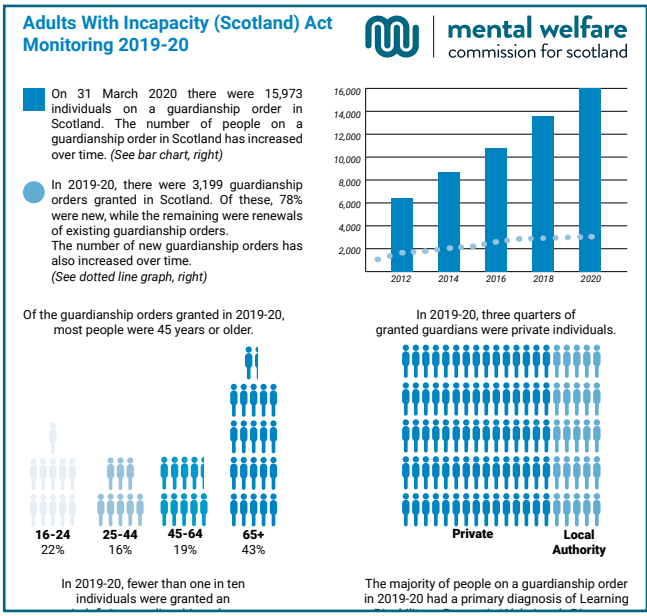
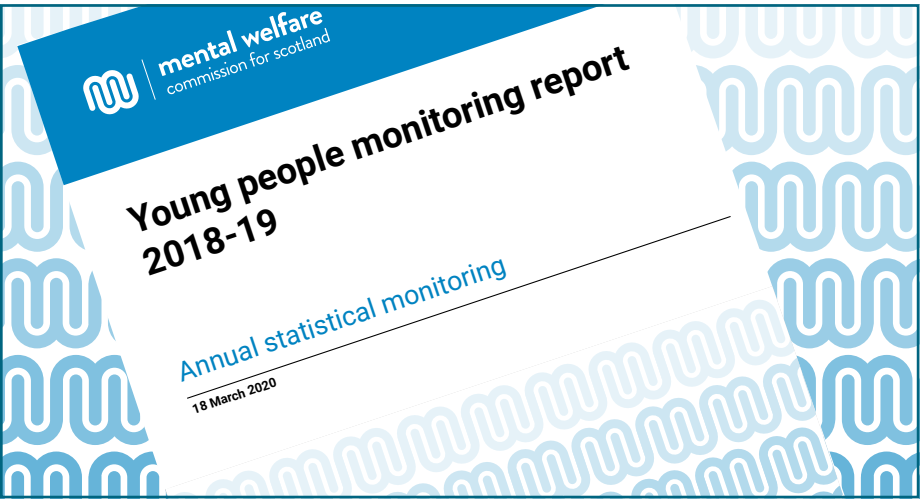
Annual report 2019-20

mental welfare commission for scotland





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

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

Chair's foreword

I begin by talking about the end of the reporting year – the point in March when we were all suddenly propelled into a very different way of working.

Covid-19

The lockdown meant we closed our office and switched to operating remotely, like so many others.

At the same time our advice line was inundated with calls asking for urgent advice on care and treatment as services sought to adjust to the challenges brought by the pandemic.

We had to cancel all of our visits to wards and hospitals. The government, meantime, was creating emergency legislation that we had to respond to urgently.

To add to the mix, Alison Thomson had only just stepped into the post of interim chief executive, expecting a 'business as usual' approach before she could return to the role she leads as director for nursing.

Alison and the team rapidly published the first edition of what was to become a regular series of Covid-19 Advice Notes for professionals and families/carers, answering a myriad of questions from across the country.

I am hugely impressed with the way in which staff at all levels continued their focus throughout this time, but most particularly at that point in March.

I am also acutely aware of the need to properly understand the impact that pandemic restrictions had, and continue to have, on care and treatment for patients and people in the community. Lessons must be learned by all, and we will play a role in that process.

Legislative reviews

One of the recurring issues of the year has been engaging with a number of reports and consultations that will have a significant impact on our areas of interest, and may also affect our role and responsibilities.

Amongst them, the Strang review into mental health services in Tayside recommended a national review of assurance and scrutiny of mental health services across Scotland, including the Commission's own powers.

In our response, we anticipated that the Scott review of the Mental Health Act may well consider our role.

I believe the Scott review is an opportunity to truly reform and update our legislation. If the review gets it right, Scotland could have transformative mental health and incapacity legislation that is designed for the future and learns from the best examples around the world. We will do all we can to support the team in its work.

Legal challenges

We were involved in two legal challenges where we believed people were not being treated as they should be, and their human rights were not being upheld. One of those challenges involved patients being treated under excessive security restrictions in hospital. The other related to patients being moved from hospital to care homes without legal authority. We say more within this report, and continue to follow each situation.

New chief executive

After six years, Colin McKay retired as chief executive. I take this opportunity to thank Colin for the impact he has had on the Commission – embedding human rights into its ethos and bringing his legal insight into the organisation.

We owe huge thanks to Alison Thomson for her tenure as interim chief executive from March until July. No-one could have anticipated the environment into which she stepped, but she kept a steady hand, not only managing huge changes to the way the Commission operates, but delivering new actions in response to the pandemic.

I started this piece with an ending, and I end it with a beginning.

I was delighted to welcome Julie Paterson as our new chief executive in August 2020. Her skills and expertise will do much to shape the Commission for the future, ensuring it is firmly connected across Scotland's health and care landscape as it seeks to increase the impact of its work.

'I am also acutely aware of the need to properly understand the impact that pandemic restrictions had, and continue to have, on care and treatment for patients and people in the community.'

Chief Executive's message

I will use this opportunity to say hello to readers who don't know me but know the Commission.

At an earlier stage in my career I spent some time on secondment with the Commission. I was both fascinated and impressed by the range of roles it undertook, and by the way it operated across the country.

As I moved on in my professional field, the potential for how the Commission can elevate issues and raise local concerns at a national level, and vice versa, remained with me.

I felt that while its work is well known by some, there are areas of the health and care sector who are less aware of the Commission than perhaps they should be. And there are parts of that external world that the Commission has the ability and powers to influence more than it is perhaps aware of.

For me, coming back to the organisation as chief executive is a fantastic opportunity and a privilege.

Arriving at a time of legislative reform and collective thinking about the future is a real plus.

