



The length of short term detentions in Scotland

A short term detention certificate (STDC) can last up to 28 days. This has not changed for 40 years. We looked at STDCs that started and ended between 2006 and 2018 to find out how long they actually last, how and when they end, and what might affect how they end.

How the detention ended



STDCs can be stopped before 28 days ("revoked"), or they can simply end on the 28th day ("lapsed"), or progress to a newer, longer detention ("extended").

There were 62% fewer lapsed STDCs in 2018, compared to 2006. **62%**

What creates differences in STDCs?



Across the eight hospitals with the most STDCs, there were big differences in:

- the chance a STDC would lapse;
- the chance a STDC would be extended;
- the average length of an order.

Women's STDCs were more likely to lapse

Older individuals's STDCs were more likely to be extended. **65+**

Men's STDCs were more likely to be extended.



"irreparable damage done to women suffering mental health problems in prison." The Mental Welfare Commission for Scotland (MWCS) highlighted concerns about the segregation of women who were significantly mentally unwell and placed in solitary confinement for extended periods. The study also raised...

Vow to end unlawful care home moves
By ELSA MAISHMAN
The Scottish Government has vowed to make sure the unlawful movement of patients from hospitals to care homes will not happen again. The government has "made mistakes" and will "learn lessons" from the pandemic in relation to care homes. Kevin...

Mental health care: Many discharged to care homes found 'unlawful'
Douglas Barrie
A report on patients being moved from hospitals to care homes in Scotland at the height of the coronavirus pandemic has raised legal concerns. The Mental Welfare Commission's report looked at decision-making for people in hospital who lacked capacity to do so themselves, studying 45 discharges from hospitals to care homes from March-May 2020. These were around 10 per cent of the number reported at the time by Public Health Scotland, and it found 20 of those to have been unlawful, and that number of these were related to...

9% rise in mental care detentions
BY VIVIANNE AITKEN
The number of people detained for mental health care has spiked during the pandemic. The Mental Welfare Commission's new report also revealed that the number dying while in detention for treatment has also risen sharply. The report shows a 9 per cent rise in detention in 2020-21. There were 10,059, compared to 922...

CONCERNS Dr Arun Chandra

CRITICISMS Delegation raised fears at Cornton Vale prison

Patients were put in care homes during the pandemic

Authority to discharge: Report into decision making for people in hospital who lack capacity

May 2021

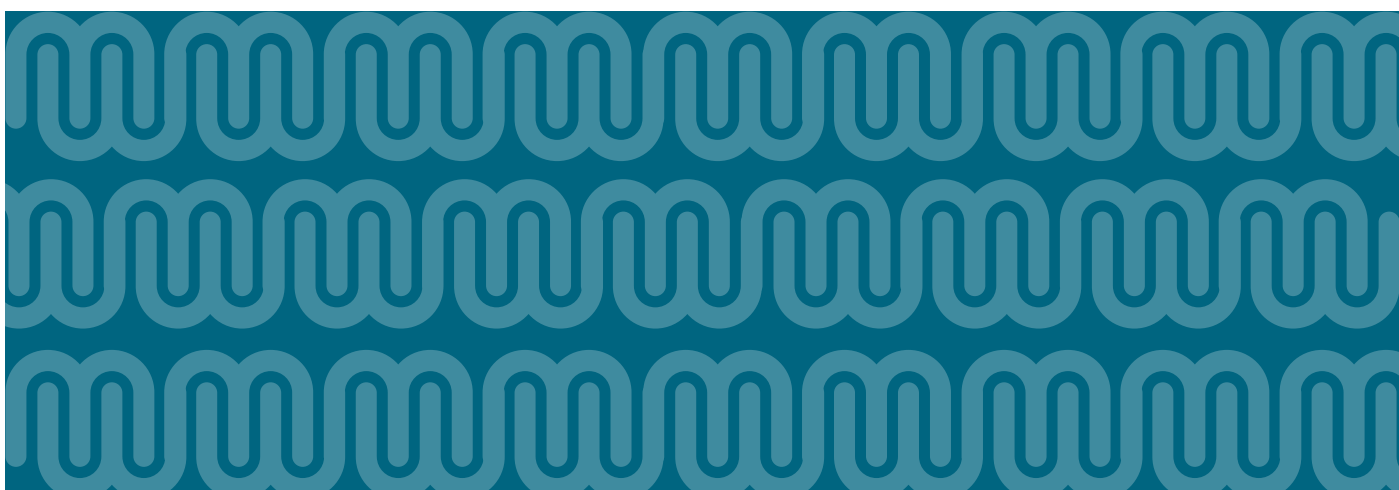


Laid before the Scottish Parliament by the Scottish Ministers
under Section 18 (2) of the Mental Health (Care and Treatment) (Scotland) Act 2003.

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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



This was an incredibly challenging year for people who are living with mental ill health, learning disability, dementia and other conditions, and for their relatives and carers.

Coping through the pandemic, when services often had to change drastically, added to the ongoing difficulty for many.

Although working remotely, the Commission sought to keep in touch with individuals and health and care organisations throughout, and to adapt our work.

Monitoring the impact of the pandemic

We advised Scottish Government at key points in April 2020 on their emergency legislation, which was brought in to anticipate the best ways of protecting people's rights during pandemic restrictions.

Many of those temporary changes to the law expired or were suspended during the year. Nevertheless, we were committed from the start to reporting on any impact of that pandemic legislation, and to be transparent in our findings.

So far we have seen an impact most clearly in our monitoring of the Adults with Incapacity Act for 2020-21, which we cover in this annual report. Our data shows a significant drop in the expected numbers of guardianship orders due to the emergency legislation's temporary 'stop the clock' suspension of expiry dates. This is understandable, but it needs close continued monitoring by us and others to ensure the system returns in full.

Working with others

From regular contact with services and individuals, we continued to publish updated Covid Advice notes, which addressed concerns related to the pandemic from professionals and from people with lived experience and their families.

We often talk about how critical it is for organisations to work across issues, each using their own roles and powers to address failings, and to call for change. Working like this often increases the impact of what each organisation can do.

A very practical example of this was our investigation into care for vulnerable women with mental ill health in Cornton Vale prison. We began this work following a damning publication from the European Committee for the Prevention of Torture after their visit to prison and police facilities in Scotland. Our investigation confirmed their findings, and raised wider questions about missed opportunities in early intervention, pathways from prison to the community and the revolving door of prison.

Mental ill health and prisons remains a key priority for us this year.

Reviewing Scotland's legislation

The Scottish Mental Health Law Review continued its work in 2020-21 and we took a proactive approach; contributing wherever we could, and submitting our response to their first consultation in May 2020. We also took part in four of their subgroups including one focusing on young people; a further group exploring economic, social and cultural rights, and a subgroup examining issues related to capacity and supported decision making.

The Review team are due to publish their final recommendations on how our laws can be reformed and updated to better support people with mental health or capacity issues in autumn 2022. This could have a huge impact for the decade or more ahead, and is a great opportunity for positive change.

