mental welfare commission for scotland

Research brief

How long do short term detentions last and how do they end?

Background

A principle of the Mental Health (Care and Treatment) (Scotland) Act 2003 ('the Mental Health Act') is that any restriction that impacts on the freedom of an individual should be the minimal possible. Compulsory treatment should therefore be for as short a time as is necessary.

To make sure compulsory treatment is for as short time as possible, the psychiatrist responsible for a person's care and treatment should regularly review the detention. Indeed, the Act requires that the psychiatrist keeps the need for detention under review. As soon as the person no longer needs compulsory treatment, the order should be revoked.

A short-term detention certificate (STDC) is the preferred 'gateway order' when a person needs compulsory care and treatment in hospital against their will (1). In the current Mental Health Act a STDC can last for up to 28 days. In the previous Mental Health Act (1984) the maximum time for a STDC was also 28 days. Although there have been improvements in psychiatric care, medications, psychological interventions, and greater availability of community-based support over the last 40 years, the maximum time for detention under a STDC has not changed.

Despite the duty to keep the detention under regular review, there has been concern in other jurisdictions that sometimes detentions last longer than necessary. In England and Wales, there was an independent review of the Mental Health Act 1983 in 2018. The review was presented evidence that psychiatrists sometimes only revoked detentions when a safeguard kicked in.

For example, 17% of longer term detentions were revoked within 48 hours of a scheduled Tribunal (3). The chair of this review concluded that there should be more safeguards on the length of detentions.

In Scotland, the Millan Committee reviewed the 1984 Mental Health Act and it made recommendations that led to our current legislation. It did consider ideas about reducing the length of STDCs, but it had no data to answer questions about if these types of detention were too long or not (2).

The Mental Health Act in Scotland is currently being reviewed by the Scottish Mental Health Law Review. This again provides an opportunity to consider the lengths of detentions. In this Research Brief we describe how long STDCs last and how this has changed over time. In this work, we look at if the length of a short-term detention in Scotland differs based on gender, ethnicity, age or hospital. We also look at when during the week a detention is more likely to start and end. This information may be important to decide if the length of a short-term detention for assessment and treatment of a mental illness should remain at 28 days within the law.

The focus of this work

To explore how long detentions last, if there has been change in this length over time, and factors that influence this we looked at three types of STDCs, based on how they ended:

- Revoked orders are STDCs that ended before 28 days. The responsible psychiatrist needs to take action to do this.
- Lapsed orders ended on the 28th day. The responsible psychiatrist does not need to take action to do this, the order just expires.
- Extended orders are those STDCs that lasted for the full 28 days and the detention went on for longer, often as a Compulsory Treatment Order (CTO) that can last for up to six months.

We had five specific questions that guided the work:

1. How long do STDCs last on average?
2. Does age, gender or ethnicity influence whether STDCs are revoked, lapse, or are extended and how long revoked STDCs last?
3. Has the average length of STDCs changed over time and how does age, gender or ethnicity impact changes on length or how many STDCs end up lapsing or get extended?
4. Is there a difference across the days of the week as to when revoked or lapsed STDCs start and end?
5. Does the length of revoked, lapsed or extended STDCs differ between hospitals?

What we did

The data we used

The Mental Welfare Commission for Scotland ('the Commission') monitors the use of the Mental Health Act. Every time someone is detained we get sent a form with details about the person being detained and why they need compulsory care and treatment. For this work, we looked at all STDCs we were notified about between 2006 and 2018. Although we are here summarising a large data-set in numbers, we know that each of these detentions