Covid-19

Doing so with the backdrop of the pandemic is something we have to deal with. We know so much more than we did in March, and must use that knowledge to undertake our business as best we can for the people we are here to serve.

Young people

The care and treatment of young people with mental ill health is particularly critical. Getting the right support at the right time can have a significant impact on the rest of their lives.

In 2019-20 the Commission raised concerns over an increase, for the second year running, in the numbers of young people being treated on non-specialist wards. This often meant they were on adult wards, which are not a suitable setting and should only be acceptable in rare situations.

We continue to monitor this, and have undertaken further work to analyse issues behind those detentions.

We are working with Child and Adolescent Mental Health Services and government on these issues, in addition to listening to the experience of relatives.

Eating disorders are serious and potentially life threatening conditions that often first appear in adolescence. Last year the Commission undertook its first ever report on this subject and found that while inpatient units were often excellent, families said they did not have enough support when managing at home.

We made recommendations for integrated authorities, for government and for Healthcare Improvement Scotland and will follow through on each of these.

What people think of the Commission

In 2019-20, an independent survey of stakeholders drew almost 400 individual responses. It gave an overall very positive view of the Commission, although some people – particularly those with lived experience and their relatives or carers – wanted us to do more.

You can find a link to the survey and our action plan in this document.

Personally I find the survey and its timing very helpful as I build connections across our areas of business and seek to make sure we are doing all we can to deliver against our commitments.

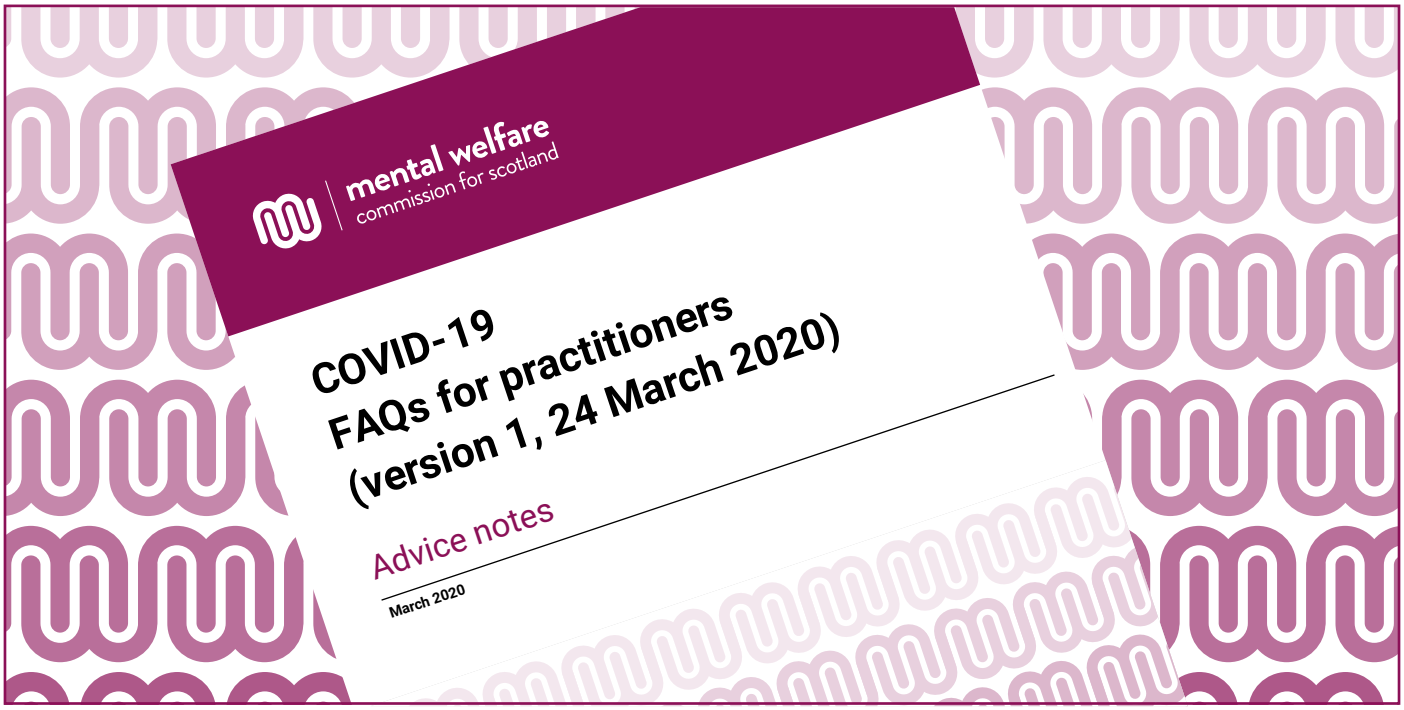
Looking ahead

Given the pressures on services and on communities right now, I am in no doubt that the challenge is great.

But if we work at optimum level across the Commission and in partnership with other organisations, while listening carefully to people's experience, so is the potential.

'The care and treatment of young people with mental ill health is particularly critical. Getting the right support at the right time can have a significant impact on the rest of their lives'.

Influencing and empowering



- **There were key developments in the review of Scotland's mental health and incapacity legislation during the year, including the appointments of John Scott QC to chair the review, and of Colin McKay and Graham Morgan to the review team. We remained closely involved with the team.**

- **The Strang review of mental health services in Tayside, published in February 2020, was a significant report, containing both local and Scotland-wide recommendations, including a recommendation to review the powers of the Mental Welfare Commission and Healthcare Improvement Scotland.**

- **We published our response to the Scottish Government's review of forensic mental health services, which remains ongoing. In our response we highlighted areas of concern, most particularly the continued lack of any high security beds for women in Scotland.**

- **We were involved in two legal challenges in the year, working with the Equality and Human Rights Commission. One of those challenges involved patients being treated under excessive security restrictions in hospital. The other related to patients being moved from hospital to care homes without legal authority.**

- **The impact of the Covid-19 pandemic began in March 2020. In that month, we published our response to Scottish Government emergency legislation, our plan to adapt our monitoring role if that emergency legislation were enacted, and the first two editions of our Covid-19 Advice Notes.**

Review of the Mental Health (Scotland) Act

In March 2019, mental health minister Clare Haughey announced an independent review of Scotland's Mental Health Act. Since that time we have been closely involved in contributing to the terms of reference, and in considering how to engage with services and with people with lived experience and their families/carers.