Working in the pandemic

The Commission, like many others, continued remote working through most of the year. Even so, our teams managed to keep high levels of engagement with others, and worked to a professional standard in every role.

The Board nevertheless understand how challenging it can be for individuals working in isolation, and over the year we sought to increase our support and connection with colleagues.

'We often talk about how critical it is for organisations to work across issues, each using their own roles and powers to address failings....'

Chief Executive's message



Planning ahead is of course vital to any organisation, but sometimes we need to be reactive.

One major piece of work in 2020-21 was not in our plan for the year, but came to us as a result of the pandemic.

Authority to Discharge

After concerns were raised with us about the legality of movement of people from hospitals to care homes in the early stages of the pandemic, we decided to look nationally at the situation.

Our report – *Authority to Discharge* – identified some pandemic-related illegal moves of people, but went much wider. We found gaps in training and in knowledge sharing that were in the system long before we'd heard of Covid-19.

We found a need for staff at all levels to have an understanding of the law in relation to their own role, and to operate within it at all times.

When we published this report we had huge engagement from health and care services across the country. We expect this report to have long term, positive, implications for individuals, families and for health and care staff.

Monitoring the Acts

One of our statutory roles is to monitor the use of legislation related to mental health and adults with incapacity.

Last year we increased this activity, publishing mid-year data tracing any impact of the pandemic on detentions under the Mental Health Act. We published both our annual Mental Health Act monitoring report and our Adults with Incapacity Act monitoring report.

In our Mental Health Act monitoring, we remain very concerned over the way detentions are taking place. Consent of a mental health officer (a specialist social worker) is an important safeguard and should happen every time a person is detained using the Act. For emergency detentions, consent fell below half of all such detentions in 2020-21, with big variations in different parts of Scotland. This is unacceptable and unfair to patients, who should all receive the protection of this safeguard, no matter where they live in the country.

Although overall legislation is under review, this is about the use of the law here and now, and we will continue to speak out about this issue.

Keeping connected

Visiting individuals and their families/ carers, and listening to how they feel about their care and treatment, is a really important part of our work.

We visit people in hospital wards or sometimes in their homes, or in care homes or secure accommodation. In March 2020 we had to postpone those visits, but as soon as we were able – in August 2020 - we began a phased reintroduction, working to government guidelines.

We also have a small engagement team with their own lived experience of mental ill health, or caring for those with mental ill health. That team has strong connections with groups and individuals across the country with their own experience, or working in advocacy or in the third sector.

The engagement team met 287 people with lived experience or as carers in 34 meetings during the year (primarily online but also by phone) and gave talks to people with lived experiences and health or care professionals and others.

Organisational development

I am acutely aware of the responsibility we have for making recommendations for improvement to others. And I believe we, too, can look to supporting each other by making improvements to our own ways of working.

We made great progress on this last year, and will continue to develop our systems, listening to the views of others.

‘We found a need for staff at all levels to have an understanding of the law in relation to their own role, and to operate within it at all times.’

Influencing and empowering

Vow to end unlawful care home moves
By ELSA MAISHMAN

The Scottish Government has vowed to make sure the unlawful movement of patients from hospitals to care homes will not happen again. The government has "made mistakes" and will "learn lessons" from the pandemic in relation to care homes, Kevin Stewart, the new Minister for Mental Wellbeing and Social Care told MSPs on Thursday. It comes after a report from

Mental health care homes found 'unlawful'
Douglas Barrie

A report on patients being moved from hospitals to care homes in Scotland at the height of the coronavirus pandemic has raised legal concerns. The Mental Welfare Commission's report looked at decision-making for people in hospital who lacked capacity to do so themselves, studying 45 discharges from hospitals to care homes from March-May 2020. These were around 10 per cent of the number reported at the time by Public Health Scotland, and it found 20 of those to have been unlawful, and that number of these were related to a misinterpretation of changes to the Social Work Act. Chief executive Julie Paterson said: "These findings are

9% rise in mental care detentions
BY VIVIENNE AITKEN

THE number of people detained for mental health care has spiked during the pandemic. The Mental Welfare Commission's new report also revealed that the number dying while in detention for treatment has also risen sharply. The report shows a 9.1 per cent rise in detentions in 2020-21. There were 10,059, compared to 9222 the previous year. The Commission also found 147 people died while detained for treatment

Patients were put in care homes during the pandemic

- **We were heavily involved in advising Scottish Government on the implications of the proposed emergency legislation, Coronavirus (Scotland) Bill, on the rights and welfare of people subject to proposed changes to the Mental Health Act and Adults with Incapacity Act.**
- **After stakeholders raised concerns with us about potential unlawful moves of people from hospitals to care homes during the pandemic, we undertook a national review resulting in our report Authority to Discharge that identified issues not exclusively related to the pandemic.**
- **The ongoing Scottish Mental Health Law Review is of paramount importance to us, and we continued to contribute to the review throughout the year.**
- **Our engagement team met 287 people with lived experience or as relatives/carers in 34 meetings, primarily online.**
- **Exchanging our findings and learning with other organisations is the best way to ensure good practice is shared. We participated in a number of joint groups throughout the year.**

Emergency legislation

At the start of the pandemic in April 2020 we were heavily involved in advising the Scottish Government on the implications of the proposed emergency legislation, Coronavirus (Scotland) Bill, on the rights and welfare of people subject to proposed changes to the Mental Health Act and Adults with Incapacity Act. This was done through participation in different Scottish Government stakeholder groups, resulting in daily involvement by executive team members in the early stages.

Potential emergency changes to the Mental Health Act (MHA) had been previously documented by Scottish Government through its business continuity and emergency planning processes. Our chief executive had been previously consulted on these. Our role here was to give advice on the practical application of the changes to legislation should it be enacted, including input to the code of practice. We reviewed the MHA forms and developed advice on how these should be completed, including presenting at a webinar hosted by the Royal College of Psychiatrists in Scotland.

We had significant concerns about proposed emergency legislation to change provisions of the Adults with Incapacity Act (AWI Act). In particular we were concerned about the proposed “easements” to section 13ZA of the 1968 Social Work Act. These “easements” would allow local authorities to move a person without capacity to a residential setting without recourse to a welfare guardian or person with a power of attorney. They also removed the duty to apply the principle of taking into account the past and present wishes and feelings of the adult lacking capacity. We asked that the proposed system include a formal notification to a scrutiny body each time the powers were used. Scottish Ministers confirmed during the debate in Parliament on the Coronavirus Bill on 2 April 2020 that the Commission would be involved in the reporting process whenever the emergency legislation on easements of section 13ZA were to be used.

In consultation with the Scottish Government we set up a scrutiny group of key mental health and learning disability stakeholders to scrutinise the use of emergency mental health and incapacity legislation. The intention was to ensure such legislation was only used if absolutely necessary and vital safeguards upheld. The group met twice in preparation for its role. Thankfully the provisions of the emergency legislation were never invoked and so there was no requirement for the scrutiny group to continue.

