mentalwelfare commission for scotland

VISIT AND MONITORING REPORT

Updated Survey of Recorded Matters

Updated survey of recorded matters made under the Mental Health (Care &Treatment) (Scotland) Act 2003

Introduction

In May 2009, the Mental Welfare Commission (MWC) reported on a survey of Recorded Matters made between October 2005 and December 2008. The evidence this provided indicated that approximately half of the recorded matters made in that period were likely to be inappropriate within the meaning of the Mental Health (Care & Treatment) (Scotland) Act 2003 (the Act).

Of those that could be considered appropriate, the majority were drafted in a vague and non specific way that could give rise to confusion as to whether the recorded matter was being complied with. Even amongst the recorded matters that could be classified as specific, there were instances of non-essential treatments being recommended, or too short a timescale set when complex packages of care needed to be provided.

The conclusions of this earlier survey recommended that:

- The Mental Health Tribunal for Scotland (MHTS) should consider reviewing training and guidance on when and how recorded matters are to be made by Tribunals.
- The MHTS and the MWC should consider possible means of following up cases where a recorded matter is made e.g. requesting the RMO to give an update on progress, including information on recorded matters on detention renewal forms.
- The MHTS should explore what more forceful options are available in reviewing recorded matters that involve the provision of essential care or treatment, including referral to the MWC.

These recommendations led to training for tribunal members on the use and merits of recorded matters, and on how they might best be framed, to ensure that they are specific, measurable and achievable, and have a realistic timescale attached to them.

The MHTS training stressed that recorded matters should have the following qualities:

- they should be directly concerned with the individual's care and treatment;
- they should be defined in operational terms. If they involve the principles of the Act, these should be translated into practical aspects of care, treatment, or services;

- they should be specific, measurable and achievable; and
- they should have a realistic timescale attached to them so that, at the end of that time period, it is clear whether they have been implemented or not.

What is a Recorded Matter?

Under Section 64 (4)(a)(ii) of the Act, the Tribunal may: "specify such medical treatment, community care services, relevant services, other treatment, care or service as the Tribunal considers appropriate" (any such medical treatment, community care services, relevant services, other treatment, care or service so specified being referred to in this Act as a 'recorded matter').

The value of recorded matters is that they are intended to ensure the provision of appropriate services for individual service users where a specific need has been identified. This reflects the Act's principle of reciprocity, i.e. where society imposes an obligation on an individual to comply with a programme of treatment and care, it should impose a parallel obligation on the health and social care authorities to provide safe and appropriate services, including ongoing care following discharge from compulsion.

Where an element of care or treatment which is a recorded matter is not provided to the service user, the Responsible Medical Officer (RMO) must bring this to the MHTS's attention. The Commission also has a general power to refer a Compulsory Treatment Order (CTO) to the Tribunal and could use this power to refer non-provision of a recorded matter to the Tribunal.

1. Purpose

The aim of this survey was to identify whether recorded matters are being used appropriately within the terms of the Act and what types of care and treatment are being made the subject of recorded matters. This information will be used to inform further discussion between the Commission and the Mental Health Tribunal for Scotland as to how best to develop the use of recorded matters.

What did we look at?

This work updates the previous survey completed in May 2009 (covering 385 recorded matter made between October 2005 until May 2008). As indicated, since then, Tribunal members have had training on the applicability and use of recorded matters.

For this exercise, the Commission staff considered all recorded matters made in the period between January 2011 and October 2013. During this period there were 130

recorded matters made by tribunals. (There were 9679 tribunal hearings during this time period.) The breakdown by year is shown below.

2011	2012	2013	Total
53	53	24	130

Initially, we looked into the appropriateness and specificity of the recorded matter in the same way as the earlier survey had. This allowed us to identify what aspects of care and treatment were being made the subject of recorded matters, the diagnosis of the individuals, their NHS and local authority area, and whether the CTO order was hospital or community based.

We then looked at what effect the recorded matter had on the individual's care and treatment. We developed a pro-forma for capturing this information, including that helpfully provided by the MHTS, as well as the views of the individual, named person, Mental Health Officer (MHO) and RMO.

