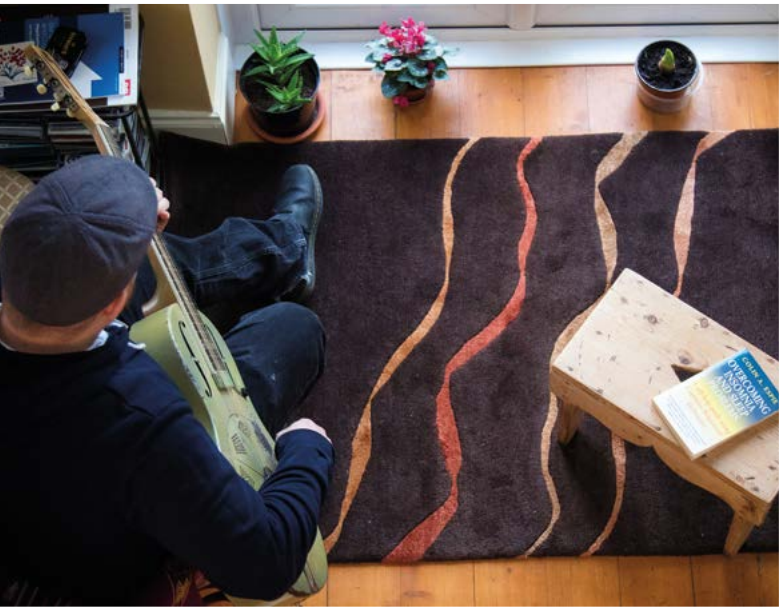
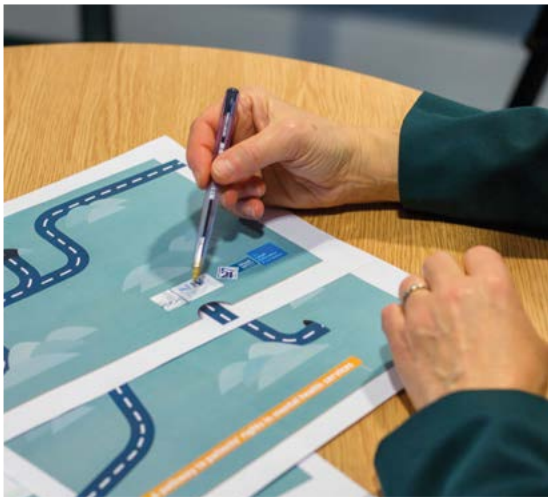
Annual report 2016-17

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 promote a new pathway to patients' rights in mental health services. 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

Perhaps more than any other year, I feel there has been more public discussion of mental illness at a national level than ever before, but set against continued pressure on local services.

The willingness of high profile public figures to talk about mental illness is important and very much welcome. By speaking openly about their own struggles with depression or anxiety, they help others realise that mental illness can happen to anyone.

A substantial next step would be for that kind of open discussion to extend to those mental illnesses and diagnoses which are less well known, and can be misunderstood. This could help address prejudice and improve care and treatment.

Our visits, our findings

Every day the Commission sees the reality of how services are being delivered, not only for people with mental illness, but also for those with learning disability, dementia and related conditions.

We meet staff who are dedicated to their work, and who provide high quality, professional care and treatment for their patients.

Last year we also saw improvements in some services, such as in the reducing numbers of young people who are being treated in non-specialist units for mental illness.

But we continue to hear of delays in discharging patients from hospital to more appropriate settings.

And in our visits to all of Scotland's adult acute wards, we found improved physical environments, but a worrying number of patients expressed concern about their safety.

Our monitoring work showed a continued rise in new episodes of compulsory treatment for mental illness, and we are unsure of the reasons behind this.

All of these findings, the positive and the negative, are published. We understand the pressures that providers are operating under, but we hope that by sharing good practice, and highlighting issues that need to be addressed, we can help drive improvements for patients, their families and carers, and for the service.

Patients' Rights

I was really pleased to see the Commission produce 'Rights in Mind' – a patients' rights care pathway.

Rights in Mind was designed as a practical, easy-to-use guide to a patient's rights at key stages, and is aimed at staff in mental health services. It was created in partnership with the Scottish Human Rights Commission, the NHS Scottish Patient Safety Programme, and the Royal College of Psychiatrists, and involved consultation with staff on wards, with patients, and with relatives or carers. It could not have been done without them. It is supported by a series of short films and web materials.

While it is designed for use by staff, Rights in Mind will also help patients and their families/carers to understand their rights, and raise questions if they feel that a patient's rights have not properly been explained or upheld.

NCF

The National Confidential Forum published an interim report 'What we have heard so far,' which shares the experiences of adults who have so far spoken to the Forum about their time in care as children.

And finally:

My thanks as always to all of those who have contributed to our work. The commitment of our staff, ably led by Colin McKay, personifies the importance of the Commission's distinctive contribution. Also I wish to say a special thank you to the three Board members who completed their terms of office this year – Lesley Smith, Elaine Noad, and Nigel Henderson. Each of them from their different perspectives brought to the Board that vital blend of challenge and support for all that the Commission does, as this annual report so clearly demonstrates.

"Rights in Mind will also help patients and their families to understand their rights, and raise questions."

Chief Executive's message

Colin McKay

This year, we published our strategic plan for 2017-2020. The plan draws on discussions with our staff, our advisory committee, and people with lived experience, and sets out how we aim to protect the human rights of people with mental illness, learning disabilities, dementia and related conditions.

Our strategic priorities are to challenge and promote change, and focus on those who are most vulnerable, while increasing our impact and improving our efficiency and effectiveness.

