

## Integration Joint Board 20 October 2022

<b>Subject :</b>	<b>Mental Welfare Commission Report - Authority to Discharge</b>
<b>Purpose :</b>	To provide an update on progress of the North Ayrshire Health and Social Care Partnership in relation to the action plan developed in response to the Mental Welfare Commission – Authority to Discharge Report (May 2021).
<b>Recommendation :</b>	IJB members are asked to note the report and the NAHSCP response to the recommendations.

<b>Direction Required to Council, Health Board or Both</b>	Direction to :-	
	1. No Direction Required	X
	2. North Ayrshire Council	
	3. NHS Ayrshire & Arran	
	4. North Ayrshire Council and NHS Ayrshire & Arran	

<b>Glossary of Terms</b>	
NHS AA	NHS Ayrshire and Arran
HSCP	Health and Social Care Partnership
MWC	Mental Welfare Commission

<b>1.</b>	<b>EXECUTIVE SUMMARY</b>
1.1	<p>This report presents the progress made by the NAHSCP in relation to the action plan developed following receipt of the MWC Authority to Discharge report which was issued on 20 May 2021.</p> <p>The full report can be accessed here:</p> <p><a href="https://www.mwcscot.org.uk/AuthorityToDischarge-Report_May2021.pdf">AuthorityToDischarge-Report_May2021.pdf (mwcscot.org.uk)</a></p>
<b>2.</b>	<b>BACKGROUND</b>
2.1	<p>As highlighted in the previous paper presented to the IJB on 21<sup>st</sup> October 2021, the Mental Welfare Commission (MWC) has specific legal duties in relation to safeguarding the rights of people who are subject to the welfare provisions of the Adults with Incapacity (Scotland) Act 2000 (AWI Act) and has a statutory safeguarding role in respect of adults whose capacity to make decisions or take actions to promote or safeguard their welfare is impaired due to a mental disorder. During the pandemic a number of stakeholders raised concerns with the Commission 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</p>

	to agree the move. These discharges are made under the powers of Section 13ZA of the Social Work (Scotland) Act 1968.
2.2	The Commission therefore carried out a review of the practice with specific reference to moves from hospital to care homes from 1 March 2020 to 31 May 2020 supported by information from HSCPs across Scotland on the moves during that period. The Commission then made further inquiries as to the rights-based practice and legal authority supporting the moves. The focus of this work was to identify any learning and to ensure that this learning takes place, where required, to support and uphold the rights of individuals.
2.3	The commission made 11 recommendations to be considered by HSCPs and the Care Inspectorate. In response and as agreed at the IJB in October 2021, a local focussed action plan was developed, and work undertaken to ensure improved processes and sustained good practice.
<b>3.</b>	<b>PROPOSALS</b>
3.1	In responding to the recommendations North Ayrshire HSCP have attached a RAG status to each of the 8 recommendations relevant to HSCPs, a further 3 recommendations are specifically for the Care Inspectorate.
3.2	The position within North Ayrshire can be summarised below with full responses attached at Appendix 1:
	<ul style="list-style-type: none"> <li>• There remains a robust system of recording AWI where a formal decision in respect of an adult with incapacity is agreed.</li> </ul>
	<ul style="list-style-type: none"> <li>• The HSCP hospital based social work team have extensive experience of discharge and the legal requirements.</li> </ul>
	<ul style="list-style-type: none"> <li>• Practitioner guidance is consistent with the principles of the legislation, but a need has been identified to update the Management Guidelines which were last reviewed in 2014. The guidelines have been reviewed and updated and will be tabled for ratification at the Social Work Governance Board in December 2022. Robust processes and decision making remains in place for all 13ZA discharges.</li> </ul>
	<ul style="list-style-type: none"> <li>• There continues to be an established learning and development programme in relation to AWI with the addition of a refresher training programme now established in response to the recommendations. This is delivered on a continuous rolling programme to all relevant staff.</li> </ul>
	<ul style="list-style-type: none"> <li>• The development and installation of a self-evaluation process including collating, reviewing and developing an audit framework with regards to AWI remains in progress. This has been delayed through changes in personnel and is now seen as a priority for completion and ratification via the Social Work Governance Board. Although the self-evaluation of process is not fully established and ratified, there is however continuous assurance activity by way of auditing on a continuous basis undertaken by a variation of personnel i.e., Learning &amp; Development Team Manager, locality Team Managers and Senior Officers who all audit files regularly</li> </ul>