Using the recorded matters from the last year as our sample, we wrote to each individual, named person, RMO and MHO, inviting them to give their views on a range of questions.

It became clear from an early stage that a range of recorded matters are being made and that, in some cases, they lack specific timescales for when the recorded matter is to be implemented. While some recorded matters were very specific, others were vague. Other recorded matters did not appear to meet the criteria set out by legislation. It was quickly apparent, nonetheless, that there was considerable improvement in these areas since the previous survey was carried out.

For this survey, we were able to extract the necessary information from our database in relation to CTO applications (form CTO1), supporting mental health reports (form CTO2), and applications to vary or extend the CTO with or without variation (forms CTO5, CTO3a and CTO4). Notifications of failure to comply with a recorded matter were also considered (CTO10). There were only 2 instances of the use of the CTO10 form identified over the 3 years.

We decided to concentrate on the last year for which we held data, and took as our catchment period recorded matters made between 7 October 2012 and 20 September 2013. We did not feel it practical to include recorded matters made before October 2012 as people's recall of events would have faded, and they would be unable to easily answer questions regarding the possible benefit of the recorded matter. We identified 30 recorded matters in this period.

We wrote to each of the individuals, their named person where they had been identified (15), their RMOs and MHOs, requesting that they complete a few short questions relating to the recorded matters. The responses from these four groups

are reported upon later in this document. We received no responses in relation to 6 of these cases.

The responses are broken down in the table below:

Feedback Responses to MWC Letters:

Type of Respondent	Number of Responses
Service Users	8
Named Persons	7
RMOs	21
MHOs	17
Total Responses	**53**

We confirmed with the MHTS that, in relation to the 30 recorded matters identified, they were satisfied in 67% of cases that the matter had been delivered and complied with. In 10% of cases, a reference was made under section 96 by the RMO. In 67%, of cases, the MHTS received a report on the recorded matter.

Demographic Information

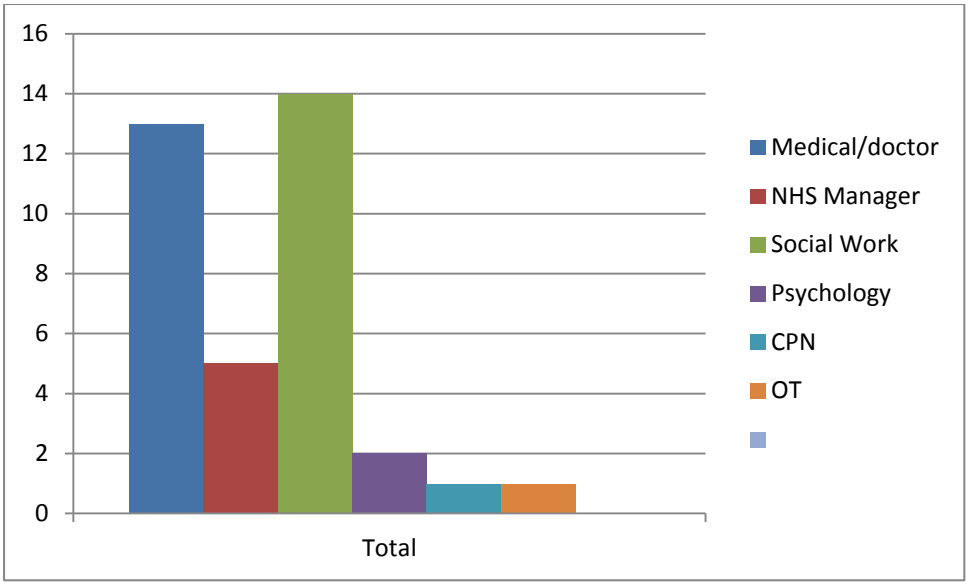
The majority of individuals for whom there was a recorded matter (80%) were aged between 25 and 64 years. Notwithstanding the small sample, the breakdown by gender of those who had a recorded matter was roughly equivalent to the breakdown by gender of the total number of people on a CTO as at 20/9/13.

