The Highland Council

Agenda Item	12.
Report No	ECAS 10/15

Education, Children and Adult Services Committee
14 January 2015

Mental Health Officer Service

Report by Director of Care and Learning

Summary

This report provides an update on the performance, development and impact of the Mental Health Officer Service within Highland Council, and introduces a presentation.

1. Background

1.1 Local authorities are required to appoint qualified Mental Health Officers to undertake duties outlined in legislation.

1.2 This is not a responsibility that can be delegated to NHS Highland. Being employed by the Highland Council, rather than the NHS, enables Mental Health Officers to provide an independent response when considering statutory measures

1.3 The Mental Health (Care and Treatment) (Scotland) Act 2003 states that a local authority may only appoint persons who satisfy requirements with regard to registration, education and training, experience, and competence to undertake the role. Mental Health Officers (MHOs) are qualified social workers who are additionally qualified to undertake a wide variety of statutory tasks. Registered Social Workers with a minimum of 2 years post-qualifying experience are eligible to practice, and are formally appointed by the Chief Social Work Officer as MHOs once they have successfully completed a specialist, year-long master's level course.

1.4 The role includes consenting to detentions in hospital and making applications for Compulsory Treatment Orders under the Mental Health (Care and Treatment) (Scotland) Act 2003; and completing reports for Guardianship applications under the Adults with Incapacity (Scotland) Act 2000. MHOs also perform duties under the Criminal Procedure (Scotland) Act 1995, which can include compiling reports to the Sheriff Court on mentally disordered offenders who are subject to criminal justice processes, supervising them and providing support. This specific area of activity is referred to as forensic MHO work.

1.5 The 3 Forensic MHOs working in the service require to have an understanding of the relationship between mental disorder and crime, a detailed knowledge of the legislation relevant to civil psychiatric patients and to mentally disordered offenders, an enhanced understanding of the interface between the mental health system and the criminal justice system, an ability to function within all parts of the Criminal Justice System (Police, Courts and Prisons) as well as in health and social work settings and are able to apply forensic risk assessment and risk management procedures. In working with mentally disordered offenders, Forensic MHOs undertake the following duties

- Statutory interventions/assessments under the Mental Health Act (both civil

and criminal procedures)
- Provide a day-time on-call duty system for those in custody.(Police cells, court and prison in-reach)
- Group Work
- Joint working (Community Mental Health Teams, Criminal Justice Social Work)
- Undertake and provide forensic training
- Provide an advice, support and consultation service to partner professionals
- Are qualified in and undertake 14 advanced forensic risk assessments and risk management planning

2. Current Service, Performance and Impact

2.1 Since the integration of services with NHS Highland the role of the MHO has evolved. An area of significant progress is the relationship between MHO and the Responsible Medical Officer (RMO) and medical staff in general. Colleagues are becoming increasingly more reliant on MHOs to support and help them navigate through complex areas of mental health law.

2.2 In addition to statutory interventions, MHOs regularly provide specialist advice and guidance on mental health matters to service users and their families and to social work and health colleagues. These activities are key to helping individuals achieve and maintain good mental health and also reduce the number of people who need to be admitted to hospital or, in the case of mentally disordered offenders, reduce re-offending and imprisonment.

2.3 MHOs now routinely attend pre guardianship case conferences and similar Adults With Incapacity discussions. Many of these cases relate to adults with learning disabilities with complex needs or older adults who are no longer able to make decisions about their own wellbeing.

2.4 Because of the separation from care management responsibilities, and aspects of that work which a range of other Lead Professionals are required to undertake, MHOs can work closely with clients' families/carers in their clearly defined MHO role, ensuring the least restrictive legal option for the person is followed. There is now an acknowledgement that there have been a number of cases where this has resulted in a more productive and less antagonistic relationship between a client's family and the hospital/care team.

2.5 The service works closely with NHS colleagues to ensure that people in hospital whose discharge from hospital is delayed, are identified where their decision making capacity is an issue for them. This allows medical/care staff to work closely with all involved to ensure plans can be made for the person - in keeping with the principles of the Adults with Incapacity legislation and their human rights.

2.6 There can be a delay in progressing a welfare guardianship application due to difficulty in obtaining medical certificates - for example, where a rurally based GP is unable to travel to Inverness and a Video Conference assessment cannot be managed by the client. MHO involvement at an early stage can ensure this issue is appropriately addressed. There can also be delays when a family has expressed their intention to apply for Welfare Guardianship, but progress is slow or not

happening due, for example, to delayed applications for Legal Aid. Mental Health Officers can advise staff and families around the process.

2.7 In addition to the above, the recent 'Cheshire West ruling and decision' poses challenges to the operation of incapacity law in Scotland as it currently stands. The Cheshire West decision highlights the importance of ensuring that there is a proper and auditable process for taking decisions on care arrangements for people who lack capacity, and that this process fully reflects the principles of the 2000 Act. The principles relate to least restrictive option, ensuring legal safeguards are in place before moving or detaining someone who lacks capacity. This applies in situations where the person may appear to agree to proposed changes in their care arrangements.