The Mental Health Act

We prepared the Commission for amendments to the Mental Health Act that have brought us new responsibilities, including the creation of a register of advance statements, a new role in relation to how health boards promote advance statements, and changes related to advocacy.

Call for Reform

While we welcome these changes, we also believe that it is time to consider longer term reform of the law, and we held three seminars on law reform with Edinburgh Napier University's Centre for Mental Health and Capacity Law. Attendees included specialists in the law, health care, social work and human rights from across the UK.

We tested Scotland's core legislation - the Adults with Incapacity Act 2000, and the Mental Health (Care and Treatment) Act 2003 – against evolving international human rights laws and standards. What was once world-leading, was found to be increasingly in need of reform. We hope the final report will make a strong contribution to the debate on mental health and capacity law reform in Scotland over the next few years.

But how the law is used is as important as what the legislation says. Scotland needs to embrace the supported decision making approach championed by the UN Convention on the Rights of Persons with Disabilities, and we published detailed guidance on what this means in the Scottish context.

Mental Health Strategy

We welcomed publication of the Scottish Government's mental health strategy. We were glad to see Ministers set out the clear ambition that mental health problems will be prevented and treated with the same commitment, passion and drive as physical health problems. But there is work to do on how the vision will be delivered, and we will continue to play a constructive role in this.

Investigation

We published an investigation into the tragic case of a woman who killed her baby whilst profoundly affected by postnatal depression. Our report made a number of recommendations, one of which was for the Scottish Government to establish a national managed network for perinatal mental health. This echoed a recommendation from our visits last year to perinatal mental health in-patient services.

We were delighted to see this network being launched in January, and we are hopeful that this will deliver real and lasting improvement in this vital area.

Working with others

The Commission has few powers to direct other people – we can only succeed if we influence and persuade. We work with government, health and social care services and professionals, and, increasingly, people with lived experience and carers. Some of this year's highlights included a consultation event with VOX for people with lived experience, working with partner organisations and individual wards on the Rights Pathway, and meeting international organisations in Geneva to develop a shared understanding of how psychiatric institutions should be monitored.

"The Commission has few powers to direct other people - we can only succeed if we influence and persuade."

Influencing and empowering

- In partnership with Edinburgh Napier University, we held seminars where specialists in their field compared Scotland's legislation on mental health and incapacity with international human rights standards. This work culminated in a report setting out an agenda for reform of Scotland's law.

- We worked with the Scottish Human Rights Commission, the Scottish Patient Safety Partnership (Mental Health), the Royal College of Psychiatrists in Scotland and two hospital wards to create a patients' rights pathway that sets out a person's rights at various stages throughout their care and treatment. The pathway has been rolled out to hospital staff across the country.

- In a joint project with the Scottish Commission for Learning Disability, we oversaw a study that considered how the government should undertake its promised review of the place of learning disability and autism within Scottish mental health law. The government published the study.

- We worked with the Office of the Public Guardian on proposals for graded guardianship. This work contributed to the government's review of incapacity laws.

"Hospital staff told us that patients are less anxious, and feel more empowered, when their rights are explained on admission to hospital, but that this doesn't always happen."

Rights in Mind – a patients' rights pathway

We know from our visits and other work that patients are not always aware of their rights. Last year we held a consultation event where we asked people to talk about their experience of being admitted to a mental health ward. We also heard the views of relatives and staff.

People told us that it would have helped if their rights had been explained to them. Hospital staff told us that patients are less anxious, and feel more empowered, when their rights are explained on admission to hospital, but that this doesn't always happen.

As a result, we decided to create resources to help staff ensure that patients have their human rights respected at key points in their treatment.

We produced a booklet - Rights in Mind - which lists people's rights when they are admitted to hospital, when they are on the ward, at discharge, and when they are being treated in the community.

The guide is designed to be accessible to staff on busy wards, and will also be useful to many patients and relatives.

We also developed a good practice guide for staff, which explains how and where human rights impact on mental health care delivery and how staff can best ensure that key rights are upheld and promoted. It is intended to be both a reference guide and an improvement resource.

We worked with the Scottish Patient Safety Programme, the Royal College of Psychiatrists and the Scottish Human Rights Commission on the project.

There are also five short films showing interviews with former patients, nurses on pilot wards in Dumfries and Wishaw, and the Commission.

The resources were launched at an event in May 2017, and the project is supported by a grant from the Legal Aid Foundation. All the materials are available to view and download on our website.

Scotland's Mental Health and Incapacity Law – the Case for Reform

We held three seminars on law reform with Edinburgh Napier University's Centre for Mental Health and Capacity Law. The seminars were attended by specialists in the law, health care, social work and human rights from across the UK. Discussions focused on graded guardianship, capacity as a basis for compulsory treatment, and the possibility of unified mental health and capacity legislation.

Attendees compared Scottish law in these areas - the Adults with Incapacity Act 2000, and the Mental Health (Care and Treatment) Act 2003 – with international human rights laws and standards, and found that what was once world-leading is now increasingly in need of reform. Scotland's laws need, for example, to increase the emphasis on supported decision-making for people who cannot take decisions for themselves.

A final report, with a series of recommendations, was produced and presented to government and circulated widely. We hope it will lead the debate on mental health and capacity law reform in Scotland.

"There should be a long-term programme of law reform, covering all forms of non-consensual decision-making affecting people with mental disorders."

Recommendation 1 – Scotland's Mental Health and Incapacity Law – the Case for Reform

Mental Health Strategy

The government published its mental health strategy in March 2017. We welcomed this document and its commitment to a human rights-based approach, and called for more clarity on how its actions will be delivered.