Gender	18-24 yrs	25-44yrs	45-64yrs	65-84yrs	85yrs +	Total	%	% of all CTOs
Male	3	8	7	0	0	18	60	64
Female	0	3	6	2	1	12	40	36
Total	**3**	**11**	**13**	**2**	**1**	**30**	**100**	**100**

It is always important for tribunals to record the reasons for making the recorded matter in their decisions. When we reviewed our files we found that 15 tribunals had provided an explanation for the recorded matter in the full findings, while 4 tribunals had given partial information. In the remaining 11 cases, there was no explanation from those tribunals.

Professional responsibility for the recorded matter

Some of the recorded matters analysed identified multiple matters to be addressed. There were 36 matters in total, which were to be delivered by 6 different organisations and disciplines. In the main these were directed towards either social work (14), or healthcare providers (13). Full details are shown below:



Each of the recorded matters identified at least one service as responsible for completing the recorded matter; five recorded matters identified 2 services; and one identified 3 services.

Reference to the Tribunal by the Responsible Medical Officer

Section 96 of the Act provides a mechanism by which a reference can be made to the MHTS by the RMO if it appears to the RMO that any recorded matter specified in a CTO is not being provided. In these instances, the RMO is required to consult with the MHO and such other persons as the RMO considers appropriate. Following this consultation, if the RMO is satisfied that a recorded matter is not being provided, the RMO is required to make a reference to the MHTS.

A reference must be made as soon as is practicable after the requirement to make it arises. (Of course, these obligations do not apply where the RMO is required to revoke the CTO, or where the RMO is making an application to extend and vary the order). Where the RMO decides to make a reference, they must give notice of this intention to the parties specified in section 91, namely the service user, the named person, any guardian or welfare attorney, the MHO, and the MWC.

The MHTS received a satisfactory report from the RMO in 20 of the 30 recorded matters they had made during this period (i.e.67%). In the earlier survey, it was only possible to identify that the recorded matter had been complied with in 22% of cases.

In the 10 cases where the MHTS was not satisfied, this was for a variety of reasons. In one case, the RMO wrote asking that the recorded matter be removed as it was no longer needed. In another, the recorded matter was changed at a subsequent hearing. In three other cases, the CTO ended before the recorded matter could be delivered. We could find no information on whether the recorded matter had been delivered in 5 cases.

We also wanted to know if the recorded matter was fully or partially implemented. Of these responses, 16 records show the recorded matter was fully completed, 3 records report it was partly met, and 4 records identify the recorded matter was not met.

The work undertaken by the Tribunal administration and the Commission in following up these responses identified some interesting information:

- In one case the authority to detain lapsed prior to the term of the recorded matter expiring. No report was sent apart from the termination of CTO standard form.
- In one case the MWC asked for follow up from the RMO on the outcome of the recorded matter. It transpired that the MHTS had revoked the order.
- An investigation report was completed by a Social Work Officer at the MWC in one case, in the course of which the officer visited the individual, the named person, and the support provider. Following on from this, the NHS Board carried out an internal investigation and produced an action plan. There was no further action by MHTS.
- In one case the recorded matter was dealt with at a subsequent S92 hearing which noted that the recorded matter was delivered and the housing issues/social care issues were dealt with. However, this was 5 months later.

Service Users Responses

We wrote out to all 30 service users who had had a recorded matter made at a CTO hearing. We included a copy of the original recorded matter to prompt their memory, and asked each individual to complete a brief questionnaire. We received 8 responses, although not every question was answered in each response.

In answer to the question “Did you know the Tribunal had made a recorded matter?” we had 7 responses. Only two answered “yes”. We asked for a comment about this. One individual said “I did not understand what was meant by recorded matter”. Another said they did not attend the tribunal as they thought it was “a foregone conclusion”.

We asked “What did you think the recorded matter meant?” We had 3 comments:

- I knew I was to see a psychologist but I did not have the concept of a "recorded matter".
- I thought this was boring stuff.
- If I was told it was a recorded matter, I certainly do not remember that is what it was called.

We asked, “Did you think the tribunal was right to make this a recorded matter?” Six individuals replied “yes”. Two said “no” and made the comment:

- No “I shouldn't have to be in hospital”.
- No “The Tribunal were only interested in what it was the doctor had to say - it was unfair”.