Despite the fact the emergency legislation was never invoked, we were made aware that there remained some confusion in practice. In October 2020 we issued a position statement about the continued use of section 13ZA confirming that easement of section 13ZA had never been introduced and on 29 September 2020 the provisions expired through The Coronavirus (Scotland) Acts (Early Expiry of Provisions) Regulations 2020.

Authority to Discharge

A number of stakeholders raised concerns with us about potential unlawful moves of people from hospital to care homes during the pandemic. We were already aware of unlawful moves progressed by Greater Glasgow and Clyde Health Board as we were a key interested party to a judicial review led by the Equality and Human Rights Commission which concluded in December 2020.

People who lack mental capacity and who are being cared for and treated in care homes and hospitals are among the most vulnerable in our society. Given this, we decided to undertake a much wider review, looking at the cases of 457 people from around Scotland to check that those moves were done in accordance with the law during the early stages of the pandemic.

Our published report of this review – Authority to Discharge - confirms that there were 20 moves across 11 health and social care partnership areas that were reported as unlawful.

Further analysis showed a lack of understanding of safeguarding legislation within and across health and social care partnerships, which suggested that other moves may also not have been valid, despite assumptions being made that legal authority was in place. We also found that the intended ‘from time to time’ monitoring of the use of section 13 ZA of the Social Work (Scotland) Act 1968 by the Social Work Inspection Agency (now known as the Care Inspectorate) had never been done.

Our work identified areas for improvement that are not exclusively as a result of the pandemic.

The report received widespread attention. We also delivered a webinar on the report, with nearly 200 people in attendance. We are currently following up on recommendations made to health and social care partnerships, the Care Inspectorate and Scottish Government.

This report is [available on our website](#).

Comments on the report

Social worker

I have just attended the webinar and wanted to pass on that I found it excellent, I felt that it brought the report to life. We have had multiple team discussions about the report and how it directs our practice, I found this webinar really useful.

Our staff

I made a call to a social worker as part of our hospital to care home work. The social worker was fairly newly qualified and after we talked about issues such as deprivation of liberty she said she was so inspired by the work the Commission was doing that she decided to apply for mental health officer training... I understand she got on the course!

Carer:

The ‘Authority to discharge: Report into decision making for people in hospital who lack capacity’ looks to be a most commendable document.

Scottish mental health law review

The review of Scotland's mental health and incapacity legislation (Scott review) continued throughout the year and this is of paramount importance to us.

We submitted a comprehensive response to the first consultation in May 2020 and gave evidence to the young people, capacity and supported decision making, compulsion and economic, social and cultural rights subgroups of the Scott review. Our chief executive and medical director are active participants on review subgroups. We completed a detailed analysis of how well significantly impaired decision making (SIDMA) criterion works within the law, a statistical analysis of our data set on short term detention certificates and an estimate of the prevalence of advance statements, with the intention to inform and influence the Scott review. Internally, we have set up a governance structure to ensure we are able to respond and influence further consultations and evidence sessions of the Scott review, including those looking at the role and powers of the Commission.

Engaging with people with lived experience and with relatives/ carers

Our engagement team either have their own lived experience of mental ill health, or of being a relative or carer of people with mental ill health.

Throughout the pandemic this small team kept in regular contact with groups and individuals across Scotland.

Overall the team met 287 people with lived experience or as carers in 34 lived experience meetings (primarily online) and gave nine talks to people with lived experiences and nine talks to practitioners and others.

Once lockdown started all engagement switched to remote contact, mainly by video link but also by phone. Among other meetings, the team started a fortnightly meeting (which they still hold) where they supported each other and gathered intelligence on how people were experiencing lockdown. This information was shared across the Commission and ultimately shared with government.

In these meetings they also started to look at reports such as the guidance around psychiatric emergency plans to help turn the recommendations of Commission reports into practical reality.

Lived experience

Other reports completed this year were one on the views of people on their rights, will and preference when looking at the Mental Health Act which was used as an appendix to the Commission response to the Scottish review into mental health legislation.

'In these meetings we also started to look at reports such as the guidance around psychiatric emergency plans to help turn the recommendations of Commission reports into practical reality.'

The other one was about the views of people with lived experience on what we should be looking at when we carry out visits to hospitals. These are both on our website.

We contributed a lived experience viewpoint to papers published on remote assessments, the Mental Health Act, and on significantly impaired decision making ability (SIDMA).

We also started work on finding out the views of people from diverse ethnic communities on what we should be looking at on this subject in the project that started towards the end of the year.

Relatives/carers

From March 2020 to April 21 our carer engagement officer was in contact with over 100 carers, mainly by zoom and telephone. As this was in the first lockdown, much of the planned ways of being in touch was cancelled then restarted with new forms of communication.

The groups and individuals we kept in contact with at this critical time included mental health and learning disability organisations, carers groups, autism organisations and BAME workers.

A key piece of work was the creation of a Covid Advice Note, written specifically for people with lived experience of mental ill health and family/carers, which addressed questions raised with us by these contacts. The Advice Notes were published on our website and updated as new information and restrictions appeared.

Amongst other work, the team began to look at access to mental health care for people from ethnically diverse backgrounds. This involved formulating questionnaires and organising zoom meetings with individuals and groups.

'I linked with as many carer groups as possible across the country weekly to give information and encourage Zoom meetings and continued contact.'

Working with others

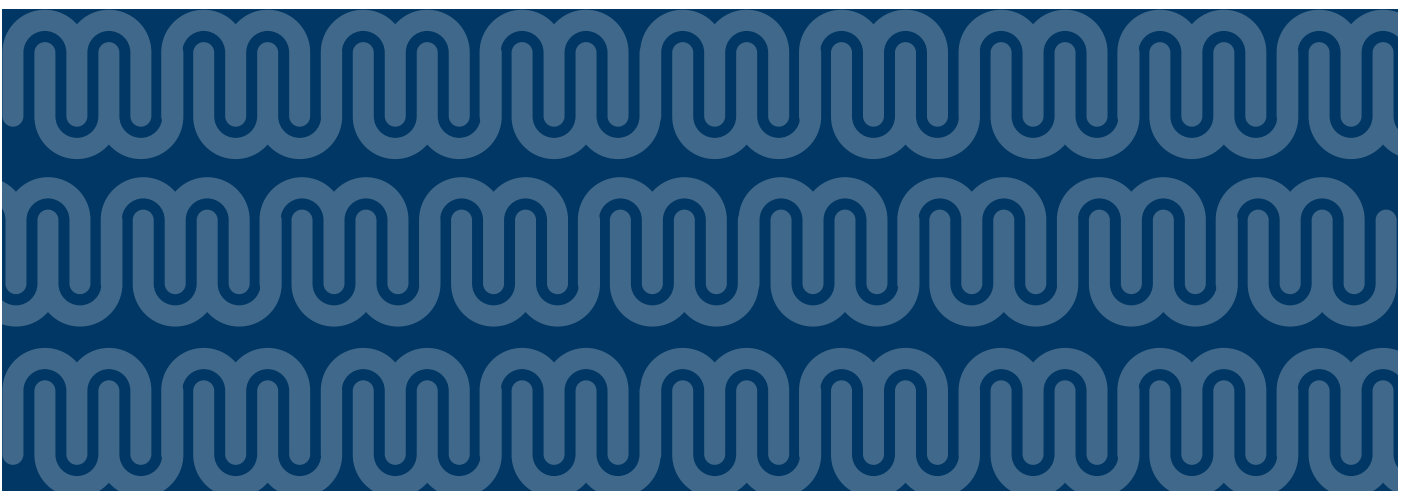
The Commission continues to contribute to the Sharing Intelligence for Health & Care Group which aims to improve the quality of health and social care by allowing members to share and learn from existing data, knowledge and intelligence. We are one of seven national organisations that make up the group,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

We attend meetings of the Scottish mental health partnership and worked with other organisations to promote a rights based approach to the Scottish Government's mental health strategy. We also participate in professional networks including the mental health nursing forum, the Royal College of Psychiatrists in Scotland's devolved council and associated Social Work Scotland groups, and key groups such as the adult support and protection convenors' group, the Scottish ECT accreditation network and the Alzheimer Scotland policy committee.

National Preventive Mechanism

We are a member of the UK National Preventive Mechanism (NPM), a body that brings together independent monitoring organisations that have a role in protecting people in detention. Our chief executive sits on the UK groups and our medical officer sits on the Scotland sub-group. 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. Our Cornton Vale Report highlights a piece of work we undertook following a publication from the Council of Europe's Committee for the Prevention of Torture, which also drew an NPM response. The NPM's 12th annual report includes the work of the Commission.

Effective and targeted visiting



- **After postponing all visits due to the pandemic, in August 2020 we began a phased return to meeting people in hospital and rehab settings, visiting people in 15 different locations overall in the year on our local visits.**
- **All of our visits were announced in advance to the wards, due to pandemic restrictions.**
- **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 15 locations across Scotland as part of our local visits.

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.

Local visits

As part of our role to protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions, we visit individuals, in a variety of settings. When we visit:

- We find out whether individual care, treatment and support is in line with the law and good practice.
- We challenge service providers to deliver best practice in mental health, dementia and learning disability care.
- We follow up on individual cases where we have concerns, and we may investigate further.
- We provide information, advice and guidance to people we meet with. Where we visit a group of people in a hospital, care home or prison service; we call this a local visit.

The visit can be announced or unannounced. In addition to meeting with people who use the service, we also speak to staff and visitors.

Before we visit, we look at information that is publicly available about the service from a variety of sources including Care Inspectorate reports, Healthcare Improvement Scotland inspection reports and Her Majesty's Inspectorate of Prisons inspection reports.

We also look at information we have received from other sources, including telephone calls to the Commission, reports of incidents to the Commission, information from callers to our telephone advice line, and other sources.

Our local visits are not inspections: our reports detail our findings from the day we visited. Although there are often particular things we want to talk about and look at when we visit, our main source of information on the visit day is from the people who use the service, their relatives or carers, from staff, and from our review of the care records and our impressions about the physical environment.

When we make recommendations, we expect a response to them within three months (unless we feel the recommendations require an earlier response). We may choose to return to the service on an announced or unannounced basis. How often we do this will depend on our findings, the response to any recommendations from the visit and other information we receive after the visit.

Impact of the pandemic

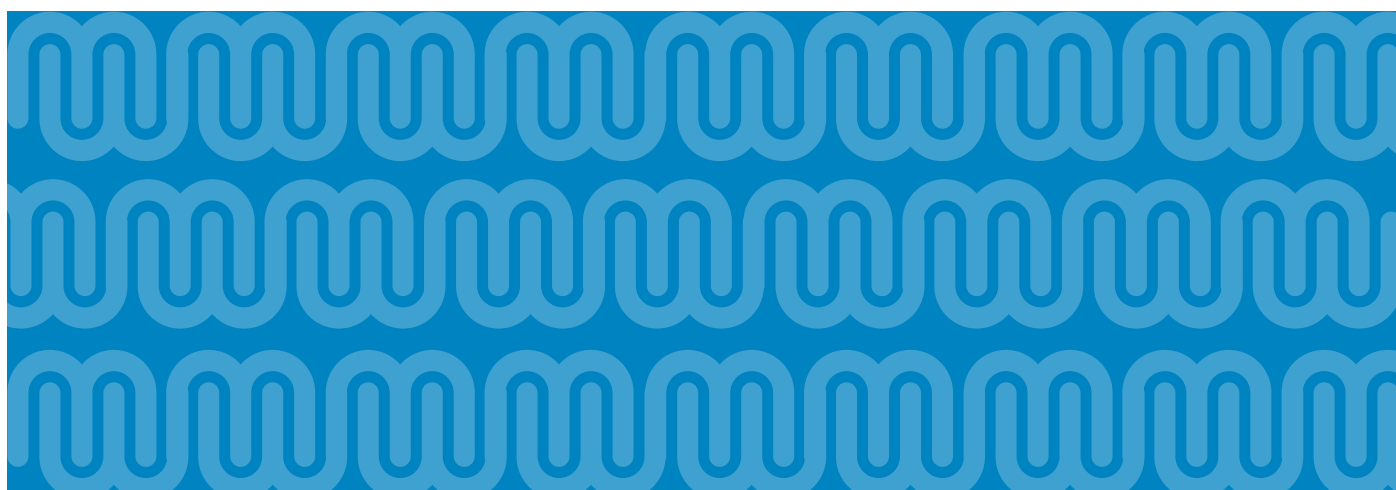
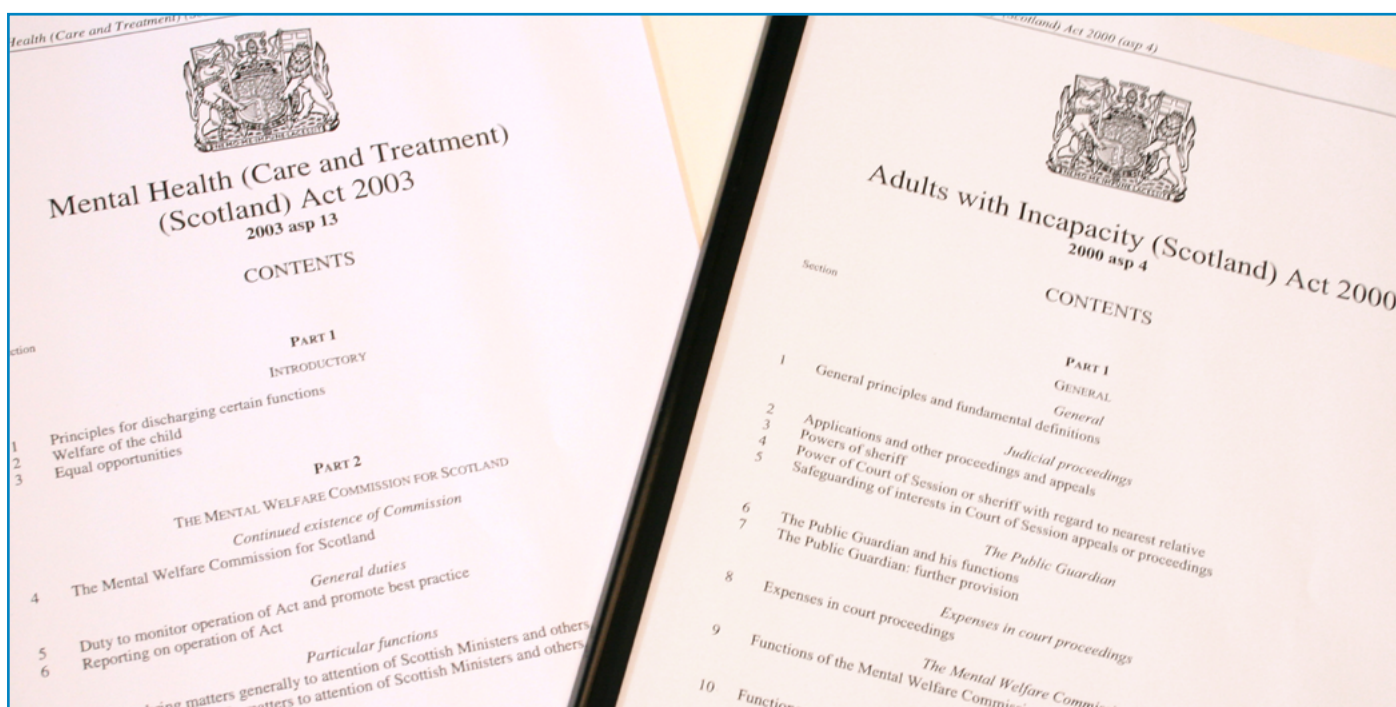
Due to the Covid-19 pandemic, we postponed all scheduled local visits in March 2020. From August 2020, we followed a phased return to our visiting programme applying the recommendations in the Scottish Government's roadmap to recovery. We visited 15 settings across Scotland from August 2020 to end March 2021. The settings included low secure, older people's functional wards, intensive psychiatric care units, wards for people with learning disability and rehabilitation settings. All visits were undertaken on an announced basis given the need to ensure planning in relation to Covid-19 with the safety of all a priority. Some parts of the visits were done on a virtual basis, for example follow up calls with relatives. All outcome reports have been published on our website noting a range of recommendations made; on some visits no recommendations were made and for others, up to five recommendations were made.

Publishing our local visits reports

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.

Local visits can be found [here on our website](#).

Monitoring and safeguarding care and treatment



- **Our Mental Health Act monitoring report showed that the number of times people in Scotland were so unwell that they were detained for mental health treatment rose by 10.5% in 2020-21. This compares to an average 4.5% rise over the previous five years, more than doubling the rise.**
- **The Coronavirus Act had a clear impact on our Adults with Incapacity Act monitoring data. This can be seen most clearly in relation to orders granted in the year. A total of 2,194 guardianship orders were granted in 2020-21, which was 30% fewer than in 2019-20.**
- **The number of young people under the age of 18 admitted to non-specialist hospital wards was 86 admissions involving 62 young people. This is a fall from 2019-20, however it is not directly comparable and needs to be understood against the backdrop of pandemic restrictions.**

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.

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 of Mental Health and Incapacity Legislation

We have various duties under the Mental Health Act to receive, check and report on statutory interventions and notifications. We also promote the principles of that Act. In addition, we receive statutory notifications of certain welfare interventions under the Adults with Incapacity (AWI) Act. Our monitoring work involves both checking the paperwork and records of people who are being cared for or treated under mental health or incapacity law, and analysing and reporting on trends and differences in the way the law is being used across the country.

In 2020-21 we processed 39,514 (2019-20: 39,085) forms and other notifications related to mental health and incapacity legislation; 2,418 (2019-20: 3,605) guardianship and intervention orders.

Mental Health Act monitoring

Our annual monitoring report showed that the number of times people in Scotland were so unwell that they were detained for mental health treatment rose by 10.5% in 2020-21.

This compares to an average 4.5% rise over the previous five years, more than doubling the rise.

As well as rising numbers, the report once more showed falling safeguards when people are detained for treatment against their will and found a clear link between detention for serious mental ill health and poverty.

The report found there were 6,699 episodes – each episode being a single period of time one individual is detained for - using the Mental Health Act in Scotland in 2020-21.

There are three different ways people can be detained - either by emergency certificate, short term detention, or through a compulsory treatment order - and rates rose in each of these.

We remain very concerned over the way detentions are taking place. Consent of a mental health officer (a specialist social worker) is an important safeguard and should happen every time a person is detained using the Act. For emergency detentions, consent fell below half of all such detentions in 2020-21, with big variations in different parts of Scotland. This is unacceptable and unfair to patients, who should all receive the protection of this safeguard, no matter where they live in the country.

For the first time since we started monitoring detentions, our report also considered the level of deprivation based on the home address of the person being detained according to the Scottish Index of Multiple Deprivation (SIMD). For all three detention order types there was a clear gradient, with a higher proportion of detentions of individuals from the most deprived parts of Scotland.

The full report is [available on our website](#).

‘We remain very concerned over the way detentions are taking place.’

Adults with Incapacity monitoring

The Commission has a duty to monitor AWI data. The implementation of the Coronavirus (Scotland) Act 2020 on 7 April 2020 had an impact on the year's data, specifically schedule 3 part 2:

- 'Stop the clock' provisions for guardianships, meaning that whilst the provision was in force the guardianship order was effective, but the time to expiry was paused. This dealt with the issue of possible expiry of guardianships before a renewal application could be lodged at court.
- 'Stop the clock' provisions for s.47 certificates for medical treatment, meaning that whilst the provision was in force the s.47 certificate was effective, but the time to expiry was paused. This dealt with the issue of possible expiry of certificates before a doctor could re-certify.

This year's figures show a small increase in the number of individuals subject to a guardianship order; 16,033 individuals subject to a guardianship order on 31 March 2021, compared to 15,973 in 2020.

The impact of the Coronavirus Act can be seen most clearly in relation to orders granted in the year. A total of 2,194 guardianship orders were granted in 2020-21, which was 30% fewer than in 2019-20. Of all granted guardianship orders, 91% were new orders compared to 78% in 2019-20. This increase follows from a consistent downward trend in new orders since 2011-12.

Private guardianship orders accounted for 72% of all guardianships granted, which was similar to previous years. The most common primary diagnosis was learning disability (47%) and dementia (38%).

During the year we were only able to visit five people subject to guardianship orders with the aim to complete a further 45 visits in 2021.

This related to a project focussing on people with alcohol related brain damage subject to guardianship orders and measuring their experience against our alcohol related brain damage good practice guide published in January 2019.

The full AWI report is available [our website](#).

Young people monitoring

In 2020-21 the number of young people under the age of 18 admitted to non-specialist hospital wards was 86 admissions involving 62 young people. These figures are a fall from 2019-20 when there were 103 admissions to non-specialist wards involving 88 young people.

These numbers however are not directly comparable and the fall needs to be understood against the backdrop of pandemic restrictions. Hospital wards and admissions and discharges across the country were adapted in 2020-21 to help cope with this.

Scotland does not have any intensive psychiatric care unit (IPCU) beds for young people. In previous years we have recommended that Scottish Government resource and support the development of IPCU facilities. We repeat this recommendation, and ask that the exploratory work needed to make this happen is completed within one year.

The Commission repeats its recommendation that health boards have specialist advocacy services for young people, and repeats its recommendation that hospital managers ensure that whenever a young person is admitted to a non-specialist ward, the right to education should be part of their care planning.

The full report is available on [our website](#).

Further work

In addition to our three main reports, we undertook a number of specific monitoring projects during 2020-21.

Young people

Our Mental Health Act monitoring report in 2019 highlighted an increasing number of young people being subject to detention. As a follow-up, we completed an in-depth review of detentions of young people aged 16 and 17 to better understand the characteristics and presentations of young people who are so unwell that they need treated under the law.

This report can be found [on our website](#).

Mental health act detentions in the pandemic

As part of our work with stakeholder groups reviewing the implications of the pandemic, we agreed to report on any implication on the use of the Mental Health Act. We produced a report in December 2020 on detentions for mental health care during the pandemic.

Our biggest concern at that point was the lack of involvement of a mental health officer (MHO) in emergency detentions; during the first phase of the pandemic the number of detentions that had MHO consent fell to a new low of only 42%. These concerns were confirmed in our full year monitoring report which noted a 10.5% increase in detentions during 2020-21 in parallel with the falling safeguard of the mental health officer involvement.

This report can be found on [our website](#).

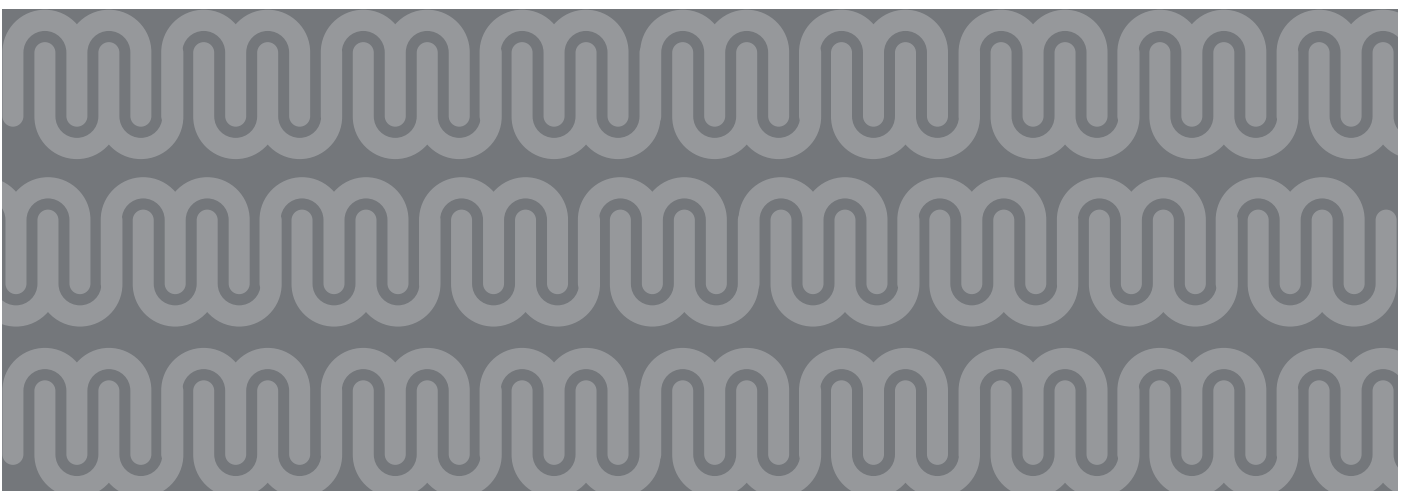
Restricted patients

We were asked by Scottish Government during the year to monitor the use of remote visits for restricted patients moving to new units. This required us to speak with the individuals and services to ensure an opportunity was given to the individual to see the new unit on video link and so prevent a delay in moving.

Designated medical practitioners

Under Section 233 of 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 Part 16 of the Mental Health Act (and section 48 of the Adults with Incapacity Act). These are important safeguards and are the highest priority for recovery under our business continuity plans. We were able to keep this safeguard functioning by facilitating phone or video second opinion visits during the pandemic. A consequence of these opinions being completed remotely was a higher percentage were authorised for a shorter period (e.g. for one year rather than three years). This may have implications for the number of second opinions required in subsequent years. During the year, we organised 2,266 (2019-20: 2,360) second medical opinions.

Investigations



- **We considered and investigated 23 cases (15 individual cases, one of whom subsequently joined eight further cases as part of our investigation into the care and treatment of female prisoners).**
- **In response to concerns raised in a report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT), we carried out a review of the records of nine women who had received mental health care in prison custody in Scotland between 2017 and early 2020.**
- **We continued to review and strengthen our investigations work and have made significant changes to our in house processes.**

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.

We considered and investigated 23 cases (15 individual cases, one of whom subsequently joined eight further cases as part of our investigation into the care and treatment of female prisoners).

We closed nine individual cases as complete, with the Commission satisfied with the outcome or responses of services after our investigation.

We continued to direct investigations into six other cases.

Cornton Vale Report

During 2020 we carried out a review of the records of nine women who had received mental health care in prison custody in Scotland between 2017 and early 2020. This was in response to concerns raised in a report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT) in October 2019, in relation to their visit to Scottish police and prison premises during October 2018.

Our initial findings included concerns about women who were mentally unwell being segregated in prison and delays in transferring women who were acutely mentally ill to hospital. The full findings were published in July 2021.

Our report received wide news coverage in Scottish print and broadcast media on the day of release in addition to coverage and comment in specialist publications. Scottish Government Minister Kevin Stewart said 'This is an important report that contains a number of recommendations which will be given careful consideration'. We are currently following up the response to recommendations.

Ongoing improvement

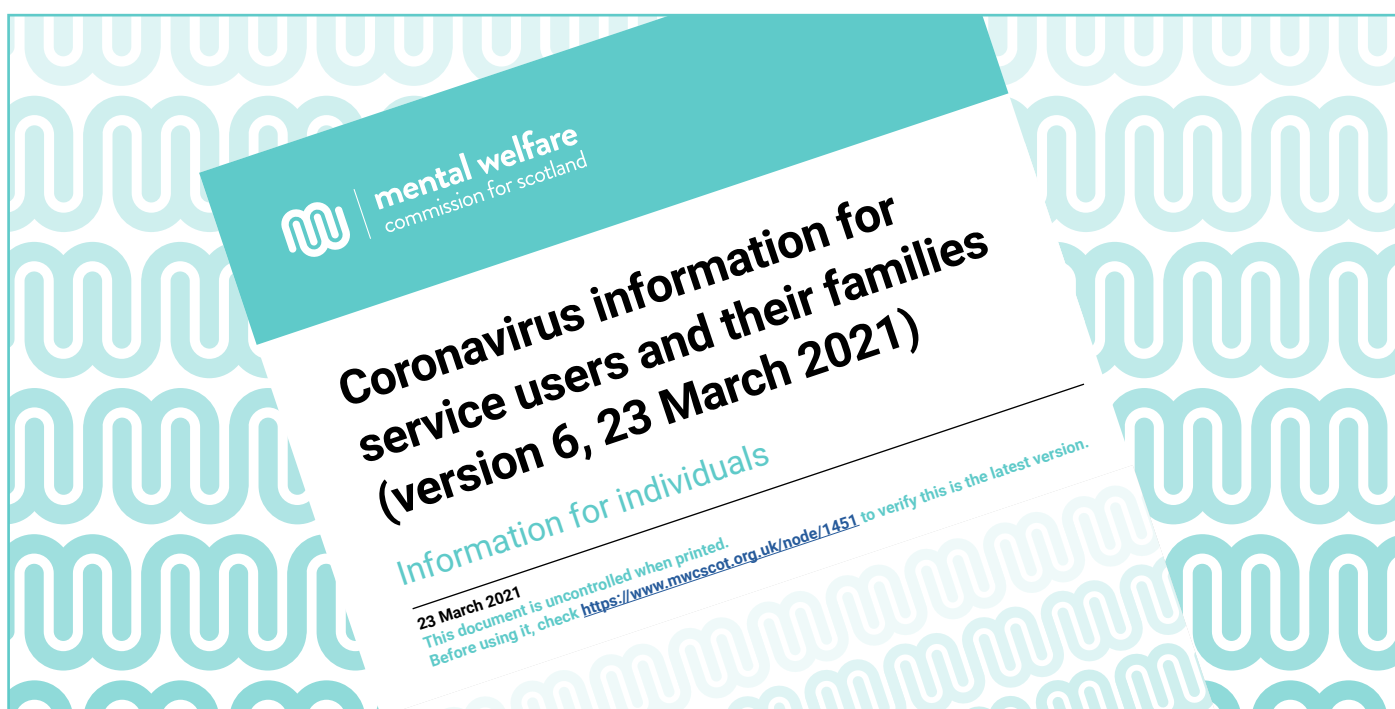
We are continuing to review and strengthen our investigations work and have made significant changes to our in house processes.

Project done on behalf of Scottish Government

We have 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:

- **Investigating deaths of people detained under the Mental Health Act**
We are developing an approach for a national system for investigating all deaths of individuals who, at the time of death, were subject to mental health legislation.
- **A system of review for homicide**
The second strand involves the ongoing development of a system of review when people who have been in contact with mental health services commit homicide.

Providing information and advice



- We received 3750 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 Covid Advice notes throughout the year responding to FAQs on managing care and treatment in the rapidly changing environment of the pandemic – 24 updates for health and care professionals, and six versions specifically for relatives/carers.
- We reviewed, revised or rewrote 39 of our good practice guides.
- We publish our reports widely and 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.

Advice line

From Mondays to Fridays we run an advice line staffed by mental health nurses, social workers (Mental Health Officers) and psychiatrists.

Our team of professionals offers advice to health and care professionals and people with mental ill health and families or carers.

During 2020-21, we received a total of 3750 calls to our advice line:

- 854 of the calls came from relatives/ carers/private guardians,
- 666 calls from people with experience,
- 646 calls from RMOs/psychiatrists and
- 504 calls from MHOs/social workers.

Other categories of call included those from advocacy, nurses, medical records, care homes etc.

Alongside the work on ensuring ongoing rights and safeguards at the legislative and policy level we were aware of practical difficulties for individuals and services through calls to our advice line.

Relative

Following a call to the telephone advice line Ms X just wanted to thank everyone in the Commission for being very helpful and kind.

Psychiatrist

It's really helpful to get your perspective. I'm still finding my feet with the paperwork with the Scottish Act....

Person with experience

Caller spoke to someone a few weeks back and just wanted to let them know that the advice given has made a massive difference and resolved the issues... huge progress made, which they put down to Commission advice/ intervention.

Covid-19 advice notes

In March 2020 we produced our first Covid-19 advice note which was a collection of frequently asked questions to assist health and care professionals facing new challenges and dilemmas in a rapidly changing environment.

We issued 24 versions of the advice note throughout the year. These included wide ranging advice on promoting rights, a position statement on the use of do not attempt resuscitation (DNACPR) forms, the role of technology in mental health assessments and vaccination guidance.

We also produced six versions of Covid-19 advice notes for people using services and their families and carers.

Our advice notes focussed on the rights and welfare of individuals and included the following:

- clear guidance about how to proceed in considering vaccination for people who may have reduced capacity to consent or refuse vaccination. We also wrote to Scottish Government to request that people with learning disabilities received vaccinations earlier in the vaccination programme than originally planned,
- there was significant interest and concern in the use of technology to complete virtual assessments under mental health legislation. This was a new area of practice with no evidence to draw on. We formulated advice, with other stakeholders, for the sector in Scotland which was published in the BMJ's Journal of Medical Ethics.

Good practice guides

During 2020-21 we looked at 39 good practice guides and advice notes, reviewed, revised and in some cases rewrote them. We now also have nine new easy read accessible items.