2.8 The Scottish Law Commission is due to report this autumn on proposed legislative changes taking into account the UK Supreme Courts view on the definition of deprivation of liberty. It is expected that the Scottish Government will have to respond to this and consult on what they consider necessary amendments to existing legislation. In the meantime, services need to operate within the existing statutory framework and be informed by developing case law. The MHO Service is committed to ensuring that the above is taken into consideration when carrying out duties under Adults With Incapacity legislation jointly with NHS Highland. A draft procedure for discharging patients who may lack capacity is being finalised and should be available for practitioners' prior to the new year.

2.9 The service has introduced a MHO duty rota in the hospital and community, ensuring there is always a named MHO available across Highland to respond to requests for intervention under Mental Health legislation. This is in response to the challenge of responding to requests for MHOs in rural and remote parts of Highland and the higher demand in the South/Mid area, and to ensure equitable distribution of work throughout Highland. This is a 6 month pilot, which will be reviewed and evaluated in the new year.

2.10 Mental Health Officers are deployed and co-located with other front line Mental Health professionals and associates in Community Mental Health teams or appropriate clinical settings in order to ensure effective communication and to promote joint and co-working. These arrangements, across the Districts, give the opportunity for responsive and flexible services to meet local demand. To avoid the potential isolation from other MHO Team members (where singleton MHO's are located in some North and West Districts) the individuals and their manager make every effort to ensure good individual and Team communication and support is available, and used – including e mail, phone and VC communications when face to face meetings are not always viable.

2.11 Information attached in **Appendix 1** outlines numbers of assessments and social circumstances reports completed in respect of the Mental Health Act over the last 3 years. The figures for Adults with Incapacity are also included.

3. National Standards

3.1 National Standards for Mental Health Officers require local authorities to provide proper managerial, administrative and technical support to enable MHOs to fulfil their statutory duties under the legislation and the associated Codes of Practice.

Internal audit will be undertaking a review of the mental health officer service at the beginning of 2015. The ability to meet the standards will be part of this review.

3.2 In relation to Adults with Incapacity legislation, National Standards require that there are clear procedures in place for monitoring how a guardian who undertakes duties on behalf of the chief social work officer is undertaking their role. Adult care social workers are being appointed to undertake this role and are not always able to undertake the level of monitoring required by legislation.

3.3 Private Guardians appointed by Adults with Incapacity legislation who are normally family members require to be supervised. With integration, these duties are now delegated to NHS Highland, and the resource available for this varies across Districts. MHO Team Managers and colleagues support their NHS Social Work colleagues and associates to understand the priority need to allocate named supervisors for this important supervisory role protecting people who lack capacity and may have severe and enduring mental health problems.

3.4 National standards state that individual MHOs can expect their local authority to provide appropriate opportunities for continuing professional development and structured specialist professional advice and guidance, as needed, from an experienced MHO.

3.5 The local authority also has a responsibility for the recruitment, training and retention of adequate numbers of MHOs, including MHO staff with a variety of relevant specialist expertise, to meet the needs of their area. There needs to be a programme of orientation/training for all newly appointed MHOs and MHO trainees which familiarises them with the range of care and treatment services available for people with mental disorder on a local, regional and national basis. Mental health officer forums are held regularly in Highland offering an opportunity for professional development. Mental Health officers also work with a mentor offering support in practice issues.

4. Legislation

4.1 The Mental Health (Care & Treatment) (Scotland) Act 2003 has been in operation since October 2005. The widespread view is that it has been a significant advance on the previous 1984 Act. The Scottish Government is currently reviewing the 2003 legislation and has issued a draft Bill for consultation.

4.2 The Bill brings forward changes to improve the operation of the MH Act and importantly, also proposes a number of changes and additional duties to the role of Mental Health Officers. It is likely that the proposed changes will significantly increase demands on MHO time and capacity.

4.3 Since integration, all non MHO Social Work staff working in mental health are employed by NHS Highland and those who aspire to train as MHO's are limited in their access to such training due the concerns about releasing staff from teams with heavy workloads There is currently one candidate undertaking the MHO post qualifying award. 3 MHO trainees successfully completed the MHO award in September 2014.

4.4 The MHO Management Team, alongside some NHS and Highland Council

colleagues, have identified lack of staff coming forward for MHO training as a matter requiring priority consideration and development if we are to avoid a deficit of MHO availability in Highland in the near future. The average age of the MHO work force in Highland is 58 and so retirement of the current workforce is relatively near.

4.5 This is a national issue with work being undertaken by the Scottish Government to consider ways of addressing this problem. NHS Highland and Highland Council will also need to consider other ways to ensure that suitably qualified and motivated Social Work staff that are already based here can be supported to train as MHO's. By encouraging and enabling local staff to undertake the training we will not only ensure the sustainability of the service going forward but will also avoid the need to employ expensive locum MHO provision in order to meet our basic statutory responsibilities and duties.

