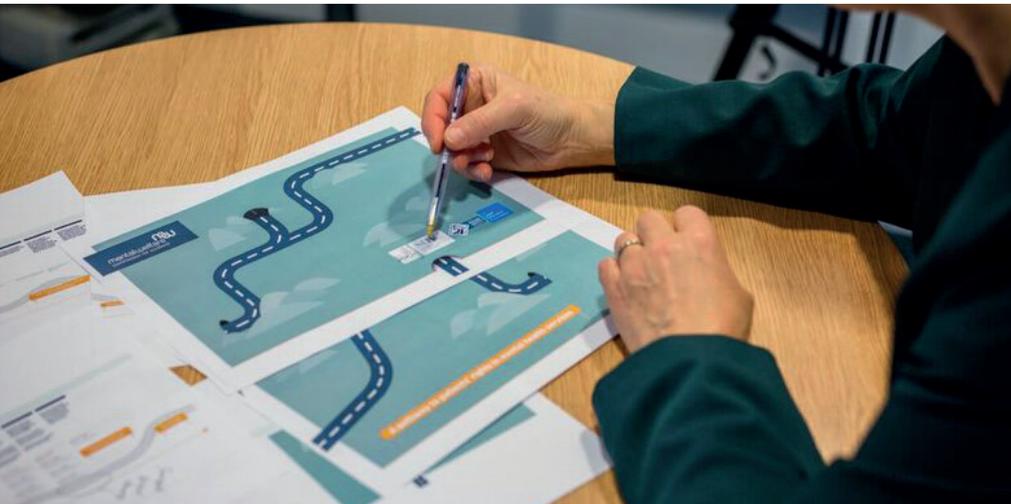


Strategic plan 2017-20



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 promote advance statements, and a new pathway to patients' rights in mental health services. We thank all of those involved.

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Foreword

In recent years we have seen increased awareness of the rights of people with mental illness, dementia and learning disability.

At the same time, demand on services is increasing, and public sector funding is under pressure.

In Scotland, the way in which services are being delivered is also changing, with the integration of health and social work services well underway.

What does this mean for the Commission?

Our statutory duties are increasing, with updated legislation bringing additional responsibilities in 2017.

To best prepare the organisation for this changing environment, we have identified four priorities that will be central to our work over the next three years. One of the four is a specific focus on the most vulnerable. The three additional priorities are required to ensure we succeed, but in this strategic plan, we want to be clear that focussing on the most vulnerable is at the heart of everything we do.

In many ways our work has always been about protecting and promoting the rights of some of the most vulnerable people in society. People who are detained in hospital for care and treatment. People who lack capacity to make decisions about their own welfare, and rely on others to do so. Children and young people who are being treated in hospital for mental ill health, and for whom the experience can be particularly difficult.

In the future, we also want to turn attention to people who don't easily slot into a single category – those who have complex needs, personality disorder or a combination of learning disability

and mental ill health. These individuals can be extremely vulnerable, and services sometimes struggle to offer the care and treatment they need. This must change.

The Commission is increasingly aware, too, of the vital role that families, friends and carers so often play in supporting a vulnerable person as they receive care and treatment. We are getting better at connecting with those carers, and will do more in the future.

We are also getting better at including the experience of people who have mental ill health, and their representatives, into our work. We do this through membership of our Board, through our advisory committee, staff appointments and engagement forums.

While we are very aware of our role as the only organisation focussing on rights, ethics, and care and treatment that works across the continuum of health and social care in Scotland, we can only achieve success if we work collaboratively with others.

We hope this plan sets out our priorities in a way that is helpful to you. Commission staff and Board members care deeply about our work. Together we will do all we can to ensure we achieve our outcomes.

Graham Forbes
Chair

Colin McKay
Chief Executive

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

How we will deliver our priorities

Priority one: To challenge and to promote change

The context

Mental health currently has a high profile, with stigma increasingly challenged and a commitment across the political spectrum to improve the lives of people with mental illness, learning disability and dementia. At the same time, public services face significant resource pressures, and major reforms such as integration of health and social care have yet to fully realise their aspirations. The Scottish Government has recently published a 10 year vision for mental health services.

The Scottish Government's [dementia, learning disability](#) and [autism](#) strategies are also committed to a rights-based approach and to promoting individual autonomy, choice and control.