We asked the service users, “Do you think the recorded matter has been provided?” Four said “yes” and 3 made comments; “Yes I moved to [house] within six weeks of the recorded matter being issued” and another said “Staff have talked to me - that is all”. One said “I am not sure”.

Five said they thought the recorded matter had helped and 3 added:

- Only with going back into the community.
- The psychologist’s input was helpful.
- Yes I’ve learned new skills and it's helped me get my life together.

The MWC feels that this area of the survey is crucial in demonstrating issues concerning the underlying principle of “participation”. Service users should be supported in every possible way to fully participate in their own tribunal. This is enshrined in the principle of participation under s1(3)(c). In order to do this, we feel that better explanation should be afforded to the service user whenever recorded matters are being considered, or when made by the tribunal. From this survey, despite the small size, it is apparent that service users do not have a good understanding of recorded matters, and so are unable to make effective use of this important safeguard.

Named Person responses

We were able to identify and write out to15 named persons; 7 responded to the questionnaire. We included a copy of the original recorded matter to prompt their memory, and asked each individual to complete a brief questionnaire. Some of the service users did not have any details of named persons.

Six named persons knew the recorded matter had been made. Two made comments:

- I attended the tribunal (though my wife chose not to) and the recorded matter was explained clearly to me at the end.
- She said she heard all the tribunal said and thought the tribunal was excellent. She heard the tribunal say that a social worker should be allocated.

Three named persons knew what the recorded matter meant and that it related to the provision of services for the individual. Comments included:

- An assessment had to be made of the individual’s condition. A new care plan had to be prepared.
- I understood that there was a long waiting list for assessments by the psychology service, but the Tribunal thought it was important she was seen as soon as possible.

Others appeared confused:

- She thought the recorded matter meant the recording of the entire tribunal hearing.

- I was not made aware of this process.

All 7 named persons agreed it was right to make a recorded matter and that it had been provided, and that making the recorded matter had helped the individual.

As with service users, we feel that there is a lack of understanding about recorded matters by named persons. Given this position, we would again question whether they are being helped sufficiently to participate as fully as possible in the tribunal process. Better information needs to be provided to named persons and other relevant parties.

Responsible Medical Officer responses

We wrote out to 30 RMOs. Twenty-one answered the questionnaire and all but one knew about the recorded matter. This particular RMO had not been involved at the time of the recorded matter which had by now been completed. Sixteen thought it was right to make a recorded matter; three thought it was wrong. Comments from the three RMOs who thought it was wrong to make a recorded matter are set out below:

- This was made following representation by the individual's solicitor and whilst it did concentrate the focus on to a timescale of assessment, it was not necessary at the point it was made. Where recorded matters give time limits where there is a complex case such as this, I have some concern that these may be rushed as workers in the community feel they have to complete it in time for the RMO to pass it to the tribunal.
- The sexual offending treatment recommendation was unhelpful as he was due to be transferred to another hospital; this is very sensitive work and would have not been appropriate to start just before transfer. The 'social integration' recommendation was also “no”.
- It was a waste of time. (The RMO had been asked to procure and provide insight training and psychosocial education to the individual into the nature of their illness, if they were willing to engage, within 28 days).

Of the 16 who agreed it was right, some comments included:

- Very important as a young man had been waiting years for a rehab placement.
- It ensured the recorded matter happened.
- The panel was absolutely right in doing so.
- I would have done a care plan anyway and discussed with all relevant others. However, I think the tribunal wanted to ensure this happened.

Sixteen RMOs thought the recorded matter was provided and four thought it had not been. Of the four who thought not, some comments were:

- He is still awaiting a community placement.
- We just went through the motions (see “It was a waste of time” above).

- The individual subsequently demonstrated that he was no longer requiring services provided by the recorded matter.

Some of the RMOs who thought the recorded matter had been provided commented:

- Yes - he was transferred as planned to low secure care.
- Resource panel has approved application by MHO for placement in supported accommodation.
- He moved to [Ward], in another hospital.
- He received psychological input on transfer to another hospital
- A bed in the local unit became available and the individual was transferred accordingly.
- A copy of the detailed care plan was sent to all the relevant parties and discussed.
- Partially. Support has been provided for 20 hours per week but a respite facility was not found by [the Social Work Department].

