Policy and Sustainability Committee

10am, Tuesday 3 August 2021

Edinburgh response to the Mental Welfare Commissions Report - Authority to Discharge

Executive/routine
Wards
Council Commitments

1. Recommendations

1.1 It is recommended that the Policy and Sustainability Committee:

1.1.1 Note the response from the Chief Officer of the Edinburgh Integration Joint Board and the Chief Social Work Officer for Edinburgh to the findings and improvements recommended by the Mental Welfare Commission's report named above.

1.1.2 Note the detail, including numbers and timescales, for the completion of an additional audit of Edinburgh cases to ensure a rigorous improvement plan for the city

Judith Proctor

Chief Officer, Edinburgh Integration Joint Board

Contact: Colin Beck, Strategic Planning and Quality Manager – Mental Health

E-mail: Colin.Beck@edinburgh.gov.uk

EDINBVRGH
THE CITY OF EDINBURGH COUNCIL

Report

Response to the Mental Welfare Commission Report – Authority to Discharge (published 5 May 2021)

2. Executive Summary

2.1 On 5 May 2021, the Mental Welfare Commission (MWC) for Scotland published a report titled – Authority to Discharge. The report contains a series of improvement actions for Health Boards and Health and Social Care Partnerships (HSCPs).

2.2 The Edinburgh Health and Social Care Partnership (EHSCP) and the Chief Social Work Officer, are leading work to implement the recommended improvements. In addition, EHSCP, in conjunction with the Chief Social Work Officers Quality Assurance service would like to build on the scrutiny applied by the MWC by conducting an additional internal audit. This audit will ensure that our plans for improvement are fully informed by an extensive evaluation of practice in response to the impact of Covid-19.

2.3 Subsequently a motion was submitted to the City of Edinburgh Council meeting on 24 June 2021 from Cllr Howie and Cllr Doggart with a coalition amendment approved requesting;

2.4 a summary report in one cycle to the Policy and Sustainability Committee that included:

2.4.1 The number, under each category included in the MWCS report, of a summary of the authorities to discharge for all patients since the start of the pandemic;

2.4.2 Confirmation that all relevant EHSCP staff had received training in respect of current policies and procedures, including specific detail surrounding the legality of Power of Attorney and its role in decision making;

2.4.3 Realistic and achievable timescales to carry out a proportionate and robust review of all cases over the past 16 months to assure ourselves of processes over the extraordinary period of time of the pandemic, setting out current resource requirements in continuing to deal with the pandemic to inform that timeline.

2.5 This report provides the detail requested in the motion.

3. Background

3.1 The Adults with Incapacity (Scotland) Act 2000 ('the Act') introduced a system for safeguarding the welfare and managing the finances and property of adults (age 16 and over) who lack capacity to act or make some or all decisions for themselves because of a lack of capacity. The Act allows other people to make decisions on behalf of these adults, subject to safeguards. The main groups affected include people with dementia, people with a learning disability, people with an acquired brain injury or severe and chronic mental illness, and people with a severe sensory impairment.

3.2 The MWC Authority to Discharge report acknowledges that the hospital discharge of people who may lack capacity, can be complicated and lengthy, leading to unnecessary delays in hospital. Planning discharge from hospital is therefore critical to ensuring that people leave hospital fully included in decision making, fully informed and with appropriate protection and support. For those people who do not have the capacity to fully participate in discharge planning processes, legal frameworks must be considered to ensure appropriate lawful authority and respect for the person's rights.

3.3 The principles associated with the legislation requires that any action must be the least restrictive option necessary to achieve the benefit and importantly to encourage the adult to exercise whatever skills he or she has in relation to their welfare, property or financial affairs and develop new skills where possible recognising issues of capacity are not 'all or nothing', they are decision specific.

3.4 The MWC audit focused on hospital discharges to care homes during the first months of the Westminster and Scottish Government's lockdown on 23 March 2020, in response to the Coronavirus (Covid-19) pandemic. The Coronavirus (Scotland) Act, was issued two days later.

