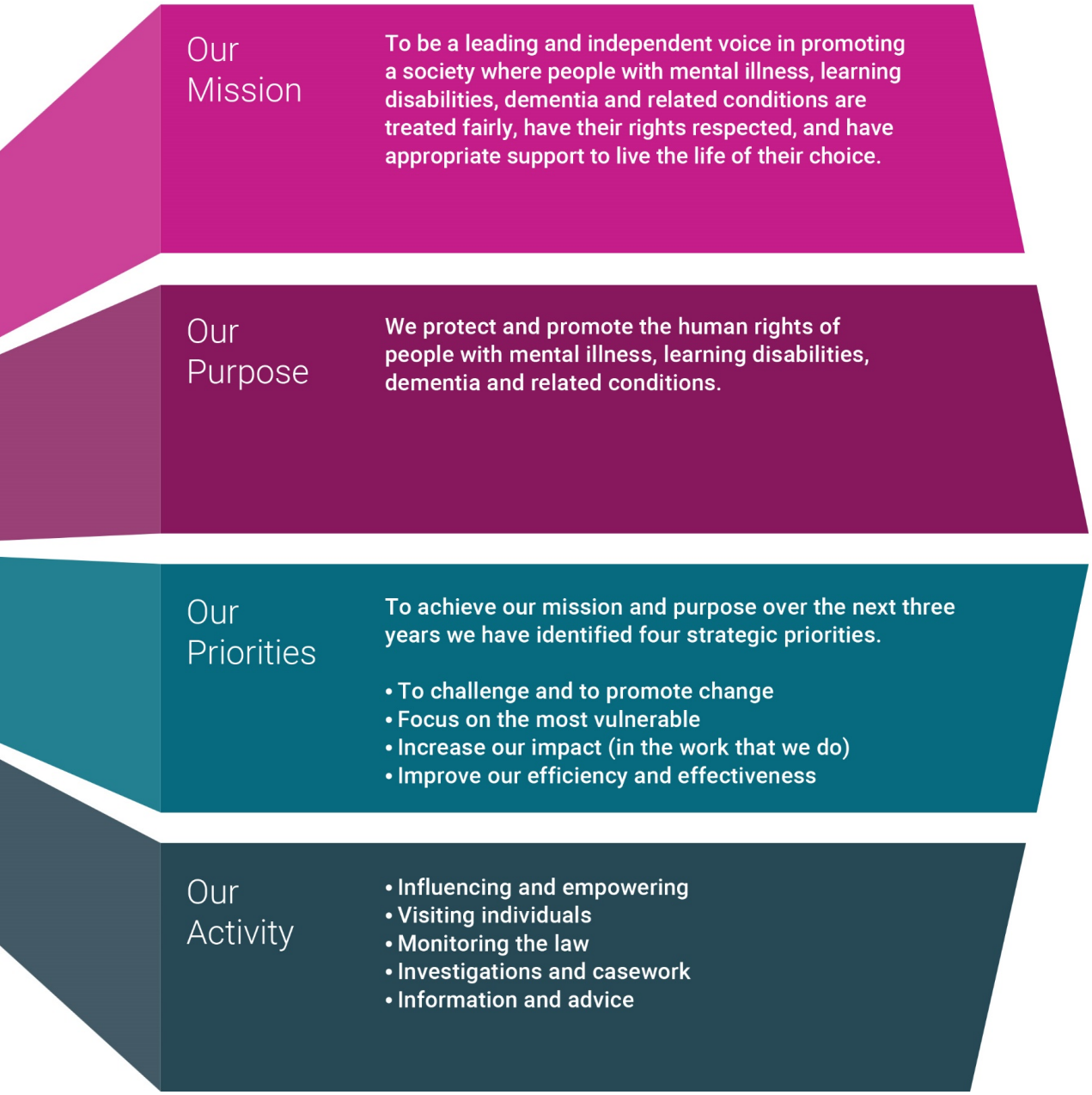
mental welfare commission for scotland

Closure report

Compulsory treatment for mental illness in the community – how is it working?

October 2024

Our mission and purpose



Closure report:

Compulsory treatment for mental illness in the community – how is it working?

Executive lead:

Julie Paterson, chief executive, and Yvonne Bennett, senior manager

Date of executive leadership team approval of project mandate:

August 2022

Date of commencement:

November 2022

Date of publication:

February 2024

Date of closure report:

October 2024

Purpose of a closure report

The purpose of a closure report is to assess whether the Commission has achieved its objectives (including outcomes, learning, quality and impact) and completed all deliverables on time and as planned.

The report must summarise the findings and recommendations made in themed visit report and identify the organisations and individuals to whom the recommendations were made.

The report should also identify the follow up actions and activities of the Commission in gathering in responses to the recommendations, and once in, identify how these responses were evidenced, assessed for impact and their success measured.

The report should assess theme in terms of impact, resource commitment and outcomes and met organisational standards and expectations.