In light of the above information, we wanted to know if the RMO had referred back to the Tribunal. Thirteen RMOs said it wasn't applicable and 2 indicated they had not referred back even though the legislation requires them to do this if the recorded matter is not going to be met. Twelve RMOs thought the recorded matter had helped, whereas 7 thought it had not.

Of the 12 who thought it had helped, their comments included:

- We had to put as much pressure on as possible to get a result. The individual came to the Tribunal and I made a passionate appeal for the recorded matter.
- It helped cut short the hospital stay for the individual and also significantly helped enhance his overall quality of life and mental health.
- To a degree it helped us to arrange external support for the individual.
- I would have done it anyway, but possibly I was more thorough!
- The recorded matter sped up the transfer to rehabilitation.
- The recorded matter gave her daughter more of a role, which she was keen for.
- Yes, it helped. We were afraid the resource panel was likely to have rejected the MHO's application for funding (again).

Mental Health Officer Responses

We identified all 30 MHOs and wrote out to them. Seventeen completed the questionnaire.

Sixteen confirmed they knew about the recorded matter at the time it was made – one was on annual leave at the time of the hearing but found out about it later.

Twelve thought it was right for the MHTS to make the recorded matter and 7 made comments as outlined below:

- It helped address the issue of succession of locum and psychiatrist cover and the need in most cases for continuity.

- It gave value to the Act and gave the service user a sense they had achieved something from the tribunal.
- The tribunal were anxious that the service user should not remain in hospital for a protracted period.
- This ensured the service user received best possible care and was in keeping with criteria as funding the community placement would have been difficult without these recorded matters.
- The service user's liberty had been over-restricted in my opinion in the hospital.
- The lack of the allocation of a social worker had been a long standing matter
- I welcomed this decision as a lack of supported accommodation contributed to readmissions and I have been struggling to find suitable accommodation.

Fourteen MHOs believed the recorded matter had been provided and some of their comments included:

- The placement is now much more suitable.
- RMO has been consistent since April 2013.
- The bed was provided at the earliest convenience.
- The service user was transferred to a more appropriate placement where he is receiving the appropriate level of care and psychological interventions.
- Assessment was completed by the local authority in time.
- A social worker was allocated.
- The service user was successfully rehabilitated on to a low secure unit.
- A full OT assessment was carried out and all adaptations have been made.

One MHO said

- The resource panel have now accepted application for supported accommodation but as of yet – there is no availability.

One MHO said that the recorded matter had been referred back to the MHTS. However, the RMO said it had not been referred back. The MHTS said the recorded matter had been partly met and was satisfied with the outcome.

Eleven MHOs thought the recorded matter had helped. Comments included:

- It put pressure on limited services, but it did ensure ongoing consideration of bed occupancy and admissions.
- It has helped in the sense that supported accommodation has been agreed by all as a way forward.
- Yes, because the NHS were getting nowhere without this formality. The individual was assessed and moved to an appropriate resource within four weeks.
- It placed more emphasis and urgency on the matter to be undertaken.
- It provided weight to the arguments.
- The individual felt 'let down' by services, but now has the assistance of intervention should she become ill again.
- It focussed the clinical team's attention on the need to move the individual on to a less secure environment.

Four MHOs thought it had not helped. Their comments included:

- It would have been done anyway. (The RMO to engage an autism specialist service for the adult within 8 weeks.)
- The RMO and CMHT staff had robust arrangements/care planning in place. I do not think the family were fully cognisant of this though. Possibly better communication with family at the time may have helped them.
- The assessment was already underway and there was a commitment to this without the use of a recorded matter.

Overall, we found that when the tribunal made a recorded matter, it focussed the minds of the RMO and MHO in taking the issue forward within their professional areas in order that the outstanding matter was resolved. At times, this meant that they had to escalate the issue to more senior staff for authorisation or remedy. Some social workers felt that making the recorded matter added weight to the outstanding issue which was resolved via the tribunal imposing the recorded matter. This worked best when everyone knew what the specific matter was, and the tribunal set a reasonable timeframe in which it should be delivered.