4. Main report

4.1 During the Coronavirus pandemic, there were a number of concerns raised with the MWC regarding whether the appropriate legal authority was used to safeguard people being discharged from hospital to care homes who did not have the capacity to make an informed decision to agree to the move. The MWC undertook to make further inquiries and sought information from HSCPs across Scotland in relation to people who had moved from hospital to registered care home settings during the period 1 March 2020 – 31 May 2020. The sample size was 457 people from across Scotland, which amounted to 10% of the total number of hospital discharges to care homes for the period.

4.2 The MWC audit found that people had been moved during the sample period without the protection of legal authority. These unlawful moves (involving 20 people) took place across 11 HSCPs. Some of the moves, had been due to specific pandemic related reasons. For example, a misinterpretation that easement of 13ZA had been enacted as a result of the Coronavirus (Scotland) Act 2020 when in fact this legislation was never activated. Some moves were related to more systemic

practice issues, which represented not only a lack in clear legal authority but also as an Article 5 deprivation of liberty and a possible breach of European Convention on Human Rights (ECHR).

4.3 Edinburgh was found to have one case deemed unlawful by the MWC. This has since been reviewed and an improvement plan is now in place in response to this individual case. In addition, there is extensive work underway to complete a full training needs analysis, to deliver a training programme which enable staff to navigate the complexities of the Adults with Incapacity Act, the Mental Health Act and the Adult Support and Protection Act, including the use of Power of Attorney and 13za. Putting the protection of Human Rights at the core of all interventions. This work will also result in improvements in procedures for practice around hospital discharge and improvement in how we record, store and share information regarding capacity.

4.4 In addition to these improvements it is the view of the Chief Officer of the Edinburgh Health and Social Care Partnership and the Chief Social Work Officer that an extended and robust review will be undertaken of a sample taken from the 332 cases of hospital discharge to care homes for the period of 1st March 2020 up to 31st August 2020. It is suggested that an audit sample of 40% would allow for substantial analysis of practice within Edinburgh, which would then further inform the improvement plan.

5. Next Steps

5.1 The methodology will include the template used by the MWC, looking at hospital discharges to care homes for the time period, adults aged 16+. The methodology will also consider relevant legislation and guidance published within the Covid-19 timeline.

5.2 The audit report will be used to consider current legislative and human rights practice, any training needs across the services, highlight any reparative or remedial work required with individuals and/or their families and other quality assurance findings.

5.3 The audit template will consider identification of who may lack capacity, assessment, legal framework, the practice of promoting power of attorney or guardianship, multi-agency meetings, person and carer involvement, advocacy involvement, the role of the Mental Health Officer (MHO) the use of 13ZA and highlighting areas of good practice (audit template attached.)

5.4 A dip sample of 12 cases has been completed to understand the size and scale and to trial the audit template. The timescales involved are reliant on resources being made available for the duration of the audit. Each case file audit averages 2 hours in duration dependent on the complexity of the case, with additional time required for recording and deep dive in complex cases. There may also be a need to interview some staff associated with cases in order to better understand the decision-making process and rational. The timescale of the audit is proposed to run

from 31 July 21 until 30 October 21. The audit report should be finalised by October 21.

5.5 This completion date will be dependent on balancing the need for completion of the audit with the ongoing pressures placed on the MHO service and hospital discharge social workers. Their expertise will be required to advise the audit process however their availability will be dependent on the demand and capacity to meet ongoing statutory requirements.

6. Financial impact

6.1 The project requires a significant resource from across the Quality Assurance, and Mental Health Officer Service and where required from partners in NHS Lothian Acute Services. Transferring relevant staff resource to complete the audit may have significant impact directly on Mental Health Officer and Hospital Social Work service delivery. There may be a need to consider backfill arrangements.

7. Stakeholder/Community Impact

7.1 The improvement plan is being driven by a group of front-line managers who will consult with front line staff and seek the views of people who use the service and their carers.