1. Summary of recommendations made in the report

The Commission made community based compulsory treatment orders (CCTOs) a monitoring priority when the Mental Health Act was implemented in October 2005.

In advance of our fourth themed visit in 2022-23, we were aware that the use of CCTOs and the research into their effectiveness over the years continued to cause much debate. Indeed, both the mental health law reviews in South Australia (February 2023) and in Scotland (September 2022) expressed concern that practice was approaching the point where the growth of compulsion in the community was against a backdrop of evidence which suggests that the effectiveness of CCTOs is mixed and in many respects weak. Whilst neither review recommended ending the use of CCTOs, questions were asked about how they have developed and grown.

In this themed visit report, titled *Compulsory treatment for mental illness in the community: how is it working?* the measurement of effectiveness was not about use of hospital beds but about direct reports from those subject to CCTOs; what difference did it make to their lives, what did it feel like being subject to this order at home, did resources follow these orders and lead to individual outcomes being met? We also aimed to gather information from family members/carers and those staff supporting the person, as part of a care management approach.

We made seven recommendations for improvement to health and social care partnerships and their respective local authorities and health boards:

- **Recommendation 1**: The care programme approach or similar integrated framework should be used to support the dynamic care planning, review and revocation strategies for all people who are subject to CCTOs.
- **Recommendation 2**: Audits must be in place to evidence quality assurance of section 76 care plans completed by responsible medical officers.
- **Recommendation 3**: Audit processes must be in place to ensure that everyone subject to a CCTO has legal authority under Part 16 of the Mental Health Act in place with recorded dates for review and that treatment recorded on the statutory form remains accurate.
- **Recommendation 4**: Statutory obligations within section 25-27 of the Mental Health Act should be reflected within eligibility criteria and also the right to the four options of self-directed support.

- **Recommendation 5**: Social circumstances reports, taking account of economic, social and cultural rights, should be completed by mental health officers annually for those subject to CCTOs or statement given as to why this will serve little or no purpose.
- **Recommendation 6**: A training needs analysis should be undertaken to ensure a delivery plan to support key staff responsible for ensuring that:
    - legal authority to provide treatment is in place, which is current and subject to regular review;
    - carers' rights to an Adult Carer Support Plan are understood and upheld; and
    - that carers are involved in decision making as far as possible.
- **Recommendation 7**: Individuals subject to CCTOs and their carers should have information regarding appropriate actions and contacts at times of crises.

2. Summary of responses

The Commission received responses from all 31 health and social care partnerships (HSCPs), sometimes as individual HSCPs and sometimes as a collective e.g. Glasgow's Health Board.

All action plans were scrutinised using agreed standard criteria and where action plans were not SMART (Specific, Measurable, Achievable, Relevant, and Time-Bound) and did not give assurance, follow up contacts were made, including meetings with key people within health and social care partnerships as required. The quality of responses varied from exemplary to very poor; we are keen to seek permission to share one of the exemplary examples with others for their information and understanding.

The outcome is that all action plans now evidence clear objectives in relation to recommendations and timescale to delivery. HSCPs will be expected to monitor progress through their existing governance arrangements and updates will be requested by the Commission in advance of 'end of year meetings' in 2024. The updates will include, as always, request for information regarding the governance arrangements in place supporting delivery of recommendations made by the Mental Welfare Commission.

One of the consistent themes from the responses was the lack of any audit activity around CCTO practice in general and the quality of Section 76 care plans in particular and, on reflection, it would appear that the level of scrutiny applied to hospital based orders has never been expanded to community based orders. This was viewed as an oversight and significant improvement activity has been identified for the majority of HSCPs over the coming 12 months based on the recommendations made.

During the themed visit we noted that while the treatment part of the order was almost, without fail, in place, the care element which should be an integral part of the CCTO was less evident. The responses we received, however, invariably highlighted that care needs were routinely considered although this rarely translated into the provision of a service or a self-directed support (SDS) option. Within the responses, some HSCPs committed to considering this afresh and as a starting point auditing the use of SDS for those subject to a community-based order. We welcome this.

Whilst it is recognised that resources are finite and there are significant challenges in practice, a request to change the Commission's good practice guide and remove the recommendation for an annual social circumstances report (SCR) was not agreed; our good practice guide already acknowledges that the requirement for every event is not workable however we suggest our good practice guide retains the balance of ensuring safeguards are in place to support decision making in relation to the removal of liberty.

Additionally, we continue to remain of the view that a Section 86 determination required at the point of renewal of an order does not automatically satisfy the need for an SCR. The section 86 determination prepared by the MHO essentially confirms the MHO's agreement (or otherwise) that the order should be made. While this may include some information relevant to the person's social circumstances, it does not address the same requirements as an SCR, not least what alternatives to ongoing detention might be available and therefore does not negate the legal requirement for the preparation of the SCR. We will continue to monitor through the current SCR audit activity within the Commission.