In one example, a service user was seen by psychological services as per the recorded matter. The service user and named person both felt it had helped. The RMO was satisfied the recorded matter had been delivered but explained that the effect of the recorded matter had been to cause a 'queue jump' of other service users on psychology waiting lists.

We classed all the recorded matters as appropriate, partly appropriate or not appropriate based on the agreed definition (see the 4 qualities at bottom of Page 1).

We viewed 24 as appropriate, 4 not appropriate and 2 partly appropriate.

The 4 recorded matters we classed as not appropriate are outlined below, together with our comments:

- "The RMO should report his concerns to the Mental Welfare Commission." *Our view is that this did not meet the MHTS's criteria for a recorded matter. It was, however, good advice.*
- The tribunal made a recorded matter that the individual be transferred to a specific ward within 4 weeks. *In fact, all the beds were full and the tribunal were not in a position to know the clinical state of the other 5 service users. It is therefore difficult to see how this met the criteria for a recorded matter.*
- It was for "the MHO to establish whether the daughter wished to act as Named Person and apply to the tribunal to have her so appointed". *This is already covered in MHO's duties under the Act and need not be a recorded matter.*
- The recorded matter asked "the MHO, within 8 weeks, to record steps taken to identify a Named Person and failing that, identify any opportunities to appoint a new Named Person once the individual had moved to his new community placement". *The MHO had already identified the only known*

relative and she had moderate learning disability herself and was not considered to be a suitable Named Person.

We thought 2 recorded matters were only partly appropriate:

- The recorded matter specified there should be an application for guardianship and that guardianship be in place within 3 months. *It is not appropriate to require that guardianship is in place within 3 months as this is a matter for the court to decide.*
- One of the recorded matters was to access benefits - benefits check to be completed. *This was not directly concerned with the individual's care and treatment, and while not meeting the MHTS's own criteria for a recorded matter, was a helpful suggestion.*

Summary of Key Findings

Although the 2 surveys were conducted in very similar timeframes, the number of recorded matters made by tribunals was only one third of the total in the previous survey.

Overall, we found that recorded matters frequently made a real difference to service users and improved their therapeutic care plan or social care package. Even when the outcome was only expedited, the recorded matter focussed the minds of services and their managers on resource issues.

We found that there were only 2 occasions when an RMO provided a notification to the MHTS of failure to comply with the recorded matter. We suspect that this figure is lower than it should have been and that more "Notification of Failure to Comply" forms should have been completed by RMOs (CTO 10).

The first survey resulted in MHTS members' training which has sharply focussed the use and application of recorded matters and we would commend MHTS for providing the training to their members.

Recommendations

1. Service users and named persons appear to have been given little information about recorded matters. In order to fully participate in the process of their tribunal, service users, named persons and other relevant parties should be fully aware of the nature and purpose of recorded matters, their relationship to the principle of reciprocity and a tribunal's authority to make recorded matters. Hospital Managers and mental health officers should ensure that service users, named persons and other relevant parties are provided with the necessary information about recorded matters.
2. All Mental Health Officer training programmes should ensure that the nature and purpose of recorded matters, their relationship to the principle of reciprocity and a tribunal's authority to make recorded matters in making a determination is thoroughly addressed as part of the taught component of programmes.
3. Given there was uncertainty from some Mental Health Officers about recorded matters, we recommend this is taken up by being included in

their in-service post qualifying development and that the HEIs providing MHO training review their input on named persons in light of the findings of this survey.

4. RMOs require clear notification about recorded matters, the implications and their duties. Hospital managers should ensure that there is a clear system for documenting when a recorded matter is made and for setting appropriate timescales for reviewing progress on implementation and/or referring back to the MHTS.
5. Mental Health Tribunals should clearly state the reasons for making a recorded matter in the full findings and reasons and continue to seek reasonable timeframes for delivery.
6. To avoid any ambiguity, Mental Health Tribunals should clearly indicate who has responsibility for completing the recorded matter.

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

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