mentalwelfare commission for scotland

dignity & rights ethical tre respect ca & equality

VISIT AND MONITORING REPORT

Early revocation of compulsion orders

Early revocations of compulsion orders

Introduction

The Scottish Government asked the Commission to examine how many compulsion orders were revoked by the responsible medical officer before being reviewed by the Tribunal. The question stemmed from concerns that compulsion orders, granted by a court following conviction for an offence, were revoked within a short period of time.

A court may grant a compulsion order for an individual who is convicted of a criminal offence. The order can impose detention in hospital or a range of community compulsory measures. It can also impose a requirement for medical treatment subject to the safeguards in mental health legislation. The order lasts for an initial six months and may be extended by application to the Tribunal. For particularly serious offences, the court may impose a compulsion order with a restriction order (CORO). Only a Tribunal can revoke or amend a CORO.

Within the first six months, the individual has no right of appeal but the responsible medical officer (RMO) has the duty to keep the grounds for the order under review from time to time (S142). The RMO must revoke the compulsion order if not satisfied that the order remains necessary or that any of the following grounds is no longer met:

- The patient has a mental disorder;
- There is treatment available which would be likely to prevent the mental disorder worsening or alleviate any symptoms or effects of the disorder;
- Without treatment, there would be a risk to the patient's health, safety or welfare or the safety on any other person.

Number of revocations

We analysed the information we held on RMOs' decisions to revoke compulsion orders. From October 2005 onwards, our information system recorded 75 revocations of compulsion orders within the first 6 months. Of these:

- 8 were wrongly notified or recorded as having been revoked;
- 9 were transferred out of Scotland (4 cross border transfers, 5 foreign national repatriated with view to ongoing mental health care in their countries of origin);
- 58 orders were revoked by the RMO before the expiry of 6 months of a compulsion order since October 2005. One was detained under civil procedures, one was in prison and one died of cancer during his spell in hospital.
- Around 500 compulsion orders were granted during this period. The proportion of orders revoked within the first six months was slightly more than 10%.

The remaining 55 either remained in hospital informally or were managed informally in the community. Of these, 28 had detention suspended for between one and five months. In a further three cases, we think detention was suspended (because of the wording of the revocation form) although we had not been notified.

While the compulsion order may have been relatively brief, the total length of compulsory treatment was usually longer. Most individuals had previously been detained and given treatment while subject to assessment or treatment orders before the granting of a compulsion order. The total length of episode ranges from one to eleven months. Mean and median lengths were six months. Some individuals may also have been receiving informal treatment prior to the making of a compulsion order. We have no information on this.

Reasons given for revocation

We looked at the explanations for the decision to revoke the orders. The form gives the RMO two options for recording the reason for revoking the order and a text box in which to describe the reasons more fully. The order can be revoked either because the first three grounds are no longer met (mental disorder, availability of treatment and risk) or because the order is no longer necessary. We relied more on the RMO's written account of the reasons for revocation. Note that there is no statutory requirement to notify the reasons on the revocation form. The forms were designed so that we could perform this sort of analysis.

- 33 were primarily revoked on the grounds of necessity. Patient complying with medication, engaging with services and not requiring compulsion.

Example: A is compliant with medication, recognises that he has a mental illness and agrees to continued informal treatment. Compulsory treatment is no longer necessary.

- Seven were revoked because the other grounds were no longer met. In all cases, this was because there was thought to be no ongoing evidence of mental disorder.

Example: B's psychosis was purely related to alcohol. With abstinence, symptoms have resolved without medication. There is no ongoing evidence of mental disorder.

- A further nine were revoked because of both reasons. These revocations contained some particularly good examples of how to record the determination to revoke the order.

Example: C's mental health has greatly improved. He is compliant with treatment and as a result the risk to self and others is greatly reduced to the extent that the grounds of risk and necessity are no longer met.

- Two cases contained explanations that we did not consider satisfactory as there was no direct mention of any of the criteria for revocation. One of these was convicted of a further offence a year later. The offence was sexual and was different in nature to previous offending behaviour.

Example: D is ready for discharge and out-patient care.

Surprisingly few revocations specifically mentioned risk. In view of offending behaviour, we would have expected risk to have greater prominence in the record of the reasons for revocation.

Some revocations mentioned insight or decision-making ability. SIDMA is not a criterion for a compulsion order. We were surprised to see this written so often, although it occurred largely in the context of explaining why the order was no longer necessary.

Outcomes:

- 14 had subsequent episodes of compulsory treatment;
- Eight of these had CPSA episodes, six had civil episodes and two had episodes of both types. Five had subsequent compulsion orders, five had remand orders and one had a short transfer for treatment direction. None had a subsequent CORO;
- 41 of the 55 had no further compulsory mental health treatment during a period ranging from two months to seven years from the date the order was revoked.

There was no correlation between length of the index episode and future episodes of compulsory treatment under civil or criminal procedures.

Conclusions

Despite anxieties about the length of episodes, it is good to see that RMOs are reviewing the grounds for continuing the order “from time to time”, not just at the point where a mandatory review is required. Where orders were revoked early, this was mostly on the grounds of necessity. There were usually good explanations as to why compulsion was unnecessary: i.e. the individual accepted the need for treatment, complied well and engaged well when out of hospital on suspension of detention.

There are some recommendations we can make on the basis of this small study:

- RMOs should record clearly the reasons for revoking compulsion orders. We advise more attention to assessing and documenting risk when making the decision, even when considering that revocation is primarily on the grounds of necessity. Example C above is a good example of how to document this.

- While we did not set out to examine the provision of social circumstances reports (SCRs), we noted some cases where no SCR had been provided despite the individual having been subject to assessment order, treatment order and compulsion order. All of these are relevant events that should trigger an SCR unless it would serve little or no practical purpose. Local authorities should ensure that at least one SCR is provided for each episode of compulsory treatment under criminal procedures. One single episode may comprise assessment, treatment, interim compulsion and compulsion orders; it is unreasonable to expect a notification for each individual order and we have already made recommendations about amending the legislation in this regard.

mentalwelfare
commission for scotland

Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE
Tel: 0131 313 8777
Fax: 0131 313 8778
Service user and carer
freephone: 0800 389 6809
enquiries@mwcscot.org.uk
www.mwcscot.org.uk

Mental Welfare Commission (July13)