3. Summary of follow up activity and actions

The focus of our CCTO report was not on the number of admissions or bed days gained or lost but on the experience of those subject to CCTOs, their relatives and those who are charged with ensuring safeguards, care and support are in place.

Whilst our report does not call for CCTOs to end, we support the Scottish Mental Health Law Review's conclusion that further research and inquiry needs to take place to ensure the intention and the spirit of the law is realised in practice.

We found that the safeguards are not being implemented as expected for those people subject to CCTOs and indeed reviews are becoming an administrative process rather than part of dynamic care planning towards recovery and informal care. Our concern is that this is leading to extension of social control via CCTOs which are remaining in place for many years.

We met with the Mental Health Tribunal for Scotland (MHTS) and presented our findings. The MHTS now log two year reviews where the person has been on a CTO in the community for more than five years. Previously submitted paperwork and current paperwork is now considered as part of prehearing scrutiny.

The Scottish Government's *Mental Health and Capacity Reform Programme Delivery Plan October 2023 – April 2025* refers to our report in the context of priority 6 Reducing Coercion and states "We will scope a programme of work to reduce the use of coercion and restrictive practices such as seclusion and restraint over time… We will consider findings of the Mental Welfare Commission's report on community- based compulsory treatment orders published February 2024".

In February 2024 we provided a keynote speech and facilitated a group discussion to consider the findings of our report at the Scottish Association of Social Work's Mental Health Officer conference.

A meeting was held with the Law Society Mental Health and Disability Sub-Committee September 2024 about the Commission's views on the benefits, or not, of long term CCTOs.

We are scheduled to attend the Royal College of Psychiatrists in Scotland rehabilitation psychiatry faculty on 28 November 2024 to provide an input based on the role of the responsible medical officer as detailed in the themed report.

4. Summary of the impact of the themed report and wider learning

Media

This report gained extensive media coverage, online, print and a BBC radio interview with Yvonne Bennett.

Social media

On social media, the original tweet on Twitter (aka ‘X’) received 119 engagements (meaning it was liked, retweeted, clicked on, or otherwise interacted with). 43 users clicked on the link to the news story, 18 users liked the tweet, and 24 retweeted it directly to their own followers. This makes it the most-engaged tweet of that week (and second most-engaged of the month, after the tweet for a new AWI learning module).

Organisations retweeting us include AdvoCard, Society of Solicitor Advocates, The Advocacy Project, Policy Hubs UK, Prison Experts Group, Advocacy In Angus, and Dunfermline Advocacy.

5. Conclusion – was the themed visit worth doing?

Community-based compulsory treatment orders (CCTOs) were introduced by the Mental Health (Care and Treatment) (Scotland) Act 2003. It was thought that compelling care, treatment and support in the community for some people would be a better option than potentially multiple compulsory admissions to hospital. The positive intention of this approach was to provide stability, support and recovery at home in the community leading to voluntary care and treatment

We heard some positive reports of care and support, particularly involving social care support from third sector providers. We heard that CCTOs were good because they ensured that the person had access to a psychiatrist, community nurse and mental health officer. There was a perception and indeed experience that this support would not be available without a CCTO. The threat of hospital appeared to be the main measure considered with expectation of recovery and hope rarely mentioned. Forty-one of the people we met had been on a CCTO for 10 years or more. There was a sense that CCTOs often just 'trundled' on.

Our findings from this themed work are important in that they support the Scottish Mental Health Law Review's recommendation 9.29 to the Scottish Government:

The Scottish Government should commission substantial and innovative research:

- To explain why the use of CCTO has continued to increase in Scotland;
- To understand the circumstances which make CCTO effective or ineffective;
- To show which groups of people CCTO tends to work for;
- To understand the experience of those who receive regular voluntary treatment in the community and who are not on CCTO.

Whilst we note and welcome the reference to our CCTO report in the Scottish Government's mental health and capacity reform delivery plan, we look forward to the Scottish Government's specific response to the Scottish Mental Health Law Review's recommendation 9.29 in the context of the detail provided in our report. Our report is important because it reflects the views of the 92 people subject to CCTOs, 29 family members and 322 staff working with them.

6. Outstanding actions and recommendations, and any future activity or options to satisfy these

During 2024-25 we will make contact with the 41 people we found to have been on CCTOs for 10 years or more to determine whether any progress has been made.

During 2025-26 we will complete a good practice guide for mental health nurses and their role in relation to the mental health act, specifically administration of treatment and authority to do so.

If you have any comments or feedback on this publication, please contact us:

Mental Welfare Commission for Scotland
Thistle House,
91 Haymarket Terrace,
Edinburgh,
EH12 5HE
Tel: 0131 313 8777
Fax: 0131 313 8778
Freephone: 0800 389 6809
mwc.enquiries@nhs.scot
www.mwcscot.org.uk