5. Implications

5.1 **Legal and Equalities:** Highland Council is currently meeting legal requirements in relation to the Mental Health Officer service. Mental Health officers provide a service to people with disabilities and engage interpreters when English is not the first language.

5.2 **Climate Change/Carbon Clever**: Whilst MHO's work across Highland and are also required to work out with Highland, at times, and across the UK if clients are placed in specialist resources unavailable locally – staff do endeavour to be mindful of the impact on climate change of motor travel and the cost of travel also. When possible Videoconferencing/Teleconferencing etc.is used.

5.3 There are no resources, risk, rural or Gaelic implications arising from this report.

6. Recommendation

6.1 Members are asked to note the development of the Mental Health Officer Service in Highland Council since integration of services with the N.H.S.

Designation: Director of Care and Learning

Date: 24th December 2014

Author: Fiona Palin Head of Adult Services

Appendix 1

Mental Health (Care & Treatment)(Scotland) Act 2003

There are different orders allowing a person to be assessed or treated depending on individual circumstances. The table below shows the number and type of orders commenced in Highland over the last 3 reporting years. The permissible duration of each order is given in brackets. The information demonstrates that there has been an overall increase in EDCs and STDCs. Last year's increase in CTOs has reduced slightly to the same number as 2011/12. The increase in the use of EDC and STDC represents a significant increase in demand on the MHO Service as both of these orders place specific legal duties on the Local Authority MHOs.

Completed Assessments

	2011/12	2012/13	2013/14
EDC - Emergency Detention Certificates (up to 72 hours)	129	164	169
STDC - Short Term Detention Certificates (up to 28 days)	196	221	245
CTO – Compulsory Treatment Orders (up to 6 months/reviewed annually/hospital or community based)	82	94	82
Totals	407	479	496

Percentage increase from 2011/12 to 2013/14 = 21.86%

Social Circumstances Reports

Social Circumstances Reports (SCR) should be completed following a Short Term Detention Certificate. The Mental Welfare Commission continue to promote the completion of SCRs in line with their published guidelines and include this as part of their annual reporting on how the Mental Health Act legislation is being used across local authorities and health boards in Scotland.

Provision of completed SCRs in Highland over the last 3 reporting years

2011/12	2012/13	2013/14
15%	35%	49%

Scottish average is 38% completion

This is a significant improvement of SCR completion since 2011/12 in Highland also taking into account the increase of Short Term Detention Certificates during this time.

Adults with Incapacity (Scotland) Act 2000

The MHO Service received 162 referrals for AWI interventions, including requests for MHO attendance at pre guardianship case conferences. The service undertook the following recorded activities over the 3 year reporting period.

2011/12	2012/13	2013/4
Local Authority 37	Local Authority 46	Local Authority 35
Private 61	Private 43	Private 77

Percentage increase from 2011/12 to 2013/14 = 14.28
Throughout Scotland there has been a gradual decrease in the percentage of orders granted during the past few years where the primary cause of incapacity was dementia. There has been an increase in the granting of orders for adults where the cause of incapacity was learning disability. This trend is reflected in Highland where the percentage of orders for dementia was 54% and learning disability 36%.

It may be that the increased use of Power of Attorney, as reported by the MWC, is beginning to have a moderating effect on the number of people with dementia who require guardianship orders, given that the majority of Powers of Attorney are granted by people over 65 years of age.

Due to the increase in demand on the service it has been necessary to introduce a waiting list for intervention under AWI legislation. This reflects the pressures and demands on the service having to prioritise Delayed Discharge patients in hospital and private and local authority applications for individuals in the community.

The recent Cheshire West ruling and decision poses challenges to the operation of incapacity law in Scotland as it currently stands. The UK Supreme Court's view on the definition of 'deprivation of liberty' considerable broadens existing interpretations in Scotland which have been held, for the most part, by health and social services. These interpretations have evolved over the years from accepted common practice but have been further informed by the Scottish Government's guidance in CCD5/2007 following the amendment to the Social Work (Scotland) Act 1968 with the introduction of 13ZA.

The Scottish Law Commission is due to report this autumn on proposed legislative changes. It is expected that the Scottish Government will have to respond to this and consult on what they consider necessary amendments to existing legislation. In the meantime, services need to operate within the existing statutory framework and be informed by developing case law.

The Cheshire West decision highlights the importance of ensuring that there is a proper and auditable process for taking decisions on care arrangements for people who lack capacity, and that this process fully reflects the principles of the 2000 Act.

The MHO Service is committed to ensuring that the above is taken into consideration when carrying out duties under AWI 2000 jointly with NHS Highland. A draft procedure for the use of 13ZA is being finalised and should be available for practitioners' prior to the new year.