Annual report 2017-18

mentalwelfare commission for scotland

Our purpose - we protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions

Photography in this document includes images taken around Scotland as we undertook filming to help explain what happens on our visits, and our work more broadly. We thank all of those involved.

Laid before the Scottish Parliament by the Scottish Ministers under Section 18 (2) of the Mental Health (Care and Treatment) (Scotland) Act 2003.

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Who we are and what we do

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

Chair's foreword

The Very Revd Dr Graham Forbes CBE

The impact of mental illness on a person's daily life is often traumatic, more so when faced with a less well understood diagnosis.

While much had been done to reduce stigma in general, we have become increasingly aware that people with one specific diagnosis – borderline personality disorder (BPD) – often had a difficult experience of care and treatment. This year we produced an extensive report that gave voice to people with BPD. It confirmed that more needs to be done to address prejudice across wider society, and in health services themselves.

Extending our influence

While the report was well received, we are acutely aware that changing attitudes takes time. It requires collaboration and longer term action. Our report on BPD coincided with an important publication on BPD by the Royal College of Psychiatrists in Scotland, looking at service provision. We are now working together to extend our influence and reach wider audiences.

Police Scotland

This year we produced a report on how Police Scotland implements place of safety orders, which are used when dealing with people in acute mental distress. There has been a sharp rise in recorded use of this power, and we wanted to find out more. We spoke to people who had been subject to these orders and to police officers, and found a consistently high level of care and professionalism among officers, which was hugely reassuring.

We made recommendations for change to health authorities, the Scottish Government, and Police Scotland. In the process of working with Police Scotland, the Commission built new connections, which we will continue to develop.

This work also gave us a clear reminder that understanding and supporting people with mental ill health is not only the role of health and social care services. It is an issue that many other professionals are faced with in their working lives. Ensuring that such staff have appropriate training is essential.

Wider impact

An example of how our work leads to long term change is the Scottish Government's announcement to create a perinatal clinical network. This will mean a much improved service for women and their families across Scotland. It follows the publication of our report on perinatal mental health services and our investigation into the death of a baby, both published in 2016, and joint working with experts in this field.

Learning disability and autism

Turning to the internal operations of the Commission, in 2017-18 the Scottish Government began a much welcomed review of learning disability and autism provisions in mental health legislation. As this work fits well with our purpose and aims, the team is now located within our organisation, in support of Andrew Rome, the independent Chair.

As ever, I thank our staff for continuing to deliver on our regular work while at the same time rising to the challenge when required. At a time of austerity budgets, the need for organisations such as the Commission to monitor, visit, investigate and inform - and to speak out when we find services lacking - has never been greater.

I would also like to thank those Board members who completed their second terms this year – Professor Sivasankaran Sashidharan and Norman Dunning. Their expertise and wise counsel have been invaluable.

And finally

This will be my last annual report. Much has changed for the better in the last eight years. Mental health issues have probably never had a higher public profile which can only be good. In the years ahead, the Commission will, I trust, be both a guide dog and a watchdog but never a poodle. My successor will inherit an excellently led organisation, all of whom are 101% committed to the needs of our remit group, and a Board which will continue to support and challenge.

"In the years ahead, the Commission will, I trust, be both a guide dog and a watchdog."

Chief Executive's message

Colin McKay

For a number of years we have been calling for reform of Scotland's mental health and incapacity legislation. We know where the pressures are, and regularly use the publication of our monitoring and visits reports to highlight the ways in which current laws are lacking.

Last year, in partnership with Edinburgh Napier University, we also published 'The Case for Reform', a comprehensive study that tested our laws against international human rights and standards.

Impact

Those calls were partially addressed when the Scottish Government issued a consultation on one of the two key acts that need updating, the Adults with Incapacity Act. Our response welcomed their proposals, while suggesting improvements. We are now seeking an open and inclusive approach as the consultation moves into development stage.

We will continue to call for reform of the Mental Health Act.

Investigations

This year our major investigation centred on the case of Mr QR, who died as the result of a suicidal act following discharge from a psychiatric hospital. We found flaws in the process of his diagnosis which had implications for his care. The manner of his discharge from hospital was completely unacceptable.

We made a number of recommendations, which we will follow through, and urge all health boards to reflect on our findings.

Internally, we, too, have used the findings of this publication to influence our programme of work. It contributed to our thinking as we planned the report on borderline personality disorder.

Continuous improvement

While we publish one national investigation report each year, we examine many more potential cases. As part of our approach to continuous improvement, we reviewed our process for dealing with these potential cases, in consultation with external organisations operating in this area.

We are now developing a new internal system for recording cases, and training for staff involved. The next stage will be to begin publishing summary reports explaining cases where we have actively intervened without the need for a full investigation.

Advocacy

New duties came into force this year requiring local authorities and health boards to tell us how they ensure access to advocacy services.

To get a better understanding of current provision, and to raise awareness of this new duty, we surveyed all health boards and local authorities, and found a lack of clarity, and much variation across the country. We published the results, and will continue to monitor this.

Lived experience

The Mental Welfare Commission is a relatively small organisation, with a wide remit and a significant sphere of influence. This brings both opportunities and challenges, but in all of the work we do, our focus remains on the most vulnerable.

Having members of staff, and members of our Board, with lived experience of mental illness - or of caring for someone with mental illness or a learning disability - is an added strength. This has become more apparent in recent years, and is now integral to the way we think and operate.

I hope this report is helpful in explaining some of our achievements and priorities over 2017-18. And I look forward to working with colleagues to do all we can to build on this work in the year ahead.

"While we publish one national investigation report each year, we examine many more potential cases."

Influencing and empowering

- A substantial area of work for us this year was to influence, and then respond to, the Scottish Government's consultation on reform of the Adults with Incapacity Act. We said we believed the government's proposals to be important and radical, but in need of a great deal of further work.

- In response to new duties under the Mental Health (Scotland) Act 2015, we surveyed health boards, health and social care partnerships and local authorities seeking information on how they have ensured access to advocacy services, and how they plan to do so in the future. We published our findings, which showed a varied level of planning and provision, and a lack of clarity.

- We held end of year meetings with all health boards in Scotland, and representatives of health and social care partnerships. We used those meetings to exchange information on current and recent work, to learn from each other, and to discuss any areas of concern.