	which will include those subject to AWIA measures. An example of audit template is attached in Appendix 2.
3.3	Support to service continues to be provided from the North Ayrshire Council Legal Services and team managers to ensure our local processes are robust and will ensure all moves are made with the legal authority in place.
3.4	<b><u>Anticipated Outcomes</u></b>
	The work of the Mental Welfare Commission is to support and safeguard the rights of people who lack mental capacity, the report and associated recommendations should ensure the rights of those individuals are protected.
3.5	<b><u>Measuring Impact</u></b>
	The North Ayrshire HSCP response to the recommendations will be monitored through the HSCP Social Work Governance Board with oversight by the Chief Social Worker.
4.	<b>IMPLICATIONS</b>
<b>Financial:</b>	None
<b>Human Resources:</b>	None
<b>Legal:</b>	Required compliance with provisions in the Adults with Incapacity (Scotland) Act 2000 (AWI Act).
<b>Equality:</b>	Focus of the report is that people who lack mental capacity have their rights respected, have equality of access to representation and are safeguarded.
<b>Children and Young People</b>	None
<b>Environmental &amp; Sustainability:</b>	None
<b>Key Priorities:</b>	None
<b>Risk Implications:</b>	Taking forward actions in relation to the recommendations minimises the risk of moving individuals with no legal capacity to do so.
<b>Community Benefits:</b>	Confidence in the activity of the NAHSCP.
5.	<b>CONCLUSION</b>
5.1	IJB Members are asked to (i) IJB members are asked to note the report and the NAHSCP response to the recommendations.

**Caroline Cameron, Director**

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## Appendices

- **Appendix 1** - Action Plan
- **Appendix 2** - Casefile Audit Template

## NORTH AYRSHIRE HSCP – RESPONSE TO RECOMMENDATIONS

## MENTAL WELFARE COMMISSION REPORT

## AUTHORITY TO DISCHARGE: REPORT INTO DECISION MAKING FOR PEOPLE IN HOSPITAL WHO LACK CAPACITY

	Recommendation	RAG Status	Comments/Actions
1	HSCPs should undertake a full training needs analysis to identify gaps in knowledge in relation to capacity and assessment, associated legislation, deprivation of liberty definition and the human rights of individuals (as detailed in the report) to inform delivery of training programmes to ensure a confident, competent multidisciplinary workforce supporting safe and lawful hospital discharge planning.	GREEN	<p>A programme of learning and development in relation to Adults With Incapacity is in place within NAHSCP, with two full days of training as part of the programme. The Partnership has reviewed this position and has identified an area for improvement in the provision of refresher training to bring parity with CP and ASP arrangements. Consideration is being given to including this in training programme, for a ½ to 1 day refresher course, with plans to have this in place by March 2022. Team Managers from locality adult Social Work Services are being consulted as part of this exercise and agreement and priority will be agreed through Social Work Governance Board.</p> <hr/> <p><b>October 2022 update:</b> The refresher training programme is now in place and is being delivered on a rolling programme basis. Activity will be reported via the Social Work Governance Board on an annual basis.</p>
2	HSCPs should establish a consistent system for recording when an assessment of incapacity has been conducted, by whom and in relation to which areas of decision making.	GREEN	Our social work information system records requests for assessment of incapacity, decisions and who carries out that assessment. The assessment is very specific in terms of recording details in relation to what specifically a person has capacity to agree to and the timeline of the capacity assessment and outcome. The system is accessible by all social work staff and there is standard protocol for recording which is consistently followed.
3	HSCPs should ensure that staff facilitating hospital discharges are clear about the status of registered care home placements, in terms of law (see EHRC vs GGC in the report) and with regards the financial and welfare implications of different types of placements for the individual.	GREEN	All NAHSCP teams across localities and including the hospital team have extensive experience of safely discharging to care homes in terms of the law. The Senior Manager responsible for these services held a session with team managers in July 2021 to reinforce responsibilities and ensure all had a comprehensive understanding of the guidance on discharge, with particular emphasis on 13za. Any 13za discharge cannot proceed by only a social worker and requires Team Manager approval with oversight from the Senior Manager.
4	HSCPs should ensure that practitioners facilitating hospital discharges have copies of relevant documents on file detailing the powers as evidence for taking action on behalf of the individual who is assessed as lacking capacity.	GREEN	As detailed in NAHSCP guidance practitioners require to ensure documentation is in place and on file regarding any evidence on capacity of individuals. The Hospital Based Social Work Team have access to the social work information system and patient medical notes which both include information pertaining to assessment of capacity. A Team Manager has been identified to lead self-evaluation of processes including collating, reviewing and developing audit frameworks in regard to AWI. In terms of those discharging from hospital into care homes, these assessments require to be agreed by two Senior Managers which ensures consistency and quality of assessment. All assessments require to be explicit in regard to the legal basis for discharge. This