We were particularly glad to see Ministers set out the clear ambition that mental ill health will be prevented and treated with the same commitment, passion and drive as physical ill health.

In our response, we highlighted the importance of the human rights PANEL principles (participation, accountability, non-discrimination, empowerment and legality) in the strategy because they could transform the way services are delivered, and ensure that people with mental illness always have their rights protected, at every stage.

Learning disability, autism and the Mental Health Act

Working with the Scottish Commission for Learning Disability, we jointly oversaw a scoping study to prepare for the planned review on whether the Mental Health Act fulfils the needs of people with learning disabilities and autism.

The study was commissioned by the Scottish Government, following its commitment to undertake a review of this issue, and was carried out by Dawn Greisbach Associates. It was published by the government in January 2017.

The review was promised because there has been considerable debate and disagreement about whether people with learning disabilities and autism should be subject to the provisions of the Mental Health Act. The purpose of the scoping study was to lay the foundations for a process which is inclusive, authoritative, and recognises the diversity of opinion on this issue. It sought views on the scope of the government's review, who should be involved in it, and how the review should be conducted.

One key message from this work was that learning disability and autism are different, but related. On the one hand, the review must acknowledge the diversity in both conditions, but on the other, it must recognise that there is also significant comorbidity between the two, and between both sets of conditions and mental illness.

We look forward to the forthcoming review.

NPM Symposium – monitoring psychiatric institutions

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 Association for the Prevention of Torture (APT) held an international symposium in Geneva in September that brought together 15 NPMs and other organisations from around the world to discuss the monitoring of psychiatric institutions.

Colin McKay, our chief executive, and Graham Morgan, our engagement and participation officer with lived experience, represented the UK NPM at this event. Graham gave a very well received presentation.

The final report[1] set out important considerations when monitoring psychiatric institutions, and also emphasised that bodies like the Commission, with an NPM mandate, should not confine themselves to visits and verifying material conditions. Their role is also, where appropriate, to challenge practices and legislation, to check that guarantees are in place to prevent arbitrary detention, and to ensure that individuals are duly informed of their rights. It also concluded that it is crucial to 'raise awareness within society on the rights and needs of persons with mental disabilities, with a view to ending discriminatory practices and preventing their prolonged institutionalisation.'

That fits well with the human rights approach that guides the work of the Commission, and we hope will influence other countries where the role of independent monitoring of psychiatric care is less developed.

Building on the connections made at this event, Graham has been invited by the APT to participate in an international discussion about protecting the rights of people with mental illnesses.

1 'Monitoring Psychiatric institutions: Jean-Jacques Gautier NPM Symposium 2016 Outcome Report' – available online at http://www.apt.ch/content/files_res/report-jjg-symposium-2016-en.pdf

Effective and efficient visiting

- We met with 1,583 people across Scotland this year, listening to their experience.

- This exceeds our key performance indicator which was to visit 1,500 people.

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 who were homeless. We did this by arranging to be at services for homeless people on certain days. We spoke to people who attended on those days who had mental ill health and who were willing to talk to us.

We publish reports after most of our visits and make recommendations for improvement for services, for health boards and for 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 at 116 locations across Scotland as part of our local visits. Twenty six per cent of these visits were unannounced.

Themed visits – to people with similar health issues or situations across the country. We worked on three themed visit reports in the year – adult acute wards, forensic services, and homelessness and mental health.

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.

Monitoring visits – where we visit people who are subject to specific areas of mental health and incapacity legislation as part of our statutory duty to monitor the operation of the law in this area. On these visits we seek to ensure compliance with the law by those giving care and treatment, and we listen to the experience of people who are receiving that care and treatment.

Other visits – for example, we 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 his or her rights under these Acts?
- Has that person been involved in decisions about his or her care and treatment, and have they been given enough information to participate in those decisions?
- Is the building and are the facilities suitable in relation to the needs of the person we are visiting?
- Where the person is receiving compulsory treatment, are the appropriate safeguards being provided?
- Is care and treatment culturally sensitive?
- Is there a clear person-centered care plan, and is it being carried out?
- Can the person get access to advocacy and legal services, and 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?

Themed visits

Adult acute mental health wards

We visited all 47 adult acute mental health admission wards in Scotland, reviewing the care of 323 patients, most of whom we met in person.

We spoke to 41 carers, most often a member of the patient's family, and we spoke to ward staff.

We found some changes since our last themed visit in 2012.

In 2016 we saw a welcome shift to care that is focused on recovery, and we found a general improvement in the physical environment.

But this time we found that almost one in five patients reported feeling unsafe, particularly at night. One in four women expressed concerns about being on a mixed ward.

In 2016 there were more peer support workers – people who have themselves experienced mental ill health – than in 2012, but we found that more needs to be done to promote awareness of their role.

Fewer than half of patients spoken to said they had the opportunity to exercise, yet many wards said they had access to a gym or other exercise options.

We made a number of recommendations to NHS health boards.

Homelessness and mental ill health

Through this small scale study we wanted to try to understand how people who are homeless, and have mental ill health, access the care and treatment they need.

We spoke to 43 homeless people in two local authority areas – one urban, one rural. Over half said they experienced depression. Other diagnoses included bipolar disorder and schizophrenia.

Almost half had spent some time in prison.

Twenty had experienced sexual or physical abuse.

Fourteen had been looked after children.

We saw engaged and committed staff in homelessness services supporting people with significant mental health needs, but lacking direct referral routes to psychiatric and psychological services.

We heard that the only way of accessing those services was via a GP, but there could be barriers to registering. People with both mental ill health and addiction issues sometimes had difficulty getting help. We were told that the benefits system is not set up well for homeless people, and in particular for people with mental health problems. On release from prison there is often a delay in accessing medication due to difficulties registering with a GP and GPs' reluctance to prescribe without input from a hospital consultant.