- We published guidance to address questions surrounding the eligibility to vote in the 2017 General Election for those receiving treatment in hospital for mental ill health, or for people with issues related to their mental capacity.

End of year meetings

Once a year we meet with each of Scotland's health boards and their health and social care partners.

These meetings give each participant the opportunity to share information on work undertaken during the year, and to discuss areas of mutual interest.

The Commission might raise the findings of our local visits in the area, or discuss issues arising from our themed visits and our plans for future themed visits.

We highlight local data featured in our monitoring reports, and draw attention to the recommendations made for all health boards arising from our investigation reports. Health boards and other partners tell us about their current priorities, achievements and challenges.

The meetings always result in a valuable exchange of information. Attendees include senior managers from the Commission, from the health board, local authorities and integrated joint boards.

"The meetings always result in a valuable exchange of information."

A review of advocacy planning

The Mental Health (Scotland) Act 2015 created new duties for local authorities and health boards to tell us how they have ensured access to advocacy services up to now, and how they plan to do so in the future.

We sent out a survey to health boards, health and social care partnerships and local authorities.

Our findings show that planning and provision of advocacy services across Scotland is variable and lacks clarity.

We found a lack of clarity on which organisation is responsible for preparing plans, and on how advocacy providers and people using advocacy services will be involved in planning.

Only five health boards provided current plans.

Services for adults often prioritised those who were receiving compulsory care or treatment. We are clear that limiting advocacy in this way was never the intention of the 2003 Mental Health Act, and we expect everyone who has the right to access an advocate to be able to get that support.

We found significant gaps in service provision for children and young people with mental ill health and/or learning disability. A number of the services we were told about were not independent advocacy and almost all of the services had very restricted eligibility criteria.

Only three areas told us their advocacy budget had increased, and three quarters said budgets had remained static in the last two years. If this continues, there is likely to be an actual reduction in the service provided.

The report and all the survey responses are available on our website.

"planning and provision of advocacy services across Scotland is variable and lacks clarity."

Reform of the Adults with Incapacity Act

We responded to the Scottish Government's consultation on reform of this Act.

One of the first pieces of legislation passed by the Scottish Parliament, it dates from 2000. It is intended to protect adults who felt unable to take financial, welfare or medical decision, because of conditions such as dementia or learning disability. It provides for a range of measures including powers of attorney and guardianship.

In the years since its introduction, the use of the legislation has risen substantially, putting the safeguards in the law under pressure. Developments in the law and human rights standards have meant that what was once world leading legislation now requires a fundamental review.

We welcomed the consultation, seeing it as an opportunity to develop a new approach that is flexible and proportionate, and which strengthens the rights of adults whose ability to make decisions is impaired.

We believe the government's proposals to be important and radical, but in need of a great deal of further work. We suggested ways the proposals could be improved, and said we hoped that the next step would be an open and inclusive policy development process that would capture the very best ideas, and give Scotland new legislation that will protect and empower adults with dementia, learning disability and related conditions.

"what was once world leading legislation now requires a fundamental review."

NPM update

The Commission is a member of the UK National Preventative Mechanism (NPM), a body that brings together independent monitoring organisations that all have a role in protecting people in detention.

The NPM published guidance on isolation in detention in January 2017. This provides a framework members can apply when examining the use of seclusion. This will inform the Commission's own work on seclusion in psychiatric care, and in reviewing our own guidance on its use.

Our local visits, where we visit in-patient units where people may be detained and our monitoring of mental health services in prisons, link with our role as an NPM member. Our publication Rights in Mind, with its focus on human rights, is consistent with the NPM focus on rights. Our work on place of safety powers by the police also involved monitoring a specific aspect of detention.

On an international level, and as part of our NPM role, Graham Morgan, our engagement and participation officer, presented in Geneva to the Committee Against Torture on involuntary detention. Colin McKay, our chief executive, was part of a panel at the International Academy of Law and Mental Health in Vienna discussing compliant monitoring of mental health detention.

General Election guidance

Ahead of the General Election on 8 June 2017, we were asked about the eligibility to vote for people receiving treatment in hospital for mental ill health, or for people with issues related to their mental capacity.

We published guidance and FAQs addressing questions such as whether people could vote if they were staying in hospital long term and receiving treatment for their mental health. We also advised on whether people could vote if there were questions about their mental capacity, or if they were detained under mental health legislation. And we advised on how to register to vote online or by post.

Our FAQs focused on these issues, while providing links to key sections of the Electoral Commission's full guidance.

Effective and efficient visiting

- We visited 1,456 people across Scotland this year, exceeding our key performance indicator to visit 1,350 people.

- Twenty nine of our 113 local visits this year were unannounced. This exceeds our key performance indicator, which was to conduct 25% of local visits in this way.

One of the best ways to check that people are getting the care and treatment they need is to meet with them, and ask them what they think.

We visit people wherever they are receiving care and treatment. Often this is in hospital, but it might be in their own home, in a care home or in secure accommodation.

This year we also visited people with dementia in community hospitals across Scotland. We also met with people with borderline personality disorder, to find out about their experiences of care and treatment.

We publish reports after most of our visits and make recommendations for improvement for services, health boards and government where we identify a need for change. We follow up on our recommendations.

Our visits are divided into:

Local visits – to people who are being treated or cared for in local services such as a particular hospital ward, a local care home, local supported accommodation or a prison. This year we visited people in 113 locations across Scotland as part of our local visits. Twenty six percent of these visits were unannounced.

Themed visits – to people with similar health issues or situations across the country. We did two themed visit reports this year focusing on those with dementia in community hospitals and those with borderline personality disorder.

Welfare guardianship visits – where we visit people who have a court-appointed welfare guardian. The guardian may be a family member, friend, carer, or social worker.

Other visits – for example, we may visit people who have been detained in hospital in other parts of the UK, but who are transferred to Scotland for treatment. We also visit young people who have been admitted to an adult hospital ward for treatment.