## Appendix 1

			requires to be in line with NAHSCP guidance and the Adults With Incapacity (Scotland) Act 2000.
5	HSCPs should ensure that assessments reflect the person as a unique individual with focus on outcomes important to that individual and not external drivers that have the potential to compromise human rights and/or legality of moves.	GREEN	It is embedded into practice from Social Workers, Social Work Assistants and Team Managers that assessments require to be outcome focused and have the person who owns that assessment and/or their representative at the heart of same. Assessments must be authorised by Team Managers before being signed by service users or their representative.
6	HSCPs should ensure that processes are in place to audit recording of decisions and the legality of hospital discharges for adults who lack capacity in line with existing guidance and the principles of incapacity legislation.	AMBER	<p>It was previously identified that there is a need to update the Management Guidelines for the provision of discharging individuals who lack capacity. This document dates from 2014 and forms the basis of Team Manager and Social Worker practice in terms of ensuring the rights of individuals are upheld and that those discharged from hospital who lack capacity are discharged on a legal basis. A briefing note was produced by legal colleagues in March 2021 around the use of 13za in discharges, this was circulated to all team managers with consultation through locality social work meetings. Discussions have begun with the North Ayrshire Council legal team and suggestions have been made in updating the guidance, particularly in relation to deprivation of liberty. This work is ongoing.</p> <p>A Team Manager has been identified to lead self-evaluation of processes including collating, reviewing and developing audit frameworks regarding AWI. This will be strengthened by proposals to provide refresher training. This improvement work will be overseen by the Social Governance Board.</p> <p>(Timescales for updated Management Guidelines – by June 2022)</p> <hr/> <p><b>October 2022 update:</b></p> <ul style="list-style-type: none"> <li>• The guidelines have been reviewed and updated by Senior Management Team and will be finally ratified at the Social Work Governance Board in December 2022.</li> <li>• The development and installation of a self-evaluation process including collating, reviewing and developing an audit framework with regards to AWI remains in progress. This has been delayed through changes in personnel and is now seen as a priority for completion and ratification via the Social Work Governance Board. Although the self-evaluation of process is not fully established and ratified, there is however continuous assurance activity by way of multiple auditing activity on a continuous basis undertaken by various personnel i.e., Learning &amp; Development Team Manager, locality Team Managers and Senior Officers who all audit files regularly which will include those</li> </ul>

## Appendix 1

			subject to AWIA measures. It is proposed that the self-evaluation framework be presented to the Social Work Governance Board by March 2023.
7	HSCPs' audit processes should extend to ensuring evidence of practice that is inclusive, maximising contribution by the individual and their relevant others, specifically carers as per section 28 Carers (Scotland) Act 2016.		Refer to requirements 5 and 6
8	HSCPs should ensure strong leadership and expertise to support operational discharge teams.	GREEN	Operational leadership at Team Manager and Senior Manager level and skilled, experienced staff are in place to continue to ensure appropriate legislative frameworks. Enhanced Social Work Hospital Team in summer 2021 with dedicated Team Manager overseeing assessments for complex care arrangements including consistent application of guidance and legislation.
9	The Care Inspectorate should take account of the findings of this report regarding the use of s.13ZA of the Social Work (Scotland) Act 1968 and consider the scrutiny, assurance or improvement activity to take in relation to this.		n/a – Care Inspectorate Recommendation
10	The Care Inspectorate should take account of the broader findings of this report beyond use of s.13ZA and consider how this might inform future scrutiny, assurance and improvement activity in services for adults.		n/a – Care Inspectorate Recommendation
11	The Scottish Government should monitor the delivery of the above recommendations and work with Health and Social Care Partnerships and the Care Inspectorate to support consistency and address any barriers to delivery of the next two years.		n/a – Care Inspectorate Recommendation

