

Section 136 Lapses – Too obscure to notice?

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Background

- Changes in mental health law in December 2017 resulted in the validity period of Section 136 (S136) being reduced from 72 hours to 24 hours¹
- This has resulted in an increase in the number of S136 lapses due to the **lack of an available inpatient bed**
- When this occurs, the legal grounds to continue detaining a patient are dubious. Our local trust policy advises that:

1. Patients should be informed with an **apology** (duty of candour)
2. A **medical review** should take place, ideally by the on-call registrar
3. A **capacity assessment** should take place in relation to the patient's consent to remaining in the Place of Safety (PoS) and the proposed treatment plan

TARGET CRITERIA

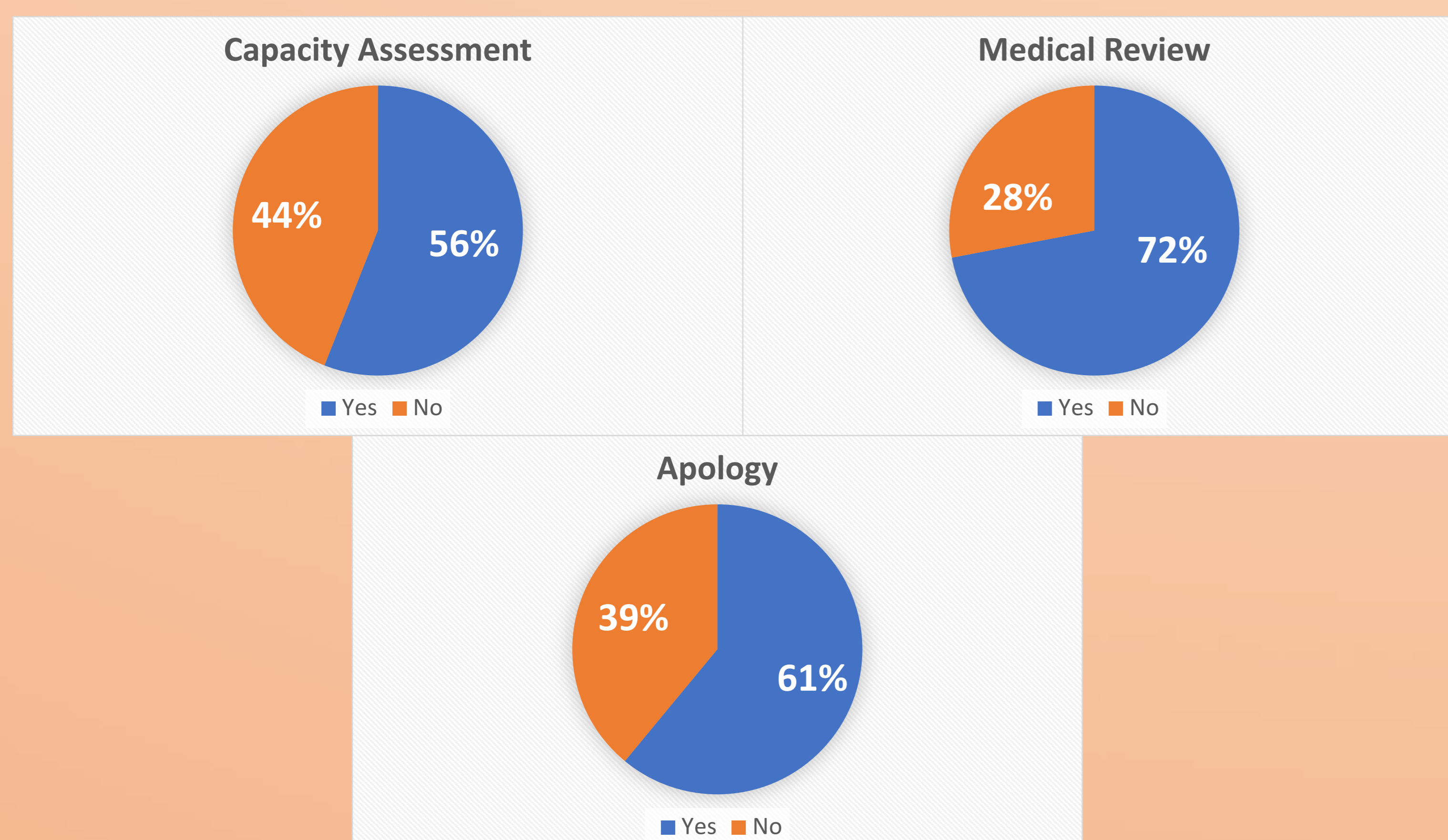
All patients who continue to be detained on Section 136 after the time lapses due to the lack of an available inpatient bed, should receive an apology, medical review and capacity assessment in relation to their continued detention.

Method

- Data was collected retrospectively over a 2-month period (November & December 2018) from a PoS that houses 2x S136 suites
- Clinical notes were reviewed to identify all cases where a patient continued to be detained under S136 due to the lack of an available inpatient bed. Notes were assessed as to whether whether the patient received an apology, medical review or capacity assessment in relation to their lapsed S136
- Information gathered was used to inform changes
- Data was re-audited retrospectively over a 2-month period (June & July 2020) from the same PoS
- A comments section was included to indicate whether any factors may have influenced whether the target criteria was adhered to (e.g. consultant review, use of seclusion)

Results of the 1st audit cycle

- There were 18x S136 lapses due to the lack of an available inpatient bed identified over 2 months in 2018



Charts 1-3. Pie charts showing the proportion of patients who received a capacity assessment, medical review and apology at the time of their S136 lapsing

Changes implemented after 1st audit cycle

1. The recommended actions were written into the **Operational Protocol** for the PoS
2. Information was incorporated into the presentation delivered by the PoS staff at the 6-monthly **junior doctors' induction**

Results of the 2nd audit cycle

- There were 20x S136 lapses due to the lack of an available inpatient bed in 2020
- **Unfortunately, 0% of patients received an apology, medical review or capacity assessment in relation to their lapsed S136**
- **40% of patients were in seclusion at the time that their S136 had lapsed**

Discussion

- The interventions we implemented did not bring about change in the way S136 lapses were managed

What went wrong?

1. **Accessibility of the PoS Operations Protocol:** Many trainees may not have been aware that the protocol existed, and the relevant information was contained on page 28 of a 43-page document.
2. **Overemphasis of information giving at induction:** It may have been too early to fully grasp the concept of a lapsed S136 for trainees new to S136 assessments (CT1s and GP trainees).
3. **Clinician perception:** Is this aspect of the S136 legislature too obscure for clinicians to care about? Some may attribute the issue as being systemic, and so not feel any need to act.

Why are S136 lapses important to act on?

- Places of Safety are more restrictive than an inpatient ward. If we do not acknowledge that we are detaining patients for longer than legally permissible in the PoS, we are eroding the rights of our patients
- Extended time in the PoS can be a trigger to escalations in levels of agitation, which may explain the significant number of patients who were in seclusion at the time of lapse

Lessons learnt

- The recommended protocol will be made more accessible through **posters** displayed in the PoS, and the junior and senior doctor on-call rooms
- The protocol will be presented at the **local academic programme**, once trainees have more familiarity with S136 assessments
- The presentation will include an opportunity for **trainees to discuss their views** on this issue
- Ultimately, the legal implications of a lapsed S136 remains a national dilemma that may require a decision through case law²

REFERENCES

1. Home Office (2017). *Policing & Crime Act 2017*, C. 4
2. Ramesh & Kripalani (2020) Section 136: The 'grey zone' after the 24-h validity period lapses. *BJPsych Advances*