) were not furnished until the day of the hearing.

In Q2 19/20, 16 of 29 renewal reports (55%) were provided in line with the 21 day deadline; a further report was received at 20 days (58.6% of reports received 20+ days before the deadline). 1 report was not furnished until the day of the hearing and 1 was received the day before the hearing.

## 7 AMHAM Feedback

The AMHAMs fed back that 2 of the written reports for in-patient hearings and 1 of the written reports for CTO were inadequate, however 100% of oral reports were adequate for both in-patient and CTO hearings.

47% of in-patients and 71% of CTO patients did not attend their hearing. The reason was generally that they simply declined to attend, although it was noted that the patient was too ill or would find the process too distressing.

50% of patients who did not attend the hearing were invited to speak to a panel member before the hearing. The reasons for not meeting are listed as:

- Too distressing according to IMHA and Consultant
- Patient refused to talk or meet with the panel
- The ward asked the patient and the patient did not respond to the request

38% of inpatient hearings and 35% of CTO hearings started late.

In general, late starts were caused by participants arriving late. This usually involved staff and/or the patient; on one occasion the panel encountered difficulty accessing the ward; the reception desk was not staffed at the time and panel members were unable therefore to communicate easily with the ward.

Appendix 1

## The Legal Status of the AMHAMs and Hospital Managers' Functions and Duties with regard to Reviewing Detention or CTO (Delegated to AMHAMs)

In England, NHS Trusts and NHS Foundation Trusts are themselves defined as the 'hospital managers' for the purposes of the MHA. Mental Health Act Code of Practice (2015), Chapter 37.2. (Hereafter: CoP).

Hospital managers have the authority to detain patients under the Mental Health Act 1983 (MHA), and Section 23 of the MHA gives the Hospital Managers the power to discharge patients from detention in hospital under most sections of the MHA and from compulsory powers in the community under a Community Treatment Order (CTO).

In practice, this power of discharge is delegated to managers' panels made up of people appointed specifically for the purpose who are not officers or employees of the Trust: the Associate Mental Health Act Managers (AMHAMs). The payment of a fee for serving on a panel does not constitute 'employment'. (MHACoP Chapter 38.6).

The independent status of AMHAMs is confirmed in case law: *South Staffordshire and Shropshire Healthcare NHS Foundation Trust v The Hospital Managers of St George's Hospital* [2016] EWHC 1196 (Admin).

An AMHAM panel must be made up of at least 3 people. If more than 3 sit, at least 3 are required to agree the decision to discharge a patient from detention, ie a 3-person panel must be unanimous, see *R (Tagoe-Thompson) v The Hospital Managers of the Park Royal Centre [2003] EWCA Civ 330*, where the judge ruled "… in circumstances in which the members are laymen, may not be directors of the trust and whose expertise may be limited, a finding that the affirmative view of at least three of them is required to override the opinion of the [RC] and authorise release."

This is in contrast to the First Tier Tribunal (Mental Health) where a majority decision is sufficient. *South Staffordshire and Shropshire* confirms that 'a panel of Hospital Managers has equal standing when ordering a patient's discharge to that of a tribunal operating under [MHA] s72'. However, because the Hospital Managers (through the AMHAMs) are one of the parties to the hearing, only the Tribunal (as an independent expert body) constitutes a court in satisfaction of Article 5(4) of the European Convention on Human Rights (ECHR).[1]

Hospital Managers' functions and duties with regard to reviewing detention or CTO

The Mental Health Act Code of Practice (CoP) informs all practice under the Act. The CoP defines the terms 'must', 'should' and 'may': 'must' reflect legal requirements and permits no exceptions; 'should' requires that any exceptions should be documented and recorded including the reason, which must be sufficient to withstand judicial scrutiny; 'may' reflects good practice, but exceptions are permitted.

[1] ECHR Article 5(4) - Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

CoP Chapter 38.12 describes the functions of the Hospital Managers.

The hospital managers (via the AMHAMs):

- may undertake a review of whether or not a patient should be discharged at any time at their discretion.

- must undertake a review if the patient's responsible clinician submits a report to them under section 20 of the MHA renewing detention or under section 20A extending the CTO.

- should consider holding a review when they receive a request for discharge from a patient.

- should consider holding a review when the responsible clinician makes a report to them under MHA section 25 barring an order by the nearest relative to discharge a patient. Barring can only occur if the patient 'if discharged, would be likely to act in a manner dangerous to other persons or to himself'. (MHA 1983, s25(1), see also key to sections below).

The CoP determines the questions the AMHAM panel should address in order to satisfy itself that the criteria for detention (or, following a barring order, dangerousness) are met, and the order in which they should be addressed. If three or more members of the panel (panels normally have three members) who between them make up a majority are satisfied by the evidence presented that the answer to any of the prescribed questions is 'no' the patient should be discharged.

If there is a divergence of views among the professionals about whether the patient meets the clinical grounds for continued detention or CTO, AMHAM panels should reach an independent judgement based on the evidence that they hear. In all cases, the hospital managers (via the AMHAMs) have discretion to discharge patients even if the criteria for detention or CTO are met, if there is a less restrictive (safe) alternative.

In respect of s25 barring orders, AMHAMs need to demonstrate in their written decisions that they have considered both the dangerousness issue and whether any exceptional reasons to continue detention exist in its absence.

Other than the order of proceedings laid out in the CoP (as above) there is no formal procedure for AMHAM hearings and no explicit requirement for there to be a hearing at all. The MHA manual states that in circumstances where the patient makes repeated applications to the AMHAMs, or if s/he does not wish to contest the renewal of detention or extension of CTO, or if the application is made immediately after an unsuccessful Tribunal and there has been no change in the patient's circumstances, the review could be limited to consideration of the written reports and an interview with the patient. (Richard Jones, MHA Manual 20th ed, p192).

It is of note that it is the practice of SHSC to hold a full hearing, taking evidence from the RC, care co-ordinator etc. in the event of extension of a CTO. This is in contrast to the practice of some other providers which, in common with the practice of the Tribunal, undertake 'paper' reviews if a capacitous patient does not elect to attend a hearing following renewal.

Appendix 2

**Key to Sections** NB: This is not an exhaustive list of sections

| Section | Purpose | Made By | Length of Time | Can be renewed |
|---|---|---|---|---|
| 2 | Admission for assessment or assessment followed by treatment | 2 Doctors and 1 Approved Mental Health Professional/Nearest Relative | 28 days | No |
| 3 | Admission for treatment | 2 Doctors and 1 Approved Mental Health Professional/Nearest Relative | Initially up to 6 months | Can be renewed for a further 6 months then yearly – no limit to number of renewals |
| 4 | Admission for assessment in cases of emergency | 1 Doctor and 1 Approved Mental Health Professional/Nearest Relative | 72 hours | No – but if a second medical recommendation is received within the 72 it is then converted to a section 2 |
| 5(4) | Nurses Holding power | Nurse | 6 hours | No - is used to prevent someone already an inpatient from discharging themselves until a doctor can assess |
| 5(2) | Doctors Holding power | Doctor in Charge of the care or nominated deputy | 72 hours | No – completed by the doctor to prevent someone from discharging themselves while waiting for a MHA assessment |
| 25 Barring Order | A patient's legal 'Nearest Relative' (NR - defined at MHA s26) has the power to apply to the hospital managers for the patient's detention under the MHA (the function more usually carried out by the Approved Mental Health Professional or AMHP). There is a corresponding power for the NR to order discharge, which may only be barred by the responsible clinician on the grounds (extra to the criteria for on-going detention) that the patient 'if discharged, would be likely to act in a manner dangerous to other persons or to himself'. The 'dangerousness' criterion does not feature elsewhere in the MHA. | | | |
| 37 | Hospital Order | Magistrates or Crown Court | Initially up to 6 months | Can be renewed for a further 6 months then yearly - no limit to number of renewals |
| 38 | Interim Hospital Order | Magistrates or Crown Court | For a period not exceeding 12 weeks | Can be renewed for further periods of not more than 28days up to a total of 12 months |
| 47/49 | Transfer of direction from Prison to Hospital with restrictions – sentenced prisoner | Ministry of Justice | No time limit although the restrictions would end when the prison would have ended | |
| 48/48 | Urgent transfer of direction from Prison to Hospital with restrictions – other prisoners (usually remanded) | Ministry of Justice | No time limit, but patient should return to criminal justice process ASAP | |
| CTO | Community Treatment Order | Responsible Clinician and Approved Mental Health Professional | Initially up to 6 months | Can be renewed for a further 6 months then yearly - no limit to number of renewals |
| Section 136 | Place of Safety | Police | 72 hours | No but MHA assessment must be carried out within this time |

Appendix 3

## AMHAM duties and the MHA Code of Practice 2015

1. [The] board (…) of the organisation should ensure that the people appointed properly understand their role and the working of the Act. [It] should ensure that people appointed to a managers' panel receive suitable training to understand the law, work with patients and professionals, to be able to reach sound judgements and properly record their decisions. This should include training or development in understanding risk assessment and risk management reports, and the need to consider the views of patients, and if the patient agrees, their nearest relative, and if different, carer. (MHA Code of Practice 2015 Chapter 38.8)

2. AMHAM hearings take place for one of the following four reasons:

    - The patient has applied for a hearing
    - The RC has renewed the detention or extended the CTO
    - The RC has issued a certificate barring the nearest relative (NR) from discharging the detention/CTO
    - A hearing at the Managers discretion

3. Tribunals: In contrast to the automatic review of detention/CTO undertaken by the AMHAMs, the Tribunal does not consider renewals automatically; renewal brings with it a right to apply to the Tribunal during the new period of detention. The Trust must make automatic referrals in specific circumstances in order to protect patient rights under Human rights legislation.

4. Hearings before Expiry: The MHA CoP 38.14 states 'Before the current period of detention or the CTO ends, it is desirable that a managers' panel considers a report made under section 20 or section 20A and decides whether to exercise its discharge power'. Section 20 MHA provides the authority to renew sections 3 and 37. Section 20A provides the authority to extend the Community Treatment Order.

5. Adjourning Hearings: MHA CoP 38.37 states: (…) If there is a divergence of views among the professionals about whether the patient meets the clinical grounds for continued detention or CTO, managers' panels should reach an independent judgement based on the evidence that they hear. (..) *In some cases, it might be necessary to consider adjourning to seek further medical or other professional advice.*

    When deciding to adjourn the managers must give adequate reasons. They should take into account that the person remains subject to compulsion and therefore to adjourn may not be the least restrictive option. Before adjourning because a member of the care team is not present the mangers should review the written reports, question the professional present and only adjourn if the evidence presented is not sufficient to reach a decision.

Renewal Timetable Notification of the renewal/extension due date is issued from the MHA office to the RC at least 7 weeks prior to the current order expiring, with a request for the return of the completed document at least 21 days prior to expiry. A reminder is issued 3 weeks prior to expiry. The hearing date is booked at the start of the process (7 weeks' notice) but cannot go ahead if the renewal form has not been completed.