Table 1. Characteristics of the three types STDCs

Characteristics	Revoked (N=16,610)	Lapsed (N=9,393)	Extended (N=16,490)
Age groups (Mean age ± sd, median)			
<18 years	15.7 ± 1.4 (16)	15.6 ± 1.4 (16)	15.4 ± 1.5 (16)
18–65 years	40.1 ± 12.6 (40)	42.7 ± 12.9 (43)	41.1 ± 13.1 (41)
>65 years	77.5 ± 7.4 (77)	77.7 ± 7.2 (77)	76.8 ± 6.8 (77)
Age groups			
<18 years	522 (3.1%)	152 (1.6%)	543 (3.3%)
18–65 years	12,857 (77.4%)	5916 (63.0%)	11,410 (69.2%)
>65 years	3,231 (19.5%)	3325 (35.4%)	4,537 (27.5%)
Gender			
Female	8,376 (50.4%)	5026 (53.5%)	7,905 (47.9%)
Male	8,234 (49.6%)	4367 (46.5%)	8,585 (52.1%)
Ethnicity[a]			
African, Caribbean or Black	118 (1.6%)	36 (0.9%)	157 (1.5%)
Asian	171 (2.3%)	92 (2.4%)	302 (2.8%)
Mixed	16 (0.2%)	11 (0.3%)	75 (0.7%)
Other	36 (0.5%)	19 (0.5%)	33 (0.3%)
White Scottish	6,174 (83.4%)	3,376 (86.9%)	8,636 (81.4%)
White Other British	499 (6.7%)	207 (5.3%)	845 (8.0%)
White Other	391 (5.3%)	143 (3.7%)	561 (5.3%)

[a]*The ethnicity dataset included of a total of 21,898 STDCs (revoked n=7,405; lapsed n=3,884; extended n=10,609)*

represents a moment of difficulty for the person and those that are important to them. The information we used from the STDC forms were age (grouped as <18 years, 18–65 years, and >65 years), gender (currently only male or female), ethnicity (grouped as the main Scottish Census categories), start and end date of the order, and the hospital the person was detained in.

Over the whole time period, 30,464 people were detained under a STDC. Some people were detained more than once so the total number of STDCs was 42,493. These detentions took place in 189 hospitals across Scotland. In Table 1 we have summarised these detentions based on how then ended and stratified these into age, gender and ethnicity.

Statistical methods

The analyses were done by a statistician at the Department of Mathematics at Edinburgh University. The full details of the statistical methods that we used will be published in an academic journal article but are available on request. Questions on the methodology can be directed to mwc.enquiries@nhs.scot

What we found

Revoked, lapsed and extended STDCs

Overall, 39% of STDCs were revoked, 22% lapsed and 39% were extended. We could see that more STDCs lapsed for people over 65 and for females. More males had their STDCs extended. The ethnicity of people who were detained was similar across the three types of STDCs (Table 1). Revoked STDCs were on average 14.43 days long.

Changes over time

Lapsing STDCs

Over time we could see fewer STDCs that lapsed: 62% fewer STDCs lapsed in 2018 compared to 2006.

