



mental welfare
commission for scotland

Can you detain someone who won't talk to you?

Advice notes

15 June 2020



Our mission and purpose

Our Mission

To be a leading and independent voice in promoting a society where people with mental illness, learning disabilities, dementia and related conditions are treated fairly, have their rights respected, and have appropriate support to live the life of their choice.

Our Purpose

We protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions.

Our Priorities

To achieve our mission and purpose over the next three years we have identified four strategic priorities.

- To challenge and to promote change
- Focus on the most vulnerable
- Increase our impact (in the work that we do)
- Improve our efficiency and effectiveness

Our Activity

- Influencing and empowering
- Visiting individuals
- Monitoring the law
- Investigations and casework
- Information and advice

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

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Ms. X was known to have a mental illness and had a history of serious self-harm when unwell. Her relatives contacted the mental health services with serious concerns about her. The approved medical practitioner and mental health officer went out to see her. When they got there, they found that she was outside her house in a friend's car and refused to be interviewed. They tried to interview her through the car window but failed. Based on her appearance, previous history and worries from the family, they detained her under a short-term detention certificate (STDC).

While done with the best of intentions, this was wrong. The code of practice states quite clearly that the medical practitioner must undertake a detailed interview to determine the grounds for an STDC. It is important to conduct a full examination before someone can be detained for up to 28 days and treated without consent. We made this clear to the medical practitioner, Ms. X and her solicitor, as she might be able to take legal action. We can't rule that the STDC was unlawful; only a court can do that.

If she had been in her home, the mental health officer could have applied to a Sheriff or Justice of the Peace for a warrant for entry under section 35 of the Act ([Form MH01](#)) to allow for a medical examination. That was not possible in this case. The best course of action may have been to admit her under an emergency detention certificate. The code of practice states that this may be acceptable in exceptional circumstances where it is not possible to examine the patient. Of course, if there were serious concerns about her safety, the police could have been alerted.

For more information, please refer to chapters 2 and 7 of [volume 2](#) the code of practice.



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Mental Welfare Commission 2020