Our visits

When we visit, the kind of questions we ask are:

- Are care, treatment and support in keeping with the principles of the Mental Health Act, or the Adults with Incapacity Act?
- Does the person we are visiting know their rights under these Acts?
- Has that person been involved in decisions about their care and treatment, and have they been given enough information to participate in those decisions?
- Have other relevant people, such as a carer, been involved in decisions about a person's care and treatment?
- Is the building and are the facilities suitable for the needs of the person we are visiting?
- Where the person is receiving compulsory treatment, are the appropriate safeguards being provided?
- Are care and treatment sensitive to issues of equality and diversity, and human rights?
- Is there a clear person-centred care plan, and is it being carried out?
- Can the person get access to advocacy and legal services? Has the person used those services and been given any help they need to do so?
- Is the person's money and property being properly looked after?
- Do we need to investigate further? For example, has the person been ill-treated, neglected, or improperly detained?

Dementia in community hospitals

We published a report on our first ever themed visit to people with dementia in community hospitals.

Community hospitals are small local hospitals, varying considerably in scale and the services they provide. They are not specialist dementia services, but about a quarter of patients in the wards we visited had dementia, and over half of those we saw had been in hospital for a month or more.

We visited 78 wards in 56 of the 89 community hospitals in Scotland. We met 287 people with dementia, or who were being assessed for dementia, and heard from 104 family carers.

On our visits, we found that care and treatment provided is generally good, and community hospitals are valued by patients, and by carers.

Care plans addressed physical health care interventions well, but there was a lack of planning for care focusing on patients' dementia.

However, we found issues with the dementia-friendliness of some ward environments, and only a third of wards had carried out a dementia-friendliness audit.

We found that more could be done to develop activity provision, although we also saw examples of good practice.

We found that, while staff could often call on more specialist help, not enough staff had been provided with their own dementia training.

In a number of cases, patients were ready to be discharged, but were waiting for arrangements for home care support. Often these patients had been receiving support at home before their admission to hospital, but it was automatically cancelled after a short period of hospital admission.

The report includes 12 recommendations for Integrated Joint Boards.

Borderline personality disorder (BPD)

The Mental Welfare Commission published its first report looking at the care, treatment and support of people with borderline personality disorder (BPD), often known as emotionally unstable personality disorder (EUPD).

BPD is a type of personality disorder with a long-term pattern of unstable sense of self and unstable emotions.

The Commission was aware that people with this diagnosis often have a particularly difficult experience of care and treatment, and wanted to hear directly from those affected.

Commission staff spoke to over 70 people with the diagnosis, and surveyed 119 GPs, 110 A&E staff, and 84 psychiatrists. Family members/carers and people providing therapies were also asked for their views.

Findings included:

- People with BPD reported that they were often treated with less sympathy and understanding by professional staff than people with other mental health diagnoses.
- People's experience of being given the diagnosis was varied. While there were positive experiences, many spoke of feeling let down in this aspect of care.
- Psychological therapies were highly valued, but access to those therapies, and waiting times, varied across the country.
- Many people with BPD reported a negative experience of using A&E services, and A&E staff shared their view that these departments were not well placed to meet their needs. What people with BPD told the Commission helps them stay well, and what services and professional staff thought about this, often differed.

We made recommendations for change to the Scottish Government and integrated authorities.

"People with BPD reported that they were often treated with less sympathy and understanding by professional staff than people with other mental health diagnoses."

Guardianship visits

The Commission created a report on its visits to adults who are subject to guardianship. Guardianship orders are used to safeguard those who lack the capacity to make their own decisions.

The Commission monitors the use of welfare provisions of the Adults with Incapacity Act, and publishes reports on their use. These visits are targeted towards people where we identified issues in relation to possible use of restraint, seclusion, or deprivation of liberty.

In 2017-18, the Commission visited 291 adults on guardianship. In almost all cases (92%, 267) the two categories of assessment - care and treatment, and accommodation - were rated as adequate or good.

The Commission identified issues in 23% (67) of visits. The largest number of these concerns were around the suitability of the adult's placement (22%, 23), or the level and nature of activities available to them (22%, 23). These issues were discussed with the individuals and care managers, and followed up with reviewing teams where appropriate.

In 19% (54) of all cases, there was no clear evidence that the guardian had visited the adult in the last six months.

In half of private guardianships (93 of 187) there appeared to have been no recent visits by the local authority supervisor. These visits support guardians in properly using their powers.

"The Commission identified issues in 23% (67) of visits."

Local visit overview

Between January and December 2017, we carried out 101 local visits to hospitals, secure units, specialists units and prisons. Visits to adult acute mental health wards represented 37% of visits, the largest grouping.

We provide feedback and recommendations for improvement to the services involved.

We publish these reports, and share our findings with other key scrutiny bodies – the Care Inspectorate, Healthcare Improvement Scotland, and Her Majesty's Inspectorate of Prisons.

We base our findings and recommendations on our observations on the day, the expertise and judgement of our staff, and what people tell us when we visit. Although our visits are not inspections, we take into account any applicable national standards and good practice guidance.

We made 278 recommendations for improvement this year.

We usually allow service managers three months to formally respond to our recommendations. We were satisfied with 92% of responses received.

We look closely at the recommendations we make to help determine our future visiting priorities, and if we need to carry out a particular themed visit or develop good practice guidance.

Twenty seven per cent of all recommendations related to assessment, care planning, review and person-centred care. We will be consulting and plan to publish good practice guidance on care planning in 2019.

Fourteen per cent of recommendations related to the Adults with Incapacity Act, and/or the Mental Health Act. Seventeen per cent focussed on the physical environment, and 13% concerned the provision of therapeutic activities to patients.

Publishing our local visit reports

All our local visit reports are published on our website, on the third Wednesday of each month.

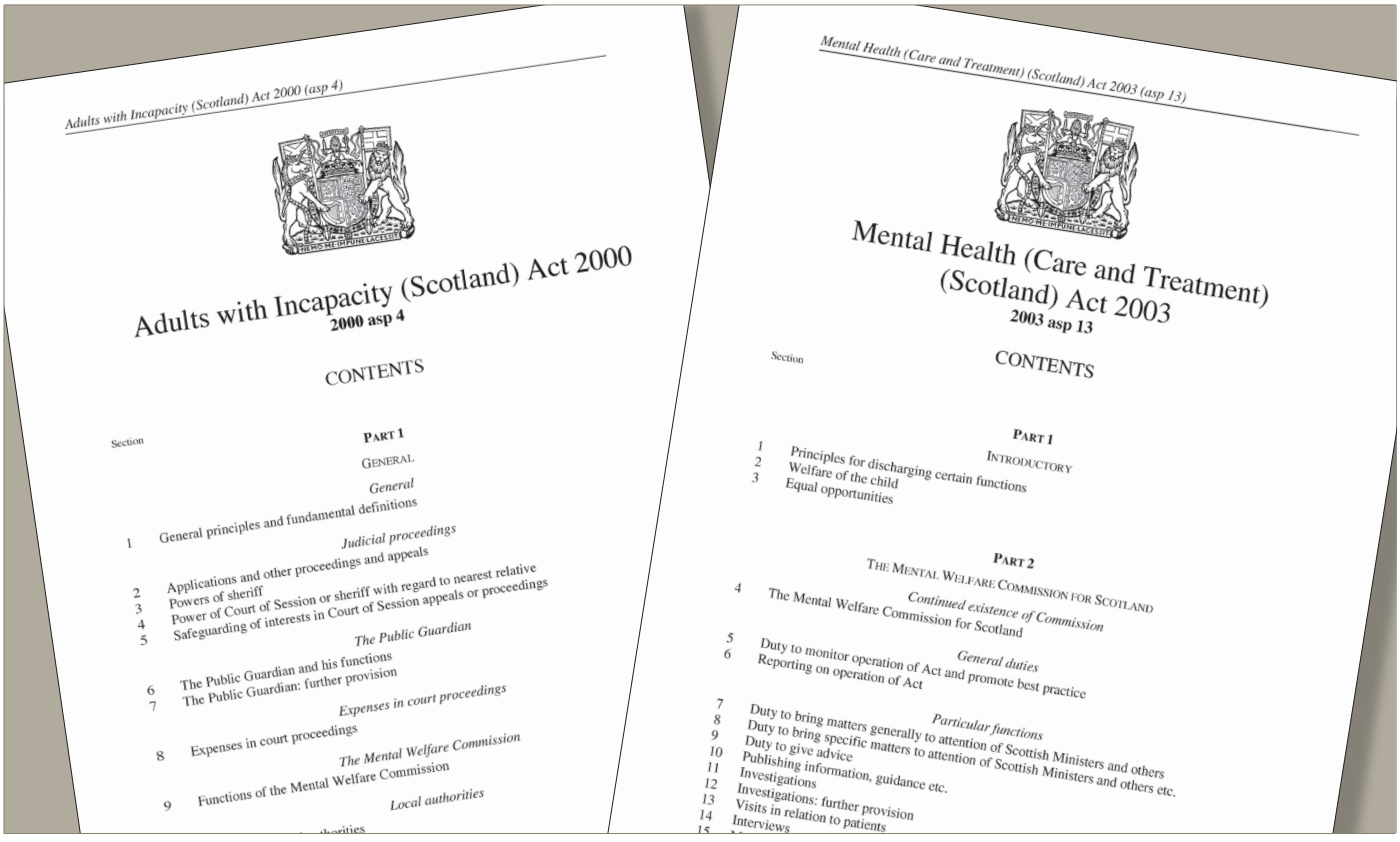
The reports are grouped by the NHS health board, with separate sections for the State Hospital and prisons. For ease of reference, all non-NHS services and care homes are also listed under the relevant health board area.

We issue news releases for each set of reports, often generating media coverage, particularly in the local media. Coverage of the reports increased this year in both local and national media, and they highlighted both positive and negative findings.

We hope that by making these reports more easily accessible to the public, we provide valuable information to local people, promote the sharing of good practice and call for change where services are lacking.

"We hope that by making these reports more easily accessible to the public, we provide valuable information to local people."

Monitoring and safeguarding care and treatment



Adults with Incapacity (Scotland) Act 2000 (asp 4)

Adults with Incapacity (Scotland) Act 2000
2000 asp 4

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- **Welfare guardianship orders continue to increase, with the total number of orders rising by 12% on the previous year.**

- **The number of new welfare guardianship orders granted increased by 5%, a 149% rise since 2008-09.**

- **For the first time we published a report examining monitoring data on Police Scotland's use of place of safety orders.**

We have a duty to monitor the use of the Mental Health (Care and Treatment) (Scotland) Act 2003, and we report on the Adults with Incapacity (Scotland) Act 2000. We publish reports on our findings. This helps us and our wider audience to understand how the law is being used across Scotland, and how it is being adhered to.

We have decided to publish the monitoring reports on the use of the Acts every second year. This year we published the report on the use of the Adults with Incapacity Act in Scotland and next year we will publish our report on the use of the Mental Health Act. Our intention is to review some more in-depth areas on the use of the Acts in the alternate years. For example over the last few years we have reported on the increase in the use of emergency detention orders. Rather than continuing to report an increase we intend to look at this in more depth to find out why this might be happening.

When doctors or other health care professionals use the law to provide compulsory treatment or care, they must inform us. We check that information, ensuring their intervention complies with legislation.

We are also responsible for appointing designated medical practitioners, who provide a second medical opinion when medical treatment is prescribed using the law.

When publishing and sharing this monitoring information, we give national and local breakdowns of data, and comparisons with previous years. This helps us and other organisations to see activity in different parts of the country, and to understand which services are under particular pressure.

We also examined Police Scotland's use of place of safety orders following last year's Mental Health Act monitoring report.

Monitoring the use of the Adults with Incapacity Act

The Commission published our annual Adults with Incapacity Act monitoring report showing that the use of guardianship orders, used to safeguard those who lack the capacity to make their own decisions, continues to rise.

The Commission monitors the use of welfare provisions of the Adults with Incapacity Act, and publishes reports on this data. The report includes information on the use of welfare guardianships orders across all of Scotland's local authorities.

The majority of guardians are private individuals, usually a relative, carer or friend. Local authorities have a duty to make an application for welfare guardianship where it is needed and no-one else is applying.

The Commission receives a copy of every application for welfare guardianship. We visit some people on guardianship, and provide advice and good practice guidance on the operation of the Adults with Incapacity (Scotland) Act 2000. We sometimes make enquiries where an adult with incapacity might be at risk. In doing so we might involve local authorities, or formally refer to them for further investigations.