Our staff/working in the pandemic

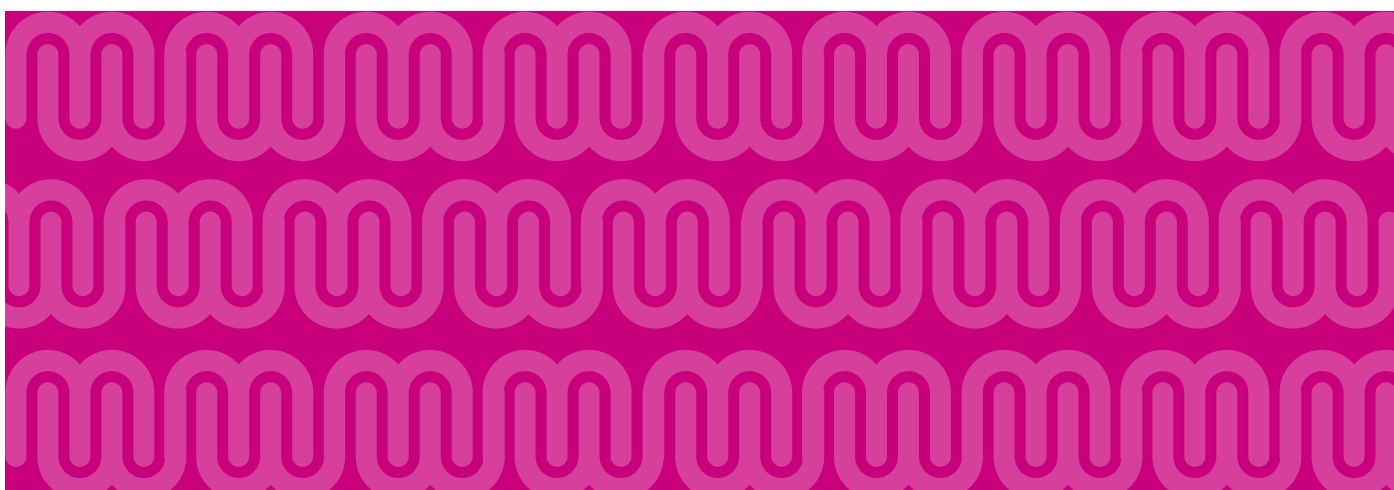
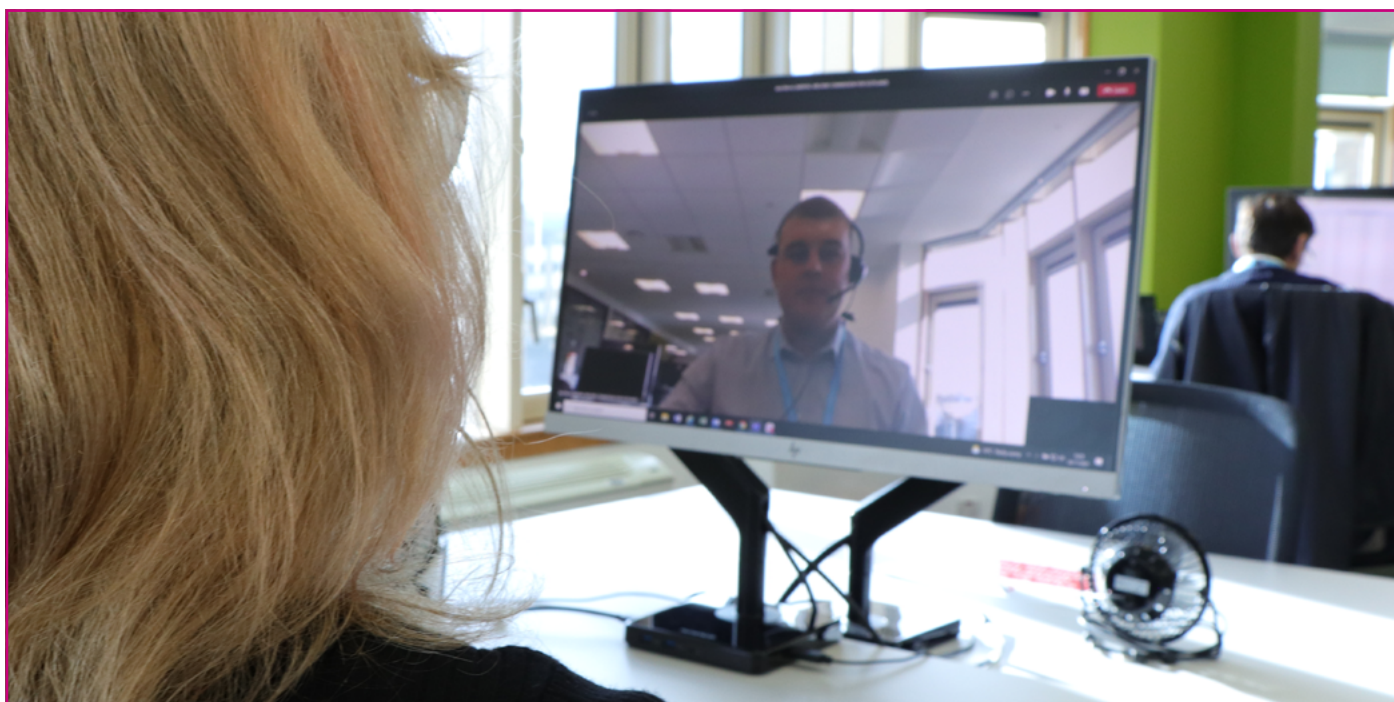
Head of Corporate Services

I'm really proud that we kept the Commission running last year when we all had to go remote. Not all of our staff had worked from home before then and the forms processing in March 2020 could not be fully done remotely. There was a huge amount of work done to initially find work arounds to process forms and then work with the external supplier to design, test and implement a more robust system to process all the forms remotely. This allowed us to produce the Mental Health Act Covid Advice notes and to update key meetings.

Engagement and Participation Officer, Carers

It's been good to maintain and extend the connections with carer groups across the country. Mainly down to them of course and they have provided great support for people. We also set up a forum for carer workers in conjunction with Carers Trust and Coalition of Carers which is providing education, support, and information for workers supporting carers looking after someone with a mental health diagnosis.

Improving our practice



- Our Board continue to set our strategic direction and ensure efficient, effective and accountable governance.
- Our Board reviewed its own development through a self-assessment exercise which highlighted three areas for particular attention.
- We seek to learn and improve as a result of the complaints we receive. In 2020-21, we received and responded to 11 complaints, one more than last year.



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 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 Director of Health and Social Care in West Lothian, with key responsibilities across partner organisations and acting as a deputy chief executive as part of West Lothian Council's executive management team, a member of the NHS Lothian Board Corporate Management Team and taking on the duty of chief officer of the West Lothian Integration Joint Board.

Board self-assessment

The Board has ensured collective time together out with formal board meetings to discuss emerging priorities, risks, objectives and changes throughout this year.

The Board reviewed its own development through a self-assessment exercise which highlighted three areas for particular attention– the need to ensure that our key priorities remain central to all of our work; a need for ongoing horizon scanning and ensuring the work of the Commission is set in the right context; and that this should be informed by hearing stakeholders views.

One new action is that the Board will regularly invite external groups and organisations to speak at Board meetings and talk about their work. Another new action is for the Board to support the development of the Commission's advisory group to ensure that a wide range of external voices are heard by the Commission.

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, particularly in relation to advice on our focus for future visiting programmes, in response to the Strang report and the Scottish Mental Health Law Review. This year, we are delighted to also have engaged on an advisory basis with the Scottish Dementia Working Group (SDWG) and will continue to do so.

Communications analysis

We continued with our 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.

Our engagements on social media remained strong, with our regular updates to Covid-19 advice notes getting a lot of attention, and a spike in interest with the announcement and welcome of Julie Paterson as the Commission's chief executive. In October Twitter changed the metrics by which certain types of engagement are measured, which means that direct year-on-year comparisons are no longer possible. However, the number of followers of the Commission's account continues to grow each year, with 736 followers gained in 2020-21.

Learning lessons

We seek to learn and improve as a result of the complaints we receive. In 2020-21, we received and responded to 11 complaints, one more than last year.

At stage 1, there was one upheld complaint (20%) and 4 partially upheld (80%).

At stage 2, there was one upheld complaint (17%), three partially upheld (50%) and two not upheld complaints (33%).

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 £4.842 million. This included £4.0 million for the Commission, £0.650 million for the National Confidential Forum and £0.192m 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](#).





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SG/2021/361

December 2021