In June 2019 we welcomed the appointment of John Scott QC to chair the review. Later in the summer our chief executive, Colin McKay, was appointed as an independent adviser to the review. Colin worked in dual roles until his retirement from the Commission in February 2020. He continues his work with the review team.

In December 2019, Graham Morgan, engagement and participation officer (lived experience) at the Commission was also appointed to the review team. Graham continues to operate in both roles, ensuring that his own real life experience - and that of the many people he engages with across Scotland – stays at the forefront of this work.

The review's first consultation was issued in February 2020, for response in year 2020-21. We responded in full, and continue to work closely with the review team.

Review of Tayside mental health services

In February 2020, after a government-instigated independent inquiry into mental health services in Tayside, the Strang review was published. In announcing his conclusions, Dr David Strang said 'the report's title – *Trust and Respect* – reflects the main conclusions of the inquiry – that there has been a loss of trust in mental health services in Tayside. Trust needs to be rebuilt by treating everyone with respect. The active involvement of staff, patients, communities and partner organisations will be essential to building a new culture and approach to delivering services and treating patients in Tayside.'

One of the report's recommendations said there should be a national review of assurance and scrutiny of mental health services across Scotland, including the powers of Healthcare Improvement Scotland and the Mental Welfare Commission.

In our response, we anticipated that the Scott review of the Mental Health Act currently underway may consider our role. We welcomed discussions to ensure our work remains effectively targeted as the environment changes.

An immediate response to the Strang review came from the mental health minister, who set up the Quality and Safety Board, of which we are a member.

'..there should be a national review of assurance and scrutiny of mental health services across Scotland, including the powers of Healthcare Improvement Scotland and the Mental Welfare Commission.'

Forensic mental health services – independent review

In March 2019, Clare Haughey, minister for mental health, announced a review into how forensic mental health services are being delivered in hospitals, prisons and in the community across Scotland.

In January 2020 we published our response to a call for evidence from the review chair, Derek Barron. Key points we raised included our concerns over a lack of any high security beds for women in Scotland, and a lack of provision for women across medium and low security wards.

We also noted the decline in the number of patients being treated in Scotland's only high security (male) hospital, the State Hospital.

We highlighted the considerable pressures on medium and low security beds in Scotland, where there is generally a waiting list, particularly in low security.

We reported that, in prisons, there were variations in the kind of mental health care available, and an overall lack of access to psychological therapies.

The review is ongoing, and we hope its final conclusions will address the problems in the system, many of which are longstanding.

Legal challenges

During the year we were involved in two judicial reviews initiated by the Equality and Human Rights Commission (EHRC); both related to health boards.

The first involved a number of hospital patients on secure wards. The health board concerned refused to find those patients a service with lower levels of security, despite Mental Health Tribunal mandates that current security levels were excessive, and alternative placements should be found. The Act states that a bed must be found after two Tribunal orders. The health board conceded the case on the morning of the review. This meant no legal precedent, although we hope the judicial record will help prevent this situation from recurring across Scotland.

The second case was a follow up from one of our own guardianship visits. It involved a health board transferring patients with dementia from hospital to what the health board described as 'interim care beds' in care homes without legal authority to do so. We believe that the this practice of discharging of people who lack capacity without consideration of the unique circumstances of that individual and the appropriate legal authority to do so is both unlawful and not compatible with the individual's human rights. We supported the EHRC's action to bring this to a judicial review and expect the legal process to conclude in December 2020 with clear learning identified.

Engagement team – helping to empower individuals

Our engagement team's two individuals with lived experience play an important role for the Commission in helping to empower people by listening to their experience and bringing that back into the Commission. They also share information and, in 2019-20, provided training and testimony at the request of advocacy groups.

The team visited over 52 groups in the year, directly reaching over 550 people across the country, and they met and heard from others individually. The people they engaged with included people living with mental ill health, relatives/carers and advocacy specialists.

Issues raised included services for young people, especially around transitions to adult services. The need for early treatment, and investment in services, was also raised frequently. People were keen to talk about the shortage of staff in mental health services and the problems that constantly seeing locums causes. They also highlighted the need to support staff, and to make working in mental health services an attractive proposition.

People also discussed the ways in which the Commission itself works, asking for such things as more unannounced visits, more discussion with government about people's experiences, and more powers for the Commission.

Shared intelligence

The Commission continues to contribute to the Sharing Intelligence for Health & Care Group which aims to improve the quality of health and social care by allowing members to share and learn from existing data, knowledge and intelligence. The Commission is one of seven national organisations that make up the Group, along with Audit Scotland, the Care Inspectorate, Healthcare Improvement Scotland, NHS National Services Scotland, NHS Education for Scotland and the Scottish Public Services Ombudsman.

Wider participation

We attend meetings of the Scottish Mental Health Partnership and worked with other organisations to promote a rights based approach to the Government's Mental Health Strategy. We also participate in professional networks including the Mental Health Nursing Forum, the Royal College of Psychiatrists in Scotland and Social Work Scotland, and key interest groups such as the Scottish ECT Accreditation Network and the Alzheimer Scotland Policy Committee.

'The team visited over 52 lived experience and/or carer support/advocacy groups in the year, directly reaching over 550 people across the country.'

Covid-19 response

In late March 2020 the Coronavirus (Scotland) Bill was introduced to the Scottish Parliament. It contained measures that would affect vulnerable adults who lack capacity and are treated under the Adults with Incapacity Act, and became an Act on 6 April 2020.

We were acutely aware that these measures - along with changes to the Mental Health Act that came in with the UK Coronavirus Act (2020) – could have a significant impact on the way in which professionals and services care for and work with people with mental illness, learning disability, dementia and related conditions.

On 26 March 2020, the Commission published its response to the Bill, saying that while we understood the need for emergency legislation during such exceptional times, we would want to see the reduction in safeguards to only be used if absolutely necessary, and for as short a time as is possible.

In our response, we noted the significant changes to how Section 13ZA would operate in Scotland's emergency measures - removing the obligation to consider the past and present wishes of an adult who lacks capacity and significant others, and to enable a local authority to pursue securing community care provision even if a welfare guardian or a welfare attorney already had the power related to these steps. This may have included decisions about moving an adult who lacked capacity to a residential setting. We stated that it was vital that effective mechanisms were in place to scrutinise how and when these powers were used.