## Case File Audit

### SERVICE USER DETAILS

SURNAME:	
FORENAME:	
CAREFIRST NO:	
DOB:	
AGE:	
GENDER:	
ETHNICITY:	

### TEAM

Other – Please State:					

Team Location:

Team Manager:

Allocated Worker: \_\_\_\_\_ Time taken to complete Audit

File Read By: \_\_\_\_\_ Date

Senior Officer – Feedback to Team Manager \_\_\_\_\_ Date

Team Manager – Feedback to Social Worker \_\_\_\_\_ Date

Please ensure you answer every question within this tool and include comments to enable full understanding of your findings and inform improvement. This must be completed with reference to the practice guidance.

**To rate the quality from level 1 – 6.**

**Level 6 – Excellent, Level 5 – Very Good, Level 4 – Good, Level 3 – Adequate, Level 2 – Weak, Level 1 - Unsatisfactory**

	Y	N
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<b>Section A1 - Chronologies</b>		
1.1 Is there a current chronology in the Care Record (paper or electronic) CareFirst/Care Partner		
1.2 Is there evidence the chronology is being used across agencies?		
1.3 Is there evidence that the chronology is used to inform the care plan?		
1.4 Overall rate the quality of the chronology on file. Grade 1 – 6 (see rating)		
Comments: There is only a very short chronology recorded electronically, more work needs to be done to update this.		
<b>Section A2 - Assessment</b>	<b>Y</b>	<b>N</b>
2.1 Is there a current assessment on file?		
2.2 Is the timing of the completion of the most recent assessment, in keeping with the needs of the service user and identified outcomes?		
2.3 Overall rate the quality of the assessment on file. Grade 1 – 6 (see rating)		
Comments:		
<b>Section A3 – Risk</b>	<b>Y</b>	<b>N</b>
3.1 Is there any risk of harm to themselves, others or both? – Please specify in comments box below.		
3.2 Is there an appropriate risk assessment in the file?		
3.3 Overall rate the quality of the risk assessment on file. Grade 1 – 6 (see rating)		
Comments:		
3.4 Is there an appropriate current risk management plan in the file?		
3.5 Overall rate the quality of the risk management plan on file. Grade 1 – 6 (see rating)		
Comments:		
3.6 Is there evidence that the risk management plan has been appropriately implemented?		
Comments:		
3.7 Is there evidence that the risk management plan has been reviewed?		
Comments:		
<b>Section A4 - Consent</b>	<b>Y</b>	<b>N</b>
4.1 Is there evidence that consent has been sought?		
4.2 Is there evidence of a signature to support consent?		
Comments:		

Section B – Care Plans	Y	N
1.1 Is there evidence that the Plan is outcome focused rather than a list of tasks?		
1.2 Is there evidence that the plan is appropriately linked to the assessment and risk assessment?		
1.3 Overall rate the quality of the plan. Grade 1 - 6		
1.4 Is there evidence that the plan has been appropriately reviewed?		
Comments:		
Section C – Support/Services Provided	Y	N
1.1 Is there evidence that support and services received have followed the contents of the care plans?		
1.2 From the information held in the records comment to what extent you consider the support provided and services received met their outcomes and minimised the identified risks?		
Comments:		
Section D – Service User Involvement	Y	N
4.1 Is there evidence that the service users views have been sought?		
4.2 Is there any barriers to engagement identified?		
Comments:		
Section E – Partnership working	Y	N
1.1 Is there evidence that partnership working in the following (proportionate to the level of risk, need and statutory duties)?		
a. At the assessment stage?		
b. At the risk assessment and management planning stage?		
c. At care planning stage?		
d. At review stage?		
Comments:		
Section F – Monitoring Overview	Y	N
1.1 Is there evidence that team managers have had oversight of this case file?		
1.2 Is there evidence that this case has been discussed within supervision discussions?		

Comments:

Section G - Summary

Please note below the overall strengths.

Comments:

Please note below the areas highlighted for improvement.

Comments: