

# **Mental Health Act Annual Statement January 2011**

## **Winterbourne View (Castlebeck)**

### **Executive Summary**

This Annual Statement reflects the findings of the visiting Mental Health Act (MHA) Commissioner in the period between 18 June 2009 and 25 September 2010. Where appropriate this Annual Statement includes consideration of the responses given by the provider to those visits. During the reporting period the Care Quality Commission (CQC) has visited Winterbourne View on two occasions and on these occasions there were 15 and 13 detained patients cared for respectively.

The CQC is pleased to note that the unit continues to provide a good level of quality care to the patient group cared for and the staff are enthusiastic and caring. However, there are some deficits in the delivery of service under the Mental Health Act 1983 afforded to those detained under the Mental Health Act. Listed below is a summary statement of these issues:

- The provider is required to review its ability to make certain that the individual and/or committee responsible for monitoring their duties under the Mental Health Act and all operational matters in so far as the documentation and training requirements of both the medical and nursing staff are met, specifically in relation to the reporting and review of all serious untoward incidents.
- The provider is required to ensure that rights under section 132 for patients' subsequent detention are repeated and the frequency for the giving of rights is consistent.
- The provider is required to review the current process for access and filing of relevant Mental Health Act documents and to ensure forms which are no longer applicable are clearly cancelled out and filed appropriately.
- The provider is required to continue to ensure that robust service protocols and procedures and ongoing staff training are maintained, to promote Deprivation of Liberty Safeguards (DoLS) and Independent Mental Health Advocacy (IMHA) access.
- The provider is required to ensure all service users are encouraged or offered the opportunity to actively participate in their individual treatment plans.
- The CQC is impressed with the diligence of the managers under the Mental Health Act in ensuring that all detentions are lawful and for the timely review of renewals of detention or at the patient's request. There is also very clear recorded evidence by the Responsible Clinician (RC) of discussions with the patient around capacity and consent and post Second Opinion Appointed Doctor (SOAD) visits.

## **Background Organisational Changes and Main Findings**

Winterbourne View is a 24-bed purpose designed Assessment and Treatment Unit in the South West operated by Castlebeck, an independent provider of healthcare and support for adults with learning disabilities, complex needs and challenging behaviour, including those liable to be detained under the Mental Health Act 1983.

Referrals are accepted from across the United Kingdom. The Multi-Disciplinary team is supported by specialised nursing and care staff including psychologist and 24 hour consultant psychiatrist cover.

The Unit recently changed the approach to its admission and assessment pathway by moving on patients who were progressing to a separate floor within the unit thus offering them more flexibility and those requiring a higher level of care are supported on another floor of the building. The provider's view is this enables patients to have a perspective of the progress they have achieved in their care pathway.

In August 2009, a step down unit Rose Villa became operational and nine of the patients from Winterbourne View were transferred over. This service also allows for some people who were detained under the Mental Health Act to be treated in the community on a Community Treatment Order.

The following points highlight those Mental Health Act issues raised by MHA Commissioners on visits and is drawn from the data presented in annex A. The detailed evidence to support them has already been shared with the provider through the feedback summaries and is not repeated here. For further discussion about the findings of this Annual Statement please contact the author via the Care Quality Commission's Mental Health Operations office located at The Belgrave Centre, Nottingham.

## **Relationships with the Provider in the reporting period**

The provider continues to demonstrate a commitment to responding positively to Issues raised by the CQC as a result of visiting activity. Relations between MHA Commissioners, senior managers and clinicians have remained constructive throughout the reporting period. The provider received the CQC Annual Statement in 2009 positively and an energetic action plan was published. This has been monitored by the MHA Commissioner on their visits during the reporting period and some progress noted in a number of areas.

## **Mental Health Act and Code of Practice Issues**

In comparison to the CQC's 2009 Annual Statement, the 2010 report has identified some anomalies in the discharge of its operational duties under the Mental Health Act and the CQC wishes to remind the provider that the revised Code of Practice is more robust than the previous one and states:

"The reasons for any departure [from the CoP] should be recorded. Departures from the Code could give rise to legal challenge, and a court, in reviewing any departure

from the Code, will scrutinise the reasons for the departure to ensure that there is sufficiently convincing justification in the circumstances.”

### **De Facto Detention**

*Concerns in this area may contribute to an understanding of the CQC's evaluation of the Provider's compliance with the Essential Standards of Safety and Quality Regulatory Outcome 7L*

The provider is asked to consider the following guidance in the Code of Practice, as the view of the MHA Commissioner was that information for informal patients was insufficient at Winterbourne View, where patients had to ask permission to leave the ward.