More broadly, there is an increasing recognition of the importance of a rights based approach in health and social care. This is evidenced by the development of [new care standards](#) and the Scottish Human Rights Commission's [Scottish National Action Plan](#) (SNAP). In mental health, it builds on the work by the Commission and the Scottish Human Rights Commission in 2015.¹

This approach is particularly important for the people (including children and young people) who come within the remit of the Commission, who may be subject to care and treatment which they may not be able to agree to, or may not want.

Our current mental health and incapacity legislation is based on a set of principles to promote dignity, participation in decisions about

care and treatment, respect, equality, choice and least restriction. The Commission ensures these principles are followed, that treatment is lawful, and that human rights norms are respected. We are uniquely placed to encourage good practice within the current legal and policy framework, and play a leading role in its development.

Scotland's mental health and incapacity legislation was ground breaking when introduced 15 years ago. However, international human rights thinking and law continues to develop.

These developments reflect a societal shift from paternalism to empowerment, and making the rights, will and preference of the individual with lived experience central to decisions about their care, treatment and welfare. They require an increased emphasis on supported decision-making where an individual's decision-making is impaired.

The Scottish Government intends to implement the remaining provisions of the Mental Health (Scotland) Act 2015 during 2017, and has committed to two major legislative reviews – to consider whether the Mental Health Act should cover learning disability and autism, and to review the Adults with Incapacity Act in respect of deprivation of liberty and compliance with the UN Convention on the Rights of Persons with Disabilities.

The Commission receives notification of all detentions and compulsory treatment orders under the Mental Health Act and Adults with Incapacity guardianship orders. We are the only organisation routinely visiting individuals detained under mental health law in hospitals and other

¹ http://www.mwscot.org.uk/media/240757/human_rights_in_mental_health_care_in_scotland.pdf

places where their freedom may be restricted. We analyse how the legislation is being used across the country, and comment on how the legislation is being used and whether individuals' rights are being met and their welfare best protected.

We visit people with mental illness, learning disability, dementia and related conditions who receive health and social care services. We investigate specific cases and speak out about people who have not received the protection that the law might have provided, or where the needs of people with impaired decision making ability are not being recognised by services.

We are part of the UK National Preventive Mechanism (NPM), established under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). We will continue to work closely with our partners in the UK NPM to strengthen the protection of all people in detention through independent monitoring.

We will work in partnership with other agencies in areas such as justice and benefits, where appropriate, to protect rights and improve choice and control.

Over the next three years to meet this priority we will:

- Lead debate on reform of the legislative frameworks for people with mental illness, learning disabilities, dementia and related conditions. This will include participation in the planned legislative reviews, alongside wider work to explore how the law can be modernised over the next 5-10 years.
- Promote a greater understanding of how to embed principles of supported decision-making

in decisions affecting people with impaired decision-making capacity.

- Seek to influence the development and implementation of national strategies relating to mental health, dementia, learning disability and related conditions.
- Seek to ensure patients, and people using care services, know about their rights and have their rights respected at every point in the journey of care.
- Continue to visit over 1,200 individuals a year who receive mental health and social care services, highlight areas of good practice and recommendations for improvement, and use this to inform our priorities for promoting change.
- Work with the Scottish Government to determine where our monitoring can contribute to achieving or measuring the outcomes of the mental health strategy.
- Undertake analysis of why the Mental Health Act and Adults with Incapacity Act are being used differently across Scotland, and the implications for policy and practice (dependent on funding).
- Continue to monitor the extent to which mental health officers are discharging their responsibilities under mental health and incapacity law, and work with other agencies to improve levels of compliance.
- Contribute to improvements in the process of investigation of deaths and other serious incidents.
- Implement our corporate parenting plan, challenging service providers on their delivery of mental health care to children and young people where necessary.

Priority two: Focus on the most vulnerable

The context

We welcome the Scottish Government's commitment to tackle inequality. Those who use mental health and learning disability services experience some of the most profound inequalities in society, whether in terms of income, employment, education or health outcomes.

We have a particular responsibility to protect the rights and welfare of people whose liberty might be restricted by the use of legal processes such as guardianship, detention and compulsory treatment.