Where we think an adult might require support and protection procedures we always refer to the local authority, whose duty it is to investigate such matters under the Adult Support & Protection (Scotland) Act 2007.

Of the total guardianships in Scotland, the majority were for people who either have learning disability (45%) or dementia/Alzheimer's Disease (41%).

We found that the number of existing guardianship orders (13,501) has risen again in 2017-18, and is up by 12% since 2016-17 (12,082).

The number of new welfare guardianship applications granted also continued to rise. In 2017-18, there were 3,084 applications granted across Scotland, a 5% rise since 2016-17. This represents a 149% increase in the ten years since 2008-09.

Private applications represented 74% of all applications. The total number of private applications was up 4% this year, and up 165% in the ten years since 2008-09. Local authority applications were up 10% to 792, and account for 26% of total applications.

A fifth (21%, 636) of welfare guardianship applications granted were for people in the 16-24 age group with learning disabilities.

Although the number of indefinite guardianship orders decreased, there were 4,990 indefinite orders as of 31 March 2018. That represented 37% of total active guardianships (13,501).

The continued steep rise in guardianship applications is concerning. Most relatives find guardianship helpful, but it is a complex legal process and takes up a considerable amount of time for care professionals, particularly mental health officers. Sometimes it is required to allow people to access Self-Directed Support, which gives greater control over their own care to people who receive services.

The Commission believes the law needs to be modernised and streamlined to ensure care can be provided when it is needed, and to better protect the rights of people with dementia and learning disabilities. We welcome the commitment of the Scottish Government to reforming the Adults with Incapacity Act, and look forward to working with them on this in the coming year.

Place of safety monitoring report

The Commission looked at how Police Scotland use place of safety orders to detain people under the Mental Health Act. The report showed wide variations in use of these powers in different parts of Scotland.

The report followed a monitoring exercise that showed an increase in recorded use of this power, from 130 orders in 2006-07 to 1,133 in 2016-17.

Place of safety orders can be used by police when they find someone in a public place who is in a state of mental distress and may be in need of immediate care and treatment. The person can be detained in a place of safety for up to 24 hours to be assessed by a doctor.

We found a high level of care and professionalism among police officers towards often highly distressed individuals, who were at risk of self-harm.

The vast majority of people subject to a place of safety order (92%) were not judged by the doctors who assessed them as having to be detained in hospital. There seemed to be some lack of local co-ordination in the response to the distressed individual, and often large amounts of police time were involved.

Of the 14 people who were held in a police station, 12 were from one health board area.

There were wide variations in reported use of these powers across Scotland, with notably higher use in Fife, Highlands and Grampian. These are too wide to be explained by local variations in the level of mental illness.

We made five recommendations for change to NHS Boards and services, Integrated Joint Boards, Police Scotland, and the Scottish Government.

"We found a high level of care and professionalism among police officers towards often highly distressed individuals."

Investigations

- **We worked on 24 investigations, seven of which were started during the year.**

- **We closed eight cases as complete, with the Commission satisfied with the outcome or responses of services after our investigation.**

- **We published one investigation, which involved a man who took his own life after being discharged from hospital.**

- **We continue to investigate 13 cases.**

When serious concerns are raised about the poor care and treatment of a person with mental ill health, learning disability, dementia or related conditions, a number of organisations are involved. Usually the primary investigation will have been conducted by the authority responsible for the services provided.

The Mental Welfare Commission is, however, often contacted about such cases. We initially contact the responsible organisations to find out more and, where necessary, make recommendations to them and follow up their actions. We do not handle complaints about services. We instigate our own investigations only when the case appears to show serious failings, and has implications for services across Scotland.

All of our investigations are anonymised. That way, we seek to protect the person the report focuses on, and we concentrate on highlighting the lessons learned by practitioners and organisations across Scotland.

Investigation into the care and treatment of Mr QR

This case was brought to our attention by the Crown Office and Procurator Fiscal Service.

Mr QR died in December 2014 as a result of a suicidal act, putting himself under the wheels of a moving heavy goods vehicle, following discharge from a psychiatric hospital shortly before.

The purpose of our investigation was to assess Mr QR's care prior to his death, and to provide the Commission's views on the reasonableness of his management by health services; the predictability of him carrying out a serious act of self-harm, and any opportunity for prevention of the act.

The Commission found that Mr QR was not treated properly, and the manner of his discharge was completely unacceptable.

We found that the process of arriving at Mr QR's diagnosis was seriously flawed. This had implications for his care, particularly the way he was discharged from hospital.

Staff who had contact with Mr QR were genuine in their intent to help him and to support him in achieving recovery, within the confines of the diagnostic approach.

We found that Mr QR's consultant sought a second opinion about the diagnosis and Mr QR's presentation, but disregarded it.

The discharge planning and actual discharge of Mr QR in the days preceding his death fell well below the standard of what is expected.

We made six recommendations, not only for the health board involved, but for all mental health services throughout Scotland.

"We found that the process of arriving at Mr QR's diagnosis was seriously flawed."

Review of our investigations process

As part of our approach to continuous improvement, we conducted a review of our investigation process.

The purpose was to examine issues such as the ways we prioritise cases, and our methods for following up Commission recommendations. We also wanted to develop a new system for sharing our findings in cases that do not become full investigations, but nevertheless have lessons that could be helpful for services across Scotland.

As part of this review we consulted with other national organisations who have an investigatory function, including Healthcare Improvement Scotland, the Care Inspectorate, the Scottish Public Services Ombudsman, the Police Investigations and Review Commissioner, the Health and Safety Executive and the Office of the Public Guardian.

The review resulted in the creation of a new internal system for recording potential investigations, and training for staff to ensure everyone operates the new system uniformly.

We also agreed to create a new form of summary reports to publish on our website. These reports will contain information on cases where we have actively intervened without the need to instigate a full investigation. By publishing them, we will invite services to consider the cases in light of their own experience. We aim to begin publishing in the next year.

Twenty four investigations

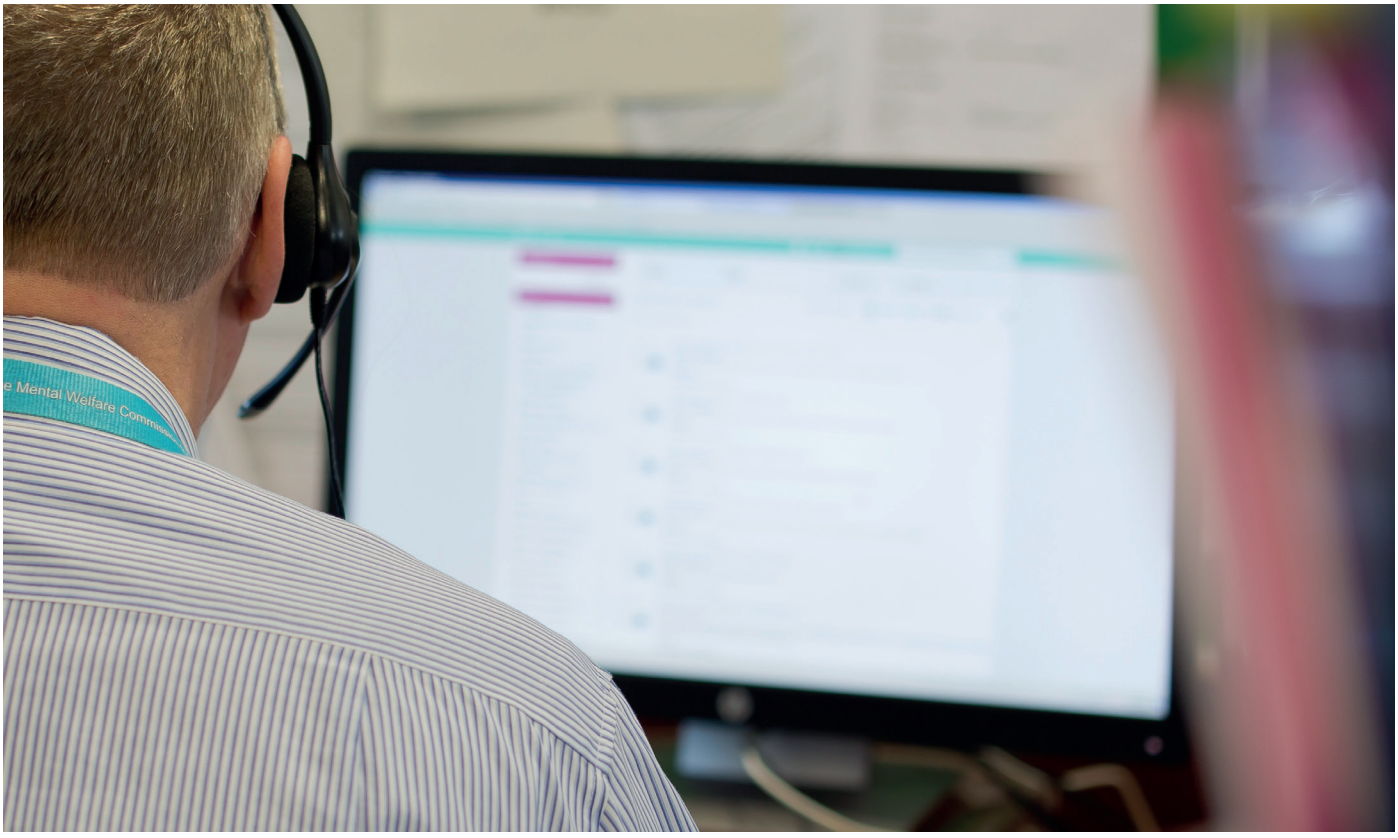
During the year we worked on 24 investigations, seven of which were new. Of the 24, one was published on our website, and two are follow-on work for reports previously published.

We closed eight cases as complete after initial stages of investigation, with the Commission satisfied with the outcome or responses of services. The reasons for this varied, and were specific to each case. In three of the eight cases, we examined the review and actions planned by local services and were satisfied with the outcomes, while continuing to ensure our local team kept a watching brief.

We continue to investigate 13 cases.

Our KPI for this year was to publish one investigation report, which we achieved.

Providing information and advice



- **We launched a series of short films about the work of the Commission, available with subtitles and British Sign Language translation.**

- **We received 4,412 calls to our Advice Line, and a sample audit showed 99% accuracy in responses given, exceeding our key performance indicator which was to achieve 97.5% accuracy.**

- **We published a detailed advice note on changes to the Mental Health Act, introduced from June 2017, and updated seven existing good practice guides.**

- **The number of visitors to our website grew notably and we updated our mailing list in advance of new general data protection regulations.**

- **On Twitter, we gained 639 new followers, and our profile was visited 15,571 times.**

One of our key roles is to provide information and advice on use of mental health and incapacity legislation. It is the most popular search area for people who access our website.

We are constantly in touch with services across the country and with patients, families and carers, to offer new or updated advice, or to respond to questions about the law, human rights or other subjects.

We supply information and advice in person, through our Advice Line, on visits or at seminars, and by publishing good practice guidance and other information on our website.

Films

This year, we launched a series of films about the work of the Commission.

The film 'Who we are and what we do' features Commission staff, and our Board, and explains the five main strands of our work.

The film 'Our visits' explains how and why we conduct this important area of our work.

'About your personal information' is an animated film that explains how we handle the personal information we receive.

By producing these films, we hope to make our information and advice accessible to as many people as possible. Each film lasts approximately three minutes, and they can be watched with subtitles and with British Sign Language translation.

We hope they are useful to those working in health and social care to explain our role, and more widely to anyone that wants to know more about our purpose and activities.

The films can be found on our website and they add to our growing collection of films that provide more accessible information and advice.

For example, our earlier series of short films on the topic of human rights in mental health care has been viewed on our website 740 times this year. These films include conversations with people with lived experience of care and treatment, with nurses, and with our director of engagement and participation.

We also have short films with people talking about advance statements, including those with lived experience of mental illness, psychiatrists and our chief executive.

"By producing these films, we hope to make our information and advice accessible to as many people as possible."

Website and mailing list

In 2017-2018, 99,720 people visited the website, 148,468 times. This is a notable rise from last year, where 81,288 people visited the website 123,973 times. This may be partly due to the decision to publish our local visit reports on our website every month.