Paragraph 21.36 of the Code of Practice refers:

“Patients who are not legally detained in hospital have the right to leave at any time. They cannot be required to ask permission to do so, but may be asked to inform staff when they wish to leave the ward.”

### **Consent to Treatment**

*Concerns in this area may contribute to an understanding of the CQC's evaluation of the Provider's compliance with the Essential Standards of Safety and Quality Regulatory Outcome 2c and 9E*

The CQC is pleased to note that there is clear recorded evidence from the RC that discussions around capacity and consent and post SOAD visits occur.

### **Section 117 / Care Programme Approach (CPA)**

*Concerns in this area may contribute to an understanding of the CQC's evaluation of the Provider's compliance with the Essential Standards of Safety and Quality Regulatory Outcome 4A and 4R*

The CQC is pleased to note that staff continue to place great emphasis on encouraging active participation with patients in the formulation of patient centred care plans and CPAs. However, from the CQC's perspective following interviews with patients on the unit, this is an area that requires further review and development.

### **Section 130A – Independent Mental Health Advocacy (IMHA)**

*Concerns in this area may contribute to an understanding of the CQC's evaluation of the Provider's compliance with the Essential Standards of Safety and Quality Regulatory Outcome 1A*

The CQC was informed that the IMHA and Independent Mental Capacity Advocate (IMCA) services were much more widely advertised. However, it requires the provider ensures the appropriate training and more importantly, their staff's understanding of these provisions are further enhanced.

### **Section 132 – Information to Patients**

*The Essential Standards of Safety and Quality Concerns in this area may contribute to an understanding of the CQC's evaluation of the Provider's compliance with Regulatory Outcome 1A*

This is an area that was identified with inconsistency and limited frequency. The Code of Practice, paragraph 2.9 refer “Information must be given to the patient both orally and in writing. These are not alternatives. Those providing information to patients should ensure that all relevant information is conveyed in a way that the patient understands.”

## **Environment**

The environment is clean and well maintained with very good personal and recreational facilities made available. However, some of the furnishing and décor in the patient bedrooms and other areas requires upgrading.

## **Privacy**

*Concerns in this area may contribute to an understanding of the CQC's evaluation of the Provider's compliance with the Essential Standards of Safety and Quality Regulatory Outcome 1A, 10F, 10M*

There are available gender separate sleeping areas and all bedrooms have en-suite facilities.

## **Recommendations and Actions Required**

MHA Commissioners will continue to visit the provider sites to monitor the operation of the Mental Health Act and to meet with detained patients in private. Particular attention will be given, while carrying out the visiting programme, to those areas recommended for action in this Annual Statement. Recommendations for action are as follows:

- The CQC advises that the provider considers what steps it needs to take to ensure greater compliance with those aspects of the Mental Health Act and the Code of Practice which CQC visits are still highlighting for attention and these issues relate to the recording of the presentation of section 132 rights and the dissemination of information on the IMHA service.
- The CQC requires the provider to consider how patients can participate more meaningfully in the care planning process and what procedures will be put in place to record patient involvement in their individual care pathway.
- The CQC suggests that the provider considers whether a training need is identified for staff in respect of their knowledge of their obligations and duties under the Mental Health Act, DoLS and the role of an IMHA.
- The provider is asked to consider whether the procedures that are in place and the information provided for informal patients are sufficient to ensure that the rights of these patients are not compromised when they wish to leave the ward.

## Annex A

The quantitative data will only apply to visits completed from April 1 2010 which is the time that the new forms data started to be captured uniformly.

### Commission Visit Information Winterbourne View from 18/06/2010 to 25/09/2010

Date	Ward	Det. Pats seen	Pats in groups	Records checked
<b>Winterbourne View</b>				
25/09/2010	Winterbourne View	4	0	6
<b>Totals for Winterbourne View</b>		<b>4</b>	<b>0</b>	<b>6</b>
Total Number of Visits: 1				
Total Number of Patients Seen: 4				
Total Number of Documents Checked: 6				
Total Number of Wards Visited: 1				

<b>Findings from Visits - Environment and Culture:</b>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
If the door is locked is there evidence that informal patients are informed of their right to leave the ward and given the means to do so?	1	0	0
Are you satisfied that there is evidence that informal patients are free to leave the ward in line with legal requirements?	1	0	0
Do patients have the ability to lock their rooms securely and the means to do so? [answer no if in dormitories]	1	0	0
Do patients have lockable space which they can control?	1	0	0
Are arrangements to cover viewing panels in bedroom doors adequate to protect patient privacy?	0	0	1
Are curtains or other window coverings in patient bedrooms adequate to protect privacy from people outside the ward?	1	0	0
Does the ward provide single gender sleeping areas, toilets, bathrooms and lounges?	1	0	0
Is there a ward phone for patients' use?	1	0	0
Is it placed in a location which provides privacy?	1	0	0
Are there any circumstances under which patients may have their mobile phones? [answer N/A if HSH]	1	0	0
Do patients have an opportunity to participate in influencing the ward they are on via such mechanisms as community meetings, patients' councils etc?	1	0	0

<b>Findings From Document Checks</b>	<b>YES</b>	<b>NO</b>	<b>N/A</b>
Were the detention papers available for inspection? Did the detention appear lawful	5	1	0
Was there either an interim or a full AMHP report on file?	5	1	0
If the NR was identified was s/he consulted, If there was no consultation, were reasons given?	5	0	1
Where appropriate was all psychotropic medication covered by a T2 and/or T3?	5	0	1
Was there evidence a capacity assessment at the time of first administration of medication following detention?	5	0	1
Was there evidence a discussion about consent at the time of first administration of medication following detention?	5	0	1
Was there a record of the patient's capacity to consent at 3 months?	5	0	1
Was there a record of a meaningful discussion about consent between the AC and the patient at 3 months?	5	0	1
Was there evidence that the RC had advised the patient of the outcome of the SOAD visit or an explanation why not?	1	1	4

Was there evidence of discussions about rights on first detention and an assessment of the patient's level of understanding?	5	1	0	
Was there evidence of further attempts to explain rights where necessary?	5	1	0	
Was there evidence of continuing explanations for longer stay patients?	1	5	0	
Is there evidence that the patient was informed of his/her right to an IMHA?	1	5	0	
Are the patient's own views recorded on a range of care planning tools?	6	0	0	
Was there evidence that the patient was given a copy of their care plan?	6	0	0	
Is there evidence that the patient signed / refused to sign their care plan	6	0	0	
Was there evidence of care plans being individualised, holistic, regularly reviewed and evaluated?	6	0	0	
Is there evidence of an up to date risk assessment and risk management plan?	6	0	0	
Is there evidence that discharge planning is included in the care plan?	6	0	0	
Were all superseded Section 17 leave forms struck through or removed?	6	0	0	
Was there evidence that the patient had been given a copy of the section 17 leave form?	0	6	0	
Are the timescales, frequency and conditions for the use of leave unambiguously specified?	0	6	0	
For patients in hospital less than a year, is there evidence of a physical health check on admission?	6	0	0	
For patients in hospital over than a year, is there evidence of a physical health check within the last 12 months?	5	0	1	
<b>Enter 0 for none, 1 for one consultee, 2 for both consultees and n/a if no T3</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>N/A</b>
If the patient's medication was authorised on a T3, was there a record of the discussion between the SOAD and the statutory consultees [enter 0 for none, 1 for one consultee, 2 for both consultees, and n/a if no T3]?	0	0	3	3

## **Annex B – CQC Methodology**

The CQC visits all places where patients are detained under the Mental Health Act 1983. MHA Commissioners meet and talk with detained patients in private and also talk with staff and managers about how services are provided. Since November 2008, MHA Commissioners have also been meeting with patients who are subject to Community Treatment Orders. As part of the routine visit programme information is recorded relating to:

- Basic factual details for each ward visited, including function, bed occupancy, staffing, and the age range, ethnicity and gender of detained patients.
- Ward environment and culture, including physical environment, rights to leave, patient privacy and dignity, gender separation, choice/access to services/therapies, communication facilities, physical health checks, food, and staff/patient ratios, smoking facilities, staff patient engagement, diversity and cultural sensitivity, cleanliness and upkeep of the ward, fresh air and exercise, physical safety and environmental risks.
- Issues raised by patients and patient views of the service provided, from both private conversations with detained patients and any other patient contacts made during the course of the visit.
- Legal and other statutory matters, including assessing the providers compliance with the Mental Health Act 1983 and the Code of Practice including scrutinising the supporting documentation, records, policies and systems. The MHA Commissioner reviews the basis and evidence of detention, including compliance with sections 132, 132a (information to the detained patient about their rights), section 58 and 58A (consent to treatment), the provision of the Independent Mental Health Advocacy (IMHA) service, the use of the Mental Capacity Act Deprivation of Liberty safeguards, section 17 and 17A (leave and Community Treatment Orders) and reviews the evidence of the patient's participation in their treatment by reference to the CPA documentation. The patient's access to physical care and treatment is also assessed.

At the end of each visit a "feedback summary" is issued to the provider identifying any areas requiring attention. The summary may also include observations about service developments and / or good practice. Areas requiring attention are listed and the provider is asked to respond stating what action has been taken. The response is assessed and followed up if further information is required. The information is used by the CQC to inform the process of registration and ongoing compliance with the outcomes and essential standards of safety and quality in accordance with the Health and Social Care Act 2008.