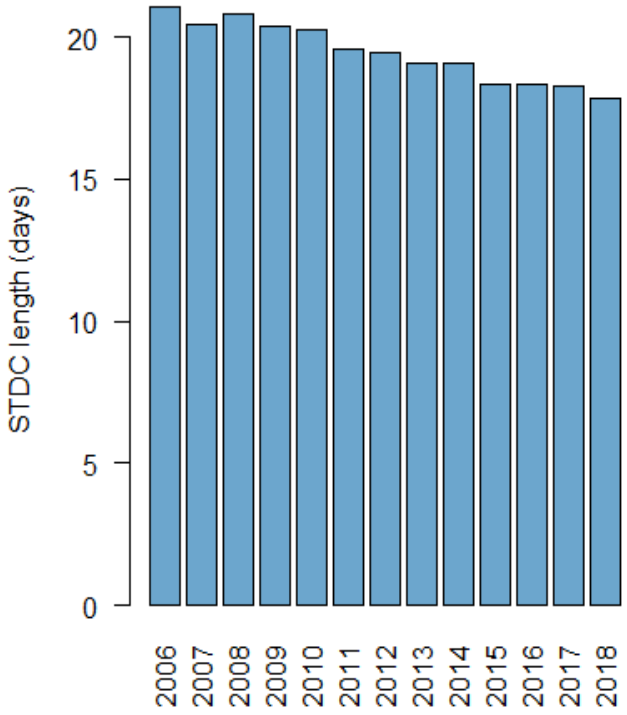
Extended STDCs

Compared to 2006, STDCs were less likely to be extended in the years from 2012 to 2018. We found that older people and males were more likely to have detention extended. Asian, White: Other and Mixed ethnicities were more likely to have their STDC extended compared to White Scottish ethnicity. It is important to highlight that the number of people who were not White Scottish was small which makes it difficult to say if these differences are significant

Revoked STDCs

The length of STDCs that were revoked declined significantly over the years; compared to 2006, STDCs were 10% shorter in 2018. We found that the older a person is, the longer their STDC tends to last. We could not see any difference for gender or ethnicity. Figure 1 shows that the length of revoked and lapsed STDCs taken together decreased over time.

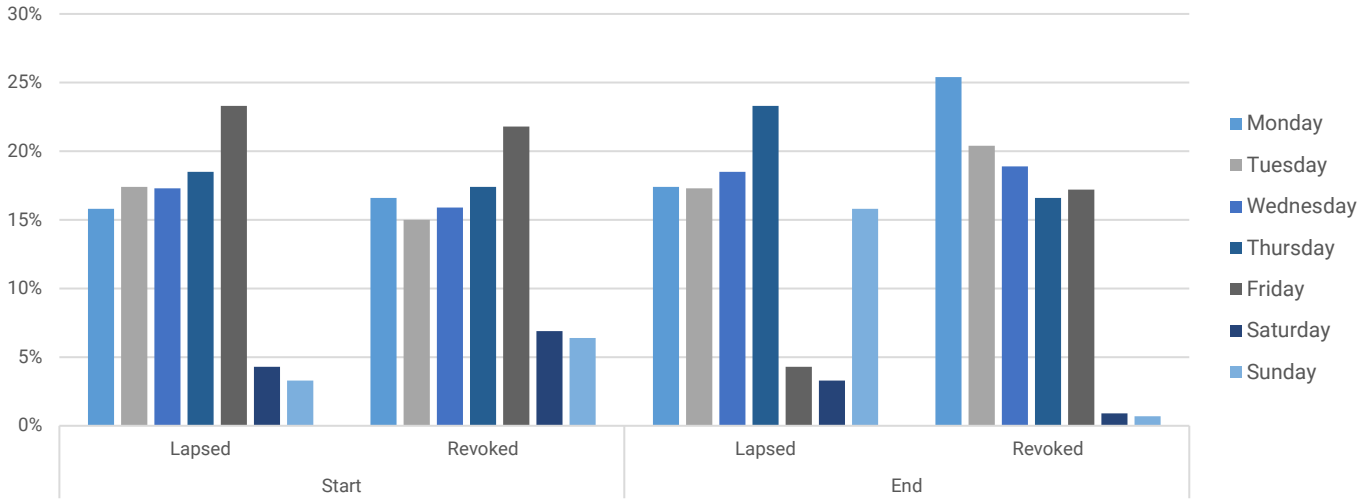
Figure 1. Length of revoked and lapsed STDCs



Day of the week

We could see differences in when detentions started and ended during the week (Figure 2). In our statistical tests we could see that these differences were significant. Most STDCs started on Fridays and those that were revoked mostly ended on Mondays. We could see that few STDCs were revoked on weekends.

Figure 2. Days of the week STDCs started and ended



Differences between hospitals

Across the eight hospitals with the most STDCs, which we looked at in more detail, we found that older age was associated with a greater amount of lapsed STDCs. When we excluded STDCs that lapsed, we could see that the length of STDCs increased with older age in all of these eight hospitals. The likelihood of an STDC lapsing or getting extended, and the length of a revoked order, varied significantly across the top eight hospitals.