The report includes recommendations for NHS boards and health and social care partnerships, and for local authorities and the Scottish Government.

Scotland's medium and low secure forensic wards

We published our first Scotland-wide report on medium and low security forensic wards, following our visits to all 46 wards across the country - 14 of which are for medium secure patients, the remainder being low secure. We reviewed the care of 165 patients.

The report found that risk assessment, care planning, and access to advocacy were good. Most patients spoke well of their care and treatment, and of the staff who cared for them.

However, we also found that there were patients in Scotland's medium secure units who had successfully appealed against the level of security in which they were held and were waiting to move on, but there were frustrations at the length of time this takes.

Sixty one patients in 24 of the wards in low security units were also waiting to move on, either to a rehabilitation bed or to a community setting.

The report identified variations across the country in the use of restrictions for patients, with no clear reason as to why some wards kept this to a minimum, whilst others did not.

One in five patients said they felt unsafe, or partially unsafe, at times in the ward.

The report contains recommendations for the Scottish Government, health boards/integrated joint boards and the Scottish Patient Safety Programme Mental Health.

Local visit overview

Between January and December 2016 we carried out 94 local visits to hospitals, care homes, secure units, specialist units and prisons. A third of these visits were to NHS wards for older people with mental ill health, the largest grouping.

We provide feedback and recommendations for improvement to each of the services involved in a local visit report.

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. We also take into account any national standards and good practice guidance. We allow service managers three months to formally write to us with their response to our recommendations.

We made 329 recommendations for improvement in the year. Only nine of our visits resulted in no recommendations.

Twenty five per cent of all recommendations related to assessment, care planning, review and person-centred care. Fourteen per cent highlighted improvements required in the physical environment.

Eleven per cent of recommendations related to the Adults with Incapacity Act, and six per cent concerned the Mental Health Act. Ten per cent of recommendations focused on therapeutic activity.

We were satisfied with 95% of the responses we received. As part of continuous improvement, we are introducing a new process for managing responses to our recommendations, because we want to be as sure as we can that they are being implemented.

"We made 329 recommendations for improvement in the year."

Publication of our local visit reports

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

Reports are grouped by 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 a news release for each set of completed reports, often generating media coverage, particularly in local media. This increases transparency and informs local people of our findings. We also post a link to the news release on our Twitter account.

Since we began publishing our local visit reports in June 2016, we have seen a substantial increase in traffic to our website and the number of downloads of our publications.

Information on our welfare guardianship visits, and on our visits to young people who have been admitted to non-specialist wards, can be found in the monitoring section of this report.

"generating media coverage... increases transparency and informs local people of our findings."

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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- The number of new episodes of compulsory treatment for mental illness rose again, and is the highest level in at least 15 years.

- Welfare guardianship orders continue to increase, and this year have risen by 12.5%. This represents an increase of 114% in new orders since 2009-10.

- For the second year running, there was a significant drop in admissions of young people with mental illness to non-specialist wards or other settings.

We have a duty to monitor the use of the Mental Health Act, and we report on the Adults with Incapacity Act. 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.

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. This year we organised 1,844 second medical opinions.

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.

Every year we also publish an annual monitoring report on young people who are admitted to non-specialist wards for mental health care and treatment - again, giving a breakdown of data by health board.

In relation to adults with incapacity, authorities are legally obliged to inform us of specific welfare interventions. Again, we monitor and analyse that information, ensuring it complies with legislation.

Monitoring the use of mental health legislation

There was an 8.2% increase in compulsory treatment for mental health in 2016-17 compared to the previous year.

This was part of a continued upward trend, and means that the number of new episodes of compulsory treatment using the Mental Health Act was the highest it had been in at least 15 years.

The report published for the year included a broader range of figures and comparisons over the previous 10 years. The data shows wide variations in the use of the legislation across the country. Our report contained a recommendation that the Scottish Government explores how to better understand these significant variations.

There are three routes to compulsory treatment, and the publication gave details on each:

Emergency detention certificates

The sharpest rise was in the use of emergency detention certificates, which were used 2,414 times in the year, a rise of almost 12% on the previous year.

These certificates are designed to be used only in a crisis situation to detain a person who needs urgent care and assessment for mental ill health. They can be issued by any registered doctor, and they allow someone to be kept in hospital for up to 72 hours.

Given this, guidance states that these certificates should usually only be issued with the consent of a mental health officer; a specialist social worker. The percentage of emergency detention certificates issued across Scotland with mental health officer consent has fallen from 68% in 2008-09 to 54% in 2016-17.

Short term detention certificates

The preferred route to compulsory treatment is through short term detention certificates. These certificate are issued by a psychiatrist, supported by a mental health officer, and can remain in place for up to 28 days. These certificates were used 2,905 times in 2016-17, an increase of 5% on the previous year.

Compulsory treatment orders

These orders can only be issued by a Mental Health Tribunal, and can last up to six months. They may apply to treatment in hospital, or treatment in the community.

While the number of compulsory treatment orders issued has increased over the last 10 years, (to 1,203 in 2016-17), the rate of increase has been slower than either of the other two routes to compulsory treatment. The number of compulsory treatment orders that are community based has increased steadily.

The full report is available on our website.

> "The number of new episodes of compulsory treatment using the Mental Health Act was the highest it had been in at least 15 years"

Young people

We report annually on young people who are admitted to non-specialist hospital wards or other units for treatment of mental ill health. These kind of admissions should only be made in exceptional circumstances. Our annual reports include information on what kind of hospital ward or facility these young people are being treated in, their age on admission, the reasons why they were admitted, and patterns of admissions around the country.

This year's report shows a substantial drop in the number of young people with mental illness being treated in non-specialist wards in Scotland, in a similar pattern to the previous year. Over the last two years the number has reduced by around two thirds.

The figures have gone from a high of 207 admissions across Scotland in 2014-15 involving 175 young people, to 71 admissions involving 66 young people in 2016-17. Most of these admissions were to adult wards.

In publishing the data, we welcomed the change, and the hard work across the country that led to it.

The reasons for the reductions appear to include:

- the stability of staffing in Scotland's three specialist inpatient units, which are in Glasgow, Edinburgh and Dundee, together with increased bed capacity,
- improvements to admission and discharge procedures in these units,
- an expansion of services provided in the community by Child and Adolescent Mental Health Services (CAMHS), particularly their intensive treatment services.

The report includes two recommendations for change. One asked for a review of admission procedures in the three specialist units to see whether they can improve the out of hours and weekend systems for new referrals.

The other recommendation asked the Scottish Government, together with health boards, to review the availability of, and access to, intensive psychiatric care unit (IPCU) beds nationally for young people.

"In publishing the data, we welcomed the change, and the hard work across the country that led to it."

Monitoring the use of the Adults with Incapacity Act

This Act relates to people who lack the capacity to make some or all decisions for themselves because of mental illness, learning disability, dementia or other conditions. It includes legal safeguards to protect the rights of people who are on welfare guardianship, intervention orders or power of attorney.

When a person has capacity, they can grant a power of attorney to someone to act on their behalf should they become unable to make their own decisions in the future.

When a person does not have capacity, an application can be made to court, and the sheriff may appoint a welfare guardian as a proxy decision maker.

Welfare guardians are usually a relative, carer or friend. These are known as private guardians. Courts can also appoint the chief social worker of a local authority to be the person's welfare guardian. This is known as local authority guardianship.

Decisions by attorneys or guardians should always be in line with the principles of the Adults with Incapacity Act.

The Commission monitors the use of welfare provisions of the Act, and we monitor the use of parts of the Act related to medical consent and research.

We also publish advice and good practice guidance on the operation of the legislation.

This year's report shows a continued rise in guardianship applications. The Commission is concerned about the increasing demands on local authorities to provide reports, supervise and support the welfare guardians. We feel the law needs to be modernised to better protect vulnerable people's rights and to reduce pressure on local authorities and courts, and we will continue to press for action.

The main findings of our monitoring report this year are:

- the number of existing guardianship orders rose by 12.5% on the previous year, to 12,082,
- the number of new guardianship orders granted during the year rose by 7% on the previous year, to 2,853,
- private applications (by relatives, carers or friends) accounted for 75% of all applications, with local authorities applications accounting for the remaining 25%,
- whilst there was an overall 7% increase in the number of applications granted across Scotland, there was wide variation in the percentage variation from last year within individual local authorities. Inverclyde up 50% while East Lothian down 44%.

The full report is available on our website.

"We feel the law needs to be modernised to better protect vulnerable people's rights and to reduce pressure on local authorities and courts, and we will continue to press for action."

Place of safety monitoring report

This year we published a snapshot monitoring report looking at how Police Scotland use their power to detain people in a public place of safety under the Mental Health Act.

The report shows wide variations in the use of these powers in different parts of Scotland. It also appears to show a lower use of these powers in Scotland, where the place of safety was a police station, than has been found in England and Wales.

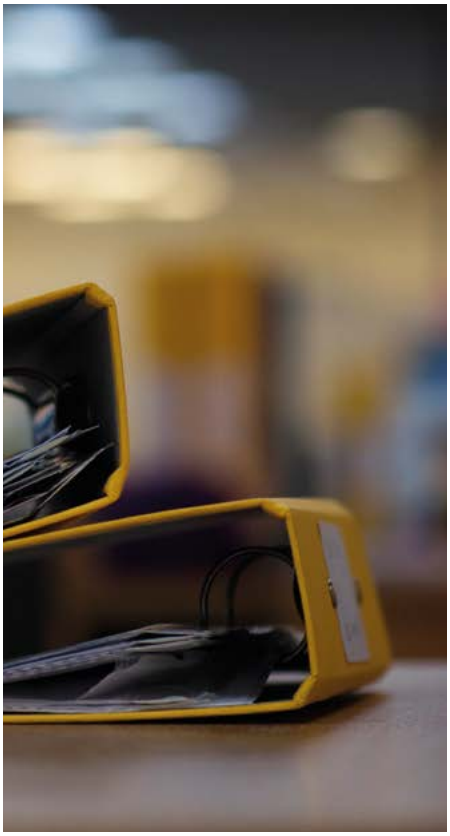
Place of safety orders can be used by the police when they find someone in a public place who they believe may have mental ill health and may be in need of immediate care and treatment. The person can be detained in a place of safety for up to 24 hours so they can assessed by a doctor.

A local plan identifying a designated place of safety, such as a local psychiatric hospital, should be in place for such incidents. A police station should only be used in exceptional circumstances.

The police should notify us every time a person is held under these powers.

"The report shows wide variations in the use of these powers in different parts of Scotland."

Investigations



- **We worked on 23 investigations, 10 of which were started during the year.**

- **We sent four cases back to local services, making specific recommendations for their further internal investigation.**

- **We published one investigation on our website, which involved a mother who suffocated her baby while profoundly affected by postnatal depression.**

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

When serious concerns are raised about the poor care or treatment of a person with mental ill health, learning disability, dementia, or related conditions, a number of organisations are often involved. Usually the lead investigator will be 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 instigate our own investigations when we believe 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.

"We instigate our own investigations when we believe the case appears to show serious failings, and has implications for services across Scotland."

Twenty-three investigations

During the year we worked on 23 investigations, 10 of which were new. Of these, one was published on our website.

We sent four cases back to local services after initial investigation. In these cases, we expressed concerns and made recommendations to service managers for further investigation and action. In five cases, we looked at the review carried out by local services following which we were satisfied with the outcome. In two of these cases we were satisfied that there was no deficiency of care. In the remaining three cases, we were satisfied that appropriate action had been taken to address deficiencies identified.

We continue to investigate a further 13 cases.

Although we did not meet our KPI for this year to publish two investigation reports by March 2017, we published one report and completed further analysis and a draft report for a second investigation.

Death of a baby – investigation into the care of Ms OP

Ms OP suffocated her baby while profoundly affected by postnatal depression. She had experienced postnatal depression during a previous pregnancy.

The death of her baby in 2015 was the subject of a police investigation and court case. Ms OP was convicted of culpable homicide.

The Commission was asked by the former government minister for sport, health improvement and mental health, to carry out a full investigation into the care of Ms OP prior to the baby's death.

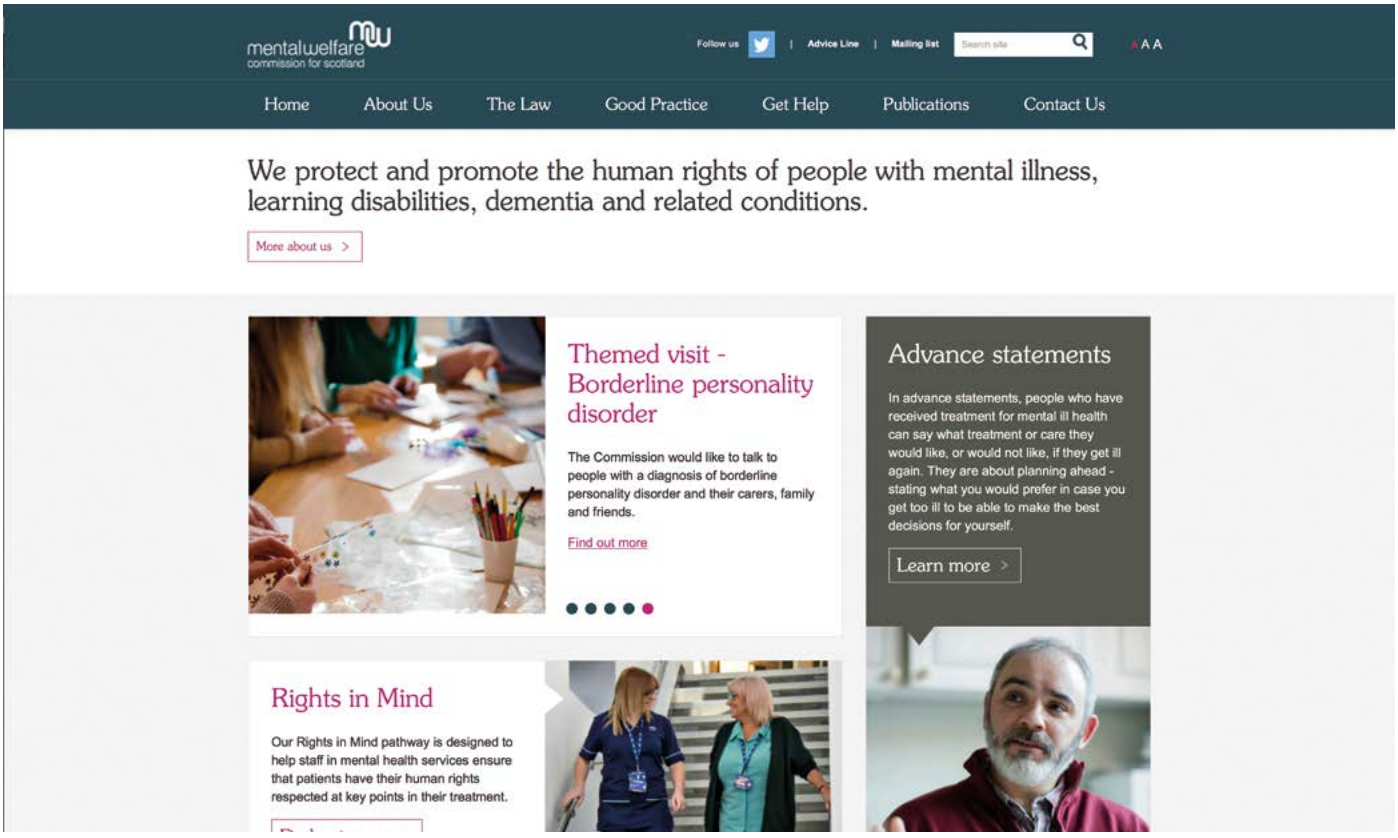
When we published this report we said we had not found any single failing or omission that directly contributed to the death, but we did find several aspects of Ms OP's care and treatment that should have been better.

We found very little communication between the different agencies involved in Ms OP's care, and missed opportunities for referral to postnatal mental health services and adult mental health services.

We found that a pre-birth planning meeting would have highlighted the history and risks, and we found that Ms OP's discharge by a community psychiatric nurse was not discussed with anyone else in the team in advance.

We made nine recommendations for joint health and social care bodies; three for the health board involved; one for the Royal College of General Practitioners and one for government. The government have since acted on our recommendation, which was to establish a national managed clinical network for perinatal mental health.

Providing information and advice



- We received 4,388 calls to our Advice Line. A sample audit showed 99% accuracy in responses given.

- This exceeds our key performance indicator, which was to achieve 97.5% accuracy in responses given.

- We published good practice guides on the use of the Mental Health Act, and on the use of the Adults with Incapacity Act, in general hospitals.

- Working with LGBT Health and Wellbeing, we created our first guide to LGBT-inclusive mental health services.

- We published a good practice guide on supported decision-making.

One of our central roles is to provide information and advice on the effective 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 or other subjects.

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

Good practice – supported decision-making

In recent years there has been increased international interest in the idea of supported decision-making – giving people with mental illness or a learning disability the support to make choices for themselves, rather than simply authorising someone else to make decisions on their behalf.

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) sets clear expectations that signatories take this approach forward. Some countries have already legislated in this area. While this has not yet happened in Scotland, there are already many steps that can be taken to keep a person's rights, will and preferences at the centre of decisions concerning them.

We produced guidance in order to help health and social care staff understand what supported decision-making is, why it is important, and the benefits it can bring.

The guidance outlines the human rights framework, and considers the role that supported decision-making can play in respecting the principles that underline Scottish mental health and incapacity law.

It also discusses what must be taken into account when providing supported decision-making, and gives examples of situations where it might be put into practice.

We see great potential for embedding the supported decision-making approach in the care and treatment of people with mental ill health, learning disability, dementia and related conditions, and we will continue to promote it.

"There are already many steps that can be taken to keep a person's rights, will and preferences at the centre of decisions concerning them."

Good practice – the Mental Health Act in general hospitals

We published this guidance for staff in general hospitals. It discusses how the act can be used to provide compulsory treatment in general hospitals, and highlights the steps that should be taken before using this legislation.

The guidance also answers a range of questions we feel will be helpful to staff in general hospitals, based on the experience of our own staff in responding to queries.

Good practice - the Adults with Incapacity Act in general hospitals and care homes

We published this guidance for staff in general hospitals and care homes. It sets out the purpose and the principles of this act, explains issues related to capacity, and discusses what treatment under the act means in practice.

The guidance outlines the processes that must be followed if staff wish to use the legislation. It also answers a range of questions we feel will be helpful to staff, based on the experience of our own staff in responding to queries.

"The guidance also answers a range of questions we feel will be helpful to staff"

Good practice – LGBT inclusive mental health services

We completed work on our first ever guide to making mental health services inclusive of lesbian, gay, bisexual and trans (LGBT) people, aimed at mental health professionals and service providers.

We produced the guide to help eliminate discrimination against lesbian, gay, bisexual and trans people in mental health services, and to help health and social care services to deliver more person-centred care and treatment for this group.

Studies show that LGBT people experience higher rates of mental ill health and are much more likely to think about suicide or self-harming. They are also more likely to have negative experiences when accessing mental health services.

The guide features a number of recommendations for making services more accessible and LGBT-friendly.

We worked closely with LGBT Health and Wellbeing on the production of the guide, with input from Mahmud Al-Gailani from Voices of Experience, Stonewall Scotland and the Scottish Trans Alliance.

Copies were sent to all psychiatric wards in Scotland, as well as primary care and community services.

Good practice – human rights in mental health services

This guidance was written as part of our Rights in Mind campaign, and is designed to be used alongside our Rights in Mind booklet and short films.

Aimed at staff in hospital and community teams, it illustrates how and where human rights impact on mental health care delivery, and how staff can best ensure that a patient's key rights are respected and promoted.

It explains the background to human rights in mental health care and looks at each of the rights set out in the Rights in Mind booklet. There is a section for each stage: community care, admission to hospital, time on the ward and discharge. The guide also sets out overarching rights that apply across each of these stages.

It includes examples of good practice where a patient's rights have been upheld. It also includes case examples of where a patient's rights should have been upheld but may not have been.

The guide has been written for staff working in adult acute settings and in the community, but may be useful for other areas of mental health care and other patient groups.

Website and social media

We use our website to share information, publications, advice and guidance.

Last year we added social media buttons to our homepage to allow visitors to move back and forth seamlessly between our website and Twitter account.

We created a new section on our website designed to showcase our Rights in Mind materials. The section allows visitors to read our Rights in Mind booklet and associated good practice guide, and watch our short films.

We commissioned a variety of still images for use on our website and publications. The images feature real people such as nurses and ex-patients, and help give a more accurate reflection of our work.

In 2016-17 we continued to see a significant increase in the number of visitors to our website and Twitter account compared with previous years.

81,288 people visited the website, 123,973 times. This compares with 76,834 people visiting 119,351 times the previous year.

The number of publications downloaded on our website was 49,018. This means that 40% of visits to our website resulted in a download.

We had 63.5% new visitors to the site, and 36.5% returning visitors.

Our Twitter following increased by 33% in 2016/17, from 1,644 to 2,188.

There were 290 new subscribers to our mailing list.

Our 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. We can advise on their rights related to the law, and in relation to their care and treatment.

Our advice line also receives regular calls from doctors, social workers, mental health nurses and other professionals who wish to discuss specific situations, legislation and good practice.

In 2016-17, our helpline staff gave advice in 4,082 of the 4,388 calls to the Advice Line.

In an audit of a sample of the advice given, we found that 99% was accurate, exceeding our target of 97.5%.

Excellence in Practice Seminars

We held a series of Excellence in Practice seminars, tailored to specific audiences, which focused on difficult legal and ethical issues that health professionals, care home managers, social workers and others may face in providing care and treatment.

These seminars covered issues that are commonly raised with us through our advice line, or through visits or investigations.

In 2016-17 we ran two seminars. The topics were:

- Professional challenges – welfare guardianship and power of attorney.
- Capacity, consent and restrictions.