The most popular pages on our website provide information about mental health and incapacity legislation, and links to our publications.

The total number of times publications were downloaded from our website was 56,398. This means that 38% of visits to our website resulted in a download.

The website had 16.9% returning visitors and 83.1% new visitors. This is an increased proportion of new visitors from 2016-17, where 36.5% of people were returning visitors and 63.5% were new visitors.

We also reviewed and updated our mailing list in advance of new general data protection regulations.

Twitter

Our Twitter following has continued to increase, and this year we gained 639 new followers.

This year, our profile was visited 15,571 times.

We published 190 tweets, promoting our work, including new publications, films, consultations and attendance at events. We also regularly retweeted relevant content posted by accounts we follow.

Our tweets were often retweeted by individuals and organisations with an interest in disseminating information and advice relevant to the field of mental health and social care in Scotland.

"The total number of times publications were downloaded from our website was 56,398."

Media

In 2017-2018, media coverage of our work continued to increase in print, broadcast, and online media.

This includes increasing coverage of our local visit reports in local media, which helps share our findings with the local community. We see this as a positive change, which has widened our transparency and accountability.

Our work also continues to attract national media coverage. In October, our investigation into the care and treatment of Mr QR was reported across national broadcast, and national and local print media, in 37 media outlets. Our annual statistical monitoring reports, showing how often legislation is used in treating and caring for people, also attracted substantial national and local media interest.

Advice Line

We have a telephone advice service which is open daily from Monday to Friday.

People who are receiving care and treatment, and their families or carers, can call our Freephone number and speak to one of our health and social work practitioner staff for advice.

Callers are often looking for information on the law surrounding mental health or adults with incapacity. Much of our work is at the complex interface between the individual's rights, the law and ethics and the care the person is receiving. We work across the continuum of health and social care.

In 2017-2018, our advice line staff gave advice in 4,002 of the 4,412 calls allocated as "requests for advice".

A sample audit of advice given out by individual staff members found an accuracy rate of 99%, exceeding our target of 97.5%.

"We see this as a positive change, which has widened our transparency and accountability."

Changes to the Mental Health Act – Advice note

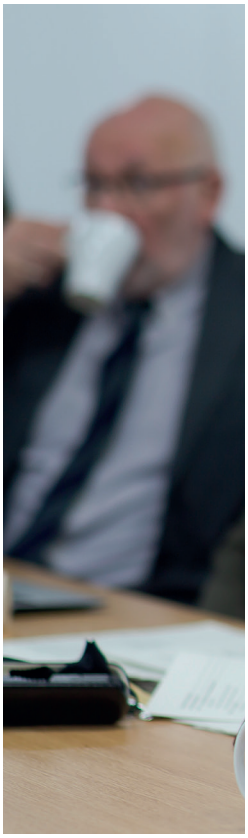
We published this guidance on changes to mental health legislation, made by the Mental Health (Scotland) Act 2015 and associated regulations that came into force on 30 June 2017.

Our advice note addresses changes to a wide range of issues including changes to Mental Health Act forms, named persons nominations, advance statements and cross-border matters.

We hope that mental health and social work professionals found this useful.

We also updated seven existing good practice guides to reflect changes in the Mental Health Act (Scotland) 2015. They were published on our website under good practice guides.

Improving our practice



- Our Board continued to set our strategic direction and ensure efficient, effective and accountable governance.

- Our engagement and participation officers contributed their own lived experience and expertise to our work, and met with hundreds of people across Scotland.

- The Commission's executive team undertook leadership training through an adapted version of the Aston team journey, used extensively in the NHS.

Our Chair

The Very Revd Dr Graham Forbes CBE retired as provost of St Mary's Cathedral, Edinburgh in 2017. After degrees in Russian and theology, Dr Forbes was ordained in 1977 and since then he has combined his ecclesiastical duties with various public appointments, mostly in the areas of health or criminal justice. He served on the General Medical Council for 12 years, chaired the Scottish Executive Expert Group on MMR, and was a non-executive board member of NHS Quality Improvement Scotland. He is a former HM lay inspector of constabulary for Scotland, a member of the parole board, and chair of the Scottish Criminal Cases Review Commission, which referred the case of Mr Al-Megrahi back to the Appeal Court. Dr Forbes also chaired the UK body during the 2009 swine flu pandemic, which advised the UK government on ethical issues. A member of the Cabinet Office's Security Vetting Appeals Panel, he also served on the Armed Forces Pay Review Body for 5 years. He chairs the Court of Edinburgh Napier University, is also chair of the Committee of Scottish [University] Chairs, and chairs OSCR, the Scottish charity regulator. He was awarded the CBE in 2004 for public service in Scotland.

Our Board members

Norman Dunning had an early career as a probation officer and a social worker in child protection services. He was chief executive of ENABLE Scotland from 1991-2010, leading the largest voluntary organisation of, and for people with learning disabilities in Scotland. He was at the forefront of moves to help people with learning disabilities be heard in their own right and to be considered as full citizens, as well as developing a wide range of community support services. He has held a number of trustee and management committee positions in other charities and has continued a number of these interests since his retiral. He brings to this position a substantial knowledge of learning disability, mental health and community care issues as well as experience in governance and management.

Professor Sivasankaran Sashidharan is a consultant psychiatrist who has held senior clinical, managerial and academic positions in the NHS. He has been working in Scotland since 2007, and brings to the Commission extensive experience working in the mental health field, a strong knowledge of, and commitment to human rights and mental health issues, and wide experience of mental health and capacity legislation.

Safaa Baxter was born and educated in Alexandria, Egypt, where she obtained a BA degree in social work and community development in 1975. She worked as a volunteer in Clydebank and as a social worker with Strathclyde Regional Council. As a local authority employee for over 36 years, Safaa has worked at various levels of seniority in social work across a number of local authorities. Until her retirement in April 2014, she was East Renfrewshire Council's chief social work officer and head of the community health and care partnership children's, criminal justice and addictions services. Safaa was also chair of the child protection committee, children's services plan and alcohol and drugs partnership. Safaa also works with a number of local authorities as a consultant on the provision of children's services.