What this means

We are concerned to find that 22% of all STDCs lapsed on the final day of the maximum time an order can last for. Our Mental Health Act states the psychiatrist who is responsible for the compulsory care and treatment should keep the need for the detention under review "from time to time". The Code of Practice of the law suggests continuous review by the multi-disciplinary team on the ward. Allowing an STDC to lapse on the 28th day is not mentioned in the Mental Health Act, the Code of Practice, or the training manual for Approved Medical Practitioners (AMPs)(4). We think, at best, allowing a detention to lapse is poor practice and at worst it might suggest that the principles of the Mental Health Act are not being followed. This is particularly important for the principle of "proportionality", which means that as soon as the criteria for a detention are not met it should be lifted. We however can see the clear improvement in practice in our finding that much fewer detentions lapsed in 2018 compared to 2006 (A 62% reduction). The practice of allowing STDCs to lapse should be discouraged in training, and in practice.

We also think it is good news that the length of STDCs have overall got shorter over time. However for people over 65 years we found that they had longer revoked detentions and were more likely to have them extended. This could suggest that there are difficulties for treatment teams to find placements for people with reduced capacity. This is an important question to be looking at in the future as we have also seen a rise in detentions for older age groups over time for both males and females (5).

While the numbers of people from ethnically diverse groups was small limiting our ability to say for certain how strong these findings are, we need to acknowledge these groups might be more likely to have extended detentions. Previous work has shown that mental health services are less accessible to ethnic minority groups. This could mean that they are more likely to present in crisis which is why studies have shown an overrepresentation among detained people across the UK generally, and in Scotland (6,7). Greater need at the time of the detention might explain why extensions are more likely for this group but this needs further work in the future.

Our work shows clearly that psychiatry works on a five-day-a-week basis. We believe this raises

important questions about how well mental health input works for our most vulnerable people at the weekend. Along with differences between hospitals in the likelihood of detentions lapsing or extending, this suggests that services need to look at how services are provided and what practices are in place. We cannot say from this data if the differences we see between hospitals are down to culture in how the Mental Health Act is used in different hospitals, on-call practices, availability of crisis resolution and home treatment teams, or other factors.

Conclusion

We can see that the principle of proportionality might not be working as the Mental Health Act and its associated Code of Practice intend. We think our findings might suggest that practices are 'reflexive' as a fifth of STDCs lasted as long as they were allowed to. We consider two ideas that might reduce the reflexivity. The first option is additional clinical scrutiny at 14 days that gives the detained person an additional safeguard. This is an idea suggested for a new act in England and Wales for detentions that can last up to 28 days (9). However, we think for this to offer credible scrutiny this additional opinion should not come from within the service, as has been suggested in England and Wales. The second option is to consider a shorter time of detention. Any such changes would need to carefully consider the impact on lengths of other detentions and the resource implications.

We hope that this work will provide valuable data on how the length of detentions have changed over time to inform the Scottish Mental Health Law Review. As far as we are aware, such data was not available and considered when the Mental Health Act was last reviewed. Informed changes to the maximum length of detentions can make a difference to those who experience detentions and those important to them.

Why we wrote this Brief

The Commission has a statutory duty to promote best practice with the Mental Health Act. One way we do this is by presenting the key findings of our research and monitoring activity. The details of this work will be published in an academic journal. However, we are keen to ensure that the key findings and summary of the work is available and accessible to all who are interested.

Authors and Acknowledgements

This work was done in collaboration with Dr Gail Robertson, Statistical Consultant, Department of Mathematics, University of Edinburgh. The work was led by Dr Lisa Schölin, Dr Moira Connolly and Dr Arun Chopra from the Mental Welfare Commission for Scotland with early input from Dr Helen Alderson whilst on placement as a trainee at the Commission.

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