We specifically asked that the system include a formal notification to a scrutiny body each time the 'easements' with regards to Section 13ZA was to be used, emphasising that it was vital for trust in the health and social care sector to be maintained through this pandemic by way of appropriate scrutiny of powers, and for the use of this emergency legislation to be fully recorded. Our request was agreed by Scottish Government, who confirmed that the Mental Welfare Commission would be that scrutiny body. In the event, Section 13ZA elements of Coronavirus (Scotland) Act were not implemented, and expired on 29 September 2020. Whilst the notification system was never introduced, the Commission is looking into actual practice during this time to identify any learning or practice which needs to be improved to maximise the rights of individuals

On 26 March 2020 we also committed to ensuring that we would adapt our methods of monitoring data related to the Mental Health Act to accommodate emergency laws and capture their use through the pandemic. This was to include the scrutiny of temporary powers that may have come into play due to workforce reduction and that would reduce safeguards for those detained under this Act. We committed to publishing data on its use in due course. While those powers were not called upon to be used, we prioritised our preparations, including forming a scrutiny advisory group to assist us in the scrutiny of the use of emergency powers under both Acts.

Commission advice in the pandemic

Giving professional advice on the use of the law to treat and care for people with mental ill health or incapacity is one of the Commission's key roles.

The Commission continues to operate our advice line through phone and email. On 24 March we published the first edition of an advice note with specific guidance to the sector on our website on emergency measures and wider aspects of mental health care through the pandemic. It continues to be updated regularly, led by our director of engagement and participation.

National Preventive Mechanism

The Commission is a member of the UK National Preventative Mechanism (NPM), a body that brings together independent monitoring organisations that have a role in protecting people in detention. Our chief executive chairs its Mental Health and Scotland sub-groups. Our local visits, where we visit in-patient units where people may be detained and our visits to mental health services in prisons, link with our role as an NPM member.

The Investigations section of this report highlights a piece of work the Commission is currently conducting following a publication from the Council of Europe's Committee for the Prevention of Torture, which also drew an NPM response.

Effective and efficient visiting

- **We visited 1307 people across Scotland this year, against a target of 1350. We were unable to reach our target due to cancelling visits in March because of pandemic restrictions (although planning began about reinstating these following the Scottish Government route map, and they recommenced later in 2020).**
- **Thirty one of our 127 local visits this year were unannounced (24%). This just fell short of our key performance indicator, which was to conduct 25% of local visits in this way, due to an unannounced visit scheduled for March being cancelled.**
- **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.**
- **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 in 127 locations across Scotland as part of our local visits. Twenty four percent of these visits were unannounced.

Themed visits – to people with similar health issues or situations across the country. We conducted a themed visit this year focussing on people with autism and complex care needs.

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

Other visits – for example, we may visit young people who have been admitted to an adult hospital ward for treatment.

Our visits

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

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

'Have other relevant people, such as a relative/carer, been involved in decisions about a person's care and treatment?'

Care and treatment on mental health rehabilitation wards

We published a report on our visits to all 22 of Scotland's NHS rehabilitation wards.

Patients on these wards are likely to have severe and complex mental health needs and will have been in hospital for a long time. In comparison with acute mental health wards, where the average length of stay is 40 days, the length of stay for patients in rehabilitation services is much longer, averaging 582 days.

The overall findings in the report were mixed. There were some improvements since our last visit, such as patients regularly getting access to their local communities, and in assessment, care planning and reviews for patients, but this varied.

Ninety nine of the 130 patients we visited were subject to compulsory treatment, and we found all such treatment was properly authorised.

Most patients were aware of advocacy, and 107 were actively in contact with advocacy services, saying they found advocacy to be helpful in supporting them on ward meetings and in a number of other general ways.

Families/carers were mostly positive about staff and services. Their main complaint was a lack of meaningful activity on the wards. Families also described the negative impact of their relative's illness on family relationships, and most families had not been directed to any support for themselves.

A third of all patients were on delayed discharge, waiting to leave hospital, and we recommended that integrated joint boards (IJBs) across Scotland review patients whose discharge had been delayed by over three months.

A significant number of patients said they had difficulties with the management of their money. Many managed their own money with support, others had their money managed for them.

One of our main recommendations was that integrated joint boards should review on an individual basis rehabilitation patients whose discharges have been delayed by over three months in order to develop a clear plan for discharge within an acceptable timescale.

The report is published here.

"Families also described the negative impact of their relative's illness on family relationships, and most families had not been directed to any support for themselves".

Older people with mental illness

We visited all 23 NHS wards for older people with 'functional mental illness', which relates to conditions other than dementia. We interviewed almost 100 patients and 23 relatives/carers, and reviewed a further 50 patient files.

We found that the environment in almost all of the wards had improved since the last visit in 2015, and was often in new, purpose-built facilities.

However, we also found that the decision to move patients from general adult mental health community and inpatient services to older age services was often made without involving the patient, and the process for making that decision was often not clear or consistent.

In our recommendations, we asked for clear protocols for patients moving from adult to old age mental health community and inpatient services, with an assurance that decisions are not based on arbitrary age limits.

Elsewhere, we found that in wards where there had been investment in therapeutic and recreational activities, patients told us about the positive difference this made to their lives.

A major part of mental health care is psychological therapies, which help people make positive changes in their lives. We were disappointed to find that only seven of the 23 wards reported regular input from psychology, and we are asking for this to be reviewed and increased.

Pressure on beds elsewhere meant that wards were increasingly accepting patients with a diagnosis of only dementia.

Relatives/carers told us of the impact of the illness on them and the rest of the family.

The full report is published here.

"...the decision to move patients from general adult mental health community and inpatient services to older age services was often made without involving the patient..."

Care, treatment and support for people with eating disorders

We undertook our first themed visit looking at care, treatment and support for people with an eating disorder in Scotland.

Eating disorders are a group of serious mental illnesses that are potentially life threatening conditions. Anorexia nervosa has the highest mortality rate of any mental illness and can have a devastating lifelong impact.

The report included a mapping exercise – the first of its kind in Scotland – showing significant variation in the organisation of services across the country.

We visited 10 specialist services and heard from people with eating disorders, families/carers, and a wide range of professionals.

Key findings included:

- While families/carers reported positively about excellent care, particularly inpatient care, they said that there was not enough support for them as they tried to manage the situation at home.
- Without exception, families/carers told us that caring for someone with an eating disorder had devastating and long-lasting effects on the whole family.
- Inequalities of service across the country, including the availability of psychological therapies, with some people accessing support privately.
- While early intervention and access to psychological help is critical, there is often a lack of support, and delays in accessing services, particularly in the community.
- Confusion and conflict over responsibility for physical health monitoring between GPs and psychiatrists.
- Concerns about the focus on BMI (body mass index) alone as a criteria for referral and as an indicator of recovery, with less attention paid to co-existing mental health conditions.