We also know from our visits, casework and investigations that rights can also be restricted without formal legal authority. We need to be concerned about everybody who has choices made for them by others, as well as people who are not adequately protected from risk and harm.

We have found, from our investigations,² that often people may need services but services do not recognise this need. This is particularly the case for people whose needs or diagnostic labels do not fit well with the way services are designed or structured. Examples include people whose mental health condition co-exists with other problems such as drug or alcohol dependence, people diagnosed with a mental illness and another condition such as learning disability or autistic spectrum disorder, and people given the label of personality disorder.

Children and young people with mental health issues are a particularly vulnerable group, and we have focused in recent years on reducing their admission to adult in-patient services. We will maintain our interest in this group, particularly with our new responsibilities under the Children and Young Persons Act 2014 for looked-after children.

In our submission to the review of the mental health strategy, we highlighted the need to do more to protect and support people whose needs or diagnostic labels do not fit well with current service approaches.

It is vital that we recognise inequalities within mental health, and we will ensure that in our work we include a focus on those that are most vulnerable.

Over the next three years to meet this priority we will:

- Develop a strand of our programme of themed visits which focuses on groups who appear to experience particular disadvantage, including borderline personality disorder and autism.
- Develop a focus on monitoring responses to people experiencing crisis, beginning with work on how the police respond where individuals require a place of safety.
- Focus guardianship visits on specific groups (such as people with learning disability or dementia) or on the use of specific powers, so we can better analyse how the law is working, and make recommendations for change.
- Link our data on use of legislation with data on areas of deprivation etc. to identify issues of inequality.
- Complete one major investigation a year focussing on the rights and welfare of the individual and drawing out recommendations for change for services across Scotland.
- Develop advice and guidance relating to groups whose needs do not fit well into the current legislative framework, such as people with alcohol related brain damage and young people with borderline personality disorder.

² Investigation into care and treatment of [Mr JL](#) and investigation into care and treatment of [Ms MN](#)

Priority three: Increase our impact

The context

Mental health and learning disability services are experiencing similar financial pressures to those seen across all public services.

The creation of integrated health and social care partnerships is potentially transformative, but the initial focus has inevitably been on getting the management and governance structures in place. It may be several years before individuals receiving services see the full benefits, and it will be important to be mindful of the risks of new bureaucratic boundaries emerging.

One of the key aims of health and social care integration was to address the problem of people remaining in expensive and inappropriate healthcare settings, for lack of appropriate community support. This is something we regularly review on our local and themed visits, and there is still much to be done, particularly for people with learning disabilities.

In our visits to services, we see an emerging paradox. There are high level policy aims to improve prevention and early intervention, and design services around the needs of individuals, giving them choice over what support would best help them to lead a flourishing life. However, funding constraints drive services to focus on those in most urgent or severe need, and on providing 'core' treatment rather than promoting recovery and wellbeing.

There are also concerns that the gains of previous years may be at risk, for example in the development of individualised and person-centred support for people with complex needs. Financial

pressures may mean that the care and support on offer reverts to older institutional models, or that people receive just enough support in the community to exist, but not to thrive.

An empowering rights-based system would give individuals choice about their care and treatment and support to live where they wish. This reflects the requirements of the UN Convention on the Rights of Persons with Disabilities, and the duties placed on services by the Mental Health (Care and Treatment) (Scotland) Act.

Our population is ageing, and we are seeing an increasing use of the Mental Health Act and Adults with Incapacity Act in treating and caring for people. We are also seeing more complex cases of people with dementia, autistic spectrum disorder, children with mental health problems and an increase in eating disorders.

There is a particular strain on mental health officers (social workers) with local authorities. Mental health officers play a pivotal role when an individual is detained under the Mental Health Act or subject to guardianship, and we have reported on the difficulties they currently experience in meeting their statutory obligations. We have grave concerns that the safeguards in mental health and incapacity law will not be able to be supported in the future if there is no investment in this workforce.

The Mental Health (Scotland) Act 2015 has reaffirmed the importance of independent advocacy, but these services too are under pressure. The Commission needs to support and collaborate with independent advocacy services to ensure that the rights we promote are delivered for individuals.

The Commission is neither an inspectorate nor an improvement agency. We identify areas that need change, and lead in promoting a system that will empower individuals to have autonomy, choice and control.