8. Background reading/external references

8.1 Authority to discharge – MWC Report

9. Appendices

9.1 Appendix 1 - Terms of Reference – for the delivery of a project concerning Edinburgh's authority to discharge

9.2 Appendix 2 – Authority to Discharge Audit Template

QUALITY ASSURANCE AND COMPLIANCE SERVICE

TERMS OF REFERENCE

BETWEEN

Edinburgh' Health and Social Care Partnership

AND

Chief Social Work Officer

FOR THE DELIVERY OF A PROJECT CONCERNING EDINBURGH'S AUTHORITY TO DISCHARGE

Date: 14 July 2021

1. BACKGROUND INFORMATION

The legislative basis for this exercise is the Local Government in Scotland Act 2003, Part 1:

1 Local authorities' duty to secure best value -
(1) It is the duty of a local authority to make arrangements which secure best value.
(2) Best value is continuous improvement in the performance of the authority's functions.
(3) In securing best value, the local authority shall maintain an appropriate balance among—
(a) the quality of its performance of its functions;
(b) the cost to the authority of that performance; and
(c) the cost to persons of any service provided by it for them on a wholly or partly rechargeable basis.
https://www.legislation.gov.uk/asp/2003/1/pdfs/asp_20030001_en.pdf

The Adults with Incapacity (Scotland) Act 2000 ('the Act') introduced a system for safeguarding the welfare and managing the finances and property of adults (age 16 and over) who lack capacity to act or make some or all decisions for themselves because of mental disorder or inability to communicate due to a physical condition. It allows other people to make decisions on behalf of these adults, subject to safeguards. The main groups affected include people with dementia, people with a learning disability, people with an acquired brain injury or severe and chronic mental illness, and people with a severe sensory impairment.

Authority to Discharge, Mental Welfare Commission 2021 The discharge of patients who may lack capacity can be complicated and lengthy, leading to unnecessary delays in hospital. Planning discharge from hospital is therefore critical to ensuring that people leave hospital fully included in decision making, fully informed and with appropriate support. For those people who do not have the capacity to fully participate in discharge planning processes, legal frameworks must be considered to ensure appropriate lawful authority and respect for the person's rights. All adults have the right to receive the right support at the right time in the right setting for them.

The MWC highlights that any action must be the least restrictive option necessary to achieve the benefit and importantly to encourage the adult to exercise whatever skills he or she has in relation to their welfare, property or financial affairs and develop new skills where possible recognising **issues of capacity are not 'all or nothing', they are decision specific.**

The MWC audit focused on hospital discharges to care homes during the first months of the Westminster and Scottish Government's lockdown on 23 March 2020, in response to the Coronavirus (Covid-19) pandemic. The Coronavirus Act 2020 was implemented 2 days later.

2. DETAILS OF SERVICE LEAD

Name of person who has instigated project	Job Title	Department
Judith Proctor	Chief Officer	Edinburgh's Health and Social Care Partnership
Jackie Irvine	Chief Social Work Officer	Chief Executive
Tom Cowan	Head of Operations	Edinburgh's Health and Social Care Partnership

3. PURPOSE OF PROJECT

Purpose
During the Coronavirus pandemic, there were a number of concerns raised with the Mental Welfare Commission (MWC) regarding whether the appropriate legal authority was used to safeguard people being discharged from hospital to care homes who did not have the capacity to make an informed decision to agree to the move. The MWC undertook to make further inquiries and sought information from Health and Social Care Partnerships (HSCPs) across Scotland in relation to people who had moved from hospital to registered care home settings during the period 1 March 2020 – 31 May 2020. The sample size was 457 people from across Scotland, which amounted to 10% of the total number of hospital discharges to care homes for the period. The MWC audit found that people had been moved during the sample period without the protection of legal authority. These unlawful moves (involving 20 people) took place across 11 Health and Social Care Partnership areas. Some of the moves, had been specific pandemic related reasons for this. For example, a misinterpretation that easement of s.13ZA had been enacted as a result of the Coronavirus (Scotland) Act 2020 when in fact this legislation was never activated and was removed in September 2020. Some moves were related to more systemic practice issues, each case presenting as not only lacking in clear legal authority but also as an Article 5 deprivation of liberty and a possible breach of European Convention on Human Rights (ECHR). Edinburgh was found to have one case deemed unlawful by the MWC. This has since been reviewed and an improvement plan is now in place. However, it is the view of the Chief Officer of Edinburgh's Health and Social Care Partnership and the Chief Social Work Officer that an extended and robust review be undertaken of the 332 cases of hospital discharge to care homes for the period of 1st March 2020 up to 31st August 2020 [not all of the 332 hospital discharge cases are adults affected by issues of capacity]. A substantial sample of 132 cases will be reviewed (40%).