We found some excellent examples of care, but we also found issues that need to be addressed, which include making sure that everyone gets access to the same high quality level of care and treatment.

In our recommendations we asked the government to take this detailed report into account as they conduct a national review of eating disorder services across Scotland, which we know they are planning to do. We have also called for a managed network across the country.

The report is published here.

"[we found] confusion and conflict over responsibility for physical health monitoring between GPs and psychiatrists."

Local visits

Between April 2019 and March 2020 we carried out 127 local visits to hospital wards, specialist units and prisons across Scotland, of which 31 were unannounced. We provide feedback and recommendations for improvement to the services involved.

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

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

We particularly focus on units where there is a major deprivation of liberty, or where we have intelligence gathered from themed visits, previous visits - or raised with us by patients and others about care and treatment or where it has been some time since our last visit.

For each local visit we provided feedback and recommendations for improvement to the services involved. Due to other work pressures around the Covid-19 pandemic we will not produce our annual report summarising the findings from our local visits in 2019.

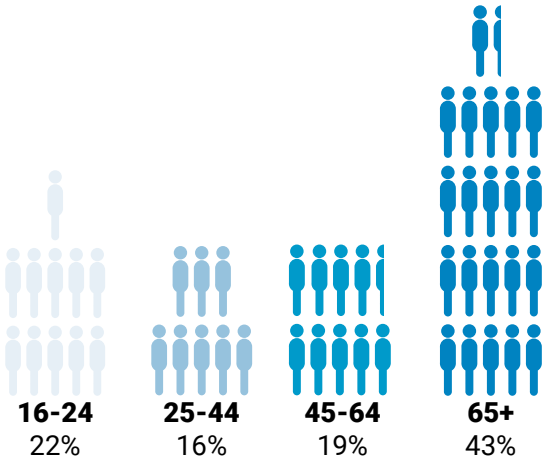
Publishing our local visits reports

All of our local visit reports are published on our website each month, and sent to people on our mailing list. The 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 news releases for each set of reports, regularly generating media coverage, particularly in local media, which raises awareness of our findings in local communities. We also promote and share them on social media. We hope that by making these reports easily accessible to the public, we provide valuable information to local people and promote the sharing of good practice.

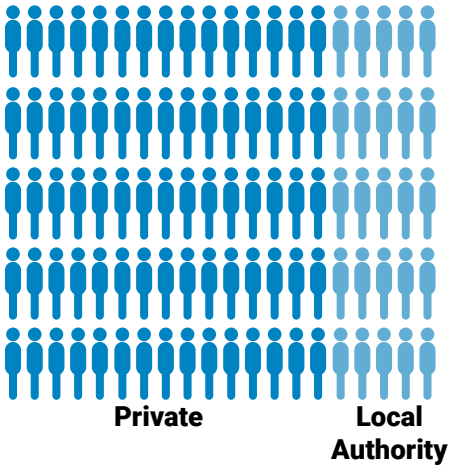
Monitoring and safeguarding care and treatment

Of the guardianship orders granted in 2019-20, most people were 45 years or older.



In 2019-20, fewer than one in ten individuals were granted an indefinite guardianship order.

In 2019-20, three quarters of granted guardians were private individuals.



The majority of people on a guardianship order in 2019-20 had a primary diagnosis of Learning Disability or Dementia/Alzheimer's Disease.

- **There was a continued rise in the use of guardianship orders in Scotland, to almost 16,000 at March 2020. This is the highest figure ever recorded.**
- **The majority of guardianship orders granted in 2019-20 were for people who either have a learning disability or dementia.**
- **The majority of guardianship orders granted in 2019-20 were for private guardians, relatives or friends, which is similar to the last five years. The remainder were local authority guardians.**
- **In our visits to people on guardianship we identified a lack of support and supervision for private guardians; only 76% had received a visit from a supervising officer in the past six months.**

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

We have decided to publish the monitoring reports on the use of the Acts in alternate years. This year we produced the report on the use of the Adults with Incapacity Act and next year we will report on the use of the Mental Health Act. Our intention is to review some more in-depth areas on the use of the Acts in the alternate years. For example, in 2020-21 we look at the increase in compulsory treatment of young people in more depth to find out why this might be happening.

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

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

We are notified when a guardian is appointed with powers to take welfare decisions for an adult with incapacity.

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.

Monitoring the use of the Adults with Incapacity Act

Guardianship orders are used to safeguard those who lack the capacity to make their own decisions. Guardians are appointed by the court with specific powers.

Main findings

The report's main findings are:

- The number of guardianship orders (15,973 in year 2019-20) is the highest ever recorded, and is up from 13,501 in 2017-18 when data was last published, and up from 6,407 in 2012.
- A total of 3,199 guardianship orders were granted in 2019-20, a seven per cent rise on the previous year.
- The majority of granted guardianship orders in 2019-20 (74%) were for private guardians, relatives or friends, which is similar to the last five years of reporting. The remainder were local authority guardianships.
- Almost half (46%) of guardianship orders granted were for a period of five years or less, while 47% were more than five years and 7% were indefinite orders. The proportion of orders granted that are indefinite has declined steadily over time.
- There has been a marked decline in indefinite guardianship orders, from 48% in 2010-11 to 2% in 2019-20.
- The lowest rate of guardianship orders granted last year was in Inverclyde, and highest in South Ayrshire.

What did people think of their guardianship order?

We also visit people who are on a guardianship order, and in 2019-20 met over 300 individuals. The report contains example case studies of some visits, highlighting the views of both people subject to guardianship orders and their guardians.

In most cases people subject to a guardianship order were positive about how decisions were made on their behalf. Guardians, too, were mostly positive. In the few cases where issues were raised they mostly related to restrictions (from the individuals) or to the quality and level of care provided by services (from guardians). And the Commission provided follow up on an individual basis accordingly.

Key gaps

Three key gaps we identified during these visits include the lack of support and supervision for private guardians; only 76% had received a visit from a supervising officer in the past six months. A second concern was that only 76% had the correct medical certification from doctors for their medical treatment. A final area of real concern was the fact that for 67% of individuals with a do-not-attempt CPR (DNACPR) form, it was either unclear if guardians had been informed, or guardians had not been informed.

In previous years we have said that we believe the law needs to be modernised and streamlined to ensure care can be provided when it is needed, and to better protect the rights of people with dementia and learning disabilities. We welcome the commitment of the Scottish Government to reforming the Adults with Incapacity Act, which will be considered alongside the review of the Mental Health Act.

Meantime, we hope that local authorities, integration joint boards, health and social care partnerships and others find the information in this report valuable as they plan and operate their services. We particularly ask that the issues we raise in relation to findings on our visits are addressed.

The full report can be read here.

Rise in number of young people with mental illness being treated in non-specialist wards

We also published a report using data from the previous year showing the number of young people under the age of 18 admitted to non-specialist hospital wards – mainly adult wards - for treatment of their mental illness. The number in 2018-19 rose for the second year running. There were 118 admissions involving 101 young people.

This was an increase on the 2017-18 figures which were 103 admissions involving 90 young people. Admission of a young person to an adult ward should only be acceptable in rare situations.

Our report on this data made three recommendations for change – two for government, one for health boards.

The first recommendation called on the Scottish Government to prioritise providing intensive psychiatric care unit (IPCU) facilities for young people – a recommendation we have been making for a number of years. Currently there are no such facilities in Scotland. Scottish Government have now made a commitment to scoping this work. We will report on progress made on this.

The second recommendation called on health boards to review access to specialist advocacy for young people in adult and paediatric wards.

The third recommendation relates to young people requiring forensic or learning disability care in Scotland. We noted that plans were being developed for these facilities, but asked for a clear process for young people needing those services now.

The full report is available here.

"Admission of a young person to an adult ward should only be acceptable in rare situations".

Review of psychiatric emergency plans

In 2018, we completed a report on Police Scotland's use and recording of Place of Safety orders - powers used by the police to detain a mentally distressed person for up to 24 hours so they can be assessed by a doctor.

We consulted Police Scotland, people who had been mentally distressed and subject to a Place of Safety order, and families/ carers, and collected their experiences of how mental health crises are managed.

The report found high levels of care and compassion from the police officers involved, but variations in health board responses to the crises.

In follow-up to this work, this year we contacted every health board in Scotland to request a copy of their psychiatric emergency plan (PEP), a key part of planning how health boards respond to people in these situations.

We reviewed their content and published a new report that included a summary of how PEPs from every health board in Scotland matched against key themes. We issued this to all health boards, along with a new template outlining what we believe would be helpful to include in all psychiatric emergency plans.

In creating the template we covered subjects that were important to people who have been distressed and in crisis, and their family or carers. We also worked with Police Scotland, the Scottish Ambulance Service, Scottish Government directorate for mental health, and professionals from a variety of clinical backgrounds.

We hope that by using the template when updating their PEPs, health boards across Scotland will offer the same high quality level of service to people in these crisis situations, no matter which part of the country they are in.

A copy of the report can be read here.

Designated medical practitioners

Under the Mental Health Act, we are responsible for appointing designated medical practitioners (DMPs). Their function is to provide a second medical opinion when medical treatments are prescribed under the legislation. This is a critical role in the care and treatment of patients who are very unwell, and is becoming more so as detentions for mental illness increase.

During the year we held two induction sessions and one seminar for DMPs and organised 2,360 second medical opinions, a rise from 2,138 on the previous year.

Investigations

- **We considered and investigated 23 cases.**
- **We closed 12 cases as complete, with the Commission satisfied with the outcome or responses of services after our investigation.**
- **We remitted five cases to the local area Commission officer to continue to intervene and keep a watching brief.**
- **We continued to direct investigations into seven other cases, and continued to follow up with government, health boards, health and social care partnerships and local authorities the recommendations made in two of our publications.**
- **We began a follow-up investigation after a report from the Council of Europe's Committee for the Prevention of Torture into Scotland's prisons found serious failings in the care and treatment of women with mental ill health in Cornton Vale prison. We will publish it in 2020-21.**
- **We decided to focus our approach to investigations in the future by creating a new role of investigations lead practitioner.**
- **We made progress on two pieces of work on behalf of the government; one to create a system for investigating the deaths of people detained under the Mental Health Act, and the other related to homicides.**

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

The Mental Welfare Commission is, however, often contacted about such cases. We initially contact the responsible organisations to find out more and, where necessary, make recommendations to them and follow up their actions.

We do not handle complaints about services. We instigate our own investigations only when the case appears to show serious failings, and has implications for services across Scotland.

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

Serious failings in women's prison

Following a report by the Council of Europe's Committee for the Prevention of Torture (CPT) in October 2019 which identified serious failings in the treatment of women with mental health needs in prison, we completed an initial review of seven of the identified cases. We are taking these cases forward through our investigation process, where a full report will be published in 2021.

See our response to the CPT report here.

A new approach to investigations

Much of our work on investigations is resolved before the stage of a full investigation publication. For example, in 2019-20, we conducted lower level investigatory work and actively intervened in 110 cases, of which 80 were closed on satisfactory outcome.

As part of our continuous improvement, we believe we can do more to share some of that work, and alert others to issues we come across.

We also want to examine how cases come to us for investigation from across the country, ensuring we are not missing lessons that can be learned by all. And we want to consider our follow-up work in relation to investigations, again, looking at whether there is more we can share.

Given this, we created the new role of investigations lead practitioner, to be taken forward in year 2020-21. This post holder will take a fresh look at our whole approach to investigations and develop new systems for reporting on them at all levels.

"As part of our continuous improvement,
we believe we can do more to share some of that work."

We made progress on two key strands of work which were the subject of Ministerial commitments during the passage of the 2015 Mental Health Act.

Investigating deaths of people detained under the Mental Health Act

The first is to develop a system for investigating all deaths of patients who, at the time of death, were subject to mental health legislation whether in hospital or in the community, including those who had their detention suspended (*Section 37 Review Action 1*). Actions in the year included planning engagement about current systems with families and with health boards in four pilot areas to identify approaches, gaps and areas of good practice. We created links with key partner agencies including Healthcare Improvement Scotland and National Suicide Prevention Leadership Group.

A system of review for homicide

The second strand is to progress work on developing a system of review when people who have been in touch with mental health services commit homicide. In 2019-2020 we progressed work on data sharing agreements ahead of testing the model previously put to public consultation by Scottish Government.

Independent literature reviews for both projects have been commissioned and the Commission is learning from other jurisdictions.

Providing information and advice

- **We received 4,230 calls to our Advice Line, and a sample audit showed accuracy in responses given exceeded our key performance indicator, which was to achieve 97.5% accuracy.**
- **We published a good practice guide on capacity, consent and compulsion for young people with borderline personality disorder**
- **We published FAQs on voting in the UK General Election 2019.**
- **We created new advice notes for professionals and relatives/ carers in response to Covid-19 pandemic restrictions, working with intelligence from across the country.**
- **We are active on social media, continuing to increase our Twitter following.**

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

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

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

Capacity consent and compulsion for young people with borderline personality disorder – good practice guide

We published a new good practice guide for professionals working with young people with a diagnosis of borderline personality disorder (BPD).

The guide focuses on the crucial issue of a young person's capacity to make decisions when they are unwell or in serious distress, and how that affects the ability of health and social work professionals to best treat that young person.

This can be a very challenging area to judge accurately, and the new guide discusses the difficulties and dilemmas around issues ranging from whether or not a hospital admission may be appropriate, to the possible use of compulsory treatment.

It emphasises the need to balance the importance of promoting a collaborative relationship between the patient, clinicians and service, whilst managing the risks.

The guide was created after the Commission held two consultation events, and with contributions from a number of specialists across Scotland.

The guide can be found here.

Advice Line

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

People who are receiving care and treatment, families/carers, health and social care practitioners and others can call and speak to one of our health and social work staff for advice.

Callers are often looking for information to understand more about individuals' rights and effective use of mental health and incapacity law.

Much of our work is at the complex interface between the individual's rights, the law and ethics and the care the person is receiving. We work across the continuum of health and social care and are the only organisation to do so.

In 2019-2020, our advice line staff gave advice in 3,848 of the 4,230 calls allocated as "requests for advice".

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

"The guide focuses on the crucial issue of a young person's capacity to make decisions when they are unwell or in serious distress"

FAQs – UK General Election

We published FAQs ahead of the UK General Election, covering issues such as voting for people with learning disabilities, voting while detained in hospital for treatment for mental illness and voting for people with welfare guardians.

Advice note: Covid-19 pandemic

In March 2020, when the country was suddenly in a position of lockdown due to the Covid-19 pandemic, we quickly adjusted our working methods and priorities.

One of our very first priorities was to create new advice notes which cover a wide range of topics – from general principles and a human rights approach at this time, to specific questions raised with us on care and treatment.

The first of these advice notes was published in March and they have been regularly updated since then.

We publish one version focusing on advice for professionals, and another version aimed at relatives and carers.

Twitter

Our Twitter following has continued to increase and this year, our tweets were engaged with in a meaningful way 7,555 times (this includes link clicks, likes, retweets and replies). This is our highest rate of engagement to date.

We doubled the total number of engagements each month, and the average number of engagements per tweet has increased from an average of 11–23 engagements (annually, from 2015-2019) to 31 engagements per tweet over the course of 2019-20.

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

Media

In 2019-20 we continued to attract strong media coverage for our work, in print, broadcast and online. Our chief executive and directors took part in print and broadcast interviews, and our media work attracted responses from government, health boards and other key organisations.

National television and radio covered our work regularly, including our themed visit report on eating disorders and our monitoring reports on young people with mental illness and on the Adults with Incapacity Act.

Our reports on our visits to local wards and units were often picked up by local media, and attracted response from health boards and government.

Improving our practice

- **Our Board continued to set our strategic direction and ensure efficient, effective and accountable governance.**
- **We commissioned a stakeholder survey, conducted by an independent research company, to gain feedback on our roles and our work.**
- **Our Advisory Committee continued to make a valuable contribution to our thinking and our work.**
- **We undertook a project to assess workforce planning and skills mix within the Commission.**

Our Chair

Sandy Riddell originally trained in social work and, during a public service career of over 40 years, has held director level posts in social work, housing, education, and health and social care. He retired from the post of Fife's director of health and social care in 2016. Sandy has substantial experience at a national level in shaping policy and legislation in adult health and social care, children's services, substance misuse, and justice services. He was president of the former Association of Directors of Social Work and founded Social Work Scotland. Sandy has been a member of the Mental Welfare Commission for Scotland since 2017 before his appointment as chair in April 2019. He is currently a member of Grampian NHS Board and also has Board experience as a management consultant specialising in collaborative leadership and service integration. Sandy is passionate about the need to develop a rights-based approach for services and to fully involve the public in service design and delivery.

Our Board members

Safaa Baxter was born and educated in Alexandria, Egypt, where she obtained a BA degree in social work and community development in 1975. She worked as a volunteer in Clydebank and as a social worker with Strathclyde Regional Council. As a local authority employee for over 36 years, Safaa has worked at various 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. Safaa was also chair of the child protection committee, children's services plan, and alcohol and drugs partnership. Safaa also works with a number of local authorities as a consultant on the provision of children's services.

Gordon Johnston has a background in community development, urban regeneration, project development and management, and managing major funding streams. He is currently an independent consultant in mental health, specialising in peer research, user/ patient involvement, policy development and organisational development. Gordon is involved in many third sector organisations and is currently chair of Bipolar Scotland and a director of Voices of eXperience (VOX). He has also been a member of the delivery group of the Scottish Patient Safety Programme: Mental Health since its inception. Gordon was also appointed as a non-executive Board member and Whistleblowing Champion of NHS Forth Valley by the Cabinet Secretary for Health in February 2020. He is a Steering Group member of the UKRI funded Closing The Gap Network and a member of the Scottish Government's Mental Health Strategic Delivery Board and Mental Health Research Advisory Group.

Mary Twaddle has lived experience of mental ill health and recovery and has been treated and supported by General Adult Mental Health Services for over 15 years. Originally studying for degrees in Physics at university, and after time out to focus on her health, she joined NHS Lothian at the end of 2015 as a Peer Support worker at the medium secure forensic unit, The Orchard Clinic; where she helped build the first Peer Support Service within a medium secure forensic unit in the UK. In her role she uses her own lived experience to help others in their recovery from life changing periods of mental ill health. As part of the multi-disciplinary team she helps maintain the recovery focused ethos of the clinic within the complexities of working in a forensic setting.