To do that we need to increase our impact. We cannot be satisfied by simply pointing out things that we feel need to change. We need to identify who can do something about it and what we can do to help to make the change happen. This focus on our impact is even more critical given the financial and resource pressures on public services.

Over the next three years to meet this priority we will:

- Improve our process for making recommendations from visits, investigations and monitoring to ensure they are appropriately targeted and effectively followed up.
- Publish lessons learnt, areas for improvement and recommendations from a wider range of our investigations work.
- Share information and collaborate with health and social care regulatory bodies where this will improve effectiveness and avoid duplication.
- Focus our monitoring work on areas of the Mental Health Act and Adults with Incapacity Act which are particularly significant for practice, decided in consultation with stakeholders.
- Review our open data responsibilities and consider whether information on the use of the Acts can be produced in open data format, allowing it to be more widely and effectively used in practice and research.
- Broaden our monitoring role in relation to the protection of rights, including delivering our new responsibilities in relation to advocacy and advance statements as outlined in the MHA 2015.
- Develop and publish a series of advice notes on areas of practice where care and treatment, rights and ethics overlap.
- Broaden the reach of our information and advice work to promote a wider understanding of the requirements and principles of the law amongst non-specialists (such as GPs, care workers and the police).
- Develop and promote digital and online options to make our information and training materials such as our excellence into practice sessions more accessible.
- Implement our engagement strategies for [individuals and carers](#) and [stakeholder](#) organisations, to ensure our priorities and approaches are well-informed, and that we collaborate with others where we share values and concerns.

Priority four: Improve our efficiency and effectiveness

The context

The Commission's core budget has been static at £3.6 million since 2011/12. During that period, as the number of people subject to detention under the MHA, and the number of people subject to welfare guardianship have risen (by 17% and 50% respectively), the subsequent increase of second opinions and associated fees under part 16 of the Act places a significant strain on our budget. The proportion of our budget allocated to second opinions has increased from 8% to 11% over this period.

We must therefore deliver our statutory duties with fewer resources. During the development of this plan, we undertook a sustainability review, to identify opportunities for efficiencies and better prioritisation over the next three years. We have put in place a new, more streamlined team structure, reviewed and improved guardianship processes and we are reviewing our accommodation requirements.

Over the next three years to meet this priority we will:

Develop our staff

- As we focus our work under our four new priorities, we will review our capabilities and skill mix, and ensure all staff are supported and receive appropriate training.
- Continue to demonstrate our values and promote equality and diversity. Our values are:
 - Respect – valuing and treating people fairly.
 - Challenging for better outcomes.
 - Commitment to high quality.
 - Team work and participation.
 - Supporting, protecting and nurturing.

Ensure our financial sustainability

- Review our processes and structure on an ongoing basis to ensure we are working in the most efficient and effective way.
- Review our accommodation needs.
- Ensure we have robust financial management and reporting.

Continuous improvement

- Maintain a robust system of corporate governance, underpinned by a risk management strategy, which ensures clear leadership and direction for the organisation and transparent decision making.
- Review our IT infrastructure and make ongoing improvements to our operation and knowledge management.
- Consider ways to better evaluate the impact of our work.
- Strengthen the communications about our work and our improved impact to ensure we target the individuals and services we most want to know about us.

Our outcomes – we know we have succeeded when:

Priority one:

To challenge and to promote change

- Individuals know their rights, are empowered to participate in decision making about their care and treatment and are supported to choose the lives they want to live.
- The Commission is known by policy makers, service providers, patients and service users and families/carers as an authoritative voice on mental health and incapacity legislation and human rights.
- Scotland's legislation relating to non-consensual care and treatment fully reflects international human rights norms, in its wording and implementation.

Priority two:

Focus on the most vulnerable

- Across mental health and learning disability services, there are robust plans to identify and respond to the needs of people most at risk of marginalisation and their rights not being upheld

Priority three:

Increase our impact

- Services respect our recommendations and implement them.
- We are the go to place for advice on areas where care and treatment, ethics and the law intersect.
- Our monitoring of mental health and incapacity legislation informs legislative and policy changes.

Priority four:

Improve our efficiency and effectiveness

- Staff are engaged, trained and developed to have the right skills to deliver the Commission's priorities in a changing environment.
- We continue to deliver our statutory duties with fewer resources.





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