4. PROJECT MANAGEMENT

Description of project management
Specific The methodology will include that used by the Mental Welfare Commission (MWC), looking at hospital discharges to care homes for the time period, adults aged 16+. The methodology will also consider relevant legislation and guidance published within the Covid-19 timeline. **Measurable** The audit report will be used to consider current legislative and human rights practice, any training needs across the services, highlight any reparative or remedial work required with individuals and/or their families and other quality assurance findings. The audit template used for every case that meets the MWC criterion (above) will consider identification of who may lack capacity, assessment, legal framework, the practice of promoting power of attorney or guardianship, multi-agency meetings, person and carer involvement, advocacy involvement, the role of the MHO the use of 13ZA and highlighting areas of good practice (audit template attached). The audit proposal included a dip sample undertaken of 12 cases to understand the size and scale and to trial the audit template. **Attainable** – The project requires a significant resource from across Quality Assurance, Mental Health Officer Service and where required from Health. However, the audit has significant outcomes that impact directly on practice and users of the service. **Realistic –** The timescales involved are manageable but reliant on resources being made available for the duration of the audit. The Coronavirus is still a significant risk and ongoing public health concern and the MHO team provide a statutory service. Each case file audit averages 2 hours in duration dependent on the complexity of the case, locating case files on the CEC G: Drive, if any further audit is required and each case subsequently requires writing-up. **Timescale –** The timescale of the audit is proposed to run from 31st July until 30 October. This will be dependent upon Terms of Reference Sign-off and the resources being made available. The audit report should be finalised before mid-October. **Mitigation** - circumstances which may affect timescales and successful completion of project are 1. moving back into lockdown or restrictive measures such as tiered systems 2. Annual leave arrangements 3. IT and systems failings/access delays. Working from home proves an ongoing challenge for IT and IT-based systems.

5. QUALITY ASSURANCE OF PROJECT

How progress will be monitored
Communication between QAO and Mental Health Officer Service Manager (or designated officer) will be as and when a case arises that requires additional audit of health records. Monthly updates to be provided to the audit oversight group who consist of Colin Beck, Tom Cowan, Judith Proctor and Jackie Irvine.
The audit report will go to the audit oversight group for sign-off. Sign-off should take no more than 2 weeks from submission to approval.
The audit report, consisting of 40% of cases will be finalised by mid-late October. The report can then be circulated as required. All completed audits are published to the Quality Assurance intranet pages on the CEC Orb.
The audit will highlight areas for improvement and will require an improvement-focused workshop to compile an improvement plan. The workshop participants should be made up of those with suitable seniority who have the authority to implement changes and allocate required resources.
From the time of feedback of audit findings, a progress report on all areas highlighted for development/improvement will take place no longer than 3 and 6 months with further reviews, as required.
Additional Quality Assurance activity may arise as a result of the findings of the audit. Any additional arrangements for further assurance/improvement activity will fall out-with the scope of this Terms of Reference.

6. AGREEMENT OF TERMS OF REFERENCE

Name and Position	Name and Position
Signature	**Signature**
Name and Position (QA Manager)	
Signature	

Appendix 2 - Authority to Discharge Audit 2021

AIS/Swift No. CHI:	Initials:	DOB & Age: [MWC criterion was 16+]
Date person was discharged into registered care home: [MWC criterion] Name of care home: Nature of the placement: Temp/respite/permanent/Safe Haven/other	What authority was used for discharge? Power of Attorney 13ZA Welfare Guardianship Person was deemed to have capacity and gave consent None	Locality & Key Worker: Was the social worker involved in the discharge process? Was a MHO involved in the discharge process?
Is there a capacity assessment on file? (MWC criterion) Is there a capacity assessment saved to the G Drive and an entry as 'saved to the G Drive' on AIS?	If the discharge was based on a POA, was an accompanying incapacity assessment provided? Yes No NA	Was the person discharged under 13ZA? Yes/No/NA Is there evidence that the 13ZA process was followed?
Did a multi-agency discharge meeting take place? Yes/No Date:	Did the individual contest the discharge?	Is there evidence the discharge was done in consultation with the family?
Is it obvious from file that there was long-term care planning made with the individual or the family as part of the discharge process?		

Other observations [This should include evidence of good practice]	
Date:	Auditor: