



mental welfare
commission for scotland

Strategic Plan 2020-2023

Corporate reports

30 March 2020



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

Foreword

We publish this strategic plan during the pandemic; an unprecedented time of uncertainty for all.

Hospitals, care homes and community teams have been under enormous pressure as they seek to continue to provide care and treatment in a restrictive environment. Patients and people who use services, along with their relatives and carers, have had to cope with all of these changes, which often adds stress to their lives.

The Commission itself had to quickly alter its focus and plans.

Working through change

In the early stages of lockdown we worked intensely with government and other authorities to try to envisage the impact the virus might have on the people we are here to serve, and to plan mitigation.

We halted all of our visits and devised interim means of keeping in touch with wards and services including advocacy services. As lockdown continues, with our staff working from home, we have kept our advice line running and published regular guidance bulletins for professionals and relatives/carers on the impact of Covid-19 on services across Scotland. We are now reviewing how to restart our visiting including utilising video technology when appropriate.

It seems that how we work in the future will be affected by current circumstances for some time.

This gives us challenges for strategic planning. The content of this document was drafted just before the pandemic hit. It was also completed at a time when a number of reviews instigated by government - which may have an impact on our future role, and which we welcome - were either recently completed or underway.

These are two reasons why we are mindful of the need to possibly review this plan sooner rather than later. A third reason is the appointment of our new Chief Executive, Julie Paterson, whom we look forward to working with from August this year.

This strategic plan

The Commission nevertheless wishes to share our strategy now; a strategy that set out our priorities as we see them now, and the context for our current work programme.

We hope the full document will resonate with our audiences. Meantime there are two points we would like to highlight here, both related to the need to increase our impact:

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.

An empowering rights-based system would give individuals choice about their care and treatment and support to live where they wish.

A second issue is our status as neither an inspectorate nor an improvement agency. We know from our recent stakeholder survey that others raise this point too. While we make recommendations rather than direct, 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 will become even more critical given the financial and resource pressures on public services.

Sandy Riddell Chair

Alison Thomson Interim Chief Executive

June 2020

How we will deliver our priorities

Priority one: to challenge and to promote change

The context

Mental health currently has a high profile, with a commitment across the political spectrum to improve the lives of people with mental illness, learning disability and dementia. The Scottish Government's vision for the [national mental health strategy](#) is of a Scotland where people can get the right help at the right time, expect recovery, and fully enjoy their rights, free from discrimination and stigma. 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.

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 publication of rights based [health and social care standards](#) and the development of the Scottish Human Rights Commission's second [Scottish National Action Plan](#) (SNAP 2). The Scottish Government's [mental health, dementia, learning disability](#) and [autism](#) strategies are also committed to a rights based approach and promoting individual autonomy, choice and control.

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.

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. It is therefore essential that any legislation related to mental health, including learning disability and autism, is fit for purpose. We welcome the current focus on mental health and incapacity law reform which we promoted through a [case for reform](#) along with Napier University and look forward to playing a leading role in its development.

The independent [review](#) of mental health law, chaired by John Scott, QC, was set up in May 2019 to take a broad view of various inter-connected pieces of legislation. Its aim *"is to improve the rights and protections of persons who may be subject to the existing provisions of mental health, incapacity or adult support and protection legislation as a consequence of having a mental disorder, and remove barriers to those caring for their health and welfare"*. The review will also take account of the [final report](#), published in December 2019, from the independent review of people with learning disability and autism in the mental health act.

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.

Alongside the focus on law reform there are also several reviews on how services are performing to ensure every person with mental illness or learning disability has access to good quality care and treatment, whether in hospital or in the community. A review of forensic

mental health services will report in June 2020, the independent inquiry into Tayside mental health services reported in February 2020. One of the recommendations in this report is to “conduct a national review of the assurance and scrutiny of mental health services across Scotland, including the powers of Healthcare Improvement Scotland and the Mental Welfare Commission for Scotland’.

The Minister for Mental Health has set up a Quality and Safety Board which aims to establish a national approach to the quality and safety of mental health services.

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 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 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 1200 individuals a year who receive mental health and social care services, seeking to increase the number we visit in the community, and highlight areas of good practice and recommendations for improvement, and use this to inform our priorities for promoting change.
- Develop a system of investigation for people who die while subject to detention under the mental health act.
- 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 investigations¹, 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 responsibilities under the Children and Young Persons Act 2014 for care experienced children and young people.

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 prisoners' mental health pathways.
- Focus guardianship visits on specific groups (such as people with alcohol related brain damage who could have fluctuating capacity) or on the use of specific powers, so we can better analyse how the law is working, and make recommendations for change.
- Analyse the use of the mental health act specifically in relation to young people.
- 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 (or a series of cases) focussing on the rights and welfare of the individual and drawing out recommendations for change for services across Scotland.

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

¹ Investigation into care and treatment of [Mr JL](#) and investigation into care and treatment of [Ms MN](#)

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 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:

- Publish lessons learnt, areas for improvement and recommendations from a wider range of our investigations work and promote areas of good practice.
- Increase our understanding of, and impact with, Integrated Joint Boards and other new partnerships e.g. Public Health Scotland.
- Share information and collaborate with health and social care regulatory bodies where this will improve effectiveness and avoid duplication.

- Broaden our monitoring work to understand how the Acts are working and outline recommendations for law, policy and service improvements.
- Develop our communication of advice and opinions using new formats and approaches.
- Take account of feedback from the stakeholder survey about perceptions of our role and responsibilities, and examine whether or not we might change the language we use to describe ourselves and our work, in order to communicate better. This might include re-examining the wording of our purpose statement, to distinguish between our work related to the Acts and a wider need for protection and promotion of rights that we cannot deliver.
- Implement our [engagement and participation strategy 2019-22](#), 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 is £4 million. Over the previous ten years we have operated in a period of resource restraint and made significant efficiencies to deliver our statutory duties with fewer resources. At the same time the number of people subject to detention under the MHA, and the number of people subject to welfare guardianship have risen (by 25.6% and 269% respectively), the subsequent increase of second opinions and associated fees under part 16 of the Act places a significant strain on our budget.

During 2019/20 we carried out a workforce planning exercise to identify the skills and organisation structure needed to help us develop and organise our work more efficiently and to continue to have impact and influence. We identified the need for additional skills to help us review and develop our investigations work, monitoring and data analysis work and how to improve our impact and influencing role. We recognise the need to embed a culture of ongoing learning, development and improvement.

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

Develop our staff

- Implement the recommendations from the workforce planning and skill mix review 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.
- 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.
- Develop a proactive communications plan, including media work and stakeholder engagement, to ensure we target the individuals and services we most want to know about us.
- Review our IT infrastructure and make ongoing improvements to our operation and knowledge management.
- Consider ways to better evaluate the impact of our work.

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, service users and carers as the 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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