Cindy Mackie is an independent consultant with occupational experience in the public, private, and voluntary sectors and currently performs a number of Associate roles within the area of regulation. She is a tribunal member with the Medical Practitioner Tribunal Service, where she is engaged in a decision making role in Fitness to Practise proceedings, she has also served in this capacity with the Nursing and Midwifery Council and the Health and Social Care Council. She is a lay examiner in membership examinations for the Royal College of Obstetricians and Gynaecologists, and is engaged in a chairing role in quality assurance / educational standards inspections across the UK with the General Dental Council. She holds a position of Independent Assessor in Public Appointments and is also involved in school governance in a voluntary capacity. Cindy brings knowledge of health regulation, public protection, safeguarding, and human rights. She is educated to graduate level with additional qualifications in human resource management and learning and development.

David Hall spent over 25 years as a consultant Psychiatrist and Medical Manager in Dumfries and Galloway, and during that time led the redesign of the local Mental Health service, culminating in the development of a new Mental Health facility at Midpark Hospital.

He has held a number of national roles including National Clinical Lead for the Mental Health Collaborative, and for almost 10 years till, 2019, as National Clinical Lead for the Scottish Patient Safety Programme. He has gained an international reputation in Quality Improvement in Mental Health, and has worked with the Danish and New Zealand governments.

He has also held a number of roles with the Royal College of Psychiatrists, and is currently the RCPsych in Scotland Suicide Prevention Lead, and sits on the National Suicide Prevention Leadership Group.

Nichola Brown joined the Board in April 2019, as carer representative. She cares for her son who has severe learning disability and complex needs, and brings experience of the challenges for families of navigating services. She has a background in community development and has worked in Public Health within Glasgow for over twenty years.

Nichola is employed by NHS Greater Glasgow and Clyde as a Health Improvement Manager in Glasgow City Health and Social Care Partnership. She leads the Health Improvement Team in North East Locality and has a city role for children aged 0-8. Nichola manages a portfolio of work programmes to improve population health, with particular focus on reducing health inequalities.

She established a community organisation in North Lanarkshire, PlayPeace, following a successful pilot in the summer of 2016 and is chairperson in a voluntary capacity. The service offers play sessions and outings to support families of children with additional needs during school holiday periods and it continues to grow and develop its services, driven by families and the children and young people engaged.

Alison White joined the Board in October 2019. She qualified as a Social Worker from Robert Gordon University 20 years ago. She is currently Head of Adult Services and Chief Social Work Officer for Midlothian Health and Social Care Partnership, responsible for mental health, substance misuse, learning disability and criminal justice. Alison is passionate about developing person centred, human rights based services.

Board away day and self-assessment

The Board had an away day with the management team to look at the strategic challenges and opportunities for the Commission in the coming years. Much of the activity in the mental health and incapacity landscape with legislative and national policy reviews will have an impact on individual rights and care and treatment and also on the role and impact of the Commission. We need to ensure that we can influence these reviews. Our strategic plan was then updated and published with input from our staff and Advisory Group.

The Board also reviewed its own development at the away day and completed a self-assessment exercise later in the year. The chair has implemented several improvements including a new Board appraisal process, private meetings of Board members and engagement opportunities with staff.

Stakeholder survey

In January 2020 the Commission launched a stakeholder survey seeking feedback on our roles and our work, conducted by Wellside Research Ltd, an independent research company. The researchers used online questionnaires, interviewed people independently and held a national event.

The results were overall very positive, although some respondents - particularly people with experience of care and treatment and their families/carers - want us to do more.

People with lived experience of mental ill health, learning disability, dementia or related conditions and their families/carers say they are both less aware and less satisfied with the Commission compared to professionals working in the field.

Seventy six per cent of respondents gave a good or excellent rating on the Commission's trustworthiness, while over 67% were satisfied with their experience of the Commission.

Sixty five per cent of respondents said getting advice from us was easy.

Half had used the Commission's advice line, of whom, between 71% and 96% agreed with positive statements about it.

Fifty five per cent agreed their problem had been solved by using the advice line. Professionals were significantly more positive than non-professionals on this.

Sixty three per cent of respondents felt we are influential in relation to national policy and legislation. Forty per cent had seen us in the media.

We published the report alongside an action plan which will we use to improve in areas where stakeholders – particularly people with lived experience and relatives/carers – think we can do better.

Both documents are available here.

"The results were overall very positive, although some respondents - particularly people with experience of care and treatment and their families/carers - want us to do more".

Workforce planning and skills mix

The Commission wishes to increase its impact, and ensure it is sustainable and effective into the future. In order to do this, staff across the organisation met with consultants in workshops to discuss current working practices and share ideas for improvements. We identified several areas where we need additional skills and resources to improve our impact, monitoring and investigations functions and digital improvements. We do not have resources for all of the areas identified and prioritised additional resource for our investigations work. The skill mix review was paused to allow our new chief executive a proper contribution.

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 made a valuable contribution to our thinking on how to develop and change our approach to monitoring mental health and incapacity legislation.

Communications analysis

We introduced a communications analysis reporting system for every major publication we issue. These are short, specific documents reporting on media and social media coverage and giving information on activity on our website and mail outs.

Learning lessons

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

In 2019-20, we received and responded to 10 complaints, one more than last year. Two were resolved without investigation. After investigation, four complaints were partially upheld, and the other four were not upheld.

As a result of the complaints, we have reminded all of our practitioners and line managers that it is important to confirm to someone raising concerns when we have finished reviewing a case, and what we have decided to do, or not to do. They also need to be clear about our timelines for responding to these concerns in order to manage expectations. We also clarified some wording in a good practice guide and reviewed the process for arranging second opinion visits.

Our commitment to equality

Under the specific duties, the Commission is required to:

- Report on mainstreaming the equality duty
- Publish equality outcomes and report progress
- Assess and review policies and practices
- Gather and use employee information
- Publish gender pay gap information
- Publish statements on equal pay
- Consider award criteria and conditions in relation to public procurement
- Publish in a manner that is accessible

Additionally there is a requirement for the Commission as a listed authority to consider other matters which may be specified by the Scottish Ministers and a duty for the Scottish Ministers to publish proposals for activity to enable listed authorities to better perform the general equality duty.

Our reports *Equality outcomes and how we plan to achieve them* and *Equality outcomes and mainstreaming progress* are on our website.

Financial resources

Our revenue budget for the year was £4.885 million. This included £3.869 million for the Commission, £0.775 million for the National Confidential Forum, £0.153 million for The Review of the Mental Health (Care and Treatment) (Scotland) Act 2003 for people with Learning Disability and Autism and £0.088m for The Reviews of Deaths in Detention and Mental Health Homicide.

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 (add link).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