Paul Dumbleton has lived in Stirling for 35 years and has three grown-up children, one of whom has a learning disability. The first twenty years or so of his working life was spent teaching in special education in schools and further education colleges. He then worked in higher education and educational development before moving to the voluntary sector. Since retiring from full time work he has worked on a part time basis in a number of roles, including public appointments to the Council of the Scottish Social Services Council and as a member of social security tribunals. In 2014 he was awarded an honorary degree by Stirling University in recognition of his work in the voluntary sector.

Sandy Riddell originally trained in social work and has spent over 40 years in public service. He has held director level posts in social work, education, housing, and in health and social care in a variety of settings and retired from the post of director of health and social care in Fife in 2016. Sandy has substantial experience at a national level in shaping policy and legislation in adult health and social care, children's services, substance misuse and justice services. He brings to the Commission a wide range of experience and knowledge of public services, with particular skills in transformational change and the integration of frontline services. He is passionate about the need to develop a rights-based approach for services and to fully involve the public in service design and delivery.

Mary Twaddle has lived experience of mental ill health and recovery and has been treated and supported by general adult mental health services for over 10 years. She currently works for NHS Lothian at the medium secure forensic unit, The Orchard Clinic, as a peer support worker using her own lived experience to help others in their recovery journey from life changing mental ill health. She joined the newly created Peer Support Service 15 months ago, helping build the first peer service within a medium secure forensic unit in the UK. In her role she works with patients directly (both individually and as part of recovery focused groups), and also works alongside all the other disciplines as part of the multi-disciplinary team using her experience to contribute to team meetings and discussions on maintaining the recovery focused ethos of the clinic within the complexities of working in a forensic setting.

Gordon Johnston has a background in community development, urban regeneration, project development and management, and managing major funding streams. He is currently an independent consultant in mental health, specialising in peer research, user/patient involvement and organisational development. Gordon is involved in many organisations and is currently chair of Bipolar Scotland. He was a director of Voices of Experience (VOX) for six years. He has also been a member of the delivery group of the Scottish Patient Safety Programme Mental Health since its inception.

These appointments were regulated in accordance with the Commissioner for Public Appointments in Scotland's Code of Practice and the Commissioner for Ethical Standards in Public Life in Scotland.

Our Advisory Committee

A standing committee of our Board, our advisory committee consists of representatives of 32 stakeholder groups from across Scotland. They meet twice a year, and this year they made a valuable contribution to our thinking on how to develop and change our approach to monitoring mental health and incapacity legislation.

Developing our executive team

The Commission's senior management undertook a team development programme, which used an adapted version of the Aston team journey. This was supported by an external facilitator.

Learning lessons

We seek to learn and improve as a result of the complaints we receive.

In 2017/2018, we received and responded to nine complaints. This is an improvement on 13 complaints last year. After investigation, three of those complaints were upheld, two were partially upheld and four not upheld.

As a result of the complaints we have:

- Reminded staff of the importance of good communication with relatives prior to visits.
- Reminded staff of timescales for responding to correspondence.

Individual errors which resulted in complaints have been raised with members of staff involved and their line managers. Additionally, we have carried out refresher training on complaints to remind staff of our processes.

Involving people

We are acutely aware of the importance of maintaining good ongoing relationships with people who are affected by mental ill health, learning disability, dementia or related conditions.

Involving people who receive care and treatment in our work – and involving family members and friends who provide essential day-to-day support – ensures that we do not lose sight of our purpose.

Our engagement and participation officers, one person with lived experience of mental ill health, and one person with lived experience of caring for someone receiving care and treatment, continue to substantially increase our contact with individuals and with mental health and carer organisations.

They frequently meet with individuals and groups to consult, give talks and gather feedback on our work. They participate in local and themed visits, and contribute their own lived experience and expertise to our work.

For example, this year, as we work to mainstream our Rights in Mind campaign, they gave talks to over 200 people in support and carer groups across Scotland.

The meetings promoted our guidance and films, and gathered important feedback on the issue of human rights in mental health care.

Our Board and Advisory Committee, who help shape the work of the Commission, also have members with lived experience of mental ill health or as an unpaid carer.

Our commitment to equality

The Commission is committed to the principles and practice of equality and diversity. We see our equalities duties as part of a wider strategy, which puts equality and human rights at the centre of our work.

This year we introduced a new way of monitoring and reporting on equality outcomes. Previously we published our single equality scheme with details of our approach. This has been replaced by two separate reports, 'Equality outcomes and how we plan to achieve them' and 'Equality outcomes and mainstreaming progress'.

This year we also reviewed our accessible information policy.

They are available on our website.

Financial resources

Our revenue budget was £4.585 million. This included £3.6 million for the Commission, and £0.985 million for the National Confidential Forum.

Capital budget was nil.

We are funded through the Scottish Government, and met all the financial targets set by them. Our audited annual accounts are available on our website.

Environmental sustainability

We voluntarily report on progress in this area, where it is mandatory for some other Scottish public sector bodies to produce annual sustainability reports under the Climate Change (Duties of Public Bodies: Reporting Requirements) (Scotland) Order 2015.

The Green Group, drawn from all areas of the Commission, is responsible for consideration of sustainability issues and for reporting upon this.

The report, published in March 2018, is available on our website.

Corporate parenting

We published our first plan and report on our new role as corporate parents under the Children and Young People (Scotland) Act 2014. We are aware of the increased mental health needs of looked after children and young people from our work with people subject to mental health and incapacity legislation.

Our aims in this plan are to embed our new role into our ongoing work; to learn more about mental health in this group of people, and about how our work can support them; and to raise any concerns or views we have about looked after children and young people with relevant mental health and social care services and policy makers.

The plan is available on our website and should be read in conjunction with the Commission's strategic and business plans.

Information governance and security

In preparation for the implementation of the General Data Protection Regulations, we ran awareness training for Board and staff, reviewed our information flows, identified information asset owners and updated several policies.

We also produced a short animation about how we handle personal information. It is available on our website, with both subtitles and British Sign Language translation.

We process data, sometimes personal, sensitive data, to enable us to carry out our statutory duties and this is the legal basis of the processing.

We also reviewed the Scottish Government cyber resilience strategy, published in May 2017, and developed and implemented our own action plan.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preventive
mechanism

mentalwelfare
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