In total, 51 practitioners from across Scotland attended. Feedback came by way of a written form, and resulted in an overall positive view of the events. We welcome the positive feedback, and are looking at ways in which we can deliver these seminars most cost-effectively in the future.

Nurse engagement events

This year the Commission held a series of events across Scotland for mental health and learning disability nurses working in the community. The events focused on advance statements, changes to the Mental Health Act and recovery-focused practice.

These events allowed us to engage with this group and update them on our work.

We ran a total of 17 events, visiting every health board in Scotland, over a period of four months. Two events were held in Tayside and Glasgow due to a high demand for places.

In total, 364 nurses attended the events. Of these, 64% worked in mental health services, 30% in learning disability services and the rest across forensic and older people's services. Ninety per cent worked in a community setting and 10% in an inpatient setting.

Feedback from the events was very positive. Of those who responded to our feedback form, 88% found the event either very helpful or helpful, and 94% indicated that they would like us to provide further events of this type.

We reviewed the usefulness of these sessions and agreed to look into running them on a more regular basis, most likely on a two-year cycle.

Annual meeting with heads of social work services

The annual meeting between the Commission and the lead officers of social work services took place in Stirling this year, and was attended by over 50 delegates from local authorities across Scotland.

The meeting allowed us to discuss our work with key social work contacts, and share best practice.

Staff from the Commission spoke on a variety of topics, such as advance statements and our new patients' rights pathway – Rights in Mind. We also gave updates on our forensic and perinatal themed visit reports.

We heard from a number of external speakers, including representatives of the Scottish Government, NHS Lothian, the Office of the Public Guardian and the Mental Health Tribunal, who all gave updates on their work.

"The meeting allowed us to discuss our work with key social work contacts"

Improving our practice

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

- We published our first guide to LGBT inclusive mental health services as part of our commitment to equality and diversity.

- Our advisory committee continues to directly influence our work.

Our Board

Our Board brings a wide range of experience and knowledge to the Commission.

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 AlMegrahi 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

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.

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.

Nigel Henderson is chief executive of Penumbra, one of Scotland's most innovative mental health charities. He has over 30 years experience in the mental health field having originally qualified as both a mental health and general nurse. He worked in the NHS before moving to the third sector in 1985. He joined Penumbra in 1991 and became its chief executive in 1999. He is also vice chair of the Health and Social Care Alliance (Scotland) and a board member of Mental Health Europe (MHE).

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.

Lesley Smith works for the Scottish Recovery Network, with a particular responsibility to support the development of the peer support worker role. She has lived experience of mental health problems and using services. She believes in recovery and in people being involved and having their voices heard through participation and collective advocacy. She was actively involved with the Patients Council at the Royal Edinburgh Hospital. She was a board member of Carr-Gomm Scotland for six years, contributing throughout the organisation, and was a member of the training team with the Lothian Recovery Network.

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, she has worked at various level 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. She was also chair of the child protection committee, children's services plan and alcohol and drugs partnership. She also works with a number of local authorities as a consultant on the provision of children's services.

Elaine Noad OBE has worked in the public and voluntary sectors throughout her career. She was formerly the director of social work, housing and health at South Ayrshire Council. She has worked with a number of public and voluntary sector organisations, including acting as a non-executive director of the Scottish Government, a member of the Parole Board for Scotland, and as a lay member of the Scottish Solicitors Disciplinary Tribunal. She brings experience in management, social work, audit and governance, and has a strong commitment to equality, diversity and human rights.

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.

Towards greater engagement

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.

Last year we created two new engagement and participation posts within the Commission, one for a person with personal experience of mental ill health, and one for an unpaid carer of someone receiving care and treatment.

Our engagement and participation officers have helped us to substantially increase our network of mental health and carer organisations, and better connect with individuals and support groups. They participate in local and themed visits, offering a unique insight through their lived experience, and are heavily involved in our consultations, which help shape the work of the Commission.

This year we held a pilot engagement forum in partnership with Voices of Experience (VOX), for people with lived experience of mental illness. The forum took place in Glasgow and was attended by 41 people. It focused on discussing the priorities of our work over the next few years and the feedback from the event informed our strategic planning.

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 helped to shape our strategic plan for the next three years, and advised us on law reform proposals.

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. Our single equalities scheme, with full details of our approach, is on our website.

This year we published our first ever LGBT inclusive mental health guide. We produced this guide to promote equalities, and in recognition of the higher rates of mental ill health experienced by this group.

We also met with black and minority ethnic groups across Scotland to explore ways of improving our engagement with BME communities. We now have representatives from BME and LGBT organisations on our Advisory Committee.

Financial resources

Our revenue budget was £4.455 million. This included £3.620 million for the Commission, and £0.835 million for the National Confidential Forum.

Our 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.

Learning lessons

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

In 2016/17 we received and responded to 13 complaints. After investigation, two of those complaints were upheld, two partially upheld, and nine not upheld. This is an improvement on 15 complaints last year, five of which were upheld.

As a result of these complaints we have:

- made improvements to the way administrative work is overseen;
- increased management oversights of projects; and
- introduced new guidance about confidentiality for users of our advice line.

Individual errors that resulted in complaints have been raised with the members of staff involved and their line managers.

Environmental sustainability

The Climate Change (Duties of Public Bodies: Reporting Requirements) (Scotland) Order 2015 came into force on 23 November 2015. The Commission is not part of the '150 major players list' who are required to submit a report; however it is best practice for smaller organisations to voluntarily report on progress on areas where they have influence.

We published our sustainability report in January 2017, which is available on our website.

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SG/2017/165

November 2017